

# City of Morro Bay

## City Council Agenda

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### *Mission Statement*

*The City of Morro Bay is dedicated to the preservation and enhancement of the quality of life. The City shall be committed to this purpose and will provide a level of municipal service and safety consistent with and responsive to the needs of the public.*

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## **--AMENDED--**

**REGULAR MEETING – APRIL 10, 2012**

**CLOSED SESSION  
CITY HALL CONFERENCE ROOM - 5:00 P.M.  
595 HARBOR ST., MORRO BAY, CA**

- CS-1 GOVERNMENT CODE SECTION 54957.6; CONFERENCE WITH LABOR NEGOTIATOR.** Conference with City Manager, the City's Designated Representative, for the purpose of reviewing the City's position regarding the terms and compensation paid to the City Employees and giving instructions to the Designated Representative.
- CS-2 GOVERNMENT CODE SECTION 54956.8; REAL PROPERTY TRANSACTIONS:**  
Instructing City's real property negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property as to two (2) parcels.
- **Property: Flying Dutchman - Lease Site 78-81/78W-81W**  
Negotiating Parties: L. Van Beurden and City of Morro Bay  
Negotiations: Lease Terms and Conditions
  - **Property: Sea One Solutions LLC - Lease Site 124-128/124W-128W & 113W**  
Negotiating Parties: Neil and City of Morro Bay  
Negotiations: Terms and Conditions of Lease
- CS-3 CONFERENCE WITH LEGAL COUNSEL DUE TO ANTICIPATED LITIGATION -- GOVERNMENT CODE SECTION 54956.9(C):** Initiation of litigation exists based upon existing facts and the advice of legal counsel as to one matter.
- Parties: City of Morro Bay and Sharon Moore
- CS-4 CONFERENCE WITH LEGAL COUNSEL REGARDING PENDING LITIGATION - GOVERNMENT CODE SECTION 54956.9(a):**
- Parties: Meisterlin v. City of Morro Bay

**IT IS NOTED THAT THE CONTENTS OF CLOSED SESSION MEETINGS  
ARE CONFIDENTIAL AND EXEMPT FROM DISCLOSURE..**

**PUBLIC SESSION – APRIL 10, 2012  
VETERANS MEMORIAL HALL - 6:00 P.M.  
209 SURF ST., MORRO BAY, CA**

ESTABLISH QUORUM AND CALL TO ORDER  
MOMENT OF SILENCE  
PLEDGE OF ALLEGIANCE  
MAYOR AND COUNCILMEMBERS ANNOUNCEMENTS & PRESENTATIONS  
CLOSED SESSION REPORT

PUBLIC COMMENT PERIOD - Members of the audience wishing to address the Council on City business matters (other than Public Hearing items under Section B) may do so at this time.

To increase the effectiveness of the Public Comment Period, the following rules shall be followed:

- When recognized by the Mayor, please come forward to the podium and state your name and address for the record. Comments are to be limited to three minutes.
- All remarks shall be addressed to Council, as a whole, and not to any individual member thereof.
- The Council respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commission and/or staff.
- Please refrain from public displays or outbursts such as unsolicited applause, comments or cheering.
- Any disruptive activities that substantially interfere with the ability of the City Council to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in City Council meetings is welcome and your courtesy will be appreciated.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (805) 772-6205. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

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 CITY COUNCIL MINUTES FOR THE REGULAR MEETING OF MARCH 13, 2012 AND MARCH 27, 2012; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 A PROCLAMATION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY

DECLARING APRIL 17, 2012 AS EQUAL PAY FOR WOMEN DAY; (CITY COUNCIL)

**RECOMMENDATION: Adopt Proclamation.**

A-3 A PROCLAMATION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY DECLARING THE MONTH OF APRIL "FAIR HOUSING MONTH"; (PUBLIC SERVICES)

**RECOMMENDATION: Adopt Proclamation.**

A-4 RESOLUTION STATEMENT OF CONTINUED OPPOSITION TO CREATION OF A NATIONAL MARINE SANCTUARY IN THE SAN LUIS OBISPO COUNTY COASTAL AREA, AND CONTINUED OPPOSITION TO EXPANSION OF THE MONTEREY BAY NATIONAL MARINE SANCTUARY INTO THE SAN LUIS OBISPO COUNTY COASTAL AREA; (ADMINISTRATION)

**RECOMMENDATION: Adopt Resolution 18-12.**

A-5 APPROVAL OF THE SERVICE RETIREMENT INCENTIVE PROGRAM FOR FISCAL YEAR 2012/13 BUDGET; (ADMINISTRATION)

**RECOMMENDATION: Approve the Service Retirement Incentive Program.**

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 577 AMENDING AND RENAMING MORRO BAY MUNICIPAL CODE CHAPTER 9.24 TO SECONDHAND SMOKING REGULATIONS; (CITY ATTORNEY)

**RECOMMENDATION: Accept public comment and then move for Introduction and First Reading of Ordinance No. 577, by number and title only, amending and renaming Morro Bay Municipal Code Section 9.24 to Secondhand Smoking Regulations.**

B-2 RESOLUTION NO. 16-12 INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT FOR THE CLOISTERS PARK AND OPEN SPACE LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (RECREATION & PARKS)

**RECOMMENDATION: Adopt Resolution 16-12.**

B-3 RESOLUTION NO. 17-12 INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT FOR THE NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (RECREATION & PARKS)

**RECOMMENDATION: Adopt Resolution 17-12.**

C. UNFINISHED BUSINESS - NONE

D. NEW BUSINESS

D-1 DISCUSSION ON THE PRESENTATION OF THE 2012/13 FISCAL YEAR BUDGET; (ADMINISTRATIVE SERVICES DEPARTMENT)

**RECOMMENDATION: Direct staff on preferred method of presenting the 2012/13 Budget to Council and the public.**

D-2 DISCUSSION ON THE PAPERLESS AGENDA CONCEPT; (ADMINISTRATION)

**RECOMMENDATION: Provide direction to staff on the paperless agenda concept, including whether or not a wireless network is required at City Hall.**

D-3 CITY SUPPORT OF MORRO BAY COMMUNITY RADIO; (CITY COUNCIL)

**RECOMMENDATION: Authorize City support of the Morro Bay Community Radio application to the FCC and future installation of the station's antenna at the City's Corporation Yard.**

E. DECLARATION OF FUTURE AGENDA ITEMS

F. ADJOURNMENT

**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 772-6205 FOR FURTHER INFORMATION.**

**MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL LOCATED AT 595 HARBOR STREET; MORRO BAY LIBRARY LOCATED AT 625 HARBOR STREET; AND MILL'S COPY CENTER LOCATED AT 495 MORRO BAY BOULEVARD DURING NORMAL BUSINESS HOURS.**

**IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE THAT REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.**

**AGENDA NO: A-1**

**MEETING DATE: 04/10/2012**

MINUTES - MORRO BAY CITY COUNCIL  
CLOSED SESSION – MARCH 13, 2012  
CITY HALL CONFERENCE ROOM - 5:00 P.M.

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

PRESENT:	William Yates	Mayor
	Carla Borchard	Councilmember
	Nancy Johnson	Councilmember
	George Leage	Councilmember
	Noah Smukler	Councilmember
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney
	Eric Endersby	Harbor Operations Manager

CLOSED SESSION

Mayor Yates adjourned the meeting to Closed Session.

Mayor Yates read the Closed Session Statement.

**CS-1 GOVERNMENT CODE SECTION 54957.6; CONFERENCE WITH LABOR NEGOTIATOR.** Conference with City Manager, the City's Designated Representative, for the purpose of reviewing the City's position regarding the terms and compensation paid to the City Employees and giving instructions to the Designated Representative.

**CS-2 GOVERNMENT CODE SECTION 54956.8; REAL PROPERTY TRANSACTIONS.** Instructing City's real property negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property as to two (2) parcels.

- **Property: Lease Site 122-123/122W-123W, 1205 Embarcadero**  
Negotiating Parties: Troy & Heather Leage (Harbor Hut) and City of Morro Bay  
Negotiations: Lease Terms and Conditions
- **Property: Lease Site 87-88/87W-88W, 833 Embarcadero**  
Negotiating Parties: Violet Leage (Outrigger) and City of Morro Bay  
Negotiations: Lease Terms and Conditions

The meeting adjourned at 5:45pm.

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING – MARCH 13, 2012  
VETERANS MEMORIAL HALL - 6:00 P.M.

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

PRESENT:	William Yates	Mayor
	Carla Borchard	Councilmember
	Nancy Johnson	Councilmember
	George Leage	Councilmember
	Noah Smukler	Councilmember
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney
	Jamie Boucher	City Clerk
	Rob Livick	Public Services Director
	Tim Olivas	Police Chief
	Mike Pond	Fire Chief
	Susan Slayton	Administrative Services Director
	Eric Endersby	Harbor Operations Manager
	Joe Woods	Recreation & Parks Director
	Kathleen Wold	Planning Manager

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 Shultz reported that City Council met in Closed Session and no reportable action under the Brown Act was taken.

PUBLIC COMMENT

Robert Latham spoke in favor of Item D-2 (Beach Access Ramp at Morro Rock) stressing the need for stairs from the parking lot down to the beach. He also thanked all concerned for their continued work towards those efforts.

Susan Brown spoke on the City's Transit System's enhancements and thanked staff for their involvement as permanent transit stop signage and information kiosks are now in place. She also presented information on how to ride the bus.

Kelly Lewis spoke in favor of Item A-5 (Approval of the Sign Exception Permit) and hoped that Council would uphold the off-site sign exception permit for Virg's Sport Fishing.

Jamie Irons requested Council pull Item A-4 (Approval of Amended Job Descriptions for the Harbor Director and Harbor Business Manager and Authorization to Fill Both Vacancies). He hoped that Council would propose a long range plan that would restore the Harbor's infrastructure as well as the Harbor Department itself and then design an organization to fulfill that.

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING – MARCH 13, 2012  
VETERANS MEMORIAL HALL - 6:00 P.M.

Keith Taylor, a member of Friends of the Fire Department, spoke soliciting the sale of bricks being placed at the new fire department. The money collected goes towards the Morro Bay Fire Reserves for their attendance at the Fire Academy and/or Paramedic School. You can get bricks from him by calling 772-2852.

Ron De Carli, Executive Director of SLOCOG spoke on Item C-1 (Consideration of Estero Bay Transit Service Proposal). He expressed concerns that the system continues to perform poorly with low ridership and high overhead rate. He did express his thanks for the enhancements that have taken place including the bus stop improvements as well as changing hours to better connect with the regional system.

Mandy Davis also spoke on Item A-4 saying there should be more thought and consideration given to how the Harbor Department should be reorganized. She felt this item should have been brought to the Harbor Advisory Board first.

Mark Hamerding was in agreement with Ms. Davis and felt that the position of Harbor Director should be advertised for, as opposed to appointed.

Craig Schmidt announced the upcoming Chamber Mixers – one at Coast National Bank and the other at Casa de Flores.

Betty Winholtz was surprised that we weren't going to advertise for a Harbor Director. She also spoke about KONY2012. ~~She encouraged people sending letters to the President Obama requesting we not withdraw our advisors from Africa to help in our efforts to capture this man.~~—She asked you as parents and grandparents and guardians of the children to send a letter to the President of the United States to agendize it for the next meeting to ask him to not withdraw his advisors in Africa but to keep them there so that we might capture this man.

Garry Johnson echoed Mayor Yates's comments about all candidates running a clean campaign. He promoted the upcoming Morro Photo Expo being held March 30 – April 1<sup>st</sup>. He also thanked Chief Tim Olivas for his years of service.

Mayor Yates closed the public comment period.

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 CITY COUNCIL MINUTES FOR THE JOINT PLANNING COMMISSION/CITY COUNCIL MEETING AND REGULAR MEETING OF FEBRUARY 28, 2012; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING – MARCH 13, 2012  
VETERANS MEMORIAL HALL - 6:00 P.M.

A-2 RESOLUTION 14-12 AUTHORIZING THE FEDERAL FUNDING UNDER FTA SECTION 5317 (49 U.S.C. SECTION 5317) WITH CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR THE COMMUNITY BUS PROGRAM; (PUBLIC SERVICES)

**RECOMMENDATION: Adopt Resolution 14-12.**

A-3 RESOLUTION 13-12 AUTHORIZING THE EXECUTION OF A MASTER AGREEMENT AND PROGRAM SUPPLEMENTS WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR STATE FUNDED TRANSIT PROJECTS; (PUBLIC SERVICES)

**RECOMMENDATION: Adopt Resolution 13-12.**

A-4 APPROVAL OF THE AMENDED JOB DESCRIPTIONS FOR THE HARBOR DIRECTOR/HARBORMASTER AND HARBOR BUSINESS MANAGER AND AUTHORIZATION TO FILL THE HARBOR DIRECTOR/HARBORMASTER AND HARBOR BUSINESS MANAGER VACANCIES; (ADMINISTRATION)

**RECOMMENDATION: Approve the amended job descriptions for the Harbor Director/Harbormaster and Harbor Business Manager and authorize to fill the Harbor Director/Harbormaster and Harbor Business Manager vacancies.**

A-5 FINDINGS FOR APPROVAL OF THE SIGN EXCEPTION PERMIT (#SP0-141) FOR VIRG'S SPORT FISHING; (PUBLIC SERVICES)

**RECOMMENDATION: Staff recommends that Council adopt the findings listed in Exhibit A and Conditions detailed in Exhibit B.**

Councilmember Smukler pulled Items A-2 and A-4 from the Consent Calendar; Councilmember Borchard pulled Item A-5 from the Consent Calendar.

MOTION: Councilmember Johnson moved the City Council approve Item A-1 and A-3 of the Consent Calendar. The motion was seconded by Councilmember Borchard and carried unanimously 5-0.

Councilmember Smukler pulled Item A-2 in order to thank staff for their work on the Community Bus Program.

