



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, September 8, 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

- Presentation of Business Heroes Award

PUBLIC COMMENT

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this Meeting 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 Veterans' Hall 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 via email to the City Council at council@morrobayca.gov 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.*
- *Members of the public may watch the meeting either on cable Channel 20 or as streamed on the City [website](#).*
- *Alternatively, members of the public may watch the meeting and speak during general Public Comment or on a specific agenda item by logging in to the Zoom webinar using the information provided below. Please use the "raise hand" feature to indicate your desire to provide public comment. Each speaker will be allowed three minutes to provide input.*

Please click the link below to join the webinar:

- <https://us02web.zoom.us/j/82722747698?pwd=aWZpTzcwTHlRTk9xaTlmWVNWRFUQT09>
Password: 135692
- Or Telephone Attendee: 1 (408) 638-0968 or 1 (669) 900 6833 or 1 (346) 248 7799;
Webinar ID: 827 2274 7698; Password: 135692; Press *9 to "Raise Hand" for
Public Comment

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

RECOMMENDATION: Approve as submitted.

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

RECOMMENDATION: Approve as submitted.

- A-3 DESIGNATION OF VOTING DELEGATE AND ALTERNATE AT LEAGUE OF
CALIFORNIA CITIES 2020 ANNUAL CONFERENCE BUSINESS MEETING; AND,
AUTHORIZE THE VOTING DELEGATES TO APPROVE PROPOSED RESOLUTION AT
THE ANNUAL MEETING CALLING FOR AN AMENDMENT TO SECTION 230 OF THE
COMMUNICATIONS DEGENCY ACT OF 1996 TO REQUIRE SOCIAL MEDIA
COMPANIES TO REMOVE MATERIALS WHICH PROMOTE CRIMINAL ACTIVITIES;
(ADMINISTRATION)

RECOMMENDATION: Staff recommends the City Council:

1) Select Mayor Headding, as the voting delegate, and Council Member Heller, as the alternate voting delegate, for the upcoming annual business meeting to be held at the League of California Cities Annual Conference; and 2) Authorize City Clerk to sign the League of California Cities' form affirming the selection of the voting delegate and the alternate voting delegate; and 3) Authorize the selected voting delegate (or selected alternate as needed) to approve the proposed Resolution.

- A-4 ADOPTION OF ORDINANCE NO. 638 TO AMEND SECTION 8.20.030 OF THE MORRO
BAY MUNICIPAL CODE TO INCREASE PENALTIES FOR UNAUTHORIZED RV AND
VEHICLE CAMPING WITHIN THE CITY OF MORRO BAY; (CITY ATTORNEY)

RECOMMENDATION: Staff recommends Council consider adopting, by second reading and by title only with further reading waived, Ordinance No. 638 entitled "An Ordinance of the City Council of the City of Morro Bay, California, amending section 8.20.030 of the Morro Bay Municipal Code to Increase Penalties for Unauthorized RV and Vehicle Camping within the City of Morro Bay."

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

- C-1 TOURISM STAKEHOLDER GROUP REPORT AND RECOMMENDATIONS REGARDING DIRECTION AND MANAGEMENT OF THE TOURISM MARKETING FUNCTION IN MORRO BAY; (CITY MANAGER)

RECOMMENDATION: Staff recommends the Council adopt recommendations from the Tourism Stakeholder Group and the Tourism Business Improvement District (TBID) Advisory Board and provide direction to staff as appropriate.

- C-2 AMENDMENT NO. 2 TO MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN MORRO BAY OPEN SPACE ALLIANCE (MBOSA) AND CITY TO PROTECT EAGLE ROCK/CERRITO PEAK IN PERPETUITY AS UNDEVELOPED PUBLIC OPEN SPACE THROUGH CONSERVATION EASEMENT; AMENDMENT NO. 1 TO MOU FOR PAYMENT FROM MBOSA TO CITY OF \$265,000 BY OCTOBER 31, 2020; (CITY ATTORNEY)

RECOMMENDATION: City Council consider approval of Amendment No 2 to MOU between MBOSA and the City and authorize Mayor to execute the same; and, City Council ratify Amendment No 1 to MOU.

- C-3 AUTHORIZE SUBMITTAL OF A LETTER OF SUPPORT TO THE OCEAN PROTECTION COUNCIL SOLICITATION OF GRANT PROPOSALS FOR UPGRADES TO MORRO ROCK PARKING LOT TO REDUCE POLLUTED STORMWATER RUNOFF TO OCEAN AND CERTAIN CITY COMMITMENTS FOR PROJECT; (PUBLIC WORKS)

RECOMMENDATION: Staff recommends the City Council authorize staff to submit a letter of support for the Ocean Protection Council solicitation of grant proposals for upgrades to Morro Rock parking lot to reduce polluted stormwater runoff to ocean and make certain City commitments for the project.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, September 22, 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.

This Page Intentionally Left Blank

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

ABSENT: None

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

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 5:32 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION – None

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/k-pipT6fB-s?t=354>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/k-pipT6fB-s?t=1010>

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

PRESENTATIONS - None

PUBLIC COMMENT

<https://youtu.be/k-pipT6fB-s?t=1315>

Betty Winholtz, Morro Bay, stated her appeal of an affordable housing project at 405 Atascadero Road, heard at the July 14, 2020 meeting, was based on information contained in the June 2020 Planning Commission staff report, rather than the complete project description presented in November 2019. She encouraged staff reports include details from previous meetings and restated her belief an elevator is needed to protect the health and safety of residents.

Dan Sedley, Morro Bay, requested an update on the paid parking study.

Mayor Heading closed public comment.

Staff responded to issues raised during public comment.

- A. CONSENT AGENDA
<https://youtu.be/k-pipT6fB-s?t=1831>

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 JUNE 23, 2020, CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF MINUTES FOR THE JULY 14, 2020, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 ADOPTION OF RESOLUTION NO. 74-20 UPDATING THE CITY'S CONFLICT OF INTEREST CODE; (CITY CLERK)

RECOMMENDATION: Staff recommends the City Council update the City's Conflict of Interest Code by adopting the proposed Resolution No. 74-20.

- A-4 ADOPTION OF RESOLUTION 75-20 RESCINDING RESOLUTION NO. 48-20 AND APPROVING REVISIONS TO THE CITY'S TEMPORARY USE PERMIT AND BLANKET ENCROACHMENT PERMIT PROGRAMS FOR OUTDOOR DINING/SALES TO INCLUDE OTHER OUTDOOR USES (E.G. OUTDOOR FITNESS AND PERSONAL CARE SERVICES); (COMMUNITY DEVELOPMENT DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 75-20 revising the City's recently adopted Blanket Encroachment Permit and Temporary Use Permit ("TUP") programs for outdoor dining/sales to include other outdoor uses.

- A-5 THIRD QUARTER INVESTMENT REPORT (PERIOD ENDING MARCH 31, 2020) FOR FISCAL YEAR 2019/20; (FINANCE DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council receive the attached Third Quarter Investment Report (period ending March 31, 2020) for Fiscal Year 2019/20.

- A-6 ADOPTION OF RESOLUTION NO. 76-20 APPROVING THE ASSIGNMENT AND ASSUMPTION AND CONDITIONALLY AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS NECESSARY FOR THE ASSIGNMENT AND ASSUMPTION AT LEASE SITE 91-92/91W-92W AND ACCEPTING DEEDS OF TRUST RELATED THERETO (ANDERSON INN, 897 EMBARCADERO); (HARBOR DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 76-20 allowing the Mayor to authorize the assignment and assumption, and authorizing

2

the Mayor to execute necessary documents, and accepting deeds of trust related thereto regarding the leasehold interest at Lease Site 91-92/91W-92W, with documents subject to approval of the City Attorney.

A-7 ADOPTION OF RESOLUTION NO. 77-20 APPROVING THE CITY'S AMENDED SALARY SCHEDULE FOR FY 2020/21; (FINANCE DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 77-20, rescinding Resolution No. 62-20 and approving the City's amended FY 2020/21 Salary Schedule.

Mayor Heading opened public comment for the Consent Agenda.

Betty Winholtz, Morro Bay, questioned cash flow for construction of the WRF project (Item A-5) and suggested step increases for staff not be allowed until the City is out of debt (Item A-7).

Dan Sedley, Morro Bay, spoke regarding Item A-7, questioning salary concessions agreed to by the bargaining groups and suggesting they be made permanent.

Rodger Anderson, Morro Bay, stated he was available to answer questions regarding Item A-6, as needed.

The public comment period was closed.

Mayor Heading pulled Items A-5 and A-7.

MOTION: Council Member Addis moved approval of all items on Consent except Items A-5 and A-7. The motion was seconded by Council Member Davis and carried 4-0-1 by roll call vote with Council Member McPherson absent due to technical difficulties.

A-5 THIRD QUARTER INVESTMENT REPORT (PERIOD ENDING MARCH 31, 2020) FOR FISCAL YEAR 2019/20; (FINANCE DEPARTMENT)
<https://youtu.be/k-pipT6fB-s?t=2337>

Mayor Heading responded to questions raised during public comment.

MOTION: Mayor Heading moved approval of Item A-5. The motion was seconded by Council Member Davis and carried 4-0-1 with Council Member McPherson absent due to technical difficulties.

A-7 ADOPTION OF RESOLUTION NO. 77-20 APPROVING THE CITY'S AMENDED SALARY SCHEDULE FOR FY 2020/21; (FINANCE DEPARTMENT)
<https://youtu.be/k-pipT6fB-s?t=2575>

City Manager Collins responded to questions raised during public comment.

MOTION: Mayor Heading moved approval of Item A-7. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

- C-1 REVIEW WRF QUARTERLY UPDATE REPORT AND DISCUSS THE CITIZEN'S FINANCE ADVISORY COMMITTEE (CFAC) ROLE IN WATER RECLAMATION FACILITY (WRF) REVIEW WITH ADDITIONAL RESPONSIBILITIES AS DIRECTED BY COUNCIL ON JANUARY 28, 2020; (PUBLIC WORKS DEPARTMENT)
<https://youtu.be/k-pipT6fB-s?t=2925>

WRF Program Manager Casares provided the report and, along with Finance Director Callaway, responded to Council inquires.

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

John Weiss, Morro Bay, raised several questions regarding the project and negotiations with Cayucos for closure of the existing wastewater treatment plant.

Dan Sedley, Morro Bay, sought information on the process to determine responsibility for costs associated with the soil slip and suggested the contract be structured so the City is not responsible for things outside its control.

Betty Winholtz, Morro Bay, thanked the Citizens' Finance Advisory Committee for its review and restated questions submitted as agenda correspondence.

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

Staff responded to questions raised during public comment.

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

- C-2 APPROVAL OF CONTRACT WITH DIGITAL WEST TO PROVIDE BROADBAND/INTERNET SERVICES TO THE CITY FOR REGULAR OPERATIONS AND CONTINUITY OF OPERATIONS NEEDS DURING EMERGENCIES AND POWER SHUTDOWNS; (CITY MANAGER/FIRE DEPARTMENT)
<https://youtu.be/k-pipT6fB-s?t=10757>

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

The public comment period for Item C-2 was opened; seeing none, public comment was closed.

MOTION: Council Member McPherson moved to execute a contractor agreement with Digital West to provide broadband/internet services to support regular City operations as well as continuity of operations during prolonged power shutdowns and other emergencies, subject to approval as to form by the City Attorney. The motion was seconded by Council Member Addis

Council Member Heller stated his belief it was premature to invest in infrastructure for facilities that may not be used in the future.

Following discussion, the motion carried 4-1 by roll call vote with Council Member Heller opposed.

- D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS
<https://youtu.be/k-pipT6fB-s?t=10757>

Mayor Headding suggested the Council agendaize a resolution at the next meeting to increase fines for overnight RV parking in prohibited areas. There was full support for this item.

Council Member McPherson proposed the Council consider adoption of an urgency ordinance to freeze issuance of short-term permits until new ordinance goes into effect. There was full support this item be brought back at the next meeting.

Council Member Heller suggested the City take a stronger stance and adopt an ordinance requiring face masks. Following brief comments by Council and staff, Council Member Heller withdrew the request.

Council Member Heller requested discussion of City operations and physical requirements (office space) going forward. The Council agreed in concept to a future discussion, possibly tied to consideration of the sale of City-owned property.

E. ADJOURNMENT

The meeting adjourned at 9:13 p.m.

Recorded by:

Dana Swanson
City Clerk

This Page Intentionally Left Blank

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
AUGUST 25, 2020 – 3:00 P.M.
TELECONFERENCE

AGENDA NO: A-2
MEETING DATE: September 8, 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

ABSENT: None

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 3:00 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; hearing none, public comment was closed.

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

CS-1 CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Paragraph (1) of subdivision (d) Government Code Section 54956.9

Name of Case: City of Morro Bay vs. Vistra Energy Corp., Case No. 20CV-0127, San Luis Obispo County Superior Court

CS-2 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2) or (d)(3) & (e)(1): One Matter

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

Property: 1 Jordan Terrace (Cerrito Peak/Eagle Rock): APN 066-221-001

Property Negotiators: Morro Bay Open Space Alliance

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

Under Negotiation: Price and Terms of Payment

CS-4 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

Items CS-1 and CS-4 were continued to a future meeting.

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 3:29 p.m.

Recorded by:

Dana Swanson
City Clerk



AGENDA NO: A-3
MEETING DATE: September 8, 2020

Staff Report

TO: Honorable Mayor and City Council DATE: August 24, 2020

FROM: Dana Swanson, City Clerk

SUBJECT: **Designation of Voting Delegate and Alternate at League of California Cities 2020 Annual Conference Business Meeting; and, Authorize the Voting Delegates to Approve Proposed Resolution at the Annual Meeting Calling for an Amendment to Section 230 of the Communications Decency Act of 1996 to Require Social Media Companies to Remove Materials which Promote Criminal Activities**

RECOMMENDATION

Staff recommends the City Council:

1. Select Mayor Headding, as the voting delegate, and Council Member Heller, as the alternate voting delegate, for the upcoming annual business meeting to be held at the League of California Cities Annual Conference; and
2. Authorize City Clerk to sign the League of California Cities' form affirming the selection of the voting delegate and the alternate voting delegate (page 4 of Attachment 1); and
3. Authorize the selected voting delegate (or selected alternate as needed) to approve the proposed Resolution provided as Attachment 2.

ALTERNATIVES

1. The Council may choose to disapprove the proposed Resolution.
2. The Council may choose not to select any delegates; however, the City would not have voting rights at the annual business meeting.

BACKGROUND

In order to conduct the annual League of California Cities' business meeting, held in conjunction with the League of California Cities Annual Conference, every represented city must have its city council designate a voting representative who will be registered at the conference and present at the annual business meeting (the General Assembly). Each member city may also appoint up to two alternates, one of whom may vote in the event the designated voting delegate is unable to serve in that capacity.

Conference attendance provides an exceptional opportunity for elected officials to hear from leading experts, expand their knowledge regarding municipal government, and view innovative resources that could benefit the delivery of services, enhance resources, and strengthen the City.

DISCUSSION

The League of California Cities 2020 Annual Conference and Expo is being held virtually October 7-9, 2020. The Opening General Session is tentatively scheduled at 10:00 a.m. on Wednesday,

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

October 7, with education sessions Wednesday afternoon through noon Friday. The League's Annual Business Meeting and General Assembly will be held virtually at 11:00 a.m. on Friday, October 9. The delegates in attendance at the General Assembly will be asked to vote on resolution(s) submitted from members and developed for the Assembly's consideration. If adopted, then the resolutions are used to set League policy or to provide direction for the League's work efforts in the coming year. This year one resolution is being offered for membership consideration; the details of the proposed resolution are provided in provided in Attachment 2.

In order to vote at the League of California Cities 2020 Annual Conference Business Meeting, the City Council must select a voting delegate. In the event the designated voting delegate is unable to serve in this capacity, the City Council may appoint up to two alternate voting delegates. The voting delegate must be registered to attend the conference; however, they may register for Friday only. Currently, Mayor Headding and Council Member Heller are registered to attend the League of California Cities Annual Conference.

