



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, April 14, 2020 – 5:30 P.M. Held Via Teleconference

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

- Morro Bay National Estuary Program 2020 State of the Bay Update
- Morro Bay Chamber of Commerce Quarterly Update

PUBLIC COMMENT

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this Meeting of the City Council will be conducted telephonically through Zoom and broadcast live on Cable Channel 20 and streamed on the City website (click [here](#) to view). Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, the Council Chambers will not be open for the meeting.

Public Participation:

In order to prevent and mitigate the effects of the COVID-19 pandemic, and limit potential spread within the City of Morro Bay, in accordance with Executive Order N-29-20, the City will not make available a physical location from which members of the public may observe the meeting and offer public comment. Remote public participation is allowed in the following ways:

- *Community members are encouraged to submit agenda correspondence in advance of the meeting and watch the meeting live on either cable Channel 20 or as streamed on the City's [website](#). Agenda correspondence may be emailed to the City Clerk's office at cityclerk@morrobayca.gov, or mailed to the City Council care of the City Clerk at 595 Harbor Street, Morro Bay, CA 93442 prior to the meeting and will be published on the City website with a final update one hour prior to the meeting start time. Agenda correspondence received less than an hour before the meeting start time may not be posted until after the meeting.*

- *If you would like to speak on an agenda item, please use the following information to call in at the beginning of the meeting. You will be placed in a queue until the Mayor opens public comment for all items on the meeting agenda. Each speaker will be allowed three minutes for public comment.*

Public Comment call-in: 1(818) 794-7004

Show #2607

Guest PIN #464192

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 FEBRUARY 11, 2020, CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF MINUTES FOR THE FEBRUARY 25, 2020, CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 APPROVAL OF MINUTES FOR THE MARCH 10, 2020, CITY COUNCIL SPECIAL CLOSED MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-4 APPROVAL OF MINUTES FOR THE MARCH 19, 2020, CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-5 APPROVAL OF MINUTES FOR THE MARCH 23, 2020, CITY COUNCIL SPECIAL CLOSED MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-6 APPROVAL OF MINUTES FOR THE APRIL 1, 2020, CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-7 APPROVAL OF MINUTES FOR THE APRIL 3, 2020, CITY COUNCIL SPECIAL CLOSED MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-8 ADOPTION OF RESOLUTION NO. 27-20 INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT FOR THE CLOISTERS PARK AND OPEN SPACE - LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS)

RECOMMENDATION: Adopt Resolution No. 27-20 ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2020/21 for the maintenance of the Cloisters Park and Open Space under the provisions of the "Landscaping and Lighting Act of 1972."

- A-9 ADOPTION OF RESOLUTION NO. 28-20 INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT FOR THE NORTH POINT NATURAL AREA - LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 28-20 ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2020/21 for the maintenance of the North Point Natural Area under the provisions of the "Landscaping and Lighting Act of 1972."

- A-10 ADOPTION OF RESOLUTION NO. 29-20 APPROVING A 1-YEAR LEASE AGREEMENT WITH THE MORRO BAY SKATEBOARD MUSEUM, INC. FOR PROPERTY LOCATED AT 781 MARKET STREET.; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 29-20, approving a 1-year Lease Agreement for the City property located at 781 Market Street (APN: 066-321-027).

- A-11 AUTHORIZATION TO SUBMIT A LOCAL EARLY ACTION PLANNING (LEAP) GRANT APPLICATION TO THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 30-20 authorizing staff to submit a grant application to the State of California Department of Housing and Community Development (HCD) for Local Early Action Planning Grant (LEAP) program funds to assist in the preparation and adoption of planning documents and process improvements that accelerate housing production and facilitate compliance to implement the sixth cycle of the regional housing need assessment (RHNA) in the City of Morro Bay, in the amount of \$65,000.

- A-12 CONSIDER RESOLUTION 31-20 APPROVING DESIGNATION OF CITY'S AGENTS IN APPLYING FOR REIMBURSEMENT FROM THE CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES (CAL OES) FOR FEMA COVID-19 RELATED EXPENSES AND AUTHORIZING CITY MANAGER TO TAKE ALL NECESSARY ACTIONS FOR COVID-19 REIMBURSEMENTS; (CITY ATTORNEY)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 31-20 approving the Designation of Applicant's Agent Resolution and authorizing the City Manager, or designee, to take all necessary actions to apply for reimbursement of eligible City costs resulting from the COVID-19 pandemic.

B. PUBLIC HEARINGS - None

C. BUSINESS ITEMS

- C-1 CONSIDERATION OF RESOLUTION NO. 32-20 TO JOIN THE SAN LUIS OBISPO COUNTYWIDE REGIONAL COMPACT ON HOUSING; (CITY MANAGER)

RECOMMENDATION: City Council receive a presentation and adopt Resolution No. 32-20 approving and authorizing the Mayor to sign the San Luis Obispo Countywide Regional Compact (on housing).

- C-2 ADOPT RESOLUTION NO. 33-20 REGARDING PUBLICATION OF EMERGENCY ORDERS ON EVICTIONS, FORECLOSURES AND PRICE GOUGING (COVID-19 STATE OF EMERGENCY); (CITY ATTORNEY)

RECOMMENDATION: Staff recommends the City Council Adopt Resolution No. 33-20 Regarding Publication of Emergency Orders on Evictions, Foreclosures and Price Gouging (COVID-19 State of Emergency).

- C-3 APPROVAL OF CONSULTANT AGREEMENT FOR IMPLEMENTATION OF THE FIRST PHASE OF THE MORRO BAY ONEWATER PLAN (WATER AND WASTEWATER) AND AUTHORIZATION FOR THE CITY MANAGER TO SIGN THE AGREEMENT; (PUBLIC WORKS)

RECOMMENDATION: Staff recommends the City Council approve and authorize the City Manager to execute a time and materials consultant agreement with Cannon Corporation, (Cannon) for engineering services to implement the first phase of the OneWater plan in an amount not to exceed \$815,237 without prior written authorization; additionally authorize a ten-percent contingency to be used, for additions to the scope of work, at the discretion of the City Manager. This will result in a total authorization of \$896,761. The budget for the project will come from the water and wastewater enterprise funds and will not impact the City's General Fund.

- C-4 INTRODUCTION OF ORDINANCE NO. 632 TO REGULATE 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 ATTORNEY)

RECOMMENDATION: Introduce for first reading, by title only with further reading waived, Ordinance No. 632 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.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, April 28, 2020 at 5:30 p.m.** via teleconference.

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 UPON REQUEST BY CALLING THE CITY CLERK'S OFFICE AT 805-772-6205.

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.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – FEBRUARY 11, 2020
VETERAN’S MEMORIAL HALL – 5:30 P.M.

PRESENT:	John Heading Dawn Addis Robert Davis Jeff Heller Marlys McPherson	Mayor Council Member Council Member Council Member Council Member
ABSENT:	None	
STAFF:	Scott Collins Chris Neumeyer Dana Swanson Jennifer Callaway Rob Livick Scot Graham Matt Vierra Amy Watkins Eric Endersby	City Manager City Attorney City Clerk Finance Director Public Works Director Community Development Director Fire Marshal Police Commander Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER
Mayor Heading 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/zqfhH7PYTMQ?t=121>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS - None

PRESENTATIONS

- Measure Q Presentation by Citizens Oversight & Citizens Finance Advisory Committee
Chairwoman Barbara Spagnola
<https://youtu.be/zqfhH7PYTMQ?t=544>

Anna Patel, Hermit Crab Store located at 898 Main Street, Unit C, provided the business spot. For more information, visit thehermitcrab.shop or call (805) 225-1110.

The Mayor sought Council concurrence to move Item C-3 to the beginning of the meeting. All members agreed.

PUBLIC COMMENT

Shirley Fraser, Morro Bay, raised concerns regarding the increase in crime related to Monday night community dinners and impacts on nearby property owners.

Linda Winters, Morro Bay, provided an update on her 2020 goals regarding mobile home park housing affordability.

Terry Simons, Morro Bay, shared his appreciation for CFAC's work on the budget and thanked the Council for approving funds to improve City's ability to respond to Public Records Act requests.

Erica Crawford, Morro Bay Chamber of Commerce, provided an update and announced upcoming events.

Mimi Goldberg, Morro Bay, spoke regarding the importance of identifying resources to help solve homeless issues.

John Weiss, Morro Bay, announced a remembrance ceremony for Captain Stew would be held Saturday, Feb. 15, at Tidelands Park.

Dan Sedley, Morro Bay, requested a summary of the report provided by CFAC be included in water/sewer bills.

Linda Donnelly, Morro Bay, encouraged transparency and open discussion by the Council at the meeting, and that Council questions and answers received from staff become part of the record for public review.

Melanie Williams-Mahan, Morro Bay, suggested engaging volunteers to assist with clearing the drainage ditch next to Morro Bay High School to alleviate the mosquito problem and asked when cannabis stores will open

Mayor Headding closed public comment.

The Council and staff responded to issues raised during public comment.

A. CONSENT AGENDA
<https://youtu.be/zqfhH7PYTMQ?t=2887>

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 JANUARY 14, 2020, CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE JANUARY 14, 2020, CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FOR THE FEBRUARY 5, 2020, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-4 APPROVAL OF RESOLUTION NO. 11-20 AUTHORIZING EXECUTION OF A DEED AND LEASE RESTRICTION AND CERTIFICATE OF ACCEPTANCE FOR LEASE SITE 87-88/87W-88W (TLC FAMILY ENTERPRISES, 833 EMBARCADERO) TO INCORPORATE CALIFORNIA COASTAL COMMISSION PERMIT CONDITIONS; (HARBOR)

RECOMMENDATION: Staff recommend the City Council adopt Resolution No. 11-20 authorizing the City Manager to execute a Deed and Lease Restriction and Certificate of Acceptance for Lease Site 87-88/87W-88W with TLC Family Enterprises, located at 833 Embarcadero Road, in order to incorporate the California Coastal Commission permit conditions for the redevelopment of the site into the property deed and lease.

Mayor Headding opened the public comment for the Consent Agenda; seeing none, the public comment period was closed.

MOTION: Council Member McPherson moved approval of all items on the Consent Agenda. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

With Council concurrence, Agenda Item C-3 was heard next.

- C-3 DISCUSSION CONCERNING AN ORDINANCE TO REGULATE TOBACCO, VAPING AND/OR SECONDHAND SMOKE, INCLUDING POTENTIALLY A TOBACCO RETAILER LICENSING PROGRAM, 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 ATTORNEY)
<https://youtu.be/zqfhH7PYTMQ?t=2943>

City Attorney Neumeyer provided the report and responded to Council inquires.

The public comment period for Item C-3 was opened.

Traci Theis, SLO County of Education Tobacco Use Prevention Coordinator, encouraged the Council to move forward with an ordinance and provided packets of information to the Council, including the Stanford University Tobacco Prevention Toolkit.

Jeff Cadwallader, Paso Robles, expressed concern about widespread vaping at Morro Bay High School and encouraged action to get these products out of our schools.

Courtney Rasmussen, San Luis County Tobacco Control Program, expressed concern about relying on the FDA ban, which does not prohibit sale of refillable based electronic cigarettes and urged the Council to adopt a comprehensive ban on all types of vape systems.

Inger Appanaitis, San Luis Obispo Tobacco Control Program, shared statistics on youth vaping in Morro Bay and provided an update on action taken by other area cities as well as San Luis Obispo County.

Julia Alber, Chair of San Luis Obispo County Tobacco Control Coalition, provided statistics and asked the Council to consider banning e-cigarette products.

Ben Akkare, local business owner, disagreed with the studies and stated it was unfair to throw blame retailers.

Melanie Williams-Mahan, Morro Bay, supported I.D. checks but not a ban on the sale of legal products.

Mimi Goldberg, Morro Bay, was confident local retailers do not sell to minors and urged the Council to continue allowing the sale of menthol cigarettes.

Trent Johnson, San Luis Obispo, implored the Council to reconsider ban on all flavored products including menthol cigarettes.

Terry Simons, Morro Bay, questioned why cannabis had been removed from this ordinance and suggested Council Members who received contributions from cannabis companies abstain from a decision on this item.

Jessie Eilers, Morro Bay, urged the Council to move forward with an ordinance.

Jim Curnutt, Morro Bay, encouraged the Council to ban vaping in Morro Bay but did not support exempting cannabis dispensaries.

Dan Sedley, Morro Bay, appreciated the information provided by staff and the public and supported stronger secondhand smoke regulations.

The public comment period for Item C-3 was closed.

Following discussion, there was Council consensus to bring forward an ordinance at a future meeting with the following components as defined on pages 112-114 of the agenda packet:

- 1) American Lung Association Recommended Regulations
 - a) Secondhand smoke regulations for multi-unit residences, including items i, ii and iii (5-0 Council support)
 - b) Tobacco Retailer License Program (5-0 Council support)
 - c) Prohibiting the sale of tobacco products by retail establishments containing a pharmacy (3-2 Council support with Davis and McPherson opposed)
 - d) Prohibiting the sale of single cigars that cost less than five dollars, and any number of cigars fewer than the number contained in the manufacturers' original consumer packaging designed for retail sale to a customer, and any package of cigars containing fewer than five cigars (3-2 Council support with Davis and McPherson opposed)
 - e) Retailer location restrictions (3-2 Council support with Davis and McPherson opposed, for a separate track to include Planning Commission review of zoning regulations).
 - f) Prohibit sale of flavored tobacco products, except for menthol and smokeless tobacco (3-2 Council support with Davis and McPherson opposed).

2) Vaping Products (“E-Cigarettes”)

- a) Prohibit the sale of all vaping products (3-2 Council support with Davis and McPherson opposed)
- b) Prohibit only the sale of flavored vaping products (not applicable based on 3-2 support for Item a).
- c) Prohibit sale of vaping products containing Vitamin E Acetate (5-0 Council support).
- d) Effective date of Prohibition (5-0 Council support to extend the effective date of the prohibition to allow local retailers additional time to prepare for the prohibition, as well as generally extend various effective dates as agreed before)

3) ID checks (5-0 Council support)

Staff confirmed an ordinance reflecting Council direction will take some time to prepare and be brought back at a future meeting.

The Council took a brief recess at 7:44 p.m. The meeting reconvened at 7:53 p.m. with all members present.

C-1 PRESENTATION AND DISCUSSION OF THE FISCAL YEAR 2018/19 COMPREHENSIVE ANNUAL FINANCIAL REPORT AND RECOMMENDATION TO PAY-OFF CALPERS LIABILITIES FOR THE TIER II AND TIER III UNFUNDED LIABILITIES; (FINANCE)

<https://youtu.be/zqfhH7PYTMQ?t=8131>

Finance Director Callaway and Mr. Kenneth Pun from The Pun Group, provided the report and responded to Council inquires.

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

Terry Simons, Morro Bay, encouraged council to support and enhance public oversight to build confidence in the community and expressed concern a significant economic downturn may make the decision to pay down unfunded liabilities look like a mistake.

Betty Winholtz, Morro Bay, posed questions regarding CFAC recommendations and, while she appreciated paying off unfunded liabilities in advance, was concerned that may not happen in future years.

Dan Sedley, Morro Bay, asked if the City was within the scope of best practices to change auditors every five years.

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

At the Council’s request, Mr. Pun and Ms. Callaway responded to questions raised during public comment.

MOTION: Mayor Headding moved for approval the FY 2018/19 Comprehensive Annual Financial Report (CAFR) for the period July 1, 2018 through June 30, 2019; and adoption of Resolution No. 12-20 approving allocation of \$486,504 in FY 2018/19 year-end revenues over expenditures to pay off the Tier II and Tier III (PEPRA) unfunded accrued liabilities for the Police,

Fire and Miscellaneous classifications. The motion was seconded by Council Member McPherson and carried 5-0 by roll call vote.

- C-2 ADOPTION OF RESOLUTIONS OF NECESSITY (RESOLUTION NO. 13-20 AND RESOLUTION NO. 14-20) AUTHORIZING EMINENT DOMAIN ACTIONS TO ACQUIRE EASEMENTS IN REAL PROPERTY FOR THE WATER RECLAMATION FACILITY PROJECT – APNs: 066-331-046 (VISTRA ENERGY) AND 066-331-036 (PG&E); (CITY MANAGER/CITY ATTORNEY)
<https://youtu.be/zqfhH7PYTMQ?t=11034>

City Manager Collins and City Attorney Neumeyer provided the report and responded to Council inquires.

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

Garrett Lewelling, appearing on behalf of his client, Vistra Energy, requested the Council continue hearing for 30 days to allow Vistra to respond and continue negotiations with goal of coming to an agreement with the City.

Terry Simons, Morro Bay, encouraged the Council to allow time for the City and Vistra to work out the details and suggested an alternative pipeline route exists that would be less impactful to the community.

Betty Winholtz, Morro Bay, raised various issues regarding the standards for eminent domain, proposed location and need for a new sewer plant with tertiary treatment, and inconsistencies in the staff report.

Dan Sedley, Morro Bay, questioned the number of infusion wells and location of the well easement. He did not believe the required criteria for eminent domain had been met.

Pauline Stansbury, Morro Bay, stated the project was not planned or located in a manner compatible for the most public good and least private injury and, therefore, does not meet requirements of eminent domain.

Mimi Goldberg, Morro Bay, stated her appreciation for Vistra's interest in working with the City.

Linda Donnelly, Morro Bay, raised various concerns about the status of the project.

Melanie Williams-Mahan, Morro Bay, requested more information regarding location of the pipelines.

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

MOTION: Council Member McPherson moved the meeting continue past 9:30 to a time uncertain. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

Council members provided individual comments with a majority of the members generally supportive and committed to ongoing negotiations with Vistra, in hopes of reaching an agreement. Given the project timeline by funding agencies, the majority agreed it was prudent to avoid potential delays and adopt the Resolution of Necessity, as presented.

Council Member Heller found public comments to be compelling and did not see the proposed action met the legal requirements to authorize the commencement of eminent domain actions.

MOTION: Mayor Headding moved to adopt the Resolutions of Necessity (Resolution No. 13-20 and Resolution No. 14-20) authorizing the commencement of eminent domain actions to acquire temporary construction easements and permanent pipeline, well, and access easements on real property with APN: 066-331-046 (Vistra Energy) and APN: 066-331-036 (PG&E) for purposes of the Water Reclamation Facility Project. The motion was seconded by Council Member McPherson and carried 4-1 by roll call vote with Council Member Heller opposed.

C-4 REVIEW OPTIONS FOR IMPROVEMENTS TO PUBLIC TRASH AND RECYCLING RECEPTACLES AND PUBLIC RESTROOM MANAGEMENT IN THE EMBARCADERO AND MORRO ROCK PARKING LOT AREAS; (CITY MANAGER/PUBLIC WORKS)
<https://youtu.be/zqfhH7PYTMQ?t=14018>

City Manager Collins and Public Works Director Livick provided the report and responded to Council inquires.

The public comment period for Item C-4 was opened.

Mimi Goldberg, Morro Bay, agreed with staff recommendations.

Linda Donnelly, Morro Bay, urged Council to consider Saturday trash pickup on event weekends and replace the roll-off bin at Dog Beach.

The public comment period for Item C-4 was closed.

The Council provided individual comments in support of staff recommendations, including the hiring of a temporary maintenance worker for summer weekends to service trash and recycling bins in heavy foot traffic areas, retrofitting the Morro Rock restroom toilets with touchless auto-flushers, adding an ADA porta-potty in the Morro Rock parking lot for the summer, and use of Proposition 68 grant funds to replace the Coleman Beach restroom with in-lieu funds for the required match.

The Council did not take any formal action on this item.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS
<https://youtu.be/zqfhH7PYTMQ?t=15327>
None

E. ADJOURNMENT

The meeting adjourned at 9:53 p.m.

Recorded by:

Dana Swanson
City Clerk

This Page Intentionally Left Blank

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL MEETING – FEBRUARY 25, 2020
VETERANS MEMORIAL HALL
209 SURF STREET – 3:30 P.M.

AGENDA NO: A-2
MEETING DATE: April 14, 2020

PRESENT:	John Headding Dawn Addis Robert Davis Jeff Heller Marlys McPherson	Mayor Council Member Council Member Council Member Council Member
STAFF:	Scott Collins Dana Swanson Jennifer Callaway Rob Livick Scot Graham Steve Knuckles Eric Endersby Jody Cox	City Manager City Clerk Finance Director Public Works Director Community Development Director Fire Chief Harbor Director Police Chief

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding established a quorum and called the meeting to order at 3:30 p.m. with all members present.

PUBLIC COMMENT FOR ITEMS ON THE AGENDA
<https://youtu.be/WaTHe2AGW50?t=42>

Aaron Ochs, Morro Bay, suggested a town hall discussion and community poll regarding the cost of housing, and spoke to the importance of bringing industry jobs with benefits to Morro Bay. He asked about the status of recreational cannabis and commented on the importance of consistent planning and building codes.

Barry Branin, Morro Bay, announced an upcoming public presentation related to the Chevron property exchange, Toro Preserve, and Dog Beach.

Dan Sedley, Morro Bay, thanked the City for including a questionnaire with last water/sewer bill asking citizens' opinions on different subjects and allowing them to provide input. He suggested the conversation regarding housing affordability be expanded to include cost of utilities.

Barry Branin, Morro Bay, commented on the importance of managing City expenses.

The public comment period was closed.

SPECIAL MEETING AGENDA ITEM:

- I. TEN-YEAR FINANCIAL FORECAST STUDY SESSION
<https://youtu.be/WaTHe2AGW50?t=629>

City Manager Collins introduced the item and turned it over to Finance Director Callaway to present the Ten-Year Financial Forecast report.

Following individual comments, there was consensus on the importance of the following:

- Community conversation about service priorities and budget constraints
- Diversifying revenue streams and support for Chamber of Commerce Economic Ombudsman Contract
- Employee retention and concern about salary disparities with other agencies
- Support for contributions to replacement funds as presented
- Continued assessment and preparation of a menu or combination of alternatives to reduce operational costs while continuing to provide essential services.

The Council did not take any formal action on this item.

ADJOURNMENT

The meeting adjourned at 4:53 p.m.

Recorded by:

Dana Swanson
City Clerk

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
MARCH 10, 2020 – 3:00 P.M.
CITY HALL CONFERENCE ROOM.

AGENDA NO: A-3
MEETING DATE: April 14, 2020

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

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

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 3:00 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, seeing none, the public comment period was closed.

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

CS-1 CONFERENCE WITH REAL PROPERTY NEGOTIATOR – GOVERNMENT CODE SECTION 54956.8

Property: 781 Market Avenue
Property Negotiators: Jack Smith, Skateboard Museum
Agency Negotiators: Scott Collins, City Manager; Scot Graham, Community Development Director
and Chris Neumeyer, City Attorney
Under Negotiation: Price and Terms of Payment

CS-2 CONFERENCE WITH REAL PROPERTY NEGOTIATOR - GOVERNMENT CODE SECTION 54956.8

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 Negotiator: 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-3 CONFERENCE WITH REAL PROPERTY NEGOTIATOR – GOVERNMENT CODE SECTION 54956.8

Property: Lease Sites 86/86W (Libertine Pub, 801 Embarcadero)
Property Negotiators: Burt Caldwell
Agency Negotiators: Scott Collins, City Manager; Scot Graham, Community Development Director,
Eric Endersby, Harbor Director and Chris Neumeyer, City Attorney
Under Negotiation: Price and Terms of Payment

CS-4 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: One Matter

CS-5 CONFERENCE WITH LABOR NEGOTIATORS

City Designated Representative: Colin Tanner, Special Labor Counsel
Employee Organizations: Morro Bay Firefighters' Association; Morro Bay Police Officers' Association;
Service Employee's International Union - SEIU Local 620

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 4:22 p.m.

Recorded by:

Dana Swanson
City Clerk

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL MEETING – MARCH 19, 2020
VETERANS MEMORIAL HALL
209 SURF STREET – 4:00 P.M.

AGENDA NO: A-4
MEETING DATE: April 14, 2020

City Council conducted this meeting via teleconference in accordance with Section 3 of California Governor Newsom’s Executive Order N-29-20 issued on March 17, 2020 in response to the present State of Emergency in existence due to the threat of COVID-19.

PRESENT:	John Headding	Mayor
	Dawn Addis	Council Member <i>(teleconference)</i>
	Robert Davis	Council Member <i>(teleconference)</i>
	Jeff Heller	Council Member <i>(teleconference)</i>
	Marlys McPherson	Council Member <i>(teleconference)</i>

STAFF:	Scott Collins	City Manager
	Dana Swanson	City Clerk
	Chris Neumeyer	City Attorney <i>(teleconference)</i>
	Jennifer Callaway	Finance Director
	Steve Knuckles	Fire Chief

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding established a quorum and called the meeting to order at 4:01 p.m. with all members present.

PUBLIC COMMENT FOR ITEMS ON THE AGENDA

Mayor Headding opened public comment; seeing none, the public comment period was closed.

SPECIAL MEETING AGENDA ITEMS:

- I. ADOPT RESOLUTION NO. 23-20 RATIFYING THE CITY OF MORRO BAY’S LOCAL EMERGENCY DECLARATION; ADOPT RESOLUTION NO. 24-20 APPROVING THE CITY OF MORRO BAY’S EMERGENCY AND DISASTER PURCHASING POLICY; AND ADOPT RESOLUTION NO. 25-20 CONCERNING PUBLICATION OF CALIFORNIA EMERGENCY ORDER AND LAW REGARDING RESIDENTIAL EVICTIONS; (CITY MANAGER)
<https://youtu.be/Z7BQiZpa5nM?t=1936>

City Manager Collins provided the report and responded to Council inquires.

Mayor Headding opened public comment for Agenda Item I. The City Clerk announced no further agenda correspondence had been submitted via email beyond that posted on the City website prior to the meeting. The public comment period was closed.

MOTION: Council Member McPherson moved to 1) Adopt Resolution No. 23-20 ratifying the City of Morro Bay’s Local Emergency Declaration, and 2) Adopt Resolution No. 24-20 adopting the City of Morro Bay’s Emergency and Disaster Purchasing Policy, and 3) Adopt Resolution No. 25-20 concerning Publication of California Emergency Order and Law regarding Residential Evictions. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

II. OVERVIEW OF THE EMERGENCY OPERATIONS CENTER (EOC) ACTIVATION FOR THE COVID-19 PANDEMIC LOCAL EMERGENCY; (FIRE CHIEF / CITY MANAGER)

<https://youtu.be/Z7BQiZpa5nM?t=4649>

City Manager Collins and Fire Chief Knuckles provided the report and responded to Council inquires.

The Council did not take any formal action on this item.

III. RATIFICATION OF THE CITY MANAGER'S DETERMINATION TO ACTIVATE THE CITY'S SHORT-TERM FISCAL EMERGENCY PLAN: (CITY MANAGER)

<https://youtu.be/Z7BQiZpa5nM?t=6754>

City Manager Collins provided the report and, along with Finance Director Callaway responded to Council inquires.

MOTION: Mayor Headding moved the Council ratify the City Manager's determination to activate the City's Short-term Fiscal Emergency Plan and that we amend the economic development contract with the Chamber to \$6,500/month, which is an increase of \$1,334, to pay for additional expenses associated with the current efforts to assist our businesses with regard to the projected downturn in the economy, and that staff be directed to come back within 45 days to Council with potential business assistance opportunities and a full report on financial impact of COVID-19. The motion was seconded by Council Member Addis for discussion.

Following discussion, Mayor Headding amended his motion.

AMENDED MOTION: Mayor Headding moved the Council ratify the City Manager's determination to activate the City's Short-term Fiscal Emergency Plan and bring back a report on what the extent of the crisis might be and recommendation for mitigations for businesses. The amended motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

ADJOURNMENT

The meeting adjourned at 6:32 p.m.

Recorded by:

Dana Swanson
City Clerk

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
MARCH 23, 2020 – 3:30 P.M.
CITY HALL CONFERENCE ROOM (TELECONFERENCE)

AGENDA NO: A-5
MEETING DATE: April 14, 2020

City Council conducted this meeting in accordance with Section 3 of California Governor Newsom's Executive Order N-29-20 issued on March 17, 2020 in response to the present State of Emergency in existence due to the threat of COVID-19. This meeting was held via teleconference for all participants.

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

STAFF: Scott Collins City Manager
Chris Neumeyer City Attorney
Scot Graham Community Development Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 3:30 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, seeing none, the public comment period was closed.

The public comment period was closed.

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

CS-1 CONFERENCE WITH REAL PROPERTY NEGOTIATOR – GOVERNMENT CODE SECTION 54956.8

Property: Chevron Estero Bay (Former Marine Terminal) Property, north and East of the City: APN: 073-075-022, APN's: 073-075-016, 073-084-032, APN's:065-022-008, 073-075-002, 073-076-016

Property Negotiators: Chevron & Cayucos Sanitary District

Agency Negotiators: Scott Collins, City Manager, Scot Graham, Community Development Director and Chris Neumeyer, City Attorney

Under Negotiation: Price and Terms

CS-2 CONFERENCE WITH REAL PROPERTY NEGOTIATOR – GOVERNMENT CODE SECTION 54956.8

Property: Assessor Parcel No. 066-331-046

Property Negotiators: Vistra Energy

Agency Negotiators: Scott Collins, City Manager; Rob Livick, City Engineer; Eric Casares, WRF Program Manager and Chris Neumeyer, City Attorney

Under Negotiation: Price and Terms of Payment – Easement Acquisition

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 4:35 p.m.

Recorded by:

Dana Swanson
City Clerk

This Page Intentionally Left Blank

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL MEETING – APRIL 1, 2020
VETERANS MEMORIAL HALL
209 SURF STREET – 4:00 P.M.

AGENDA NO: A-6
MEETING DATE: April 14, 2020

City Council conducted this meeting via teleconference in accordance with Section 3 of California Governor Newsom’s Executive Order N-29-20 issued on March 17, 2020 in response to the present State of Emergency in existence due to the threat of COVID-19.

PRESENT:	John Headding Dawn Addis Robert Davis Jeff Heller Marlys McPherson	Mayor (<i>teleconference</i>) Council Member (<i>teleconference</i>) Council Member (<i>teleconference</i>) Council Member (<i>teleconference</i>) Council Member (<i>teleconference</i>)
STAFF:	Scott Collins Dana Swanson Chris Neumeyer Jennifer Callaway Scot Graham Jody Cox Steve Knuckles Eric Endersby	City Manager City Clerk City Attorney (<i>teleconference</i>) Finance Director Community Development Director (<i>teleconference</i>) Police Chief (<i>teleconference</i>) Fire Chief (<i>teleconference</i>) Harbor Director (<i>teleconference</i>)

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding established a quorum via roll call and called the meeting to order at 4:00 p.m. with all members present.

Mayor Headding provided an update on COVID-19 in San Luis Obispo County.
<https://youtu.be/H6AQ2shrcWI?t=74>

PUBLIC COMMENT FOR ITEMS ON THE AGENDA
<https://youtu.be/H6AQ2shrcWI?t=1391>

Dan Sedley, Morro Bay, requested the Council consider reading the urgency ordinance in its entirety prior to voting.

The public comment period was closed.

At the Mayor’s request, City Attorney Neumeyer responded to concerns raised during public comment.

SPECIAL MEETING AGENDA ITEMS:

- I. ADOPTION OF UNCODIFIED URGENCY ORDINANCE TO CONFIRM AND ADOPT CITY OF MORRO BAY REGULATION NO. 1 (COVID-19), AS PROMULGATED BY DIRECTOR OF EMERGENCY SERVICES ON MARCH 30, 2020, PURSUANT TO THE EXISTENCE OF A LOCAL STATE OF EMERGENCY, PROVIDING STATE AND COUNTY ORDERS, APPLICABLE WITHIN THE JURISDICTION OF THE CITY OF MORRO BAY, AND ISSUED IN RESPONSE TO COVID-19, BE EXPRESSLY ENFORCEABLE BY CITY AUTHORITIES THROUGH ALL ENFORCEMENT PROVISIONS WITHIN MORRO BAY MUNICIPAL CODE, AND SUBJECT TO ONE THOUSAND DOLLAR FINES; (CITY MANAGER/CITY ATTORNEY)
<https://youtu.be/H6AQ2shrcWI?t=1695>

City Attorney Neumeyer provided the report and, along with Community Development Director Graham and Police Chief Cox and City Manager Collins, responded to Council inquires.