MOTION: Councilmember Smukler moved the City Council approve Item A-2 of the Consent Calendar. The motion was seconded by Councilmember Johnson and carried unanimously 5-0.

Councilmember Smukler spoke on Item A-4, he feels we are moving too quickly and wants to see us do an outside recruitment for the Harbor Director position.

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REGULAR MEETING – MARCH 13, 2012  
VETERANS MEMORIAL HALL - 6:00 P.M.

Councilmember Leage agreed with Councilmember Smukler, we should put out for applications.

Councilmember Johnson has spoken with many people from the public that want to move forward and appoint Eric Endersby as our Harbor Director. She supports staff's recommendation.

Mayor Yates spoke in favor of supporting the City Manager's recommendation.

Councilmember Borchard echoed those sentiments as Mr. Endersby has already been fulfilling the job duties. She respects the outreach that has come to Council.

**MOTION:** Councilmember Borchard moved the City Council approve Item A-4 of the Consent Calendar. The motion was seconded by Councilmember Johnson and carried 3-2 with Councilmember Smukler and Councilmember Leage voting no.

Councilmember Borchard and Councilmember Leage stepped down from the dais due to a conflict of interest.

**MOTION:** Councilmember Johnson moved the City Council approve Item A-5 of the Consent Calendar. The motion was seconded by Mayor Yates and carried 3-0-2 with Councilmember Borchard and Councilmember Leage needing to abstain.

Mayor Yates called for a break at 7:15 p.m.; the meeting resumed at 7:28 p.m.

**B. PUBLIC HEARINGS, REPORTS & APPEARANCES**

**B-1 INTRODUCTION AND 1ST READING OF THE ORDINANCE AMENDING CHAPTER 17.48.32, SECONDARY UNITS, SPECIFICALLY MINIMUM AND MAXIMUM FLOOR AREA, ARCHITECTURAL COMPATIBILITY, PARKING AND CONDITIONAL USE PERMIT; (PUBLIC SERVICES)**

Kathleen Wold, Planning Manager presented her staff report. This is an Introduction and First Reading of Ordinance 576 which was presented in draft form at the February 14, 2012 Council meeting. Ms. Wold wanted to add for clarification purposes that "nothing in GC Section 65852.2 or 65852.150 shall be construed to supersede or in any way alter or lessen the effect of application of the California coast Act except that the local government shall not be required to hold public hearings for coast development permit applications for second units."

Mayor Yates opened the hearing for public comment.

Betty Winholtz restated her previous opposition to this ordinance stating: it is inaccurate that increasing the size of secondary units is a benefit to low income housing; the ordinance

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING – MARCH 13, 2012  
VETERANS MEMORIAL HALL - 6:00 P.M.

relaxes the neighborhood character standards; this does away with deed restrictions that eliminates the need of having one of the homes on the property “be in charge of the other home”; and, adding 300 square feet adds another bedroom which adds another car which increases gas emissions.

Dorothy Cutter felt that this Ordinance was an insult to the residents of Morro Bay. Workshops were held and it was found that people don’t want large houses and definitely don’t want two (2) large houses on a lot. She feels this will create too many rental units, crowding on small lots and parking problems.

Mayor Yates closed the hearing for public comment.

Councilmember Smukler feels that this seems arbitrary and overrides a valid and thoughtful public input process. He doesn’t agree that the increase of secondary units will increase the affordability of housing.

Councilmember Borchard requested information on the previously held public process. City Attorney Rob Schultz responded that there have been no specific workshops on this topic. The topic may have been discussed when there were public workshops on mansionization or neighborhood compatibility.

Councilmember Johnson requested information on whether you could run a business through one of these secondary units to which the answer was yes, through the City’s Home Occupation Permit process like everybody/everywhere else. She also asked if setbacks applied to building a second unit to which the answer was yes.

**MOTION:** Councilmember Borchard moved the City Council Adopt the Negative Declaration; adopt the proposed ordinance amendments that would allow for ministerial secondary dwelling units in residential zones; and, approve the First Reading and Introduction of Ordinance 576 by number and title only. The motion was seconded by Councilmember Johnson and carried 4-1 with Councilmember Smukler voting no.

**C. UNFINISHED BUSINESS**

**C-1 CONSIDERATION OF ESTERO BAY TRANSIT SERVICE PROPOSAL;  
(PUBLIC SERVICES)**

Janeen Burlingame, Management Analyst, presented her staff report on the Estero Bay Transit Service Proposal. She highlighted the changes from the September proposal – it is still lacking North Main late afternoon coverage; South Morro Bay would see a reduction in service frequency; the Beach Tract would lose service frequency; the regular and discount base fare would increase; and, we would lose the City’s current Demand Response service as the Call-A-Ride service would stop operating. It is staff’s feeling that this proposal is not in the best interest of the community and is not being recommended for implementation.

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING – MARCH 13, 2012  
VETERANS MEMORIAL HALL - 6:00 P.M.

Councilmember Smukler wants what's best for the transit future of Morro Bay; he is excited about the involvement of PWAB and feels he wants to give PWAB the opportunity for review of what the final plan might be. He also thinks that since we are transitioning as a result of a major change, it would be good to give it a bit more time to see what the trends reflect.

Mayor Yates requested information on our ridership – is it up or down. Ms. Burlingame stated that we are in the 2<sup>nd</sup> year of transition which was a major shift. We are currently seeing a 30-40% increase in ridership over the same time period last year and thinks that it will get better now that the enhancements are in place. Mayor Yates went on to say that he is in support of recommendation #2 and would like to see PWAB continue in their efforts.

Councilmember Borchard was concerned that our ridership is still only at ½ of the average. She feels we will continue to be challenged with a change in service based on a decrease of subsidized funding and is supportive of having PWAB finish what they started.

Councilmember Johnson asked for clarification of what “penalties for non-compliance meant”. Ms. Burlingame assured her that currently we are not out of compliance.

**MOTION:** Councilmember Borchard directed staff to follow recommendation #2 listed on Item C-1 – continue working with SLOCOG and return to PWAB and Council. The motion was seconded by Councilmember Smukler and carried unanimously 5-0.

Councilmember Smukler wanted to ensure that the trolley component will be included in further discussions.

D. NEW BUSINESS

D-1 REVIEW OF THE MORRO BAY SPRINKLER ORDINANCE; (FIRE)

Chief Mike Pond presented his informational staff report on the City's current Sprinkler Ordinance. The City's Sprinkler Ordinance is more restrictive than the minimum code requirements found in the California Fire Code and California Building Code; however, the Ordinance is also in line with the majority of San Luis Obispo County. Chief Pond stressed his strong support for the use of fire sprinklers and is not recommending changes to the Ordinance.

Councilmember Borchard doesn't want to see a requirement being cost prohibitive for a proposed change in a building for a less intense use.

Mayor Yates concern is in construction costs as fire sprinkler installation is very expensive.

Chief Pond responded that as of 2010, the State Fire Code mandates fire sprinklers are installed with any new residential building, no matter the size.

MINUTES - MORRO BAY CITY COUNCIL  
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VETERANS MEMORIAL HALL - 6:00 P.M.

Councilmember Borchard stated it is very challenging to try and weigh the economic factors of attempted use versus the limited resources of our fire suppression staff. At this time, she is not prepared to make a change without further evaluation.

Councilmember Johnson said that safety has to be first, even given the understanding of the cost of installation.

Mayor Yates stated we need to look long range and that this report has been quite educational.

Councilmember Smukler appreciates the fact that the Chief has some discretion to apply some of the local rules and feels that their concerns have been heard.

No action was taken on this item as it was informational only.

D-2 RECOMMENDATION ON BEACH ACCESS RAMP AT MORRO ROCK;  
(PUBLIC SERVICES/RECREATION & PARKS)

Public Services Director Rob Livick presented his staff report on the status of the development of a beach access ramp from the Rock parking lot to the beach. This item was last heard at the Council level on October 31, 2011 where it was sent for review to the Recreation & Parks Commission, the Harbor Advisory Board and the Public Works Advisory Board. All of the boards were in agreement that improved access to the beach was needed. Staff wanted to re-enforce the fact that any access to the beach would need to comply with ADA and apply to all users.

Councilmember Smukler thanked all the Advisory Boards and staff for how this has evolved. He would like to see the following included: a volunteer component for installation; a sponsorship component; only alternative funding sought; and, the need to avoid impacts to the view corridor.

Councilmember Leage agreed with the need for a walkway but went on to say that first and foremost, the revetment needs to be stabilized before moving forward.

Councilmember Johnson isn't in favor of this at this time as there is already a beach access ramp there. Also, the area in question is often times covered up with water. In addition, it will be incredibly difficult to build something over rocks. Her final concern was wondering what the Coastal Commission would say to an improvement like this.

Councilmember Borchard wants to ensure access to all so is in favor of moving forward with this concept. Keeping the pathway in as natural of a state as possible would be preferred.

Mayor Yates would also like to see this kept as natural as possible and would like to go after funding as opposed to waiting for the funding to become available.

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING – MARCH 13, 2012  
VETERANS MEMORIAL HALL - 6:00 P.M.

MOTION: Councilmember Smukler moved the City Council support the beach access concept and direct staff to return within six (6) months with an update. The motion was seconded by Councilmember Borchard and carried unanimously 5-0.

E. DECLARATION OF FUTURE AGENDA ITEMS

Councilmember Borchard requested a reconsideration of a motion made at the last meeting with regards to the possibility of putting out an RFP for the Visitor's Center. Mayor Yates and Councilmember Smukler concurred.

Councilmember Johnson requested staff look at preparing an explanation guide for businesses regarding the Emergency Interim Sign Ordinance; Mayor Yates and Councilmember Smukler concurred.

Councilmember Leage requested a discussion of "unfriendly" sidewalks in commercial zones throughout the City; Councilmember Johnson and Mayor Yates concurred.

Councilmember Smukler requested a discussion item on the Community FM Radio station being proposed in Morro Bay; Mayor Yates and Councilmember Borchard concurred.

Councilmember Smukler requested a discussion on a TOT Reinvestment Ordinance which would create opportunities for improvements to businesses without using general fund monies; Councilmember Johnson and Councilmember Borchard concurred.

Mayor Yates requested a Resolution requesting Morro Strand State Campground remain open; Councilmember Johnson and Councilmember Borchard concurred.

ADJOURNMENT

The meeting adjourned at 8:31 p.m.

Recorded by:

Jamie Boucher  
City Clerk

**AGENDA NO: A-1a**

**MEETING DATE: 04/10/2012**

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING – MARCH 27, 2012  
VETERAN’S MEMORIAL HALL – 6:00P.M.

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

PRESENT:	William Yates	Mayor
	Carla Borchard	Councilmember
	Nancy Johnson	Councilmember
	George Leage	Councilmember
	Noah Smukler	Councilmember
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney
	Jamie Boucher	City Clerk
	Rob Livick	Public Services Director
	Tim Olivas	Police Chief
	Mike Pond	Fire Chief
	Susan Slayton	Administrative Services Director
	Eric Endersby	Harbor Operations Manager
	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 – There was no Closed Session Meeting held this evening.

PUBLIC COMMENT

John Solu, as a member of the Harbor Festival Board, introduced Steve Buffalo, the new Executive Director of the Harbor Festival / Music Festival.

Steve Buffalo announced the entertainment lineup for the Morro Bay Music Fest which is being held on Saturday, June 2, 2012 from 11am-7pm. He also is excited for the Harbor Festival, being held the first weekend in October; he has already received tremendous community support. He feels this is one of the premier events on the Central Coast. These events have incredible value to a community’s self-esteem as well as to the non-profit groups who benefit from working them.

Penny Herrington, owner of Ruby Dragon, along with her granddaughter Anya O’Toole, provided the City local business report. Located at 600 Morro Bay Blvd, Ste. C, Ruby Dragon carries a variety of gift items to include spheres, rocks, magic wands, crystals, fossils, note cards, sun catchers, dragon bracelets, antique vases, candles, etc... They are also going to be starting a Rock Hound Group.

MINUTES - MORRO BAY CITY COUNCIL  
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VETERANS MEMORIAL HALL - 6:00 P.M.

Hank Roth spoke on behalf of the Chamber of Commerce advertising the following upcoming events: Emergency Vehicle Car Show on April 21<sup>st</sup>, the Blessing of the Fleet on April 22<sup>nd</sup>, the Morro Bay Kite Festival on April 28<sup>th</sup> & 29<sup>th</sup> and the Celebrate Morro Bay Parade on April 28<sup>th</sup>. You can contact the Chamber of Commerce for additional information at 772-4467.

Mandy Davis congratulated Jeremiah and Trudy O'Brien for their well-deserved plaque of appreciation. She also spoke out against her removal from the Harbor Advisory Board due to too many absences. Based on her personal circumstances, she had expected the City to respond in a more human way.

Betty Winholtz asked that Item A-1, the March 13, 2012 Minutes, be pulled as her comments weren't reflected accurately. In her public comment she requested the second sentence "She encouraged people sending letters..." replaced with "the City Council to send a letter..." to President Obama regarding the Kony2012 issue. She also acknowledged Tom Laurie's recent passing. She also echoed Mandy Davis's comments on her Harbor Advisory Board appointment.

John Lewan, President of the Morro Bay Police Department Volunteer Program advertised the upcoming Citizen's Academy which begins on Thursday, April 26<sup>th</sup>. He invited the public to attend. It is a 9 week program, they meet every Thursday from 6-9pm and review "all there is to know" about our local Police Department. Applications can be found at the Police Department.

Garry Johnson also praised Jeremiah and Trudy O'Brien for all their hard work – "you couldn't ask for nicer people". He also stated he supported Joan Solu for Council as she has been an active advocate for Morro Bay in a variety of organizations.

Michele Arete commented on 3390 Main Street. She thanked the City Council for upholding the 2010 permit for the project. She also stated that they will continue to monitor the project to ensure compliance.

