

MINUTES - MORRO BAY CITY COUNCIL
CLOSED SESSION – OCTOBER 11, 2010
CITY HALL CONFERENCE ROOM - 5:00 P.M.

Mayor Peters called the meeting to order at 5:00 p.m.

PRESENT:	Janice Peters	Mayor
	Carla Borchard	Councilmember
	Rick Grantham	Councilmember
	Noah Smukler	Councilmember
	Betty Winholtz	Councilmember
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney

CLOSED SESSION

MOTION: Councilmember Borchard moved the meeting be adjourned to Closed Session. The motion was seconded by Councilmember Winholtz and unanimously carried. (5-0)

Mayor Peters read the Closed Session Statement.

CS-1 GOVERNMENT CODE SECTION 54956.8; REAL PROPERTY TRANSACTIONS. Instructing the City's real property negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property as to three (3) parcels:

- Property: Embarcadero Grill - Lease Site 86-86W
Negotiating Parties: Caldwell and City of Morro Bay.
Negotiations: Lease Terms and Conditions.
- Property: Outrigger - Lease Site 87-88/87W-88W
Negotiating Parties: V. Leage and City of Morro Bay.
Negotiations: Lease Terms and Conditions.
- Property: Surf Street Parking Lot.
Negotiating Parties: Maritime Museum and City of Morro Bay.
Negotiations: Terms and Conditions of Lease.

The meeting adjourned to Closed Session at 5:00 p.m. and returned to regular session at 5:50 p.m.

MOTION: Councilmember Grantham moved the meeting be adjourned. The motion was seconded by Councilmember Borchard and unanimously carried. (5-0)

The meeting adjourned at 5:50 p.m.

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VETERANS MEMORIAL HALL - 6:00 P.M.

Mayor Peters called the meeting to order at 6:00 p.m.

PRESENT:	Janice Peters	Mayor
	Carla Borchard	Councilmember
	Rick Grantham	Councilmember
	Noah Smukler	Councilmember
	Betty Winholtz	Councilmember
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney
	Jamie Boucher	Deputy City Clerk
	Eric Endersby	Harbor Operations Manager
	Susan Lichtenbaum	Harbor Business Manager
	Rob Livick	Public Services Director
	Tim Olivas	Police Chief
	Susan Slayton	Administrative Services Director
	Joe Woods	Recreation & Parks Director

ESTABLISH QUORUM AND CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

MAYOR AND COUNCIL MEMBERS REPORTS, ANNOUNCEMENTS &
PRESENTATIONS

CLOSED SESSION REPORT - City Attorney Robert Schultz reported the City Council met in Closed Session, and no reportable action under the Brown Act was taken.

PUBLIC COMMENT

D’Onna Kennedy announced her candidacy for City Council in the upcoming election. She also made a public service announcement regarding receiving fraudulent checks in the mail.

Don Doubledee, Interim CEO for the Chamber of Commerce, gave an update of events for the Chamber of Commerce.

Garry Johnson announced the quarterly meeting of the Historical Society will be held on November 7th with Botso Korishelli being the guest speaker. He also stated the *Then and Now* book is for sale and a book signing with the authors Roger Castle and Gary Ream will be held on October 17th at Coalesce book store with the profits going to the Historical Society.

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Nancy Johnson stated being a long-time member of the Citizens Bicycle Committee she wanted to thank the City for starting work on the North Main Street bike lanes. She also announced as a candidate running for City Council, she will be holding a Meet & Greet at Top Dog coffee shop on October 22nd to discuss issues relating to the downtown area.

Linda Winters expressed support for Proposition 21 which would establish an \$18 annual vehicle license surcharge to help fund state parks and wildlife programs and will be on the November 2, 2010 General Election ballot.

Bill Yates thanked all the volunteers and City employees who helped with the Harbor Festival. He also encouraged everyone to get out and vote on November 2nd.

Mayor Peters closed the hearing for public comment.

A. CONSENT CALENDAR

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion.

A-1 APPROVAL OF MINUTES FOR THE REGULAR CITY COUNCIL MEETING OF SEPTEMBER 27, 2010; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 AUTHORIZATION TO AMEND THE CITY'S DENTAL POLICY WITH PRINCIPAL FINANCIAL TO ALLOW FOR ELIGIBILITY OF COVERAGE FOR DEPENDENTS TO AGE 26 REGARDLESS OF STUDENT STATUS; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Authorize staff to submit a letter authorizing an amendment to the dental policy allowing eligibility of coverage for dependents to age 26 regardless of student status.