MOTION: Mayor Headding moved the City Council to adopt, by title only with further reading waived, uncodified Urgency Ordinance No. 631, to confirm and adopt Morro Bay Regulation No. 1 (COVID-19), as promulgated by Director of Emergency Services on March 30, 2020. The motion was seconded by Council Member Addis for discussion.

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

- II. ADOPTION OF RESOLUTION TO DELAY TRANSIENT OCCUPANCY TAX RELATED LATE FEES AND PENALTIES AND DISCUSSION OF TIDELANDS TRUST LEASE PAYMENTS; (CITY MANAGER)
<https://youtu.be/H6AQ2shrcWI?t=3760>

City Manager Collins and Finance Director Callaway provided the report and, along with Harbor Director Endersby, responded to Council inquires.

MOTION: Council Member Davis moved the City Council to adopt Resolution No. 26-20 authorizing the City's Tax Collector to delay collection of late fees and penalties for overdue Transient Occupancy Tax (TOT) received for stays during February and March 2020 until August 31, 2020, pursuant to the COVID-19 pandemic state of emergency. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

ADJOURNMENT

The meeting adjourned at 5:24 p.m.

Recorded by:

Dana Swanson
City Clerk

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
APRIL 3, 2020 – 11:00 A.M.
CITY HALL CONFERENCE ROOM (TELECONFERENCE)

AGENDA NO: A-7
MEETING DATE: April 14, 2020

City Council conducted this meeting in accordance with Section 3 of California Governor Newsom's Executive Order N-29-20 issued on March 17, 2020 in response to the present State of Emergency in existence due to the threat of COVID-19. This meeting was held via teleconference for all participants.

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

STAFF: Scott Collins City Manager
 Chris Neumeyer City Attorney
 Dana Swanson City Clerk

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 11:00 a.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, seeing none, the public comment period was closed.

The public comment period was closed.

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

CS-1 CONFERENCE WITH LABOR NEGOTIATORS

A closed session will be held, pursuant to Government Code § 54957.6, with City negotiator and designated labor representative Colin Tanner, special labor counsel, regarding labor negotiations with employee organizations: 1) Morro Bay Firefighters' Association, 2) Morro Bay Peace Officers' Association, 3) Service Employee's International Union - SEIU Local 620; and, regarding labor negotiations with 4) unrepresented management employees; 5) unrepresented confidential employees; and 6) unrepresented executive employees.

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 12:03 p.m.

Recorded by:

Dana Swanson
City Clerk

This Page Intentionally Left Blank



AGENDA NO: A-8 MEETING DATE: April 14, 2020

Staff Report

TO: Honorable Mayor and City Council **DATE:** April 2, 2020

FROM: Rob Livick, PE/PLS - City Engineer

SUBJECT: Adoption of Resolution No. 27-20 Initiating Proceedings to Levy the Annual Assessment for the Cloisters Park and Open Space - Landscaping and Lighting Maintenance Assessment District

RECOMMENDATION

Adopt Resolution No. 27-20 ordering the preparation of an Engineer’s Report detailing the expenses projected for Fiscal Year 2020/21 for the maintenance of the Cloisters Park and Open Space under the provisions of the “Landscaping and Lighting Act of 1972.”

ALTERNATIVE

Staff does not recommend any alternatives to the recommendation.

FISCAL IMPACT

If approved by City Council, the FY2020/21 assessments are estimated to provide \$148,944 for the maintenance of the Cloisters Park and Open space totaling 34 acres.

BACKGROUND

On September 23, 1996, the City Council passed Resolution No. 69-96, which approved the final map for Tract 1996, known as the Cloisters Sub-division, consisting of 124 lots. With that approval, the City Council accepted lots 121 and 122 of the Cloisters subdivision, 34 acres of open space and organized park. Prior to the acceptance of the final map and pursuant to the Conditions of Approval, an assessment district was formed to cover the cost of maintenance of the parkland and open space. The assessment district formation proceedings began in August 1996 and concluded with the final public hearing for formation on September 23, 1996, which levied an annual assessment of \$148,944 for the maintenance of the 34 acres of parkland and open space.

After the initial formation of the assessment district, each year thereafter, for the assessment to continue, the City must adopt a series of three resolutions to confirm the levy of assessment for the upcoming fiscal year. The first resolution, which is the one being proposed by this staff report, initiates the annual levy process and orders the preparation of an Engineer’s Report; the second resolution approves the Engineer’s Report and notices the intent to levy the assessment; and the third resolution levies the assessment for the upcoming fiscal year.

DISCUSSION

After the adoption of Resolution No. 27-20, which initiates the proceedings to levy the annual assessment, an Engineer’s Report will be prepared for review, modification, acceptance or

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

rejection at the May 12, 2020 City Council meeting. At that meeting will be a resolution for consideration declaring the City Council's intent to levy and collect the assessment. That Resolution will list the improvements, name the district and give its general location; it also refers to the proposed assessment and gives notice of the time and place for a meeting regarding the levy of the continuing assessment. The Government Code states the third and final meeting must be noticed in accordance with Sections 22500 *et seq.* of the California Streets and Highways Code and is tentatively scheduled for June 23, 2020.

The Cloisters Landscaping and Lighting Maintenance Assessment District is a separate fund from all other City funds and can only be utilized for improvements within the District. Once set, the annual assessment is transmitted to the County Auditor for recording on the County assessment role. The assessment amount then appears on the parcel owner's annual property tax bill.

In conformance with Proposition 218, The Right to Vote on Taxes Act, passed in 1996 by the voters in the State of California, the Cloisters Landscaping and Lighting Maintenance Assessment District was approved, at that time, by one hundred percent (100%) of the owners for which the assessment is to be levied. All property owners were fully apprised of the costs and benefits associated with the district, prior to its approval by them.

CONCLUSION

Resolution No. 27-20 has been prepared for City Council review and adoption. The Resolution serves as the initiation of the annual assessment proceedings and orders the preparation of the Annual Engineer's Report detailing the proposed costs for the maintenance of the Cloisters Park and Open Space, for purposes of assessing property owners of lots located within the bounds of Tract Map No. 1996 (excluding the City's property). The Resolution also gives notice of review and acceptance, modification, or rejection, of the Engineer's Report by City Council, scheduled for the May 12, 2020, Council meeting.

ATTACHMENT

1. Proposed Resolution No. 27-20

RESOLUTION NO. 27-20

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT
FOR CLOISTERS LANDSCAPING AND LIGHTING
MAINTENANCE ASSESSMENT DISTRICT PURSUANT TO THE
“LANDSCAPING AND LIGHTING ACT OF 1972”
(STREETS AND HIGHWAYS SECTIONS 22500 *ET SEQ.*)**

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

WHEREAS, the City Council has placed certain conditions on the development of Tract 1996, The Cloisters, requiring formation of a property Maintenance Assessment District encompassing and coterminous with the proposed subdivision to provide for the maintenance of a public park, bicycle pathway, right-of-way landscaping, coastal access ways, ESH restoration area, and other common area improvements to be held by or dedicated to the City of Morro Bay as required by City Ordinance and;

WHEREAS, those conditions are more specifically identified in Vesting Tentative Tract Map (condition 10e) and Precise Plan (condition 2c) as required by City Ordinance; and

WHEREAS, the owners of the real property within the proposed district (the “Owners”) consented in writing to the formation of the district pursuant to the Landscaping and Lighting Act of 1972 (Streets and Highways Code sections 22500 *et seq.*) (the “Act”), and are the only owners of property to be subject to assessments within the district; and

WHEREAS, the Owners offered, in fee and in perpetuity, Lot 121 (Parcel 1) and Lot 122 of Tract 1996, and the City has accepted that Offer of Dedication; provided, that the costs of maintenance thereof, are borne by an assessment district as required by the Conditions of Approval of the project; and

WHEREAS, one hundred percent of the property owners, at the time of the subdivision of the land, approved formation of the district to assure conformance with the “Right to Vote on Taxes Act” (Proposition 218, California Constitution Act XIII C & D); and

WHEREAS, subsequent owners of the lots within the subdivision have received constructive notice of the existence of the assessment district through the real estate disclosures, title report process, and publicly available records.

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

1. The City Council of the City of Morro Bay hereby declares its intent to initiate the proceedings to levy and collect assessments pursuant to the Act.
2. The improvements to be subject to assessment for maintenance by such District shall include those enumerated in the conditions of project approval and in Section 22525 of the Act, which were installed by the developer as a condition of approval of Tract 1996; pursuant to the Final Improvement Plans for the Cloisters Project as approved by the City.

3. The Assessment District is a District located in the City of Morro Bay, County of San Luis Obispo. A map showing the boundaries of the District is attached as Exhibit A which is hereby incorporated herein.
4. An Engineer's Report, detailing the proposed costs for the maintenance of the Cloisters Park and Open Space, will be prepared for consideration by the City Council at the May 12, 2020, meeting and that date is set to review and accept, modify, or reject that report.
5. This District is called the "Cloisters Landscaping and Lighting Maintenance Assessment District."

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of April 2020 by the following vote:

AYES:
NOES:
ABSENT:

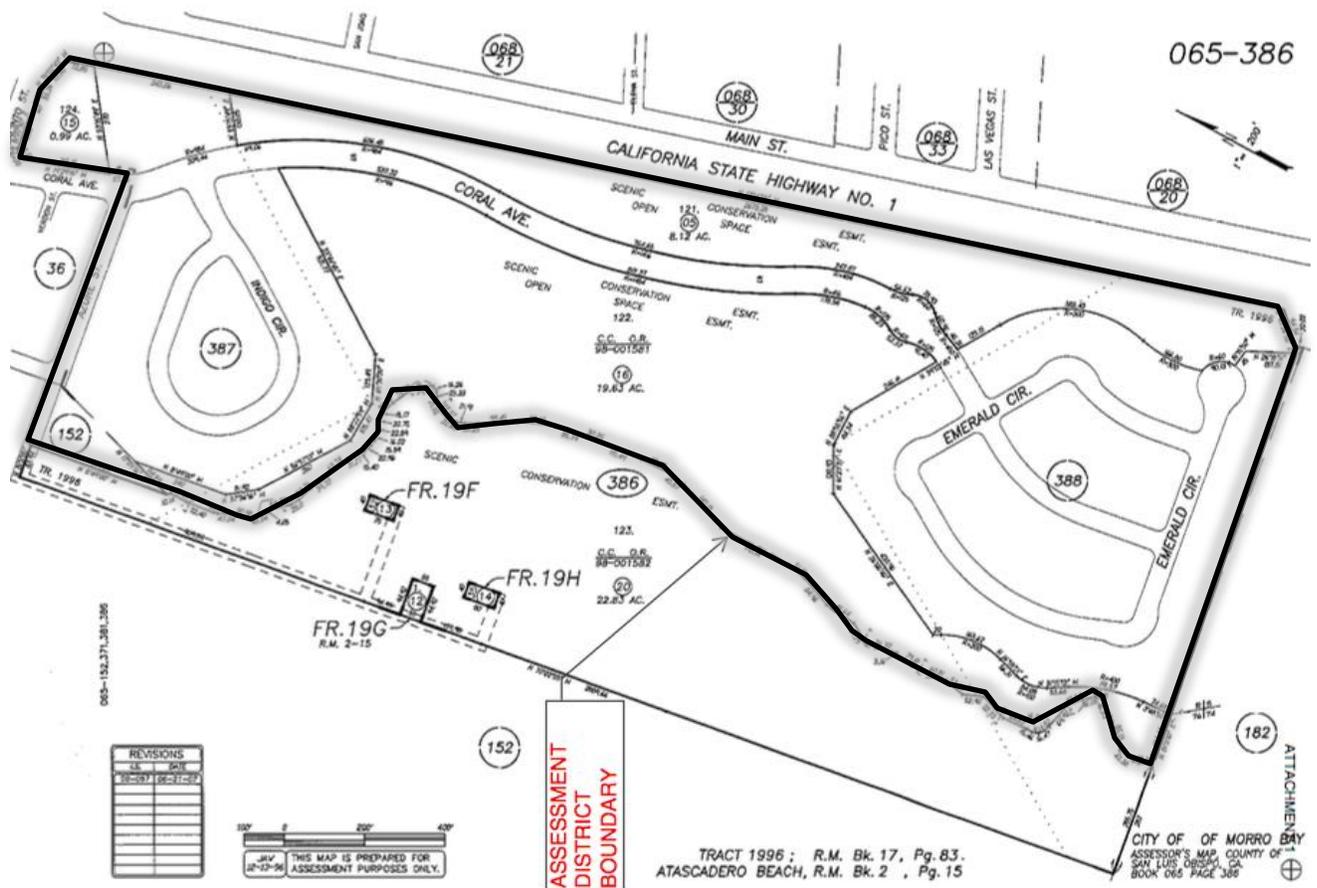
JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

EXHIBIT A
 CLOISTERS
 LANDSCAPING AND LIGHTING
 MAINTENANCE ASSESSMENT DISTRICT
 DISTRICT BOUNDARY DIAGRAM

The boundary diagrams for the District have previously been submitted to the City Clerk in the format required under the 1972 Act and, by reference, are hereby made part of this Report. The boundary diagrams are available for inspection at the office of the City Clerk during normal business hours. The following diagram provides an overview of the District.



This Page Intentionally Left Blank



AGENDA NO: A-9
MEETING DATE: April 14, 2020

Staff Report

TO: Honorable Mayor and City Council **DATE:** April 3, 2020
FROM: Rob Livick, PE/PLS – City Engineer
SUBJECT: Adoption of Resolution No. 28-20 Initiating Proceedings to Levy the Annual Assessment for the North Point Natural Area - Landscaping and Lighting Maintenance Assessment District

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 28-20 ordering the preparation of an Engineer’s Report detailing the expenses projected for Fiscal Year 2020/21 for the maintenance of the North Point Natural Area under the provisions of the “Landscaping and Lighting Act of 1972.”

ALTERNATIVE

Staff does not recommend any alternatives to the recommendation.

FISCAL IMPACT

If approved by Council, the FY2020/21 assessments are estimated to provide \$5,645 for the maintenance of the North Point Natural Area.

BACKGROUND

On June 27, 1994, the City Council accepted Lot 11 of the North Point subdivision and accepted the final map for Tract 2110. As per the conditions of approval, a Landscaping and Lighting Maintenance Assessment District was formed for the ongoing maintenance of the 1.3-acre natural area. The area includes a non-irrigated meadow area, decomposed granite and asphalt walkways, stairway/beach access, parking lot, drip irrigation system, public access signage and parking lot.

On December 9, 1996, the City Council adopted Resolution No. 89-96, which ordered the formation of the North Point Landscaping and Lighting Maintenance Assessment District and confirmed the yearly assessment of \$5,645. On January 13, 1997, the City Council adopted Resolution No. 01-97, which approved and accepted the on- and off-site improvements for Tract 2110. By adoption of Resolution No. 01-97, the City officially started the maintenance of the North Point Natural Area.

After the initial formation of the assessment district, each year, for the assessment to continue,

Prepared By: rl Dept Review: RL
City Manager Review: SC City Attorney Review: CFN

the City must adopt a series of three resolutions to confirm the levy of assessment for the upcoming fiscal year. The first resolution, which is the one being proposed by this staff report, initiates the annual levy process and orders the preparation of an Engineer's Report; the second resolution approves the Engineer's Report and notices the intent to levy the assessment; and the third resolution levies the assessment for the upcoming fiscal year.

DISCUSSION

Upon adoption of Resolution No. 28-20, which initiates the proceedings to levy the annual assessment, an Engineer's Report will be prepared for review, modification, acceptance or rejection at the May 12, 2020 City Council meeting. At that meeting will be a resolution for consideration declaring the City Council's intent to levy and collect the assessment. That Resolution will list the improvements, names the district and gives its general location; it also refers to the proposed assessment and gives notice of the time and place for a meeting regarding the levy of the continuing assessment. The Government Code states the third and final meeting must be noticed in accordance with Sections 22500 *et seq.* of the California Streets and Highways Code and is tentatively scheduled for June 23, 2020.

The North Point Natural Area Landscaping and Lighting Maintenance Assessment District is a separate fund from all other City funds and can only be expended for improvements authorized for the District. Once set, the annual assessment is transmitted to the County Auditor for recordation on the County assessment role. The assessment amount then appears on the parcel owner's annual property tax bill.

In conformance with Proposition 218, "The Right to Vote on Taxes Act," passed in 1996 by the voters in the State of California, the North Point Natural Area Landscaping and Lighting Maintenance Assessment District was approved, at that time, by one hundred percent (100%) of the owners for which the assessment is to be levied. All property owners were fully apprised of the costs and benefits associated with the district, prior to its approval by them.

CONCLUSION

Resolution No. 28-20 has been prepared for City Council review and adoption. The Resolution serves as the initiation to the annual assessment proceedings and orders an Engineer's Report detailing the proposed costs for the maintenance of the North Point Natural Area, for purposes of assessing private property owners of Tract Map No. 2110 (excluding the City's property). The Resolution also gives notice of review and acceptance, modification or rejection, of the Engineer's Report, scheduled for the May 12, 2020, Council meeting.

ATTACHMENT

1. Proposed Resolution No. 28-20

RESOLUTION NO. 28-20

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT
FOR THE NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING
MAINTENANCE ASSESSMENT DISTRICT PURSUANT TO THE
“LANDSCAPING AND LIGHTING ACT OF 1972”
(STREETS AND HIGHWAYS SECTIONS 22500 *ET SEQ.*)**

**T H E C I T Y C O U N C I L
City of Morro Bay, California**

WHEREAS, the City placed certain conditions on the development of Tract 2110 “North Point,” requiring formation of a property Landscaping and Lighting Maintenance Assessment District encompassing and coterminous with the proposed subdivision to provide for the maintenance of a natural area, parking lot, landscaping, decomposed granite and asphalt walkways, and coastal access stairway and other common area improvements to be held by or dedicated to the City of Morro Bay; and

WHEREAS, those conditions are more specifically identified in the Precise Plan (condition F1-F7) related to North Point; and

WHEREAS, the owners of the real property within the proposed district (the “Owners”) consented to the formation of the district pursuant to the Landscaping and Lighting Act of 1972 (Streets and Highways Code sections 22500 *et seq.*) (the “Act”), and are the only owners of property to be subject to assessments within the district; and

WHEREAS, the Owners offered, in fee and in perpetuity, Lot 11 of Tract 2110, and the City accepted that Offer of Dedication; provided, that the cost of maintenance, thereof, would be borne by an assessment district as required by the Conditions of Approval of North Point; and

WHEREAS, one hundred percent of the property owners, at the time of the subdivision of the land, approved formation of the District to assure conformance with the “Right to Vote on Taxes Act” (Proposition 218, California Constitution Act XIII, C & D); and

WHEREAS, subsequent owners of the lots within the subdivision have received “constructive notice” of the existence of the assessment district through the real estate disclosures, title report process, and publicly available records.

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

1. The City Council of the City of Morro Bay hereby declares its intent to initiate the proceedings to levy and collect assessments pursuant to the Act.

2. The improvements to be subject to assessment for maintenance by the District shall include those enumerated in the conditions of approval of North Point and in Section 22525 of the Act, which were installed by the developer as a condition of approval of Tract 2110 or which are hereafter installed by developer; pursuant to the Final Improvement Plans for North Point as approved by the City.
3. The Assessment District is a District located in the City of Morro Bay, County of San Luis Obispo. A map showing the boundaries of the proposed District is attached as Exhibit A which is hereby incorporated herein.
4. An Engineer's Report will be prepared for consideration at the May 12, 2020, City Council meeting and that date is set to review and accept or reject that report.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of April 2020 by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

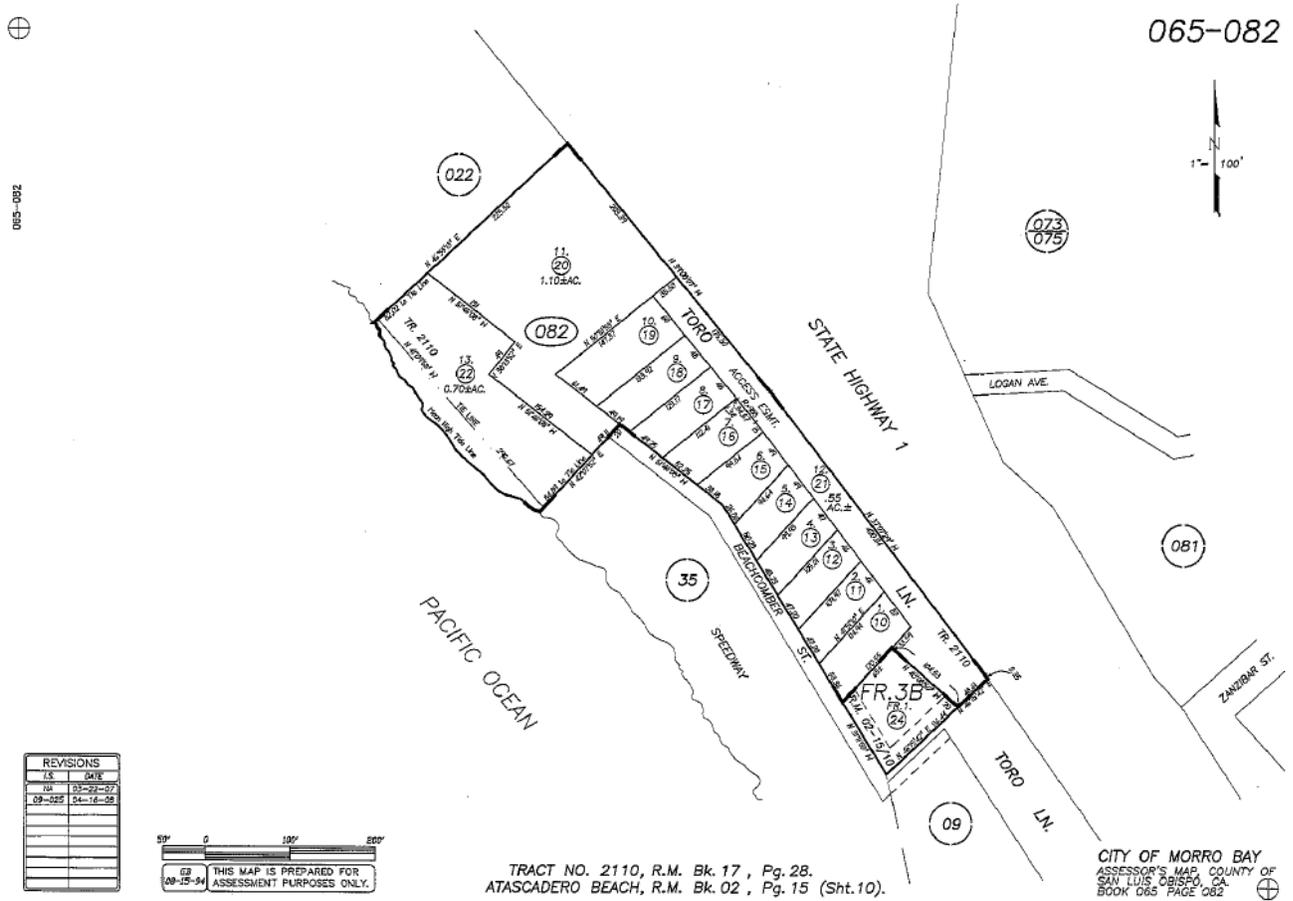
ATTEST:

DANA SWANSON, City Clerk

Exhibit A

DISTRICT BOUNDARY DIAGRAM

The boundary diagrams for the District have previously been submitted to the City Clerk in the format required under the Act and, by reference are hereby made part of this Report. The boundary diagrams are available for inspection at the office of the City Clerk during normal business hours. The following diagram provides an overview of the District.



This Page Intentionally Left Blank



AGENDA NO: A-10

MEETING DATE: April 14, 2020

Staff Report

TO: Honorable Mayor and City Council **DATE:** April 2, 2020

FROM: Scot Graham, Community Development Director

SUBJECT: Adoption of Resolution No. 29-20 Approving a 1-Year Lease Agreement with The Morro Bay Skateboard Museum, Inc. for property located at 781 Market Street.

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 29-20, approving a 1-year Lease Agreement for the City property located at 781 Market Street (APN: 066-321-027).

ALTERNATIVES

The City Council could choose not to approve the lease agreement and direct staff to either alter the agreement in a manner agreed upon by a majority of Council or the Council may choose to not lease the space to The Morro Bay Skateboard Museum, Inc.

FISCAL IMPACT

With approval of the Lease Agreement the City would receive \$1,031.00 a month rent for the twelve-month term of the lease, for a total of \$12,372.00.

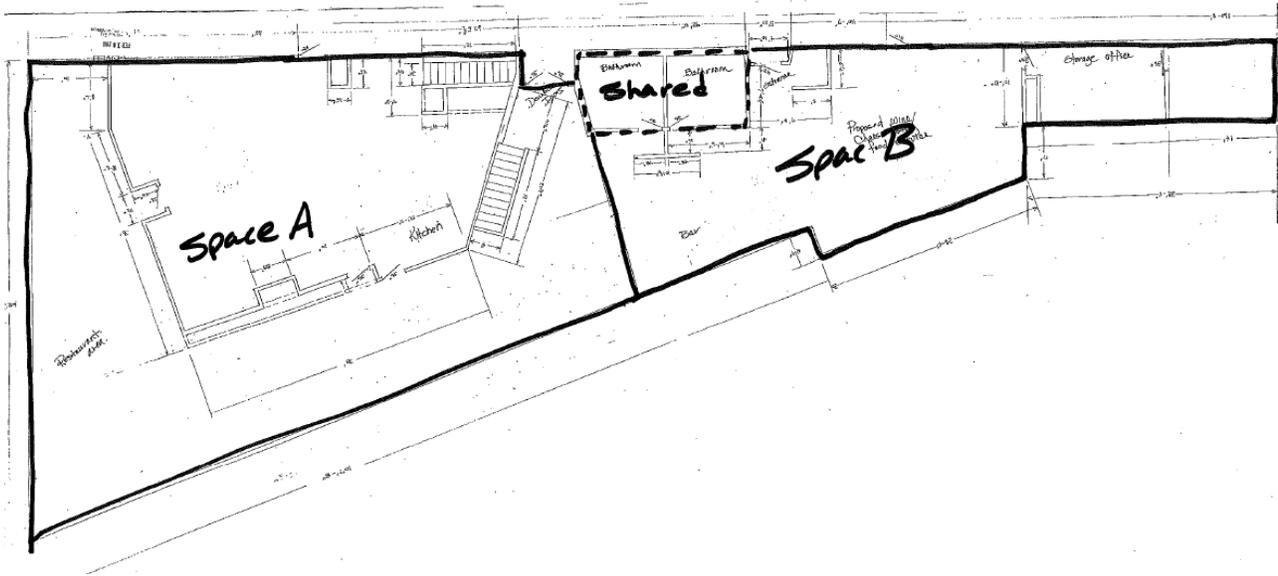
BACKGROUND/DISCUSSION

The 781 Market Street property is owned by the City and formerly housed Distasio's Restaurant and wine bar. The Distasio's lease terminated on February 15, 2018, leaving the building vacant. The Council adopted Resolution No. 16-19 on March 12, 2019, authorizing staff to execute a 1-year lease agreement with the Morro Bay Skateboard Museum Inc., for a rental rate of \$1,000 per month. The lease agreement expired on March 14, 2020 and the tenant has continued to occupy the lease space on a month-to-month basis. The second tenant space in the 781 Market Street property is occupied by Ciano Real Estate.

As the Council is aware, the City is working on redevelopment of the 781 Market Street property, with the process likely to take 2 to 3 years for sale/lease and permitting. Given the 2 to 3-year timeline, it makes sense for City to pursue lease of the building on a limited term basis. Leasing the property provides the following benefits: income generation, and property is occupied and maintained by lessee's.

The building has two floors, but given the lower floor is inaccessible from an Americans with Disabilities Act standpoint (no elevator or ramp), staff does not propose to lease the lower floor. The upper floor currently contains two lease spaces (A & B), totaling approximately 5,220 square feet with approximately 1,413 square feet allocated to the Skateboard Museum (Space B) and 3,807 square feet allocated to Ciano Real Estate (Space A). See Figure below depicting upper floor building layout.

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



Jack Smith, of the Morro Bay Skateboard Museum, would like to continue to lease Space B for use as a Skateboard Museum. Staff engaged in discussions with Mr. Smith regarding increasing the lease rate for the Museum space by 3.1%, consistent with the January Consumer Price Index over the preceding 12-month period in the Los Angeles area. Mr. Smith has agreed to the proposed lease rate increase.

CONCLUSION

The Morro Bay Skateboard Museum desires to enter into a 1-year lease agreement with the City of Morro Bay for lease of Space B in the existing City owned 781 Market Building. Having tenants occupy the building while the City pursues sale/lease and redevelopment of the property will serve to generate income for the City and will ensure the property is maintained and not left to deteriorate while the City pursues redevelopment opportunities. Staff, therefore, recommends Council adopt Resolution No. 29-20, approving a new 1-year Lease Agreement with the Morro Bay Skateboard Museum for lease of Space B within the 781 Market Street building for a lease rate of \$1,031.00 per month.

ATTACHMENTS:

1. Resolution No. 29-20
2. Morro Bay Skateboard Museum Agreement

RESOLUTION NO. 29-20

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING A 1-YEAR LEASE AGREEMENT FOR
LEASE SPACE B AT 781 MARKET STREET BETWEEN THE CITY OF
MORRO BAY AND
THE MORRO BAY SKATEBOARD MUSEUM INC.**

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

WHEREAS, the City of Morro Bay (City) is the owner of the property at 781 Market Street, in the City of Morro; and

WHEREAS, The Skateboard Museum Inc. (Lessee) is proposing to continue operating a Skateboard Museum in Space B of the 781 Market Street Building; and

WHEREAS, City and Lessee have agreed to a new 1-year lease agreement, for a portion of the located at 781 Market Street identified as Space B.

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

1. The attached new Lease Agreement for of Space B in the 781 Market Street Building Lease is hereby approved.
2. The Mayor is hereby authorized to execute said Lease Agreement.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of April 2020 on the following vote:

AYES:

NOES:

ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

COMMERCIAL LEASE AGREEMENT

By and Between

**CITY OF MORRO BAY,
a municipal corporation**

“Landlord”

and

**The Morro Bay Skateboard Museum, Inc.,
a California corporation**

“Tenant”

TABLE OF CONTENTS

Section	Title	Page
1.	Lease of Premises; Condition of Premises	3
2.	Effective Date; Term	4
3.	Rent and Performance Standard	5
4.	Uses	5
5.	Real Estate Taxes	7
6.	Personal Property Taxes	8
7.	Maintenance & Repairs	8
8.	Alterations	10
9.	Compliance with Laws	10
10.	Insurance	10
11.	Indemnification	12
12.	No Liens	12
13.	Signs	13
14.	Utilities	13
15.	Entry and Inspection	13
16.	Damage and Destruction	14
17.	Assignment and Subletting	15
18.	Default and Remedies; Termination	16
19.	Surrender of Premises	18
20.	Force Majeure	18
21.	Estoppel Certificate	19
22.	Subordination	19
23.	Condemnation	19
24.	Use of Landlord's Name	19
25.	Trade Fixtures	19
26.	Quiet Enjoyment	20
27.	Recording Memorandum	20

28.	Holdover	20
29.	Notice and Waiver Regarding Relocation, Goodwill, Property Interest and Condemnation	20
30.	Miscellaneous	21

Exhibit A Description and Depiction of Premises

COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT (“this Lease”) is made and entered into by and between the CITY OF MORRO BAY, a municipal corporation (“Landlord”), and The Morro Bay Skateboard Museum, Inc., a California corporation (“Tenant”). Landlord and Tenant are sometimes individually referred to as a “Party” and jointly as the “Parties.”