Gary Christianson thanked Chief Tim Olivas personally for the service he has given and is sad to see him leave. He encouraged staff to look for similar characteristics and traits that Tim possesses when filling the position.

Dawn Bea, Cloisters resident, commented on the Cloisters Assessment District and while she appreciates the current work being done on the parkways, she feels that more needs to be done. She wished that earlier outsourcing of the work on the parkways had taken place.

Susan Stewart presented a brief report of the Community Promotions Committee's final meeting. She gave a brief history of the accomplishments of the committee over the last year. At this meeting they elected to use unencumbered capital and granted money to the Outdoors Writer's Conference, the 4<sup>th</sup> of July Committee and the movie "Botso", all she hoped would have long term and far reaching benefits to the community. She also asked that Council consider the following make-up of the 9 member Tourism Board: 2 hoteliers (one private and one franchise business), 1 restaurateur, 2 retailers from different parts of town, 1 recreation or outdoor activities, 1 non-hotelier lodging, 1 events, and 1 arts. This will provide for a diverse board. She

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also supports a strong economic development or enhancement program supported by the City. Finally, she expressed the committee's appreciation for the time they had to serve Morro Bay and they have great hopes for our future.

Janice Peters concurred with Susan Stewart's thoughts on the diverse make-up of the Tourism Board as well as support for economic development. In addition, she advertised the Morro Bay Fundraiser Follies which is being held at the Veteran's Hall on Saturday, April 14<sup>th</sup> with 2 shows – one at 2pm and one at 7pm. Cost is \$15/adults and \$5/ seniors and children. She also commended Tim Olivas for his positive influence on the community.

Barry Brannon gave his status on the wastewater treatment plant. He is concerned that the JPA has hired a lobbyist. He also feels we can save money by moving the plant. He feels we can develop the current site into a money making venture.

Brian Stacy thanked Jeremiah and Trudy O'Brien for all their hard work. He also thanked Tim Olivas and hates to see him go. He spoke on the PG&E Seismic Study which he feels was done very poorly. He also encouraged local residents to look at the EIR report and make sure everybody gets their comments in before the deadline to respond.

Joan Solu thanked Tim Olivas for all his community service work.

Ed Sylvester hoped that when DirectTV's contract with the City was up for renewal that we could ensure that they provide a local government channel.

Bryan Millard spoke in support for the Proclamation for Telecommunications and wanted to publicly thank our dispatchers for all their hard work. He also thanked Tim Olivas for his mentorship – "can't have asked for a greater boss".

Jim Hayes has represented the City for the last 31 years and hopes to be able to continue to do so in the role of Councilmember.

Mayor Yates closed the public comment period.

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 CITY COUNCIL MINUTES FOR THE REGULAR MEETING OF MARCH 13, 2012; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 A PROCLAMATION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY DECLARING THE WEEK OF APRIL 8-14, 2012 AS "NATIONAL PUBLIC SAFETY TELECOMMUNICATIONS WEEK"; (POLICE)

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**RECOMMENDATION: Adopt Proclamation.**

A-3 A PROCLAMATION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY DECLARING APRIL 2012 AS “AUTISM AWARENESS MONTH”; (ADMINISTRATION)

**RECOMMENDATION: Adopt Proclamation.**

A-4 RESOLUTION 15-12 STATING THE IMPORTANCE OF KEEPING MORRO STRAND STATE PARKS CAMPGROUND OPEN; (ADMINISTRATION)

**RECOMMENDATION: Review and approve Resolution.**

A-5 ADOPTION OF ORDINANCE 576 AMENDING MORRO BAY MUNICIPAL CODE CHAPTER 17.48.32, SECONDARY UNITS, SPECIFICALLY MINIMUM AND MAXIMUM FLOOR AREA, ARCHITECTURAL COMPATIBILITY, PARKING AND CONDITIONAL USE PERMIT; (PUBLIC SERVICES)

**RECOMMENDATION: Adopt Ordinance 576.**

Councilmember Smukler pulled Item A-5 from the Consent Calendar; Mayor Yates pulled Item A-1 from the Consent Calendar.

MOTION: Councilmember Borchard moved the City Council approve Item A-2, A-3 and A-4 of the Consent Calendar. The motion was seconded by Councilmember Johnson and carried unanimously 5-0.

Mayor Yates pulled Item A-1 and requested staff to listen to Ms. Winholtz’s public comments and bring the minutes back to the next meeting for adoption.

MOTION: Councilmember Borchard moved the City Council approve Item A-5 of the Consent Calendar. The motion was seconded by Councilmember Johnson and carried 4-1 with Councilmember Smukler voting no.

Mayor Yates called for a break at 7:01 p.m.

**B. PUBLIC HEARINGS, REPORTS & APPEARANCES**

B-1 REVIEW OF DRAFT AMENDMENTS TO CHAPTER 9.24 OF THE MORRO BAY MUNICIPAL CODE ENTITLED SECONDHAND SMOKING REGULATIONS; (CITY ATTORNEY)

City Attorney Rob Schultz presented his staff report. He has some modifications that he already would like to make to the Ordinance. He needs to correct “W – Tobacco product” of the definitions list which he wants to take out and present when we propose the tobacco licensing/sales section. He doesn’t believe the entire “laundry list” found in Section 9.24.040 is

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necessary and instead feels that that list should be less specific. He stressed that there are 2 exemptions to public area smoking: when a person is passing from one destination to another; and, if you are in an area and due to the time of day it isn't reasonable to expect another person to arrive. He also stressed that this is a draft only and that it will still come back for an Introduction and First Reading.

Councilmember Smukler asked for information on the enforcement component of this to which Chief Olivas stated that there would be passive enforcement – in essence people enforcing each other. This will also fall under the admin cite process which requires a first warning before citing.

Mayor Yates opened the hearing for public comment.

Wayne Hansen, Co-Chair of the County Tobacco Control Coalition spoke in favor of the City moving forward with this ordinance. He also said that they would like to offer their assistance in the process in whatever way they can.

Gary Christianson spoke out against the smoking ordinance. He feels we are being over-regulated. He also finds second hand smoke studies suspicious – from personal experience, he isn't sure that second hand smoke is as dangerous as people would have us believe. He also sees this as a possible nightmare to both implement and enforce.

Kathleen Carly, County of SLO, Health Promotion stated that studies show that there isn't a negative financial impact on businesses with the passage of a smoking ordinance. She also states that research is clear on tobacco; tobacco kills and second hand smoke kills. Her department can offer us education, free stop smoking classes, free patches for those who qualify, notification of merchants should the tobacco licensing begin, and possibly some money for signage. 90% of the residents in our County don't smoke – she asked Council to consider that majority when you are deliberating tonight.

Marissa Lutz would love to see a Second Hand Smoking Ordinance enacted as it would decrease smoke exposure as well as improve the beauty of the town.

Melissa Peters with the County Tobacco Control Program read a letter to all the Councilmembers from the Health Commission – The First 5 Commission - showing support of the proposed Ordinance.

Dr. Patrick Vaughan has been a doctor serving Morro Bay for over 30 years and wants to offer his professional opinion – there are 3 ways to decrease the use of tobacco - stop using tobacco products, raise the cost of tobacco products and/or affect where people can utilize the product. He enthusiastically supports the Ordinance.

Susan Stewart, a Morro Bay business owner, has had issues with smoke going into her storefront. She also has first-hand knowledge of what smoke can do those with asthma. She feels that overall, as a community, we can be proud of moving this forward.

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Mayor Yates closed the hearing for public comment.

Councilmember Borchard thanked Councilmember Johnson for bringing this forward and wants to support this, utilizing passive enforcement. She is in support of moving forward. She does however want to remove construction sites on private property from the list of “no smoking allowed” areas.

Councilmember Johnson restated that many tourist towns have already adopted smoking ordinances – Newport Beach, Carlsbad and Carpenteria to name a few. She doesn’t feel that you can ever have too much regulation when it comes to health concerns.

Mayor Yates gets a different perspective when talking to business owners. Prohibiting smoking on sidewalks and outside of bars are the only places he has a problem with this. He is not sure why we are outlawing smoking in places where it’s already not allowed. He has concerns about this being unfriendly to tourists. He requests that the draft ordinance come back one more time for review prior to it coming back in introduction and first reading form.

Councilmember Leage agrees with Mayor Yates. He has witnessed the effect of “no smoking” on businesses; it has affected his restaurant/bar in a negative monetary way. He also feels that today’s smokers are more and more conscientious of their smoking. He feels we really don’t have a problem and instead are creating one.

Councilmember Smukler had questions about the licensing component as well as the community service component.

MOTION: Councilmember Johnson moved the City Council direct staff to return this item with the discussed changes for Introduction and First Reading at the next available meeting. The motion was seconded by Councilmember Smukler and carried 3-2 with Mayor Yates and Councilmember Leage voting no.

C. UNFINISHED BUSINESS

C-1 REVIEW OF CLOISTERS ASSESSMENT DISTRICT PARKWAY RENOVATION PROGRAM; (RECREATION & PARKS)

Recreation & Parks Director Joe Woods presented his staff report on the Cloisters Assessment District Parkway Renovation Program. This program was initiated based on feedback from residents of the Cloisters District regarding the condition of many parkways. As an outcome of those discussions, staff proceeded to investigate, compile data and then as a result, began the renovation work which is scheduled to be completed by the end of March. Parkway maintenance will be outsourced through June. Mr. Woods hopes to be able to outsource the bulk of the Cloister Maintenance next fiscal year.

Councilmember Smukler is happy to see the City’s commitments to the homeowners of the Cloisters are being met.

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Councilmember Johnson had some questions on grasses. She also wondered why we didn't go through an RFP process to which Mr. Woods responded that we were in a time sensitive situation.

Councilmember Borchard was glad to see that the residents appreciated the new and improved lines of communication. She hopes we go out for an RFP for the maintenance in the coming fiscal year.

Mayor Yates had a concern about the maintenance calendar to which he was assured that maintenance would be ongoing.

This was an informational item only and as such, no action was taken.

D. NEW BUSINESS - NONE

E. DECLARATION OF FUTURE AGENDA ITEMS

Councilmember Borchard requested a letter in regard to the Draft EIR for the PG&E Seismic Study; all Councilmembers concurred.

Councilmember Borchard requested a discussion on the presentation of the 2012-2013 Fiscal Year Budget; Mayor Yates and Councilmember Johnson concurred.

Councilmember Johnson requested an informational item on the new SoCal Gas meters; Mayor Yates and Councilmember Smukler concurred.

Councilmember Johnson requested a Resolution opposing expansion into the Marine Sanctuary; all Councilmembers concurred.

Councilmember Leage requested a discussion on local Sport-fishing businesses; all Councilmembers concurred.

ADJOURNMENT

The meeting adjourned at 8:46 p.m.

Recorded by:

Jamie Boucher  
City Clerk

AGENDA NO: A-2

MEETING DATE: 04/10/2012

**A PROCLAMATION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY  
DECLARING  
April 17, 2012 AS**

**EQUAL PAY FOR WOMEN DAY**

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

**WHEREAS**, wage discrimination affects the economic security of families today; and

**WHEREAS**, wage discrimination directly affects retirement security for women as they age; and

**WHEREAS**, the American Association of University Women have long fought to end wage discrimination; and

**WHEREAS**; we believe that equal pay is a simple matter of justice for women.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Morro Bay does hereby proclaims **APRIL 17, 2012 AS “EQUAL PAY FOR WOMEN DAY”**.

IN WITNESS WHEREOF I have  
hereunto set my hand and caused the  
seal of the City of Morro Bay to be  
affixed this 10th day of April , 2012

---

William Yates, Mayor  
City of Morro Bay, California

**A PROCLAMATION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY  
DECLARING THE MONTH OF APRIL  
“FAIR HOUSING MONTH”**

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

**WHEREAS**, the City of Morro Bay is joining with the United States Department of Housing and Urban Development (HUD) and other housing agencies in celebrating the anniversary of the National Fair Housing Law, Title VII of the Civil Rights Act of 1968.

**WHEREAS**, the City of Morro Bay encourages fair housing through the sales and rentals, as well as, through its housing rehabilitation programs;

**WHEREAS**, discrimination in housing is against the law, no person shall be discriminated against because of race, color, religion, sex, handicaps, familial status, or national origin in the sale, rental, or advertising of dwelling, in the provisions of brokerages services, or in the availability of residential real estate related transactions;

**WHEREAS**, if any City resident believes he or she has been discriminated against, the resident should contact the Department of Fair Employment and Housing District Office at 1732 Palma Dr., #200, Ventura, CA 93003, (805) 654-4514. The Fair Housing Information Office helps to ensure that all residents of the City of Morro Bay and surrounding communities are treated fairly and that all the property owners and landlords abide by the letter and spirit of the Fair Housing Law; and

**WHEREAS**, the City of Morro Bay, the State of California, HUD and various local agencies are working together to ensure equal treatment of all citizens, we urge everyone to practice the Fair Housing Law.

**NOW, THEREFORE, BE IT RESOLVED**, that I, Mayor William Yates and the City Council of the City of Morro Bay, declare the month of April as Fair Housing Month in the City of Morro Bay.