Resolution No. 1

A RESOLUTION OF THE GENERAL ASSEMBLY OF THE LEAGUE OF CALIFORNIA CITIES CALLING FOR AN AMENDMENT OF SECTION 230 OF THE COMMUNICATIONS DECENCY ACT OF 1996 TO REQUIRE SOCIAL MEDIA COMPANIES TO REMOVE MATERIALS WHICH PROMOTE CRIMINAL ACTIVITIES

Source: City of Cerritos

Referred to: Governance, Transparency and Labor Relations and Public Safety Policy Committees

Summary: This Resolution states that the League of California Cities should urge Congress to amend Section 230 of the federal Communications Decency Act of 1996 (CDA) to limit the immunity provided to online platforms where their forums enable criminal activity to be promoted.

Ultimately, the policy objectives proposed under this resolution, if enacted, would incentivize social media companies to establish and implement a reasonable program to identify and remove content that solicits criminal activity.

CONCLUSION

Staff recommends the City Council select Mayor Headding, as the voting delegate, and Council Member Heller, as the alternate voting delegate, for the upcoming annual business meeting to be held at the League of California Cities Annual Conference and authorize the voting delegates to approve the proposed resolution.

ATTACHMENTS

1. Informational materials from the League of California Cities regarding designation of voting delegate and alternate(s).
2. 2020 Annual Conference Resolutions

JUL 07 2020

Administration

Council Action Advised by August 31, 2020

June 30, 2020

TO: Mayors, City Managers and City Clerks**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference & Expo – October 7 – 9, 2020**

The League's 2020 Annual Conference & Expo is scheduled for October 7 – 9. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly) on Friday, October 9. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to the League's office no later than Wednesday, September 30. This will allow us time to establish voting delegate/alternate records prior to the conference.

Please note the following procedures are intended to ensure the integrity of the voting process at the Annual Business Meeting. These procedures assume that the conference will be held in-person at the Long Beach Convention Center as planned. Should COVID-19 conditions and restrictions prohibit the League from holding an in-person conference, new procedures will be provided.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. Conference registration will open by the end of July at www.cacities.org. In order to cast a vote, at least one voter must be present at the Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the

special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Long Beach Convention Center, will be open at the following times: Wednesday, October 7, 8:00 a.m. – 6:00 p.m.; Thursday, October 8, 7:00 a.m. – 4:00 p.m.; and Friday, October 9, 7:30 a.m.–11:30 a.m.. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League's office by Wednesday, September 30. If you have questions, please call Darla Yacub at (916) 658-8254.

Attachments:

- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form



CITY: _____

2020 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM

Please complete this form and return it to the League office by Wednesday, September 30, 2020. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

In order to vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.

OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: _____

Email: _____

Mayor or City Clerk _____

Date _____ Phone _____

(circle one) (signature)

Please complete and return by Wednesday, September 30, 2020

League of California Cities
ATTN: Darla Yacub
1400 K Street, 4th Floor
Sacramento, CA 95814

FAX: (916) 658-8240
E-mail: dyacub@cacities.org
(916) 658-8254



Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



*Annual Conference
Resolutions Packet*

2020 Annual Conference Resolutions



October 7 – 9, 2020

INFORMATION AND PROCEDURES

RESOLUTIONS CONTAINED IN THIS PACKET: The League bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, one resolution has been introduced for consideration at the Annual Conference and referred to League policy committees.

POLICY COMMITTEES: Two policy committees will meet virtually at the Annual Conference to consider and take action on the resolution referred to them. The committees are: Governance, Transparency & Labor Relations and Public Safety. These committees will meet virtually on Tuesday, September 29, with the Governance, Transparency and Labor Relations Policy Committee meeting from 9:30 – 11:30 a.m. and the Public Safety Policy Committee meeting from 1:00 – 3:00 p.m. The sponsor of the resolution has been notified of the time and location of the meeting.

GENERAL RESOLUTIONS COMMITTEE: This committee will meet virtually at 1:00 p.m. on Thursday, October 8, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of the League's regional divisions, functional departments and standing policy committees, as well as other individuals appointed by the League president.

GENERAL ASSEMBLY: This meeting will be held virtually at 11:00 a.m. on Friday, October 9.

PETITIONED RESOLUTIONS: For those issues that develop after the normal 60-day deadline, a resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Annual Business Meeting of the General Assembly. This year, that deadline is 12:30 p.m., Thursday, October 8.

Any questions concerning the resolutions procedures may be directed to Meg Desmond at the League office: mdesmond@cacities.org or (916) 658-8224

GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS

Policy development is a vital and ongoing process within the League. The principal means for deciding policy on the important issues facing cities is through the League's seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop League policy. Resolutions should adhere to the following criteria.

Guidelines for Annual Conference Resolutions

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing League policy.
4. The resolution should be directed at achieving one of the following objectives:
 - (a) Focus public or media attention on an issue of major importance to cities.
 - (b) Establish a new direction for League policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.
 - (c) Consider important issues not adequately addressed by the policy committees and board of directors.
 - (d) Amend the League bylaws (requires 2/3 vote at General Assembly).

KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned.

Number	Key Word Index	Reviewing Body Action		
		1	2	3

1 - Policy Committee Recommendation to General Resolutions Committee
 2 - General Resolutions Committee
 3 - General Assembly

GOVERNANCE, TRANSPARENCY & LABOR RELATIONS POLICY COMMITTEE

		1	2	3
1	Amendment to Section 230 of The Communications Decency Act of 1996			

PUBLIC SAFETY POLICY COMMITTEE

		1	2	3
1	Amendment to Section 230 of The Communications Decency Act of 1996			

KEY TO ACTIONS TAKEN ON RESOLUTIONS (Continued)

Resolutions have been grouped by policy committees to which they have been assigned.

KEY TO REVIEWING BODIES

- 1. Policy Committee
- 2. General Resolutions Committee
- 3. General Assembly

KEY TO ACTIONS TAKEN

- A Approve
- D Disapprove
- N No Action
- R Refer to appropriate policy committee for study

ACTION FOOTNOTES

- * Subject matter covered in another resolution
- ** Existing League policy
- *** Local authority presently exists

- a Amend+
- Aa Approve as amended+
- Aaa Approve with additional amendment(s)+
- Ra Refer as amended to appropriate policy committee for study+
- Raa Additional amendments and refer+
- Da Amend (for clarity or brevity) and Disapprove+
- Na Amend (for clarity or brevity) and take No Action+
- W Withdrawn by Sponsor

Procedural Note:

The League of California Cities resolution process at the Annual Conference is guided by the League Bylaws. A helpful explanation of this process can be found on the League’s website by clicking on this link: [Resolution Process](#).

1. A RESOLUTION OF THE GENERAL ASSEMBLY OF THE LEAGUE OF CALIFORNIA CITIES CALLING FOR AN AMENDMENT OF SECTION 230 OF THE COMMUNICATIONS DECENCY ACT OF 1996 TO REQUIRE SOCIAL MEDIA COMPANIES TO REMOVE MATERIALS WHICH PROMOTE CRIMINAL ACTIVITIES

Source: City of Cerritos

Concurrence of five or more cities/city officials

Cities: City of Hawaiian Gardens, City of Lakewood, City of Ontario, City of Rancho Cucamonga, City of Roseville

Referred to: Governance, Transparency and Labor Relations and Public Safety Policy Committees

WHEREAS, local law enforcement agencies seek to protect their communities' residents, businesses, and property owners from crime; and

WHEREAS, increasingly, criminals use social media platforms to post notices of places, dates and times for their followers to meet to commit crimes; and

WHEREAS, Section 230 of the Communications Decency Act of 1996 currently provides online platforms (including social media platforms) immunity from civil liability based on third-party content and for the removal of content; and

WHEREAS, in the 25 years since Section 230's enactment, online platforms no longer function simply as forums for the posting of third-party content but rather use sophisticated algorithms to promote content and to connect users; and

WHEREAS, the United States Department of Justice, in its June 2020 report, "Section 230 — Nurturing Innovation or Fostering Unaccountability?," concluded the expansive interpretation courts have given Section 230 has left online platforms immune from a wide array of illicit activity on their services, with little transparency or accountability, noting it "makes little sense" to immunize from civil liability an online platform that purposefully facilitates or solicits third-party content or activity that violates federal criminal law; and

WHEREAS, current court precedent interpreting Section 230 also precludes state and local jurisdictions from enforcing criminal laws against such online platforms that, while not actually performing unlawful activities, facilitate them; and

WHEREAS, amendment of Section 230 is necessary to clarify that online platforms are not immune from civil liability for promoting criminal activities; and

NOW, THEREFORE, BE IT RESOLVED at the League General Assembly, assembled at the League Annual Conference on October 9, 2020 in Long Beach, California, that the League calls upon the U.S. Congress to amend Section 230 of the Communications Decency Act of 1996 to condition immunity from civil liability on the following:

1. Online platforms must establish and implement a reasonable program to identify and take down content which solicits criminal activity; and
2. Online platforms must provide to law enforcement information which will assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity; and
3. An online platform that willfully or negligently fails in either of these duties is not immune from enforcement of state and local laws which impose criminal or civil liability for such failure.

Background Information to Resolution

Source: City of Cerritos

Background:

Social media platforms are now used as a primary means of communication, including by criminals who use them to advertise locations, dates, and times where the criminal acts will take place. Such communications, because they occur online, render the online platform immune from any civil liability for the costs incurred by law enforcement agencies that respond under Section 230 of the Communications Decency Act of 1996. Immunity from civil liability extends even to injunctive relief, thus preventing local governments from merely seeking an injunction against the online platform to have such a post removed.

The City of Cerritos supports the rights of free speech and assembly guaranteed under the First Amendment, but believes cities should have the ability to hold social media companies liable for their role in promoting criminal acts. Recently, the City suffered thousands of dollars in damages to respond to online threats that the Cerritos Mall would be looted. Anonymous posts on Instagram.com invited followers to “work together to loot Cerritos [M]all” only several days after the Lakewood Mall had been looted, causing thousands of dollars in damages. The posts were made under the names “cerritosmalllooting” and “cantstopusall,” among others. The City of Cerritos had no choice but to initiate response to protect the Mall and the public from this credible threat.

At the same time local governments face historic shortfalls owing to the economic effects of COVID-19, the nation’s social media platforms are seeing a record rise in profits. The broad immunity provided by Section 230 is completely untenable. Online platforms should be held responsible—and liable—for the direct harm they facilitate. Local governments are in no position to bear the costs of the crimes facilitated by these companies alone.

Congress is currently reviewing antitrust legislation and by extension, Section 230’s immunity provisions. The League urges Congress to amend Section 230 to limit the immunity provided to online platforms when they promote criminal activity to provide local governments some measurable form of relief.

League of California Cities Staff Analysis on Resolution No. 1

Staff: Charles Harvey, Legislative Representative
Bijan Mehryar, Legislative Representative
Caroline Cirrincione, Policy Analyst
Johnnie Piña, Policy Analyst

Committees: Governance, Transparency and Labor Relations
Public Safety

Summary:

This resolution states that the League of California Cities should urge Congress to amend Section 230 of the federal Communications Decency Act of 1996 (CDA) to limit the immunity provided to online platforms where their forums enable criminal activity to be promoted.

Ultimately, the policy objectives proposed under this resolution, if enacted, would incentivize social media companies to establish and implement a reasonable program to identify and remove content that solicits criminal activity.

Background:

The City of Cerritos is sponsoring this resolution in reaction to events whereby persons, using social media platforms to coordinate locations, dates, and times for their planned criminal activity, have committed acts of looting and vandalism resulting in both actual economic harm for targeted businesses, and pecuniary loss to cities who used resources to prevent such acts from occurring when such plans are discovered.

For example, just days after the Lakewood Mall had been looted, the City of Cerritos uncovered online communications via social media that persons were planning to target the nearby Cerritos Mall. Consequently, the city felt compelled to undertake measures to protect the Cerritos Mall, costing the city thousands of dollars to guard against what officials believed to be a credible threat.

Staff Comments:

Overview:

While there is certainly an argument to substantiate concerns around censorship, the use of social media as a tool for organizing violence is equally disturbing.

Throughout much of the 2020 Summer, there have been many reports of looting happening across the country during what were otherwise mostly peaceful demonstrations. Combined with the speculation of who is really behind the looting and why, the mayhem has usurped the message of peaceful protestors, causing a great deal of property damage in the process. Likewise, these criminal actions have upended the livelihood of some small business owners, many of whom were already reeling in the wake of the COVID-19 pandemic.

While social media allows people to connect in real time with others all over the world, organized illegal activity using social media is made easier by the anonymous nature of virtual interactions.

Nation's Reaction to the Murder of George Floyd:

Shortly after the senseless killing of George Floyd by law enforcement on May 26, 2020, civil unrest began as local protests in the Minneapolis–Saint Paul metropolitan area of Minnesota before quickly spreading nationwide to more than 2,000 cities and towns across the United States, and in approximately 60 countries in support of the Black Lives Matter movement. Protests unfolded across the country throughout the entire month of June and into July, and persisted in a handful of cities such as Portland and Seattle into the month of August.

Although the majority of protests were peaceful, some demonstrations in cities escalated into riots, looting, and street skirmishes with police. While much of the nation's focus has been on addressing police misconduct, police brutality, and systemic racism, some have used demonstrators' peaceful protests on these topics as opportunities to loot and/or vandalize businesses, almost exclusively under the guise of the "Black Lives Matter" movement. It has been uncovered that these "flash robs"¹ were coordinated through the use of social media. The spontaneity and speed of the attacks enabled by social media make it challenging for the police to stop these criminal events as they are occurring, let alone prevent them from commencing altogether.

As these events started occurring across the country, investigators quickly began combing through Facebook, Twitter, and Instagram seeking to identify potentially violent extremists, looters, and vandals and finding ways to charge them after — and in some cases before — they sow chaos. While this technique has alarmed civil liberties advocates, who argue the strategy could negatively impact online speech, law enforcement officials claim it aligns with investigation strategies employed in the past.

Section 230 and other Constitutional Concerns

At its core, Section 230(c)(1) of the CDA provides immunity from liability for providers and users of an "interactive computer service" who publish information provided by third-party users. Essentially, this protects websites from lawsuits if a user posts something illegal, although there are exceptions for copyright violations, sex work-related material, and violations of federal criminal law.

Protections from Section 230 have come under more recent scrutiny on issues related to hate speech and ideological biases in relation to the influence technology companies can hold on political discussions.

Setting aside Section 230, there are some potential constitutional issues one could raise, should there be an attempt to implement such a resolution into statute.

¹ The "flash robs" phenomenon—where social media is used to organize groups of teens and young adults to quickly ransack and loot various retail stores—began to occur sporadically throughout the United States over the past ten years.

In the United States, the First Amendment prohibits the government from restricting most forms of speech, which would include many proposals to force tech companies to moderate content. While “illegal” types of speech enjoy limited or no First Amendment protection, the line for delineating between “legal” and “illegal” speech is very difficult to determine. Consequently, one would expect online platforms to push back on whether there is a constitutionally feasible way for them to “identify” protected speech versus unprotected speech, or whether there is a feasible way to define “content which solicits criminal activity.” A law requiring companies to moderate content based on the political viewpoint it expresses, for example, would likely be struck down as unconstitutional.

Nonetheless, private companies can create rules to restrict speech if they so choose. Online platforms sometimes argue they have constitutionally-protected First Amendment rights in their “editorial activity,” and therefore, it violates their constitutional rights to require them to monitor (i.e., “identify and take down”) content that may be protected under the First Amendment. They may also argue, along the same lines, that the government may not condition the granting of a privilege (i.e., immunity) on doing things that amount to a violation of their first amendment rights. This is why Facebook and Twitter ban hate speech and other verifiably false information, for example, even though such speech is permitted under the First Amendment.

With respect to privacy and the Fourth Amendment, online platforms may argue that requiring them to “provide to law enforcement information that will assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity,” turns them into government actors that search users’ accounts without a warrant based on probable cause, in violation of the Fourth Amendment.

Industry Perspective

Unsurprisingly, industry stakeholders have strong opinions for what such changes could mean for their respective business models.

For instance, a Facebook spokesperson recently noted in a Fortune article that, “By exposing companies to potential liability for everything that billions of people around the world say, this would penalize companies that choose to allow controversial speech and encourage platforms to censor anything that might offend anyone.”

The article acknowledges that in recent years, both political parties have put social media companies under increased scrutiny, but they are not unified in their stated concerns. While Republicans accuse the companies of unfairly censoring their post, Democrats complain that these companies fail to do enough to block misinformation, violent content, and hate speech.

The article concludes that there is no way companies like Facebook and Twitter could operate without Section 230, and that the removal of this section would thereby “eliminate social media as we know it.”

Recent Federal Action on Social Media

The President recently issued an *Executive Order on Preventing Online Censorship*. In it, he notes the following:

“The growth of online platforms in recent years raises important questions about applying the ideals of the First Amendment to modern communications technology. Today, many Americans follow the news, stay in touch with friends and family, and share their views on current events through social media and other online platforms. As a result, these platforms function in many ways as a 21st century equivalent of the public square.

Twitter, Facebook, Instagram, and YouTube wield immense, if not unprecedented, power to shape the interpretation of public events; to censor, delete, or disappear information; and to control what people see or do not see.”

Ultimately the President implores the U.S. Attorney General to develop a proposal for federal legislation that “would be useful to promote the policy objectives of this order.” The President is not subtle in communicating his desire to ultimately see legislation heavily slanted toward the preservation of free speech on social media, which some interpret as a maneuver to preempt Twitter and Facebook from regulating speech they otherwise deem as hateful or demonstrably false.

Considerations for Congress

Courts have generally construed Section 230 to grant internet service providers broad immunity for hosting others’ content. Many have claimed that Section 230’s immunity provisions were critical to the development of the modern internet, and some continue to defend Section 230’s broad scope. But simultaneously, a variety of commentators and legislators have questioned whether those immunity provisions should now be narrowed, given that the internet looks much different today than it did in 1996 when Section 230 was first enacted.

One way for Congress to narrow Section 230’s liability shield would be to create additional exceptions, as it did with FOSTA and SESTA². If a lawsuit does not fall into one of the express exceptions contained in Section 230(e)³, courts may have to engage in a highly fact-specific inquiry to determine whether Section 230 immunity applies: Section 230(c)(1) immunity will be inapplicable if the provider itself has developed or helped to develop the disputed content, while Section 230(c)(2) immunity may not apply if a service provider’s decision to restrict access to content was not made in good faith.

Date Storage and Usage Considerations for Cities

Section 2 of the conditions the resolution applies to civil immunity requires that online platforms provide relevant information to law enforcement to assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity. This section would most likely require the development of new procedures and protocols that govern law enforcements usage and retention of such information. Those new policies and procedures would undoubtedly raise privacy concerns depending on how wide the latitude is for law

² The Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA) create an exception to Section 230 that means website publishers *would* be responsible if third parties are found to be posting ads for prostitution — including consensual sex work — on their platforms.

³ Section 230(e) says that Section 230 will not apply to: (1) federal criminal laws; (2) intellectual property laws; (3) any state law that is “consistent with” Section 230; (4) the Electronic Communications Privacy Act of 1986; and (5) civil actions or state prosecutions where the underlying conduct violates federal law prohibiting sex trafficking.

enforcement to request such information. In those circumstances cities could end up themselves incurring new liability for the governance of data that could either violate certain privacy rules or increase their data governance costs.

Fiscal Impact:

Unlike the costly resources needed to support or oppose a ballot measure, a federal resolution from the League of California Cities that simply urges Congress to undertake certain action should have a negligible fiscal impact, if any monetary impact at all.

Regarding cities, if social media had no immunity for its failure to police content that solicits criminal activity, then an individual city could theoretically save thousands if not millions of dollars, depending on its size and other subjective circumstances. Collectively, cities across the country could potentially save at least hundreds of millions between redress for actual economic harm suffered and/or the cost of preventative measures taken to stop criminal activity from occurring in the first place.

Conversely, if social media platforms were to shut down, due to an inability to comply with a policy requirement to regulate speech on the internet, it is unclear on how cities might be impacted from a fiscal standpoint.

Existing League Policy:

Public Safety:

Law Enforcement

The League supports the promotion of public safety through:

- Stiffer penalties for violent offenders, and
- Protecting state Citizens' Option for Public Safety (COPS) and federal Community Oriented Police Services (COPS) funding and advocating for additional funding for local agencies to recoup the costs of crime and increase community safety.

Violence

The League supports the reduction of violence through strategies that address gang violence, domestic violence, and youth access to tools of violence, including but not limited to firearms, knives, etc.

The League supports the use of local, state, and federal collaborative prevention and intervention methods to reduce youth and gang violence.

Governance, Transparency & Labor Relations:

Private Sector Liability

The League will work closely with private sector representatives to evaluate the potential for League support of civil justice reform measures designed to improve the business climate in California. These measures should be evaluated on a case-by-case basis through the League police process.

Questions to Consider:

Many cities obviously believe that creating civil liability for social media platforms—due to their role in providing the communication mediums for those who organize looting attacks— is key to deterring this organized criminal activity.

If such a change was actually passed by Congress, it would force social media to essentially police every conversation on stakeholders’ respective platforms, putting immense pressure on the industry to make subjective determinations about what conversations are appropriate and what are unacceptable.

At the end of the day, there are a few questions to consider in assessing this proposed resolution:

- 1) *What would this resolution’s impact be on free speech and government censorship?*
- 2) *What are the expectations for cities when they receive information from a social media platform about a potentially credible threat in their respective communities? Does a city become liable for having information from a social media platform and the threat occurs?*
- 3) *What would the costs be to develop and maintain new data governance policies, including data infrastructure, to store this information?*
- 4) *What is the role of the League in engaging in issues relating to someone’s privacy?*

Support:

The following letters of concurrence were received:

City of Hawaiian Gardens
City of Lakewood
City of Ontario
City of Rancho Cucamonga
City of Roseville

LETTERS OF CONCURRENCE

Resolution No. 1

Amendment to Section 230 of the Communications
Decency Act of 1996



CITY OF HAWAIIAN GARDENS

"Our Youth - Our Future"

August 7, 2020

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

This proposed resolution with the required background information will be submitted to the League of California Cities for consideration by the General Assembly at the Annual Conference on October 9, 2020. (Attachments 1 and 2) The intent of the resolution is to address the use of social medial platforms for posting information that leads followers to meet and commit crimes and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

The public safety efforts in the City of Hawaiian Gardens would certainly benefit from such legislation. This letter serves to support the City of Cerritos in their efforts to submit of the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

Ernie Hernandez
City Manager

cc Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
Meg Desmond, League of California Cities - mdesmond@cacities.org
Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
Kathy Matsumoto, Assistant City Manager, City of Cerritos - kmatsumoto@cerritos.us

Jeff Wood
Vice Mayor

Steve Craft
Council Member



Todd Rogers
Mayor

Ariel Pe
Council Member

Diane DuBois
Council Member

August 5, 2020

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

This proposed resolution, with the required background information, will be submitted to the League of California Cities for consideration by the General Assembly at the Annual Conference on October 9, 2020. (Attachments 1 and 2) The intent of the resolution is to address the use of social medial platforms for posting information that leads followers to meet and commit crimes and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

This letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

Todd Rogers
Mayor

cc: Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
Meg Desmond, League of California Cities - mdesmond@cacities.org
Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
Kathy Matsumoto, Assistant City Manager, City of Cerritos - kmatsumoto@cerritos.us

Lakewood



PAUL S. LEON
MAYOR

SCOTT OCHOA
CITY MANAGER

DEBRA DORST-PORADA
MAYOR PRO TEM

August 6, 2020

SHEILA MAUTZ
CITY CLERK

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

JAMES R. MILHISER
TREASURER

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

This proposed resolution with the required background information will be submitted to the League of California Cities for consideration by the General Assembly at the Annual Conference on October 9, 2020. (Attachments 1 and 2) The intent of the resolution is to address the use of social medial platforms for posting information that leads followers to meet and commit crimes and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

This letter serves to support the City of Cerritos in their efforts to submit the above-mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

Alan D. Wapner
Council Member
League of California Cities Board Member

- c: Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
- Meg Desmond, League of California Cities - mdesmond@cacities.org
- Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
- Kathy Matsumoto, Assistant City Manager, City of Cerritos – kmatsumoto@cerritos.us



CITY OF RANCHO CUCAMONGA

10500 Civic Center Drive | Rancho Cucamonga, CA 91730 | 909.477.2700 | www.CityofRC.us

August 6, 2020

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

This proposed resolution with the required background information will be submitted to the League of California Cities for consideration by the General Assembly at the Annual Conference on October 9, 2020. (Attachments 1 and 2) The intent of the resolution is to address the use of social medial platforms for posting information that leads followers to meet and commit crimes and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

On behalf of the City of Rancho Cucamonga, this letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

L. Dennis Michael
Mayor

cc: Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
Meg Desmond, League of California Cities - mdesmond@cacities.org
Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
Kathy Matsumoto, Assistant City Manager, City of Cerritos - kmatsumoto@cerritos.us



City Council
311 Vernon Street
Roseville, California 95678

August 7, 2020

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

This proposed resolution with the required background information will be submitted to the League of California Cities for consideration by the General Assembly at the Annual Conference on October 9, 2020. (Attachments 1 and 2) The intent of the resolution is to address the use of social media platforms for posting information that leads followers to meet and commit crimes and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

On behalf of the City of Roseville, this letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

A handwritten signature in blue ink, appearing to read "John B. Allard II", is written over a horizontal line.

John B. Allard II,
Mayor

Cc: Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
Meg Desmond, League of California Cities - mdesmond@cacities.org
Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
Kathy Matsumoto, Assistant City Manager, City of Cerritos - kmatsumoto@cerritos.us
Jason Gonsalves, Joe A. Gonsalves and Son



AGENDA NO: A-4

MEETING DATE: September 8, 2020

Staff Report

TO: Honorable Mayor and City Council

DATE: September 1, 2020

FROM: Chris F. Neumeyer, City Attorney

SUBJECT: Adoption of Ordinance No. 638 to amend section 8.20.030 of the Morro Bay Municipal Code to Increase Penalties for Unauthorized RV and Vehicle Camping within the City of Morro Bay

RECOMMENDATION

Staff recommends Council consider adopting, by second reading and by title only with further reading waived, Ordinance No. 638 entitled "An Ordinance of the City Council of the City of Morro Bay, California, amending section 8.20.030 of the Morro Bay Municipal Code to Increase Penalties for Unauthorized RV and Vehicle Camping within the City of Morro Bay."

ALTERNATIVES

No alternatives are being recommended.

FISCAL IMPACT

Enforcement of the proposed amendment should not entail increased costs to the City in so far as citations already are being issued and the proposed amendment simply increases penalties for the underlying violation. The proposed amendment of the municipal code reasonably should over time lead to a decrease in the need for City services addressing unlawful and RV vehicle camping.

BACKGROUND/DISCUSSION

Ordinance No. 638 was introduced for a first reading at the August 25, 2020 Council meeting. Additional information related to Ordinance No. 638 can be found in the August 25, 2020 Council staff report item C-1: <https://www.morro-bay.ca.us/ArchiveCenter/ViewFile/Item/5416>

1. Current Law and Enforcement Issues

Chapter 8.24 (Camping) of the Morro Bay Municipal Code ("MBMC") prohibits - between 10 pm and 6am - both the use of campers, house cars, etc., as well as sleeping in cars (unless in an authorized area). Violation of this prohibition on so-called "vehicular camping" is punishable under MBMC section 8.24.030 and Chapter 1.03 as either an infraction or by fines no greater than \$100 for the first offense. The current penalty for a first offense under Chapter 8.24 of the MBMC is set at \$62. Citation for a first violation must be preceded by a twenty-hour warning period allowing for a "correction" of the violation.

Prepared By: HG/CFN Dept Review:

City Manager Review: City Attorney Review: CFN

The growing popularity of vehicular camping in undesignated areas, coupled with current City law which levies relatively small fines when enforcement is dispensed, is perceived to have created an understanding among the vehicular camping community that Morro Bay is limited in its ability to enforce local laws against illegal vehicular camping. Essentially an unlawful vehicular camper can set up in an illegal camping area, camp for a 48-hour period, and only pay \$62, because local law at present requires first a warning be issued, does not allow additional enforcement within a 24-hour period, and the current fine when a first citation is issued is \$62 (and can only be increased up to \$100 under current law).

2. Proposed Amendment to Current Law

A. State Law Background

State law prohibits administrative fines for an infraction violation from being more than \$100 for a first violation. (Govt. Code §§ 53069.4(a)(1), 36900(b).) There is no similar statutory limitation on administrative fines for an underlying misdemeanor violation. Administrative fines for violations pertaining to “building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety” require at least a 24 hour warning period to allow for correction of the violation before a citation for a first violation is issued. Unlawful “vehicular camping” does not meet this criteria for a 24 hour warning period.

B. Proposed Increased Penalties

The proposed ordinance provides for a stricter penalty for unlawful “vehicular camping” by changing the violation from an infraction to a misdemeanor, setting the penalty for a first violation at \$250, a second violation at \$500 and a third violation (and each violation thereafter) at \$1000, for the 12 months after the first violation, and dispensing with the otherwise applicable local requirement for a 24 hour “warning” before issuance of a fine for the first violation.

CONCLUSION

Staff recommends that the City Council consider adopting Ordinance No. 638 by second reading and by title only, with further reading waived.

ATTACHMENT

1. Ordinance No. 638

ORDINANCE NO. 638

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AMENDING SECTION 8.20.030 OF THE MORRO BAY MUNICIPAL CODE TO
INCREASE PENALTIES FOR UNAUTHORIZED RV AND VEHICLE CAMPING
WITHIN THE CITY OF MORRO BAY**

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

WHEREAS, with the current COVID-19 pandemic, coupled with increased popularity of traveling via recreational vehicles and trailers, the City has experienced an increase of travelers, camping through their recreational vehicles or other vehicles (“vehicular camping”), unable or unwilling to camp in designated areas; and

WHEREAS, the Morro Bay Police Department reports that officers will on average contact over fifty unlawful vehicular campers during a weekend night shift; and

WHEREAS, vehicular camping outside of prepared and designated areas create immediate hazardous conditions for the environment with unlawful disposal of human waste, trash, fuel spills, and vehicle exhaust; and

WHEREAS, the large numbers of vehicular campers who are camping in undesignated areas are causing visual blight to the natural beauty of Morro Bay, as well as generating a deleterious, unwarranted and negative environmental impact; and

WHEREAS, unlawful vehicular campers increase law enforcement and fire response to emergency calls for service; and

WHEREAS, the City’s Harbor Department and Public Works Department are impacted by unlawful vehicular campers with increased responses to environmental impacts such as damage to roadways, parking areas, wildlife, and damage to City property; and

WHEREAS, the concomitant financial cost of these additional services created by illegal vehicular campers is an unwarranted burden on the City and its taxpayers; and

WHEREAS, Morro Bay community members have voiced concern and displeasure with the large number of vehicular campers who are camping in undesignated areas; and

WHEREAS, local Morro Bay law presently renders illegal vehicular camping punishable as either an infraction, or through administrative fines starting at a maximum of \$100 for the first violation (presently set at \$62), and the first administrative fine must be preceded by a twenty-four hour warning; and

WHEREAS, the growing popularity of vehicular camping in undesignated areas, coupled with current City law which levies relatively small fines when enforcement is dispensed, is perceived to have created an understanding among the vehicular camping community that Morro Bay is limited in its ability to enforce local laws against illegal vehicular camping, as local law at present requires first a warning be issued, does not allow additional enforcement within a 24-hour period, and the current fine when a citation is issued is \$62, meaning essentially an unlawful

01181.0001/664570.1 CFN

vehicular camper can set up in an illegal camping area, camp for a 48-hour period, and only pay \$62; and

WHEREAS, Government Code section 53069.4(a)(2)(A) provides that a warning period for the levying of administrative fines is required in circumstances “when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety,” and such circumstances are not present as concerns unlawful vehicular camping as detailed herein; and

WHEREAS, Govt Code sections 53069.4(a)(1) and 36900(b)(1) provide that if violation of local ordinance would otherwise be an infraction, the administrative fine or penalty for a first violation shall not exceed \$100, yet similar restrictions do not apply to misdemeanors; and

WHEREAS, the City Council deems it necessary to adopt an ordinance to: 1) increase the administrative fines levied for violation of the City prohibition on unlawful vehicular camping; 2) render such administrative fines able to be levied without a twenty-four hour “warning” period; and, 3) provide that violation of the City prohibition on unlawful vehicular camping, if criminally cited, is a misdemeanor; and

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

SECTION 1. RECITALS. The City Council hereby finds that the recitals set forth above are all true and correct and are incorporated herein by this reference.