RECITALS:

A. Landlord owns, certain real property located in the City of Morro Bay, County of San Luis Obispo, as follows: that certain real property, commonly identified as 781 Market Street, Morro Bay (APN 066-321-027), improved as a commercial building containing two separate lease space areas and shared bathroom facilities identified as “Space A” and “Space B” on the Attached Exhibit A, with adjacent landscape areas.

The portion of the restaurant building identified as Space B, along with shared use of the bathrooms, as described and depicted on the attached Exhibit A, is the subject of this Lease, and is also referred to as the “Premises.”

B. The Premises are located in Landlord’s downtown (Downtown Area).

C. Tenant is a corporation, currently operating a skateboard museum.

D. The Parties desire to enter into a written lease agreement and to confirm the rights and obligations of both Parties therein. Pursuant to the terms of this Lease, Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises, for Tenant’s sole exclusive use.

NOW, THEREFORE, in consideration of the above Recitals and the mutual promises of the Parties set forth in this Lease, Landlord and Tenant hereby agree as follows:

1. LEASE OF PREMISES; CONDITION OF PREMISES.

1.1. Lease. Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the Premises (as defined in the Recitals incorporated herein) solely for the uses specified in Section 4.

1.2. Condition of Premises. Tenant acknowledges it has and shall accept the Premises from Landlord in its “AS IS” condition without representation or warranty. Tenant has inspected the premises and is aware of its condition. Pursuant to California Civil Code Section 1938, Tenant is advised the Premises have not undergone an inspection by a Certified Access Specialist; and, therefore, Landlord is not aware if the Premises comply with the applicable construction-related accessibility standards pursuant to Civil Code Section 55.53.

2. EFFECTIVE DATE; TERM.

- 2.1. **Effective Date.** This Lease shall be deemed effective as of April 16, 2020 (Effective Date). All other Tenant's rights and obligations under this Lease shall commence as of the Effective Date.
- 2.2. **Term.** The term of this Lease shall commence on the Effective Date for a fixed term of one year, and terminate without notice, at 11:59 p.m. on April 15, 2021 (Term), unless otherwise amended by the Parties pursuant to Sections 2.4 and 30.15.
- 2.3. **Right to Terminate.** Tenant shall have the right to terminate this Lease at any time within the Term upon providing at least sixty-days' written notice to Landlord.
- 2.4. **Exclusive Right to Negotiate Extension.** If Tenant has not been in default of any of its obligations under this Lease during the previous six months of the original Term (as defined in Section 2.2), then Tenant shall have the right (but not the obligation) to enter into a ninety-day period of exclusive negotiation with Landlord to extend this Lease upon mutually acceptable terms (including, but not limited to, rent payments) for an additional period up to one year (ENA Right). Tenant must exercise the ENA Right by sending a written notice to Landlord specifying its exercise of the ENA Right, which notice must be delivered to Landlord not less than ninety days prior to the expiration of the original Term (ENA Notice). Within fifteen business days after receipt of the ENA Notice, Tenant and Landlord will meet to begin negotiations for an amendment to this Lease to extend the Term. If prior to the end of the Term the Parties agree to an extension and other modifications, then such terms shall be effective only if this Lease is amended in accordance with Section 30.15. If the Parties do not agree to that amendment, then this Lease shall terminate without further notice at the end of the Term.

3. RENT & PERFORMANCE STANDARD.

- 3.1. **Monthly Rent.** Tenant agrees to pay One Thousand and Thirty One Dollars (\$1,031) on a monthly basis, in advance, due no later than the 10th day of month for which rent is being paid (Rent). The first payment shall be due May 10, 2020.
- 3.2. **Performance Standards.** As material consideration for this Lease, Tenant covenants to comply with the following requirement (the "Performance Standard"): diligently maintain and repair the Premises, in compliance with Section 7.1.
- 3.3. **Payment of Rent.** All Rent and all other monetary obligations to be paid by Tenant to Landlord shall be in lawful money of the United States of America at the address specified in Section 30.13, or such other address as Landlord shall notify Tenant in writing.
- 3.4. **Late Payment.** Any payment of any sum to be paid by Tenant, not paid within ten days after its due date, shall be subject to a ten percent late charge.

3.5. **Security Deposit.** Tenant is not required to provide, and has not provided, a security deposit to Landlord.

4. USES.

4.1. **Authorized Uses; Minimum Program Requirements.**

4.1.1. **Authorized Uses.** Tenant shall use the Premises solely as a skateboard museum. As material consideration for this Lease, Tenant agrees to use the Premises and conduct all its business operations on the Premises under the designation of a skateboard museum, currently named “Morro Bay Skateboard Museum.” No other name shall be used with respect to the Premises without the prior written consent of Landlord, which may be granted or withheld in its sole discretion.

4.2. **Prohibited Uses.** Tenant shall not use, or permit the Premises, or any part thereof, to be used for any purpose or purposes other than those express uses specified in Section 4.1.1.

Tenant shall not sell or permit to be displayed, performed, sold, kept, or used in or about the Premises any conduct which may be prohibited by standard forms of fire insurance policies.

Tenant shall not violate any and all requirements, pertaining to the use of the Premises, of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance, covering the buildings within the Premises and appurtenances.

Tenant shall not permit smoking or vaping on any portion of the Premises.

Tenant shall not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant or occupant of the Premises or any adjacent Premises. Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the Premises, whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other solvency proceeding nor display any “going out of business” or similar sign.

Tenant shall not engage in any activity in, on or about the Premises that violates any Environmental Law, and shall promptly, at Tenant’s sole cost and expense, take all investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean-up and removal of any contamination involving any Hazardous Material created or caused directly or indirectly, by Tenant. The term “Environmental Law” shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Premises, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. Sections 9601, et seq.; (ii) the Resource Conservation and Recovery Act of

1976 (“RCRA”), 42 U.S.C. Sections 6901, et seq.; (iii) California Health and Safety Code Sections 25100, et seq.; (iv) the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq.; (v) California Health and Safety Code Section 25359.7; (vi) California Health and Safety Code Section 25915; (vii) the Federal Water Pollution Control Act, 33 U.S.C. Sections 1317, et seq.; (viii) California Water Code Section 13000, et seq.; and (ix) California Civil Code Section 3479, et seq., as such laws are amended and the regulations and administrative codes applicable thereto. The term “Hazardous Material” includes, without limitation, any material or substance which is (i) defined or listed as a “hazardous waste”, “extremely hazardous waste”, “restrictive hazardous waste”, “or “hazardous substance” or considered a waste, condition of pollution or nuisance under the Environmental Laws; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos; and/or (iv) substances known by the State of California to cause cancer and/or reproductive toxicity. It is the intent of the Parties hereto to construe the terms “Hazardous Materials” and “Environmental Laws” in their broadest sense. Tenant shall provide all notices required pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq. Tenant shall provide prompt written notice to Landlord of the existence of Hazardous Materials on the Premises and all notices of violation of the Environmental Laws received by Tenant. Notwithstanding the foregoing, Tenant is not responsible for the remediation or removal of any Hazardous Materials which Tenant did not directly or indirectly cause to be placed at the Premises.

4.3. Abandonment. Tenant shall not vacate or abandon the Premises at any time during the Term of this Lease. Upon termination of this Lease for any reason, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned, at the option of Landlord, shall become the property of Landlord.

5. REAL ESTATE TAXES. Tenant shall pay any and all real property taxes applicable to Tenant’s possessory interest in the Premises. All such payments shall be made at least ten days prior to the due date of the applicable installment. Tenant shall promptly (at least five days prior to the due date) furnish Landlord with satisfactory evidence such taxes have been paid. If any such taxes to be paid by Tenant shall cover any period of time after the expiration or earlier termination of the Term hereof, then Tenant’s share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year that this Lease is in effect; and Tenant may apply to the County of San Luis Obispo (the “**County**”) for reimbursement of any overpayments after such proration. Notwithstanding anything above to the contrary, to the extent any assessment is levied against the Premises payable in installments, Tenant shall pay all installments coming due and payable during the Term of this Lease.

Tenant acknowledges, although Landlord is a municipal entity exempt from real property taxes, Tenant’s possessory interest under this Lease may be subject to real property taxation.

Upon request, Landlord agrees to work with Tenant to assist in providing information to the County Tax Assessor to reduce the valuation of Tenant’s possessory interest in the Premises.

Landlord provides no assurance to Tenant that it will be successful in such efforts and that Tenant may be required to pay real property taxes.

6. PERSONAL PROPERTY TAXES. During the Term, Tenant shall pay prior to delinquency all taxes assessed against the levied upon fixtures, furnishings, equipment and all other personal property owned by Tenant (excluding Landlord's personal property) located in the Premises, and when possible Tenant shall cause said fixtures, furnishings, equipment and other personal property to be assessed and billed separately from Landlord's personal property. In the event any or all of Tenant's fixtures, furnishings, equipment and other personal property shall be assessed and taxed with Premises, Tenant shall pay its share of such taxes within ten days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.

7. MAINTENANCE AND REPAIRS.

7.1. Maintenance and Repair by Tenant. Except the specific maintenance obligations of Landlord as set forth in Section 7.2, Tenant shall at all times during the Term, and at Tenant's sole cost and expense, keep, maintain and repair the Premises in good and sanitary order, condition, and repair. Such maintenance obligations shall include, but not be limited to, any equipment installed by Tenant, furnishings (such as seating, carpeting and drapes, mirrors, and interior repainting) and landscaping.

Tenant shall also hire a cleaning service/custodian, who shall keep the Premises in good and sanitary order on a daily basis.

Tenant shall maintain a written record to evidence the regular performance of maintenance and upkeep of the facility consistent with the maintenance standards.

Upon termination of this Lease, the Premises shall be surrendered in a good, clean and sanitary condition except for reasonable use and wear. Tenant agrees to surrender the Premises in its original condition, together with all additional improvements or alternations, which have been approved by Landlord and installed by Tenant pursuant to Section 8.1. If Landlord wants to reserve the right to require Tenant to remove any such additional improvements upon the expiration or earlier termination of this Lease, then Landlord must reserve such right in its notice of approval. If Tenant is required to remove any improvements from the Premises upon termination of this Lease, then Tenant shall do so at Tenant's sole cost and expense, and Tenant will repair any damage to the Premises caused by such removal. Tenant shall promptly notify Landlord in writing of any condition in the Premises that require repairs by Landlord (**Repair Notice**), which shall be made by Landlord as set forth in Section 7.2.

Tenant acknowledges Tenant's maintenance obligations under this Section are material considerations to Landlord for this Lease and, therefore, this Section 7.1 shall be construed liberally for the protection and preservation of the Premises.

7.2. Limited Maintenance and Repair by Landlord. Landlord shall be responsible to maintain in good repair and in compliance with all applicable laws, ordinances and regulations, at Landlord's sole cost and expense, **only** (i) the physical structure of the

Premises, such as the structural elements, roof, plumbing, water heating system, electrical systems, HVAC equipment and exterior painting, and (ii) subject to the financial limitations set forth below.

Notwithstanding the foregoing, Landlord shall not be required to make repairs necessitated by reason of (i) the negligence or willful misconduct of Tenant, or any of Tenant's staff, volunteers, students, contractors, invitees, subtenants, patrons or customers, (ii) the failure of Tenant to perform or observe and promptly report to Landlord any conditions the repair of which are Landlord's responsibility or (iii) the failure of Tenant to perform or observe the conditions or agreements in this Lease, or caused by unauthorized alterations, additions or improvements made by Tenant or anyone claiming under Tenant (collectively the "Tenant Caused Damages"). Tenant shall be solely responsible, at its sole cost and expense, to repair any Tenant Caused Damages.

Upon receipt of a Repair Notice, Landlord shall have a reasonable period of time (not to exceed five business days) to commence said repairs. Upon commencement of repairs, Landlord shall use reasonable efforts to diligently complete same. Tenant and Landlord shall jointly conduct an annual inspection of the Premises every April to aid Landlord in determining if any repairs by Landlord may be necessary.

Any renovation work performed by Landlord to the Premises shall not unreasonably interfere with Tenant's operations.

Notwithstanding the foregoing, Landlord's repair obligations are **specifically limited** in that Landlord shall not be required to make repairs the cost of which exceeds the Rent actually received by Landlord from Tenant as set forth below. During the Term, Landlord shall maintain a cumulative on-going record of all Rent received by Landlord ("Landlord Repair Fund"). Any repairs and maintenance costs incurred by Landlord under this Section 7.2 shall reduce the Landlord Repair Fund. If at any time when a repair or maintenance item, which is Landlord's responsibility under this Section 7.2, then Landlord shall only be obligated to make such repair to the extent the current balance of the Landlord Repair Fund is sufficient to pay the cost of such repair. However, if the repair item is critical for Tenant's operation of the Premises, then Landlord shall promptly make such repair, but the cost of such shall reduce the Landlord Repair Fund. If Landlord elects, in its sole discretion, to make repairs notwithstanding the foregoing limitations, then such election shall not be deemed a waiver of this limitation with respect to future repairs and the cost of such repairs shall reduce the Landlord Repair Fund.

8. ALTERATIONS

8.1 To Premises. Tenant shall not make any alterations to the Premises, or any part thereof, without the prior written consent of Landlord. If Tenant wishes to make additional improvements to the Premises, then Tenant shall notify Landlord in writing specifying in reasonable detail the proposed alterations and the cost thereof. Within fifteen days after receiving such notice from Tenant, Landlord shall send written notice to Tenant indicating whether Landlord approves or disapproves of the contemplated improvements. The City Manager may act on behalf of Landlord for approvals or disapprovals under this Section. Landlord's approval shall not be unreasonably withheld and any disapproval shall be in writing and shall explain the reasons for the denial. However, as a condition to granting its approval to any of the improvements, Landlord may require Tenant to provide Landlord with reasonably satisfactory evidence of Tenant's financial ability to pay for the costs of the improvements and may require a completion bond be provided to Landlord or other security reasonably acceptable to Landlord. Any such alterations shall comply with all applicable laws and regulations. All improvements (excluding minor improvements as determined by Landlord) shall be under the supervision of a licensed architect or structural engineer (at Tenant's cost) and made in accordance with plans and specifications approved in writing by Landlord, in its governmental and landlord capacities, prior to the commencement of such work. All work shall be done in a good and workmanlike manner, diligently prosecuted to completion and completed in compliance with Section 12. All such improvements shall immediately be deemed a part of the Premises and may not be removed by Tenant. Prior to commencing any work of improvement hereunder, Tenant shall notify Landlord so that Landlord can post and record an appropriate Notice of Non-Responsibility.

9. COMPLIANCE WITH LAWS. Except as to the specific obligations of Landlord under Section 7.2, Tenant shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the use of the Premises, and shall faithfully observe in said use all municipal ordinances, including, but not limited to, the General Plan and zoning ordinances, state and federal statutes, or other governmental regulations now in force or which shall hereinafter be in force. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such order or statute in said use, shall be conclusive of that fact as between Landlord and Tenant.

10. INSURANCE.

10.1. Landlord to Provide Property Insurance. Landlord shall maintain, at Landlord's sole cost and expense, fire, and excess coverage insurance throughout the term of this Lease, on all buildings and improvements located on the Premises (and fixtures thereto), in an amount equal to one hundred percent of the replacement value of the Premises, together with such other insurance, coverages and endorsements as Landlord may determine in its sole discretion. Tenant hereby waives any right of recovery from Landlord, its officers and employees, and Landlord hereby waives any

right of loss or damage (including consequential loss) resulting from any of the perils insured against as a result of said insurance.

10.2. Tenant's Insurance Obligations.

10.2.1. Liability Insurance. During the entire term of this Lease, Tenant shall, at Tenant's sole cost and expense, for the mutual benefit of Landlord and Tenant, maintain comprehensive general liability insurance insuring against claims for bodily injury, death or property damage occurring in, upon or about the Premises, written on a per occurrence basis in an amount not less than either (i) a combined single limit of Five Million Dollars (\$5,000,000) for bodily injury, death, and property damage or (ii) bodily injury limits of Five Hundred Thousand Dollars (\$500,000) per person, One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) products and completed operations and property damage limits of Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence and One Million Dollars (\$1,000,000) in the aggregate.

10.2.2. Worker's Compensation Insurance. Tenant shall, at Tenant's sole cost and expense, maintain a policy of worker's compensation insurance in an amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both Tenant and Landlord against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Tenant in the course of conducting Tenant's business in the Premises.

10.2.3. Business Automobile Coverage Insurance. Tenant shall, at Tenant's sole cost and expense, for the mutual benefit of Landlord and Tenant, maintain Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent, with combined single limits of liability not less than One Million Dollars (\$1,000,000) per accident. If Tenant owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Tenant or Tenant's employees will use personal autos in any way for the operation of any business on the Premises, then Tenant shall provide evidence of personal auto liability coverage for each such person.

10.2.4. General Provisions. All of the policies of insurance required to be procured by Tenant pursuant to this Section 10.2 shall be primary insurance and pursuant to Subsections 10.2.1 and .3 shall name Landlord, its employees and agents as additional insureds. All policies shall waive all rights of subrogation and provide that said insurance may not be amended or canceled without providing thirty-days' prior written notice by registered mail to Landlord, unless the cancellation is for non-payment of a premium and then such written notice shall be no less than ten days.

Within ten business days after execution of this Lease by the last Party to sign, and at least thirty days prior to the expiration of any insurance policy, Tenant shall provide Landlord with certificates of insurance and full copies of the insurance policies evidencing the mandatory insurance coverages written by insurance companies acceptable to Landlord, licensed to do business in California and rated A:VII or better by Best's Insurance Guide. Landlord may require an increase in the coverage and/or the types of coverage from time to time upon written notice to Tenant. Each of the Parties, on behalf of their respective insurance companies insuring such property of either Landlord or Tenant against such loss, waive any right of subrogation that it may have against the other.

11. INDEMNIFICATION. Tenant shall indemnify, protect, defend and hold harmless the Premises, Landlord and its managers, officers, directors, members, employees, agents, contractors, partners and lenders, from and against any and all claims, and/or damages, costs, liens, judgments, penalties, permits, reasonable attorneys' and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with, the occupancy of the Premises by Tenant, the conduct of Tenant's business, any act, omission or neglect of Tenant, its officers, directors, members, employees, agents or contractors, and out of any breach by Tenant in the performance in a timely manner of any obligation on Tenant's part to be performed under this Lease, except for matters which are the result of Landlord's gross negligence, intentional wrongful acts, or in default of this Lease. The foregoing shall include, but not be limited to, all costs of the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Landlord) litigated and/or reduced to judgment. In case any action or proceeding is brought against Landlord by reason of any of the foregoing matters, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be so indemnified. In addition, Landlord may require Tenant to pay Landlord's reasonable attorneys' fees and costs in defending against or participating in such claim, action or proceeding if Landlord shall decide, in its exercise of reasonable judgment, it is unsatisfied with the representation of its interest by Tenant or its counsel.

Landlord shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Tenant, Tenant's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, earthquake, flood, terrorism, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other any other cause, whether the said injury or damage results from conditions arising upon the Premises or from other source or places except if such injury or damage is the result of the gross negligence or willful misconduct of Landlord or Landlord's employees, contractors or agents.

12. NO LIENS. Tenant shall keep the Premises, free from any liens arising out of any work performed, material furnished, or obligation incurred by Tenant or alleged to have been incurred by Tenant. If Tenant shall fail to pay any charge for which a mechanic's lien claim and suit to foreclose the lien have been filed, and shall not have obtained the release of said

lien from the property subject to such lien, then Landlord may (but shall not be so required to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, together with interest at the rate prescribed in Section 30.6, on the amount of the mechanic's lien claim.

13. SIGNS. Tenant shall not place or permit to be placed any signs upon the exterior or in the windows of the Premises without Landlord's prior written consent. Any sign installed without such approval shall be immediately removed by Tenant and, if said sign is not removed by Tenant within three days of written notice from Landlord to Tenant, then Landlord may remove and destroy said sign without Tenant's approval and without any liability to Tenant. Tenant shall not modify or alter any of the signs without the prior written approval of the City Manager for Landlord, which approval shall not be unreasonably withheld or delayed. Landlord shall reply to any proposed alteration within fourteen days from submission. Any revision shall comply with the Morro Bay Municipal Code requirements related to signage prior to any revisions actually being made to the signs. Tenant shall maintain the signs in good condition and repair at all times during the entire term at its sole cost and expense.

14. UTILITIES.

14.1. Tenant's Responsibilities. Tenant shall pay, before delinquency, all charges for water, gas, heat, electricity, power, sewer, telephone service, solid waste collection and all other services and utilities used in, upon, or about the Premises by Tenant or any of its subtenants, licensees, or concessionaires during the entire term of this Lease. Tenant shall pay such fees, assessments or charges as may be levied for the operation, maintenance and service of such facilities and shall comply with reasonable rules and regulations established from time to time for use thereof. Tenant shall insure that trash and debris produced by the activities on Premises do not accumulate on the Premises.

15. ENTRY AND INSPECTION. Tenant shall permit Landlord and its employees and agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same, or for the purpose of making repairs, alterations or additions or performing the improvements to any portion of said building(s), including the erection and maintenance of such scaffolding, canopy, and fences as may be required, or for the purpose of posting notices of non-responsibility for alterations, additions or repairs, or for the purpose of placing upon the Premises any usual or ordinary signs for public safety as determined by Landlord. Landlord shall be permitted to do any of the above without any rebate of Rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned. Landlord shall make reasonable efforts to coordinate times for any repairs deemed necessary with Tenant to reduce to the extent practicable any interference with Tenant's use of the Premises. Tenant shall permit Landlord, at any time within ninety days prior to the expiration of the Term, to place upon the Premises any usual or ordinary "For Lease" or "For Sale" signs, and during such ninety-day period, Landlord or its agents may, during normal business hours, enter upon said Premises and exhibit the same to prospective tenants or purchasers.

16. DAMAGE AND DESTRUCTION.

- 16.1. Notice to Landlord.** Tenant shall give prompt notice to Landlord in case of any fire or other damage to the Premises.
- 16.2. Partial Casualty to Premises.** If the Premises shall be damaged by any casualty including, but not limited to, civil unrest, vandalism, a fire, flood or earthquake, such that (i) the cost of replacement or repair of the Premises is less than or equal to fifty percent of the total replacement cost thereof; or (ii) the cost of replacement or repair of damage to the Premises, and any structures comprising the Premises, when aggregated together is less than or equal to fifty percent of the total replacement cost thereof, then Landlord shall promptly repair and restore the same to substantially the condition thereof immediately prior to said damage or destruction. If insurance proceeds are forthcoming, then Landlord shall not be obligated to commence the restoration and/or repair until Landlord has received said insurance proceeds. Landlord shall take all reasonable steps necessary so as to obtain such insurance proceeds promptly so as to prevent delay in restoring and/or repairing the Premises to its prior condition.
- 16.3. Substantial Damage to Premises.** If the Premises shall be damaged or destroyed by any casualty (or the other matters described above), such that (i) the cost of replacement or repair of the Premises exceeds one-years' rent; or (ii) the cost of replacement or repair of damage to the Premises, and any of the other structures comprising the Premises, when aggregated together exceeds one-years' rent total, then Landlord may elect to either replace or repair the damage as aforesaid, cancel this Lease by written notice of cancellation given to Tenant within ninety days after the date of the casualty, or allow Tenant to cause repairs to be made to City standards. This Lease shall cease and terminate twenty days following Tenant's receipt of Landlord's cancellation notice; and Tenant shall vacate and surrender the Premises to Landlord in accordance with the terms of this Lease.
- 16.4. Reconstruction.** In the event of any reconstruction of the Premises under this Section 16, Landlord shall be obligated to reconstruct the Premises only to the extent of the condition of the Premises prior to the damage.
- 16.5. Rent Abatement.** In the event any casualty to the Premises is such that operations are impossible or impractical during the reconstruction as determined by Tenant, Tenant shall be entitled to abatement of the Rent for actual number of business days closed based on a pro-rata ratio of the total days in the month.
- 16.6. Termination.** Upon any termination of this Lease under any of the provisions of this Section 16, the Parties shall be released thereby without further obligations to the other Party coincident with the surrender of possession of the Premises to Landlord, except for obligations which have theretofore accrued and be then unpaid, and except for Tenant's obligations under Section 11.

16.7. Determination of Percentage of Damage or Destruction. If either Landlord or Tenant contends the percentage of the damage or destruction referred to above exceeds one-year's rent total and the other Party disagrees, then the determination of the percentage shall be made in writing by a senior officer of the insurance company that is to make insurance proceeds available for replacement or repair. If said insurance company elects not to render such a determination in a timely manner, or no determination is rendered for any other reason, then, in such event, upon fifteen-days' prior written notice to Tenant, then Landlord's determination shall be deemed the agreed upon determination of the damage or destruction.

17. ASSIGNMENT AND SUBLETTING.

17.1. Assignment and Subletting. Tenant shall not sublet the Premises or assign this Lease without the prior written consent of Landlord. Landlord shall not unreasonably withhold its consent to an assignment or sublease to a proposed assignee or subtenant. In no event shall Landlord be required to approve of any assignment or sublease, which would result in a violation of any other agreements to which Landlord is a party and/or for which all of the following criteria are not met:

- a. The proposed assignee or subtenant has submitted to Landlord financial statements showing the proposed assignee's or subtenant's financial condition, including net worth and liquidity, is equal to or greater than Tenant's financial condition;
- b. The proposed assignee or subtenant is morally and financially responsible; and
- c. Tenant is not in default in the payment of Rent or the performance of any obligations under this Lease.

Any such assignment shall be subject to all of the terms and conditions of this Lease, including, but not limited to, the use restrictions, and the proposed assignee or subtenant shall assume the obligations of Tenant under this Lease in writing in form satisfactory to Landlord. The proposed assignee or subtenant shall simultaneously provide to Landlord an estoppel certificate in the form described in Section 21. Consent by Landlord to one assignment or subletting shall not be deemed to be consent to any subsequent assignment or subletting. Any assignment or subletting without the prior written consent of Landlord shall be void, shall constitute a material breach of this Lease, and shall, at the option of Landlord, terminate this Lease. Neither this Lease nor any interest therein shall be assignable as to the interest of Tenant by operation of law.

Landlord shall be under no obligation to consider a request for its consent to an assignment or sublease until Tenant shall have submitted in writing to Landlord a request for Landlord's consent to such assignment or sublease, a history of the proposed assignee's or subtenant's business experience and financial viability and

such other information as required by Landlord to verify that the criteria set forth herein are met.

18. DEFAULT AND REMEDIES; TERMINATION.

18.1. Default by Tenant. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

- (i) Failure to pay any Rent or other monetary payment required hereunder to Landlord within five days after receiving notice from Landlord of Tenant's failure to pay any such obligation when due under this Lease.
- (ii) Failure to perform any provision of this Lease (other than the payment of money), if the failure to perform is not cured within thirty days after receiving written notice of the default from Landlord. If the default cannot be reasonably cured within thirty days, then Tenant shall not be in default of this Lease if Tenant commences to cure the default within the thirty-day period and diligently and in good faith continues to cure the default, but within no more than one hundred eighty days from commencement of the cure.
- (iii) Failure of Tenant to meet or comply with the Performance Standard.
- (iv) Vacation or abandonment of the Premises by Tenant.
- (v) Making a general assignment for the benefit of creditors.
- (vi) Filing of a voluntary petition in bankruptcy or the adjudication of Tenant as a bankrupt.
- (vii) Appointment of a receiver to take possession of all or substantially all the assets of Tenant located at the Premises or of Tenant's leasehold interest in the Premises.
- (viii) Filing by any creditor of Tenant of an involuntary petition in bankruptcy which is not dismissed within sixty days after filing.
- (ix) Attachment, execution or other judicial seizure of all or substantially all of the assets of Tenant or Tenant's leasehold where such an attachment, execution or seizure is not discharged within sixty days.

In the event of any such default or breach by Tenant, Landlord may at any time thereafter, without further notice or demand, rectify or cure such default, and any sums expended by Landlord for such purposes shall be paid by Tenant to Landlord upon demand and as additional Rent hereunder. In the event of any such default or breach by Tenant, Landlord shall have the right to continue the lease in full force and effect and enforce all of its rights and remedies under this Lease, including the right to recover the Rent as it becomes due under this Lease or Landlord shall have the

right at any time thereafter to elect to terminate the Lease and Tenant's right to possession thereunder. Upon such termination, Landlord shall have the right to recover from Tenant:

(a) The worth at the time of award of the unpaid Rent which had been earned at the time of termination;

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; and

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided.

The "worth at the time of award" of the amounts referred to in subparagraphs (a), (b), and (c) above shall be computed by allowing interest (or by discounting in the case of subparagraph (c)) at three percent over the prime rate, but in no event greater than the maximum rate permitted by law.

"Rent" shall include all sums payable pursuant to this Lease on a regular basis; including reimbursement of real estate taxes and any similar amounts. The payment shall be computed on the basis of the average monthly amount thereof accruing during any preceding twelve-month period selected by Landlord, except that if it becomes necessary to compute such Rent before such a twelve-month period has occurred, then such Rent shall be computed on the basis of the average monthly amount hereof accruing during such shorter period.

Such efforts as Landlord may make to mitigate the damages caused by Tenant's breach of this Lease shall not constitute a waiver of Landlord's right to recover damages against Tenant hereunder.

Notwithstanding any of the foregoing, the breach of this Lease by Tenant, or an abandonment of the Premises by Tenant, shall not constitute a termination of this Lease, or of Tenant's right of possession hereunder, unless and until Landlord elects to do so, and until such time Landlord shall have the right to enforce all of its rights and remedies under this Lease, including the right to recover rent, and all other payments to be made by Tenant hereunder, as they become due. Failure of Landlord to terminate this Lease shall not prevent Landlord from later terminating this Lease or constitute a waiver of Landlord's right to do so.

18.2. No Waiver. Acceptance of any payment under this Lease shall not be deemed a waiver of any default or a waiver of any of Landlord's remedies.

18.3. Landlord's Default. Except as may be elsewhere expressly provided in this Lease, Landlord shall not be in default, unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty days after

written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty days are required for performance then Landlord shall not be deemed in default if Landlord commences performance within the thirty (30) day period and thereafter diligently prosecutes the same to completion.

18.4. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity, except Tenant i) cannot seek money damages or pursue an action in law; and ii) is instead limited to bringing a proceeding in the nature of specific performance, injunctive relief or mandamus, or any other action in equity to enforce any applicable provision of this Lease.

18.5. Termination.

18.5.1. The Parties acknowledge this Lease shall be terminated immediately at the occurrence of any of the following events:

- a. By expiration of the Lease;
- b. By mutual agreement of both Parties; or
- c. In the case of casualty as provided for in Section 16.6.

18.5.2. The Parties acknowledge this Lease may be terminated by Landlord upon five-days' written notice if Tenant fails to meet the Performance Standard.

18.5.3. Except as set forth in Section 2.3, termination of this Lease shall not extinguish Tenant's obligations to pay Rent or its other obligations including indemnification of Landlord.

19. SURRENDER OF PREMISES. The voluntary or other surrender of the Premises by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or licensees, or may, at the option of Landlord, operate as an assignment to it of any or all of such subleases or licenses.

20. FORCE MAJEURE. If either Party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the Party obligated (financial inability excepted), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this Section 20 shall excuse Tenant from the prompt payment of any Rent.

21. ESTOPPEL CERTIFICATE. Tenant shall, at any time and from time to time upon not less than twenty-days' prior notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying this Lease is unmodified and is in full force and

effect, and the dates to which the Rent has been paid, and stating whether or not to the best knowledge Landlord is in default under this Lease, and, if in default, specifying in reasonable detail each such default, and such other matters as Landlord may reasonably request, it being intended that any such statement delivered by Tenant may be relied upon by Landlord or any prospective purchaser of the fee or any prospective mortgagee or encumbrancer thereof.