IN WITNESS WHEREOF I have hereunto  
set my hand and caused the seal of the City  
of Morro Bay to be affixed this 10<sup>th</sup> day of  
April, 2012

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WILLIAM YATES, MAYOR  
City of Morro Bay, California

**RESOLUTION NO. 18-12**

**STATEMENT OF CONTINUED OPPOSITION TO CREATION OF A  
NATIONAL MARINE SANCTUARY IN THE SAN LUIS OBISPO COUNTY  
COASTAL AREA, AND CONTINUED OPPOSITION TO EXPANSION  
OF THE MONTEREY BAY NATIONAL MARINE SANCTUARY  
INTO THE SAN LUIS OBISPO COUNTY COASTAL AREA**

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

**WHEREAS**, the City of Morro Bay opposes development of offshore oil and supports protection of the abundant natural resources of the San Luis Obispo coast; and

**WHEREAS**, the Monterey Bay National Marine Sanctuary (MBNMS) has been created on the California Coast from Half Moon Bay to Cambria to stop any potential offshore oil development and to support natural resource protection through education, public participation and research; and

**WHEREAS**, the MBNMS management plan update process identified expansion of the MBNMS boundary to the San Luis Obispo coast as a mid level priority for future consideration; and

**WHEREAS**, the MBNMS Sanctuary Advisory Council (SAC) requested MBNMS staff to support formation of a committee in San Luis Obispo County to study MBNMS expansion to this area; and

**WHEREAS**, the City of Morro Bay supports the Alliance of Communities for Sustainable Fisheries and its recommendation for improving sanctuary program management through the management plan update process, which recommendations the City feels have not been adequately addressed in the sanctuary program overall; and

**WHEREAS**, the City supports commercial fishing, commercial fishing facilities and the infrastructure needed for our traditional working harbor community; and

**WHEREAS**, the National Marine Sanctuary program recently circulated a new fishing regulation coordination policy that clearly states the power of the sanctuary to regulate fishing; and

**WHEREAS**, despite what promises are made not to regulate fishing, when sanctuaries are created or expanded, this policy will result in sanctuary's becoming another regulatory agent in the already well regulated area of fishing; and

**WHEREAS**, National Marine Sanctuary programs and the commercial fishing industry have many common goals in education, pollution protection, opposition to offshore oil and creation of sustainable fishery, so that there is no reason why if managed

with proper balance and sensitivity to traditional working harbor uses the sanctuary programs should not have positive working relationships with the commercial fishing industry and working harbor communities; and

**WHEREAS**, the National Marine Sanctuary program has not developed a positive working relationship or the support of commercial fishing and the working harbor communities in its California sanctuaries at this time; and

**WHEREAS**, the National Marine Sanctuary program does not permit the SAC to have anything other than an advisory role and controls the ability of the SAC to communicate with the public at large and with outside agencies; and

**WHEREAS**, the National Marine Sanctuary Program, as currently authorized, does not provide for a mechanism for local control of sanctuary programs and the current organization of the SAC does not adequately meet the needs of local community direction to the program; and

**WHEREAS**, the City of Morro Bay feels that the City, County of San Luis Obispo and State of California opposition to offshore oil are the best protection of the Coast of San Luis Obispo from this potential degradation and although National Marine Sanctuary designation has many desirable benefits, at this time the City does not support expansion of the National Marine Sanctuary to our coast; and,

**WHEREAS**, the City of Morro Bay approved Resolution 27-03 on April 28, 2003 which opposed the creation of a National Marine Sanctuary in the San Luis Obispo County Coastal Area and opposed the expansion off the Monterey Bay National Marine Sanctuary in the San Luis Obispo County Coastal Area.

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay that because the National Marine Sanctuary Program has not adequately resolved conflicts and concerns of the commercial fishing industry and traditional working harbor uses and because the National Sanctuary Act does not currently allow for a sanctuary designation with true local control, the City of Morro Bay continues to oppose the formation of a National Marine Sanctuary and expansion of the Monterey Bay National Marine Sanctuary in the waters of the San Luis Obispo County coast.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting held thereof on the 10th day of April 2012, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
WILLIAM YATES, Mayor

ATTEST:

\_\_\_\_\_  
JAMIE BOUCHER, City Clerk



AGENDA NO: A-5

MEETING DATE: 4/10/12

# Staff Report

**TO: Honorable Mayor and City Council**

**DATE: April 4, 2012**

**FROM: Andrea K. Lueker, City Manager**

**SUBJECT: Approval of the Service Retirement Incentive Program for Fiscal year 2012/13 Budget**

## **RECOMMENDATION**

Staff recommends the City Council approve the Service Retirement Incentive Program.

## **FISCAL IMPACT**

Unknown at this time, due to unidentified number of participating employees; however, the program will create a net savings due to: replacement/new employee(s) being hired at a lower step than the retiring employee(s), the newly hired employee having the second-tier retirement formula as well as paying the entire portion of the employee's share of the PERS contribution, as well as costs savings attained during the 1-2 month hiring process for the "newly vacated position(s)".

## **BACKGROUND**

During the budget process for the fiscal year 2011/12, the City Council offered a SRI program to employees that were eligible to retire. That program offered a lump-sum incentive of \$10,000 to be paid to those who retired by December 31, 2011. In order to be eligible for the lump sum payment, the employee was required to complete an agreement memorializing their commitment by May 24, 2011. A similar program was also offered during fiscal year 2009/10 and 2010/11.

## **DISCUSSION**

Especially in recent years, a number of cities have structured retirement incentives as a means of short-term and long-term savings. There are a number of ways to structure a retirement incentive, with the most popular being:

1. Purchasing two years of California Public Employees Retirement System (PERS) service credit.
2. Paying retiree health premiums for a specified period.

**Prepared By:** \_\_\_\_\_

**Dept Review:** \_\_\_\_\_

**City Manager Review:** \_\_\_\_\_

**City Attorney Review:** \_\_\_\_\_

3. Contributing to a retiree health savings account.
4. Providing a one-time, lump-sum payment.

Staff considered and evaluated these various retirement incentive options and programs, and is presenting a one-time, lump-sum service retirement incentive program (Attachment 1). The program does not add on-going cost to the City as do some of the other retirement incentive programs staff explored.

The program creates both potential short-term and long-term savings for the City and allows employee flexibility in selecting their retirement date. A lump sum incentive also provides individuals with the flexibility to use the funds in any manner they choose. The incentive payment is not considered compensation by PERS and therefore is not considered in an employee's single highest year for retirement benefit calculations.

After formal adoption of the program by the City Council, applicants will be required to sign an agreement and release of claim against the City in exchange for the incentive (Attachment 2). Eligibility for the retirement incentive program is predicated upon a full-time regular employee having satisfied the conditions delineated by PERS with respect to age and years of credited service. Only regular benefitted employees are eligible to participate in the program.

This voluntary retirement incentive program will be communicated to all eligible employees after approval, if that occurs. After the May 31, 2012 deadline, staff will be able to provide you the exact numbers of employees who will take part in this incentive program.



**City of Morro Bay**  
**Service Retirement Incentive Program Application**

Please submit this Application, as well as your executed Agreement and Release, to Susan Slayton, Administrative Services Director, as soon as possible, but no later than **5:00 pm on Thursday, May 31, 2012.**

**Employee Name:** \_\_\_\_\_

**Job Title:** \_\_\_\_\_

**Department:** \_\_\_\_\_

**Service Retirement Date:** \_\_\_\_\_

I voluntarily choose the following incentive amount based on my voluntary service retirement (Check one box below.)

- One-time Lump-Sum payment in the amount of \$10,000 paid to me.**
  
- One-Time Lump-Sum payment in the amount of \$10,000, paid to my designated Deferred Compensation provider.**
  
- Reimbursement of retiree health insurance premiums up to a total of \$10,000, paid to me, on a monthly basis with proof of premium payment.**

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EMPLOYEE SIGNATURE

DATE

City of Morro Bay  
Service Retirement Incentive Program  
Agreement and Release

This **Agreement and Release** (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between \_\_\_\_\_ (“Employee”) and the City of Morro Bay (“City”).

**WHEREAS**, Employee is currently employed by City; and

**WHEREAS**, City is offering a “Service Retirement Incentive Program” (“Program”), Employee’s application for which is attached, to City of Morro Bay employees who are eligible for retirement on or before December 31, 2012; and

**WHEREAS**, employees of City, who are eligible to participate in the Service Retirement Incentive Program, may choose to participate in the program where the application period begins April 16, 2012, and ends May 31, 2012; and

**WHEREAS**, Employee is currently employed by City, is eligible to participate in the Service Retirement Incentive Program, and voluntarily chooses to participate in the Program; and

**WHEREAS**, Employee agrees to retire from employment with City no later than December 31, 2012,

**THEREFORE**, Employee and City enter into the following agreement:

(1) **Employee’s Voluntary Service Retirement.** Employee acknowledges that participation in the Program is entirely voluntary, and hereby knowingly and voluntarily, requests retirement from employment with City, no later than the close of business on December 31, 2012.

(2) **Incentive.** Based on the Employee’s designated date of retirement, the City of Morro Bay will provide a one-time lump-sum payment in the amount of \$10,000 for employees who retire by December 31, 2012 by election in one of the following ways:

- one-time lump-sum payment in the amount of \$10,000 paid to Employee
- one-time lump-sum payment of \$10,000 made to employee’s designated deferred compensation provider
- retiree health insurance reimbursement per month up to \$10,000

Employee acknowledges that City has provided no advice and made no representations as to the tax consequences of Employee’s participation in the Program, and affirms that Employee will be responsible for all tax liability resulting from the acceptance of this incentive.

(3) Employee’s group health insurance benefits will terminate effective the last day of the second month after his/her retirement date. Employee’s vision and dental benefits will terminate effective the last day of the month after his/her retirement date. Following the voluntary service retirement, Employee may continue City group insurance benefits to the extent allowed under PERS (health), COBRA (dental and vision) or other applicable law.

(4) On the Retirement Date, City will pay to Employee all compensable time earned and unused as of the retirement date. Thereafter, Employee will not be entitled to or accrue any additional leave time, and will not be eligible for any fringe benefits following the retirement date, except as expressly set forth in this Agreement.

(5) **WAIVER AND RELEASE BY EMPLOYEE.** In consideration of the Incentive Program payments and other consideration, as set out in this Agreement, to which Employee would not otherwise be entitled, Employee, for him or herself and his/her heirs, executors, administrators, successors, and assigns, hereby knowingly and voluntarily waives, releases, acquits and forever discharges City, its agents, officers and employees from any liability, action, suit, claim, damages, judgment, known or unknown, liquidated or un-liquidated, fixed or contingent which Employee has ever had or ever may have, arising out of or in conjunction with Employee's employment with City or the termination thereof, including, without limitation, claims under federal, state or local common law or statute, as well as any form of employment discrimination prohibited under Title VII of the Civil Rights Act of 1964, the Older Workers Benefit Protection Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, ERISA, the Rehabilitation Act of 1973, and any other local, state or federal anti-discrimination law or ordinance, any applicable collective bargaining agreement, any applicable wage and hour or workers' compensation laws (to the extent allowed by law), including, but not limited to any claim or damages for wrongful discharge, severance pay, breach of contract, breach of any express or implied promise, retaliation, breach of public policy, defamation, negligence or other tortious conduct, or any other theory, whether legal or equitable.

Employee covenants that this Agreement, and the Release contained in it, constitutes a waiver and release of any and all claims, including existing or subsequently discovered claims that are not known or suspected by Employee to exist as of the date of execution of this Agreement, which otherwise would be preserved by operation of **Section 1542 of the California Civil Code**. Section 1542 provides as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his/her favor at the time of executing the release, which if known by him/her must have materially affected his/her settlement with the debtor.**

(6) Employee is hereby advised to consult with an attorney prior to executing this Agreement. Employee acknowledges that if he/she executes this Agreement and foregoes the advice of an attorney, he/she does so freely and knowingly, and waives any and all future claims that such action or actions would affect the validity of this Agreement.

Employee may revoke this Agreement within seven (7) calendar days after signing it. Notice of revocation must be received by Susan Slayton, Administrative Services Director, at the

City of Morro Bay, 595 Harbor Street, Morro Bay, CA 93442. If Employee revokes this Agreement, City will be immediately released of any further obligation under this Agreement,

(7) Employee covenants that he/she has not commenced, and will not commence, legal proceedings of any type, whether on his/her own behalf or on behalf of any other person or entity, against City or individuals or entities released in this Agreement, or any of their respective successors or assigns, and further covenants not to maintain, join or assist in any such legal proceeding, suit, charge, or action, except as may be required by law.

(8) To the extent allowed by applicable law, the parties agree to keep the terms of this Agreement confidential and not disclose those terms to anyone, except a spouse, attorney, or tax adviser.

(9) If Employee breaches the promise in paragraphs five (5) and/or seven (7) and files a lawsuit based on legal claims that Employee has released, Employee shall immediately return all sums which were paid to Employee pursuant to this Agreement.

(10) This Agreement shall be construed under the Laws of the State of California, and any dispute arising hereunder shall be conducted under the jurisdiction of the County of San Luis Obispo Superior Court.

(11) Each party hereto agrees that in the event of any dispute concerning this Agreement or claims, demands, liabilities or causes of action included within its scope, the prevailing party shall be entitled to recover attorney's fees and costs. The prevailing party shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment.

(12) If any portion of this Agreement shall be held invalid by a court of competent jurisdiction, the validity of the remainder of this Agreement shall not be affected.

(13) This Agreement supersedes any previous understandings, agreements or correspondence of the parties on this subject, and is binding on the parties, their heirs, executors, administrators, and successors in interest.

(14) This document is the entire Agreement and Release between Employee and City. City has made no promises to Employee other than those in this Agreement. This Agreement may not be changed orally, only in a written document signed by both parties. For purposes of this Agreement, the parties shall be deemed to have participated equally in its drafting.

(15) Employee understands that if he/she dies prior to his/her effective retirement date, then this "Agreement and Release," as well as the incentive payment, is void and neither City nor Employee's heirs shall have any right or obligation defined hereunder.

**IN WITNESS WHEREOF**, City and Employee have executed the Agreement on the day and year first set forth above.

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Employee Signature

Date

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Andrea K. Lueker, City Manager

Date

APPROVED AS TO FORM:

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Robert W. Schultz, City Attorney

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**City of Morro Bay**  
**Service Retirement Incentive Program Application**  
 **$\frac{3}{4}$  Time Employee**

Please submit this Application, as well as your executed Agreement and Release, to Susan Slayton, Administrative Services Director, as soon as possible, but no later than **5:00 pm on Thursday, May 31, 2012.**

**Employee Name:** \_\_\_\_\_

**Job Title:** \_\_\_\_\_

**Department:** \_\_\_\_\_

**Service Retirement Date:** \_\_\_\_\_

I voluntarily choose the following incentive amount based on my voluntary service retirement (Check one box below.)

- One-time Lump-Sum payment in the amount of \$7,500 paid to me.**
  
- One-Time Lump-Sum payment in the amount of \$7,500, paid to my designated Deferred Compensation provider.**
  
- Reimbursement of retiree health insurance premiums up to a total of \$7,500, paid to me, on a monthly basis with proof of premium payment.**

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EMPLOYEE SIGNATURE

DATE

City of Morro Bay  
Service Retirement Incentive Program  
Agreement and Release – ¾ Time Employee

This **Agreement and Release** (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between \_\_\_\_\_ (“Employee”) and the City of Morro Bay (“City”).

**WHEREAS**, Employee is currently employed by City; and

**WHEREAS**, City is offering a “Service Retirement Incentive Program” (“Program”), Employee’s application for which is attached, to City of Morro Bay employees who are eligible for retirement on or before December 31, 2012; and

**WHEREAS**, employees of City, who are eligible to participate in the Service Retirement Incentive Program, may choose to participate in the program where the application period begins April 16, 2012, and ends May 31, 2012; and

**WHEREAS**, Employee is currently employed by City, is eligible to participate in the Service Retirement Incentive Program, and voluntarily chooses to participate in the Program; and

**WHEREAS**, Employee agrees to retire from employment with City no later than December 31, 2012,

**THEREFORE**, Employee and City enter into the following agreement:

(1) **Employee’s Voluntary Service Retirement.** Employee acknowledges that participation in the Program is entirely voluntary, and hereby knowingly and voluntarily, requests retirement from employment with City, no later than the close of business on December 31, 2012.

(2) **Incentive.** Based on the Employee’s designated date of retirement, the City of Morro Bay will provide a one-time lump-sum payment in the amount of \$7,500 for employees who retire by December 31, 2012 by election in one of the following ways:

- one-time lump-sum payment in the amount of \$7,500 paid to Employee
- one-time lump-sum payment of \$7,500 made to employee’s designated deferred compensation provider
- retiree health insurance reimbursement per month up to \$7,500

Employee acknowledges that City has provided no advice and made no representations as to the tax consequences of Employee’s participation in the Program, and affirms that Employee will be responsible for all tax liability resulting from the acceptance of this incentive.

(3) Employee’s group health insurance benefits will terminate effective the last day of the second month after his/her retirement date. Employee’s vision and dental benefits will terminate effective the last day of the month after his/her retirement date. Following the voluntary service retirement, Employee may continue City group insurance benefits to the extent allowed under PERS (health), COBRA (dental and vision) or other applicable law.

(4) On the Retirement Date, City will pay to Employee all compensable time earned and unused as of the retirement date. Thereafter, Employee will not be entitled to or accrue any additional leave time, and will not be eligible for any fringe benefits following the retirement date, except as expressly set forth in this Agreement.

(5) **WAIVER AND RELEASE BY EMPLOYEE.** In consideration of the Incentive Program payments and other consideration, as set out in this Agreement, to which Employee would not otherwise be entitled, Employee, for him or herself and his/her heirs, executors, administrators, successors, and assigns, hereby knowingly and voluntarily waives, releases, acquits and forever discharges City, its agents, officers and employees from any liability, action, suit, claim, damages, judgment, known or unknown, liquidated or un-liquidated, fixed or contingent which Employee has ever had or ever may have, arising out of or in conjunction with Employee's employment with City or the termination thereof, including, without limitation, claims under federal, state or local common law or statute, as well as any form of employment discrimination prohibited under Title VII of the Civil Rights Act of 1964, the Older Workers Benefit Protection Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, ERISA, the Rehabilitation Act of 1973, and any other local, state or federal anti-discrimination law or ordinance, any applicable collective bargaining agreement, any applicable wage and hour or workers' compensation laws (to the extent allowed by law), including, but not limited to any claim or damages for wrongful discharge, severance pay, breach of contract, breach of any express or implied promise, retaliation, breach of public policy, defamation, negligence or other tortious conduct, or any other theory, whether legal or equitable.

Employee covenants that this Agreement, and the Release contained in it, constitutes a waiver and release of any and all claims, including existing or subsequently discovered claims that are not known or suspected by Employee to exist as of the date of execution of this Agreement, which otherwise would be preserved by operation of **Section 1542 of the California Civil Code**. Section 1542 provides as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his/her favor at the time of executing the release, which if known by him/her must have materially affected his/her settlement with the debtor.**

(6) Employee is hereby advised to consult with an attorney prior to executing this Agreement. Employee acknowledges that if he/she executes this Agreement and foregoes the advice of an attorney, he/she does so freely and knowingly, and waives any and all future claims that such action or actions would affect the validity of this Agreement.

Employee may revoke this Agreement within seven (7) calendar days after signing it. Notice of revocation must be received by Susan Slayton, Administrative Services Director, at the

City of Morro Bay, 595 Harbor Street, Morro Bay, CA 93442. If Employee revokes this Agreement, City will be immediately released of any further obligation under this Agreement,

(7) Employee covenants that he/she has not commenced, and will not commence, legal proceedings of any type, whether on his/her own behalf or on behalf of any other person or entity, against City or individuals or entities released in this Agreement, or any of their respective successors or assigns, and further covenants not to maintain, join or assist in any such legal proceeding, suit, charge, or action, except as may be required by law.

(8) To the extent allowed by applicable law, the parties agree to keep the terms of this Agreement confidential and not disclose those terms to anyone, except a spouse, attorney, or tax adviser.

(9) If Employee breaches the promise in paragraphs five (5) and/or seven (7) and files a lawsuit based on legal claims that Employee has released, Employee shall immediately return all sums which were paid to Employee pursuant to this Agreement.

(10) This Agreement shall be construed under the Laws of the State of California, and any dispute arising hereunder shall be conducted under the jurisdiction of the County of San Luis Obispo Superior Court.

(11) Each party hereto agrees that in the event of any dispute concerning this Agreement or claims, demands, liabilities or causes of action included within its scope, the prevailing party shall be entitled to recover attorney's fees and costs. The prevailing party shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment.

(12) If any portion of this Agreement shall be held invalid by a court of competent jurisdiction, the validity of the remainder of this Agreement shall not be affected.

(13) This Agreement supersedes any previous understandings, agreements or correspondence of the parties on this subject, and is binding on the parties, their heirs, executors, administrators, and successors in interest.

(14) This document is the entire Agreement and Release between Employee and City. City has made no promises to Employee other than those in this Agreement. This Agreement may not be changed orally, only in a written document signed by both parties. For purposes of this Agreement, the parties shall be deemed to have participated equally in its drafting.

(15) Employee understands that if he/she dies prior to his/her effective retirement date, then this "Agreement and Release," as well as the incentive payment, is void and neither City nor Employee's heirs shall have any right or obligation defined hereunder.

**IN WITNESS WHEREOF**, City and Employee have executed the Agreement on the day and year first set forth above.

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Employee Signature

Date

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Andrea K. Lueker, City Manager

Date

APPROVED AS TO FORM:

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Robert W. Schultz, City Attorney

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**DISCUSSION:**

Ordinance 577 would enact a tobacco control ordinance that is stronger than the protections provided by the State and would focus further protections for indoor or enclosed places and outdoor public places. The draft ordinance represented a comprehensive no-smoking law very similar to the one currently in effect in the cities of Calabasas, Carpinteria and San Luis Obispo.

**Protections for Public Places**

The approach that has been used in Ordinance 577 implements a comprehensive outdoor secondhand smoking ordinance which completely bans smoking in all public places. However, Ordinance 577 does not regulate private residential and multi-family properties and provides for three major exceptions. The major exceptions are: 1) Designated unenclosed areas ("smokers' outposts"), 2) Any unenclosed area in which no nonsmoker is present and, due to the time of day or other factors, it is not reasonable to expect another person to arrive, and, 3) A person is actively passing on the way to another destination and so long as smoke does not enter any enclosed area in which smoking is prohibited.

**Protections for Indoor or Enclosed Work Places**

AB 13, codified in Labor Code section 6404.5, prohibits smoking in most indoor workplaces, but exempts certain workplace environments. Ordinance 577 would extend protections cover all enclosed workplace environments, as well as other enclosed places that are open to the public. Pursuant to City Council's direction, it would not cover private outdoor construction sites.

**CONCLUSION:**

We recommend Council review and move for first reading and introduction of the attached Ordinance 577 by number and title only. Please feel free to ask questions or make any changes you feel appropriate.

**ORDINANCE NO. 577**

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF MORRO BAY AMENDING SECTION 9.24  
OF THE MORRO BAY MUNICIPAL CODE ENTITLED  
SMOKING AND FIRES PROHIBITED ON CITY BEACHES AND PIERS  
AND RENAMING SECTION 9.24 SECONDHAND SMOKING REGULATIONS**

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

**WHEREAS**, the U. S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke and neither separating smoker from nonsmokers nor installing ventilation systems effectively eliminates secondhand smoke; and

**WHEREAS**, the U. S. Environmental Protection Agency (EPA) has found secondhand smoke to be a risk to public health, and has classified secondhand smoke as a group-A carcinogen, the most dangerous class of carcinogen; and

**WHEREAS**, exposure to secondhand smoke is the third leading cause of preventable death in this country, killing over 52,000 non-smokers each year including 3,000 deaths from lung cancer; and

**WHEREAS**, there is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke; and

**WHEREAS**, employees who work in smoke-filled businesses suffer a twenty-five to fifty percent (25-50%) higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function; and

**WHEREAS**, studies measuring cotinine (metabolized nicotine) and NNAL (metabolized nitrosamine NNK, a tobacco-specific carcinogen linked to lung cancer) in New York City hospitality workers find dramatic reductions in the levels of these biomarkers after a smoke-free law takes effect. Average cotinine levels of these restaurant and bar workers decreased by eighty-five percent (85%) after the city's smoke-free law went into effect; and

**WHEREAS**, secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. The Americans with Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability; and

**WHEREAS**, the Morro Bay Municipal Code provides that any condition existing in violation of the code is deemed to be a public nuisance.

**NOW THEREFORE, BE IT ORDAINED** by the City Council of the City of Morro Bay that Morro Bay Municipal Code is hereby amended by changing the title and contents of Section 9.24 in its entirety as follows:

## **Chapter 9.24**

### **SECONDHAND SMOKING REGULATIONS**

<b>9.24.010</b>	<b>Purpose</b>
<b>9.24.020</b>	<b>Definitions</b>
<b>9.24.030</b>	<b>Secondhand smoke generally</b>
<b>9.24.040</b>	<b>Public and other places where smoking shall be prohibited</b>
<b>9.24.050</b>	<b>Reasonable distance</b>
<b>9.24.060</b>	<b>Places where smoking may be permitted</b>
<b>9.24.070</b>	<b>Modifications of designated smokers' outposts</b>
<b>9.24.080</b>	<b>Allowing, aiding or abetting smoking</b>
<b>9.24.090</b>	<b>Signs</b>
<b>9.24.100</b>	<b>Disposal of smoking waste</b>
<b>9.24.110</b>	<b>Fires on city beaches</b>
<b>9.24.120</b>	<b>Enforcement and penalties</b>
<b>9.24.130</b>	<b>Public education – Purposes of chapter</b>
<b>9.24.140</b>	<b>Governmental cooperation</b>
<b>9.24.150</b>	<b>Other laws</b>

#### **9.24.010 Purpose.**

This chapter is enacted with the specific intent to:

- A. Prohibit smoking in certain public places not preempted by California Labor Code Section 6404.5, which provides further smoking regulations;
- B. Protect the public health, safety and general welfare by prohibiting smoking in certain public places under circumstances where other persons will be exposed to secondhand smoke;
- C. Ensure a cleaner and more hygienic environment for the City, its residents, and its natural resources, including its creeks and streams and beaches;
- D. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including residents and visitors, particularly children, to breathe smoke-free air, recognizing the threat to public health and the environment which smoking causes;
- E. Designate the enforcing agency for this chapter and for Labor Code Section 6404.5.

#### **9.24.020 Definitions.**

The following words and phrases, as used in this Chapter or in any other applicable law regulating smoking, shall have the following meanings:

A. **Business.** Any sole proprietorship, partnership, joint venture, corporation, association or other entity formed for profit-making purposes or that has an employee.

B. **City Beach.** The sandy area on either side of the mean high tide line from Atascadero Road all the way up to, but not including the parking lot at the Rock. City Beach shall also include the area of the Sand Spit that is owned by the City.

C. **City T- Piers.** The municipal piers located North of Beach Street and at Tidelands Park.

D. **Code compliance officer.** The city code compliance officer or duly authorized designee of the City code compliance officer.

E. **Dining area.** Any area available to or customarily used by the general public that is designed, established or regularly used for consuming food or drink.

F. **Employee.** Any person who is employed or retained as an independent contractor by any employer as defined in this section; or any person who volunteers his or her services for an employer, association, nonprofit or volunteer entity.

G. **Employer.** Any person, partnership, corporation, association, nonprofit or other entity that employs or retains the service of one or more persons, or supervises volunteers.

H. **Enclosed.** Any covered or partially covered space having more than fifty percent (50%) of its perimeter area walled in or otherwise closed to the outside such as, for example, a covered porch with more than two walls; or any space open to the sky (hereinafter "uncovered") having more than seventy five (75) percent of its perimeter area walled in or otherwise closed to the outside such as, for example, a courtyard.

I. **Nonprofit entity.** Any entity that meets the requirements of California Corporations Code Section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

J. **Place of employment.** Any area under the legal or de facto control of an employer, business or nonprofit entity that an employee or the general public may have cause to enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, vehicles used in employment or for business purposes, taxis, employee lounges, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses and private residences that are used as childcare or healthcare facilities subject to licensing requirements.