SECTION 2. CODE AMENDMENT. Section 8.24.030 of the Morro Bay Municipal Code is hereby amended to read as follows (new text in ***bold italics***):

“8.24.030 - Violations and penalties.

- A.** Any person who is convicted of violation of any provision of this chapter is guilty of an infraction punishable as provided in Chapter 1.16 of this code, ***with the exception of any person who is convicted of violation of Section 8.24.010(A), or Section 8.24.010(C) in regards to a “tent trailer, the living quarters of any camper, house car, bus, camp trailer, utility trailer or trailer coach,” is guilty of a misdemeanor punishable as provided in Chapter 1.16 of this code. For purposes of this chapter, a “camper” or “house car” shall also expressly refer to a “recreational vehicle.”***
- B.** ***When any violation of this chapter punishable as a misdemeanor is enforced through the administrative citation program provided for in Chapter 1.03 of this code, such enforcement (notwithstanding any contrary provision in Chapter 1.03 of this code):***
- 1. does not require a warning as a prerequisite to the issuance of a first administrative citation; and***
 - 2. shall, unless otherwise set forth in a schedule of fines established by resolution of the city council, have the amounts of the fines levied as follows:***
 - i. two hundred fifty dollars (\$250) for a first violation;***
 - ii. five hundred dollars (\$500) for a second violation within the***

01181.0001/664570.1 CFN

- consecutive 12-month period after the date of the first violation; and*
- iii. one thousand dollars (\$1000) for each additional violation within the consecutive 12-month period after the date of the first violation.”*

SECTION 3. CONFLICT. If the provisions in this ordinance conflict in whole or in part with any other City regulation or ordinance adopted prior to the effective date of this section, the provisions in this ordinance will control.

SECTION 4. 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 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 as to the passage and adoption of this ordinance, and the City Clerk 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 25th day of August 2020, by motion of Council Member McPherson and seconded by Council Member Davis.

PASSED AND ADOPTED on the ____ day of _____, 2020, by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, CITY CLERK FOR THE CITY OF MORRO BAY, HEREBY CERTIFY the foregoing Ordinance Number 638 was duly adopted by the City Council of the City Council of the City Morro Bay at a regularly meeting of said Council on the 9th day of September, 2020 and that it was so adopted on by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this _____ day of _____, 2020.

DANA SWANSON, City Clerk



AGENDA NO: C-1

MEETING DATE: September 8, 2020

Staff Report

TO: Honorable Mayor and City Council

DATE: September 3, 2020

FROM: Scott Collins, City Manager

SUBJECT: Tourism Stakeholder Group Report and Recommendations Regarding Direction and Management of the Tourism Marketing Function in Morro Bay

RECOMMENDATION

Staff recommends the Council adopt recommendations from the Tourism Stakeholder Group and the Tourism Business Improvement District (TBID) Advisory Board and provide direction to staff as appropriate.

ALTERNATIVES

No alternative recommended.

FISCAL IMPACT

It is anticipated that transitioning the Tourism function to a non-profit board management structure and the 1994 law will cost approximately \$50,000 - \$75,000. It is recommended by the TBID Board and City staff that these costs be covered by the TBID assessment revenue (not General Fund) as these efforts are meant to support tourism marketing efforts.

BACKGROUND/DISCUSSION

City staff, with support from the TBID Advisory Board and City Council, formed a stakeholder group, known as the Morro Bay Tourism Stakeholder Group (group) to discuss the future of tourism and tourism marketing in Morro Bay in the wake of the COVID-19 pandemic. The City has not resumed normal marketing efforts as we continue to deal with surging cases of COVID in the state and region. This pause in activity provides a rare opportunity to review how things are going, what steps should be taken next, and plot a course in terms of marketing in the future. Typically, organizations are running at full speed and lack sufficient time to think about how things are going and where improvements can be made in management, organizational structure and vision.

The group—consisting of three TBID Board Members, local hoteliers, short-term vacation rental owners/operators, restaurateur, City staff, and regional partners—met five times over the course of June and July to think critically and strategically together about how to ensure Morro Bay’s tourism marketing success moving forward. Kathleen Marcove with Marcove Executive Training facilitated the group’s discussions and drafted the report (Attachment 1). The group reviewed material, heard from experts on best practices and, through consideration of these materials and robust discussion, formulated three key recommendations for the TBID Board and City Council’s consideration.

Prepared By: SC

Dept Review: _____

City Manager Review: SC

City Attorney Review: CFN

Group Recommendations and Action Items:

- 1) Support tourism stakeholders to initiate the process to move from the Parking and Business Improvement Area Law of 1989 ("89 law") (Str & Hwy Code § 36500 *et seq.*) to the Parking and Business Improvement District Law of 1994 ("94 law") (Str & Hwy Code § 36600 *et seq.*).

TBID currently operates under the 89 law. That means every year, the TBID assessment must be reviewed and approved through a public hearing to determine if there is a majority protest (in which case the levy cannot be assessed). It is a time intensive process and, in many respects, creates a smaller window to execute on long-term objectives.

The group felt that moving from a 1-year timeline for the assessment (89 law) to a 5-year window (94 law) creates a longer window to implement strategic objectives. While the 94 law still requires annual review, there is not the need to hold an annual public hearing or protests.

To move this forward, outside assistance would need to be retained to conduct the process and outreach to the lodging industry.

There are also some operational differences between the 89 law and the 94 law. While both authorize the City to levy assessments, the 89 law allows funding if annually there is not a majority protest (i.e., levy authorized if a majority of businesses that pay more than 50% of the assessments do not affirmatively oppose). In contrast, while the 94 law can authorize levies for five years, to be established there essentially must be an affirmative majority support (i.e., more ballot submitted in support than in opposition).

- 2) Convene a transition team of community stakeholders to design a new tourism management model with the City of Morro Bay in a supporting role rather than the leading role.

The City has managed the Tourism marketing function since 2016, with internal staff managing the day to day functions. Prior to that, a non-profit board managed the function and had some oversight by the City.

A new model would shift functions back to a non-profit board who would oversee the day to day functions of the marketing efforts via executive direction and staff. Under a new model, the City Council would continue their oversight of the TBID by reviewing and approving budget and providing other support. According to the group, the goals for a new model is providing greater voice for the lodging industry in decisions, increasing flexibility in a rapidly changing environment, enhancing accountability in the marketing efforts, and increasing collaboration with partners within the community and region.

To move this forward, outside assistance would need to be retained to conduct this process and outreach to the lodging industry. Further assistance is also required to help develop a non-profit board and conduct a recruitment for an executive director.

- 3) Diversify the visitor profile by creating a new identity for Morro Bay, moving it away from a primarily budget destination to one that also attracts a wider spectrum of visitors, in terms of income levels.

Morro Bay is known primarily as an affordable or budget destination for visitors. With that comes lower spending levels at hotels, vacation rentals, restaurants, retail shops, etc. The spin off from that is less money for businesses to invest in their future and properties and less revenue to the City to invest in its services to the community and infrastructure.

Action items include investing in infrastructure (both private and public) and re-envisioning marketing efforts to a wider audience.

TBID Recommendation to City Council

The TBID Board reviewed and discussed the Group's recommendation at the August 20, 2020 TBID Board meeting. The TBID Board recommended by a 5 – 0 vote (one member absent) that the City Council support all three recommendations from the Tourism Stakeholder Group and further recommended TBID funds (non-General Fund) be used to support efforts to transition the tourism management function to a non-profit group and move to the 1994 law. If this direction is supported by City Council, staff recommends that the City maintain a seat on the future non-profit board in order to ensure a strong link and coordination between the City and tourism marketing efforts.

CONCLUSION

It is recommended that the City Council review the full report and survey information and approve the Group's and TBID Board's recommendations.

ATTACHMENTS

1. Morro Bay Tourism Stakeholder Group Summary Report (by Kathleen Marcove)
2. Staff Presentation



**Morro Bay Tourism Stakeholder Group
Summary Report**

Prepared by Kathleen Marcove
For the City of Morro Bay
August 2020

Overview

The sudden onset of stay-at-home orders prompted by the COVID-19 Pandemic had a significant negative impact on the transient occupancy tax collected by the Tourism Business Improvement District (TBID) of Morro Bay. As a result, the Tourism Division, managed by the City of Morro Bay and responsible to use the TBID fund to market Morro Bay as a destination, was unable to resume normal operations. The budget short fall necessitated significant changes in marketing efforts for an undetermined amount of time.

As with many organizations experiencing changes as a result of COVID-19, this is a productive time to convene stakeholders to evaluate what is working well, what may be improved, to consider budget efficiencies, and to think strategically beyond the pandemic.

Kathy Marcove, the President of Marcove Executive Training, under the direction of Scott Collins, the Morro Bay City Manager, convened a group of tourism stakeholders for a series of meeting to discuss the future of tourism marketing for Morro Bay. The purpose of the series of meetings was to formulate solid recommendations to the City Council for future Morro Bay Tourism marketing initiatives. Meetings were expert driven and historical. Participants, then dates and topics of the meetings are as follows:

Name of Participant	Affiliation
Chuck Davison	Visit SLO Cal
David Peter	Restaurateur
Derek Kirk	Visit SLO Cal
Hemant Patel	Lodging Property Owner
Joan Solu	Community Member
Maggie Juren	Lodging Property Owner
Stephen Peck	Chamber of Commerce President
Steven Allen	Lodging Property Owner
Teri Ennis	Lodging Property Owner
Scott Collins	Morro Bay City Manager
Kathy Marcove	Facilitator

Meeting Date	Meeting Theme	Presentations by
June 23 rd , 2020	Introductions and presentation of survey results*	Kathy Marcove
June 30 th , 2020	Destination Management While Ensuring Resident's Quality of Life	Derek Kirk
July 7 th , 2020	Tourism Budget Overview	Scott Collins
July 21 st , 2020	TBID Models Reviewed A Historian Perspective of Tourism Management in Morro Bay	Chuck Davison Joan Solu
July 28 th , 2020	Overview of Meeting Outcomes	Kathy Marcove

*See survey results in Addendum 1

Recommendations

1. **Support tourism stakeholders to initiate the process to move from the 89 TBID law to the 94 TBID law.** It was agreed by this group that the 94 law is more efficient and allows for a more strategic vision since it is only renewed every 5 years.
 - a. This change in governing law needs to be a community led initiative.
 - i. Chuck Davison and Derek Kirk offered guidance and support to the participants in this series of meeting to ensure this process is successful.

2. **Convene a Transition Team of community stakeholders to design a new tourism management model with the City of Morro Bay in a supporting role rather than the leading role.**
 - a. Ultimately the new model will be a collaboration between the lodging community, the City of Morro Bay, and the new leadership of the tourism function.
 - i. Goals for the new model:
 - (1) Provide a direct voice for the payors—the lodging industry.
 - (2) Build a new system that is nimble and flexible so it may respond to a changing environment.
 - (3) Ensure the system makes a difference to stakeholders in Morro Bay: the lodging property owners as well as the restaurateurs, retail establishments, and the overall infrastructure of Morro Bay in benefit of all residents.
 - (4) Build in accountability to the efficient use of funds and the achievement of results in the marketing efforts.

3. **Diversify the visitor profile by creating a new identity for Morro Bay, moving it away from a primarily budget destination to one that attracts a wider spectrum of visitors, in terms of income.**
 - a. This will require infrastructure upgrades and investments on both the part of the city and business owners to include those in the lodging, restaurant, and retail

industries. The vision is to create a more holistic approach to tourism with lodging, restaurants, retail, attractions, and residents creating buy-in and partnership to elevate the destination's image and visitor experience. It will be necessary to engage the entire community to gain public support for infrastructure repair and beautification. An education campaign on the major role tourism plays in making Morro Bay a great place to live may be beneficial to gain support for the public and private investment needed to achieve this vision.

- i. Public investments needed:
 - (1) Allocating funds for infrastructure improvements.
 - (2) Review the City's planning review process for efficiencies, make it easier for hotels to remodel, and ensure that commercial developments are prioritized.
- ii. Private investments needed:
 - (1) Individual business owners understand the benefits of the new identity for Morro Bay and make the investment to their establishment to attract higher value customers.
 - (2) Consider creating separate TBIDs for locations (like waterfront, the Embarcadero, and downtown) or other industries (restaurants as example).
- b. Immediate Marketing Efforts:
 - i. Stop marketing to the day trippers.
 - ii. Welcome visitors from the valley but focus marketing investments on higher value customers from other target areas.
- c. Future Focus of Marketing Efforts:
 - i. Leverage other partner TBIDs and Visit SLO CAL to extend the reach and target a broader spectrum of visitors.

Next Steps

Scott Collins will:

1. Meet with the current group, listed above, to review this report and decide on next steps and assign responsibilities. Primarily this group will convene a transition team of key stakeholders (some from this group and others community leaders) to:
 - Develop a new model
 - Will need professional consulting service to facilitate the transition. Looking at vendor(s) proposal.
 - Begin the process of changing from the 89 TBID law to the 94 TBID law.
 - Visit SLOCAL has offered to provide some guidance throughout the transition process.
 - Will need professional consulting service to facilitate the transition. Looking at vendor(s) proposal.
2. Present the report at the next TBID Board meeting in August.

3. Present recommendations from this group and TBID Board to the Morro Bay City Council.

Addendum

- 1) Group Survey Results

Addendum 1: Survey Results

The following are results from a survey of the members of the Morro Bay Tourism Stakeholders Group prior to the first meeting.

Question 1: Considering past tourism marketing efforts, what three things should the City of Morro Bay KEEP doing?

- Keep marketing events
- Sponsoring events like Avocado Margarita Festival and Harbor Fest
- Supporting local events
- Events funding
- Keep on highlighting Morro Bay name whenever they can like Amgen race
- Keep marketing to the Central Valley
- SOME Advertising in target markets (too much spent on this is my belief)
- Maintain tourism website and distributing hard copy guidebook
- Promoting the uniqueness of Morro Bay
- MorroBay.org
- Mental Marketing contract
- Promoting Morro Bay as a tourism destination via social media, internet, Mental Marketing, etc., especially to drive markets
- Strong online presence
- Promoting the specific unique assets of Morro Bay
- Thinking pro-actively
- TBID Funding model - sustainable source outside the General Fund
- Coordination with Visit SLOCAL
- Promoting off season and shoulder season events that make financial sense
- Leverage your location along HWY 1
- Involving stakeholders
- visiting journalists
- Promote the laid back fishing town culture that makes Morro Bay a throwback CA beach community
- Allocating money to improvements to the city to make Morro Bay a nice place to visit

Questions 2: Considering past tourism marketing efforts, what three things should the City of Morro Bay STOP doing?