A-3 RESOLUTION NO. 47-10 APPROVING CONTINUATION OF THE 2009/10 DEFERRAL OF MANAGEMENT AND EXECUTIVE 3% COST-OF-LIVING ADJUSTMENT; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Resolution No. 47-10.

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A-4 CONSIDERATION OF APPROVAL FOR A LEASE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND ABBA IMANI FOR LEASE SITE 65-66/65W-66W LOCATED AT 571 EMBARCADERO-SALT BUILDING; (HARBOR)

RECOMMENDATION: Adopt Resolution No. 48-10.

A-5 LETTER TO THE CALIFORNIA DEPARTMENT OF FISH AND GAME IN SUPPORT OF RE-OPENING THE MONTEREY BAY HALIBUT TRAWL GROUNDS; (HARBOR)

RECOMMENDATION: Approve sending a letter to the California Department of Fish and Game in support of re-opening the Monterey Bay Halibut Trawl grounds.

A-6 AWARD OF CONTRACT TO ASSOCIATED PACIFIC CONSTRUCTORS, INC. FOR THE WHARF REMOVAL PROJECT [MB-2010-H1]; (HARBOR)

RECOMMENDATION: Adopt Resolution No. 49-10.

A-7 ADOPTION OF ORDINANCE NO. 563 ADDING A LANDMARK TREE SECTION TO CHAPTER 12.08 OF THE MORRO BAY MUNICIPAL CODE; (PUBLIC SERVICES)

RECOMMENDATION: Adopt Ordinance No. 563.

A-8 RESOLUTION IN SUPPORT OF PROPOSITION 22-THE LOCAL TAXPAYER, PUBLIC SAFETY AND TRANSPORTATION PROTECTION ACT OF 2010; (CITY COUNCIL)

RECOMMENDATION: Adopt Resolution No. 50-10.

Councilmember Winholtz pulled Items A-4 and A-5 from the Consent Calendar; Mayor Peters pulled Item A-8.

MOTION: Councilmember Grantham moved the City Council approve the Consent Calendar with the exception of Items A-4, A-5 and A-8. The motion was seconded by Councilmember Borchard and carried unanimously. (5-0)

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A-4 CONSIDERATION OF APPROVAL FOR A LEASE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND ABBA IMANI FOR LEASE SITE 65-66/ 65W-66W LOCATED AT 571 EMBARCADERO-SALT BUILDING; (HARBOR)

Councilmember Winholtz referred to the lease agreement and requested the term “Harbor Director” to add the words “or designee”; and also, add language to Section 3.01 Permitted Uses: “to limit the office space to the second floor.”

MOTION: Councilmember Winholtz moved the City Council approve Item A-4 of the Consent Calendar as amended. The motion was seconded by Councilmember Borchard and carried unanimously. (5-0)

A-5 LETTER TO THE CALIFORNIA DEPARTMENT OF FISH AND GAME IN SUPPORT OF RE-OPENING THE MONTEREY BAY HALIBUT TRAWL GROUNDS; (HARBOR)

Councilmember Winholtz requested clarification on why this fishery is being limited to existing permit holders, and also on the boundaries of the grounds.

Harbor Business Manager Susan Lichtenbaum responded it is a traditional entry fishery, which is why new permit holders cannot enter that area. She said the State boundary line goes out further in Monterey and in the late 1990’s the Department of Fish and Game placed a notice that they would be strictly enforcing the regulation against halibut fishing. They are now trying to get that area back to be allowed to fish halibut.

MOTION: Councilmember Winholtz moved the City Council approve Item A-5 of the Consent Calendar. The motion was seconded by Councilmember Grantham and carried unanimously. (5-0)

A-8 RESOLUTION IN SUPPORT OF PROPOSITION 22-THE LOCAL TAXPAYER, PUBLIC SAFETY AND TRANSPORTATION PROTECTION ACT OF 2010; (CITY COUNCIL)

Mayor Peters read Resolution No. 50-10 which authorizes the listing of the City of Morro Bay in support of Proposition 22, the Local Taxpayer, Public Safety and Transportation Protection Act of 2010.

MOTION: Mayor Peters moved the City Council approve Item A-8 of the Consent Calendar. The motion was seconded by Councilmember Grantham and carried unanimously. (5-0)

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Mayor Peters called for a break at 6:50 p.m.; the meeting resumed at 7:00 p.m.

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 REVIEW OF THE JODY GIANNINI FAMILY DOG PARK; (RECREATION & PARKS)

Recreation & Parks Director Joe Woods stated the Memorandum of Understanding (MOU) between the City of Morro Bay and the Morro Bay Pups (MBP) for the construction, maintenance, and operations of the Jody Giannini Family Dog Park (Dog Park) was approved by Council at the regular meeting of June 8, 2009. The MBP were able to obtain funding to fulfill construction obligations and began construction late in 2009. The Dog Park was substantially complete in January 2010 and the MBP began the operations with a soft opening. The MBP completed the park and hosted a grand opening on June 12, 2010. Pursuant to the Planning Commission's conditions, Special Use Permit #243, the Dog Park is to be reviewed after two years and a report shall be made to City Council. After public comment was received in May, Council directed staff to review the status of the Dog Park at a regular meeting of the Recreation and Parks Commission and report back to the City Council. The Commission reviewed the operations of the Dog Park at their regular meeting on September 28, 2010 and recommended Council consider directing staff to increase enforcement of current City municipal codes at Del Mar Park, modify the Dog Park hours of operation, modify the north fence, increase vegetation between the Dog Park and creek, and enhance park signage to better inform attendees. Mr. Woods recommended the City Council review the status of the Dog Park and the recommendations from the Recreation and Parks Commission.

Mayor Peters opened the hearing for public comment.

Steven Marketello stated he visited the dog park and there were no loud noises, only dogs having a great time. He said there were other sources of noises coming from outside of the dog park. Mr. Marketello also noted there is a thick willow area in a creek between Island Street and the dog park, which kids get into and dogs bark at them some dogs which could belong to Island Street neighbors.

Nada Simpson, board member of Morro Bay Pups, stated it was a joint effort of a large community of dedicated citizens who contributed to fund the building of this dog park.

George Baumley stated he assisted with the fundraising for the dog park and is a beneficiary of the park. He reviewed numerous benefits that the dog park offers the community.

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Elaine Giannini, board member of Morro Bay Pups, stated this dog park is a beautiful asset to the City. She said Morro Bay Pups is committed to maintaining the park to the highest standards. Ms. Giannini stated they have tried to mitigate the noise situation and requested members to counsel users to be mindful of the Island Street neighbors. They have also posted rules and regulations at the entrance of the park and also on the dog park gate. She said they are working with Morro Bay High School to implement a program for docents at the dog park. Ms. Giannini noted the leash law should be implemented outside of the dog park.

Steve Ecces, board member of Morro Bay Pups, stated the dog park is a product of a working partnership between Morro Bay Pups, City Council, its Commissions and staff. The public benefit of the park is huge and it is a first class amenity. Mr. Ecces stated Morro Bay Pups should handle the barking situation by talking to dog owners about controlling their dogs, and the City should hold Morro Bay Pups accountable allowing them to act in good faith and trust they will deal with the problems. He requested the City enforce the leash law in Del Mar Park outside of the dog park and also reaffirm its partnership with Morro Bay Pups.

Jeannie McIntosh, neighbor on Island Street, requested Council consider amending the Morro Bay Pups Memorandum of Understanding because it presently does not address noise coming from the dog park. She said she protested this dog park location being told noise would not be a problem, and yet they are hearing dogs barking and fighting and people yelling. Ms. McIntosh stated the homeowners on Island Street deserve to be recognized in this Memorandum of Understanding. She also noted taller trees on the north and west side of the park would be helpful.

Mike Anderson, neighbor on Island Street, stated this is a great park but it is unfortunate that it is so close to so many houses. He requested Council direct the Recreation & Parks staff to implement some of the changes and improvements listed in the most recent Recreation & Parks Commission staff report, which could help alleviate some of the noise issues from the dog park.

Mayor Peters closed the public comment hearing.

Councilmember Winholtz stated she contacted a noise consultant who visited the dog park and suggested a time log be maintained that records events, the extent of the noise and the location of the noise; it was also suggested someone record the noise. She said she supports obtaining some scientific information to locate the noise.

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Councilmember Grantham stated this is a well-kept, wonderful dog park. He said he would like the park to have an opening and closing time with the park being locked otherwise. Councilmember Grantham stated he would also support issuing warnings and fines for those who do not comply with the rules and regulations.

Councilmember Smukler stated because of the diligence of the Morro Bay Pups and their commitment to the agreement with the City, he would like to see the park evolve without changes to the Memorandum of Understanding at this time. He said he supports community policing, more permanent signs within the run area and the parking lots regarding noise. Councilmember Smukler stated he also supports the docent program and planting of trees as a visual and noise buffer. He said he would like to receive a memorandum from staff in six months updating Council on the changes that have occurred at the dog park along with the review every two years monitoring the progress of the park.

Councilmember Borchard stated she agrees with all of the Council remarks. She said this park is going to be used quite a bit especially with the inclusion of tennis courts, the skate rink and the dog park. Councilmember Borchard stated the dogs that are probably causing the majority of the problems are those running outside of the dog park off-leash. She said one neighbor expressed concern with someone using the dog park before the posted hours, and the excessive traffic and speeding in the neighborhood.

Mayor Peters stated she agrees more signage is required that is bright and simple, stating “PLEASE KEEP DOGS QUIET”. She said she would like monitoring with a docent during the busy times. Mayor Peters stated she would prefer hedges be planted instead of trees for a sound buffer. She said enforcement could be considered within Del Mar Park. Mayor Peters stated she would prefer not to change the Memorandum of Understanding at this time.

MOTION: Mayor Peters moved the City Council: 1) not enter the Memorandum of Understanding with Morro Bay Pups at this time; 2) request more abrupt signage in Del Mar Park to alleviate noise; 3) request information on cost of sound testing; 4) consider administrative citations as enforcement; 5) use volunteers as monitors during busy times in the dog park; and 6) receive an update from staff within six months. The motion was seconded by Councilmember Borchard and carried unanimously. (5-0)

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B-2 ADOPTION OF RESOLUTION NO. 51-10 DECLARING THE EXISTENCE OF GULLS AT BAYSHORE VILLAGE EXEMPT FROM MORRO BAY MUNICIPAL CODE 7.16.025 AND AUTHORIZING THE HOMEOWNERS ASSOCIATION TO REMOVE GULL NESTS FROM THEIR PROPERTY; (CITY ATTORNEY)

City Attorney Robert Schultz stated on September 25, 2010, his office received correspondence from Bayshore Village Homeowners Association requesting that the Gulls located within their complex be declared a public nuisance and that an exemption to allow for the removal of Gull nests from their roofs be granted by the City Council pursuant to Morro Bay Municipal Code Section 7.20.020, which was amended and incorporated into Section 7.16.025 in 2000 and states as follows: “No person shall trap, shoot, hunt, molest or kill any wild birds, or tamper, damage or destroy the nests or eggs of any wild birds within the City. Should the City Council determine by resolution that birds protected under this chapter have become so numerous or destructive in any particular location or area as to constitute a menace and danger to the public health, safety or property, the Council may provide for such remedies appropriate under the circumstances.” Mr. Schultz recommended the City Council adopt Resolution 51-10 declaring the existence of Gulls at Bayshore Village exempt from Morro Bay Municipal Code 7.16.025 and authorizing the Homeowners Association’s request to remove Gull nests from their property.

Mayor Peters opened the hearing for public comment.

William Albrecht, representing the Bayshore Village Homeowner Association, stated the Western Seagull is the only bird that has caused damage to the property and is a health hazard to Bayshore Village. He said they are trying to eliminate the problem with the removal of the Gull nests from their property to a more natural habitat.

Jack Moorehead, President of the Bayshore Village Homeowner Association, stated he has been a member of the Audubon Society for decades. He said a construction and maintenance specialist has recommended the removal of the Gull nests because of the damage to the property and their guano is affecting the roads severely. Several residents refuse to live in their complex during the breeding and nesting months due to the noise and the health concerns. Mr. Moorehead stated many remedies have been tried to no avail and removal of the nests is the best solution. He requested Council consider approving a five year period of time to help resolve this problem.

Mayor Peters closed the public comment hearing.

Councilmember Smukler stated because Morro Bay is a bird sanctuary this is becomes a serious decision. Because this is a species that is not threatened, he is comfortable with the relocation of the Gull nests to a more natural habitat and five years would be helpful to allow the colony to relocate.