K. **Playground.** Any park or recreational area designed in part to be used by children, that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on City property.

L. **Premises.** A lot or contiguous lots and any improvements thereon such as is usually described in a deed, deed of trust or mortgage, and includes legally separate but contiguous pieces of land that are owned by the same person or are under common control.

M. **Present.** Within a reasonable distance.

N. **Public place.** Any public or private place open to the general public regardless of any fee or age requirement, including, for example, streets, sidewalks, parking lots, parking garages, plazas, bars, restaurants, clubs, stores, stadiums, parks, playgrounds, City beaches, T-Piers, taxis and buses. For the purposes of the provisions of this chapter, a "public place" does not mean a

private residence except for residences used as an adult or child care, health care, board and care, or community foster care facility as such terms are defined by the state Health and Safety Code.

O. **Reasonable distance.** The greatest distance practicable that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty (20) feet.

P. **Recreational area.** Any public or private area open to the public for recreational purposes whether or not any fee for admission is charged, including without limitation, parks, trails, gardens, sporting facilities, stadiums, beaches, T-Piers and playgrounds.

Q. **Restaurant.** Any coffee shop, cafeteria, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria, eating establishment, boardinghouse or guest house or similar establishment which gives or offers for sale food to the public.

R. **Secondhand smoke.** Smoke that is generated from the burning end of a lighted tobacco, weed or plant product, or smoke that is exhaled by a smoker after inhaling or ingesting a lit tobacco, weed or plant product.

S. **Service area.** Any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place or make a transaction whether or not such service includes the exchange of money, including, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops, taxi stands and takeout counters.

T. **Smoke or Smoking.** The carrying or holding of a lighted pipe, cigar, cigarette, or any other lighted smoking product or equipment used to burn any tobacco products, weed, plant, or any other combustible substance. Smoking includes emitting or exhaling the fumes of any pipe, cigar, cigarette, or any other lighted smoking equipment used for burning any tobacco product, weed, plant, or any other combustible substance.

U. **Sports arena.** An outdoor or nonenclosed sports pavilion, stadium, swimming pool, roller rink, or other similar place where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events, including the concession stand areas thereof.

V. **Unenclosed area.** Any area which is not enclosed.

#### **9.24.030 Secondhand smoke generally**

For all purposes within the jurisdiction of the city, the nonconsensual exposure to secondhand smoke and the uninvited presence of secondhand smoke on property in violation of this chapter shall constitute a nuisance, as is further described by Chapter 8 of the Morro Bay Municipal Code.

#### **9.24.040 Public and other places where smoking shall be prohibited**

Except as otherwise provided by this chapter or by state or federal law, smoking shall be prohibited everywhere in the City, including but not limited to:

- A. All public places;
- B. Residences used as child care, health care, board and care, or community foster care facility as such terms are defined by state Health and Safety Code;
- C. Places of employment, except outdoor construction sites;

- D. Enclosed and unenclosed places of hotels, businesses, restaurants, bars and other public accommodations; and
- E. Any means of public transit including associated waiting areas, and service areas, enclosed or not.

**9.24.050 Reasonable Distance**

Smoking in unenclosed areas shall be prohibited within a reasonable distance of 20 feet from any entrance, opening, crack or vent into an enclosed area where smoking is prohibited, except while actively passing on the way to another destination and so long as smoke does not enter any enclosed area in which smoking is prohibited.

**9.24.060 Places where smoking may be permitted**

Except where prohibited by state or federal law, smoking may be permitted in the following locations within the city notwithstanding Section 9.24.040:

A. Private residential and multifamily properties. This chapter does not preclude private regulation of smoking on private residential and multifamily properties.

B. Designated unenclosed areas ("smokers' outposts") provided that all of the following conditions are met:

1. The area is located a reasonable distance away from any doorway or opening into an enclosed area and any access way to a public place;
2. The area has a clearly marked perimeter;
3. The area is posted with one or more conspicuously displayed sign(s) identifying the area as a designated outdoor smoking area pursuant to section 9.24.060 of this code;
4. Smoke is not permitted to enter adjacent areas in which smoking is prohibited by this chapter, other law or by the owner, lessee or licensee of the adjacent property;
5. Appropriate ash can(s) are placed in the smoking area and are maintained regularly by the owner, operator or manager of the smoking area; and
6. No consistent complaints of secondhand smoke are filed with the City.

C. Smoking areas at public events which have been approved as part of the Special Event Permit or Temporary Use Permit issued by the City.

D. Inside a private automobile when no minor child is present.

E. Any unenclosed area in which no nonsmoker is present and, due to the time of day or other factors, it is not reasonable to expect another person to arrive.

**9.24.070 Modifications of Designated Smokers' Outposts**

The City reserves the right to prohibit or require modifications to a smoker's outpost at a certain location if it undermines the purposes of this chapter.

#### **9.24.080 Allowing, Aiding or Abetting Smoking**

A. No person, employer, business or nonprofit entity shall knowingly permit smoking in an area under his, her or its legal or de facto control in which smoking is prohibited by this chapter or other law.

B. Except as provided in Section 9.24.050 of this code, no person, employer, business or nonprofit entity shall allow the placement or maintenance of a receptacle for smoking waste in an area under his, her or its legal or de facto control in which smoking is prohibited by this chapter or other law, provided however, that a receptacle may be placed at the entry to a nonsmoking area, along with a "No Smoking" sign, in order to encourage any smokers in violation of this chapter to immediately extinguish and properly dispose of smoking materials.

C. No person shall intimidate, threaten, effect a reprisal or retaliate against another person who seeks to attain compliance with one or more of this chapter's provisions.

#### **9.24.090 Signs**

Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this chapter.

A. "No Smoking" or "Smoke Free" signs, with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) or any alternative signage approved by the Public Services Director must be conspicuously posted by the person, employer, business or nonprofit entity who or which has legal or de facto control of such place at each entrance to a public place in which smoking is prohibited by this chapter or any other place where the Public Services Director reasonably determines that smoking in violation of this chapter has occurred, or is likely to occur.

B. Within designated smoking areas, one or more conspicuously displayed sign(s) shall be posted identifying the area as a smokers' outpost pursuant to section 9.24.060 of this code as follows: signs with arrows directing the public to the smoking area may be allowed; signs shall be no smaller than three (3) inches high and eight (8) inches long with a pictorial representation of a burning cigarette; signs shall contain "Designated Smoking Area" and shall be posted prominently between five (5) feet and seven (7) feet above the floor or ground; and all signs are subject to approval by the Public Services Director.

C. Every hotel and motel shall have signs posted conspicuously in the registration and lobby areas which state that nonsmoking rooms are maintained and may be available; rooms designated as being nonsmoking shall have signs announcing such restriction conspicuously placed inside the room.

D. No person shall alter, deface, obscure, remove or destroy a sign or placard that this chapter authorizes.

#### **9.24.100 Disposal of smoking waste.**

No person shall dispose of any cigarette, cigar or tobacco, or any part of a cigarette or cigar, in any place where smoking is prohibited under this Chapter, except in a designated waste disposal container.

**9.24.110 Fires on City Beaches**

No person shall build, light or maintain any fire on any City Beach except in designated containers or areas approved by the City.

**9.24.120 Enforcement and Penalties.**

A. A violation of this Section is an infraction.

B. Punishment under this Section shall not preclude punishment pursuant to Health & Safety Code Section 13002, Penal Code Section 374.4, or any other law proscribing the act of littering. Nothing in this Section shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

**9.24.130 Public education --Purposes of chapter.**

The code compliance officer, in conjunction and coordination with the county health officer of the County of San Luis Obispo and, where feasible, appropriate health or safety oriented community-based organizations and coalitions, shall engage in a continuing program to explain and clarify the purposes of the provisions of the chapter to citizens affected by it, and to guide business owners, operators and managers in their compliance with it.

**9.24.140 Governmental cooperation.**

The City Manager shall request all governmental and educational agencies which maintain an office within the City to establish local operating procedures to cooperate and comply with this chapter.

**9.24.150 Other laws.**

The provisions of this chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. Further, it is not the intent of the provisions of this chapter to regulate smoking where such regulation has been preempted by the state.

This Ordinance shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage, it, or a summary of it, shall be published once, with the names of the City Council members voting for and against the same, in a newspaper of general circulation published in the City of Morro Bay.

**INTRODUCED** at a regular meeting of the City Council of the City of Morro Bay held on the 10th day of April, 2012 by motion of Councilmember \_\_\_\_\_, seconded by Councilmember\_\_\_\_\_.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Morro Bay  
on the \_\_\_\_\_ day of \_\_\_\_\_ 2012 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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WILLIAM YATES, Mayor

**ATTEST:**

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JAMIE BOUCHER, City Clerk

**APPROVED AS TO FORM:**

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ROBERT SCHULTZ, City Attorney



AGENDA NO: B-2

MEETING DATE: 04/10/2012

## Staff Report

**TO:** Honorable Mayor and City Council **DATE:** 04/10/2012

**FROM:** Joseph M. Woods, Recreation and Parks Director

**SUBJECT:** Resolution No. 16-12 Initiating Proceedings to Levy the Annual Assessment for the Cloisters Park and Open Space Landscaping and Lighting Maintenance Assessment District

### **RECOMMENDATION:**

Staff recommends City Council adopt Resolution No. 16-12 ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2012-13 for the maintenance of the Cloisters Park and Open Space.

### **FISCAL IMPACT:**

The F.Y. 2011-12 assessments provided \$148,944 for the maintenance of the Cloisters Park and Open space totaling 34 acres.

### **BACKGROUND:**

On July 8, 1996 the City Council accepted lots 121 and 122 of the Cloisters Sub-division, thirty-four (34) acres of open space and organized park. On September 23, 1996 the City Council passed Resolution No. 69-96 which accepted the final map for Tract 1996 known as the Cloisters Sub-division, consisting of 124 lots. Lots 1 through 120 for single-family residential purposes, Lots 121, 122 and 124 (dedicated for a fire station) were offered to the City subject to completion of the public improvements.

Lot 123 was offered to the state. (Lot 122 is now Parcel 1 and Lot 123 is Parcel 2 as a result of subsequent MBAL 97-240 lot line adjustment.) Prior to the acceptance of the final map and pursuant to the Conditions of Approval, an assessment district was formed to cover the cost of maintenance of the parkland and open space. The assessment district formation proceedings began in August 1996 and concluded with the final public hearing for formation on September 23, 1996, which levied the annual assessment of \$148,944 for the maintenance of the thirty-four (34) acres of parkland and open space.

On January 26, 1998 the City Council adopted Resolution No. 10-98 which accepted the public improvements for Cloisters Tract 1996. Although the public improvements were completed, the developer was responsible for their maintenance for the one (1) year warranty period, with the City taking over the maintenance of the area on January 26, 1999.

Prepared By: JMW

Dept Review: JMW

City Manager Review: \_\_\_\_\_

City Attorney Review: \_\_\_\_\_

After the initial formation of the assessment district; each year beginning in April/May the City must hold a series of three (3) public hearings to confirm the levy of assessment for the upcoming fiscal year. The first public hearing initiates the annual levy process and directs the preparation of an Engineer's Report; the second hearing approves the Engineer's Report and notices the intent to levy the assessment and the third public hearing actually levies the assessment for the upcoming fiscal year.

**DISCUSSION:**

Upon adoption of Resolution No. 16-12, which initiates the proceedings to levy the annual assessment, an Engineer's Report will be prepared for review at the May 8, 2012 City Council meeting. The May 8<sup>th</sup> agenda item will also include a resolution of intention declaring the City Council's intent to levy and collect the assessment. The Resolution lists the improvements, names the district and gives its general location, it also refers to the proposed assessment and gives notice of the time and place for the third and last public hearing regarding the levy of the proposed assessment, as well as stating whether or not the proposed assessment is an increase from the previous year. The Government Code states that the third and final public hearing must be noticed ten (10) days prior to the actual hearing, which is tentatively scheduled for June 26, 2012. Any interested person may file a written and/or oral protest with the City Clerk stating all grounds of objection for levy of assessment. However, only protests by property owners in the proposed assessment district are used to determine if a majority protest exists. A majority protest would only affect the ability to increase the assessment amount, but would not be effective in dissolving the assessment district.

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

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

**CONCLUSION:**

Resolution No. 16-12 has been prepared for City Council review and adoption. The Resolution serves as the initiation of the annual assessment proceedings and orders an Engineer's Report detailing the proposed costs for the maintenance of the Cloisters Park and Open Space for the purpose of assessing private property owners of Tract Map No. 1996 (excluding the City's property). The Resolution also gives notice that a public hearing on the intent to levy the assessment, review and acceptance of the Engineer's Report, will be held on May 8<sup>th</sup>, 2012.

**RESOLUTION NO. 16-12**

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

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

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

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

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

**WHEREAS**, the Owners of real property within the proposed district have offered to dedicate in fee and in perpetuity, Lot 121 (Parcel 1) and Lot 122 of Tract 1996, and the City has agreed to accept said Offer of Dedication, provided that the cost of maintenance of thereof shall be borne by an assessment district as required by the Conditions of Approval of the project; and

**WHEREAS**, one hundred percent (100%) of the property owners approved formation of the district to assure conformance with the “Right to Vote on Taxes Act” (Proposition 218, California Constitution Act XIII C & D).

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

- a. The City Council of the City of Morro Bay hereby declares its intent to initiate the proceedings to levy and collect assessments pursuant to the “Landscaping and Lighting Act of 1972”. (Streets and Highways Code Sections 22500 et seq.)

- b. The improvements to be subject to assessment for maintenance by such District shall include those enumerated in the conditions of project approval and in Streets and Highways Code Section 22525 which are installed by the developer as a condition of approval of Tract 1996 or which are hereafter installed by developer; pursuant to the Final Improvement Plans for the Cloisters Project as approved by the City.
- c. The Assessment District is a District located in the City of Morro Bay, County of San Luis Obispo. A map showing the boundaries of the proposed District is attached as Exhibit A which is hereby incorporated herein.
- d. An Engineer's Report will be prepared for consideration at the May 8, 2012 City Council meeting.
- e. This District shall be called the "Cloisters Landscaping and Lighting Maintenance Assessment District".