- Paying for infrastructure projects that do not equally benefit all lodging contributors
- Putting the entire financial burden for tourism marketing on the back of lodging constituents
- Continually increasing the costs of doing business that will force companies out of the market
- Spending as much money as they currently do on tourism when a lot of the community is hostile toward tourists
- Running the tourism bureau as a city department - spin it back out and force the industry to partner own its development and growth while partnering with the city to do so
- Stop internal staff - expensive model
- in-house City staffing
- Spending so much money on Digital and Social Media advertising without being able to quantify benefit
- funding small events
- Focusing on events that are predominately attended by locals
- Marketing your destination as a cheap or low-cost CA alternative (you have the lowest coastal Average Daily Rate (ADR) in the county - lots of opportunity for improvement in increasing that)
- Stop/Change Current marketing firm contractors
- Remarket Morro Bay as a location for more than relaxing, maybe as a finishing destination or something that differentiate Morro bay from the other towns in the county
- Focusing exclusively on "heads in beds"
- Stop not focusing on heads in beds revenue
- I do not have enough knowledge of past marketing to answer
- Only focusing on out of country tourism
- special deals/wine
- Promoting community-based events that do not draw tourism
- Acting isolation/collaborate with other agencies
- Stop ignoring the businesses needs
- Operating as a silo

Questions 3: **Thinking about future tourism marketing efforts, what three things should the City of Morro Bay START doing?**

- Better signage that would tell the visitors how to get to the Rock or to sand spit
- more frequent outreach to hotels and vacation rental owners
- Increase marketing to drive distance markets
- Allowing the Tourism Bureau to run as a non-profit, responsible for growing the industry and partnering with the city and the community
- Support efforts to get more attractions in town such as the new aquarium
- Capture the young active family market, creating memories for future generations to come back.
- Identify who the customer is; what do they need and want?
- Contract management of funding with City oversight
- Create attractive events to attract more visitors to Morro Bay
- more creative marketing
- Promote cleanliness, open spaces, and cleanliness measures
- Bring lodging investors, partners, and stakeholders together to work collectively as one to increase the visitor experience while improving resident quality of life
- Abolish current BID and form a non-government joint BID with lodging, merchants & restaurants to achieve unity in making Morro Bay an area that attracts a better caliber of people
- Investing in improvements of the product (Morro Bay) to enhance tourist experience
- Committing to cosmetic improvements on the waterfront
- Change to a 1994 TBID structure for sustainability
- Promote more off-season events (i.e. utilizing the parking area at the Rock)
- Take advantage of unique opportunities presented by Visit SLO CAL to increase your overall marketing reach and exposure
- Building a bridge with the community so tourism is not considered a dirty word to most of the community
- Encourage locals to interact with visitors in a positive way
- Identify funding sources for tourism services and waterfront improvements
- Focus more directly on marketing heads in beds for the stakeholders which impacts city revenue

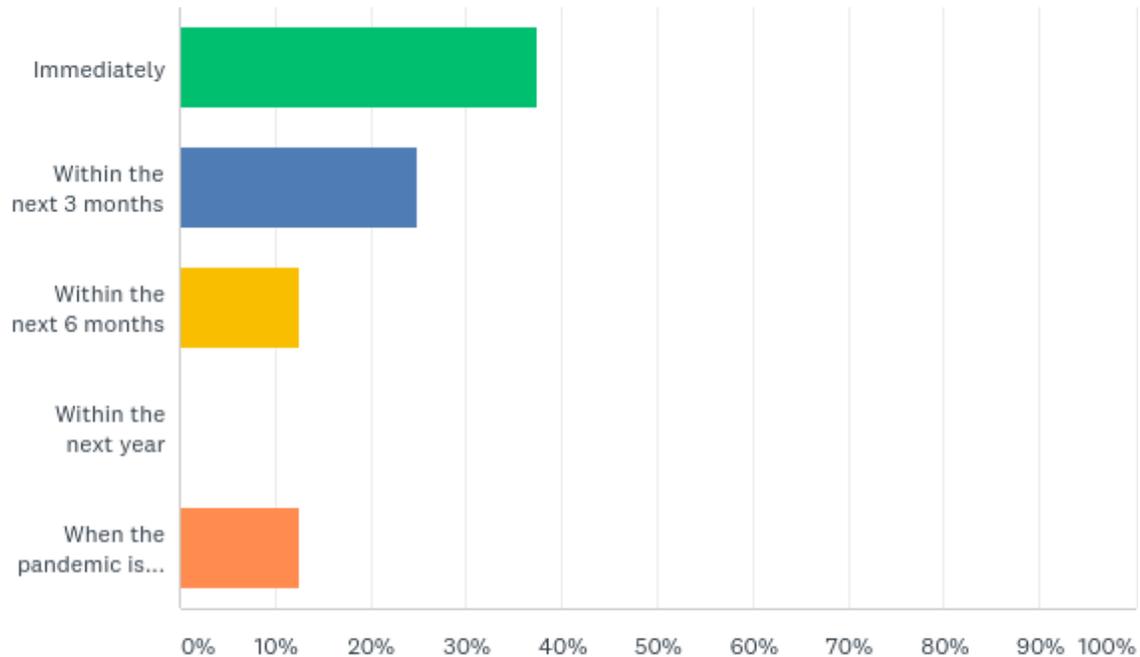
Questions 4: What are your overall hopes for the future marketing of Morro Bay as a tourist destination?

- Recreate a new identity for Morro Bay as a tourist destination
- Strengthen the brand and see more overnight stays as we climb out of COVID-19
- We have seen the effects of lack of marketing to coastal destinations. My hope is that the City appreciates the necessity for targeted, destination, marketing and does not capture marketing funds to subsidize their General Fund. This would make things worse and the cost of doing business in Morro Bay is already extremely high
- Morro Bay is a gem on the central coast and in SLO CAL. The larger SLO CAL destination cannot be successful if Morro Bay is not successful. I see a Morro Bay with a higher-level visitor, enjoying the destination, spending more, and becoming an advocate for the lifestyle and the destination
- I would like to see a focus on beautifying the city, creating more inviting outdoor spaces, and focusing on attracting a higher-spend clientele
- That we can draw in more of the So Cal and Nor Cal visitors with larger disposable income to support our Morro Bay economy
- Hopeful, if we look at the big picture
- The marketing will create impact to increase the stakeholder revenue, all tourism related businesses, causing the City's revenue to grow from Sales tax and Transient Occupancy Tax (TOT)

Question 5: In light of the COVID-19 pandemic, what three factors need to be in place for marketing of Morro Bay as a tourist destination to begin a new?

- Market at the right time (don't spend money when we shouldn't or don't need based upon demand)
- A small coalition of business, lodging and community members working as an independent Tourism Bureau to determine future direction.
- Cohesive message bought into by key stakeholders
- New message to our visitors
- Sell you less traveled destination and open spaces through visually appealing imagery
- Give visitors a reason to either visit more (partners on cross-visitation with other communities) or spend more
- Positive tourism campaign to the residents to gain support for tourism
- New vision of Morro Bay
- The program has to be nimble - we do NOT know what tomorrow holds so develop a plan with flexibility and manage it to that
- Collaboration plan
- Full review of TBID needs, tourism services and improvements
- Staffing plan
- Hand sanitizing stations.
- Allocate city funding to take care of public spaces such as restrooms, sanitation stations, street cleanliness.
- Lifted restrictions
- survey would-be visitors
- A clear definition of who the target audience is and what they are looking for in a vacation. (I personally did not feel the Strategic Plan adapted by the TBID was specific enough nor did it set a clear direction)
- Business specific social distancing plans.
- Open space
- Outdoor activities
- Expanded pedestrian spaces
- Be able to enforce the CDC requirements for social distancing
- Plenty of space in accommodations, restaurants, and shops.

Question 6: In light of the COVID-19 pandemic, when is the appropriate time to begin marketing Morro Bay as a tourist destination?



ANSWER CHOICES	RESPONSES	
Immediately	37.50%	3
Within the next 3 months	25.00%	2
Within the next 6 months	12.50%	1
Within the next year	0.00%	0
When the pandemic is over	12.50%	1
TOTAL		8

Comments to Question 6:

- When demand dictates the need to market.
- Now is the time to slowly introduce the destination again trying to make it top of mind for those considering travel in the months ahead (do it in your own, not paid, channels). Hold your paid channels until visitor sentiment increases and use research to make your decision for you - right now between 40%-60% of visitors are still not willing to travel depending on the time and survey you look at
- If consumers can be assured refunds if we have to shut down suddenly
- After key customer needs are identified
- But with a conservative approach

Question 7: Going forward, what are three key elements of success for managing the marketing of Morro Bay as a tourist destination?

- A non-city run organization
- A non-government organization (BID) made up of representatives from all business segments in the city that benefit from tourism.
- Identify success metrics
- Connection between the dollars spent and growth with accountability to the director/contractor
- Good management of tourism
- Move to a 1994 model and use a formula to split marketing dollars and then also address tourism related elements within the City that are unfunded
- Data of revenue vs. expenditures
- Increase of city sales tax Total
- Drive increased ADR, especially during the summer season
- Attract new investors
- Annual Rev Par escalation / rate compression
- buy-in from stakeholders
- Coalition building tourism management
- Strong ties between TBID, Chamber, Visit SLOCAL
- Partnership, Partnership, Partnership - other neighboring communities, Visit SLOCAL, local lodging investors, partners and stakeholders all working together to further the Morro Bay message and increase the visitor experience
- Increase of visitor numbers
- Increased brand awareness
- Take full advantage of free social media marketing
- Don't market, just to spend money
- Successful business operators
- A plan for attracting businesses to fill vacant commercial spaces with businesses that will attract a higher-spend tourist.
- Improvements to city's infrastructure to make the city more desirable for tourist such as public supported bathrooms, cleaner streets, nice outdoor resting, and picnic spaces, etc.
- Be sure locals are comfortable and welcoming to tourists

Question 8: Please share any other thoughts or ideas related to the future of marketing of Morro Bay as a destination as well as Morro Bay Tourism in general.

- Opportunity to review how things and make course corrections where the group thinks will be most helpful. Also, make sure plan is put in place to make physical improvements to our tourist-serving areas in Morro Bay.
- Marketing is a necessity, especially in the time of COVID-19. We should be reminding customers of the Morro Bay brand and promoting cleanliness efforts.
- Never let a good crisis go to waste. You have an amazing opportunity right now to really get the foundation and structure correct propelling your community to future success. Don't let that opportunity get away from you!
- Even though there has been very little advertising and marketing done for Morro Bay over the last few months, the town is swarming with tourists which tells me that we do not necessarily need marketing. Many people know about Morro Bay already. It is just whether they choose to come here or to Monterey or to Pismo or to Santa Barbara for their coastal visit. The best way to get them to choose Morro Bay is to make it a more attractive place to come with upscale shops, varied types of cuisine (not just fish and chips), clean sidewalks and outdoor spaces and an inviting ambiance (more outdoor dining places and pedestrian zones, etc.).
- We have many beautiful photos to promote Morro Bay. We need to be sure the reality is just as beautiful. All the marketing in the world will not do us any good if the tourists are underwhelmed when they arrive. We need to help new businesses get on their feet to fill the many vacancies on the Embarcadero and downtown to show Morro Bay is thriving and fun.
- The destination sells itself.
- Could a percent say \$100,000 a year go directly to tourism related support projects, beautification, a grant toward fixing a bathroom, cross walk programs, streetlight repair?

Tourism Stakeholder Group Report and Recommendations

Scott Collins, Morro Bay City Manager

September 8, 2020

Background

- ▶ COVID-19 impacts -- reduced staffing, no paid marketing, uncertainties
- ▶ Opportunity to review vision, strategies, tactics, organizational structure
- ▶ TBID Board and Council supported creation of stakeholder group to review opportunities
- ▶ City Manager convened group:
 - ▶ Chuck Davison, CEO and Derek Kirk (Visit SLOCAL)
 - ▶ Joan Solu, TBID Board community member appointee
 - ▶ Hemant Patel, Hotel owner/operator, Visit SLOCAL Board member
 - ▶ David Peter, Restauranter
 - ▶ Steve Allen, TBID Chair and hotel owner/operator
 - ▶ Teri Ennis, TBID Chair and STR owner/operator
 - ▶ Steve Peck, Chamber Board President
 - ▶ Maggie Juren, STR owner/operator

Stakeholder Process

- ▶ Group met 5 times over the course of June and July 2020, facilitated by professional (Kathleen Marcove)
- ▶ Reviewed material, best practices, engaged in surveying and deliberated on several important topics
 - ▶ What should we continue doing?
 - ▶ What should we stop doing?
 - ▶ What should we start doing?
 - ▶ Hopes?
 - ▶ When do we market again and how?
 - ▶ Factors of success moving forward?

Recommendation #1: Diversification

- ▶ #1 Transition to more diverse visitation
 - ▶ Morro Bay is a charming, beautiful and unique destination, with an authentic experience
 - ▶ However, we are known as a low-cost/affordable destination primarily
 - ▶ Diverse visitation has cascading benefit effect
- ▶ Requires commitment from public and private sector
 - ▶ Public infrastructure and services
 - ▶ Private investment in existing businesses and new developments
- ▶ Requires support and collaboration from other industries and support from the community for those investments
- ▶ New approach to marketing - take the long view and build upon previous marketing efforts to connect to new visitors

Recommendation #2 - Convert to 94 Law

- ▶ Currently operate under 89 Law
 - ▶ One year assessment period
 - ▶ Protest vote
- ▶ Recommend transition to 94 Law
 - ▶ Five-year assessment period - longer term horizon
 - ▶ Must attain 50% support

Recommendation #3: Transition to Non-Profit Board

- ▶ City currently oversees day to day Tourism marketing function
 - ▶ Stability
 - ▶ Connectivity to other ED strategies
 - ▶ Process
- ▶ Group recommends transitioning the day to day to a non-profit board of lodging representatives
 - ▶ Voice and accountability
 - ▶ Greater flexibility
 - ▶ City in supporting/advisory role

Next Steps

- ▶ TBID Review and Recommendations
- ▶ City Council review
- ▶ Find champions - transition and long view
- ▶ Initiate transition with July 1, 2021 as target date
 - ▶ Outside support for 94 law and non-profit transition
 - ▶ Conversion
 - ▶ Recruitment
 - ▶ Strategic Plan Revision
 - ▶ TBID funds
- ▶ Continue current efforts under 89 Law and existing staff and marketing agency (once marketing efforts can/should begin again)

Questions and Deliberation

This Page Intentionally Left Blank



AGENDA NO: C-2

MEETING DATE: September 8, 2020

Staff Report

TO: Honorable Mayor and City Council **DATE:** September 1, 2020

FROM: Chris F. Neumeyer, City Attorney

SUBJECT: Amendment No. 2 to Memorandum of Understanding (MOU) between Morro Bay Open Space Alliance (MBOSA) and City to Protect Eagle Rock/Cerrito Peak in Perpetuity as Undeveloped Public Open Space through Conservation Easement; Amendment No. 1 to MOU for Payment from MBOSA to City of \$265,000 by October 31, 2020

RECOMMENDATION

City Council consider approval of Amendment No 2 to MOU between MBOSA and the City and authorize Mayor to execute the same; and, City Council ratify Amendment No 1 to MOU.

ALTERNATIVES

Do not approve Amendment No 2 to MOU and/or make revisions.

FISCAL IMPACT

The MOU provides for the transfer of \$265,000 to the City's General Fund.

BACKGROUND

A. History

Eagle Rock (also known as Cerrito Peak), a natural peak located in Morro Bay, is a unique parcel of undeveloped open space located in Morro Bay. (1 Jordan Terrace, APN: 066-221-001.)

Development of Eagle Rock was initially approved in December of 2011. A lawsuit entitled *Save the Park, et al v. City of Morro Bay* was subsequently filed challenging the approval. As a result of that lawsuit, the land use entitlements were provisionally set aside. The court decision, which was finalized on August 4, 2015, also required several actions from the property owner before the Council could consider whether the suspended land use entitlements should be reinstated, if at all. The existing entitlements were to expire, by their own terms, on September 18, 2017. During that time period, Ms. Janne Reddell (former owner of Eagle Rock) inquired with the City whether there was any interest in the City purchasing the property.

In May of 2017, the City Council approved the purchase of Eagle Rock for \$350,000, which was less than its then market value, as disclosed by a broker's opinion. The net amount received by Ms. Reddell for the property was \$265,000, as \$85,000 of the purchase amount was paid back to the City

01181.0001/667169.1 CFN	
Prepared By: <u>CFN</u>	Dept Review: _____
City Manager Review: <u>SC</u>	City Attorney Review: <u>CFN</u>

(at the close of escrow) as reimbursement for the legal fees the City paid to defend against the lawsuit *Save the Park, et al v. City of Morro Bay*.

As related in the staff report on this subject from May of 2017, the property was purchased by the City with an intent to maintain it in its current undeveloped state, with an ultimate goal of selling the property to a non-profit whose mission is preservation of open spaces.

To assist the City with meeting that intent, the Morro Bay Open Space Alliance in April 2016 committed to raising funds from the community to offset the City funds used to purchase the property.

After diligent and sustained efforts, MBOSA raised \$265,000 from the community and private donations. The City and MBOSA then entered into an MOU approved by the City Council at its April 28, 2020 Council meeting which pledged \$265,000 to the City in exchange for multiple commitments from the City concerning Eagle Rock's future.

Among these commitments was for the City to take actions to designate Eagle Rock as undeveloped public open space, subject to City's City Council and Planning Commission taking all legal actions necessary for such designation, including as an environmentally sensitive habitat area.

B. Recent Events

Subsequent to the approval of the MOU, the City and MBOSA negotiated further amendments to the MOU, including further assurances the property will remain as undeveloped public open space. The result of the negotiations included an option for the grant of a conservation easement from the City to MBOSA and/or another qualified entity committed to the same conservation goals as held by the City and MBOSA.

The City and MBOSA also amended the MOU to extend to October 31, 2020 the deadline for payment of \$265,000 to the City from MBOSA. (Government Code §§ 54956.8; 54957.1(a)(1)(B).) The intent was to provide time for good faith negotiations before payment was made. That Amendment No 1 is included for ratification by the City Council at tonight's regular City Council meeting.

C. Conservation Easements

The State of California "finds and declares that the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California. The Legislature further finds and declares it to be the public policy and in the public interest of this state to encourage the voluntary conveyance of conservation easements to qualified nonprofit organizations." (Civil Code § 815.)

Conservation easement are "executed by or on behalf of the owner of the land subject to such easement and is binding upon successive owners of such land, and the purpose of which is to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition." (Civil Code § 815.1.)

A conservation easement is perpetual in duration and has further characteristics as defined in a specific conservation easement. (Civil Code § 815.2(b).)

DISCUSSION

The Second Amendment to the MOU is attached and presented for consideration for approval by the City Council.

This amendment includes adding a conservation easement form (new Exhibit A to MOU) to be used by MBOSA upon exercise of the option to take a conservation easement over Eagle Rock. The conservation easement is to retain Eagle Rock in its natural, scenic, historical, forested and open-space condition in perpetuity. MBOSA has approved the Second Amendment.

The Second Amendment amends the MOU with substantial provisions including as follows:

1. Conservation easement (new MOU § 3(D))
 - a. Provides option to MBOSA and/or qualified third party (third party to be approved by City with consent not unreasonably withheld) to be granted a conservation easement over Eagle Rock
 - b. City retains express authority to maintain the property and as necessary erect fences, or otherwise secure the property, to prevent damage while maintaining public access (conservation easement § 3)
 - c. MBOSA may assign conservation easement to qualified entity with approval of City, such approval to not be unreasonably withheld (conservation easement § 9)
 - d. City agrees to an assignment of the conservation easement to City if either MBOSA ceases to exist as an entity, or at option of MBOSA (conservation easement § 9)
 - e. If the conservation easement is conveyed to the City, such assignment shall not cause a merger of interests, such that the conservation easement shall remain in full force and effect in perpetuity (conservation easement §§ 8, 9)
2. MBOSA retains authority from original MOU to place commemorative sign/monument on property (conservation easement § 4)
3. Removal of MOU termination sections (old MOU §§ 6-8)
4. Removes obligation of MBOSA to pay property taxes if taxable interest created (new MOU § 8 / old MOU § 10)

CONCLUSION

The City Council is asked to consider approving MOU Amendment No 2 and authorizing the Mayor to execute the same, and ratifying the approval of MOU Amendment No 1.

ATTACHMENTS

1. Amendment No 1 to MOU
2. Amendment No 2 to MOU
3. Conservation Easement (Exhibit A to Amendment No 2 to MOU)
4. Map of Eagle Rock

**AMENDMENT NO. 1
TO MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF MORRO BAY
AND MORRO BAY OPEN SPACE ALLIANCE CONCERNING EAGLE ROCK**

This AMENDMENT NO. 1 TO MEMORANDUM OF UNDERSTANDING (“Amendment No. 1”), concerning Eagle Rock (being a certain property with APN 066-221-01, referred to herein as “Property,” and also known as “Cerrito Peak”), by and between the **CITY OF MORRO BAY**, a municipal corporation (“City”), and **MORRO BAY OPEN SPACE ALLIANCE**, a California non-profit corporation (“MBOSA”) (sometimes collectively the “Parties”), is effective as of the 30th day of July, 2020.

RECITALS

- A. The Property was initially purchased by the City for the net amount of \$265,000 with the intention for it to remain as undeveloped public open space. MBOSA shares this goal with the City and has raised funds to assist the City with its finances.
- B. Parties previously approved a memorandum of understanding to memorialize their understanding regarding the rights and obligations of each regarding the Property (that memorandum of understanding referred to herein as the “MOU”).
- C. The MOU provides in Section 2 that “on or before July 31, 2020, MBOSA will pay City \$265,000 (Payment).”
- D. Prior to the transfer from MBOSA to the City of the Payment, Parties presently desire to amend the rights and obligations of the Parties under the MOU vis-à-vis the Property, including, but not limited to, by providing further assurances the Property will remain as undeveloped public open space through a conservation easement.
- E. To provide ample time to finalize negotiations for that further anticipated amendment of the MOU, the Parties desire to extend the deadline for Payment.

TERMS

- 1. **MOU Changes.** The MOU is amended as provided herein (new text is identified in ***bold italics***, deleted text in ~~strike through~~).

- a. Section 2 of the MOU shall be amended as follows:

“In an effort to assist City with its finances, on or before ~~July 31, 2020~~ ***October 31, 2020***, MBOSA will pay City \$265,000 (Payment).”

- 2. **Continuing Effect of MOU.** Except as amended by this Amendment No. 1, all provisions of the MOU shall remain unchanged and in full force and effect.

**AMENDMENT NO. 2
TO MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF MORRO BAY
AND MORRO BAY OPEN SPACE ALLIANCE CONCERNING EAGLE ROCK**

This AMENDMENT NO. 2 TO MEMORANDUM OF UNDERSTANDING ("Amendment No. 2"), concerning Eagle Rock (being a certain property with APN 066-221-01, referred to herein as "Property," and also known as "Cerrito Peak"), by and between the **CITY OF MORRO BAY**, a municipal corporation ("City"), and **MORRO BAY OPEN SPACE ALLIANCE**, a California non-profit corporation ("MBOSA") (sometimes collectively the "Parties"), is effective as of the _____ day of _____, 2020.

RECITALS

- A. The Property was initially purchased by the City for the net amount of \$265,000 with the intention for it to remain as undeveloped public open space. MBOSA shares this goal with the City and has raised funds to assist the City with its finances.
- B. Parties previously approved a memorandum of understanding to memorialize their understanding regarding the rights and obligations of each regarding the Property (that memorandum of understanding referred to herein as the "MOU").
- C. There has been strong community support for the preservation of undeveloped open space on Eagle Rock as shown by a history of participation in community activities supporting Eagle Rock as undeveloped open space.
- D. The intent of the donors to the campaign to preserve Eagle Rock is to protect it as undeveloped open space parkland.
- E. The preservation of land in its natural, scenic, historical, forested and open-space condition are among the most important environmental assets of California (Civil Code section 815).
- F. The State of California has found and declared it to be a public policy and in the public interest of California to encourage the voluntary conveyance of conservation easements to qualified nonprofit organizations (Civil Code section 815).
- G. The MOU provides in Section 2 that the MBOSA will pay City \$265,000 (Payment) to the City in an effort to assist the City with its finances, and as amended through Amendment No. 1 to MOU dated July 30, 2020, the parties

agreed to extend the deadline for payment of \$265,000 from MBOSA to City, from July 31, 2020 to October 31, 2020, so as to provide ample time to finalize negotiations for this Amendment No. 2 of the MOU.

- H. Parties now desire to amend the rights and obligations of the Parties under the MOU vis-à-vis the Property, including, but not limited to, by providing further assurances the Property will remain as undeveloped public open space, through an option for the grant of a conservation easement from the City to MBOSA and/or another qualified entity committed to the same goals stated herein as held by the City and MBOSA.

TERMS

- I. **MOU Changes.** The MOU is amended as provided herein (new text is identified in ***bold italics***, deleted text in ~~strike-through~~).
1. The foregoing Recitals are incorporated into this MOU.
 2. In an effort to assist City with its finances, on or before October 31, 2020, MBOSA will pay City \$265,000 (Payment).
 3. In exchange for the Payment, City agrees:
 - A. to maintain, as determined necessary by City's City Manager, the Property, including clearing of trees and other potential fire hazards, as determined necessary by City's Fire Chief, for use solely as an undeveloped public open space; provided, that MBOSA shall be responsible for properly maintaining the Sign/Monument (as defined in Subdivision 3.C., below), if installed pursuant to that subdivision;
 - B. to take actions deemed necessary by City's Community Development Director and City Attorney to designate the Property as undeveloped public open space, subject to City's City Council and Planning Commission taking all legal actions necessary for such designation, including as an environmentally sensitive habitat area, after complying with all applicable laws, including, but not limited to, Government Code section 38440, *et seq.* and to the best of its ability complete those processes on or before January 31, 2021;
 - C. to allow, subject to the written approval of City's Community Development Director and after obtaining all building and other required permits, MBOSA to erect one moderately-sized sign or monument at the entrance to the Property detailing the history of the Property, as well as an additional plaque or bench honoring significant preservation donors (Sign/Monument).

D. to consent to, assist in, authorize the creation of, and grant a perpetual conservation easement over the Property, to be held by MBOSA and/or a qualified organization (if not MBOSA, then City consent is necessary, and such consent shall not be unreasonably withheld), so as to retain the Property predominantly in its natural, scenic, historical, forested and open-space condition, pursuant to and consistent with the intent and purpose of Civil Code, sections 815, et seq., such conservation easement to be substantially in the form as provided for in Exhibit A, attached hereto and incorporated herein in its entirety.

4. City and MBOSA acknowledge California Government Code sections 831.2, 831.25 and 831.4 provide certain immunities to City and City's employees for any injuries that may be caused by a natural condition on any unimproved public land, including roads and trails.

5. If MBOSA installs the Sign/Monument, then MBOSA shall indemnify, defend and hold harmless City and each of its officers, employees and agents from any and all liability that may arise from MBOSA's or any of its officers', employees', agents', invitees' or volunteers' negligent, grossly negligent or willful acts or omissions relating to the Sign/Monument.

6. Unless otherwise specifically stated, whenever this MOU requires an approval of City, such approval may be given by City's City Manager or designee, if so designated in writing; provided, that the City Manager, or designee, in their sole discretion, may decide to bring any matter to the City Council; ~~and provided, further, that the City Council reserves the right to determine whether to terminate this MOU as described in Paragraph 7.~~

~~7. After the fifth annual anniversary of this MOU, City shall have the right to terminate this MOU in the event, after a public meeting to discuss the issue, City's City Council determines termination is in the best interests of the community. City's right of termination shall be subject to a fifteen-day (15-day) written notice to MBOSA.~~

~~8. MBOSA shall have the right to terminate this MOU upon fifteen-day's (15-day's) written notice to City.~~

7.9. Notices.

a. Any formal notice, request, approval or other communication to be provided by either party shall be in writing and dispatched by first class mail, registered or certified mail, postage prepaid, return-receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional

messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of City and MBOSA set forth below. Such written notices, requests, approvals or other communication may be sent in the same manner to such other addresses as either party may from time to time designate.

b. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt and any notice that is sent by registered or certified mail, postage prepaid, return-receipt requested shall be deemed received on the date of receipt thereof.

c. If to City:

City of Morro Bay
Attn: City Manager
595 Harbor Street
Morro Bay CA 93442

With a copy to

Aleshire & Wynder, LLP
Attn: Chris F. Neumeyer
2361 Von Karmen Avenue, Suite 1700
Irvine, CA 90245-4916

d. If to MBOSA:

Glenn Silloway, Co-Chair
Morro Bay Open Space Alliance
P.O. Box 1029
Morro Bay, CA 93422

~~8.10. This MOU is not intended to create any interest in real property. If it is determined, by a governmental agency duly authorized to make such decision, this MOU creates any taxable interest, including, but not limited to, a possessory interest, then MBOSA shall be solely responsible to pay such taxes to the extent such taxes are required by law to be paid.~~

~~9.11. The terms and conditions, covenants, and agreements set forth herein~~

shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereto. This MOU cannot be assigned without the written agreement of each party.

10.12. This MOU shall be governed, construed, interpreted and enforced in accordance with and under the laws of the State of California. Venue for any action legal taken by any party related to this MOU shall be the Superior Court of the County of San Luis Obispo.

11.13. This MOU represents the entire agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to use and operation of the Property. This MOU may not be amended unless agreed as such in writing and certified by the signatures of the parties hereunder.

12.14. It is understood and agreed this MOU shall not be effective until it has been signed by all parties and shall be effective as of the date it is signed on behalf of City.

- II. Continuing Effect of MOU.** Except as amended by this Amendment No. 2 all provisions of the MOU shall remain unchanged and in full force and effect.
- III. Adequate Consideration.** Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 2.
- IV. Authority.** The persons executing this Amendment No. 2 on behalf of the Parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment No. 2 on behalf of said party, (iii) by so executing this Amendment No. 2, such party is formally bound to the provisions of this Amendment No. 2, and (iv) the entering into this Amendment No. 2 does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 2 to be executed by their duly authorized representatives.

CITY OF MORRO BAY, a California municipal corporation

Dated: _____, 2020 By: _____
John Heading, Mayor

ATTEST:

APPROVED AS TO FORM:
Aleshire & Wynder, LLP

Dana Swanson,
City Clerk By: _____
Chris F. Neumeyer, City Attorney

MORRO BAY OPEN SPACE ALLIANCE, a California non-profit corporation

Dated: 27 Aug 20, 2020 By: Glenn Silloway
Glenn Silloway, Co-Chair

Dated: 8/29/20, 2020 By: Noah Smukler
Noah Smukler, Co-Chair

Dated: 8.29.20, 2020 By: Ken Green
Ken Green, Treasurer

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Morro Bay Open Space Alliance
P. O. Box 1029
Morro Bay, CA 93443
Attn: President

APN: 066-221-001

Exempt from recording fees under Govt. Code 6103

GRANT OF CONSERVATION EASEMENT
(California Civil Code Section 815 *et seq.*)

THIS GRANT OF CONSERVATION EASEMENT (“**Easement Agreement**”) is made this _____, 2020, by CITY OF MORRO BAY, a municipal corporation (“**Grantor**” or “**City**”) with and in favor of MORRO BAY OPEN SPACE ALLIANCE, a public benefit non-profit corporation (“**Grantee**” or “**MBOSA**”).

RECITALS:

- A.** Grantor owns in fee that certain real property known as “Eagle Rock,” with APN 066-221-01, also known as “Cerrito Peak,” and more particularly described in Exhibit A (“**Property**”).
- B.** The Property was initially purchased by the City for the net amount of \$265,000 with the intention for it to remain as undeveloped public open space.
- C.** The preservation of land in its natural, scenic, historical, forested and open-space condition are among the most important environmental assets of California (Civil Code section 815).
- D.** The State of California has found and declared it to be a public policy and in the public interest of California to encourage the voluntary conveyance of conservation easements to qualified nonprofit organizations (Civil Code section 815).
- E.** Grantee is an entity or organization authorized to acquire or hold conservation easements under Civil Code section 815.3.
- F.** Grantor and Grantee both desire that the Property is preserved in its natural, scenic, historical, forested and open-space condition (except as otherwise specified below) in perpetuity.
- G.** Grantee has provided a gift of Two Hundred Sixty-Five Thousand Dollars (\$265,000) to Grantor in part as consideration for the grant from Grantor to Grantee of a conservation easement in accordance with Civil Code Section 815 *et seq.* to preserve the Property in its natural, scenic, historical, forested and open-space condition (except as otherwise specified below) in perpetuity.

