

RESOLUTION NO. 34-22

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
CALLING FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION
TO BE HELD ON TUESDAY, NOVEMBER 8, 2022, FOR THE SUBMISSION OF ORDINANCE
NO 650 TO THE QUALIFIED VOTERS OF THE CITY AS A PROPOSED MEASURE;
AND, REQUESTING THE BOARD OF SUPERVISORS OF SAN LUIS OBISPO COUNTY
TO CONSOLIDATE SAID ELECTION WITH THE STATEWIDE GENERAL ELECTION
TO BE HELD IN THE COUNTY ON TUESDAY, NOVEMBER 8, 2022 PURSUANT TO
SECTION 10403 OF THE ELECTION CODE; AND, OTHER ELECTION MATTERS
AS REQUIRED BY LAW**

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

WHEREAS, the City Council of the City of Morro Bay, under the provisions of the laws related to general law cities in the State of California, has called for the holding of a General Municipal Election to be held on November 8, 2022 to consider a ballot measure concerning Ordinance No. 650, and further desires that this election be consolidated with the Statewide General Election to be held on the same date; and

WHEREAS, pursuant to authority provided by the California Constitution and the State Elections Code, on March 10, 2022, an initiative petition was presented for filing entitled, "Initiative Measure To Fund City Of Morro Bay Harbor Infrastructure Through \$120 Special Parcel Tax With Revenues Used Only And Exclusively For Maintenance And Improvements To City Of Morro Bay Owned Harbor Facilities"; and

WHEREAS, Election Code Section 9215 provides in part that an initiative petition qualifies if it "is signed by not less than 10 percent of the voters of the city,"; and

WHEREAS, in accordance with Election Code Section 9210, it was determined that the County Clerk's last official report of City of Morro Bay voter registration to the Secretary of State was 8,268 registered voters and that 10% of said registration would require 827 valid signatures to qualify the initiative petition; and

WHEREAS, on March 10, 2022, pursuant to the provisions of Election Code section 9210, the initiative petition was examined by the City's Elections Official and it was determined the number of signatures, prima facie, was in excess of the number of signatures required, and the City's Elections Official accepted the petition for filing; and

WHEREAS, based on the County of San Luis Obispo Registrar of Voters' Signature Verification Certificate and, in accordance with Election Code Sections 9114 – 9115, the initiative petition was determined to contain 1,047 valid signatures and deemed to be sufficient on April 4, 2022; and

WHEREAS, in accordance with Election Code Section 9215, the Elections Official certified the results of the examination to the City Council at the next regular meeting held on April 12, 2022; and

WHEREAS, Election Code Section 9215 provides in part that when a city council is presented with a qualified initiative petition, the City Council “shall do one of the following: (a) Adopt the ordinance, without alteration, at the regular meeting at which the certification was presented. (b) Submit the ordinance, without alteration, to the voters pursuant to Section 1405. (c) Order a report pursuant to Section 9212 at the regular meeting at which the certification of the petition is presented.”; and

WHEREAS, the City Council desires to have the voters consider this measure at the next statewide general election to be held on November 8, 2022; and

WHEREAS, it is desirable that said General Municipal Election be consolidated with the Statewide General Election to be held on the same date and that within the City of Morro Bay the precincts, polling places and election officers of the two elections be the same, and that the County Election Department of the County of San Luis Obispo canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election.

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

SECTION 1. That pursuant to the requirements of the laws of the State of California relating to General Law Cities, including California Elections Code Sections 306, 9222 and 1301, there is called and ordered to be held in the City of Morro Bay, California, on Tuesday, November 8, 2022, a General Municipal Election for the purpose of submitting to the voters of the City of Morro Bay a ballot measure. Pursuant to Elections Code Section 9222, it is the intent of the City Council the measure be submitted to the voters of Morro Bay at the aforementioned General Election. The full text of the measure is attached hereto and marked as Exhibit A. The San Luis Obispo County Registrar of Voters is requested to print the Full Text of the Measure contained on Exhibit A in the sample ballot pamphlet. As required by Elections Code Section 13247, the abbreviated form of the measure to appear on the ballot is specified below in Section 2. The City Clerk is hereby authorized and directed to make any changes to the text of the proposition or this resolution as required to conform to any requirements of the San Luis Obispo County Registrar of Voters.

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

Shall the measure, to exclusively fund City of Morro Bay owned harbor infrastructure (such as docks, piers, Harbor Walk, sea walls, public restrooms, revetments, launch ramps) through preventative maintenance and capital improvements, revenues used only for these purposes and unable to be used for any other purpose, providing approximately \$680,000 annually, through annual \$120 special parcel tax on all parcels of taxable real property, adjusted for inflation, until ended by voters, be adopted?	YES
	NO

SECTION 3. That the text of Ordinance No. 650 to be submitted to the voters as a proposed measure is attached as Exhibit “A” to this resolution.