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 10<sup>th</sup> day of April, 2012 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

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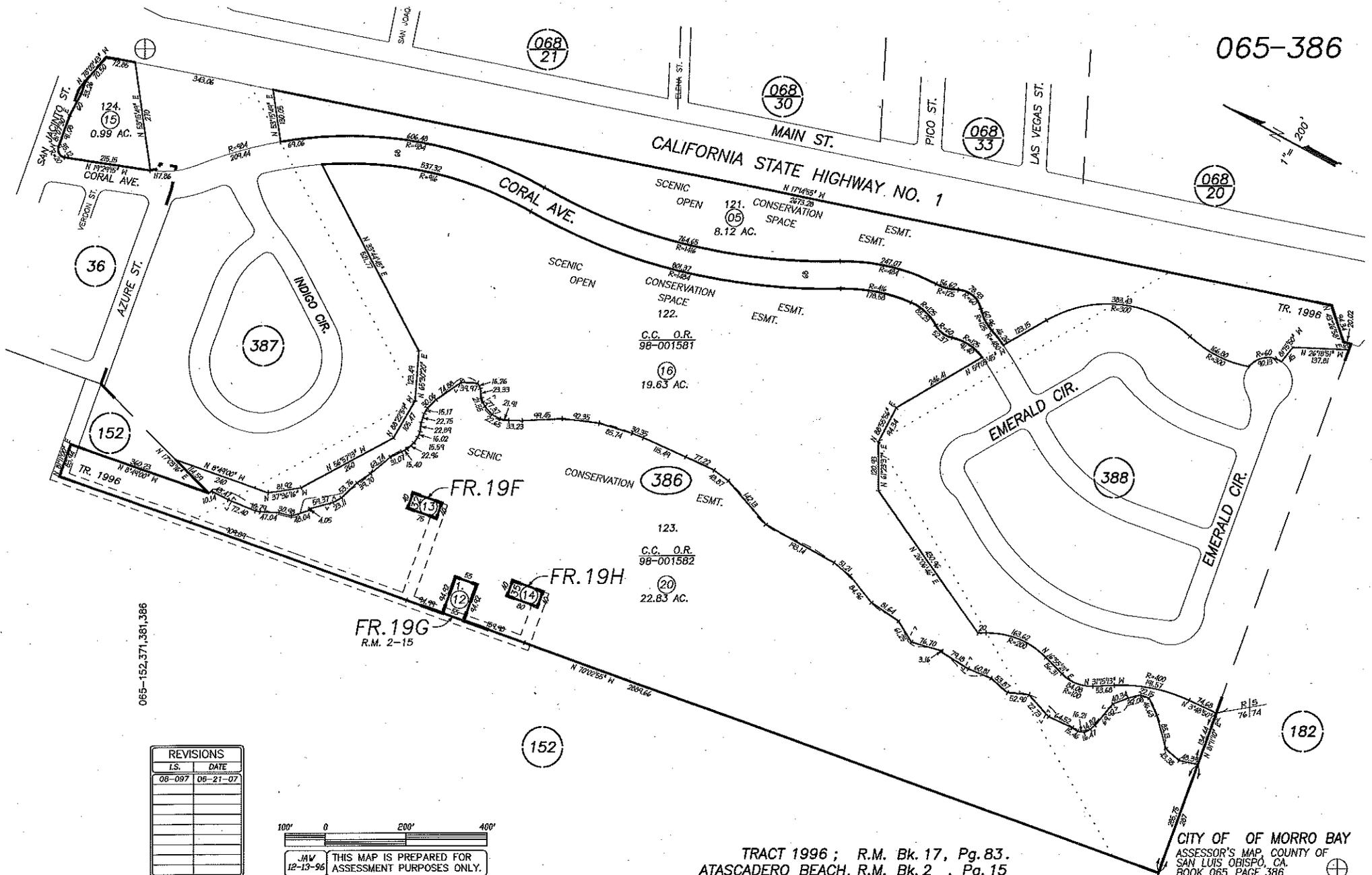
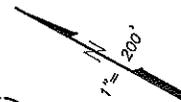
**William Yates, Mayor**

**ATTEST:**

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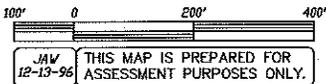
**Jamie Boucher, City Clerk**

065-386



065-152,371,381,386

REVISIONS	
I.S.	DATE
08-097	06-21-07



TRACT 1996 ; R.M. Bk. 17, Pg. 83.  
 ATASCADERO BEACH, R.M. Bk. 2 , Pg. 15

CITY OF MORRO BAY  
 ASSESSOR'S MAP, COUNTY OF  
 SAN LUIS OBISPO, CA.  
 BOOK 065 PAGE 386.



**DISCUSSION:**

Upon adoption of Resolution No. 17-12, which initiates the proceedings to levy the annual assessment, an Engineer's Report will be prepared for the second public hearing scheduled for the May 8, 2012 City Council meeting. The May 8<sup>th</sup> agenda item will also include a resolution declaring the City Council's intent to levy and collect the assessment. The resolution also lists the improvements, names the district and gives its general location, refers to the proposed assessment, gives notice of the time and place for the third and last public hearing regarding the levy of the proposed assessment as well as states whether or not the proposed assessment is an increase from the previous year.

The Government Code states that the third and final public hearing must be noticed ten (10) days prior to the actual hearing, which is tentatively scheduled for June 26, 2012. Any interested person may file a written and/or oral protest with the City Clerk stating all grounds of objection for levy of assessment. However, only protests by property owners in the proposed assessment district are used to determine if a majority protest exists. A majority protest would only affect the ability to increase the assessment amount, but would not be effective in dissolving the assessment district. However, the assessment amount cannot be increased over the highest assessment on record, \$5,645, should a majority protest exist.

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

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

**CONCLUSION:**

Resolution No. 17-12 has been prepared for City Council review and adoption. The Resolution serves as the initiation to the annual assessment proceedings and orders an Engineer's Report detailing the proposed costs for the maintenance of the North Point Natural Area for the purpose of assessing private property owners of Tract Map No. 2110 (excluding the City's property). The Resolution also gives notice that a public hearing on the intent to levy the assessment, review and accept the Engineer's Report, will be held on May 8, 2012.

**RESOLUTION NO. 17-12**

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

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

**WHEREAS**, the City has placed certain conditions on the development of Tract 2110 “North Point”, requiring formation of a property Landscaping and Lighting Maintenance Assessment District encompassing and coterminous with the proposed subdivision to provide for the maintenance of a natural area, parking lot, landscaping, decomposed granite and asphalt walkways, and coastal access stairway and other common area improvements to be held by or dedicated to the City of Morro Bay as required by the Morro Bay Municipal Code 16.16.030; and

**WHEREAS**, these conditions are more specifically identified in the Precise Plan (condition F1-F7); and

**WHEREAS**, the Owners of the real property within the proposed district consented to the formation of the district pursuant to the Landscaping and Lighting Act of 1972 (Streets and Highways Code Section 22608.2 et seq.), and are the only owners of property to be subject to assessments within the district; and

**WHEREAS**, the Owners of real property within the proposed district offered in fee and in perpetuity, Lot 11 of Tract 2110, and the City has agreed to said Offer of Dedication, provided that the cost of maintenance of thereof is borne by an assessment district as required by the Conditions of Approval of the project; and

**WHEREAS**, one hundred percent (100%) of the property owners approved formation of the District to assure conformance with the “Right to Vote on Taxes Act” (Proposition 218, California Constitution Act XIII, C & D).

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

1. The City Council of the City of Morro Bay hereby declares its intent to initiate the proceedings to levy and collect assessments pursuant to the “Landscaping and Lighting Act of 1972”. (Streets and Highways Code Sections 22500 et seq.)

2. The improvements to be subject to assessment for maintenance by such District shall include those enumerated in the conditions of project approval and in Streets and High ways Code Section 22525 which are installed by the developer as a condition of approval of Tract 2110 or which are hereafter installed by developer; pursuant to the Final Improvement Plans for the North Point Project as approved by the City.
3. The Assessment District is a District located in the City of Morro Bay, County of San Luis Obispo. A map showing the boundaries of the proposed District is attached as Exhibit A which is hereby incorporated herein.
4. An Engineer's Report will be prepared for consideration at the May 8, 2012 City Council meeting.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 10<sup>th</sup> day of April, 2012 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

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**William Yates, Mayor**

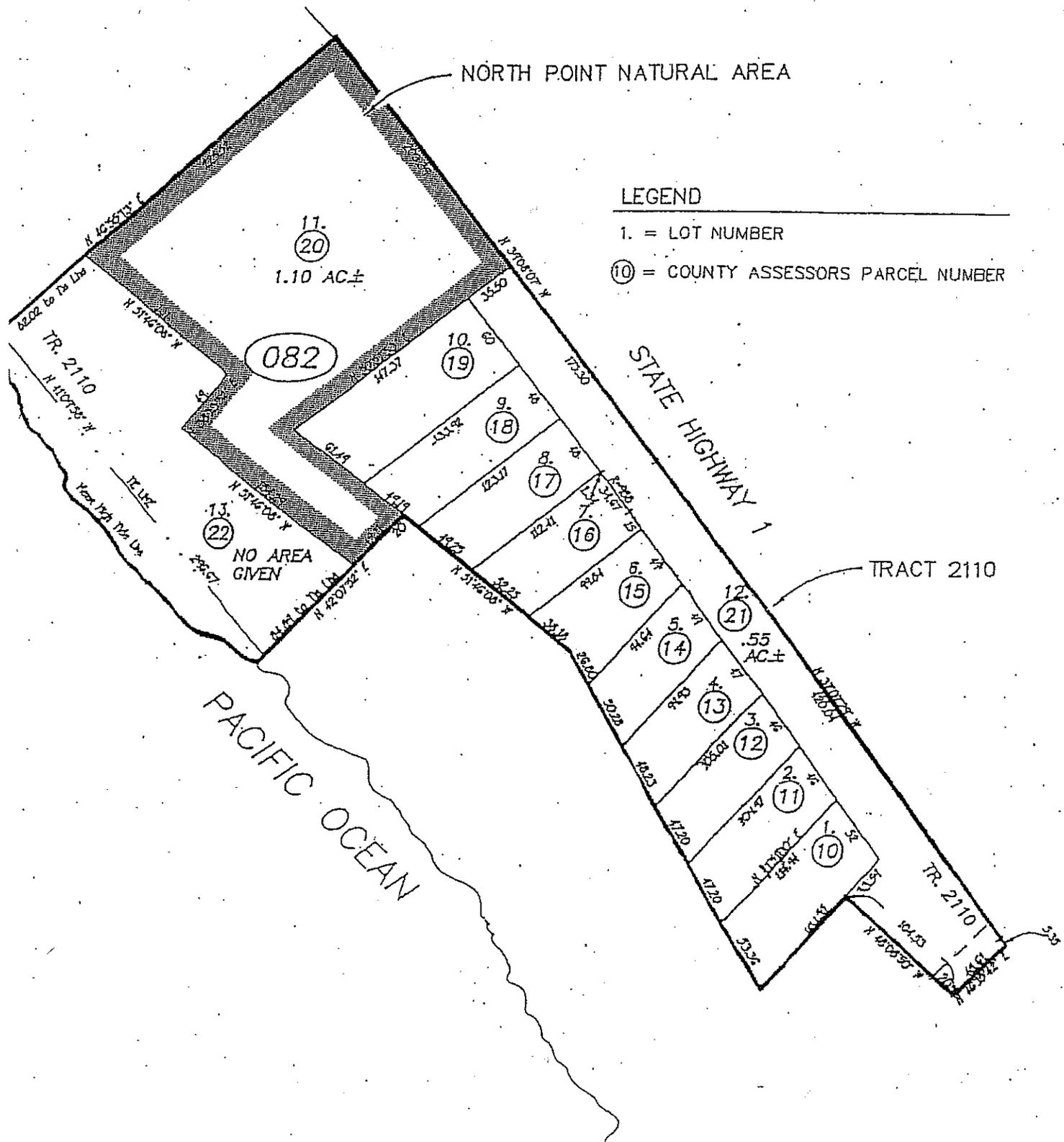
**ATTEST:**

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**Jamie Boucher, City Clerk**

# NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT

## ASSESSMENT DIAGRAM





AGENDA NO: D-1

MEETING DATE: 04/10/12

# Staff Report

**TO: Honorable Mayor and City Council**

**DATE: April 3, 2012**

**FROM: Susan Slayton, Administrative Services Director/City Treasurer**

**SUBJECT: Discussion on the Presentation of the 2012/13 Fiscal Year Budget**

**RECOMMENDATION:**

Council to direct staff on preferred method of presenting the 2012/13 budget to Council and the public.

**SUMMARY:**

Staff is requesting that Council discuss the presentation of the 2012/13 fiscal year budget, and decide upon the method of presentation to be used this year.

**DISCUSSION:**

Staff is requesting Council's direction regarding the presentation of the annual budget. In prior years, the City has held special meetings at which Staff has brought forward a budget document along with a PowerPoint presentation, then brought the budget back to one or two regular Council meetings as either a consent item or a public hearing. Last year, the budget was only offered to Council at its July 12 regular meeting as a public hearing.

Staff anticipates the budget being adopted on either 6/12/12 or 6/26/12. The preliminary budget document will be available on 5/25/12.

Staff wishes to receive input from the Council about its preferred method of presenting the 2012/13 budget document.