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Councilmember Borchard stated she values the health and welfare of the residents, as she does the welfare of the Gulls. She said since the homeowner association is working with the agencies and the City, she feels they are doing their due diligence in resolving this issue. Councilmember Borchard stated she feels comfortable is approving the removal of the Gull nests, and allowing the homeowners a five-year time period.

Councilmember Grantham stated he would not make it binding and would like the homeowner association to consult Pacific Wildlife who may have information that the Department of Fish and Game may not have provided since they only issue the permit. He said he supports approving a five-year time period.

Councilmember Winholtz stated she totally disagrees and noted the last time the City Council reviewed this issue eight years ago, the Gulls moved to another neighborhood and caused the same problems. She said the Gulls are all along the bay and she referred to the Inn at Morro Bay and questioned how they deal with this problem. Councilmember Winholtz stated the permit with the Department of Fish and Wildlife is for one year and then up for review, so she feels to ask the City for a five-year permit is extreme, and the City should review it in one year. She also agreed that other organizations should be considered in the resolution of this issue.

Mayor Peters stated she does not see it as destruction of the species with the relocation of the Gull nests, and the health and welfare of the residents should be the main concern. She said she supports approving a five-year permit.

MOTION: Councilmember Borchard moved the City Council adopt Resolution 51-10 declaring the existence of Gulls at Bayshore Village exempt from Morro Bay Municipal Code 7.16.025, and authorizing the Homeowners Association's request to remove Gull nests from their property with a timeline of five years. The motion was seconded by Councilmember Grantham and carried with Councilmember Winholtz voting no. (4-1)

Councilmember Borchard encouraged the homeowner association to contact the Pacific Wildlife Care to obtain some possible information on relocation of the Gulls.

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B-3 APPROVAL OF PARCEL MAP MB 10-0069 (781 MARKET AVE.) AND
ACCEPTANCE OF ABANDONMENT OF RIGHT-OF-WAY AND
EASEMENTS; (PUBLIC SERVICES)

Public Services Director Rob Livick stated approval of a lot line adjustment and a parcel map is a "ministerial act", pursuant to the California Subdivision Map Act (Government Code Section 66474 .1), once the map is found to be in substantial conformance with the approved tentative map. This Parcel Map has met all City regulations and no further discretionary approvals are required. The purpose for the right-of-way abandonments is to allow the existing building to meet zoning setbacks and to clean up old easements that are no longer needed. The abandonment along Market Avenue includes a reservation for a five-foot public pedestrian easement, so that there is no change in public access but allows the existing building to meet zoning setbacks. Mr. Livick recommended the City Council City Council approve the Parcel Map MB 10-0069 with the following easements to be accepted; a 16-foot wide abandoned road from Front Street to Market Street for sewer and water rights and a 5-foot wide easement for foot passage extending from Market Street easterly to the abandoned road from Front Street to Market Avenue. Staff also recommends to City Council to abandon the following portions of right-of-way: a 10-foot strip along the easterly side of Market Street, a 6-foot strip along the southerly side of Morro Bay Boulevard, and an 8-foot strip along the northerly side of Pacific streets by adoption of Resolution No. 52-10.

Mayor Peters opened the hearing for public comment; there were no public comments and Mayor Peters closed the public comment hearing.

MOTION: Councilmember Grantham moved the City Council approve Parcel Map MB 10-0069; and, adopt Resolution No. 52-10 accepting abandonment of right-of-way and easements as described in the staff report. The motion was seconded by Councilmember Borchard.

Councilmember Winholtz stated the City has approved abandonment of properties for developers which she finds unfair to the City because it is valuable property and the City has not received any exchanges. She said in this case, she somewhat understands the abandonment on Market Street but is opposed to the abandonment on the Pacific Street side.

VOTE: The motion carried with Councilmember Winholtz voting no. (4-1)

C. UNFINISHED BUSINESS – NONE.

D. NEW BUSINESS – NONE.

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E. DECLARATION OF FUTURE AGENDA ITEMS

Councilmember Smukler requested to agendize a Resolution in support of Proposition 21 - the State Parks and Wildlife Conservation Trust Fund Act of 2010; Council concurred.

ADJOURNMENT

The meeting adjourned at 8:29 p.m.

Recorded by:

Jamie Boucher
Deputy City Clerk