If Landlord desires to refinance or transfer the Premises, then Tenant agrees to deliver to Landlord or any lender or transferee designated by Landlord such financial information concerning Tenant as may be reasonably required by such lender or transferee and is reasonably available to Tenant. All such financial information shall be received by Landlord in confidence.

22. SUBORDINATION. The rights of Tenant shall be and are subject and subordinate at all times to the lien of any mortgage now or hereafter in force against the Premises, and Tenant shall promptly execute and deliver such further instruments subordinating this Lease to the lien of any such mortgage as shall be requested by Landlord.

23. CONDEMNATION. In the event a condemnation or transfer in lieu thereof results in a taking of any substantial and/or material portion of the Premises, Landlord or Tenant may, upon written notice given to the other Party within thirty days after such taking or transfer in lieu thereof, terminate this Lease. In connection therewith, Landlord and Tenant acknowledge that:

- a. Landlord (acting as the City of Morro Bay) possesses the power to take the Premises through eminent domain proceedings; and
- b. The business to be conducted by Tenant upon the Premises is not a viable business without financial assistance from Landlord, therefore if Tenant must vacate the Premises, it will be extremely impractical, if not impossible, for Tenant to operate its business elsewhere.

Therefore, upon such termination Tenant shall have the right to claim and recover from Landlord and/or the condemning authority only the amount equal to the value of any improvements installed by Tenant. Tenant shall **not** receive any value related to the leasehold value of the property which shall be paid solely to Landlord.

24. USE OF LANDLORD'S NAME. Tenant shall not use Landlord's name for advertising or promotion without Landlord's prior written consent, which may be granted or withheld in its sole discretion.

25. TRADE FIXTURES. Tenant has the right to use the Landlord's personal property located on the Premises, but Tenant shall, at its own cost and expense, install and equip the Premises with all furniture, fixtures, trade fixtures, equipment and personal property reasonably required for the operation of Tenant's business. Any and all fixtures and appurtenances installed by Tenant shall conform with the requirements of all applicable laws and regulations. All furniture, equipment, and trade fixtures installed by Tenant shall remain the property of Tenant during the Term of this Lease, but Tenant shall not remove any trade

fixtures during the Term hereof without Landlord's prior written consent, which may be provided by the City Manager on behalf of the Landlord, and which consent may be withheld or granted in Landlord's sole discretion. On termination of this Lease, Tenant may, provided Tenant is not in default of this Lease, remove at its own expense all trade fixtures, equipment and its personal property. At termination of this Lease, if Tenant has left any merchandise, furniture, equipment, signs, trade fixtures or other personal property in the Premises, then Landlord may give Tenant written notice to remove such property. In the event such property is not removed within fifteen days after the date of said notice, Landlord may dispose of said property in any manner whatsoever and Tenant hereby waives any claim or right to said property or any proceeds derived from the sale thereof. Any damage to the Premises resulting from the installation or removal of any of said trade fixtures or equipment shall be repaired by Tenant at Tenant's sole cost and expense.

26. QUIET ENJOYMENT. As long as Tenant is not in default under this Lease, Tenant shall have quiet enjoyment of the Premises during the Term.

27. HOLDOVER. Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. Any holding over after the expiration of the term of this Lease, with the consent of Landlord, express or implied, shall be construed to be a tenancy from month to month, cancelable upon thirty-days' written notice, and at a monthly rent equal to two hundred percent of the rent set forth in Section 3.1 and upon terms and conditions as existed during the last month of the Term.

28. NOTICE AND WAIVER REGARDING RELOCATION, GOODWILL, PROPERTY INTEREST AND CONDEMNATION

28.1. Tenant knowingly and voluntarily acknowledges and agrees upon its vacation of the Premises at the end of the Lease term, upon the sooner termination thereof for any reason, or vacation, of the Premises under any circumstances, in no event shall Tenant be entitled or shall Landlord, including its employees, agents and assignees, be required to provide any relocation benefits, compensation for loss of goodwill, or assistance under any applicable federal, state, or local laws or regulations including without limitation, the Uniform Relocation Assistance Laws, California Government Code Section 7260 et seq. Further, Tenant being fully informed of any and all of its rights and obligations and all laws and regulations (including without limitation, the Uniform Relocation Assistance Laws, California Government Code Section 7260 et seq.) in connection therewith fully waives, releases and rejects any and all relocation assistance and benefits relating to or in any respect connected with Tenant vacating the Premises.

28.2. Tenant knowingly and voluntarily acknowledges and agrees upon its vacation of the Premises at the end of the Term, upon the sooner termination thereof for any reason, or vacation, of the Premises under any other circumstances, in no event shall Tenant be entitled or shall Landlord be required to provide any compensation or consideration to Tenant for the leasehold interest of Tenant, improvements pertaining to realty, personal property, fixtures and equipment, pre-condemnation damages, severance damages or interest and litigation expenses, whether based on

condemnation, inverse condemnation or any other reason. Upon vacation of the Premises or termination of the Lease, Tenant knowingly waives and surrenders any claims or rights to the leasehold interest, improvements pertaining to realty, personal property, fixtures and equipment, pre-condemnation damages, severance damages or interest and litigation expenses.

29. MISCELLANEOUS.

- 29.1. Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their successors and assigns and be governed by the laws of the State of California. Any litigation between the Parties hereto concerning this Lease shall be initiated in the Superior Court of the State of California for the County.
- 29.2. Partial Invalidity.** If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, then the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.
- 29.3. Successors in Interest.** The covenants herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the Parties hereto, and each and all, including the Party making the assignment, shall be jointly and severally liable hereunder.
- 29.4. No Oral Agreements.** This Lease covers in full each and every agreement of every kind or nature whatsoever between the Parties hereto concerning this Lease, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein, and there are no oral agreements. Tenant acknowledges no representations or warranties of any kind or nature not specifically set forth herein have been made by Landlord or its employees, agents or representatives.
- 29.5. Interest.** Any sum due to Landlord under this Lease shall bear simple interest from and after its due date at a rate equal to ten percent per month until paid to Landlord, but not in excess of the maximum rate permitted by law.
- 29.6. Authority.** Each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that this Lease is binding upon Tenant in accordance with its terms.
- 29.7. Time.** Time is of the essence of this Lease.
- 29.8. Consistency.** Each provision herein shall be interpreted so as to be consistent with every other provision.
- 29.9. Relationship of Parties.** The relationship of the Parties is that of Landlord and Tenant, and it is expressly understood and agreed Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of Tenant's business or otherwise, or a joint venture with Tenant.

29.10. Non-Discrimination. Tenant herein covenants by and for Tenant, Tenant's successors, heirs, executors, administrators and assigns, and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, sexual preference or identity or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises, nor shall the Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, Tenants, subtenants, subtenants or vendees of the Premises.

29.11. Non-Collusion. No official, officer, or employee of Landlord has any financial interest, direct or indirect, in this Lease, nor shall any official, officer, or employee of Landlord participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or non interest pursuant to California Government Code Sections 1091 and 1091.5. Tenant represents and warrants that (i) it has not paid or given, and will not pay or give, to any third party including, but not limited to, Tenant or any of its officials, officers, or employees, any money, consideration, or other thing of value as a result or consequence of obtaining this Lease; and (ii) it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any official, officer, or employee of Landlord, as a result or consequence of obtaining this Lease. Tenant is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Lease void and of no force or effect.

29.12. Notices. Wherever in this Lease it shall be required or permitted that notice and demand be given or served by either Party to this Lease to or on the other, such notice or demand shall be given or served in writing and shall not be deemed to have been duly given or served unless in writing, and personally served or forwarded by certified mail, postage prepaid, addressed as specified below. Either Party may change the address set forth below by written notice by certified mail to the other. Any notice or demand given by certified mail shall be effective one (1) day subsequent to mailing.

Landlord: City of Morro Bay
Attn: City Manager
595 Harbor Street
Morro Bay, CA 94585

With a copy to: Aleshire & Wynder, LLP
Attn: Chris F. Neumeyer, City Attorney
18881 Von Karman Ave., Suite 1700, Irvine CA
92612

Tenant: Morro Bay Skateboard Museum, Inc.
Attn: Jack Smith
150 Trinidad
Morro Bay, California 93442

- 29.13. Not an Offer.** The submission of this Lease and any ancillary documents to Tenant shall not constitute an offer to lease, and Landlord shall have no obligation of any kind, express or implied, to lease the Premises to Tenant until Landlord has approved, executed and returned to Tenant a fully signed copy of this Lease.
- 29.14. Amendments.** This Lease may be modified or amended only in writing executed by both Parties and approved by Landlord in accordance with applicable law.
- 29.15. Exhibits.** Exhibit A is attached hereto and incorporated herein by reference.
- 29.16. Acknowledgement of Content.** Each Party acknowledges they have read and fully understand the contents of this Lease and have had an opportunity to consult with an attorney regarding the same. This Lease represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the Parties have duly executed this Lease on the day and year first above written in Morro Bay, California.

LANDLORD:

CITY OF MORRO BAY,
a municipal corporation

By: _____
Scott Collins, City Manager

_____, 2020

ATTEST:

Dana Swanson, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: _____
Chris F. Neumeyer, City Attorney

TENANT:

**THE MORRO BAY SKATEBOARD
MUSEUM, INC.,** a California corporation

By: _____
Jack Smith, President of the Board of
Directors

_____, 2020

By: _____
Eric Terhorst, Secretary to the Board
of Directors
Its _____

_____, 2020

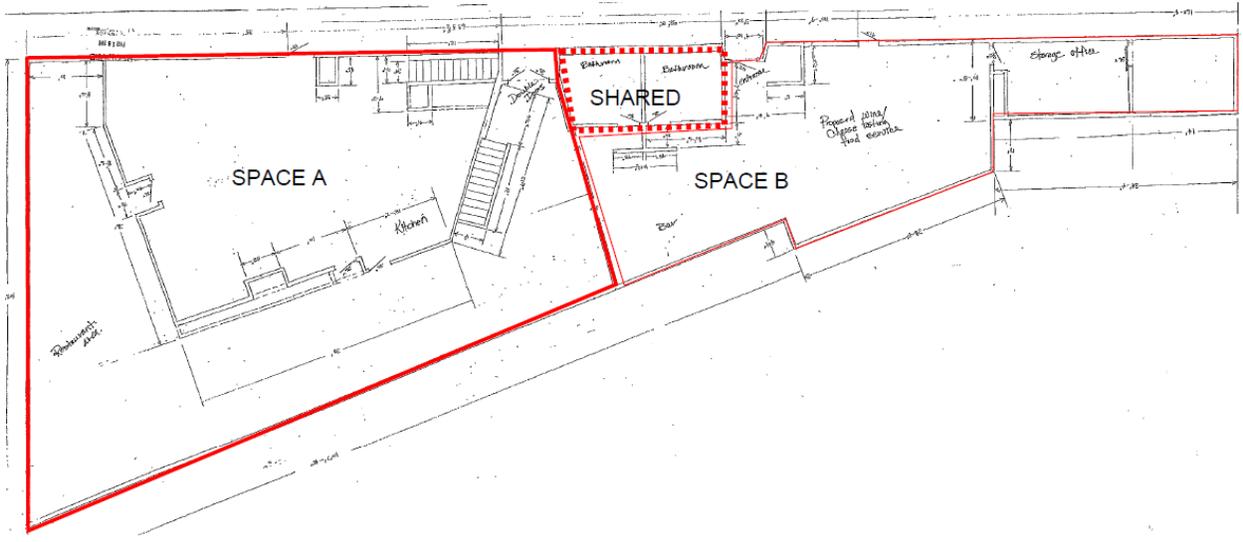
(Attach Notary Acknowledgements for
Tenant)

EXHIBIT A

DESCRIPTION AND DEPICTION OF PREMISES

The Premises consist of Space B and shared use of the bathrooms as depicted on the figure below.

(APN: 066-321-027)





AGENDA NO: A-11

MEETING DATE: April 14, 2020

Staff Report

TO: Honorable Mayor and City Council **DATE:** April 2, 2020

FROM: Scot Graham, Community Development Director

SUBJECT: Authorization to Submit a Local Early Action Planning (LEAP) Grant Application to the Department of Housing and Community Development

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 30-20 authorizing staff to submit a grant application to the State of California Department of Housing and Community Development (HCD) for Local Early Action Planning Grant (LEAP) program funds to assist in the preparation and adoption of planning documents and process improvements that accelerate housing production and facilitate compliance to implement the sixth cycle of the regional housing need assessment (RHNA) in the City of Morro Bay, in the amount of \$65,000.

ALTERNATIVES

- A. Direct staff to discontinue application for the HCD LEAP Planning Grant
- B. Decrease amount of grant request

FISCAL IMPACT

Costs associated with the grant relate only to the staff time spent administering the grant. Grant funding is based on reimbursement of qualified costs for preparation of the Housing Element update or other eligible activities. Funding is available through December 31, 2023.

BACKGROUND/DISCUSSION

City staff is in the process of updating the 2020-2028 Housing Element and ***The Local Early Action Planning Grants Program***, which provides non-competitive, one-time funding to all cities and counties to reimburse the costs incurred for the update of planning documents and to implement process improvements that facilitate accelerated housing production. This program is very similar to the ***SB2 Planning Grants Program*** (*City of Morro Bay was awarded \$160,000 for the SB2 grant, contracted on and effective March 5, 2020*). Applications for the LEAP grant are due on or before July 1, 2020. Eligible activities may be part of a larger planning effort (e.g., Housing Element update or a comprehensive zoning code update) and qualify for reimbursement if the proposed activities have not been completed prior to the Notice of Availability (NOFA) date (January 27, 2020), are distinct, and demonstrate a nexus to accelerating housing production. Grant eligible activities include preparation and adoption of the 2020-2028 Housing Element as the document includes an implementation component to

Prepared By: SG Dept Review: Com. Dev.
City Manager Review: SC City Attorney Review: CFN

achieve compliance with the sixth cycle RHNA.

The City of Morro Bay can apply for up to a total of \$65,000.00 based on its population category of 'less than 20,000'. The Program will provide the grants through a non-competitive process to eligible local governments. The grant application is due on July 1, 2020.

CONCLUSION

Staff recommends the Council adopt Resolution No. 30-20 authorizing Staff to submit a LEAP grant application in the amount of \$65,000.00 to the State of California Department of Housing and Community Development in support of the ongoing effort to create and adopt planning documents and process improvements that accelerate the production of housing in the City of Morro Bay.

ATTACHMENT

1. Resolution No. 30-20

RESOLUTION NO. 30-20

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AUTHORIZING SUBMITTAL
OF AN APPLICATION FOR, AND RECEIPT OF,
LOCAL GOVERNMENT PLANNING SUPPORT GRANTS PROGRAM FUNDS**

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

WHEREAS, pursuant to Health and Safety Code sections 50515 *et seq.* the Department of Housing and Community Development (Department) is authorized to issue a Notice of Funding Availability (NOFA) as part of the Local Government Planning Support Grants Program (hereinafter referred to by the Department as the Local Early Action Planning Grants program, or LEAP); and

WHEREAS, the City Council of the City of Morro Bay desires to submit a LEAP grant application package (“Application”) on forms provided by the Department, for approval of grant funding for projects that assist in the preparation and adoption of planning documents and process improvements that accelerate housing production and facilitate compliance to implement the sixth cycle of the regional housing need assessment; and

WHEREAS, the Department has issued a NOFA and Application on January 27, 2020 in the amount of \$119,040,000 for assistance to all California Jurisdictions;

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

SECTION 1: The Community Development Director is hereby authorized and directed to apply for and submit to the Department the Application package;

SECTION 2: In connection with the LEAP grant, if the Application is approved by the Department, the Community Development Director, of the City of Morro Bay is authorized to submit the Application, enter into, execute, and deliver on behalf of the Applicant, a State of California Agreement (Standard Agreement) for the amount of \$65,000.00 and any and all other documents required or deemed necessary or appropriate to evidence and secure the LEAP grant, the Applicant’s obligations related thereto, and all amendments thereto; and

SECTION 3: The Applicant shall be subject to the terms and conditions as specified in the NOFA, and the Standard Agreement provided by the Department after approval. The Application and any and all accompanying documents are incorporated in full as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the Application will be enforceable through the fully executed Standard Agreement. Pursuant to the NOFA and in conjunction with the terms of the Standard Agreement, the Applicant hereby agrees to use the funds for eligible uses and allowable expenditures in the manner presented and specifically identified in the approved Application.

PASSED AND ADOPTED by the City Council of the City of Morro Bay, at a regular meeting held on this 14th day of April 2020 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk



AGENDA NO: A-12
MEETING DATE: April 14, 2020

Staff Report

TO: Honorable Mayor and City Council **DATE:** April 6, 2020
FROM: Chris F. Neumeyer, City Attorney
SUBJECT: Consider Resolution 31-20 Approving Designation of City’s Agents in Applying for Reimbursement from the California Governor’s Office of Emergency Services (Cal OES) for FEMA COVID-19 related Expenses and Authorizing City Manager to take all Necessary Actions for COVID-19 Reimbursements

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 31-20 approving the Designation of Applicant’s Agent Resolution and authorizing the City Manager, or designee, to take all necessary actions to apply for reimbursement of eligible City costs resulting from the COVID-19 pandemic.

ALTERNATIVES

None recommended.

FISCAL IMPACT

No immediate fiscal impact. Approval and submission of the Resolution is part of the process of submitting a FEMA Request for Public Assistance through the State of California, which could result in the City being reimbursed for certain costs incurred in responding to the COVID-19 pandemic.

BACKGROUND

On March 13, 2020, the President declared the ongoing coronavirus (COVID-19) pandemic of sufficient severity and magnitude to warrant a nationwide emergency declaration. As a result of this declaration, local governments, including the City of Morro Bay, are eligible to seek reimbursement from the Federal Emergency Management Agency (FEMA) for the cost of eligible emergency protective measures taken to respond to the COVID-19 emergency. This reimbursement is called “Public Assistance.” FEMA Public Assistance is distributed to California cities through the California Governor’s Office of Emergency Services (Cal OES).

In order to apply for FEMA Public Assistance, the City must (among other requirements) submit a “Request for Public Assistance” (RPA) to Cal OES. As part of the RPA, the City must submit a Designation of Applicant’s Agents Resolution. This Resolution designates City employees who are authorized to submit the RPA to Cal OES on behalf of the City – specifically, the City Manager, the Finance Director, and the Fire Department Chief.

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

DISCUSSION

The Resolution designates the City Manager, the Finance Director, and the Fire Department Chief as authorized City representatives for purposes of submitting the RPA to Cal OES. The City Council is being asked to approve this Resolution as a necessary element of the City's application for Public Assistance from FEMA and Cal OES.

Further actions will be required to complete the RPA, and additional reimbursement may also be available from other federal, state, and county sources. Therefore, this Resolution also authorizes the City Manager, or designee, to take all necessary actions and execute all necessary documents to apply for reimbursement of eligible City costs resulting from the COVID-19 pandemic, from the federal government, California government, and San Luis Obispo County, and any agency or department thereof.

CONCLUSION

The City Council is asked to approve the Designation of Applicant's Agents Resolution as part of the City Request for Public Assistance from FEMA and Cal OES, and to authorize the City Manager to take any other necessary action to apply for reimbursement for City costs resulting from the COVID-19 pandemic.

ATTACHMENTS

- 1) Resolution No. 31-20
- 2) Designation of Applicant's Agent Resolution for Non-State Agencies

RESOLUTION NO. 31-20

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AUTHORIZING APPLICATION FOR COVID-19 REIMBURSEMENTS,
INCLUDING APPROVAL OF DESIGNATION OF APPLICANT'S AGENT
RESOLUTION FOR SUBMISSION TO CAL OES**

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

WHEREAS, on March 13, 2020, the President declared the ongoing coronavirus (COVID-19) pandemic of sufficient severity and magnitude to warrant a nationwide emergency declaration.

WHEREAS, as a result of this declaration, local governments, including the City of Morro Bay, are eligible to seek reimbursement from the Federal Emergency Management Agency (FEMA) for the cost of eligible emergency protective measures taken to respond to the COVID-19 emergency. This reimbursement is called "Public Assistance."

WHEREAS, FEMA Public Assistance is distributed to California cities through the California Governor's Office of Emergency Services (Cal OES); and

WHEREAS, in order to apply for FEMA Public Assistance, the City must submit a "Request for Public Assistance" (RPA) to Cal OES. As part of the RPA, the City must submit a Designation of Applicant's Agents Resolution. This Resolution designates City employees who are authorized to submit the RPA to Cal OES on behalf of the City; and

WHEREAS, additional actions must be taken to complete the RPA; and

WHEREAS, additional reimbursement for COVID-19-related costs may be available from other federal agencies, the State of California, or San Luis Obispo County.

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

SECTION 1. The above recitals are true and correct and incorporated herein by reference.

SECTION 2. The Designation of Applicant's Agent Resolution for Non-State Agencies, attached as Exhibit A, is adopted.

SECTION 3. The City Manager, or designee, is authorized to take all necessary actions and execute all necessary documents to apply for reimbursement of eligible City costs resulting from the COVID-19 pandemic, from the federal government, California government, and San Luis County, and any agency or department thereof.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on this 14th day of April, 2020 on the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

**DESIGNATION OF APPLICANT'S AGENT RESOLUTION
FOR NON-STATE AGENCIES**

BE IT RESOLVED BY THE _____ OF THE _____
(Governing Body) (Name of Applicant)

THAT _____, OR
(Title of Authorized Agent)

_____, OR
(Title of Authorized Agent)

(Title of Authorized Agent)

is hereby authorized to execute for and on behalf of the _____, a public entity
(Name of Applicant)

established under the laws of the State of California, this application and to file it with the California Governor's Office of Emergency Services for the purpose of obtaining certain federal financial assistance under Public Law 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act.

THAT the _____, a public entity established under the laws of the State of California,
(Name of Applicant)

hereby authorizes its agent(s) to provide to the Governor's Office of Emergency Services for all matters pertaining to such state disaster assistance the assurances and agreements required.

Please check the appropriate box below:

This is a universal resolution and is effective for all open and future disasters up to three (3) years following the date of approval below.

This is a disaster specific resolution and is effective for only disaster number(s) _____

Passed and approved this _____ day of _____, 20 _____

(Name and Title of Governing Body Representative)

(Name and Title of Governing Body Representative)

(Name and Title of Governing Body Representative)

CERTIFICATION

I, _____, duly appointed and _____ of
(Name) (Title)

_____, do hereby certify that the above is a true and correct copy of a
(Name of Applicant)

Resolution passed and approved by the _____ of the _____
(Governing Body) (Name of Applicant)

on the _____ day of _____, 20 _____.

(Signature)

(Title)

Cal OES Form 130 Instructions

A Designation of Applicant's Agent Resolution for Non-State Agencies is required of all Applicants to be eligible to receive funding. A new resolution must be submitted if a previously submitted Resolution is older than three (3) years from the last date of approval, is invalid or has not been submitted.

When completing the Cal OES Form 130, Applicants should fill in the blanks on page 1. The blanks are to be filled in as follows:

Resolution Section:

Governing Body: This is the group responsible for appointing and approving the Authorized Agents.
Examples include: Board of Directors, City Council, Board of Supervisors, Board of Education, etc.

Name of Applicant: The public entity established under the laws of the State of California. Examples include: School District, Office of Education, City, County or Non-profit agency that has applied for the grant, such as: City of San Diego, Sacramento County, Burbank Unified School District, Napa County Office of Education, University Southern California.

Authorized Agent: These are the individuals that are authorized by the Governing Body to engage with the Federal Emergency Management Agency and the Governor's Office of Emergency Services regarding grants applied for by the Applicant. There are two ways of completing this section:

1. **Titles Only:** If the Governing Body so chooses, the titles of the Authorized Agents would be entered here, not their names. This allows the document to remain valid (for 3 years) if an Authorized Agent leaves the position and is replaced by another individual in the same title. If "Titles Only" is the chosen method, this document must be accompanied by a cover letter naming the Authorized Agents by name and title. This cover letter can be completed by any authorized person within the agency and does not require the Governing Body's signature.
2. **Names and Titles:** If the Governing Body so chooses, the names **and** titles of the Authorized Agents would be listed. A new Cal OES Form 130 will be required if any of the Authorized Agents are replaced, leave the position listed on the document or their title changes.

Governing Body Representative: These are the names and titles of the approving Board Members.
Examples include: Chairman of the Board, Director, Superintendent, etc. The names and titles **cannot** be one of the designated Authorized Agents, and a minimum of two or more approving board members need to be listed.

Certification Section:

Name and Title: This is the individual that was in attendance and recorded the Resolution creation and approval.
Examples include: City Clerk, Secretary to the Board of Directors, County Clerk, etc. This person **cannot** be one of the designated Authorized Agents or Approving Board Member (if a person holds two positions such as City Manager and Secretary to the Board and the City Manager is to be listed as an Authorized Agent, then the same person holding the Secretary position would sign the document as Secretary to the Board (not City Manager) to eliminate "Self Certification.")



AGENDA NO: C-1

MEETING DATE: April 14, 2020

Staff Report

TO: Honorable Mayor and City Council **DATE:** April 9, 2020
FROM: Scott Collins, City Manager

SUBJECT: Consideration of Resolution No. 32-20 to Join the San Luis Obispo Countywide Regional Compact on Housing

RECOMMENDATION

City Council receive a presentation and adopt Resolution No. 32-20 approving and authorizing the Mayor to sign the San Luis Obispo Countywide Regional Compact (on housing).

FISCAL IMPACT

None.

BACKGROUND/DISCUSSION

The San Luis Obispo County region is currently one of the least affordable places to buy a home in the United States – recently reported as the 8th least affordable region in the Nation. According to the National Association of Home Builders¹, only 20.9 percent of the area’s share of homes are affordable to a family earning the area’s median income. As stated in the County’s Housing Element of the General Plan (2014-2019), the chronic undersupply of housing affordable and suitable for locally employed people has economic, social and environmental impacts. Providing an adequate supply and range of housing choices affordable to residents and working families/individuals is a significant challenge in San Luis Obispo County, and requires the efforts of public agencies, private industries, residents and working individuals to overcome it.

Pursuant to State law, the State Department of Housing and Community Development (HCD) determines the region’s future housing needs by affordability level and directs the San Luis Obispo Council of Governments (SLOCOG) to assign the required housing units to each of the seven Cities and the County’s unincorporated areas. This is known as the Regional Housing Needs Allocation (RHNA) process. In December 2018, the SLOCOG Board accepted the State HCD’s final determination that the San Luis Obispo County region must plan for 10,810 new housing units by 2028. Subsequently, in October 2019, the SLOCOG Board adopted the 2019 RHNA Plan, allocating the 10,810 new housing units across the eight local land use planning agencies, generally based on each jurisdiction’s proportional share of the region’s population and jobs. Table 1 below shows each agency’s allocation and allocation within each State-defined income category². Each of the eight

¹ 2019 Third Quarter Housing Opportunities Index.

² "Very Low Income" is defined by Health and Safety Code Section 50105 as 50% or less of county median income; "Lower Income" is defined by Health and Safety Code Section 50079.5 as 80% or less of county median income; "Moderate Income" is defined by Health and Safety Code Section 50093 as 120% or less of county median income; and "Above Moderate Income" is defined as those exceeding the moderate income level of Health and Safety Code Section 50093.

01181.0032/628851.3 Prepared By: <u>SC</u>
City Manager Review: <u>SC</u> City Attorney Review: _____

agencies is now required to identify adequate sites and plan for its future housing needs as it updates its Housing Element by December 31, 2020.

Table 1: Regional Housing Needs Allocation for 2020 - 2028

Jurisdiction	Total Allocation	Very Low Income Allocation ² (24.6%)	Low Income Allocation ² (15.5%)	Moderate Income Allocation ² (18.0%)	Above Moderate Income Allocation ² (41.9%)
Arroyo Grande	692	170	107	124	291
Atascadero	843	207	131	151	354
Grover Beach	369	91	57	66	155
Morro Bay	391	97	60	70	164
Paso Robles	1,446	356	224	259	607
Pismo Beach	459	113	71	82	193
San Luis Obispo	3,354	825	520	603	1,406
Unincorporated	3,256	801	505	585	1,365
Regional Total	10,810	2,660	1,675	1,940	4,535

Meeting the current and future RHNA cycles will require our communities to plan for additional growth and prioritize investment in housing and infrastructure. The Governor and State Legislature have enacted numerous bills that encourage local agencies to take actions to streamline housing approvals and accelerate housing production³. The Governor and numerous legislators have expressed a need for urgent focus on California’s housing affordability crisis. Their decisions continue to prioritize the need for actions to address this complex challenge, such as through their adoption of the FY 2019-20 State Budget that included \$1.75 billion investment to increase housing supply and hold local agencies accountable for meeting regional housing goals.

Meeting the housing needs of the San Luis Obispo County region is a challenge shared by all eight local land use jurisdictions and SLOCOG and will take collective actions to overcome. With this great challenge also comes an opportunity for regional collaboration.

The proposed San Luis Obispo Countywide Regional Compact (Exhibit A to Attachment 1) is an aspirational document. It sets the tone and goals for future recommended plans and actions among the local agencies. It establishes a united regional framework to unlock the potential to develop an adequate supply of housing and resilient infrastructure that support our economic prosperity. It recognizes that people, water, transportation, connectivity, and housing form the foundation of the San Luis Obispo County region’s healthy, livable communities and thriving economic opportunity.

The region’s local agencies, building and development community, residents and workforce have an

³ While numerous other bills and actions were enacted, several key examples include: SB 330 Housing Crisis Act of 2019 aimed at accelerating housing production through various actions such as streamlining permitting and approval processes; Various bills aimed at eliminating barriers to building accessory dwelling units; AB 1486 and AB 1255 related to inventorying and reporting surplus and excess local public lands; AB 72 modifying enforcement actions against agencies that do not comply with RHNA.

opportunity to unite around six shared regional goals that provide a vision to guide collaborative resolution of the underlying issues.

Goal 1. Strengthen Community Quality of Life – We believe that our Region’s quality of life depends on four cornerstones to foster a stable and healthy economy for all: resilient infrastructure and resources, adequate housing supply, business opportunities, and educational pathways.

Goal 2. Share Regional Prosperity – We believe that our Region should share the impacts and benefits of achieving enduring quality of life among all people, sectors and interests.

Goal 3. Create Balanced Communities – We believe that our Region should encourage new development that helps to improve the balance of jobs and housing throughout the Region, providing more opportunities to residents to live and work in the same community.

Goal 4. Value Agriculture & Natural Resources – We believe that our Region’s unique agricultural resources, open space, and natural environments play a vital role in sustaining healthy local communities and a healthy economy, and therefore should be purposefully protected.

Goal 5. Support Equitable Opportunities – We believe that our Region should support policies, actions, and incentives that increase housing development of all types, available to people at all income levels.

Goal 6. Foster Accelerated Housing Production – We believe that our Region must achieve efficient planning and production of housing and focus on strategies that produce the greatest impact.

The Regional Compact is recommended for approval by the governing boards of all eight local agencies and SLOCOG. Signatories to the Regional Compact commit to acting as partners in aligning actions with these regional goals. The Regional Compact is an important first step that will help to protect and enhance the region’s communities, build critical infrastructure, protect natural resources and create a forward-thinking future for the region. By taking collaborative actions to further these goals, our region can solve critical issues and become a statewide leader in sustaining vibrant communities. Additionally, given the State’s pro-housing focus, the Regional Compact shows the San Luis Obispo County region’s intent to work collaboratively to plan for our region’s future and its growth. This may make the region more competitive for housing and infrastructure funding opportunities.

The City has previously indicated its commitment to supporting regional collaboration and development of a plan for action among the region’s local agencies, through the adoption of the City goal for 2019/2020 to address affordable housing with regional partners. City staff are also working to update the Housing Element, and as part of the scope of work, included interagency coordination and development of the region’s first “regional chapter” common to all eight local agencies’ Housing Elements. City staff will continue to work closely with the regional effort being led by the County and other key stakeholders as it moves these regional planning efforts forward.