Prepared by: \_\_\_\_\_ Dept Review: \_\_\_\_\_

City Manager Review: \_\_\_\_\_

City Attorney Review: \_\_\_\_\_



AGENDA NO: D-2

MEETING DATE: 4/10/2012

# Staff Report

**TO: Mayor and City Council**

**DATE: April 3, 2012**

**FROM: Andrea K. Lueker, City Manager**

**SUBJECT: Discussion on the Paperless Agenda Concept**

## **RECOMMENDATION**

Provide direction to staff on the paperless agenda concept, including whether or not a wireless network is required at City Hall.

## **FISCAL IMPACT**

To be determined.

## **DISCUSSION**

The City Council directed staff to research and report on various paperless agenda options. At least 75 California cities have gone to some form of paperless agenda reading devices for their City Councilmembers. Some of those cities also provide electronic reading devices to their Department Heads.

The reading device of choice in a majority of these cities is the Apple iPad along with different software modules that allow for the upload of agendas and staff reports. In addition, several cities provide wireless Internet in their City Council Chambers (the City of Morro Bay already has this feature in the Veteran's Hall) and City Hall to facilitate the use of these devices.

Purchasing iPads with 16 GB of memory has been found to be sufficient for the type of use the City is interested in. All iPads have the capability of accessing wireless Internet. Also available is the purchase of an iPad which has the ability to connect to mobile Internet provided by a wireless company (similar to that of a smart phone), however, that option is more expensive than a Wifi-only iPad, and would also incur a monthly cost for a data plan.

Regardless of the type of iPad purchased, the following decisions must be made:

1. How would the agenda materials be distributed to the City Council and staff? Several options include the City sending an e-mail containing a link to the materials and prompting the user to download the materials. Another option is providing an automatic means for the documents to be uploaded to the iPad using commercially available software.

Prepared By: \_\_\_\_\_

Dept Review: \_\_\_\_\_

City Manager Review: \_\_\_\_\_

City Attorney Review: \_\_\_\_\_

2. Does the reader want to makes notes on the Council packet materials? If so, there is software available to allow this function.
  
3. It must be determined who owns the device and what, if any, restrictions need to be placed on its use. Generally, a computer device is purchased by the City, and the user must follow the City's information systems policy, whereby the device and associated network access is only used for City business. Cities have approached this issue differently; some provide a technology stipend for users to purchase their own devices, others have the City purchase the device, becoming subject to the information systems policy restrictions, others utilize a hybrid between the two options.
  
4. Who should the iPads be purchased for? The majority of cities using iPads have made them available to the City Council members and the Department Head team. It is also common to make sure the IT professional has one to ensure proper configuration and troubleshooting issues.
  
5. If a mobile data capable iPad is purchased, then is that data plan for the iPad purchased by the City or by the individual? If it is paid for by the City, how is the City's Internet policy (if one exists) enforced? Staff found there was no uniformity amongst cities using iPads on either of these questions.

**Costs**

There are certainly some initial costs with implementing a paperless agenda concept. Staff has provided an estimate of the costs for iPads below. Any service contracts, cases and/or screen protection would be additional. If mobile data capable iPads are purchased, there is an ongoing cost for a data plan. If a data plan is purchased, the cost can range from approximately \$75 to over \$700. The variable includes the data allowance, monthly plan costs and overage costs. Below is an estimate for the cost for iPads:

Version	Storage	WiFi	Mobile Data Compatible	Cost/Unit	Cost for City Council (x5)	**Cost for CC (x5) + Dept. Heads (x8)
iPad 2	16 GB	Yes	No	\$400	\$2,000	\$5200
iPad 2	16 GB	Yes	Yes	\$530	\$2,650	\$6890
iPad 3	16 GB	Yes	No	\$500	\$2,500	\$6500
iPad 3	16 GB	Yes	Yes	\$630	\$3,150	\$8190

\*\*this line item may be reduced as some Department Heads may have already purchased iPads.

Other costs to consider are the cost of software for distributing and reading agenda materials. If distribution of agenda materials is done manually, the least expensive option would be for users to download their agenda materials from the City’s website to their iPads. This option would be no cost for distribution, and \$10-15 per user for software. If automated distribution of agenda materials is desired, the cost would vary depending on the method chosen and the number of users. If the City Council decided to install a WiFi network at City Hall, the costs would need to be determined.

Staff primarily investigated the use of the iPad versus the use of a laptop computer. While laptop computers could also be used in a paperless agenda scenario, they are generally heavier and bulkier.

Other considerations include the capability of locating a lost or stolen iPad electronically or even if necessary, being able to have the data in it wiped clean by remote means, reverting it to the factory defaults. Should the City Council desire staff research the use of laptops instead of the iPad system, that information can be presented at the next City Council meeting, April 24, 2012 so as to not hold up this decision.

**Savings**

For each City Council meeting, generally 23 copies of each piece of material (agenda, staff reports, attachments and minutes) are made. Reducing the number of pages and packets copied would not only save in the cost of paper, but staff time and impacts to the copier, resulting in a direct savings to the City. As an illustration, the chart below shows how many copies were made for each Council meeting from January through March, 2012.

<b>Meeting Date</b>	<b>Number of Council Packets</b>	<b>Number of Staff Packets</b>	<b>Number of Public Packets</b>	<b>Total number of Copied Packets</b>	<b>Sheets of Paper Used</b>	<b>Copies Made</b>
<b>1/10/12</b>	<b>5</b>	<b>12</b>	<b>6</b>	<b>23</b>	<b>163</b>	<b>326</b>
<b>1/24/12</b>	<b>5</b>	<b>12</b>	<b>6</b>	<b>23</b>	<b>94</b>	<b>188</b>
<b>2/14/12</b>	<b>5</b>	<b>12</b>	<b>6</b>	<b>23</b>	<b>364</b>	<b>728</b>
<b>2/28/12</b>	<b>5</b>	<b>12</b>	<b>6</b>	<b>23</b>	<b>184</b>	<b>364</b>
<b>3/13/12</b>	<b>5</b>	<b>12</b>	<b>6</b>	<b>23</b>	<b>155</b>	<b>310</b>
<b>3/27/12</b>	<b>5</b>	<b>12</b>	<b>6</b>	<b>23</b>	<b>48</b>	<b>96</b>
				<b>Total</b>	<b>1008</b>	<b>2016</b>

**CONCLUSION**

Staff spends a significant amount of time in preparing the agenda packets. Switching to a paperless agenda system would certainly result in an ability to redirect the time spent on agenda packets to other activities. However, it should be noted that the IT staff person would likely be tasked with additional work with the addition of iPads. Staff has also attached a copy of an article titled “Costa Mesa Sanitary District Promotes Zero Waste, Saves Money through Use of Paperless Agendas.”

# Costa Mesa Sanitary District Promotes Zero Waste, Saves Money through Use of Paperless Agendas

By Scott Carroll, General Manager, Costa Mesa Sanitary District



The Costa Mesa Sanitary District (CMSD) Board of Directors meets once a month on the fourth Thursday of every month. In addition, the Board established two committees, the Sewer System Committee and the Recycling Committee, in which two board members are appointed to serve. The committees also meet once a month and they are subject to follow the requirements under the Brown Act. Having three monthly meetings that require agendas, staff reports and back up documentation became increasingly costly and time consuming to prepare, as each agenda packet can average 166 pages. Sometimes, the Board agenda packets fall at over 300 pages! CMSD estimated that it was spending 240 staff hours, printing 40,000 pages and spending over \$13,000 a year to prepare and disseminate agenda packets.

In 2010, the Board of Directors adopted a five year Strategic Plan in which one of the goals of the plan

was to encourage implementing zero waste programs and promote sustainability efforts. Using the latest technology, CMSD was able to achieve this Strategic Plan Goal while at the same time reducing costs and improving efficiencies for preparing and disseminating agenda packets by implementing a Paperless Agenda Program.

CMSD's Paperless Agenda Program is quite simple and can be implemented by any organization at a minimal cost. For our program, CMSD decided to use the latest technology by procuring iPad 2s from Apple. Other accessories included iPad stands, cordless key pads (for the Clerk of the Board and General Manager), an iPad safe and a wireless access point. The cost to purchasing these items was a total of nearly \$8,000.

When an agenda packet is complete instead of printing several copies (on the average, CMSD was printing

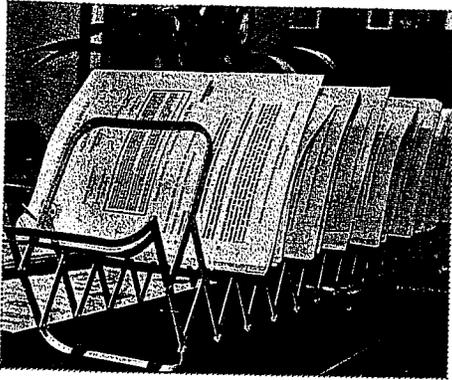
18 agendas per meeting) the agenda is scanned on a copy machine in a .pdf format and then uploaded on the home page of CMSD's website. After the agenda packet is uploaded, an email is sent to the Board of Director's and staff informing everyone that the agenda is now available and ready to be downloaded onto their work or home computer. This method has saved the district approximately \$744 a year in mailing costs.

Before a Board and/or committee meeting begins, the iPads are set up in front of Board members' and staff's designated chairs. The wireless access point in the Board room allows staff to access the internet on the iPads and download the agendas from CMSD's website. This procedure improves access to the agenda because many agenda packets are larger than 10 MB and many computer servers will not accept documents larger than 10 MB for security protection reasons, such as viruses. The wireless access point also allows staff to email meeting notes from the iPads to their work computers. There is virtually no paper required during meetings.

When the meeting is over, the iPads are stored in a safe that is specifically designed to store iPads. The safe can hold up to 20 iPads and inside are 20 outlets so that the iPads are continually charging through a single electrical cord that is routed from the safe and connected to a wall outlet. The iPads are not allowed for personal use and no one can take the iPads home.

## SHARE YOUR SOLUTIONS & INNOVATIONS

Do you have a new program, process or facility that increases efficiency, reduces costs, improves service or otherwise helps make your community a better place to live? *California Special District* wants to know about it! Contact Nicole Dunn at [nicoled@csda.net](mailto:nicoled@csda.net) or (877) 924-2732.



The results of the program have proven successful in a short matter of time with a return on our investment within the first year. The total cost to procure the necessary equipment and supplies for a Paperless Agenda

Program was close to \$8,000. It is estimated that CMSD will save 213 staff hours in preparing agendas. These saved hours have been reassigned to other projects and/or programs that have, in the past, received less attention because of insufficient resources. In addition, less paper is being printed. CMSD estimates that it will print little more than 8,000 pages a year on agendas (at least one hard copy is made available for the public), saving 32,000 pages a year. The benefits to the environment for saving this amount of paper are staggering. Within six years, the scheduled replacement for the iPads, CMSD will have saved one ton of paper, which will result in the following environmental benefits:

- Saved 17 mature trees;
- Saved 7,000 gallons of water;
- Saved 3 cubic yards of landfill space;
- Saved 2 barrels of oil; and
- Saved 4,100 kilowatt hours of electricity, which is enough energy to power the average American home for six months.

The net savings CMSD is experiencing from this program is \$10,691 a year, which is an immediate return on our investment. When the iPads are replaced in six years, CMSD will have a net savings of \$64,146.

The success of CMSD's Paperless Agenda Program has attracted the attention of many special districts in California and even one organization as far away as Minnesota because of the relative inexpensive and ease to implementing such a program. Thanks to the Board of Directors commitment to bringing new innovative ideas to fruition, CMSD's Paperless Agenda Program is a proven success story. ■



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AGENDA NO: D-3

MEETING DATE: April 10, 2012

# Council Report

**TO: MB City Council**

**DATE: April 4, 2012**

**FROM: Councilmember Smukler**

**SUBJECT: City Support of Morro Bay Community Radio**

## **RECOMMENDATION**

Authorize City Support of the Morro Bay Community Radio Application to the FCC and Future Installation of the Station's Antenna at the City's Corporation Yard.

## **FISCAL IMPACT**

None

## **SUMMARY**

"Morro Bay Community Radio" (MBCR) is a non-profit, non-commercial and non-partisan organization working to establish a local "Low Power FM" radio station. The FCC's application process requires the identification of the exact location of the 4'x3' antenna. An existing tower at the Morro Bay City Corporation Yard offers the best location option because it is central to Estero Bay with minimal interference potential for the licensed 100 watts of power. The City's Public Services Director has confirmed that the tower can accommodate an additional antenna.

## **BACKGROUND**

Morro Bay Community Radio will feature a minimum of eight (8) hours daily of locally originated programming that will include, but not limited to, coverage of local events, street festivals and markets, sports, council meetings, music, conversation about homegrown issues, tourist information and suggestions, local merchant information and emergency communications as dictated by the local police and fire departments.

The costs associated with the operation of Morro Bay Community Radio are minimal and are expected to be covered through grants and local fundraising opportunities. Donations of time, expertise and equipment is currently being solicited and received from the community.

The studio space and necessary studio equipment is being donated by the Chairman of the Board, Hal Abrams. The transmitter would not have to be accessed except for routine maintenance, as it will be remotely controlled from the studio.

Prepared By:       NOS                            Dept Review:       

City Manager Review:       

City Attorney Review:

Operational costs (including electricity and phone) are expected to be \$100/month and will be covered by MBCR.

MBCR has acquired the services of a vetted FCC Attorney and Engineer, well versed and experienced in the processes related to LPFM (Low Power FM) FCC applications and operation. Cavell Mertz and Associates, alongside a Ernest Sanchez Communications Attorney, will be key in assembling the necessary materials to demonstrate the community's eligibility for the license.

### **CONCLUSION**

The FCC's window for application is small and brief, usually 6 months. MBCR believes that this window will be opening within the year and intends to present an application as soon as all the necessary details are known. The identification of the transmitter and antenna location is a key component to the FCC application. There is no risk for locating the antenna on an existing City tower and, with approval of the FCC, the antenna can be relocated anytime.

Any questions or concerns may be directed to the current Chairman of the Board, Hal Abrams, 699 Paula St., Morro Bay, CA. 93442, 805-772-1314