SECTION 4. That the ordinance shall not take effect unless and until the ordinance receives the approval of a majority of the votes cast by the qualified voters of the City voting upon the ballot measure on the proposed ordinance at the November 8, 2022 General Municipal Election.

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

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

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

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

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

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

SECTION 11. That pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of San Luis Obispo is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday, November 8, 2022, for the purpose of submitting to the voters a ballot measure concerning City of Morro Bay Ordinance No. 650.

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

SECTION 13. That the Board of Supervisors is requested to issue instructions to the County Election Department to take any and all steps necessary for the holding of the consolidated election.

SECTION 14. That the City of Morro Bay recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs incurred by reason of this consolidation.

SECTION 15. That the City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the County Election Department of the County of San Luis Obispo.

SECTION 16. That the City Council authorizes the City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

SECTION 17. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

SECTION 18. That this Resolution is effective on the day of its adoption.


PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12th day of April 2022 following vote:

AYES: Headding, Addis, Barton, Ford, Heller
NOES: None
ABSENT: None



JOHN HEADDING, Mayor

ATTEST:



DANA SWANSON, City Clerk

ORDINANCE NO. 650

**AN ORDINANCE OF THE PEOPLE
OF THE CITY OF MORRO BAY, CALIFORNIA,
ADDING CHAPTER 3.27 “MORRO BAY HARBOR INFRASTRUCTURE ACT OF 2022”
TO TITLE 3 OF THE MORRO BAY MUNICIPAL CODE**

WHEREAS, on March 10, 2022, an initiative petition entitled “Initiative Measure To Fund City Of Morro Bay Harbor Infrastructure Through \$120 Special Parcel Tax With Revenues Used Only And Exclusively For Maintenance And Improvements To City Of Morro Bay Owned Harbor Facilities” (initiative petition) was presented to the City Clerk for filing; and

WHEREAS, the initiative petition adds the “Morro Bay Harbor Infrastructure Act of 2022” to Chapter 3.27 of the Morro Bay Municipal Code to fund preventative maintenance and capital improvements for the City of Morro Bay harbor infrastructure through an annual special parcel tax of \$120, adjusted for inflation, on all Parcels of Taxable Real Property in the City starting in 2023-24 tax year; and

WHEREAS, Elections Code section 9215 provides in part that an initiative petition qualifies if it “is signed by not less than 10 percent of the voters of the city,” and as of the August 30, 2021, voter registration report to the Secretary of State, there were 8,268 registered voters in the City of Morro Bay; and

WHEREAS, pursuant to Elections Code section 9210, the initiative petition was examined by the City Clerk and it was determined the number of signatures prima facie, was in excess of 10% (827) of the registered voters of the City, and the petition was accepted for filing; and

WHEREAS, the City Clerk’s office coordinated with the County Registrar of Voters to examine signatures and, in accordance with Election Code sections 9114-9115, the initiative petition was determined to contain 1,047 valid signatures and deemed sufficient on April 4, 2022; and

WHEREAS, Elections Code section 9215 provides in part that when a city council is presented with a qualified petition, the Council shall do one of the following: (a) Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented; or, (b) Submit the ordinance, without alteration, to the voters pursuant to Election Code section 1405; or, (c) Order a report pursuant to Election Code section 9212 at the regular meeting at which the certification of the petition is presented. When the report is presented to the legislative body, the legislative body shall either adopt the ordinance within 10 days or order an election pursuant to option (b) above; and

WHEREAS, The California Constitution in Article XIIC (Voter Approval for Local Tax Levies) precludes the City Council from exercising the first option under Election Code section 9215 of adopting the ordinance, because the City Council cannot pursuant to the California Constitution adopt a proposed tax ordinance without voter approval; and

WHEREAS, consistent with the law requires the City Council to choose one of the options provided by Election Code section 9215, and the first option under the election codes of adopting the ordinance - without voter approval - is not available pursuant to the California Constitution, the City Council decided to submit the ordinance, without alteration, to the voters; and

NOW, THEREFORE, THE PEOPLE OF THE CITY OF MORRO BAY, CALIFORNIA FIND AND ORDAIN AS FOLLOWS:

SECTION 1. RECITALS. The recitals set forth above are all true and correct and are incorporated herein by this reference.