Staff recommends that the Council approve the attached resolution approving the San Luis Obispo Countywide Regional Compact and authorize the Mayor to sign the Regional Compact, which is

anticipated to take place at a future signing event. Staff anticipates returning to the region’s boards and councils with Housing Elements, including a regional chapter, in late-2020 and with the Regional Plan in late-2020 to early-2021.

OTHER AGENCY INVOLVEMENT/IMPACT

Overcoming the challenges highlighted in this staff report will require a significant focus on increasing regional collaboration related to affordable housing and the critical infrastructure to support it. The following are the dates in which the other cities and regional agencies approved the Regional Compact, and pending approval by all, will culminate in a public signing event (date to be determined in the wake of the COVID-19 pandemic and Shelter at Home order).

Proposed Regional Compact Signatories	Date of Regional Compact Approval
County of San Luis Obispo	February 25, 2020
City of Grover Beach	March 2, 2020
City of Paso Robles	March 3, 2020
City of Pismo Beach	March 3, 2020
City of Arroyo Grande	March 10, 2020
City of Atascadero	March 10, 2020
City of San Luis Obispo	March 17, 2020
San Luis Obispo Council of Governments	April 1, 2020

The County and cities remain committed to engaging with partners to develop the Regional Infrastructure and Housing Plan and formulate recommendations for how to collaboratively carry out the goals set forth in the Regional Compact. In the months leading up to presentation of this Regional Compact, SLO County staff engaged and informed various stakeholders including but not limited to the Coalition of Housing Partners (including representation from the Central Coast Homebuilders Association, Economic Vitality Corporation, San Luis Obispo Chamber of Commerce, Housing Trust Fund, San Luis Obispo and Paso Robles Housing Authorities, People’s Self Help Housing and Habitat for Humanity), REACH (previously known as Hourglass Project), Central Coast Home Builders Association, Economic Vitality Corporation’s Building, Design and Construction Cluster, Healthy Communities Work Group and the Local Agency Formation Commission.

CONCLUSION

Approval of the recommended resolution and Regional Compact will provide an aspirational vision as staff of the nine local agencies develop various planning documents, strategies, and actions, aimed at increasing the affordability and production of housing. Therefore, approving the resolution and recommendations will contribute towards a more healthy, livable, prosperous and well-governed community.

ATTACHMENT

1. Resolution No. 32-20

RESOLUTION NO. 32-20

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING AND AUTHORIZING THE MAYOR TO SIGN THE SAN LUIS OBISPO
COUNTYWIDE REGIONAL COMPACT**

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

WHEREAS, the San Luis Obispo County region is a rural coastal county with seven vibrant cities and numerous unincorporated communities that depend on collaborative relationships between and among government agencies, community organizations, and residents to solve significant regional issues; and

WHEREAS, California Government Code Section 65584 requires the San Luis Obispo County region's local land use agencies to plan for their Regional Housing Needs Allocation of 10,820 new housing units by 2028 and future allocations as determined by the California Department of Housing and Community Development; and

WHEREAS, the San Luis Obispo Countywide Regional Compact, attached hereto as Exhibit A and incorporated herein by this reference and prepared by leaders from each of the region's local agencies, creates a united regional framework to unlock the potential to develop an adequate supply of housing and resilient infrastructure that support economic prosperity; and

WHEREAS, the regional goals set forth therein will help to protect and enhance our communities, build critical infrastructure, protect natural resources, and create a forward-thinking future for local communities in addition to underpinning the future Regional Infrastructure and Housing Plan, creating compatibility among the eight local land use agencies' Housing Elements within San Luis Obispo County, and driving future recommendations for collaborative actions.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Morro Bay hereby approves the San Luis Obispo Countywide Regional Compact and authorizes the Mayor to sign said Compact.

PASSED AND ADOPTED by the City Council of the City of Morro Bay, at a regular meeting held on this 14th day of April 2020 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

SAN LUIS OBISPO COUNTYWIDE REGIONAL COMPACT

A united regional framework to unlock our potential to develop an adequate supply of housing and resilient infrastructure that support our economic prosperity.

People, water, transportation, connectivity, and housing form the foundation of San Luis Obispo County Region’s healthy, livable communities and thriving economic opportunity.

We are a rural coastal county with seven vibrant cities and numerous unincorporated communities that depend on collaborative relationships between and among government agencies, community organizations, and residents to solve our Region’s significant issues, such as limited water supply, disconnects between communities, climate impacts, pressure on agriculture and open space resources, and inadequate access to affordable housing.

To identify actions our agencies can take to solve these issues, we agree to develop our first *Regional Infrastructure and Housing Strategic Action Plan*. This regional effort examines infrastructure and housing needs countywide and integrates efforts to address critical shortages. Our organizations are signing this compact as a first, necessary step toward creating opportunities for our local workforce and families, while preserving the appeal and vitality of our Region.

Our agencies collectively embrace the following six shared regional goals and support aligning resources and policies to make progress towards acting on them. These regional goals will underpin the future *Regional Infrastructure and Housing Strategic Action Plan*, create compatibility among the eight local agencies’ *Housing Elements*, and drive future recommendations for collaborative actions.

Strengthen community quality of life	We believe that our Region’s quality of life depends on four cornerstones to foster a stable and healthy economy for all: resilient infrastructure, services, and resources, adequate housing supply, business opportunities, and educational pathways.
Share regional prosperity	We believe that our Region should share the impacts and benefits of achieving enduring quality of life among all people, sectors and interests.
Create balanced communities	We believe that our Region should encourage new development that helps to improve the balance of jobs and housing throughout the Region, providing more opportunities for residents to live and work in the same community.
Value agricultural & natural resources	We believe that our Region’s unique agricultural resources, open space, and natural environments play a vital role in sustaining healthy local communities and a healthy economy, and therefore should be purposefully protected.
Support equitable & diverse opportunities	We believe that our Region should support policies, actions and incentives that increase the diversity of housing available to people at all income levels.
Foster accelerated housing production	We believe that our Region must achieve efficient planning and production of housing and focus on strategies that produce the greatest impact.

We believe that these regional goals will help to protect and enhance our communities, build critical infrastructure, protect natural resources and create a forward-thinking future for all of our communities. We believe in the importance of taking responsibility for leading our Region towards a brighter future. By signing this compact on this ___ day of _____ 2020, we commit to act as partners by aligning actions with these regional goals. By taking collaborative actions to further these goals, we believe that our Region will solve critical issues and become a statewide leader in sustaining vibrant communities.



City of Arroyo Grande



City of Morro Bay



City of San Luis Obispo



City of Atascadero



City of Paso Robles



San Luis Obispo County



City of Grover Beach



City of Pismo Beach



SLO Council of Governments



AGENDA NO: C-2

MEETING DATE: April 14, 2020

Staff Report

TO: Honorable Mayor and City Council

DATE: April 8, 2020

FROM: Chris F. Neumeyer, City Attorney

SUBJECT: Adopt Resolution No. 33-20 Regarding Publication of Emergency Orders on Evictions, Foreclosures and Price Gouging (COVID-19 State of Emergency)

RECOMMENDATION

Staff recommends the City Council Adopt Resolution No. 33-20 Regarding Publication of Emergency Orders on Evictions, Foreclosures and Price Gouging (COVID-19 State of Emergency).

ALTERNATIVES

Do not take any action to publish emergency orders.

FISCAL IMPACT

No immediate fiscal impact to City.

BACKGROUND

In December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19) was first identified in Wuhan City, Hubei Province, China. COVID-19 is a respiratory disease that may result in serious illness or death and is easily transmissible from person to person.

As of April 8, 2020, the CDC has reported in the United States there are over 395,000 COVID-19 cases and over 12,750 deaths. The California Governor on March 4, 2020 proclaimed a State of Emergency to exist in California due to the COVID-19 pandemic. The President of the United States on March 13, 2020 declared the outbreak of COVID-19 in the United States constituted a national emergency. On March 13, 2020, the San Luis Obispo County Emergency Services Director issued a Proclamation of Local Emergency due to the spread of COVID-19 in the County of San Luis Obispo.

On March 14, 2020, the Morro Bay City Manager proclaimed a declaration of the existence of a local emergency within the City of Morro Bay due to the threat posed to the City from COVID-19, and that declaration was subsequently ratified by the City Council on March 19, 2020.

Because of these emergency conditions due to the continuing COVID-19 pandemic, many people are experiencing or will experience substantial loss of income as a result of business closures, the loss of hours or wages, or layoffs related to COVID-19, hindering their ability to keep up with rent or mortgage payments, leaving them potentially vulnerable to eviction or foreclosure.

01181.0001/641164.7

Prepared By: CFN

Dept Review: _____

City Manager Review: SC

City Attorney Review: CFN

At the same time, consumers while seeking to purchase medical and emergency supplies, as well as food and consumer goods, may face unscrupulous price gouging or profiteering.

DISCUSSION

In response to the prospect of evictions, foreclosures, and price gouging during the COVID-19 emergency, various government authorities have issued emergency orders and regulations. Staff requests that Council consider approving Resolution No. 33-20 to publish the below emergency rules, orders, and regulations.

1. Eviction Relief / Eviction Moratorium

Executive Order N-37-20 issued on March 27, 2020 prohibits the *enforcement* of residential eviction orders for renters affected by the COVID-19 pandemic through May 31, 2020. The Governor's Order provides that a renter must inform the landlord in writing, within seven days of the rent being due, of delays caused by specified COVID-19 reasons.

On April 6, 2020, the California Judicial Council issued Emergency Rule No. 1 which provides for a *suspension* of the issuance of summons, and the entry of defaults, in unlawful detainer actions (i.e., an eviction), unless the court finds there is a health and safety reason (e.g., a health hazard). The Judicial Council rule effectively suspends new evictions (other than for health and safety reason) until 90 days after the California State of Emergency concerning COVID-19 is lifted, or as amended.

2. Mortgage Relief / Judicial Foreclosure Moratorium

The Governor secured agreement on March 25, 2020 from many major financial institutions to provide mortgage payment forbearances of up to 90 days to borrowers economically impacted by COVID-19. Mortgage holders are to contact their bank for more information.

On April 6, 2020, the California Judicial Council issued Emergency Rule No. 2 to stay court proceedings on judicial foreclosure actions until 90 days after the California State of Emergency related to the COVID-19 pandemic is lifted, or as amended. (Note that many foreclosures are not judicial foreclosures, but simply involve bank repossession.)

3. Price Gouging and Profiteering

Penal Code § 396(b) prohibits price gouging as of the State of Emergency declared on March 4, 2020 by the Governor. Price gouging (with some exceptions) is raising the price more than 10% of the pre-emergency price.

That statute provides in part "Upon the proclamation of a state of emergency declared by ... the Governor ... and for a period of 30 days following that proclamation or declaration, it is unlawful ... to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent greater than the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency. However, a greater price increase is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, during the state of emergency or local emergency, and the price is no more than

01181.0001/641164.7

10 percent greater than the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business immediately prior to the onset of the state of emergency or local emergency.”

Executive Order N-44-20 issued on April 3, 2020 provides that the above price gouging regulations shall be in effect through September 4, 2020 (rather than April 4, 2020). The order also backdates the price point from which “price gouging” is weighed to February 4, 2020 (rather than March 4, 2020), with certain exceptions.

CONCLUSION

Staff recommends that Council adopt Resolution No. 33-20, and provide other direction as deemed appropriate by Council.

ATTACHMENTS

1. Resolution No. 33-20
2. Executive Order N-37-20
3. Emergency Rules Nos. 1-2, Judicial Council of California
4. Governor Announcement Mortgage Relief
5. Penal Code § 396(b)
6. Executive Order N-44-20

RESOLUTION NO. 33-20

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, STATE OF CALIFORNIA,
REGARDING PUBLICATION OF EMERGENCY ORDERS ON
EVICIONS, FORECLOSURES AND PRICE GOUGING (COVID-19
STATE OF EMERGENCY)**

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

WHEREAS, in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19) was first identified in Wuhan City, Hubei Province, China; and,

WHEREAS, COVID-19 is a respiratory disease that may result in serious illness or death and is easily transmissible from person to person; and

WHEREAS, as of April 8, 2020, the federal Centers for Disease Control and Prevention (“CDC”) has reported in the United States there are over 395,000 COVID-19 cases and over 12,750 deaths; and

WHEREAS, the California Governor on March 4, 2020 proclaimed a State of Emergency to exist in California due to the COVID-19 pandemic; and

WHEREAS, the President of the United States on March 13, 2020 declared the outbreak of COVID-19 in the United States constituted a national emergency; and

WHEREAS, On March 13, 2020, the San Luis Obispo County Emergency Services Director issued a Proclamation of Local Emergency due to the spread of COVID-19 in the County of San Luis Obispo; and

WHEREAS, on March 14, 2020, the Morro Bay City Manager proclaimed a declaration of the existence of a local emergency within the City of Morro Bay due to the threat posed to the City from COVID-19, and that declaration was subsequently ratified by the City Council on March 19, 2020; and

WHEREAS, because of these emergency conditions due to the continuing COVID-19 pandemic, many people are experiencing or will experience substantial loss of income as a result of business closures, the loss of hours or wages, or layoffs related to COVID-19, hindering their ability to keep up with rent or mortgage payments, leaving them potentially vulnerable to eviction or foreclosure; and

WHEREAS, at the same time, consumers while seeking to purchase medical and emergency supplies, as well as food and consumer goods, may face unscrupulous price gouging or profiteering, during the COVID-19 pandemic emergency conditions; and

WHEREAS, in response to the prospect of evictions, foreclosures, and price gouging during the COVID-19 emergency, various government authorities have issued emergency orders and regulations; and

WHEREAS, Executive Order N-37-20 issued by the Governor on March 27, 2020 prohibits the enforcement of residential eviction orders for renters affected by the COVID-19 pandemic through May 31, 2020, and that order also provides that a renter must inform the landlord in writing, within seven days of the rent being due, of delays caused by specified COVID-19 reasons; and

WHEREAS, On April 6, 2020, the California Judicial Council issued Emergency Rule No. 1 which provides for a suspension of the issuance of summons, and the entry of defaults, in unlawful detainer actions (i.e., an eviction), unless the court finds there is a health and safety reason (e.g., a health hazard), meaning that said Judicial Council rule effectively suspends new evictions (other than for health and safety reasons) until 90 days after the California State of Emergency concerning COVID-19 is lifted, or as amended; and

WHEREAS, the Governor secured agreement on March 25, 2020 from many major financial institutions to provide mortgage payment forbearances of up to 90 days to borrowers economically impacted by COVID-19, and mortgage holders are to contact their bank for more information; and

WHEREAS, on April 6, 2020, the California Judicial Council issued Emergency Rule No. 2 to stay court proceedings on judicial foreclosure actions until 90 days after the California State of Emergency related to the COVID-19 pandemic is lifted, or as amended; and

WHEREAS, Penal Code § 396(b) prohibits price gouging as of the California State of Emergency declared on March 4, 2020 by the Governor, and such price gouging (with some exceptions) is raising the price more than 10% of the pre-emergency price; and

WHEREAS, Executive Order N-44-20 issued by the Governor on April 3, 2020 provides that the above price gouging regulations shall be in effect through September 4, 2020 (rather than April 4, 2020), and that order also backdates the price point from which “price gouging” is weighed to February 4, 2020 (rather than March 4, 2020), with certain exceptions; and

WHEREAS, the Morro Bay City Council desires that residents of Morro Bay are informed and aware of their rights under said State emergency orders and law.

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

1. **Recitals.** The City Council hereby finds and believes that the above recitals are true and correct and incorporate them herein by reference.
2. **Emergency Orders on Evictions, Foreclosures and Price Gouging.** The City Council hereby orders that City staff publicize to City residents in as widespread a manner as is reasonably feasible under the conditions prevailing during this local emergency the following COVID-19 emergency orders, rules and regulations:
 - A. **Eviction Relief / Eviction Moratorium** - Executive Order N-37-20 (Exhibit A) and Judicial Council Emergency Rule No. 1 (Exhibits B)
 - B. **Mortgage Relief / Judicial Foreclosure Moratorium** – Governor’s March 25, 2020

Agreement with Major Financial Institutions Regarding Mortgage Payment
Forbearances (Exhibit C) and Judicial Council Emergency Rule No. 2 (Exhibits B)

C. **Price Gouging and Profiteering** - Penal Code § 396(b) (Exhibit D) and Executive Order N-44-20 (Exhibit E)

3. **Effective Date of Resolution.** This Resolution shall be effective immediately upon passage and adoption. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.
4. **Publication.** This Resolution and its contents will be published and promulgated in as widespread a manner as is reasonably feasible under the conditions prevailing during this local emergency.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay, California, at a regular meeting thereof held on the 14th day of April 2020 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

EXECUTIVE ORDER N-37-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS in a short period of time, COVID-19 has rapidly spread throughout California, necessitating stringent public health emergency orders as well as guidance from federal, state, and local public health officials; and

WHEREAS on March 16, 2020, I issued Executive Order N-28-20, suspending state law limitations on local jurisdictions that impose restrictions on evictions; and

WHEREAS on March 19, 2020, I issued Executive Order N-33-20, ordering all residents to immediately heed the Order of the State Public Health Officer for all residents, unless exempted, to stay home or at their place of residence; and

WHEREAS many Californians are experiencing or will experience substantial losses of income as a result of business closures, the loss of hours or wages, or layoffs related to COVID-19, hindering their ability to keep up with their rent, and leaving them vulnerable to eviction; and

WHEREAS minimizing evictions during this period is critical to reducing the spread of COVID-19 in vulnerable populations by allowing all residents to stay home or at their place of residence in compliance with Executive Order N-33-20; and

WHEREAS Chief Justice Tani Cantil-Sakauye issued advisory guidance on March 20, 2020 for superior courts to suspend most civil trials and hearings for at least 60 days, and on March 23, 2020, suspended all jury trials for a period of 60 days, and extended by 60 days the time period for the holding of a civil trial; and

WHEREAS on March 25, 2020 the Department of Business Oversight secured support from national banks, state banks and credit unions for temporary delays in mortgage payments and foreclosure sales and evictions for homeowners who have economic impacts from COVID-19 with the objective of maximizing consistency and minimizing hurdles potentially faced by borrowers.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567 and 8571, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) The deadline specified in Code of Civil Procedure section 1167 shall be extended for a period of 60 days for any tenant who is served, while

this Order is in effect, with a complaint that seeks to evict the tenant from a residence or dwelling unit for nonpayment of rent and who satisfies all of the following requirements:

- a. Prior to the date of this Order, the tenant paid rent due to the landlord pursuant to an agreement.
 - b. The tenant notifies the landlord in writing before the rent is due, or within a reasonable period of time afterwards not to exceed 7 days, that the tenant needs to delay all or some payment of rent because of an inability to pay the full amount due to reasons related to COVID-19, including but not limited to the following:
 - (i) The tenant was unavailable to work because the tenant was sick with a suspected or confirmed case of COVID-19 or caring for a household or family member who was sick with a suspected or confirmed case of COVID-19;
 - (ii) The tenant experienced a lay-off, loss of hours, or other income reduction resulting from COVID-19, the state of emergency, or related government response; or
 - (iii) The tenant needed to miss work to care for a child whose school was closed in response to COVID-19.
 - c. The tenant retains verifiable documentation, such as termination notices, payroll checks, pay stubs, bank statements, medical bills, or signed letters or statements from an employer or supervisor explaining the tenant's changed financial circumstances, to support the tenant's assertion of an inability to pay. This documentation may be provided to the landlord no later than the time upon payment of back-due rent.
- 2) No writ may be enforced while this Order is in effect to evict a tenant from a residence or dwelling unit for nonpayment of rent who satisfies the requirements of subparagraphs (a)-(c) of paragraph 1.
 - 3) The protections in paragraphs 1 and 2 shall be in effect through May 31, 2020.

Nothing in this Order shall prevent a tenant who is able to pay all or some of the rent due from paying that rent in a timely manner or relieve a tenant of liability for unpaid rent.

Nothing in this Order shall in any way restrict state or local governmental authority to order any quarantine, isolation, or other public health measure that may compel an individual to remain physically present in a particular residential property.

IT IS FURTHER ORDERED that this Order supersedes Executive Order N-28-20 to the extent that there is any conflict with that Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 27th day of March 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-141

For business meeting on: April 6, 2020

Title	Agenda Item Type
Judicial Branch Administration Emergency Rules in Response to the COVID-19 Pandemic	Action Required
	Effective Date
	April 6, 2020
Rules, Forms, Standards, or Statutes Affected	Date of Report
Adopt Cal. Rules of Court, emergency rules 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11	April 4, 2020
Recommended by	
Hon. Marsha G. Slough, Chair, Executive and Planning Committee	
Hon. David M. Rubin, Chair, Judicial Branch Budget Committee and Litigation Management Committee	
Hon. Kyle S. Brodie, Chair, Technology Committee	
Hon. Marla O. Anderson, Chair, Legislation Committee	
Hon. Harry E. Hull, Jr., Chair, Rules Committee	

Executive Summary

Due to the immediate and ongoing impact the COVID-19 pandemic is having on California's judicial branch, and at the request of Chief Justice Tani G. Cantil-Sakauye, Chair of the Judicial Council, the chairs of the Judicial Council's six internal committees recommend that the Judicial Council adopt rules of court to: suspend the entry of defaults in unlawful detainer actions; suspend judicial foreclosures; provide for remote appearance via technology; adopt a statewide emergency bail schedule that sets bail at \$0 for most misdemeanor and lower-level felony

offenses; provide for personal appearance through counsel for defendants in pretrial criminal proceedings; prioritize for juvenile dependency and juvenile delinquency proceedings various hearing and orders and set a structure for remote hearings and continuances; extend the timeframes for specified temporary restraining orders; and adopt miscellaneous civil proposals, including suspending the statutes of limitations governing civil actions. The Judicial Council should take these temporary actions in order to protect the health and safety of the public, court employees, attorneys, litigants, and judicial officers, as well as staff and inmates in detention facilities, and law enforcement during the state of emergency related to the COVID-19 pandemic.

On March 20, 2020 Governor Newsom issued a statewide shelter in place order¹ with limited exceptions for emergency services. Adults over the age of 65 and persons of any age who have serious underlying medical conditions are at higher risk and required to stay home. In addition, several counties have issued local shelter in place orders that are more restrictive than the statewide order issued by the Governor. Courts are currently operating with greatly reduced numbers of staff and judicial officers. The courts' workforce continues to diminish weekly as staff and judicial officers are overtaxed and risking their health. As a result, the courts must responsibly, carefully, stringently and strategically determine which urgent court services take priority. Thus far, the efforts of the judicial branch have been to balance the access to justice for critical and vulnerable populations of people, while ensuring the health and safety of the public we serve and those in the courts. During this time, it is critical to balance the demands on the courts and concerns for the public, including the need to extend time to permit the courts to establish remote technology for those who wish to use it.

Recommendation

The chairs of the Judicial Council's six internal committees recommend that the Judicial Council adopt the following rules of court, to take effect immediately:

Unlawful Detainers and Foreclosures: Proposed Emergency Rules 1-2

1. Adopt emergency rule 1 to suspend the issuance of summons and entry of default and default judgments on unlawful detainer complaints, and to allow courts to set trials on any unlawful detainer actions in which a defendant has appeared more than 60 days after the request for such a trial, unless the court finds that earlier action is needed to protect public health and safety.
2. Adopt emergency rule 2 to stay all actions for judicial foreclosures on mortgages and deeds of trust and extend all deadlines related to such actions.

Use of Technology to Conduct Proceedings Remotely: Proposed Emergency Rule 3

¹ Executive Order N-33-20: <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>

3. Adopt emergency rule 3 to provide that courts may require that judicial proceedings and court operations be conducted remotely; however, in criminal proceedings, courts must receive the consent of the defendant to conduct the proceeding remotely. Conducting proceedings remotely includes, but is not limited to, the use of video, audio, and telephonic means for remote appearances; the electronic exchange and authentication of documentary evidence; e-filing and e-service; and the use of remote interpreting, remote reporting, and electronic recording to make the official record of an action or proceeding.

Criminal Proceedings: Proposed Emergency Rules 4-5

4. Adopt emergency rule 4 establishing a statewide Emergency Bail Schedule that sets bail at \$0 for most misdemeanor and lower-level felony offenses and includes other specified provisions.
5. Adopt emergency rule 5 to provide for appearance through counsel and remote appearance via technology for defendants in pretrial criminal proceedings.

Juvenile Dependency and Juvenile Delinquency Proceedings: Proposed Emergency Rules 6-7

6. Adopt emergency rule 6 for juvenile dependency proceedings that would prioritize specified hearings and orders and set a structure for remote hearings and continuances.
7. Adopt emergency rule 7 related to juvenile delinquency that would prioritize hearings and orders in juvenile delinquency proceedings and set a structure for remote hearings and continuances. Emergency rule 7 would also grant an extension of time under Welfare and Institutions Code section 709.

Temporary Restraining Orders: Proposed Emergency Rule 8

8. Adopt emergency rule 8 related to temporary restraining orders that, among other changes, would extend the timeframes for specified orders and allow courts to transmit an order in any format to the entering agency for transmission into the California Department of Justice database.²

Civil Proceedings: Proposed Emergency Rules 9-11

9. Adopt emergency rule 9 to toll the statutes of limitation for all civil causes of action from April 6, 2020, to 90 days after the state of emergency related to the COVID-19 pandemic is lifted.
10. Adopt emergency rule 10 to increase by six months, for all civil actions filed on or before April 6, 2020, the five years in which to bring the actions to trial under Code of Civil

² Family Code section 6380 requires that protective orders be entered into the California Restraining and Protective Order System (CARPOS) maintained by the Department of Justice.

Procedure section 583.310 and the three years in which to bring a new trial of the actions under Code of Civil Procedure section 583.320.

11. Adopt emergency rule 11 to allow a party or nonparty deponent, at their election or the election of the deposing party, to appear at a deposition remotely through electronic means.

Relevant Previous Council Action

This is the second action taken by the Judicial Council to address the impact of the COVID-19 pandemic as it affects California's residents and judicial branch.

- On March 28, 2020³, the Judicial Council met in an emergency session and approved recommendations authorizing and supporting the Chief Justice to, among other actions, issue statewide orders to extend certain statutory deadlines until 90 days after the state of emergency related to COVID-19 is lifted. Those orders include the following:
- Extending the 10-day court period provided in Penal Code section 859b for the holding of a preliminary examination and the defendant's right of release to 30 court days;
- Extending the time period provided in Penal Code section 825 within which a defendant charged with a felony offense shall be taken before a magistrate from 48 hours to not more than 7 days;
- Extending the time period provided in Penal Code section 1382 for the holding of a criminal trial by no more than 30 days; and
- Extending the time periods provided in Code of Civil Procedure sections 583.310 and 583.320 to bring an action to trial by no more than 30 days.

The Judicial Council also directed the superior courts to:

- Make use of available technology, when possible, to conduct judicial proceedings and court operations remotely in order to protect the health and safety of the public, court personnel, judicial officers, litigants, and witnesses. This includes the use of video, audio, and telephonic means for remote appearances, reporting, and interpreting in judicial proceedings; the electronic exchange and authentication of documentary evidence; and the use of e-filing and e-service; and
- For criminal and juvenile proceedings, including arraignments and preliminary examinations, prioritize the use of available technology to meet current statutory time requirements and ensure that defendants are not held in custody, and children are not held

³ Judicial Council of Cal., Judicial Branch Administration: Response to the COVID-19 Pandemic (Mar. 27. 2020), <https://jcc.legistar.com/LegislationDetail.aspx?ID=4408176&GUID=C64F8BB5-2C51-46DC-90FA-A51F1C56BF94>.

in custody or removed from the custody of their parents or guardians, without timely due process of law or in violation of constitutional rights.

The Chief Justice issued a statewide order⁴ on March 30 implementing the temporary emergency measures approved by the Judicial Council. The Chief Justice has also issued two advisories⁵ and one other statewide order,⁶ as well as approximately 100 individual emergency orders at the request of courts.⁷

Analysis/Rationale

Background

The United States continues to be the epicenter of the global pandemic caused by the COVID-19 virus. As of April 3, 2020, it was reported that there have been more than one million confirmed cases of COVID-19 in the world and more than 54,000 deaths.

On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency in California as a result of the threat of COVID-19.⁸ Despite sustained efforts by all levels of government, COVID-19 continues to spread rapidly and is impacting nearly all sectors of California.

As of this writing, the Governor's COVID-19 website reported that in California there are more than 10,000 positive cases and there have been 237 deaths. A surge of COVID-19 cases is expected in the next two weeks, and the Governor predicts that the state needs another 50,000 hospital beds to accommodate new cases. Californians have been directed to stay at home to slow the spread of the virus and to practice social distancing. Nearly all venues with public gatherings have been closed, including state parks and beaches.

The continuous operation of our courts to provide due process and protect the public is essential for our constitutional form of government; however, courts are clearly high-risk places during this pandemic because they require gatherings of judicial officers, court staff, litigants, attorneys, witnesses, defendants, law enforcement, and juries in numbers well in excess of what is allowed for gathering under current executive and health orders. Indeed, many court facilities in California are ill-equipped to implement social distancing and satisfy other public health

⁴ March 30 statewide order: <https://newsroom.courts.ca.gov/news/chief-justice-issues-order-implementing-temporary-court-emergency-measures>.

⁵ The two advisories may found at: <https://newsroom.courts.ca.gov/news/california-chief-justice-issues-guidance-to-expedite-court-emergency-orders>, and <https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-on-emergency-relief-measures>.

⁶ March 23 statewide order: <https://newsroom.courts.ca.gov/news/chief-justice-issues-statewide-order-suspending-jury-trials>.

⁷ Copies of the emergency orders may found at: <https://newsroom.courts.ca.gov/news/court-emergency-orders-6794321>.

⁸ State of emergency proclamation: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

requirements necessary to protect people involved in court proceedings and prevent the further spread of COVID-19.

Every state and territory in the country has now delayed jury trials. New York State Unified Court System has implemented temporary “virtual court” operations in New York City Criminal and Family Courts to reduce courtroom density and stem the spread of COVID-19. However, courts must provide due process for defendants who are currently in custody and are entitled to timely pretrial appearances.

On March 16, the California legislature voted unanimously to recess from March 20 to April 13 in response to the COVID-19 pandemic. On April 3, the legislature extended their recess to May 4.

On March 24, the Governor issued an order to suspend the intake of all incarcerated persons into adult state prisons and Division of Juvenile Justice facilities at the county level for a minimum of 30 days, which will impact county jail and juvenile detention facility populations.⁹ The spread of the virus has hit California’s inmate population as well as staff members in the prison system. Many inmates have ongoing court cases and courts cannot be assured that safe social distancing can be maintained with the transport of in-custody defendants and the holding cells adjacent to or within courthouses.

On March 25, the California Governor announced an agreement with multiple financial institutions allowing Californians economically impacted by the COVID-19 pandemic to receive 90-day grace periods to make mortgage payments and for at least 60 days, the financial institutions will not initiate foreclosure sales or evictions.¹⁰

On March 27, the Governor issued an executive order banning the enforcement of eviction orders for renters affected by the COVID-19 pandemic through May 31, 2020.¹¹ This was in addition to his previous order on March 16 authorizing local governments to halt evictions for renters impacted by the pandemic.¹²

The Governor, also on March 27, issued an order related to the emergency authority of the Chief Justice and the Judicial Council.¹³ Among other items, the order states:

In the event that the Judicial Council or its Chairperson, in the exercise of rulemaking authority consistent with Paragraph 2, wishes to consider a rule that would otherwise be

⁹ Executive Order N-36-20: www.gov.ca.gov/wp-content/uploads/2020/03/3.24.20-EO-N-36-20.pdf.

¹⁰ Governor’s financial relief package: www.gov.ca.gov/2020/03/25/governor-gavin-newsom-announces-major-financial-relief-package-90-day-mortgage-payment-relief-during-covid-19-crisis/.

¹¹ Executive Order N-37-20: www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-EO-N-37-20.pdf.

¹² Executive Order N-28-20: www.gov.ca.gov/wp-content/uploads/2020/03/3.16.20-Executive-Order.pdf.

¹³ Executive Order N-38-20: www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf.

inconsistent with any statute concerning civil or criminal practice or procedure, the relevant statute is suspended, subject to the following conditions:

- a. The statute is suspended only to the extent it is inconsistent with the proposed rule;
- b. The statute is suspended only if the proposed rule is adopted; and
- c. The statute is suspended only when the adopted rule becomes effective.

Unlawful detainers and foreclosures: proposed emergency rules 1-2

At a time when people are being urged to stay at home to protect public health and safety, unlawful detainers are particularly problematic for two reasons: (1) they require very fast legal responses (within five days) from defendants who are often self-represented and at a time when court self-help centers and legal aid services are not readily available; (2) when involving residential property, they threaten to remove people from the very homes they have been instructed to remain in. In addition, the number of such actions for both commercial and residential properties is likely to explode in coming months—as a significant portion of the population faces severe economic losses due to the closing of businesses, loss of income, and inability to work due to illness or the need for childcare in light of stay-at-home orders—resulting in a surge of unlawful detainer filings and trials in the courts.

The Governor's executive order is intended to help address this crisis by providing an extended answer period to, and banning the enforcement of evictions for, residential tenants who have suffered COVID-19 pandemic-related income loss and meet certain other requirements. That order, however, cannot by itself provide sufficient assistance to tenants and courts to avert this crisis. Proposed emergency rule 1 would amend current court procedures throughout the pandemic to implement the goals of the executive order as well as protect litigants and court staff.

Proposed rule emergency rule 1 would preclude a court from issuing summonses on unlawful detainer complaints. Currently, the summons that must be issued on the filing of an unlawful detainer complaint instructs the defendant that a formal response must be made within five days—instructions that do not apply to those tenants who meet the conditions of the executive order and which, if defendants do follow them, will deprive the defendants of the rights provided in that order and force them to move forward in a fast-paced proceeding with little or no help available. (Because it is not possible to tell from the face of the complaint whether a tenant might be eligible for the extended answer period and protection from enforcement, it is not feasible to limit issuance of summonses to only certain cases.)

The economic hardships brought on by the COVID-19 pandemic mean that many homeowners will have difficulty making mortgage payments for the same reasons that tenants will have difficulties making rent payments. The Federal Housing Finance Agency has directed certain federal lenders to suspend foreclosures during this crisis, but there are many millions of home mortgages still subject to foreclosure. Although most foreclosures in California take place

without any court action, lenders may choose to file complaints for foreclosure and deficiency judgments with the courts, resulting in evictions of residents at a time when they are most in need of shelter and may find it difficult to afford legal defense. Such proceedings will also impact court staff.

Proposed emergency rule 2 would stay court proceedings on judicial foreclosure actions until 90 days after the state of emergency related to the COVID-19 pandemic is lifted, toll the statute of limitations for filing such actions for that same period, and continue the deadlines for exercising any claims of redemption on foreclosure sales.

Use of technology to conduct proceedings remotely: proposed emergency rule 3

On March 28, the Judicial Council directed superior courts to make use of available technology, when possible, to conduct judicial proceedings and court operations remotely, in order to protect the health and safety of the public, court personnel, judicial officers, litigants, and witnesses. On March 30¹⁴, the Chief Justice issued an order suspending any rule in the California Rules of Court to the extent such rule would prevent a court from using technology to conduct judicial proceedings and court operations remotely, consistent with Governor Newsom’s Executive Order N-38-20, which also provides for the suspension of related statutes that impose limitations on the subject of these emergency orders.

This recommendation is intended to confirm and clarify those previous actions, and to support courts in conducting essential court functions, including arraignments, preliminary hearings, restraining orders, juvenile proceedings, and mental health hearings, while at the same time implementing the social-distancing measures necessary to limit the spread of COVID-19.

This proposal recommends that the council adopt a rule that would suspend any rule in the California Rules of Court and any statute to the extent that the rules and statutes are inconsistent with or limit a court’s ability to require that judicial proceedings and court operations be conducted remotely. Specifically, the proposed rule provides that courts may require that judicial proceedings and court operations be conducted remotely; however, in criminal proceedings, courts must receive the consent of the defendant to conduct the proceeding remotely and otherwise comply with proposed emergency rule 5. The proposed rule is intended to provide courts with broad authority to use technology to conduct proceedings remotely, including using video, audio, and telephonic means for remote appearances; requiring the electronic exchange and authentication of documentary evidence; requiring e-filing and e-service; and using remote interpreting, remote reporting, and electronic recording to make the official record of an action or proceeding.

¹⁴ March 30 statewide order, *supra*, note 4.

Criminal proceedings: proposed emergency rules 4-5

Statewide Emergency Bail Schedule

During the COVID-19 pandemic, trial courts have a vital role to play in balancing public safety and public health by assisting to safely reduce jail populations in a manner that protects the health of inmates, jail staff, those who transport defendants to courts, and others as individuals leave jail and return to their communities. The courts can assist by permitting more persons accused of misdemeanors and other lower-level offenses to be released from jail custody prior to arraignment, which in turn will reduce the immediate burden on the courts to conduct arraignments and preliminary examinations within compact timeframes.

After arrest, an accused person held in jail prior to arraignment must be brought before a magistrate for arraignment within 48 hours (a timeframe that has been extended to seven days under the Chief Justice's order of March 30). Alternatively, if the person has bailed out of custody, there is no specified timeframe within which the arraignment must occur. Whether an accused is in or out of custody, a preliminary hearing must occur within 10 court days after arraignment (a timeframe that has been extended to 30 days under the Chief Justice's order of March 30). If more individuals can bail out of custody, arraignments can be delayed and calendared to a later date, reducing the burden on courts to hold large numbers of arraignments and preliminary examinations within a short timeframe, especially at a time when many courtrooms are closed, and staff is limited.

On March 20, the Chief Justice issued an advisory that recommended the following:

Revise, on an emergency basis, the countywide bail schedule to lower bail amounts significantly for the duration of the coronavirus emergency, including lowering the bail amount to \$0 for many lower level offenses – for all misdemeanors except for those listed in Penal Code section 1270.1 and for lower-level felonies.

Following this advisory, some courts adopted emergency bail schedules, but during this time there is a need for greater uniformity throughout the state.

This proposal is for the Judicial Council to adopt an emergency rule of court that provides for a statewide Emergency Bail Schedule. Proposed emergency rule 4 would require:

- The Emergency Bail Schedule to set bail at \$0 for misdemeanors and certain felonies, with exceptions for serious felonies under Penal Code section 1192.7(c) and violent felonies under Penal Code sections 667.5(c), and other offenses such as those involving domestic violence or stalking, driving under the influence offenses, and offenses requiring sex offender registration.
- Pursuant to Penal Code section 1269b, the application of the statewide Emergency Bail Schedule to any accused currently held in county jail custody charged with an offense

covered by the schedule. The rule would provide that each superior court's current bail schedule would remain in effect for all offenses other than those addressed in the Emergency Bail Schedule and provide courts with authority to revise those remaining portions of their schedules, including setting bail for court-specific conduct enhancements and any status enhancements.

- Bail to be set at \$0 for violations of misdemeanor probation, whether the arrest is made with or without a bench warrant. For violations of felony probation, parole, post release community supervision, or mandatory supervision, bail must be set in the same amount as bail for the underlying substantive charge of conviction under the Emergency Bail Schedule.
- No later than 5 p.m. on April 10, 2020, requires courts to apply the statewide Emergency Bail Schedule to every accused person arrested and in pretrial custody and to every person held in pretrial jail custody.
- This rule will remain in effect until 90 days after the Governor declares that the state of emergency arising from the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

Remote Appearance via Technology and Appearance through Counsel for Defendants in Pretrial Criminal Proceedings

Article I, section 15 of the California Constitution provides, in part, “The defendant in a criminal cause has the right to a speedy public trial, to compel attendance of witnesses in the defendant’s behalf, to have the assistance of counsel for the defendant’s defense, to be personally present with counsel, and to be confronted with the witnesses against the defendant.” Consistent with the Constitution, Penal Code section 977 provides the accused with options regarding personal appearance, appearance through counsel, and appearances via technology for arraignment, plea, sentencing, and other phases of criminal proceedings, requires the defendant’s presence under specified circumstances, and provides certain protections.

During the COVID-19 pandemic, trial courts must protect defendants’ constitutional rights to have the assistance of counsel and to be personally present with counsel, and at the same time take steps to protect the health of defendants, judicial officers, court staff, counsel, and all those who are required to be present in court. This proposed rule of court, together with other protective efforts, enables courts to strike that balance.

Under the proposed rule, courts must, with the knowing and voluntary consent of the defendant, permit the defendant to appear through counsel at all pretrial portions of a criminal proceeding. Additionally or alternatively, and to the greatest extent possible, courts must provide for the remote appearance of defendants via audio/visual electronic communication or other technology. The technology must provide for private communications between the defendant and the attorney. The rule requires courts to accept defendants’ waivers of appearance through oral representation of counsel or electronic communication by the defendant.

Juvenile dependency proceedings: proposed emergency rules 6-7

During the state of emergency related to the COVID-19 pandemic, critical juvenile dependency proceedings, also called child welfare proceedings, need to occur to ensure that a child is safe from child abuse and neglect. Judicial oversight is needed to ensure the safety, permanency, and well-being of children and youth who have been removed from their homes and placed into foster care or who may need to be removed from their homes. Prolonged or indefinite delays in delivering services and postponements of judicial oversight place children's safety and well-being in jeopardy, may lead to unnecessarily long stays in foster care, and are inconsistent with statutory and regulatory requirements. To ensure that courts can provide the critical oversight that is necessary to protect children and families during the state of emergency related to the pandemic, it is recommended that the council adopt an emergency rule of court for juvenile dependency proceedings to take effect immediately that would:

- Prioritize hearings and orders that need to be made in juvenile dependency proceedings. These include hearing detentions, psychotropic medication requests, emergency medical requests, temporary restraining orders, reentry petitions for nonminor dependents, and section 388 petitions that require immediate relief based on the state of emergency related to the pandemic.
- Provide a structure for remote hearings and continuances of hearings during the state of emergency related to the pandemic. Hearing requirements include provisions for remote appearances, service of notice, court reports, determinations of required findings and orders including the need for continuances in certain circumstances, and visitation orders.

Juvenile delinquency proceedings: During the state of emergency related to the COVID-19 pandemic, critical juvenile delinquency proceedings need to occur in order to protect the community and provide for the rehabilitation of the child. Delays in these hearings can cause prolonged and unnecessary detention in juvenile detention facilities that negatively impact the well-being of the child. While there are many parallels between juvenile delinquency and criminal proceedings, there are key differences including confidential proceedings and records, no access to juries, and opportunities to seal records, all of which are rooted in the objective of rehabilitating the child during a key period of development. To ensure that courts can provide the critical oversight and judicial determinations that are necessary to protect the community and provide services to the child during the state of emergency related to the COVID-19 pandemic, it is recommended that an emergency rule be adopted to take effect immediately that would:

- Prioritize hearings and orders that need to be made in juvenile delinquency proceedings. These include hearing detentions and other hearings for in-custody children, psychotropic medication requests, emergency medical requests, temporary restraining orders, reentry petitions for nonminor dependents, any request for a warrant for a child, probable-cause determinations, proceedings for children who are not detained, and hearings for children in foster care.

- Provide a structure for remote hearings and continuances of hearings during the state of emergency related to the pandemic. Hearing requirements include provisions for remote appearances, service of notice, and introduction of evidence.
- Grant an extension of time for requirements under Welfare and Institutions Code section 709 concerning a child who is not competent for juvenile adjudication.

Temporary restraining orders: proposed emergency rule 8

In times of crisis, many individuals, including victims of domestic violence, are more vulnerable as access to the court and social services become more limited. It is imperative that our courts continue to be open to Californians who seek restraining orders to stop abuse, harassment, or other harm. During this crisis, courts are also significantly impacted and are limiting operations to protect the public, court staff, and judicial officers. To ensure that litigants throughout California have access to court services statewide, and to ensure that individuals needing protection have valid and enforceable orders during court closures, it is recommended that the council adopt an emergency rule of court to take effect immediately that would do the following:

1. Provide that emergency protective orders issued pursuant to Family Code section 6250 be granted for up to 30 days;
2. Allow courts to issue temporary restraining orders and gun violence emergency protective orders for up to 90 days, to allow the matter to be heard by the court;
3. Allow courts to automatically extend any criminal protective order that is set to expire during state of emergency related to the COVID-19 pandemic period, for up to 90 days, to allow the matter to be heard by the court;
4. Require courts to provide a means for the filing of ex parte requests for any temporary restraining order. Courts may do so by providing a physical location, drop box, or, if feasible, through electronic means;
5. Allow e-signatures for restraining order requests;
6. If the proposed restrained party appears remotely, not require further service on the restrained party for enforcement purposes, provided that the court follows the requirements of Family Code section 6384; and
7. When extending a temporary restraining order, if completing the mandatory Judicial Council forms is impractical, allow courts to transmit an order in any format to the entering agency for transmission into the California Department of Justice database.¹⁵

¹⁵ Family Code section 6380 requires that protective orders be entered into CARPOS.

Civil proceedings: proposed emergency rules 9-11

The COVID-19 pandemic is having a severe impact on the lives and well-being of all Californians. The human crisis, in turn, has disrupted and delayed the operations of superior courts across the state. Given Constitutional imperatives, the superior courts have had to shift their resources to address the most urgent criminal actions and proceedings affecting the most vulnerable. The disruption to court operations will have long-term repercussions on the workload of the superior courts, and civil trials of less urgent matters are likely to be the last to be resolved in the courts' increasing backlog.

To protect the rights of litigants in civil proceedings and to address the long-term backlog of civil actions, the chairs of the internal committees recommend the following rule proposals:

Toll the running of statutes of limitation for civil causes of action

Proposed emergency rule 9 tolls the statutes of limitation for civil causes of action. Tolling stops or suspends the running of time in statutes of limitations; when the tolling period ends (90 days from the end of the state of emergency), the time to bring an action will begin to run again. This rule is necessary to allow parties and attorneys time to investigate, gather information and evidence, and determine whether to file an action. During the pendency of the state of emergency, the ability to do so is restricted. Proposed emergency rule 9 would, for all civil causes of action, toll the statutes of limitation from April 6, 2020, to 90 days after the Governor lifts the state of emergency related to the COVID-19 pandemic.

Extend the time in which to bring civil actions to trial

Proposed emergency rule 10 provides a six-month extension of the statutory limits on the time to bring a civil action to trial.

- Proposed rule 10(a) would, for all civil actions filed before April 6, 2020, increase by six months the time in which the actions would otherwise have to have been brought to trial in Code of Civil Procedure section 583.310 (for a total of five years and six months).
- Proposed rule 10(b) would, for all actions filed before April 6, 2020, if a new trial is granted in the action, increase by six months to three years within which the action would otherwise have to again be brought to trial in Code of Civil Procedure section 583.320 (for a total of three years and six months). Proposed subdivision (b) explicitly confirms that nothing in the subdivision requires that an action again be brought to trial before expiration of the time prescribed in subdivision (a) of the rule.

Remote Depositions

Proposed emergency rule 11 allows for the use of remote depositions. Under current law, a party deponent is required to attend a deposition in person, and a nonparty deponent may appear remotely only with the permission of the court upon a finding of good cause. (Code Civ. Proc., § 2025.310(b); Cal. Rules of Court, rule 3.1010(c) and (d).) At a time when people are being urged, if not required, to stay at home to protect public health and safety, and when courts are already struggling to address the most urgent matters, the chairs of the internal committees

recommend that litigants in civil proceedings be given broader authority to allow a deponent to appear at a deposition through electronic means, and without seeking approval of the court.

Under proposed emergency rule 11, a party or nonparty deponent, at their election or the election of the deposing party, is not required to be present with the deposition officer at the time of the deposition.

Policy implications

The COVID-19 pandemic presents an unprecedented crisis that threatens the lives, health, and safety of all Californians. California courts, however, provide critical services that also affect the lives of many Californians, including some of the most vulnerable. Given the length of time the pandemic may impact the state, the courts cannot delay all proceedings indefinitely and must find a way to continue to provide the most critical services.

Comments

This proposal has not been circulated for comment due to the incredible speed with which the COVID-19 pandemic has spread and the urgent need to provide courts with the tools required to keep providing necessary services while also protecting the health and safety of the public and those who interact with the courts.

Alternatives considered

The council could take no action. Over the past month, however, individual courts have been struggling to address the impact of COVID-19. Given the severity of the crisis, the chairs of the Judicial Council's six internal committees concluded that these recommendations were necessary to help give courts the tools they need to confront the impact of the pandemic.

Fiscal and Operational Impacts

It is anticipated that the proposal will facilitate court operations, allowing courts to continue critical functions while protecting the health and safety of all who would be attending court in person, by effecting compliance with social-distancing mandates. It is uncertain what fiscal impact these recommendations may have on the courts.

Attachments and Links

1. Cal. Rules of Court, Appendix, emergency rules 1–11, at pages 15-29

Emergency Rules 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 of the California Rules of Court are adopted effective April 6, 2020, to read:

1
2 **Emergency rule 1. Unlawful detainers**

3
4 **(a) Application**

5
6 Notwithstanding any other law, including Code of Civil Procedure sections 1166,
7 1167, 1169, and 1170.5, this rule applies to all actions for unlawful detainer.
8

9 **(b) Issuance of summons**

10
11 A court may not issue a summons on a complaint for unlawful detainer unless the
12 court finds, in its discretion and on the record, that the action is necessary to protect
13 public health and safety.
14

15 **(c) Entry of default**

16
17 A court may not enter a default or a default judgment for restitution in an unlawful
18 detainer action for failure of defendant to appear unless the court finds both of the
19 following:
20

21 (1) The action is necessary to protect public health and safety; and

22
23 (2) The defendant has not appeared in the action within the time provided by
24 law, including by any applicable executive order.
25

26 **(d) Time for trial**

27
28 If a defendant has appeared in the action, the court may not set a trial date earlier
29 than 60 days after a request for trial is made unless the court finds that an earlier
30 trial date is necessary to protect public health and safety. Any trial set in an
31 unlawful detainer proceeding as of April 1, 2020 must be continued at least 60 days
32 from the initial date of trial.
33

34 **(e) Sunset of rule**

35
36 This rule will remain in effect until 90 days after the Governor declares that the
37 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
38 repealed by the Judicial Council.
39
40
41

1 **Emergency rule 2. Judicial foreclosures—suspension of actions**

2
3 Notwithstanding any other law, this rule applies to any action for foreclosure on a
4 mortgage or deed of trust brought under chapter 1, title 10, of part 2 of the Code of Civil
5 Procedure, beginning at section 725a, including any action for a deficiency judgment, and
6 provides that, until 90 days after the Governor declares that the state of emergency
7 related to the COVID-19 pandemic is lifted, or until this rule is amended or repealed by
8 the Judicial Council:

- 9
10 (1) All such actions are stayed, and the court may take no action and issue no
11 decisions or judgments unless the court finds that action is required to further the
12 public health and safety.
13
14 (2) Any statute of limitations for filing such an action is tolled.
15
16 (3) The period for electing or exercising any rights under that chapter, including
17 exercising any right of redemption from a foreclosure sale or petitioning the court
18 in relation to such a right, is extended.
19
20

21 **Emergency rule 3. Use of technology for remote appearances**

22
23 **(a) Remote appearances**

24
25 Notwithstanding any other law, in order to protect the health and safety of the public,
26 including court users, both in custody and out of custody defendants, witnesses, court
27 personnel, judicial officers, and others, courts must conduct judicial proceedings and
28 court operations as follows:

- 29
30 (1) Courts may require that judicial proceedings and court operations be
31 conducted remotely.
32
33 (2) In criminal proceedings, courts must receive the consent of the defendant to
34 conduct the proceeding remotely and otherwise comply with emergency
35 rule 5.
36
37 (3) Conducting proceedings remotely includes, but is not limited to, the use of
38 video, audio, and telephonic means for remote appearances; the electronic
39 exchange and authentication of documentary evidence; e-filing and e-service;
40 the use of remote interpreting; and the use of remote reporting and electronic
41 recording to make the official record of an action or proceeding.
42
43

Governor Gavin Newsom Announces Major Financial Relief Package: 90-Day Mortgage Payment Relief During COVID-19 Crisis

Published: Mar 25, 2020

Governor Newsom announces financial institutions will provide relief for vast majority of Californians

Californians economically impacted by COVID-19 may receive 90-day grace periods to make mortgage payments

Financial institutions agree not to negatively impact credit reports as a result of accepting payment relief

SACRAMENTO – Governor Gavin Newsom today announced that financial institutions will provide major financial relief for millions of Californians suffering financially as a result of the COVID-19 outbreak.

“Millions of California families will be able to take a sigh of relief,” said Governor Newsom. “These new financial protections will provide relief to California families and serve as a model for the rest of the nation. I thank each of the financial institutions that will provide this relief to millions of Californians who have been hurt financially from COVID-19.”

Governor Newsom secured support from Citigroup, JPMorgan Chase, U.S. Bank, and Wells Fargo and nearly 200 state-chartered banks, credit unions, and servicers to protect homeowners and consumers.

Under the Governor’s proposal, Californians who are struggling with the COVID-19 crisis may be eligible for the following relief upon contacting their financial institution:

90-Day Grace Period for Mortgage Payments

Financial institutions will offer, consistent with applicable guidelines, mortgage payment forbearances of up to 90 days to borrowers economically impacted by COVID-19. In addition, those institutions will:

- Provide borrowers a streamlined process to request a forbearance for COVID-19-related reasons, supported with available documentation;
- Confirm approval of and terms of forbearance program; and
- Provide borrowers the opportunity to request additional relief, as practicable, upon continued showing of hardship due to COVID-19.

No Negative Credit Impacts Resulting from Relief

Financial institutions will not report derogatory tradelines (e.g., late payments) to credit reporting agencies, consistent with applicable guidelines, for borrowers taking advantage of COVID-19-related relief.

Moratorium on Initiating Foreclosure Sales or Evictions

For at least 60 days, financial institutions will not initiate foreclosure sales or evictions, consistent with applicable guidelines.

Relief from Fees and Charges

For at least 90 days, financial institutions will waive or refund at least the following for customers who have requested assistance:

- Mortgage-related late fees; and
- Other fees, including early CD withdrawals (subject to applicable federal regulations).

[Click here](#) for details on how to apply for relief. Loans held by a financial institution may be serviced by another company.

Please note that financial institutions and their servicers are experiencing high volumes of inquiries.

###

West's Annotated California Codes

Penal Code (Refs & Annos)

Part 1. Of Crimes and Punishments (Refs & Annos)

Title 10. Of Crimes Against the Public Health and Safety (Refs & Annos)

West's Ann.Cal.Penal Code § 396

§ 396. States of emergency or local emergencies; unfair advantage of consumers; price controls; housing protections; penalties; definitions; preemption; calculations

Effective: January 1, 2019

Currentness

(a) The Legislature hereby finds that during a state of emergency or local emergency, including, but not limited to, an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or manmade disaster, some merchants have taken unfair advantage of consumers by greatly increasing prices for essential consumer goods and services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency or local emergency results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited. It is the intent of the Legislature in enacting this act to protect citizens from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency or local emergency for goods and services that are vital and necessary for the health, safety, and welfare of consumers. Further, it is the intent of the Legislature that this section be liberally construed so that its beneficial purposes may be served.

(b) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county, and for a period of 30 days following that proclamation or declaration, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent greater than the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency. However, a greater price increase is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, during the state of emergency or local emergency, and the price is no more than 10 percent greater than the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business immediately prior to the onset of the state of emergency or local emergency.

(c) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county, and for a period of 180 days following that proclamation or declaration, it is unlawful for a contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup for a price of more than 10 percent above the price charged by that person for those services immediately prior to the proclamation or declaration of emergency. However, a greater price increase is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, during the state of emergency or local emergency, and the price represents no

more than 10 percent greater than the total of the cost to the contractor plus the markup customarily applied by the contractor for that good or service in the usual course of business immediately prior to the onset of the state of emergency or local emergency.

(d) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county, and for a period of 30 days following that proclamation or declaration, it is unlawful for an owner or operator of a hotel or motel to increase the hotel or motel's regular rates, as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent. However, a greater price increase is not unlawful if the owner or operator can prove that the increase in price is directly attributable to additional costs imposed on it for goods or labor used in its business, to seasonal adjustments in rates that are regularly scheduled, or to previously contracted rates.

(e) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any city, county, or city and county, and for a period of 30 days following that proclamation or declaration, or any period the proclamation or declaration is extended by the applicable authority, it is unlawful for any person, business, or other entity, to increase the rental price, as defined in paragraph (11) of subdivision (j), advertised, offered, or charged for housing, to an existing or prospective tenant, by more than 10 percent. However, a greater rental price increase is not unlawful if that person can prove that the increase is directly attributable to additional costs for repairs or additions beyond normal maintenance that were amortized over the rental term that caused the rent to be increased greater than 10 percent or that an increase was contractually agreed to by the tenant prior to the proclamation or declaration. It shall not be a defense to a prosecution under this subdivision that an increase in rental price was based on the length of the rental term, the inclusion of additional goods or services, except as provided in paragraph (11) of subdivision (j) with respect to furniture, or that the rent was offered by, or paid by, an insurance company, or other third party, on behalf of a tenant. This subdivision does not authorize a landlord to charge a price greater than the amount authorized by a local rent control ordinance.

(f) It is unlawful for a person, business, or other entity to evict any residential tenant of residential housing after the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any city, county, or city and county, and for a period of 30 days following that proclamation or declaration, or any period that the proclamation or declaration is extended by the applicable authority and rent or offer to rent to another person at a rental price greater than the evicted tenant could be charged under this section. It shall not be a violation of this subdivision for a person, business, or other entity to continue an eviction process that was lawfully begun prior to the proclamation or declaration of emergency.

(g) The prohibitions of this section may be extended for additional 30-day periods, as needed, by a local legislative body, local official, the Governor, or the Legislature, if deemed necessary to protect the lives, property, or welfare of the citizens.

(h) A violation of this section is a misdemeanor punishable by imprisonment in a county jail for a period not exceeding one year, or by a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(i) A violation of this section shall constitute an unlawful business practice and an act of unfair competition within the meaning of Section 17200 of the Business and Professions Code. The remedies and penalties provided by this section are cumulative to each other, the remedies under Section 17200 of the Business and Professions Code, and the remedies or penalties available under all other laws of this state.

(j) For the purposes of this section, the following terms have the following meanings:

(1) “State of emergency” means a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or manmade disaster for which a state of emergency has been declared by the President of the United States or the Governor.

(2) “Local emergency” means a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or manmade disaster for which a local emergency has been declared by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county in California.

(3) “Consumer food item” means any article that is used or intended for use for food, drink, confection, or condiment by a person or animal.

(4) “Repair or reconstruction services” means services performed by any person who is required to be licensed under the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), for repairs to residential or commercial property of any type that is damaged as a result of a disaster.

(5) “Emergency supplies” includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers.

(6) “Medical supplies” includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products.

(7) “Building materials” means lumber, construction tools, windows, and anything else used in the building or rebuilding of property.

(8) “Gasoline” means any fuel used to power any motor vehicle or power tool.

(9) “Transportation, freight, and storage services” means any service that is performed by any company that contracts to move, store, or transport personal or business property or that rents equipment for those purposes, including towing services.

(10) “Housing” means any rental housing with an initial lease term of no longer than one year, including, but not limited to, a space rented in a mobilehome park or campground.

(11) “Rental price” for housing means any of the following:

(A) For housing rented within one year prior to the time of the proclamation or declaration of emergency, the actual rental price paid by the tenant. For housing not rented at the time of the declaration or proclamation, but rented, or offered for rent, within one year prior to the proclamation or declaration of emergency, the most recent rental price offered before the proclamation or

declaration of emergency. For housing rented at the time of the proclamation or declaration of emergency but which becomes vacant while the proclamation or declaration of emergency remains in effect and which is subject to any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity that establishes a maximum amount that a landlord may charge a tenant for rent, the actual rental price paid by the previous tenant or the amount specified in subparagraph (B), whichever is greater. This amount may be increased by 5 percent if the housing was previously rented or offered for rent unfurnished, and it is now being offered for rent fully furnished. This amount shall not be adjusted for any other good or service, including, but not limited to, gardening or utilities currently or formerly provided in connection with the lease.

(B) For housing not rented and not offered for rent within one year prior to the proclamation or declaration of emergency, 160 percent of the fair market rent established by the United States Department of Housing and Urban Development. This amount may be increased by 5 percent if the housing is offered for rent fully furnished. This amount shall not be adjusted for any other good or service, including, but not limited to, gardening or utilities currently or formerly provided in connection with the lease.

(C) Housing advertised, offered, or charged, at a daily rate at the time of the declaration or proclamation of emergency, shall be subject to the rental price described in subparagraph (A), if the housing continues to be advertised, offered, or charged, at a daily rate. Housing advertised, offered, or charged, on a daily basis at the time of the declaration or proclamation of emergency, shall be subject to the rental price in subparagraph (B), if the housing is advertised, offered, or charged, on a periodic lease agreement after the declaration or proclamation of emergency.

(D) For mobilehome spaces rented to existing tenants at the time of the proclamation or declaration of emergency and subject to a local rent control ordinance, the amount authorized under the local rent control ordinance. For new tenants who enter into a rental agreement for a mobilehome space that is subject to rent control but not rented at the time of the proclamation or declaration of emergency, the amount of rent last charged for a space in the same mobilehome park. For mobilehome spaces not subject to a local rent control ordinance and not rented at the time of the proclamation or declaration of emergency, the amount of rent last charged for the space.

(12) “Goods” has the same meaning as defined in subdivision (c) of Section 1689.5 of the Civil Code.

(k) This section does not preempt any local ordinance prohibiting the same or similar conduct or imposing a more severe penalty for the same conduct prohibited by this section.

(l) A business offering an item for sale at a reduced price immediately prior to the proclamation or declaration of the emergency may use the price at which it usually sells the item to calculate the price pursuant to subdivision (b) or (c).

(m) This section does not prohibit an owner from evicting a tenant for any lawful reason, including pursuant to Section 1161 of the Code of Civil Procedure.

Credits

(Added by Stats.1993-94, 1st Ex.Sess., c. 52 (A.B.36), § 2. Amended by Stats.1995, c. 91 (S.B.975), § 123; Stats.2004, c. 492 (S.B.1363), § 2; Stats.2016, c. 671 (A.B.2820), § 1, eff. Jan. 1, 2017; Stats.2018, c. 631 (A.B.1919), § 2, eff. Jan. 1, 2019.)

West's Ann. Cal. Penal Code § 396, CA PENAL § 396
Current with urgency legislation through Ch. 3 of 2020 Reg.Sess

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

EXECUTIVE ORDER N-44-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS despite sustained efforts, COVID-19 continues to spread and is impacting nearly all sectors of California; and

WHEREAS it is vital that California's health care workers, first responders, and others engaged in the fight against COVID-19 be able to obtain the medical and emergency supplies they need, and that all Californians be able to obtain food and consumer goods; and

WHEREAS the State is prepared to take strong action against price gouging, profiteering, and other unscrupulous business practices that threaten these vital interests; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, 8627, and 8665, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency, is hereby waived. All prohibitions against price gouging set forth in subdivision (b) shall be in effect through September 4, 2020.
- 2) In addition to the prohibitions set forth in Penal Code section 396, a person or other entity (including, but not limited to, any business enterprise of any kind) shall not—from April 4, 2020 until September 4, 2020, and except as set forth below—sell or offer to sell any item from among the following categories of goods for a price that is more than 10 percent greater than the highest price charged by that person or entity for that item on February 4, 2020:
 - Food items;
 - Consumer goods;
 - Medical or emergency supplies; and
 - Any other materials previously designated by the U.S. Secretary of Health and Human Services as Scarce Materials or Threatened

Materials pursuant to section 102 of the Defense Production Act, 50 U.S.C. § 4512.

A price increase greater than the 10 percent increase specified above shall not be unlawful if the seller can prove either of the following:

- a) The increase was directly attributable to additional costs imposed on the seller by suppliers of the item, and the price is no more than 10 percent greater than the total of the cost to the seller plus the markup customarily applied by the seller for that item in the usual course of business on February 4, 2020; or
- b) The seller was offering the relevant item for sale at a reduced price on February 4, 2020, and the increased price is not more than 10 percent greater than the price at which the seller ordinarily sold the item.

Additionally, and notwithstanding the foregoing, it shall not be a violation of this Paragraph 2 to sell or offer to sell any medical or emergency supplies to the State (including, but not limited to, any agency, department, board, commission, or office of the State), or to any political subdivision of the State, on terms acceptable to the State or to the relevant political subdivision of the State, as determined by the Governor's Office of Emergency Services (as to sales or offers of sale to the State) or by the officer or entity within the political subdivision that is responsible for procuring such supplies (as to sales or offers of sale to that subdivision).

- 3) If a person or other entity (including, but not limited to, any business enterprise of any kind) did not offer an item for sale on February 4, 2020, and that item is among the categories of goods listed in Paragraph 2, that person or entity shall not—from April 4, 2020 until September 4, 2020, and except as set forth below—sell or offer to sell that item for an unconscionably excessive price.

For purposes of this Paragraph 3, a price is unconscionably excessive if that price is more than 50 percent greater than whichever of the following applies:

- a) The amount that the person or entity paid for the item; or
- b) If the person or entity did not purchase the item, the total cost, to the person or entity, of producing and selling the item.

Notwithstanding the foregoing, it shall not be a violation of this Paragraph 3 to sell or offer to sell any medical or emergency supplies to the State (including, but not limited to, any agency, department, board, commission, or office of the State), or to any political subdivision of the State, on any terms acceptable to the State or to the relevant political subdivision of the State, as determined by the Governor's Office of Emergency Services (as to sales or offers of sale to the State) or by the officer or entity within the political subdivision that is responsible for procuring such supplies (as to sales or offers of sale to

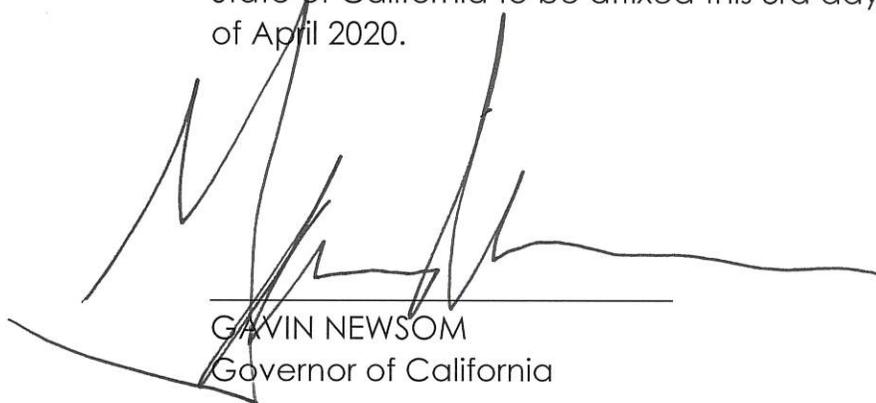
that subdivision).

- 4) Each instance in which an item is sold or offered for sale in a manner prohibited by Paragraph 2 or Paragraph 3 shall constitute a separate violation of this Order. Each violation of this Order shall be a misdemeanor punishable as set forth in Government Code section 8665. Each such violation shall also be redressable in the same manner as any other unlawful business practice under the Unfair Competition Law, Business and Professions Code section 17200 et seq., and as otherwise provided by the laws of the State. These remedies are cumulative.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 3rd day of April 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

This Page Intentionally Left Blank



AGENDA NO: C-3

MEETING DATE: April 14, 2020

Staff Report

TO: Honorable Mayor & City Council

DATE: March 15, 2020

FROM: Rob Livick, PE/PLS – City Engineer

SUBJECT: Approval of Consultant Agreement for Implementation of the First Phase of the Morro Bay [OneWater Plan](#) (Water and Wastewater) and Authorization for the City Manager to Sign the Agreement

RECOMMENDATION

Staff recommends the City Council approve and authorize the City Manager to execute a time and materials consultant agreement with Cannon Corporation, (Cannon) for engineering services to implement the first phase of the OneWater plan in an amount not to exceed \$815,237 without prior written authorization; additionally authorize a ten-percent contingency to be used, for additions to the scope of work, at the discretion of the City Manager. This will result in a total authorization of \$896,761. The budget for the project will come from the water and wastewater enterprise funds and will not impact the City's General Fund.

FISCAL IMPACT

In the 2019/20 Fiscal Year Budget the City included three capital projects to begin implementation of the OneWater Plan. These three projects and the budgeted amounts for FY 2019/20 and estimates for FY2020/21 were:

Capital Project	Estimated Consultant Fees	Budgeted Amount (19/20)	Budgeted Estimate (20/21)	Two Year Total
Nutmeg Pressure Zone improvements (Water)	\$384,753	\$382,000	\$664,000	\$1,046,000
<i>Optional Tasks</i>	None			
Collections System Improvements: Main St & Atascadero Road (Wastewater)	\$350,908	\$171,000	\$159,000	\$330,000
Collections System Improvements: Upstream LS1/Beachcomber (Wastewater)		\$114,000	\$42,500	\$156,500
<i>Optional Tasks</i>	\$79,576			
Total	\$815,237	\$667,000	\$865,500	\$1,532,500
Total with 10-percent contingency	\$896,761			

The scope, budget of \$896,761 (including a ten-percent contingency) and schedule proposed by Cannon, delivers the proposed OneWater projects for under the budgetary estimates and by the second quarter of FY 2020/21. Based on the proposed schedule it is estimated the total fees billed for this fiscal year, including a ten percent contingency if used, would be \$529,334, which is less than the \$667,000 budgeted for this fiscal year.

Prepared By: RL

Dept Review: _____

City Manager Review: SC

City Attorney Review: JWP

DISCUSSION

As a component of the FY 2019/2020 budget, the City Council approved a Capital Improvement Program consisting of projects in the General Fund and Enterprise Funds. Three projects included in the Utilities Enterprise Fund Capital Improvement Program (CIP) , for both water and wastewater, are the subject of this staff report. The projects are:

- Nutmeg Pressure Zone improvements (Water)
- Collections System Improvements: Main St & Atascadero Road (Wastewater)
- Collections System Improvements: Upstream LS1/Beachcomber (Wastewater)

Wastewater CIPs

On January 8, 2020, the City of Morro Bay issued a single Request for Proposal (RFP) for engineering services for the wastewater CIPs: Beachcomber, and Main/Atascadero for capacity and I/I improvements; and an evaluation and prioritization of general I/I improvements as identified in the following projects from the OneWater Plan:

- WWGM-1 Gravity Main along Atascadero Road
- WWGM-2 Gravity Main along Main Street
- WWGM-3 Gravity Main along Main Street
- WWGM-4A Gravity Main along San Joaquin Street
- WWRR-1A Gravity Main Beachcomber Drive
- WWRR-1B Gravity Main Beachcomber Drive
- WWRR-1C Gravity Main Beachcomber Drive
- WWRR-2 Pipe R&R Program Upstream of LS-1
- WWRR-4 Cap Replacement Upstream of LS-1

The RFP's purpose was to retain the services of a qualified California Licensed Civil Engineering firm to complete the engineering and environmental determination for implementation of this first phase of the City's OneWater Plan for its Wastewater Collection System (Plan). The proposed services will include the following:

- Engineering Analysis and Recommendations (Preliminary Design), Geotechnical Engineering Services, Surveying, and Any Necessary Easement/Right of Way Acquisition
- Preparation of Plans, Specifications, and Cost Estimates (Final Design)
- Bidding Assistance
- Construction Support (Optional)

The City received three proposals to perform the requested engineering services. The three firms that proposed were Carollo Engineers, Cannon, and MNS Engineers.

The City staff evaluation team consisted of Rob Livick-PE/PLS, City Engineer; Joe Mueller, Utilities Division Manager, Robbie Victor, Collection System Leadworker and Jeff Cannon, Water System Lead Worker. The team evaluated the written proposals and invited the two most qualified consultant teams to be interviewed. The evaluation team interviewed Cannon on March 4, 2020, and MNS Engineers on March 5, 2020. Based on those interviews, the evaluation team unanimously recommends Cannon for the following reasons

- Direct experience with similar project in Paso Robles
- Local team
- Available resources to perform the work
- Cost Effective Approach

Water CIP

On January 10, 2020, the City of Morro Bay issued an RFP for engineering services for the improvements to the water distribution system as identified in the following projects from the

OneWater Plan:

- Vashon Booster Pump Station Replacement
- PWP-1: Fill line for Blanca Tanks

Nutmeg Tank:

- PWP-2: Fill line for Nutmeg Tank
- PWP-4: Parallel pipeline on Juniper Avenue
- PWP-5: Pipeline on Sequoia Street
- PWV-1: PRV on Juniper Avenue
- PWS-1: Nutmeg Tank Upgrade
- PWPS-1: Elena Booster Pump Station Upgrade

In addition to the improvements specifically identified for the Vashon Pump Station and Nutmeg Tank, several other elements have been added to this Project because they occur in the area of other improvements listed above (i.e., pipeline replacements occurring in alignments already being impacted). Those include:

- PWWF-10: Pipeline along Sequoia Street
- Miscellaneous replacement of sewer and stormwater pipelines in the PWP-2 alignment

The RFP's purpose was to retain the services of a qualified California Licensed Civil Engineering firm to complete the preliminary engineering and environmental determination for implementation of this first phase of the City's OneWater Plan for its water distribution (Plan). The services will include the following services:

- Engineering Analysis and Recommendations (Preliminary Design)
- Planning including Environmental Review and Permitting with a variety of agencies
- Geotechnical Engineering Services, Surveying, and
- Any Necessary Easement/Right of Way Acquisition

The City received two proposals to perform the requested engineering services. The two firms that proposed were Carollo Engineers, and Cannon

The City staff evaluation team consisted of Rob Livick-PE/PLS, City Engineer; Joe Mueller, Utilities Division Manager, Robbie Victor, Collection System Leadworker and Jeff Cannon, Water System Lead Worker. The team evaluated the written proposals and invited the two qualified consultant teams to be interviewed. The evaluation team interviewed Cannon Associates on March 4, 2020 and Carollo Engineers on March 6, 2020. Based on those interviews, the evaluation team unanimously recommends Cannon for the following reasons:

- Direct experience with this project and the ability to leverage their previous work
- Local and responsive team
- Available resources to perform the work
- Cost Effective Approach

CONCLUSION

Staff recommends the City Council authorize the City Manager to execute a consultant agreement with Cannon Corporation., , as approved by the City Attorney, for engineering services to implement the OneWater in an amount of 815,237 without additional authorization from the Council, including authorize a ten-percent contingency to be used, for additions to the scope of work, at the discretion of the City Manager. That will result in a total authorization of \$896,761.

ATTACHMENTS

1. Scope of Services - Wastewater
2. Estimated Fees - Wastewater
3. Schedule – Wastewater
4. Scope of Services - Water
5. Estimated Fees - Water
6. Schedule – Water
7. [Link](#) to OneWater Plan

ATTACHMENT 1

SCOPE OF SERVICES – WASTEWATER COLLECTIONS

PROJECT MANAGEMENT

Task 1. Progress Meetings, Project Schedule and Coordination

Meetings

Cannon will facilitate and attend a Project Kick-off Meeting with appropriate personnel from the City. The meeting agenda will focus on project understanding, team involvement, and overall goals and objectives for the project. This meeting will also include a project introduction, review of background information and project scope, and an overview of the project schedule. This meeting represents a key opportunity for representatives from the City to steer the consultant team and further clarify critical elements of the project scope.

As work progresses, we will provide updates to the project schedule and conduct up to three additional meetings at key milestone events: (1) at delivery of the 30% design, (2) mid-way through the 90% design effort, and (3) at delivery of the 90% design submittal package.

Project Coordination and Integration of Work Efforts

It is imperative for a successful project to have good coordination and communication between all members of the Team—this helps keep a project on budget and schedule. We will do this throughout the Project with team meetings, meetings with various subconsultants, and regular correspondence with team members.

Project Management, Progress Reporting, Cost and Schedule Control

Cannon will prepare invoices, itemized by task, by employee/classification hours worked, and reimbursable expenses by type of expense. Subconsultant costs will be similarly itemized by task, and the subconsultant's invoice (with backup data) will be attached to our invoice. The monthly invoice will be accompanied by a project progress report. This will inform the City what work has been completed on the project and where we are on the schedule.

Project Management Site Development

Cannon uses SharePoint for distribution and sharing information. We will prepare a Project Management Information System protocol for the design and construction of this project using the City's SharePoint site. The site will have the following functions:

- Document management
- Management and workflow tracking for the following construction documents:
 - Shop drawings/submittals
 - Requests for information (RFI)
 - Potential change orders (PCOs)
- Operations and maintenance (O&M) information

Task 1 Deliverables: Meeting minutes, project schedule updates, correspondence with stakeholders, etc.

PRELIMINARY ENGINEERING

Task 2. Research, Data Collection, Utility Coordination, and Analysis

Cannon will collect and review information related to the project provided by the City. This information is important in the preliminary design phase of the project. The flow studies from the OneWater Morro Bay Plan will be required for the I/I Evaluation portion of the project and should be delivered and discussed at the Kickoff meeting. Other information needed for preliminary design includes utility information, technical reports effecting the project, as-built drawing of road and utilities in the area of the design, and other relevant work.

We will conduct site visits and take photographs and measurements, as necessary, to facilitate development of conceptual and final design documents. We will review applicable plans, reports, and records to complete engineering design services for the project, including the OneWater plan and other documents, code requirements, and other standards that will influence the sewer improvements. We will conduct utility research with the public and private utility providers who have existing facilities within the proposed project areas and obtain record drawings and as-built information. Potential utility conflicts and/or relocation requirements will be identified and evaluated, as needed, to reduce unexpected design modifications or construction delays. We will compile and review the documents for inclusion into the electronic base map to use in preliminary design and related tasks defined below.

Task 3. Topographic Base Map

We will provide an aerial topographic survey map for the pipeline alignments.

The topographic survey will show the following:

- Coordinates and elevations in English (survey foot) units and based on California Coordinate System, Zone 5 Horizontal and NAVD88 Vertical datum.
- Two permanent benchmarks on the project site identifying coordinates and elevations to the nearest one-hundredth of a foot.
- Locations and elevations of flowline, gutter and lip of gutter/edge/edge of berm of paving and top of AC paving, including points of curve and angle points along the existing roadways (Note: data provided from the aerial mapping).
- Contours represented with 5.0-foot index and 1.0-foot intermediate lines.
- Location of visible surface USA underground utility markings onsite.
- Location of visible surface utilities, such as gate valves, manholes, inlets and catch basins.
- Invert elevations, direction and size of pipe for catch basins.
- Location of utility poles and overhead utilities crossing within the project limits.
- Seamless color digital Orthophoto at 0.2' pixel resolution.

Task 3 Deliverables: Topographic Base Map

Task 4. Geotechnical Report

We will retain the services of Earth System Pacific (ESP) to prepare a site-specific geotechnical investigation for the proposed project.

To evaluate subsurface conditions and obtain soil samples for the geotechnical engineering report, Earth Systems plans to drill a total of fifteen borings within the streets where capacity improvements are slated to be performed, including one boring adjacent to the lift station off Coral Avenue. The borings will be drilled to depths between 10 and 20 feet, as conditions dictate and allow based upon the depth of the new lines. The borings will be drilled with a Mobile Drill, Model B53 rig, equipped with a 6-inch diameter hollow stem auger and an automatic hammer for sampling. Traffic control will be subcontracted and is anticipated to include single lane closure during exploration activities along Main Street and Atascadero Road.

Soils will be classified in general accordance with the Unified Soil Classification System (ASTM D 2488). If bedrock is encountered, its properties will be described based upon observation of ring samples, observation of the spoils, the effort required to drill into the bedrock, and the energy required to drive samplers into the bedrock. During the course of drilling, various soil samples will be obtained by means of ring-lined barrel samplers (ASTM D 3550, with shoe similar to D 2937), and Standard Penetrometer Test samplers (ASTM D 1586).

Copies of the boring logs and a boring location map will be included in the report. Soil samples obtained from the borings will be tested in the laboratory to determine various engineering properties. The final numbers and types of tests to be performed will be determined based upon the subsurface conditions encountered. The estimated numbers of tests to be completed are as follows:

- Grain size distribution by sieve – 12
- Plasticity index - 4
- In situ moisture and density - 20
- Maximum density and optimum moisture – 8

The field and laboratory data will be reviewed by a Registered Engineer and evaluated with respect to development of geotechnical criteria for the proposed collections project. The following items will be addressed:

- Subsurface conditions encountered
- Pipeline design parameters
- Utility trench backfill
- Site drainage around improvements
- Construction observation and testing

During the field investigation Earth Systems will obtain a maximum of six soil samples for corrosivity testing (pH, resistivity, sulfates and chlorides). The testing will be subcontracted to an engineer who specializes in these services, and the results and a brief analysis with mitigating measures will be included in the geotechnical engineering report.

Permits are required by the San Luis Obispo County Department of Public Health (SLOCODPH) for all borings 25 feet or deeper, and for all borings that encounter groundwater, regardless of their depth. Therefore, Earth Systems anticipates that permits will be required for seven of these borings as water is anticipated to be encountered in some of the boring locations. These borings will be sealed with bentonite/grout per the permit requirements and backfilled to the surface with on-site material and covered with cold patch asphalt. The remaining borings will be backfilled with auger cuttings and cold patch.

Earth Systems will also obtain encroachment permits for the proposed exploration prior to the investigation. Prior to drilling, Underground Service Alert, USA, will be contracted to mark utilities. Should unforeseeable subsurface conditions require a different approach, the client will be notified to determine an efficient and cost-effective alternative to the planned investigation of that specific location. Geotechnical consultation will be provided by Earth Systems through the preliminary design and bidding phases, as needed.

Task 4 Deliverables: Geotechnical Engineering Report

Task 5. Inflow and Infiltration (I/I) Evaluation and Prioritization

Cannon will review existing pipeline information provided by the City at the Project Kick-Off Meeting, including flow studies prepared in conjunction with the OneWater planning document. Cannon will

present to the City a prioritization list of sections of pipelines upstream of Lift Station 1 that are candidates for rehabilitation or replacements based on amount of inflow and infiltration, constructability, and other factors. Cannon and the City will meet with City staff to determine the I/I project's to be included in this first phase of collection system improvements.

Task 5 Deliverables: I/I Technical Memo

ENVIRONMENTAL DOCUMENTS

Task 6. Environmental Documentation

As stated in the RFP, we understand this project is categorically exempt from California Environmental Quality Act (CEQA). We have provided a nominal amount of staff time to aid the City in preparing this document. In addition, we will retain the services of SWCA to provide the following.

Compliance with federal and state cultural resources regulations requires that an affirmative search be undertaken to identify properties listed in, determined eligible, or eligible for listing in the California Register of Historical Resources/National Register of Historic Properties (CRHR/NRHP) that may be affected by projects. SWCA will obtain records search data from the Central Coast Information Center (NWIC). The CCIC is the regional office of the California Historical Resources Information System (CHRIS) and the primary purpose of the records search review is to identify previously documented cultural resources and cultural resources studies within and near the project area.

SWCA will also contact the California Native American Heritage Commission (NAHC) for a review of their Sacred Lands File. NAHC will determine if any NAHC-listed Native American sacred lands are located within or adjacent to the project area and will provide a list of locally affiliated tribal contacts. SWCA will email or mail letters to identified contacts requesting any information or comments they may have regarding the project.

Upon completion of the CHRIS records search review, SWCA will conduct a brief field review of the project area. SWCA is not including the formal recordation of any archaeological resources. No testing or excavation will be conducted, nor will any artifacts, samples, or specimens be collected during the survey.

SWCA will prepare a stand-alone cultural resources technical report that will summarize the results of the cultural resources studies, as well as provide management recommendations for resources found within or near the project area and include maps depicting the areas included in the survey.

SWCA assumes that an electronic draft of the report and figures will be submitted for review. Upon receipt of comments on the draft document, if the locations of sensitive archaeological sites or Native American cultural resources are shown or described in the report, the report will be considered confidential.

Task 6 Deliverables: Cultural Resources Study

PROPERTY ACQUISITION

Task 7. Right-of-Way and/or Easement Acquisition

Per the RFP, it is not anticipated that additional rights of way or easements are necessary to make the envisioned collection system improvements. Should we find that additional access is required, we will prepare and facilitate the necessary actions to acquire easements necessary for construction of improvements. This work will likely include the preparation of an offer package, appraisal summary, right of way acquisition statement, escrow coordination, title insurance and deed to each owner whose property is required for the project. All work will be in conformance with the requirements of the California Government Code and with eminent domain requirements.

DESIGN

Task 8. 30% Design

Based on the findings and results of previous tasks, we will prepare and submit a design package at an approximate completion level of 30%. The design package will include plans, specifications, and costs as follows:

- Draft collection system improvement drawings
- Draft specifications
- Draft standard and special provisions
- Initial project construction cost estimate
- List of specific items requiring City decision

This information will be review and discussed at a 30% Design Review Workshop.

Caltrans Permitting

Cannon will work with Caltrans early in the design process to review options in installing a new sewer main under the SR 41/SR 1 Interchange. We will work up detailed preferred option based on the first meeting and exiting topography, utilities and property ownership. We will meet with Caltrans to discuss. Once an option is selected, we will produce and submit for an encroachment permit.

Community Outreach

The Beachcomber neighborhood has their sewer collect system in the backyards of the residential lot. The houses are built near the rear property line and the backyard have landscaping and other residential structures. Cannon will be exploring options to rehabilitate the aging sewers in the backyards or putting a new sewer main in the streets and sending new sewer laterals from each house to it.

This work will impact the property and the people that live there. Cannon will develop a community outreach program. The first phase will be to meet with the neighborhood and explain the situation and possible solutions. We will ask for their input and obtain contact information. The second phase will be to meet again with the neighborhood and present solutions we have developed and again get their input. Finally, through construction we will work with the neighborhood where the construction is occurring and keep them informed.

Task 8 Deliverables:

- Half-size drawings (three hard copies and an electronic copy in PDF format)
- List of specification (three hard copies and an electronic copy in PDF format)
- Class 4 cost estimate (three hard copies and an electronic copy in PDF format)

CONSTRUCTION DOCUMENTS

Task 9. Potholing

We will retain the services of R. Baker Construction to perform potholing activities for the project. We estimate needing about 5 days (~25 potholes) to identify critical potential utility conflicts. We will walk the job site with the City, coordinate USA activities, and obtain required permits before commencing the potholing activities.

We will pothole to verify the depths and locations of critical utilities and record the information on cut sheets. We will provide traffic control as required to complete the potholing effort and haul pothole mud offsite. Potholes (6-inch round) will be covered by steel pothole covers until restoration can be performed.

Task 9 Deliverables: Location and depth cut sheets of potholes

Task 10. 90% Construction Documents

Following receipt of comments on the 30% Design Submittal, Cannon will prepare a 90% Construction Documents Submittal package. The 90% Construction Document Submittal package will include construction drawings and specifications representative of a near-biddable set of construction documents. Specifications will include a proposed construction sequencing and constraints, general criteria, installation requirements and testing procedures, and listing of proposed bid item breakdown. The 90% Submittal Package will include the following items:

- Typical details
- Collection System Improvement Drawings
- Specifications for sections
- List of specific items requiring City decision
- Updated project cost estimate (Class 2)

Following delivery of the 90% Submittal Package, Cannon will bring together the design team and City Staff to facilitate the 90 % Construction Document Review Workshop to present changes occurring since completion of the 30% Design Submittal.

Task 10 Deliverables:

- PS&E at a completion level of 90%
 - Three half-size hard copies of the drawings (including electronic copy in PDF format)
 - Three hard copies of the specifications (including electronic copy in PDF format)
 - Three hard copies of the Class 2 final cost estimate (including electronic copy in PDF format)
- Meeting agendas and handout materials for the 90% Submittal Review Workshop (electronic copy in PDF format)

Task 11. Final Construction/Bid Documents

Comments received from the City on the 90% Construction Document Submittal, as well as changes identified during our internal Quality Management procedures, will be incorporated into the Bid Documents. These Bid Documents will be ready for advertisement by the City.

Task 11 Deliverables:

- Meeting minutes for the 90% Submittal Review Workshop (electronic copy in PDF format)

- Bid Documents
 - One CD that includes electronic copies of the full-size final drawings, half-size final drawings, and specifications in PDF format
 - One print-ready hard copy master set of the specifications
 - Three half-size hard copies of the drawings
 - Three hard copies of the project specifications

BIDDING ASSISTANCE

Task 12. Bidding Support Services

We will facilitate the pre-bid conference and the bid opening conference for the project under the assumption that all construction work will be included in a single bid package. We will respond to prospective bidder's questions as necessary during the bidding phase and prepare bid addenda, as necessary (up to 3).

Task 12 Deliverables:

- Meeting agendas and handout materials for the Pre-Bid Conference (electronic copy in PDF format)
- Meeting minutes for the Pre-Bid Conference (electronic copy in PDF format)
- Three addenda (electronic copy in Word format)

CONSTRUCTION SUPPORT

Task 13. Construction Engineering Support (to be finalized at completion of 90% PS&E)

We will provide construction engineering support services as defined below.

- Attend pre-construction job walk at the project site (1);
- Review Contractor Material Submittals (10);
- Respond to RFIs (40);
- Respond to Requests for Change (re-designs) (4);
- Review Progress Pays and Change Orders (10);
- Attend bi-weekly construction progress meetings/site visits (20); and
- Prepare Record Drawings.

ASSUMPTIONS AND EXCLUSIONS

- City will provide timely delivery of all pertinent record information relative to the project.
- Cannon is not responsible and cannot be held accountable for the accuracy of As-Builts or Record Drawings provided by Agencies or utility providers.
- It is assumed that the City will provide all permitting and plan approval agencies (including encroachment permits for the work in Caltrans Right-of-Way, i.e. Highway 1 and Atascadero Road intersection).
- Items not specifically identified in the scope of services sections of this proposal are to be excluded and will be considered additional services. Additional work will be billed on a time and materials basis or as an addendum with prior written authorization from the City.

RECOMMENDED SCOPE ADDITIONS (TO BE DISCUSSED DURING CONTRACT NEGOTIATIONS)

- Community outreach for the backyard sewer easements. We recommend have a few townhall meetings and going door to door with residents to discuss the details of construction and the reasons for the design.
- Caltrans permitting for the trenchless installation of the trunk sewer under Highway 1.

Attachment 2
Project Fees
Wastewater Collection Projects

Task 1 – Progress Meetings, Progress Schedules and Coordination - \$23,020

Task 2 - Background Research, Data Collection, Utility Coordination - \$6,224

Task 3 - Topographic Base Map and Existing Easement Research - \$37,568

Task 4 - Geotechnical Report - \$50,147

Task 5 - Infiltration and Inflow Evaluation and Prioritization - \$24,585

Task 6 - Environmental Documentation - \$8,043

Task 7 - Right-of-Way and/or Easement Support (Optional) - \$10,000

Task 8 - 30% Design Submittal - \$96,835

Task 9 - Potholing (5 days, total of 25 potholes) - \$23,960

Task 10 & 11 - 90% and Final Construction Documents Submittal - \$72,378

Task 12 - Bidding Support Services - \$8,148

Task 13 - Construction Engineering Support (Optional) - \$69,576

Total (without optional tasks) - \$350,908

Total (with optional tasks) - \$430,484

CITY OF MORRO BAY
PRELIMINARY SCHEDULE
 OneWater Morro Bay Phase 1 Implementation
 Wastewater Collections: Beachcomber, Main/Atascadero, and Misc. I/I

ID	Task Name	Start	Finish												
				Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec			
1	"One Water" Morro Bay Phase 1 Implementation	Mon 4/6/20	Fri 8/6/21	[Summary bar]											
2	Wastewater Collections: Beachcomber; Main/Atascadero; I&I Evaluati	Mon 4/6/20	Fri 8/6/21	[Summary bar]											
3	***City Issues Notice To Proceed***	Mon 4/6/20	Mon 4/6/20	◆ 4/6											
4	Project Management	Mon 4/6/20	Mon 11/2/20	[Summary bar]											
5	Task 1 - Progress Meetings, Project Schedule, and Coordination	Mon 4/6/20	Mon 11/2/20	[Summary bar]											
12	Preliminary Engineering	Tue 4/7/20	Mon 6/1/20	[Summary bar]											
13	Task 2 - Background Research, Data Collection, Utility Coordination and Analysis	Tue 4/7/20	Mon 5/4/20	[Task bar]											
14	Task 3 - Topographic Base Map and Existing Easement Research	Tue 5/5/20	Mon 6/1/20	[Task bar]											
15	Task 4 - Geotechnical Report	Tue 5/5/20	Mon 6/1/20	[Task bar]											
16	Task 5 - Inflow and Infiltration Evaluation	Tue 5/5/20	Mon 6/1/20	[Task bar]											
17	Environmental Documents	Tue 4/7/20	Mon 7/6/20	[Summary bar]											
18	Task 6 - Environmental Documentation	Tue 4/7/20	Mon 7/6/20	[Summary bar]											
21	Property Acquisition	Mon 4/6/20	Mon 4/6/20	◆ 4/6											
22	Task 7 - Right-of-Way and/or Easement Support (as needed)	Mon 4/6/20	Mon 4/6/20	◆ 4/6											
23	Design	Tue 6/2/20	Fri 7/31/20	[Summary bar]											
24	Task 8 - 30% Design Submittal	Tue 6/2/20	Fri 7/31/20	[Summary bar]											
28	Construction Documents	Mon 8/3/20	Fri 11/27/20	[Summary bar]											
29	Task 9 - Potholing	Mon 8/3/20	Fri 8/14/20	[Task bar]											
30	Task 10 - 90% Construction Documents Submittal	Mon 8/3/20	Fri 10/30/20	[Summary bar]											
34	Task 11 - Final Construction/Bid Documents	Mon 11/2/20	Fri 11/27/20	[Task bar]											
35	Bidding Assistance	Fri 11/27/20	Fri 2/19/21	[Summary bar]											
36	Task 12 - Bidding Support Services	Fri 11/27/20	Fri 2/19/21	[Summary bar]											
42	Construction Support	Mon 2/22/21	Fri 8/6/21	[Summary bar]											
43	Task 13 - Construction Engineering Support	Mon 2/22/21	Fri 8/6/21	[Task bar]											

Project: MorroBayWastewaterCol Date: Fri 3/13/20	Task		External Milestone	◆	Manual Summary Rollup	
	Split		Inactive Task		Manual Summary	
	Milestone	◆	Inactive Milestone	◇	Start-only	
	Summary		Inactive Summary		Finish-only	
	Project Summary		Manual Task		Deadline	
	External Tasks		Duration-only		Progress	

ATTACHMENT 4

SCOPE OF SERVICES – WATER: Nutmeg Pressure Zone Improvements

PROJECT MANAGEMENT

Task 1. Progress Meetings, Project Schedule and Coordination

Meetings

Cannon will facilitate and attend a Project Kick-off Meeting with appropriate personnel from the City. The meeting agenda will focus on project understanding, team involvement, and overall goals and objectives for the project. This meeting will also include a project introduction, review of background information and project scope, and an overview of the project schedule. This meeting represents a key opportunity for representatives from the City to steer the consultant team and further clarify critical elements of the project scope.

As work progresses, we will provide updates to the project schedule, up to six progress updates, and conduct meetings at key milestone events: (1) at delivery of the 30% design, and (2) for the Stakeholder Workshop.

Project Coordination and Integration of Work Efforts

It is imperative for a successful project to have good coordination and communication between all members of the Team—this helps keep a project on budget and schedule. We will do this throughout the Project with team meetings, meetings with various subconsultants, and regular correspondence with team members.

Project Management, Progress Reporting, Cost and Schedule Control

Cannon will prepare invoices, itemized by task, by employee/classification hours worked, and reimbursable expenses by type of expense. Subconsultant costs will be similarly itemized by task, and the subconsultant's invoice (with backup data) will be attached to our invoice. The monthly invoice will be accompanied by a project progress report. This will inform the City what work has been completed on the project and where we are on the schedule.

Project Management Site Development

Cannon uses SharePoint for distribution and sharing information. We will prepare a Project Management Information System protocol for the design and construction of this project using the City's SharePoint site. The site will have the following functions:

- Document management
- Management and workflow tracking for the following construction documents:
 - Shop drawings/submittals
 - Requests for information (RFI)
 - Potential change orders (PCOs)
- Operations and maintenance (O&M) information

Task 1 Deliverables: Meeting minutes, project schedule updates, correspondence with stakeholders, etc.

PRELIMINARY ENGINEERING

Task 2. Research, Data Collection, Utility Coordination, and Analysis

Cannon will collect and review information related to the project provided by the City. This information is important in the preliminary design phase of the project. Our team has several reports and studies prepared for this project in our records, as well as other historical information relevant to this project that will be reviewed and shared with the team. Other information needed for preliminary design includes utility information, technical reports effecting the project, as-built drawing of road and utilities in the area of the design, and other relevant work.

We will conduct site visits and take photographs and measurements, as necessary, to facilitate development of conceptual and final design documents. We will review applicable plans, reports, and records to complete engineering design services for the project, including the OneWater plan and other documents, code requirements, and other standards that will influence the water improvements. We will conduct utility research with the public and private utility providers who have existing facilities within the proposed project areas and obtain record drawings and as-built information. Potential utility conflicts and/or relocation requirements will be identified and evaluated, as needed, to reduce unexpected design modifications or construction delays. We will compile and review the documents for inclusion into the electronic base map to use in preliminary design and related tasks defined below.

Task 2A. Alternatives Analysis

Conditions Assessment of Nutmeg and Elena Tanks

Cannon will retain the services of Advantage Technical Services, Inc. (ATS) to dive inspect, sediment removal and assess the condition of the Nutmeg Tank and the two Elena Tanks. ATS will produce an inspection report for each tank and provide recommendations based on the inspections.

Elena Tank Site Options

From the inspection reports for the Elena Tanks, the water model from the OneWater Plan and other information, Cannon will provide an analysis of the Elena site and answer the following questions:

- Is there a need for the Elena Tanks at the site?
- Are there improvements to the distribution system that will eliminate the need for the Elena Tanks?
- If the Elena Tanks are needed, when should they be replaced based on the inspection report?
- If the tanks are in good condition and only the booster pumps need upsizing per the OneWater Plan, where on the site should they be placed to not conflict with existing and/or future tank(s).

We will evaluate these scenarios using the water model and prepare a summary of our analysis and findings in a technical memorandum which will include a conceptual site layout for a new tank and/or booster pump station on site.

Blanca Tanks filling options analysis

The Blanca Tank(s) are currently filled from a 4-inch discharge line from the Vashon booster station which is feed from the Elena pressure zone via connecting pipes originating from the Sequoia/Main/Hwy 1/Sienna intersection. There is also a valve within the Nutmeg Zone at the intersection of Ironwood Street and Sequoia Street that, when opened, will bleed water to the Blanca pressure zone from the

Nutmeg pressure zone. This value is used to add water to the Blanca Tanks anytime there is high water demand in the Blanca pressure zone or when there is a mechanical issue with the Vashon booster station.

Project PWP-1 “Fill Line for Blanca Tanks” of the OneWater Plan includes the replacement of approximately 2,350 ft of 4-inch line from the Vashon Booster Station with an 8-inch main. This will mitigate the excessive head-losses occurring during peak hourly flow conditions.

Prior to initiating design of Project PWP-1, we will analyze two options to determine if there is a more effective way to fill the Blanca Tanks. The two options, generally described, consist of:

- Placing a PRV, instead of the bleeder valve, on the Nutmeg water main located at the intersection of Ironwood Street and Sequoia Street and use the Blanca pressure zone distribution system piping to fill the Blanca Tanks.
- Install a new water line from the Nutmeg pressure zone to the Blanca Tanks at a different location than from Vashon booster station to the Blanca tanks.

Cannon will evaluate these options using the water model and prepare a report presenting the options and estimated costs to implement.

Task 2A Deliverables: Inspection reports for the Nutmeg and Elena Tanks; Technical Memo for Elena Tank Site Options; and Technical Memo for Blanca Tank Filling Options

Task 3. Geotechnical Report

We will retain the services of Earth System Pacific (ESP) to prepare a site-specific geotechnical investigation for the proposed project. To evaluate subsurface conditions and obtain soil samples for the geotechnical engineering report, Earth Systems plans to drill between fifteen and twenty borings within the streets where capacity improvements are slated to be performed, including four borings at the Highway 1 crossings at Vashon Street and Elena Street which are anticipated to be installed with trenchless technologies. These borings will be drilled to depths between 10 and 20 feet, as conditions dictate and allow based upon the depth of the new lines. One additional boring will be drilled at each of the Elena and Nutmeg tank sites, as needed based upon planned tank bottom elevations and existing geotechnical data from reports prepared by this firm. The borings will be drilled with a Mobile Drill, Model B53 rig, or similar, equipped with a 6-inch diameter hollow stem auger and an automatic hammer for sampling. Traffic control will be provided by Earth Systems staff in non-traffic areas or residential streets with minimal traffic. Traffic control will be subcontracted for higher traffic locations.

Soils will be classified in general accordance with the Unified Soil Classification System (ASTM D 2488). Where bedrock is encountered, its properties will be described based upon observation of ring samples, observation of the spoils, the effort required to drill into the bedrock, and the energy required to drive samplers into the bedrock. During the course of drilling, various soil samples will be obtained by means of ring-lined barrel samplers (ASTM D 3550, with shoe similar to D 2937), and Standard Penetrometer Test samplers (ASTM D 1586).

Copies of the boring logs and a boring location map will be included in the report. Soil samples obtained from the borings will be tested in Earth Systems laboratory to determine various engineering properties. The final numbers and types of tests to be performed will be determined based upon the subsurface conditions encountered. The estimated numbers of tests to be completed are as follows:

- Grain size distribution by sieve – 18
- Plasticity index - 4
- *In situ* moisture and density - 20
- Maximum density and optimum moisture – 4
- Unconfined compression – 2

The field and laboratory data will be reviewed by Earth Systems Registered Engineer and evaluated with respect to development of geotechnical criteria for the proposed tanks and pressure piping project. The following items will be addressed:

- Subsurface conditions encountered
- Grading recommendations
- Tank foundation design parameters
- Retaining wall design parameters
- Pipeline design parameters
- Utility trench backfill
- Site drainage around improvements
- Construction observation and testing

During the field investigation Earth Systems will obtain a maximum of six soil samples for corrosivity testing (pH, resistivity, sulfates and chlorides). The testing will be subcontracted to an engineer who specializes in these services, and the results and a brief analysis with mitigating measures will be included in the geotechnical engineering report.

Permits are required by the San Luis Obispo County Department of Public Health (SLOCODPH) for all borings 25 feet or deeper, and for all borings that encounter groundwater, regardless of their depth. Therefore, Earth Systems anticipates that permits will be required for four of these borings as water is anticipated to be encountered in some of the boring locations and the Nutmeg Tank boring is planned to be greater than 25 feet. These borings will be sealed with bentonite/grout per the permit requirements and backfilled to the surface with on-site material and covered with cold patch asphalt. The remaining borings will be backfilled with auger cuttings and cold patch.

Earth Systems will also obtain encroachment permits from the City for the proposed exploration prior to the investigation. Prior to drilling, Underground Service Alert (USA) will be contracted to mark utilities. Should unforeseeable subsurface conditions require a different approach, the client would be notified to determine an efficient and cost-effective alternative to the planned investigation of that specific location.

Geologic Hazards Report Update. The Geologic hazard report and revised geologic hazard report, both authored by Earth Systems, will be reviewed by their associate geologist relative to the planned new tank project. This information along with the results of the boring performed for the geotechnical engineering report will be utilized to prepare an update to the existing Nutmeg Tank Geologic Hazards Report.

Task 3 Deliverables: Geotechnical Engineering Report

Task 4. Topographic Base Map

We will provide an aerial topographic survey map for the pipeline alignments. The topographic survey will show the following:

- Coordinates and elevations in English (survey foot) units and based on California Coordinate System, Zone 5 Horizontal and NAVD88 Vertical datum.
- Two permanent benchmarks on the project site identifying coordinates and elevations to the nearest one-hundredth of a foot.
- Locations and elevations of flowline, gutter and lip of gutter/edge/edge of berm of paving and top of AC paving, including points of curve and angle points along the existing roadways (Note: data provided from the aerial mapping).
- Contours represented with 5.0-foot index and 1.0-foot intermediate lines.
- Location of visible surface USA underground utility markings onsite.
- Location of visible surface utilities, such as gate valves, manholes, inlets and catch basins.
- Invert elevations, direction and size of pipe for catch basins.
- Location of utility poles and overhead utilities crossing within the project limits.
- Seamless color digital Orthophoto at 0.2' pixel resolution.

Task 4 Deliverables: Topographic Base Map

Task 5 Environmental Documentation

Based on our understanding of the project, the 2014 IS/MND needs to be revised to reflect changes made to the Project Description and to incorporate recent revisions to the State CEQA Guidelines. Due to the increase in tank size and prominent location, our proposal includes preparation of a Visual Impact Assessment to analyze the change in visual character and quality. Additionally, due to an expanded footprint of disturbance, we anticipate the need to update the Biological Resources Survey Report (BRSR) and prepare an updated Cultural Resources Study (CRS) to supplement completion of the IS/MND. Should the City decide to pursue SRF funding, we have also included optional tasks for the preparation of the Environmental Package for the City's funding application and preparation of a federal Biological Assessment to utilize for SWRCB consultation with the U.S. Fish and Wildlife Service (USFWS). In addition to preparation of the revised IS/MND, BRSR, and CRS, our scope includes tasks for responding to public comments on the IS/MND and attending two City Planning Commission hearings.

SWCA Environmental Consultants (SWCA) has prepared the following scope of work and cost estimate to prepare revisions to the October 2014 Initial Study/Mitigated Negative Declaration (IS/MND) and provide related California Environmental Quality Act (CEQA) services for the proposed Project.

Update Project Description

SWCA will work closely with Cannon and the City of Morro Bay (City) to develop and finalize the revised Project Description. The revised Project Description will incorporate changes made since initial submittal of the application and will include any details pertinent to CEQA analysis (e.g., revised site plans, revised demolition plan, etc.). SWCA will prepare a detailed Project Description, which will provide decision makers with a comprehensive summary of the proposed project. The revised Project Description will be submitted to Cannon and the City to ensure completeness. Upon receipt of comments on the draft submittal of the revised Project Description, SWCA will finalize the Project Description for inclusion into the revised IS/MND.

Review All Previously Prepared Technical Studies

In addition to reviewing the 2014 Draft IS/MND, SWCA will review all technical reports prepared in support of the Draft IS/MND. To the greatest degree feasible, these reports will be used to revise the

IS/MND. In addition, Cannon has stated additional technical reports will be prepared (e.g., geotechnical); SWCA will review and utilize updated versions of these reports to the greatest extent feasible.

Prepare Visual Impact Assessment

Review of the Phase 1 water distribution system implementation project shows that the proposed improvements will be seen from numerous public vantage points including State Scenic Route 1, Highway 41, local neighborhood streets and public recreation areas. Visible project components will include new and larger water tanks, booster pump station, and water line upgrades during construction. The evaluation method of the report will provide a photographic and written inventory of existing site conditions and establish the baseline visual character. Particular attention will be given to the project's effect on scenic vistas and ridgeline development as a hillside backdrop to the City. The aesthetic study will compare the existing on-site and through-site visual resources with the project features as proposed and will identify any potential impacts to visual community character. The evaluation will include all proposed project elements and associated support equipment for their complete effect on views. Project impact determinations will be consistent with community scenic values as identified in the City of Morro Bay coastal planning policy, ordinances and goals. Expected viewer sensitivity will be assessed and considered as part of the analysis. Assessment of impacts and related findings will be based on CEQA guidelines.

Four realistic photo-simulations will document visibility of the project from representative viewpoints on Highway 1, Highway 41, and various local roadways and recreation areas. Simulations will evaluate the appearance of the project and will show the effectiveness of any recommended mitigation measures, if applicable. The photo-simulations will thoroughly identify changes to the site and to the area's visual character as a result of the project. The photo-simulations will provide a valuable method of public disclosure as well as a tool for project approval discussion.

The Visual Impact Assessment will be prepared as a stand-alone report but will include an impact analysis that mirrors the required CEQA analysis to facilitate seamless incorporation into the IS/MND.

Prepare Updated Biological Resources Survey Report

Two Botanical Resources Survey Reports were previously prepared for the project in 2012 and 2014. These reports encompassed a 57,000-square-foot (1.3-acre) site and included a literature review and botanical survey of the entire site. They did not encompass the currently proposed expanded project area (including areas for proposed pipeline improvements, new pipelines, new pressure-reducing valve (PRV) station, and temporary construction access road) and did not evaluate the potential for special-status wildlife species to occur within the project site. Therefore, in addition to utilizing the results of the 2012 and 2014 Botanical Resources Survey Reports, SWCA will prepare a BRSR to accurately describe and map the existing habitat(s) and vegetation type(s) present within the expanded study area, conduct an updated botanical survey for the expanded project area, and evaluate the potential for special-status wildlife species to occur in the expanded project area. Preparation of the BRSR will include the tasks described below.

Literature Review

SWCA will conduct a literature review to gather information on known special-status plant and wildlife resources and sensitive habitats in the project vicinity, building upon the list identified in the previous IS/MND and Botanical Resources Survey Reports.

Biological Survey

SWCA will conduct a biological survey in the approved study area, including a seasonally timed botanical survey. Based on the results of the 2014 Botanical Resources Survey Report, we understand that a special-status plant species—Cambria morning glory (*Calystegia subacaulis* ssp. *episcopalis*)—is known to occur within the project site (now a CNPS Rank 4 species). Therefore, we propose to conduct an updated botanical survey during the appropriate blooming period for this species (between March and July) to accurately assess presence and distribution of this species and any other special-status plant species within the project area. It does not currently appear that the project would directly impact any areas that may be considered jurisdictional; therefore, a Jurisdictional Wetland Determination is not included in the current scope of work.

Biological Resources Survey Report

SWCA will compile the results in an updated BRSR that addresses the project's potential to impact sensitive biological resources pursuant to CEQA, including plant and wildlife species and habitats. This report will include a literature review and database review of resources known to occur in the area, and descriptions of the survey methodology, results, and recommendations for avoidance or mitigation, as necessary. The report will include an impact analysis that mirrors the required CEQA analysis to facilitate seamless incorporation into the IS/MND.

Prepare Supplemental Cultural Resources Study

An Archaeological Survey Report was previously prepared for the project in 2009. This report encompassed a 57,000-square-foot (1.3-acre) site and included a literature review, records search, and pedestrian survey of the entire site. It did not encompass the currently proposed expanded disturbance footprint, which includes additional areas for proposed pipeline improvements, new pipelines, a new PRV station, and a temporary construction access road. Therefore, in addition to utilizing the information and results contained in the 2009 Archaeological Survey Report, SWCA will prepare a Supplemental CRS to encompass the expanded project area. Preparation of the CRS will include the tasks described below.

Area of Potential Effects Map

SWCA will assist in the preparation of a project Area of Potential Effects (APE) map, which will delineate the project study area. This figure will depict all areas that are expected to be affected by the proposed project, including staging and construction access areas. It will be plotted on an aerial photograph at an approximately 1" = 200' scale. The purpose of the project APE is to ensure identification of significant cultural resources that may be listed in, determined eligible for, or appear to be eligible for listing in the National Register of Historic Places (NRHP) that may be affected, either directly or indirectly, by the proposed project.

Records Search and Literature Review

Compliance with CEQA and National Historic Preservation Act (NHPA) Section 106 requires that an affirmative search be undertaken to identify properties listed in, determined eligible for, or eligible for listing in the NRHP and California Register of Historical Resources (CRHR) that may be affected by the proposed project. SWCA will conduct background research, in part, by reviewing existing studies that

encompass portions of the project APE, such as the 2009 Archaeological Survey Report prepared for the project, as well as the Archaeological Survey Report for the Morro Bay New Water Reclamation Facility Project prepared by Far Western Anthropological Research Group, Inc. for the Righetti and Rancho Colina Sites [2016]), and any other relevant resources the City may provide. We assume, based on the extent of overlapping studies and existing information, that a new record search will not be necessary.

Native American Coordination

SWCA will contact the California Native American Heritage Commission (NAHC) for a review of their Sacred Lands File. The NAHC will determine if any NAHC-listed Native American sacred lands are located within or adjacent to the project area. In addition, the NAHC will provide a list of Native American contacts for the project that they believe should be contacted for additional information. SWCA will prepare and mail a letter to each of the NAHC-listed contacts, requesting that they contact SWCA if they know of any Native American cultural resources within or immediately adjacent to the project area. Should additional Native American consultation be required, SWCA would request a change order to complete this additional work.

Supplemental Field Survey

Upon completion of the literature review, SWCA will conduct an intensive pedestrian survey of the portions of the APE that have not already been surveyed to supplement the findings of other studies' survey efforts. SWCA cultural resources specialists will conduct the survey utilizing pedestrian transects spaced at intervals of approximately 15 meters, covering all previously unsurveyed portions of the project area. For the purposes of this proposal and cost estimate, SWCA assumes that only supplemental survey efforts will be necessary and that the survey will be negative; therefore, this survey does not include the recordation of any resources. If any resources (e.g., prehistoric or historic archaeological sites or built environment resources) are identified during the pedestrian survey, a change order will be requested in order to officially document the resource(s). No testing or evaluation will be conducted, nor will any artifacts, samples, or specimens be collected during the survey.

Supplemental Cultural Resources Study

Upon completion of the literature review, Native American consultation, and field survey, SWCA will prepare a CRS that will summarize the results of the study, as well as provide management recommendations for resources within or near the project area. The CRS will include maps depicting the area surveyed for cultural resources. SWCA assumes that an electronic draft of this report and figures will be submitted to Cannon and the City for review. Upon receipt of comments on the draft document, SWCA will incorporate any necessary revisions and produce the final CRS. SWCA assumes that only one round of review will be necessary. If the locations of sensitive archaeological sites or Native American cultural resources are shown or described in the report, the CRS will be considered confidential and may not be distributed to the public. In order to protect these sensitive resources, the confidential CRS shall be made available only to qualified cultural resources personnel, the landowner, project management staff, and other qualified parties.

Prepare a Revised Initial Study/Mitigated Negative Declaration, Mitigation Monitoring and Reporting Program, and Public Noticing

A complete IS/MND was drafted in 2014 based on the previous version of the project that only included

demolition of the existing water tanks and construction of a replacement tank of similar size. SWCA will prepare a revised Administrative IS/MND pursuant to State CEQA Guidelines Section 15063. Preparation of the IS Checklist will include an assessment of all resource areas as required by State CEQA Guidelines Appendix G. The information in the revised technical reports, updated BRSR, and supplemental CRS identified above will be incorporated into the appropriate resource sections of the IS/MND. The IS/MND Checklist format will be consistent with prior environmental review documents SWCA has prepared for the City. This task assumes SWCA will submit an electronic copy of the Administrative IS/MND to Cannon and the City and that the document will undergo one round of review by Cannon and the City. Upon receipt of comments from Cannon and the City on the Administrative IS/MND submittal, SWCA will finalize the IS/MND and prepare an MMRP. SWCA will prepare all required notices, including the Notice of Completion (NOC), Notice of Availability (NOA), and Notice of Intent to Adopt a Mitigated Negative Declaration (NOI), which will be advertised in the San Luis Obispo Tribune and posted at the County of San Luis Obispo (County) Clerk's Office. We assume the City will submit the NOC and 15 copies of the revised IS/MND to the State Clearinghouse, arrange publishing of the NOI, and file the NOI with the County Clerk. We assume that the City will be responsible for all public noticing, such as onsite posting, newspaper advertisement listing, and public hearing noticing.

Assist with Response to Comments

SWCA is prepared to respond to any comments received in writing during public circulation of the IS/MND, as needed to inform decision makers and facilitate the public review process. The scope of work includes preparation of responses to comments received for the IS/MND and assumes up to five substantial comments or comment topics would be received. SWCA will incorporate any necessary clarifications and edits and prepare a final IS/MND, MMRP, and Notice of Determination (NOD).

Attend City Planning Commission Hearings

SWCA will prepare for and attend up to two City Planning Commission hearings and will be prepared to assist City staff by presenting the item and/or answering questions related to the revised IS/MND. If more hearings are necessary, SWCA will plan to attend and support as needed under an amended contract.

Task 5 Deliverables: Environmental Studies and Documents

PROPERTY ACQUISITION

Task 6. Right-of-Way and/or Easement Acquisition

The scope of work for the Water Distribution System: Nutmeg Pressure Projects-planning and preliminary design includes work up to finalization of 30% plans, estimates and environmental documents. HJA propose to conduct Phase I activities during this time. In advance of the acquisition process, we would participate in the Stakeholder workshop and communicate with property owners from whom property interests will need to be acquired, and will seek Right of Entry agreements as needed to support the project team with gaining access for all project planning studies and investigations, including the necessary geotechnical investigations.

All our work would be done in accordance with the requirements of the California Government Code and in conformance with eminent domain requirements to preserve all City options. Of course, our goal is always to reach cooperative amicable agreements with each property owner on the City's behalf and we have an excellent track record of accomplishing that.

PERMITTING SUPPORT

Task 7. Permit Submittal and Acquisition

Our team will coordinate with all applicable permitting agencies including, but not limited to, Caltrans, Division of Drinking Water (DDW), City, and County. Develop permit applications for review and submission by the City.

PRELIMINARY DESIGN

Task 8. 30% Design

Based on the findings and results of previous tasks, we will prepare and submit a design package at an approximate completion level of 30%. The design package will include plans, a list of specifications, and costs as follows:

- Draft water main improvement plans
- Draft tank site plans
- Draft piping and instrumentation diagrams
- Draft piping layout drawings
- Draft chloramination station in the system at either the Nutmeg Tank or the Elena Tanks.
- Draft Electrical one-line drawings
- Draft Control descriptions
- Control system architecture block diagrams (SCADA)
- Draft instrument lists
- Draft specifications list
- Draft standard and special provisions
- Initial project construction cost estimates
- List of specific items requiring City decision

This information will be review and discussed at a 30% Design Review Workshop.

Task 8 Deliverables:

- Half-size drawings (three hard copies and an electronic copy in PDF format)
- List of specification (three hard copies and an electronic copy in PDF format)
- Class 4 cost estimate (three hard copies and an electronic copy in PDF format)

ASSUMPTIONS AND EXCLUSIONS

- City will provide timely delivery of all pertinent record information relative to the project.
- Cannon is not responsible and cannot be held accountable for the accuracy of As-Builts or Record Drawings provided by Agencies or utility providers.

- Items not specifically identified in the scope of services sections of this proposal are to be excluded and will be considered additional services. Additional work will be billed on a time and materials basis or as an addendum with prior written authorization from the City.

ATTACHMENT 5
Project Fees
Nutmeg Pressure Projects

Task 1 – Progress Meetings, Progress Schedules and Coordination - \$32,061

Task 2 - Background Research, Data Collection, Utility Coordination, Summary Memo - \$14,839

Task 2A - Alternative Analysis - \$42,987

Task 3 - Geotechnical Investigation - \$69,778

Task 4 - Topographic Base Map and Existing Easement Research - \$9,608

Task 5 - Environmental Documentation - \$45,518

Task 6 - Right-of-Way and/or Easement Support - \$20,184

Task 7 - Permit Submittal and Acquisition - \$6,430

Task 8 - 30% Design Submittal (Plans, List of Specifications & Cost Estimates) - \$133,348

Total - \$384,753

ID	Task Name	Start	Finish												
				Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov			
1	Nutmeg Tank and Misc. Water System Improvements	Mon 4/6/20	Tue 10/6/20												
2	Notice to Proceed	Mon 4/6/20	Mon 4/6/20												
3	Task 1 – Progress Meetings, Progress Schedules and Coordination	Mon 4/6/20	Tue 10/6/20												
4	Task 2 - Background Research, Data Collection, Utility Coordination, Summary Memo	Mon 4/6/20	Tue 5/5/20												
5	Task 2A - Alternative Analysis	Mon 4/6/20	Thu 6/4/20												
6	Task 3 - Geotechnical Investigation	Mon 4/6/20	Thu 6/4/20												
7	Task 4 - Topographic Base Map and Existing Easement Research	Wed 5/6/20	Mon 7/6/20												
8	Task 5 - Environmental Documentation	Mon 4/6/20	Tue 6/16/20												
9	Task 6 - Right-of-Way and/or Easement Support	Tue 7/7/20	Tue 10/6/20												
10	Task 7 - Permit Submittal and Acquisition	Tue 7/7/20	Tue 10/6/20												
11	Task 8 - 30% Design Submittal (Plans, List of Specifications & Cost Estimates)	Tue 7/7/20	Tue 10/6/20												

Project: Nutmeg Schedule Condensed Date: Fri 3/13/20	Task		External Milestone		Manual Summary Rollup	
	Split		Inactive Task		Manual Summary	
	Milestone		Inactive Milestone		Start-only	
	Summary		Inactive Summary		Finish-only	
	Project Summary		Manual Task		Deadline	
	External Tasks		Duration-only		Progress	

This Page Intentionally Left Blank



AGENDA NO: C-4

MEETING DATE: April 14, 2020

Staff Report

TO: Honorable Mayor and City Council

DATE: April 6, 2020

FROM: Chris F. Neumeyer, City Attorney

SUBJECT: Introduction of Ordinance No. 632 to Regulate 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

Introduce for first reading, by title only with further reading waived, Ordinance No. 632 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.

ALTERNATIVES

No alternatives are recommended.

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

The City Council has recently considered regulation of tobacco, vaping and secondhand smoke at five prior Council meetings, held on: October 8, 2019; November 12, 2019; December 10, 2019; January 14, 2020; and, February 11, 2020.

Discussion addressed American Lung Association recommendations (e.g., tobacco retailer license, secondhand smoke in multiunit housing, flavored tobacco) to both reduce exposure to secondhand smoke as well as curtail youth access to tobacco products.

Vigorous discussion and public comment also addressed a response to the national upsurge in use of vaping products (especially amongst youth) and related health issues.

01181.0001/640876.1

Prepared By: CFN Dept Review:

City Manager Review: SC City Attorney Review: CFN

Staff was directed by Council at the February 11, 2020 City Council meeting to bring back the ordinance attached (and outlined below) for introduction and first reading to regulate tobacco, vaping and secondhand smoke.

DISCUSSION

The proposed ordinance, consistent with Council direction to staff on February 11, 2020, provides for tobacco, secondhand smoke and vaping regulations, including the eight ones below.

Note that proposed changes to existing municipal code are in ***bold italics*** (new text) or ~~strikethrough~~ (deleted text), and changes (at Council direction on February 11, 2020) to the prior draft ordinance presented to Council are in blue text.

Consistent with American Lung Association general recommendations:

1. **Multi-Unit Residences.** Preventing secondhand smoke in multi-unit residences (e.g., apartments and condominium) (does not include single-family homes and mobile home parks) by:
 - a. 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.
 - b. Requiring that all new and renewed leases for occupancy of a unit in a multi-unit residence shall prohibit smoking.
 - c. Requiring landlords of multiunit housing to provide written notice of new restrictions to tenants and to also post “no smoking” signs.
2. **Tobacco Retailer License Program.** 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.

Consistent with American Lung Association “emerging issues” recommendations:

3. **Pharmacies.** Prohibiting the sale of tobacco products by retail establishments that contain a pharmacy.
4. **Cigars.** 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.
5. **Flavors.** Prohibiting the sale of flavored tobacco products (with exception of menthol flavored tobacco products and smokeless tobacco products).

Council on February 11, 2020 by majority vote directed staff to provide for the following restrictions on the retail sale of vaping products:

6. **Prohibition on Sale of All Vaping Products.**

Council further directed staff on February 11, 2020 to address two additional issues:

7. **100% ID Check.** Tobacco retailers to verify the age of **every** person purchasing a tobacco product by means of a government issued (or equivalent) photographic identification containing the bearer's date of birth, regardless of what age the purchaser appears. The ordinance provides for this regulation.
8. **Location Restrictions.** Staff will work with planning staff and/or planning commission on review and recommendation of location restrictions (if any) for tobacco retailers, and staff will proceed subsequently to bring forward any recommendations to Council.

There are three effective dates for the various new regulations and prohibitions, pursuant to Council direction, with the assumption a second reading to adopt the ordinance will be on April 28, 2020, and thereafter the ordinance will be law by June 1, 2020 (30+ days after adoption of ordinance).

- August 1, 2020 - Prohibitions on secondhand smoke in multiunit housing starts. Provides two months (after ordinance becomes law) for landlords and renters to implement new regulations.
- December 1, 2020 - Prohibition on sales of vaping products, certain cigars, and flavored tobacco products (excepting smokeless and menthol). Provides six months (after ordinance becomes law) for local retailers to address present inventory.
- June 1, 2021 - Tobacco retailer licensing program is effective. Allows approximately a year (after ordinance becomes law) for City staff to develop applications, forms, procedures and appropriate fee recovery.

CONCLUSION

As requested by Council at the February 11, 2020 Council meeting, Staff recommends Council introduce for first reading the ordinance to regulate tobacco, vaping and secondhand smoke.

ATTACHMENTS

1. Ordinance No. 632
2. American Lung Association Scorecard

ORDINANCE NO. 632

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

01181.0001/640877.1 CFN

Ordinance No. 632

Page 1 of 19

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, 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 or menthol, 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 that contains no Vitamin E acetate), 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.

“Menthol” means any form or taste of menthol commonly used to add flavor or aroma to tobacco products, and any substance derived from menthol.

“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.

01181.0001/640877.1 CFN

Ordinance No. 632

Page 3 of 19

“Smokeless tobacco product” means any tobacco product that is not smoked or burned, including but not limited to chewing tobacco and snuff; this definition does not include electronic cigarettes, electronic cigarette paraphernalia, nor vaping products.

“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.

“Vitamin E acetate,” also known as α -Tocopheryl acetate, means a synthetic form of vitamin E and/or an oil derived from vitamin E, and known to be used as an additive for vaping products.

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 (commencing ~~July 15~~ December 1, 2020):

- A. Electronic cigarettes.
- B. Electronic cigarette paraphernalia.
- C. 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.

D. Flavored tobacco products (excepting smokeless tobacco products).

5.54.030 – Requirement for tobacco retailer license.

- A. Beginning on ~~January 1~~June 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, state or federal tobacco-related law.

5.54.110 – 100% ID check requirement.

Tobacco retailers shall verify the age of every person purchasing a tobacco product by means of a government issued (or equivalent) photographic identification containing the bearer's date of birth regardless of what age the purchaser appears to be.

5.54.120 – 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~~130 – 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~~140 – 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.

5.54.140150 – 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~~):

"9.24.010 – 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 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, **venting 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~~ August 1, 2020.

9.24.050 – Reasonable distance.

Smoking in unenclosed areas shall be prohibited within a reasonable distance ~~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.

01181.0001/640877.1 CFN

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~~August 1, 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~~August 1, 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~~ August 1, 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~~ August 1, 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 _____ 2020, by motion of _____ and seconded by _____.

PASSED AND ADOPTED on the ____ day of _____ 2020, by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk
01181.0001/640877.1 CFN

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 632 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the ____ day of _____, 2020, 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

ATTACHMENT 2



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