NOW THEREFORE, for valuable consideration, Grantor grants a conservation easement in accordance with Civil Code Section 815 *et seq.* as follows:

1. **Effective Date.** This Easement Agreement shall be effective as of the day it is recorded in the Official Records of San Luis Obispo County, California ("**Effective Date**").
2. **Conservation Easement.** As of the Effective Date subject to all matters of record, Grantor irrevocably grants and conveys to Grantee a conservation easement in the Property in accordance with Civil Code Section 815, *et seq.* in perpetuity as a natural, scenic, historical, forested and open-space area ("**Conservation Easement**").
3. **Grantor's Rights and Duties.**
 - a. **Property Maintenance.** Grantor shall maintain, as determined necessary by City's City Manager, the Property, including clearing of trees and other potential fire hazards, as determined necessary by City's Fire Chief, for use solely as an undeveloped public open space.
 - b. **Property Use.**
 - i. After the Effective Date, Grantor shall not use or allow the Property to be used for any purpose inconsistent with the Conservation Easement.
 - ii. Provided Grantor obtains all applicable permits and complies with all applicable laws and ordinances, Grantor may fence or otherwise secure the Property to prevent third parties from entering or damaging the Property but also with the intent of maintaining public access while protecting and preserving the Property in its natural, scenic, historical, forested and open-space condition.
4. **Grantee's Rights and Duties.**
 - a. **Sign/Monument.** Subject to the prior written approval (which shall not be unreasonably withheld) of City's Community Development Director, and provided Grantee obtains all building and other required permits, Grantee may erect: (a) one (1) moderately-sized sign or monument at the entrance to the Property detailing the history of the Property; and (b) a plaque or bench honoring significant preservation donors ("**Sign/Monument**").
 - i. The right in this Section 4 to erect the Sign/Monument is personal to Grantee and not to any successor or assignee.
 - ii. Grantee shall be responsible for maintaining the Sign/Monument if installed.
 - iii. If Grantee installs the Sign/Monument, then Grantee shall indemnify, defend and hold harmless City and each of its officers, employees and agents from any and all liability that may arise from Grantee's or any of its officers', employees', agents', invitees' or volunteers' negligent, grossly negligent or willful acts or omissions relating to the Sign/Monument.
 - b. **Inspection.** Grantee shall have the right (but not the duty) from time to time to inspect or otherwise advise Grantor in writing of any potential violation of the Conservation Easement.
5. **Grantor's Representations.** As of the Effective Date, Grantor represents and warrants to Grantee that (i) it owns the Property free and clear of all encumbrance or liens, and (ii) has the authority to execute and deliver this Easement Agreement which shall be binding on the Property without the consent of any third party.

6. **Benefit and Burden.** This Easement Agreement and the Conservation Easement shall run with and burden the Property. All obligations, terms, conditions, and restrictions imposed by this Easement Agreement shall be deemed covenants and restrictions running with the land, shall be limitations on the use of the Property, and shall bind the Grantor and its successors and assigns.
7. **Enforcement.** The Conservation Easement may be enforced as provided in Civil Section 815.7.
8. **Amendment.** No modification, amendment or termination of this Easement Agreement shall be valid unless made in writing executed by both the then owner of the fee property ("**Fee Owner**") and the then owner of the Conservation Easement ("**Easement Owner**") and recorded in the Official Records of San Luis Obispo County. However, if at any time, the City as grantor under this Easement Agreement becomes both the Fee Owner and the Easement Owner pursuant to Section 9(b) below, there shall be no merger of the interests, the Conservation Easement shall remain in full force and effect and City may not terminate this Easement Agreement or the Conservation Easement nor amend it to materially modify the terms and provisions.
9. **Assignment.**
 - a. **Qualified Third-Party.** Grantee may assign this Conservation Easement to any entity or organization authorized to acquire or hold conservation easements under Civil Code Section 815.3, upon approval of Grantor, which approval shall not be unreasonably withheld.
 - b. **City.**
 - i. At any time after the Effective Date, Grantee may, in its sole discretion, assign this Easement Agreement to Grantor and Grantor will accept such assignment and both parties will promptly execute appropriate document reflecting the assignment which will be recorded in the Official Records ("**Assignment**"). However, both Grantor and Grantee specifically agree that such an Assignment to Grantor will not result in a merger of interests and the Conservation Easement shall remain in full force and effect against the Property.
 - ii. In the event Grantee ceases to exist as an entity and has not formally assigned this Easement Agreement, all rights of Grantee under this Easement Agreement shall be automatically assigned to and vest in Grantor, provided, however, that such assignment to Grantor shall not result in a merger of interests and the Conservation Easement shall remain in full force and effect. In such event, Grantor (as owner of both the Fee Interest and the Easement Owner), may execute a document evidencing such assignment under this provision and record it in the Official Records of San Luis Obispo County to reflect such assignment.
10. **Notice.** Any notice, demand or request given in connection to this Easement Agreement shall be in writing and shall be given by (i) personal delivery, (ii) overnight courier service, or (iii) certified US mail, return receipt requested, postage or other delivery charge prepaid. In all events, notice shall only be deemed given if properly addressed to Grantor or Grantee, as applicable. Such notices will be deemed properly addressed if the following addresses (or at such other address as Grantor or Grantee or the person receiving copies may designate in writing given in accordance with this Section) are used:

Grantor: City of Morro Bay
595 Harbor Street
Morro Bay, CA 93442
Attn: City Manager

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

Grantor: Morro Bay Open Space Alliance
P. O. Box 1029
Morro Bay, CA 93443
Attn: Glenn Silloway, Co-Chair

11. **Entire Agreement.** This Easement Agreement together with the Exhibit A attached hereto and incorporated herein by this reference, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements with respect to the Conservation Easement.
12. **Construction.** This Easement Agreement shall be construed according to its fair meaning as if prepared by both Grantor and Grantee and shall also be construed liberally toward enforcement of its intent. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.
13. **Severability.** In the event that part of this Easement Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Easement Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Easement Agreement meaningless.
14. **California Law.** This Easement Agreement shall be governed by the laws of the State of California. Venue for any action legal taken by any party related to this Easement Agreement shall be the County of San Luis Obispo, California.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Easement Agreement to be effective as of the Effective Date.

GRANTEE:

MORRO BAY OPEN SPACE ALLIANCE,
a California non-profit corporation

By: _____

By: _____

GRANTOR:

CITY OF MORRO BAY, a municipal
corporation

By: _____
John Headding, Mayor

ATTEST:

Dana Swanson, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Chris F. Neumeyer, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Morro Bay, County of San Luis Obispo, State of California described as follows:

AN IRREGULARLY SHAPED PARCEL OF LAND IN THE CERRITO ADDITION TO THE TOWN OF MORRO, IN THE CITY OF MORRO BAY, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, AS PER MAP FILED MARCH 14, 1888 IN BOOK A, PAGE 34 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED ON THE NORTH, SOUTH, EAST AND WEST SIDES BY JORDAN TERRACE, AS SHOWN ON SAID MAP.

APN 066-221-001

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, 2020 before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, 2020 before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature _____ (Seal)

This Page Intentionally Left Blank



AGENDA NO: C-3

MEETING DATE: September 8, 2020

Staff Report

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

FROM: Jennifer Callaway – Finance Director/Interim Public Works Director
Damaris Hanson, Environmental Programs Manager

SUBJECT: Authorize Submittal of a Letter of Support to the Ocean Protection Council Solicitation of Grant Proposals for Upgrades to Morro Rock Parking Lot to Reduce Polluted Stormwater Runoff to Ocean and Certain City Commitments for Project

RECOMMENDATION

Staff recommends the City Council authorize staff to submit a letter of support for the Ocean Protection Council solicitation of grant proposals for upgrades to Morro Rock parking lot to reduce polluted stormwater runoff to ocean and make certain City commitments for the project.

ALTERNATIVES

The Council may choose to not direct staff to submit a letter of support for the Ocean Protection Council solicitation of grant proposal application and/or (within limitations of program) direct staff to make revisions to the letter of support.

FISCAL IMPACT

The grant does not have a City required financial match. Letter of support commits City staff to review and input on planning, design, and various aspects of the project. If grant secured, City commits in three years to assuming the operations and maintenance of the Morro Rock parking lot upgrades.

BACKGROUND/ DISCUSSION

The California Ocean Protection Council (OPC), part of the State Natural Resources Agency, has opened a new solicitation for grant proposals for projects benefitting California’s ocean and coast, made possible with funding from [Proposition 68](#). The priority issue area for this round of Proposition 68 funding is coastal resiliency and nature-based adaptation strategies to address sea level rise impacts.

City staff met with Daniel Apt, President of Olaunu, along with his project team, several times over the last year to discuss the possibility of including Morro Bay in this potential grant opportunity. Mr. Apt and his team are working with Surfrider Foundation, as the primary grant applicant, to apply for a grant with the OPC to implement bioretention systems in parking lots of popular surf spots along the California coast: Morro Rock parking lot, Rincon Point parking lot, Malibu beach parking lot and Huntington Beach parking lot. The primary purpose of this project is to reduce polluted stormwater runoff, to protect the ocean, waves and beaches in California and educate surfers and the public about green stormwater infrastructure.

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

The project team will pursue the grant funding and manage the grant once awarded. They will oversee construction and inspections, host commissioning/education events, and conduct water quality monitoring and operation and maintenance for the first 3 years of the project. The project team has developed a concept design of the Rock parking lot with several bioretention areas integrated into the parking area. The design includes re-grading and compaction of decomposed granite, directing the surface water to the bioretention areas where the water will be treated, and pollutants removed. This concept design was developed prior to the new parking layout and will be updated to incorporate the new parking layout.



As part of support for the project the City of Morro Bay will commit to collaboration with the Surfrider Foundation and the Olaunu Team on the project including providing review and input on planning and design, educational signage and the operation and maintenance plan; attendance to inspections and training performed by the Olaunu Team and the ribbon cutting event lead by the Surfrider Foundation; and ongoing coordination during the project. Additionally, the City commits to assuming the operations and maintenance of the bioretention system after 3 years of operation and maintenance performed by the Olaunu Team and the Surfrider Foundation.

Proposition 68 grant schedule:

- Letter of Intent due September 14, 2020
- Application review and evaluation: September 14-October 1, 2020
- Selected applicant invited to submit full proposal October 2, 2020
- Full proposal due November 13, 2020
- Application review and evaluation: November 16- January 1, 2021
- Select proposals invited for interview or site visit: January 4 – February 5, 2021
- OPC staff recommend selected projects to OPC for approval: February 2021
- Approved project finalized work plans and grant agreements: Spring 2021

CONCLUSION

Staff recommends the City Council authorize staff to submit a letter of support for the Ocean Protection Council solicitation of grant proposals for upgrades to Morro Rock parking lot to reduce polluted stormwater runoff to ocean and make certain City commitments for the project.

ATTACHMENTS

1. City of Morro Bay-Letter of support
2. California Coastal Green Stormwater Infrastructure Project Presentation



CITY OF MORRO BAY

PUBLIC WORKS DEPARTMENT

955 Shasta Avenue
Morro Bay, CA 93442

September 3, 2020

Surfrider Foundation
942 Calle Negocio, Suite 350
San Clemente, CA 92673

Subject: Surfrider Foundation Bioretention Project at Morro Rock Beach Parking Lot

Dear Surfrider Foundation:

The City of Morro Bay is in support of the Surfrider Foundation Bioretention Project at Morro Rock Beach Parking Lot that the Surfrider Foundation in collaboration with Olaunu is pursuing as part of the California Coastal Green Stormwater Infrastructure Project (CCGSIP). CCGSIP is a comprehensive project, conceived by Olaunu and the Surfrider Foundation, to implement bioretention systems in parking lots of popular surf spots along the California coast. The primary purpose of this project is to reduce polluted stormwater runoff, to protect the ocean, waves and beaches in California and educate surfers and the public about green stormwater infrastructure.

The City of Morro Bay has had a couple meetings with the Olaunu Team including Daniel Apt of Olaunu, Dr. Darla Elswick, and Wayne Carlson of AHBL, where presentations about the specifics of the project were provided including presentation of a concept design. During these meetings it was identified that the Surfrider Foundation in collaboration with Olaunu are interested in pursuing grant funds for the project and have identified the California Ocean Protection Council (OPC) Proposition 68 Coastal Resilience grant solicitation as the primary grant that will be pursued for the project. The City of Morro Bay concurs with the Surfrider Foundation and Olaunu that the CCGSIP project closely aligns with the OPC Proposition 68 Coastal Resilience grant priorities.

Based on the meetings with the Olaunu Team and the City's understanding of the project the City of Morro Bay fully supports the project and the Surfrider Foundation and Olaunu's pursuit of the OPC Proposition 68 Coastal Resilience grant. As part of support for the project the City of Morro Bay is committed to collaboration with the Surfrider Foundation and the Olaunu Team on the project including providing review and input on planning and design, educational signage and the operation and maintenance plan; attendance to inspections and training performed by the Olaunu Team and the ribbon cutting event lead by the Surfrider Foundation; and ongoing coordination during the project. Additionally, the City is committed to assuming the operations and maintenance of the bioretention system after 3 years of operation and maintenance performed by the Olaunu Team and the Surfrider Foundation.

The City of Morro Bay appreciates the opportunity to collaborate with the Surfrider Foundation and the Olaunu Team on this project that will benefit California's ocean and coast as well as the public and the City of Morro Bay. Please contact Damaris Hanson at (805) 772-6265 or dhanson@morrobayca.gov if you have any questions regarding this letter.

Sincerely,

John Heading
Mayor

CC: Morro Bay City Council
Daniel Apt, Olaunu

This Page Intentionally Left Blank



California Coastal Green Stormwater Infrastructure Project Presentation

City of Morro Bay – September 1, 2020
Daniel Apt, Darla Elswick, Wayne Carlson



Surfrider – California Coastal Green Stormwater Infrastructure Project Concept

- Primary Purpose: Reduce polluted stormwater runoff to protect the ocean, waves, and beaches in California and educate surfers and the public about green stormwater infrastructure.
- Project Concept: Implement bioretention systems at parking lots of popular surf spots along the California Coast.



Project Concept Details

- Select 4 surf spot parking lots along the California Coast
- Collaborate with parking lot owners and local Surfrider chapter as project partners
- Design the bioretention systems in collaboration with the parking lot owners and Surfrider local chapter
- Design of educational signage on the bioretention systems and water quality with Surfrider and parking lot owners
- Integrate water quality monitoring elements into the design

Project Concept Details

- Oversee construction of the bioretention systems - inspections
- Host commissioning/education event on each location in collaboration with parking lot owners and local Surfrider chapter
- Conduct water quality monitoring of bioretention systems for 3 years – SMC CLEAN Monitoring Protocol
- Conduct operation and maintenance inspections for 3 years
- Perform operation and maintenance with help from two Chapter volunteer maintenance days/year
- Pursue grants for funding and grant management

Project Benefits



- Help to achieve the Surfrider mission:
 - *“The Surfrider Foundation is dedicated to the protection and enjoyment of the world's ocean, waves and beaches through a powerful activist network.”*
- Reduces polluted runoff at surf spots
- Educates the surfing community and the public about Green Stormwater Infrastructure/Ocean Friendly Gardens and water quality at high traffic/popular locations
- Provides opportunities for Surfrider chapter and parking lot owner involvement
- Provides a location for ongoing education of students, chapter volunteers, and the public through an outside classroom

Project Benefits



- Provides locations to perform monitoring to understand performance of bioretention systems
- Provides opportunities for use of SMC CLEAN Construction, Inspection, Maintenance, and Monitoring Guidance Manual
- Opportunity for Surfrider collaboration with municipalities & State Parks
- Great exposure for municipalities/Surfrider with implementation of Green Stormwater Infrastructure & Environmental Education
- An experienced team in GSI and LID and successful award and management of state grants

The Project Team



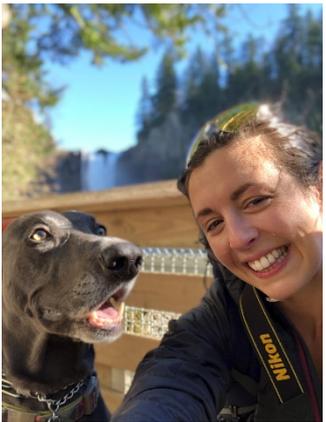
Wayne Carlson, AHBL



Daniel Apt, Olaunu



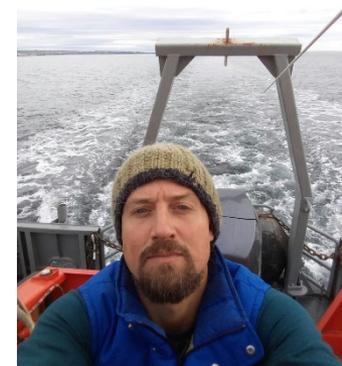
Darla Elswick



Brittany Port, AHBL



Claudia Grandez, Olaunu



Brad Parks, Olaunu

Potential Project Locations



Morro Rock Beach Parking Lot



Morro Rock Beach Parking Lot



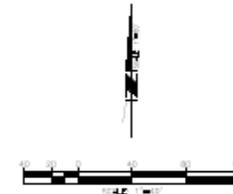
Morro Rock Beach Parking Lot

LID DRAINAGE CHARACTERISTICS

Drainage Area	BMP Type	Drainage Area (sf)		Precip Depth (in)	Design Volume (cf)	Area (sf)		BMP Depth (ft)	Draw Down (hr)
		Imp (sf)	Perv (sf)			Min Required	Available		
Morro Rock Parking Lot	Bioretention	-	191,536	1	6,385	8,513	9,209	0.8	18.0



- LEGEND**
- SITE BOUNDARY
 - STORMWATER POND
 - BIORETENTION
 - PROPOSED BIORETENTION
 - INFILTRATION BASIN
 - INFILTRATION BASIN



VICINITY MAP

CLIENT



SURFRIDER FOUNDATION
SAN DIEGO COUNTY, CALIFORNIA

PROJECT NAME

MORRO ROCK BEACH
PARKING LOT BIORETENTION

PROJECT NUMBER

BUILDER

CONSULTANT



REGISTRATION STAMP

DATE

AGENCY APPROVAL

ISSUE

NO.	DATE	DESCRIPTION

DATE: _____
 TIME: _____
 DRAWN BY: _____
 PROJECT NO.: _____
 APPROVED BY: _____
 SHEET TITLE

DRAINAGE EXHIBIT

DATE: _____
 SHEET NUMBER

Morro Rock Beach Parking Lot Bioretention Rendering (North Area)



Collaboration/Outreach to Date

- Coordination and site walk with the Surfrider San Luis Obispo Chapter on October 4, 2019
 - Discussed potential bioretention layouts
- Initial presentation to City of Morro Bay staff March 2, 2020
 - Discussed revisions to site layout with added bioretention systems and parking lot circulation
- Coordination with Fred Collins of the Northern Chumash Tribal Council (NCTC) on August 26, 2020
 - Discussed project concept and bioretention layout
 - Learned that Morro Rock is one of their most sacred places
 - Suggested integrating Chumash information about Morro Rock into project signage, which Fred thought was a good idea
 - Support for the project provided by NCTC on August 31, 2020

Educational Signage

Bioretention Cells Rain Gardens that Protect Puget Sound

A bioretention cell is an engineered rain garden—a planted depression that collects, soaks up, and filters stormwater runoff from impervious surfaces. The plant roots and soil organisms soak up and filter runoff. Micro-organisms in the soil / plant environment break down or absorb pollutants.

Engineers determine the size, shape and depth of the bioretention cell by accounting for the:

- Size of the **drainage area** flowing into the cell
- Amount of **average annual rainfall**
- **Available space** in the landscape
- Type of **underlying soil** and rate of **infiltration**

Common Pollutants in Stormwater Runoff

- Oil
- Fertilizer
- Pesticides
- Litter
- Animal Waste
- Metals

The Alternative

With no natural quality treatment, runoff flows directly into our storm drains and eventually carrying pollutants.

How do rain gardens work?



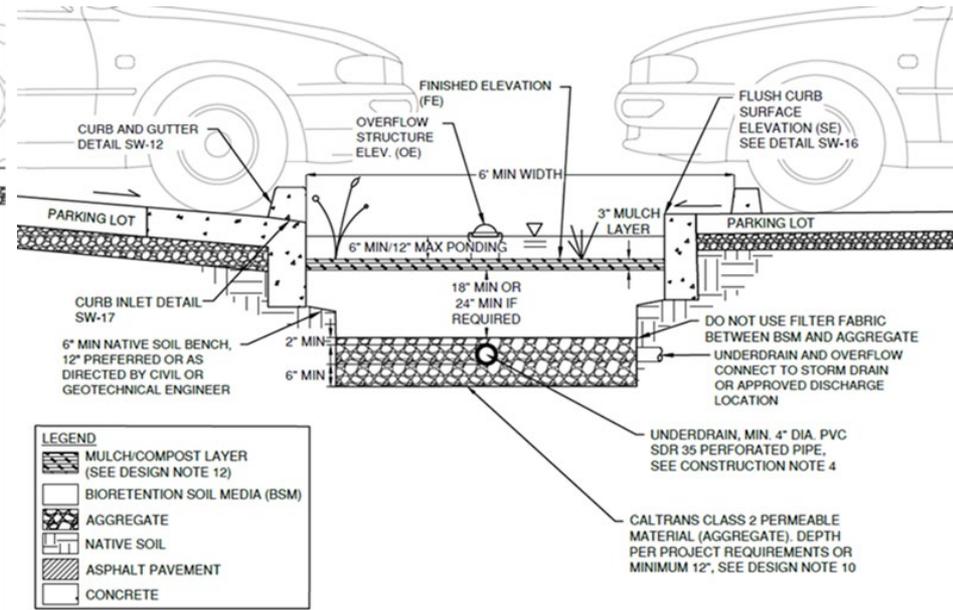
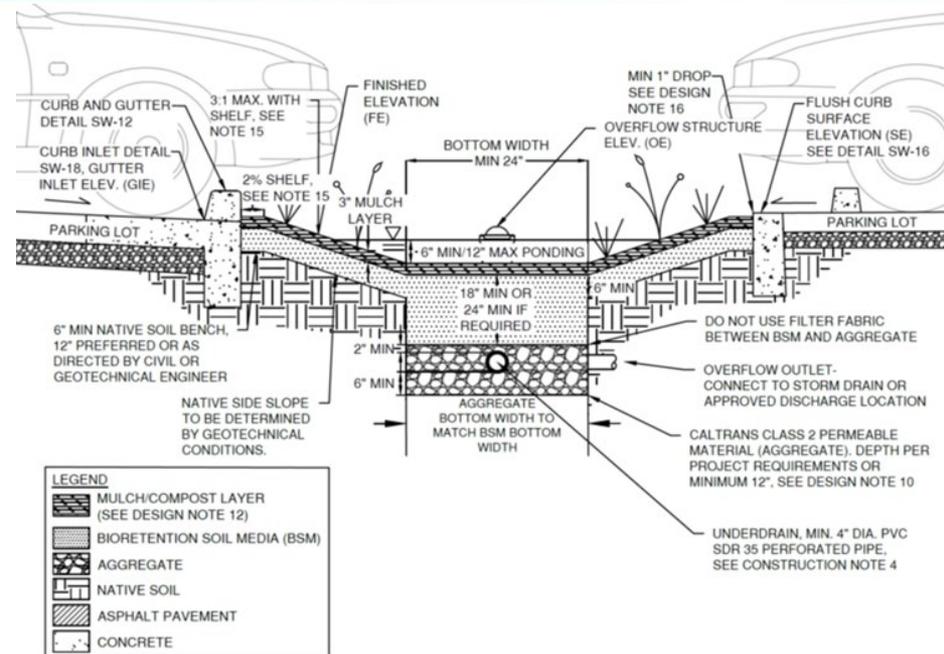
Rain Garden Benefits

- Reduce flooding
- Remove pollutants
- Control runoff volume and flow
- Recharge groundwater
- Provide wildlife habitat



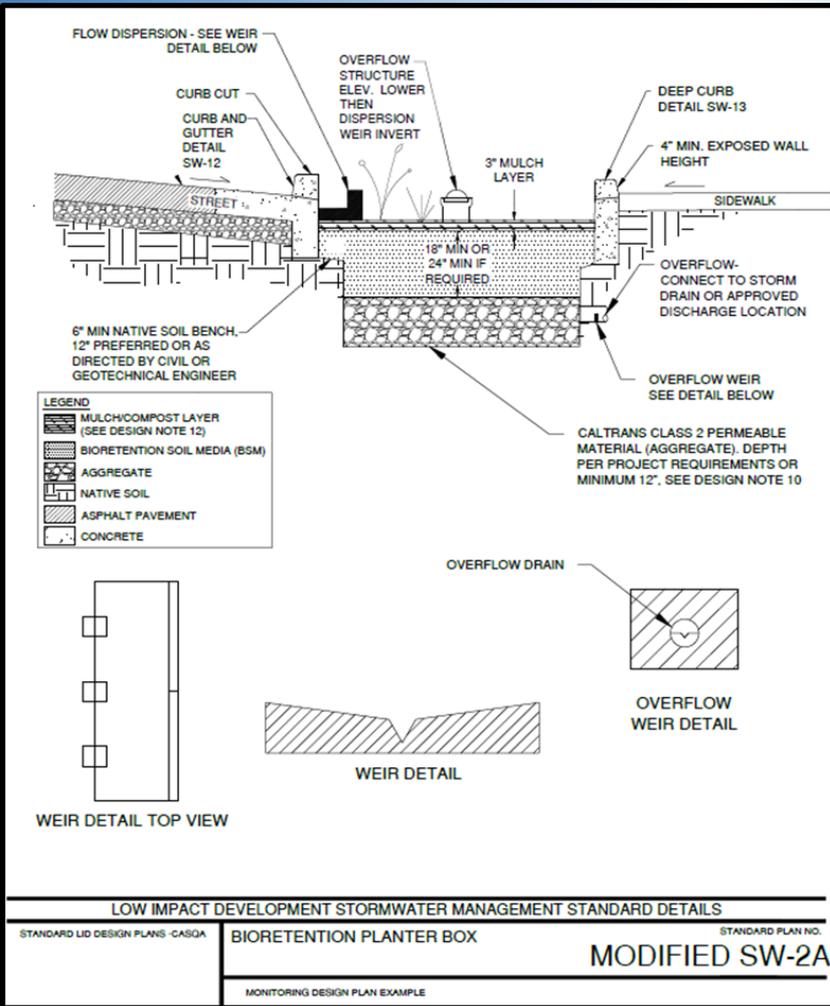
- Educational signage at each site - bioretention systems, Ocean Friendly Gardens, water quality
 - City of Morro Bay, Surfrider local chapter, NCTC input
 - Information about the Chumash and Morro Rock
 - Languages: English, Spanish, Chumash
- Provides education of the surfing community and the public about GSI, OFG, and water quality
- City of Morro Bay, Surfrider, local Surfrider Chapter, NCTC collaborates on design of the sign

Planning & Design



- Collaborate with the City of Morro Bay and local Surfrider chapter on planning and siting
- Use of CASQA-LIDI bioretention designs developed by the Project Team and peer reviewed
- City of Morro Bay and local Surfrider chapter owner involved with design elements

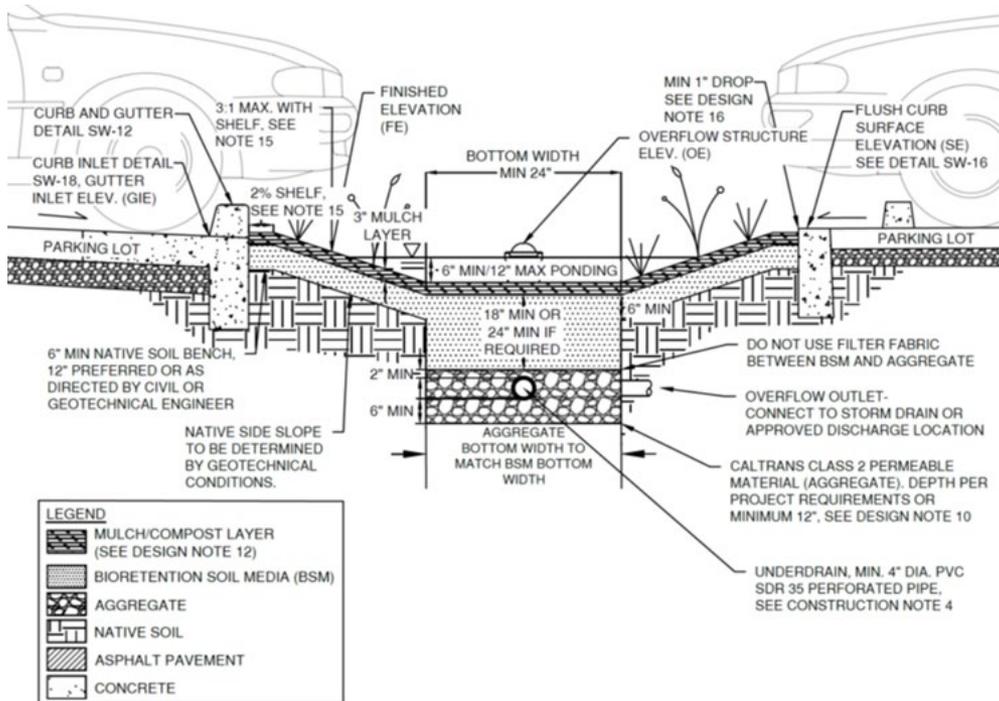
Monitoring



- Integrate monitoring infrastructure into the design of the bioretention system
 - Use of SMC CLEAN monitoring design elements
- Use SMC CLEAN Monitoring Protocol
- Perform water quality monitoring for 3 years
- City involvement if desired
- Potential for local Surfrider chapter to assist with monitoring as part of Blue Water Task Force
- Visual monitoring/inspections



Construction



- Construction oversight to ensure proper construction and per design plans
- Construction inspections/training during construction – City staff opportunity
- Use of SMC CLEAN LID BMP Construction Guidance & Inspection Protocol

Commissioning & Education Event



- Perform commissioning inspection with City of Morro Bay and local Surfrider chapter
 - Use SMC CLEAN Commissioning Inspection Protocol
 - Complete prior to commissioning event/ribbon cutting event
- Official commissioning/ribbon cutting event once bioretention systems at a site are complete
 - Local Surfrider chapter collaborate with City of Morro Bay, NCTC and Surfrider regional/national staff to organize event
 - Use the event as an educational opportunity about GSI and OFG and tour the bioretention systems and elements
 - Use event to educate about Morro Rock and the Chumash

Operation & Maintenance



- Operation and maintenance plan development by Olaunu Team with City input
- Olaunu O&M inspections & maintenance for 3 years – opportunity for City and local SF chapter
- O&M field training of City of Morro Bay staff and local Surfrider chapter in first 3 years
- Use of SMC CLEAN LID BMP Operation & Maintenance Guidance & Inspection Protocol
- City maintains the bioretention systems after 3 years in perpetuity

Prop 68 Grant & Schedule

- Ocean Protection Council – Proposition 68 Grant Coastal Resilience Solicitation
 - Letter of Intent Due: September 14, 2020 (3-page limit)
 - Project description
 - Preliminary Budget
 - Project Schedule
 - Who's Involved
 - Application Review and Evaluation: Sept 14 – October 1, 2020
 - Selected Applicants Invited to Submit Full Proposal: October 2, 2020
 - Full Proposal Due: November 13, 2020
 - Application Review and Evaluation - Nov 16 – January 1, 2021
 - Select proposals invited for interview or site visit: Jan 4 – Feb 5, 2021
 - OPC staff recommend selected projects to OPC for approval: Feb 2021
 - Approved project finalize workplans and grant agreements: Spring 2021

Questions/Discussion

Thank you!

Daniel Apt | President | Olaunu
San Clemente, CA | 949-449-7980
dapt@olaunu.com

Darla Elswick
Los Osos, CA | 805-540-0145
darla@darlaelswick.com

Wayne Carlson | Principal | AHBL
Seattle, WA | 206-658-2674
wecarlson@ahbl.com