SECTION 2. CODE AMENDMENT. A new Chapter 3.27 "Morro Bay Harbor Infrastructure Act of 2022" is added to Title 3 (Revenue and Finance) of the Morro Bay Municipal Code, to read as follows:

Section 1. Title.

This measure shall be known and may be cited as the " Morro Bay Harbor Infrastructure Act of 2022."

Chapter 3.27 of the Morro Bay Municipal Code is hereby added to read as follows:

ARTICLE 3.27 MORRO BAY HARBOR INFRASTRUCTURE ACT

3.27.010. PURPOSE AND FINDINGS.

This chapter is intended to achieve the following purposes, among others, and the provisions hereof shall be interpreted in order to accomplish such purposes and the voters of the City of Morro Bay make the following findings and resolve:

- A. The voters of the City of Morro Bay ("City") are committed to supporting the Morro Bay Harbor ("Harbor ") in its mission to provide preventative maintenance and capital improvement to City Harbor facilities; and
- B. The voters of the City of Morro Bay, our businesses, our commercial fishing industry and our tourism guests all benefit from a well-maintained and user-safe Harbor infrastructure; and
- C. The operations of the Harbor Department are funded from Tidelands Trust lease site revenues, those revenues are insufficient to fund harbor infrastructure needs; and
- D. Funding is necessary due to the inability of the City of Morro Bay's General Fund to provide revenue for critical Harbor major maintenance and capital improvement projects (the City's General Fund is used to support other City services such as public safety, streets, parks, and recreation); and
- E. Funding is needed for maintenance of and improvements to City owned harbor related infrastructure, including but not limited to: City owned properties including public restrooms

along the waterfront; docks; piers; sea walls; revetments; the Tidelands Park launch ramp, the Harbor Walk and City owned harbor structures; and

- F. Revenue from the proposed parcel tax would not be applied to City employee salaries or benefits. All revenue from the special Tax shall be used solely for purposes related to the maintenance of and improvements of City owned harbor related infrastructure; and
- G. Currently, the unfunded revenue needed maintenance and improvements to City owned harbor infrastructure is estimated to be in the multi-million dollars; and
- H. The voters of the City are empowered to do something about that by supporting this local funding measure, which will help maintain a high quality and safe harbor in the City of Morro Bay ("City") the City shall collect and authorized to appropriate, as specified below, an annual \$120 parcel tax, adjusted for inflation, raising approximately \$ 680,000 annually. None of the proceeds from this measure shall be used for City employee salaries or benefits.
- I. Pursuant to the California Supreme Court's decision in *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, that Section 4 of Article XIII A and Section 2 of Article XIII C of the California Constitution and Sections 50075, 50076, 50077, 50079 and 53722 et seq. of the California Government Code authorizes the City to have a special tax, upon approval of a majority (more than 50% percent) of the electorate voting on the measure, to levy a qualified special tax for specified purposes as stated herein; and
- J. The voters have successfully conducted a voter signature petition, as required by law, on the question of whether or not to request the City's voters to authorize funding for the purposes identified below.

3.27.020. TAX RATE.

By this parcel tax measure, the City seeks voter approval of a tax that shall be levied on all Parcels of Taxable Real Property in the City at a rate of One Hundred and Twenty Dollars (\$120.00) per parcel ("Parcel Tax Rate") per year. The new level of parcel taxes, as provided in this measure, will be imposed commencing in the 2023-24 tax year, and each year thereafter.

To account for the impact of inflation on the cost of infrastructure and maintaining a high quality and safe Harbor, the Parcel Tax Rate as set forth above, shall be automatically adjusted annually, unless otherwise directed by the City, commencing as of the 2025- 26 tax year, for inflation by the change in the "Consumer Price Index for all Urban Consumers California" published by the U.S. Department of Labor, Bureau of Labor Statistics. In the event this index is no longer published, the City shall adopt a comparable index of general price levels, as it shall reasonably determine.

"Parcel of Taxable Real Property" is defined as any unit of real property in the City that receives a separate tax bill for ad valorem property taxes from the San Luis Obispo Tax Collector's Office, as applicable, depending on parcel location. All property that is otherwise exempt from or upon which no ad valorem property taxes are levied in any year shall also be exempt from the special tax in such year.

If more than one adjacent Assessor parcel constitutes a single parcel under the Subdivision Map Act (California Government Code section 66410 *et seq.*), then the parcel will be treated as a single Parcel of Taxable Real Property for purposes of the amount of tax due, and a claim for refund may be made by the property owner pursuant to the claim procedures outlined below.

3.27.030. TAX ALLOCATIONS, APPROPRIATIONS, AND ACCOUNTABILITY.

Pursuant to California Constitution Article XIIB and applicable laws, the appropriations limit for the City will be adjusted periodically by the aggregate sum collected by levy of this special tax. Notwithstanding any other provision of law, or this measure, the proceeds of this tax measure shall be allocated and appropriated as follows: to fund maintenance of and improvements to City owned harbor related infrastructure, including but not limited to: City owned properties including public restrooms along the waterfront; docks; piers; sea walls; revetments; the Tidelands Park launch ramp, the Harbor Walk and City owned harbor structures.

The proceeds of the special tax shall be applied only to the specific purposes identified above. The proceeds of the special tax shall be deposited into a fund, which shall be kept separate and apart from other funds of the City. No later than January 1 of each year while the tax is in effect, the City shall prepare a report detailing the amount of funds collected and expended, and the status of any project authorized to be funded by this measure.

In addition, an independent Citizen's Oversight Committee shall be appointed by the City Council to ensure that the special tax proceeds collected pursuant to this measure are spent for their authorized purposes, and to report annually to the City Council and to the public regarding the expenditure of such funds at a noticed public hearing.

3.27.040. LEGAL AUTHORITY.

- A. **Severability.** The voters hereby declare, and a majority of the voters approving this measure concur, that every section and part of this measure has independent value, and the City and the voters would have adopted each provision hereof regardless of every other provision hereof. Upon approval of this measure by the voters, should any part of the measure or taxing formula be found by a court of competent jurisdiction to be invalid for any reason, all remaining parts of the measure or taxing formula hereof shall remain in full force and effect to the fullest extent allowed by law.
- B. **Protection of Funding.** Current law forbids any decrease in State or Federal funding to the City because of the City's adoption of a parcel tax. However, if any such funds are reduced because of the adoption of this parcel tax, then the amount of the special taxes will be reduced annually as necessary in order to restore such State or Federal funding.
- C. **Vote Requirement.** The voters hereby declare that in accordance with the California Supreme Court's decision in *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, that Section 4 of Article XIII A and Section 2 of Article XIII C of the California Constitution and Sections 50075, 50076, 50077, 50079 and 53722 *et seq.* of the California Government Code this citizen initiative special tax shall become effective upon approval of a majority (over 50% percent) of the electorate voting on the measure, to levy a qualified special tax for specified purposes stated above.
- D. **Home Rule.** The authority to pass this measure is derived from the City's home rule powers that are provided in Article XI, sections 7 and 11 of the California Constitution. The

People of the City of Morro Bay declare their intent that this citizen initiative be enacted, and the parcel tax be collected for the entire uninterrupted time period described herein, if this measure is approved by a simple majority of the voters pursuant to the California Supreme Court case of *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924. To the extent that the California Constitution or state law is amended, on the same date as the passage of this measure, or after, to change or create additional voting requirements to implement or to continue to implement this measure, the People of the City of Morro Bay declare their intent that such amendments should be applied prospectively only and not apply to, or in any way affect this measure.

- E. **Legal Defense.** The People of the City of Morro Bay desire this measure, if approved by the voters and thereafter challenged in court, be defended by the City. The People, by approving this measure, hereby declare that the proponents of this measure have a direct and personal stake in defending this measure from constitutional or statutory challenges to the measure's validity or implementation. In the event the City fails to defend this measure, or the City fails to appeal an adverse judgment against the constitutionality, statutory permissibility or implementation of this measure, in whole or in part, in any court of law, the measure's proponents shall be entitled to assert his, her or their direct personal stake by defending the measure's validity and implementation in any court of law and shall be empowered by the People through this measure to act as agents of the People. The City shall indemnify the proponents for reasonable expenses and other losses incurred by the proponents, as agents, in defending the validity and/or implementation of the challenged measure. The rate of indemnification shall be no more than the amount it would cost the City to perform the defense itself.

SECTION 3. EFFECTIVE DATE. Pursuant to Election Code Section 9217, this Ordinance shall be considered as adopted on the date that the City Council declares that the voters of the City of Morro Bay have approved the Ordinance by a vote of no less than a majority of the votes cast by the electors voting on the Measure, and shall go into effect ten (10) days thereafter.

SECTION 4. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

SECTION 5. AMENDMENT OR REPEAL ONLY BY VOTERS. As provided for by California Elections Code section 9217, "No ordinance that is either proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance."

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SECTION 6. EXECUTION.

The Mayor of the City of Morro Bay is hereby authorized and ordered to attest to the adoption of the Ordinance by the voters of the City of Morro Bay by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED and APPROVED and ADOPTED by the People of the City of Morro Bay, California voting on the ___ day of _____, 2022.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney