

City of Morro Bay

City Council Agenda

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.

REGULAR MEETING – AUGUST 28, 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.

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

**PUBLIC SESSION – AUGUST 28, 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 AUGUST 14, 2012; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 REQUEST TO APPROVE A RESPONSE TO THE GRAND JURY REGARDING MEDICAL MARIJUANA; (CITY ATTORNEY)

RECOMMENDATION: Review the attached letter and authorize its submittal to the Grand Jury.

A-3 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DIRECTING A TIMELINE FOR COMPLETION OF CAPITAL PROJECTS APPROVED BY COUNCIL; (CITY COUNCIL)

RECOMMENDATION: Adopt Resolution 45-12.

A-4 APPROVAL OF MANAGEMENT AGREEMENT BETWEEN THE CITY OF MORRO BAY AND ESTERO BAY COMMUNITY RADIO TO OPERATE A LOW POWER FM (LPFM) RADIO STATION;(CITY ATTORNEY)

RECOMMENDATION: Review and approve the Management Agreement between the City of Morro Bay and Estero Bay Community Radio (EBCR) to operate a “Low Power FM” (LPFM) Radio Station.

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 APPEAL OF MINOR USE PERMIT #UP0-240, COASTAL DEVELOPMENT PERMIT #CP0-294 AND PARKING EXCEPTION #AD0-043 FOR THE CONVERSION OF 820 SQUARE FEET OF COMMERCIAL SPACE TO A RESIDENTIAL UNIT AND A PARKING EXCEPTION TO WAIVE THE REQUIREMENT OF TWO COVERED AND ENCLOSED PARKING SPACES AND PROVIDING TWO OPEN AND UNCOVERED PARKING SPACES, LOCATED AT 2176 MAIN STREET (PINA NARAN, APPLICANT); (PUBLIC SERVICES)

RECOMMENDATION: Overturn the Planning Commission’s denial and approve the requested Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 subject to the Findings included as Attachment “1” and the Conditions of Approval as included as Attachment “2” and the site development plans dated May 3, 2012.

C. UNFINISHED BUSINESS - None

D. NEW BUSINESS

D-1 DISCUSSION ON THE FORMATION OF A CLOISTERS ADVISORY BOARD TO MAKE RECOMMENDATIONS REGARDING CLOISTERS MAINTENANCE WORK; (RECREATION & PARKS AND CITY ATTORNEY)

RECOMMENDATION: Review the attached draft By-Laws for the proposed Cloisters Advisory Board and direct staff to either advance the By-Laws to a final document or continue our current administration of the Assessment District.

D-2 DISCUSSION ON THE PROCESSING AND LICENSING OF TEMPORARY USE PERMITS AND PUBLIC AREA USE PERMITS AND HOW IT RELATES TO NEW BUSINESS; (CITY ATTORNEY)

RECOMMENDATION: Review and direct staff accordingly.

D-3 DISCUSSION AND RECOMMENDATION OF THE MORRO BAY CHAMBER OF COMMERCE BEING HOUSED IN A CITY-OWNED FACILITY; (ADMINISTRATION)

RECOMMENDATION: Review and approve the request from the Chamber of Commerce to be housed in the City-owned facility located at 715 Harbor Street (Fire Department Administrative Building).

D-4 UPDATE FROM THE CALIFORNIA STATE LANDS COMMISSION HEARINGS HELD ON AUGUST 14 & 20, 2012 AND DIRECTION TO STAFF FOR FURTHER MONITORING OF THE SEISMIC TESTING FOR DIABLO CANYON; (ADMINISTRATION)

RECOMMENDATION: Review the update from the August 14 and 20, 2012 hearings regarding the Seismic Testing for Diablo Canyon and provide direction to staff on further monitoring.

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: 08/28/2012

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – AUGUST 14, 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
	Susan Slayton	Administrative Services Director
	Steve Knuckles	Fire Captain
	Mike Lewis	Interim Police Chief
	Rob Livick	Public 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.

PUBLIC COMMENT

Lara Rapcinski, owner of Harbor Floral gave the Morro Bay business report. Harbor Floral is a local business located at 868 Napa, they are open Tuesday – Friday from 10am-5pm and their phone number is 772-0770. They specialize in weddings and special events. They will be holding their ribbon cutting ceremony on Thursday, August 23rd.

Craig Schmidt spoke just wanting to thank the City Council and staff for all their service and commitment. He also announced the upcoming Chamber Mixer at Rabobank on August 16th from 530-7pm. He also commented on the Bay News article stating that the events “slated to be discontinued” will in fact be kept up as many citizens’ groups and community organizations are stepping up to the plate to sponsor them.

Adrian Harris with the Morro Bay National Estuary Program spoke on “Clean Water, Great Life” and encouraged Morro Bay residents do their part and take up the Clean Water Pledge by making everyday choices for clean water.

Keith Taylor, Director of Friends of the Fire Department let the public know that the sales of the bricks and stones being placed at the new Fire Department will be ending on Labor Day.

Cathy Novak spoke on behalf of the applicant for Item D1, "Request for a Plan Check and Affordable Housing In-lieu Fee Reduction for 1885 Ironwood". She is requesting a 50% reduction of fees for the duplicate plan check fees only, as well as not be charged twice for affordable housing in-lieu fees.

Janice Peters spoke about the opinion piece she wrote for the local newspaper. She explained how she came up with the estimated dollar figures it may cost if the WWTP were to be moved. She also specified those additional items that there will be a cost for, should the plant be moved.

Betty Winholtz spoke on 3 agenda items. Regarding Item D1, she feels that the applicant is requesting something that the fee schedule doesn't provide for. As far as the in-lieu fees, she feels that they are two separate and distinct fees and that the applicant is confusing that issue. Regarding Item D2, "Recommendation to move forward in Master Planning the Northern Embarcadero Areas including Coleman Park, Target Rock and the Morro Rock Parking Lot", while there was a lot of information, there were no pictures in order to be able to visualize the information. And regarding Item D5, "Designation of Voting Delegate and Alternate Voting Delegate at the LOCC 2012 Annual Conference and Business Meeting" she hopes that Council will review the Resolutions that will be voted on at the Conference and make recommendations for the voting delegate to follow. She also responded to Ms. Peters comments by saying that her costs of moving the plant didn't take into consideration offsetting costs that we will reap based on the piece of property we will be getting as well as the piece of property on the beach.

Annie Kay spoke in praise of the surf camp that she attended. She very much enjoyed herself and was able to learn how to surf.

Garry Johnson spoke, emphasizing that it was his opinion that the Coastal Commission was given misleading information which led to the inaccuracies in their staff report. He feels that a new plant one mile up Highway 41 is a terrible mistake.

Dawn Beattie requested staff provide the Cloister residents a more accurate budget for the expenditure of the allocated maintenance monies.

Linda Merrill was disappointed to learn that the Coastal Commission hearing had been postponed and requests that we attempt to get the meeting held in San Luis Obispo County as many don't have the energy to travel such long distances. She also responded to Ms. Peters comments by saying that nobody knows the true costs of moving the plant, that the plant will cost no matter the location, and to please stop the scare tactics by coming up with figures that suit their own needs.

Roger Ewing stated that since the election, we have been subjected to lies and scare tactics and he is tired of it. We should be about the spirit of community. He stated that they wanted it moved because it's in the wrong location and if you base policy decisions solely on money, you will lose.

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 JULY 24, 2012; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 LETTER IN RESPONSE TO GRAND JURY REPORT TITLED “A VITAL FUNCTION OF THE JUDICIAL SYSTEM: LAW ENFORCEMENT PROPERTY AND EVIDENCE ROOMS”; (POLICE)

RECOMMENDATION: Direct staff to send the attached letter to the Presiding Judge of San Luis Obispo County Superior Court in response to the Grand Jury report.

A-3 RESOLUTION NO. 43-12 AUTHORIZING THE CITY OF MORRO BAY TO ENTER INTO 2012/2013 VESSEL TURN-IN PROGRAM FUND CONTRACT WITH THE DEPARTMENT OF BOATING AND WATERWAYS; (HARBOR)

RECOMMENDATION: Adopt Resolution 43-12.

A-4 RESOLUTION NO. 44-12 AUTHORIZING THE CITY OF MORRO BAY TO ENTER INTO 2012/2013 ABANDONED WATERCRAFT ABATEMENT FUND CONTRACT WITH THE DEPARTMENT OF BOATING AND WATERWAYS; (HARBOR)

RECOMMENDATION: Adopt Resolution 44-12.

A-5 ADOPTION OF ORDINANCE NO. 579 REPEALING, AMENDING AND REENACTING CHAPTER 14.72 OF THE CITY OF MORRO BAY MUNICIPAL CODE, ENTITLED FLOOD DAMAGE PREVENTION; (PUBLIC SERVICES)

RECOMMENDATION: Adopt Ordinance No. 579.

A-6 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DIRECTING A TIMELINE FOR COMPLETION OF CAPITAL PROJECTS APPROVED BY COUNCIL; (COUNCIL)

RECOMMENDATION: Adopt Resolution 45-12.

A-7 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DECLARING HOW MEASURE Q FUNDS ARE ALLOCATED AND SPENT; (COUNCIL) **THIS ITEM HAS BEEN PULLED FROM THE AGENDA**

RECOMMENDATION: Adopt Resolution No. 46-12.

Councilmember Borchard pulled Item A-6 from the Consent Calendar.

MOTION: Councilmember Johnson moved the City Council approve Items A-1, A-2, A-3, A-4 and A-5 of the Consent Calendar. The motion was seconded by Councilmember Borchard and carried unanimously 5-0.

A-6 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DIRECTING A TIMELINE FOR COMPLETION OF CAPITAL PROJECTS APPROVED BY COUNCIL; (COUNCIL)

Councilmember Borchard pulled Item A-6 as she would like additional information added to the Resolution and requests it be continued to the next Council meeting.

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 APPEAL OF MINOR USE PERMIT #UP0-240, COASTAL DEVELOPMENT PERMIT #CP0-294 AND PARKING EXCEPTION #AD0-043 FOR THE CONVERSION OF 820 SQUARE FEET OF COMMERCIAL SPACE TO A RESIDENTIAL UNIT AND A PARKING EXCEPTION TO WAIVE THE REQUIREMENT OF TWO COVERED AND ENCLOSED PARKING SPACES AND PROVIDING TWO OPEN AND UNCOVERED PARKING SPACES; (PUBLIC SERVICES)

ACTION: This item was opened but due to the omission of the property address in the title of the agenda item, it has been continued to the August 28, 2012 meeting.

C. UNFINISHED BUSINESS - None

D. NEW BUSINESS

D-1 REQUEST FOR A PLAN CHECK AND AFFORDABLE HOUSING IN-LIEU FEE REDUCTION FOR 1885 IRONWOOD; (ADMINISTRATION)

Public Services Director, Rob Livick presented the staff report.

Councilmember Smukler stated that the City doesn't have these kinds of fee structures in place; if we feel that we want to review a fee structure like this we should, but doesn't think that tonight is the right place to implement them.

Mayor Yates disagrees as we make exceptions all of the time and we are capable of doing this. This is a unique situation as we don't normally have projects with this many units that come in at once and he doesn't feel that there is that much extra work to review the plans. He feels the reasonable thing to do is to charge the 50% of plan check fees and the full amount of in-lieu fees.

Public Services Director Rob Livick described the differences between the 2 In-lieu fee charges. One is an in-lieu fee with is a charge of .30 cents/sq foot of construction. The other is for projects of 8 units or more and provides monies, in addition to the .30 cents/sq foot, to the in-lieu account. You can either build an affordable housing unit(s) or pay this in-lieu fee. They are 2 separate fees.

Councilmember Leage feels the In-lieu fees are black and white – either build or pay.

Councilmember Johnson still feels like the applicant ends up paying the in-lieu fees twice. She thinks she can support 60% of the plan check fee cost as opposed to the requested 50% cost.

Councilmember Borchard agrees with Johnson, she too feels they are paying twice for the in-lieu fees. She also has concerns that since the Building Inspector has yet to make a final review of the plans, it's impossible to determine how "like" the plans actually are. She can support a 60% of the plan check fees.

Councilmember Smukler hoped that Council would let staff allow for the plan review as there would be no harm in waiting and letting staff come back with numbers as to the actual cost of the process. He also went on to say that the 2nd In-lieu fee is because you have the ability to provide affordable housing and you have chosen not to. It recognizes the scale of a project. It also incentivizes and prioritizes affordable housing as we are far behind in affordable housing units.

MOTION: Mayor Yates moved that the applicant at 1885 Ironwood pay 100% of the plan check fees for the first unit and for the remaining identical units they pay 50% plan check fees; and, leave the affordable Housing In-lieu fees we have charged alone. The motion was seconded by Councilmember Leage and passed 4-1 with Councilmember Smukler voting no.

After a called break, Councilmember Leage made the following motion.

MOTION: Councilmember Leage moved for a reconsideration of the motion on the last item. The motion was seconded by Mayor Yates and passed 4-1 with Councilmember Smukler voting no.

Councilmember Leage feels that we are "double-dipping" and should be grateful that such a good project is coming to our town. Councilmember Johnson agrees.

MOTION: Councilmember Leage moved that for the project at 1885 Ironwood, plan check fees for the 1st unit remain at 100% with the remaining identical units being charged at 50% of the plan check fees; and, waive the .30 cent/square foot affordable housing in-lieu fee; and, rescind the previous motion. The motion was seconded by Councilmember Johnson and passed 4-1 with Councilmember Smukler voting no.

D-2 RECOMMENDATION TO MOVE FORWARD IN MASTER PLANNING THE NORTHERN EMBARCADERO AREAS INCLUDING COLEMAN PARK, TARGET ROCK AND THE MORRO ROCK PARKING LOT; (RECREATION & PARKS)

Recreation & Parks Director Joe Woods presented the staff report.

Councilmember George Leage hopes that staff should move forward right now.

Councilmember Johnson agrees but realizes we are short on funds. She would like to see approval tonight with the caveat that we wouldn't implement the plan until the funds are available.

Councilmember Borchard also agrees it's a great plan but we don't have any funding and we need to wait until we have the money.

Mayor Yates thinks we should get the actual cost nailed down to specifics.

MOTION: Councilmember Johnson moved that we move forward with master planning the Northern Embarcadero areas to include Coleman Park, Target Rock and the Morro Rock Parking Lot and wait until implementation until funds are available for the project. The motion was seconded by Councilmember Smukler and passed unanimously 5-0.

D-3 DISCUSSION ON PARKING OPTIONS ON THE EMBARCADERO BETWEEN BEACH AND PACIFIC STREETS; (PUBLIC SERVICES)

Public Services Director Rob Livick presented the staff report.

Mayor Yates hoped we would hold off on any decision in parking to see if we get the Dynegy parking which should give us a couple hundred more spaces.

Councilmember Leage still hoped to be able to take away one of the lanes on the Embarcadero and widen the sidewalks. He feels that if we could get the cars off the street and get them to park elsewhere, it would open up the shops and create a better attitude. He thinks it's a good idea to look at this again after the Dynegy parking is opened up.

Councilmember Johnson's all-time favorite idea would be to close down the Embarcadero to cars and feels that realistically, we need to wait to see what happens with Dynegy parking.

Councilmember Borchard hopes that Embarcadero business owners are continuing to encourage their employees to park elsewhere. She feels we should put time limit (2 – 4 hours) signage back up which she thinks would help. Mayor Yates responded that he would ask that putting the signs back up be brought before Council before initiating.

Councilmember Smukler questioned the delivery truck restrictions and hoped to be able to explore conversation on that topic. He thinks that this would make for a good Business Forum topic.

ACTION: Bring back this item to the 2nd meeting in October with an update, after the Dynegy parking lot opens up, with a late summer study of traffic flow patterns.

D-4 DISCUSSION ON THE NEED FOR A VOLUNTEER "COMMUNITY SERVICES COORDINATOR"; (ADMINISTRATION)

Councilmember Johnson presented this staff report.

Councilmembers were very interested in this concept and proposed that this item be brought back with more specific information on the possible appointment process as well as possible

resources that would be made available to this person. It will be brought back to a future meeting.

D-5 DESIGNATION OF VOTING DELEGATE AND ALTERNATE VOTING DELEGATE AT LEAGUE OF CALIFORNIA CITIES 2012 ANNUAL CONFERENCE BUSINESS MEETING; (ADMINISTRATION)

City Attorney Rob Schultz presented the staff report stating that historically we have never opened up the Resolutions for discussion at the Council level.

MOTION: Mayor Yates moved that Councilmember Nancy Johnson be the official City Council League Voting Delegate with City Attorney Rob Schultz being named as the Alternate Voting Delegate. The motion was seconded by Councilmember Borchard and passed unanimously 5-0.

E. DECLARATION OF FUTURE AGENDA ITEMS

Councilmember Borchard requested an agenda item to look at the Master Fee Schedule to include Identical Projects and the fees they are charged including Planning and Building Fees; Mayor Yates and Councilmember Johnson concurred.

Councilmember Smukler requested an agenda item providing an update on Seismic Testing for Diablo Canyon to receive information from the meeting held on August 14th and the meeting scheduled for August 20th as well as discussion of possible follow-up action plans; all Councilmembers concurred.

Councilmember Leage requested an agenda item providing an update on parking options on the Embarcadero between Beach and Pacific Streets to be brought back the second meeting of October; all Councilmembers concurred.

ADJOURNMENT

The meeting adjourned at 8:54 p.m.

Recorded by:

Jamie Boucher
City Clerk



City of Morro Bay

Morro Bay, CA 93442

(805) 772-6200

August 28, 2012

Presiding Judge Barry T. LaBarbera
Superior Court of California
1050 Monterey Street
San Luis Obispo, California 93408

Re: Grand Jury Report entitled “Out of Sight, Out of Mind—Medical Marijuana in San Luis Obispo County”

Dear Judge LaBarbera:

This letter constitutes the response of the City of Morro Bay to the San Luis Obispo County Grand Jury report entitled “Out of Sight, Out of Mind—Medical Marijuana in San Luis Obispo County” (hereinafter the “Report”) This response is submitted in compliance with Penal Code Section 933(c). A copy of this response is concurrently being transmitted to the Grand Jury.

Prior to responding to the findings and recommendations set forth in the Grand Jury Report it is very important for the Grand Jury to understand that in 1993 the City of Morro Bay passed a resolution supporting medical use of marijuana. This resolution was passed three years prior to the enactment of Proposition 215, the Compassionate Use Act, which protects qualified patients and their primary caregivers from prosecution under California laws for possession or cultivation of marijuana to treat serious illness pursuant to a doctor’s recommendation. Unfortunately, the Federal Controlled Substances Act (21 USC 801 et seq.) still prohibits the possession, cultivation, and dispensing of marijuana, regardless of its purpose. Therefore, there exists a conflict between California and Federal law regarding medical marijuana, and for this reason, the City of Morro Bay has banned medical marijuana dispensaries until the law is settled.

The Grand Jury Report sets forth ten findings, and six recommendations. The City of Morro Bay has been required to respond to Findings 2 through 7, inclusive, and Recommendations 2 through 5, inclusive.

FINANCE
595 Harbor Street

ADMINISTRATION
595 Harbor Street

FIRE DEPT.
715 Harbor Street

PUBLIC SERVICES
955 Shasta Avenue

HARBOR DEPT.
1275 Embarcadero Road

CITY ATTORNEY
595 Harbor Street

POLICE DEPT.
850 Morro Bay Boulevard

RECREATION & PARKS
1001 Kennedy Way

Findings

2. Each incorporated city in the county has an ordinance prohibiting brick and mortar medical marijuana collectives within its city limits.

Response: The City of Morro Bay agrees that it has an ordinance, set forth in Chapter 9.06 of its municipal code that prohibits medical marijuana dispensaries within the City. As stated in the City's ordinance, a medical marijuana dispensary "is defined as any facility in a single fixed location where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana, or cannabis, for medical purposes to two or more qualified patients or persons with an identification card in accordance with Health and Safety Code Section 11362.5." The City of Morro Bay cannot respond on the ordinances adopted by other cities or the county.

3. The county and incorporated cities in the county have not adopted an ordinance regarding medical marijuana mobile collective delivery services operating within their jurisdictions, with the exception of Atascadero.

Response: The City of Morro Bay agrees with this finding that it has not adopted an ordinance regarding medical marijuana mobile collective delivery services operating within its jurisdictions. The City of Morro Bay cannot comment on the ordinances adopted by other cities or the county.

4. Business licenses are required for all businesses operating in the incorporated and unincorporated areas of the county.

Response: The City of Morro Bay has adopted Chapter 5.04 of its municipal code, requiring business licenses for businesses operating within the City of Morro Bay. The City of Morro Bay cannot comment on the ordinances adopted by other cities or the county.

5. Many medical marijuana mobile collective delivery services operate in the incorporated and unincorporated areas of the county without a business license.

Response: The City of Morro Bay partially agrees with this finding as it pertains to the City of Morro Bay. The City of Morro Bay cannot comment on medical marijuana mobile collective delivery services in other cities or the county. The City of Morro Bay has not issued a business license to any medical marijuana mobile collective delivery services and therefore the City has no way to verify the statement that "many" such delivery services are operating in the City of Morro Bay. City staff has seen some medical marijuana mobile collective delivery services advertise in local newspapers and on the internet indicating that they deliver to collective members within the county, so it is assumed that these collectives are in operation in the county and possibly in the City of Morro Bay but it has no way to confirm that any medical marijuana mobile collective delivery services operate in the City.

6. There is currently no way to determine the exact number of medical marijuana mobile collective delivery services operating in the incorporated and unincorporated areas of the county or on the Cal Poly Campus.

Response: Agree.

7. There is no protocol for medical marijuana mobile collective delivery service recordkeeping.

Response: The City of Morro Bay partially disagrees with this finding as it pertains to the City. The City of Morro Bay cannot comment on the ordinances adopted by other cities or the county. The Morro Bay Municipal Code does not contain provisions specific to recordkeeping protocol for medical marijuana mobile collective delivery services. However, the California State Board of Equalization issued a Special Notice in June 2007 confirming its policy requiring a seller's permit of anyone selling medical marijuana and to pay sales tax on those sales. Some record keeping is required to comply with this requirement. Further, the California Attorney General issued "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" in August 2008. These guidelines include "suggested guidelines and practices for operating a collective growing operation to help ensure lawful operation." Suggested recordkeeping practices are identified to "help ensure that marijuana grown for medical use is not diverted to illicit markets" such as maintaining membership records and tracking when members' medical marijuana recommendation and/or identification cards expire.

Recommendations:

The Grand Jury recommends that:

2. The county and incorporated cities in the county should develop an ordinance regarding medical marijuana mobile collective delivery services within their respective jurisdictions.

Respondent disagrees with this recommendation. The recommendation will not be implemented because it is not warranted. Possession of, and distribution of marijuana, whether for medical or other purposes, is prohibited by Federal law. The City of Morro Bay will not issue business licenses to medical marijuana dispensaries, since they are prohibited from operating in any zone of the City, and they operate in violation of Federal law. Further, this is an inopportune time to develop any amendments to our ordinance given the fact that the California Supreme Court has agreed to review at least four cases related to how local jurisdictions regulate medical marijuana. It is expected that the rulings to be issued as a result of this review will clarify much of the legal confusion that has existed around medical marijuana related laws. These rulings may not be issued for at least another year.

3. By code or ordinance, the county and each incorporated city in the county should require medical marijuana mobile collective delivery services operating within their jurisdiction to possess a business license and seller's permit.

Respondent disagrees with this recommendation. The recommendation will not be implemented because it is not warranted. Possession of and distribution of marijuana, whether for medical or other purposes, is prohibited by Federal law. The City of Morro Bay will not issue business licenses or seller's permits to medical marijuana mobile collective delivery services since they are prohibited from operating in any zone of the City, and they operate in violation of Federal law. Also as noted above, this is an inopportune time to develop local regulations given the fact the California Supreme Court is expected to issue rulings in the next few years related to how local jurisdictions regulate medical marijuana.

4. Using business license records, seller's permits and sales taxes, the county and each incorporated city in the county should compile a list of medical marijuana mobile collective delivery services operating within their jurisdictions.

Respondent disagrees with this recommendation. The recommendation will not be implemented because it is not warranted. Possession of and distribution of marijuana, whether for medical or other purposes, is prohibited by Federal law. The City of Morro Bay will not compile lists of medical marijuana dispensaries, whether mobile or fixed, since they are prohibited from operating in any zone of the City, and they operate in violation of Federal law. Also as noted above, this is an inopportune time to develop local regulations given the fact the California Supreme Court is expected to issue rulings in the next few years related to how local jurisdictions regulate medical marijuana. Further, the County Board of Supervisors is of the opinion that the most appropriate approach to this matter of public policy is a State statute, given that these mobile collectives often travel through and make sales and deliveries in several different jurisdictions around the state. A single set of operating statutes and related regulations would provide for consistent and effective public protection. In the absence of a statewide effort, the potential exists for different and potentially conflicting regulations in various jurisdictions which would make compliance much more challenging for these collectives.

5. By code or ordinance, the county and each incorporated city in the county should require medical marijuana collectives and mobile collective delivery services to keep current records.

Response: The recommendation will not be implemented because it is not warranted. Possession of, and distribution of marijuana, whether for medical or other purposes, is prohibited by Federal law. The City of Morro Bay will not require medical marijuana dispensaries, whether mobile or fixed, to keep any records, since they are prohibited from operating in any zone of the City, and they operate in violation of Federal law.

William Yates
Mayor

cc: San Luis Obispo County Grand Jury



RECEIVED
City of Morro Bay

JUN 26 2012

Administration

GRAND JURY

June 26, 2012

CONFIDENTIAL

Mayor William Yates
City of Morro Bay
595 Harbor St
Morro Bay, CA 93422

Dear Mayor Yates and City Council:

The 2011-2012 San Luis Obispo County Grand Jury has completed the attached report titled **“Out of Sight, Out of Mind: Medical Marijuana in San Luis Obispo County.”** This copy of the report is being provided to you two days in advance of its public release, as required by California Penal Code §933.05 (f), which states:

A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

Please check the last page of text of the report for the timing of your response, if any, as required by the Penal Code. Sections 933 through 933.05 of the Penal Code are attached for your reference. Also attached is a form for your responses to its findings and recommendations.

Please keep in mind that this report must be kept confidential until its public release by the Grand Jury.

Respectfully,

Norman A. Baxter, Foreperson
2011-2012 San Luis Obispo County Grand Jury

Enclosures

NB:sm

**OUT OF SIGHT, OUT OF MIND:
MEDICAL MARIJUANA
IN SAN LUIS OBISPO COUNTY**

SUMMARY

Medical marijuana is legal in California, but regulation of the dispensing of medical marijuana in San Luis Obispo County is subjective and inconsistent. A county ordinance governing medical marijuana brick and mortar dispensaries has been approved, but the County Board of Supervisors has repeatedly rejected the applications of such dispensaries. Moreover, an unknown number of unregulated medical marijuana delivery services are active in both the cities and the unincorporated areas of the county. These delivery services have created a “gray” market that local government is ignoring.

As a result, safe access for those legally authorized for medical marijuana use is not ensured, thereby placing the safety of the community at risk. Well-defined governmental regulation and oversight would support healthcare providers and optimize patient safety and well-being by ensuring safe access to medical marijuana for those legally authorized, while limiting its diversion to recreational use.

INTRODUCTION

This Grand Jury report is intended to be an overview of how medical marijuana is regulated within the boundaries of our county. It analyzes the confusing, conflicting, and ineffective laws, policies, and practices regarding the dispensing of medical marijuana that so frustrate local jurisdictions in California. The U.S. Attorneys’ recent emphasis on enforcement of federal law in California adds another layer of confusion. The fact that federal law does not consider marijuana medically beneficial further complicates the situation. Ultimately, the courts may resolve these issues.

The findings presented in this report are meant to inform; the recommendations are meant to suggest that local governments have the ability to create order amid the current chaos through regulation and oversight. Local regulation and oversight could make medical marijuana at the local level safer for those who are legally authorized to use it and less available to those who abuse it.

Finally, this report is not to be construed as advocating the use of marijuana in any form.

AUTHORITY

Section 925 of the California Penal Code provides statutory authority for Grand Jury reports.

ORIGIN

The widely reported abuses to the intent of Proposition 215 - The Compassionate Use Act of 1996 - and SB 420 - The Medical Marijuana Program Act - created a perceived need for the Grand Jury to review the situation within San Luis Obispo County.

METHOD

The Grand Jury's inquiry included:

1. Review of Proposition 215 and SB 420
2. Interview with San Luis Obispo County Sheriff's Administration
3. Interviews with County Health Department staff
4. Interviews with local physicians familiar with the medical marijuana authorization process and related issues
5. Interviews with local medical marijuana delivery service collective managers/owners
6. Interview with an owner of a brick and mortar medical marijuana collective dispensary in another California county
7. Interview with County Building and Planning Department staff
8. A survey of city managers within the county

9. Review of city municipal codes relevant to medical marijuana
10. Interview with County Drug and Alcohol Services staff
11. Review of a sampling of hydroponics and “smoke shop” retail venues
12. Review of current research and literature concerning medical marijuana
13. Review of federal statutes
14. Review of medical marijuana policies in Mendocino County, Colorado, and Canada

NARRATIVE

In 1996, over 55% of California voters passed Proposition 215, legalizing the medical use of marijuana. Proposition 215 states that its purposes are:

- “To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a California licensed physician who has determined that a person’s health would benefit from the use of marijuana...
- “To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a California licensed physician are not subject to criminal prosecution or sanction.” (see *Online Sources* in Appendix A)

In addition, Proposition 215 decriminalizes the possession and cultivation of marijuana by seriously ill individuals or their primary caregivers upon a California-licensed physician’s recommendation for approval. The law stipulates that to receive medical marijuana a patient must see a doctor and receive an authorization (not a prescription).

On January 1, 2004, the California legislature enacted SB 420 to clarify Proposition 215. It states that a patient’s medical records must contain written documentation by the attending physician that the patient has been diagnosed with a serious medical condition and that the medicinal use of cannabis is appropriate. (Cannabis is the scientific name for marijuana.) A “serious medical condition is defined to include: AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms (multiple sclerosis), seizures, severe nausea, and

any other chronic or persistent medical symptom that either substantially limits the ability of the person to conduct one or more major life activities or if not alleviated, may cause serious harm to the patient's safety or physical or mental health.”

Implementation of SB 420 calls for the attending physician to fulfill a number of requirements, including licensing, examinations, and diagnoses, documentation of condition, medical records, and medical release forms. Physicians who authorize medical marijuana for a serious disease may not recommend a specific medical marijuana dispensary and may not authorize a certain dosage.

Obtaining Medical Marijuana Authorization in San Luis Obispo County

The Grand Jury interviewed local physicians familiar with marijuana policies, including one who does not issue medical marijuana authorizations and two whose practices involve medical marijuana examinations and authorizations. There are some similarities among the physicians. All are licensed to practice medicine in the State of California. All agreed that the state law and county regulations are too vague, making it difficult to determine whether a physician is failing to provide an acceptable standard of care.

Those physicians granting medical marijuana authorizations differ widely in how they evaluate patients. Not all of these physicians are members of recognized professional organizations, however, The physicians interviewed are familiar with the guidelines published by the California Medical Association (CMA), and the two physicians who do issue authorizations claim that they are following those guidelines, as well as all related laws. They sign a medical marijuana authorization that states the patient has a “serious disease” and is authorized to legally possess marijuana. These two physicians do not recommend a specific medical marijuana dispensary and do not authorize a certain dosage. Both of these physicians believe that medical marijuana can treat anxiety, insomnia, chronic pain, depression, panic attacks, and migraines.

The Role of the County Health Department

The language of SB 420 imposed “various duties upon county health departments relating to the issuance of identification cards, creating a state mandated local program.” It became mandatory that all counties participate in a new identification card (ID) program by:

- providing applications upon request to individuals seeking to join the identification card program
- processing completed applications
- maintaining certain records
- following state implementation protocols, and
- issuing Department of Public Health (DPH) ID cards to approved applicants or their designated primary caregivers

For the County Health Department, the medical marijuana ID program is strictly administrative. The Vital Records staff verifies identity, medical authorizations, and the authorizing physician’s California medical license. Staff also takes the ID card photo, requests the ID card from Sacramento, processes fees, and maintains a record of applications. There is no provision for checking criminal records

The fee is \$135 of which half goes to the state and half to the county. There is a reduced fee of \$67.50 for Medi-Cal recipients. The card expires after one year and is renewable with annual payment of the fee.

The primary intent of the California Medical Marijuana ID Card is to provide information to law enforcement officers who may want to verify the identity and authorization of a medical marijuana patient. It is not mandatory for the patient to obtain an ID card, however. By law, an authorization by a California-licensed physician is all that is required for a patient to buy or possess medical marijuana.

Since 2006, the county has issued 408 cards. The highest yearly total issued was 128 in 2010; in 2011, the count decreased to 48. County staff could not attribute the drop to anything in

particular, except that patients may not have wanted to pay the fee because the card is not mandatory. The county has never denied an application for an ID card.

Currently, the Health Department does not concern itself with matters of public health in regard to medical marijuana. The contaminants, pesticide content, and potency of the marijuana distributed to authorized citizens of the county are not addressed. Edible medical marijuana products are not monitored or regulated by the county health agencies (nor by the state) as are other commercially distributed edible products. The Director of the San Luis Obispo County Health Agency stated in an interview that the County Health Department would “probably” have jurisdiction over marijuana edibles. The Department is researching the issue.

Appropriate testing and regulating of medical marijuana, including edibles, by the county or incorporated cities would undoubtedly be expensive, but not necessarily a non-recoverable expense. For example, the City of Oakland taxes medical marijuana. It reported that \$1.4 million in business taxes was collected in 2011 from medical marijuana dispensaries, nearly three percent of all business taxes collected in the city that year.

City and County Ordinances

Each incorporated city in the county has an ordinance prohibiting medical marijuana dispensaries.

On February 6, 2007, the County Board of Supervisors approved an ordinance requiring a Minor Use Permit for medical marijuana dispensaries. It was authored by County Building and Planning staff and centered on the following design and operational standards:

1. The location must be outside the central business district and a minimum of 1000 feet from any school, library, park or recreation area.
2. Limitation on use.
 - a. Hours of operation are limited to 11:00 a.m. to 6:00 p.m. seven days per week.
 - b. No person under the age of 18 permitted.
 - c. No retail sales of paraphernalia

- d. No cultivation permitted at or on dispensary property.
3. Staff/employees must be 21 years of age or older.
4. A security plan must be submitted.
5. A notice must be posted that persons under the age of 18 are not allowed.
6. A notice must be posted that consumption of medical marijuana is prohibited in the vicinity of the dispensary.
7. The Sheriff's Department shall be notified of the dispensary name, location and contact information.

The process begins with an application to the County Building and Planning Department. County Building and Planning staff produces a report with a recommendation to the Planning Commission. The Planning Commission convenes a public hearing and may approve or disapprove the application for a Minor Use Permit. The Planning Commission may also recommend conditions and move the Conditional Use Permit to the Board of Supervisors for approval. The public may appeal the Planning Commission's decision to the Board of Supervisors.

There have been three applications for collective dispensaries since the county ordinance was passed. The first two applications were denied. The last application to go before the Planning Commission was heard on November 3, 2011. Staff recommended denial of the application, but the Planning Commission granted a Conditional Use Permit. The approval was appealed to the Board of Supervisors and the Board upheld the appeal, thereby denying the application, on March 6, 2012.

Brick and Mortar Dispensaries/Collectives

“Collective” is the legal term for a dispensary. The purpose of these dispensaries/collectives is to provide safe and secure access to medical marijuana. In a collective, marijuana received from growers and manufactured edibles may be tested for contaminants (including pesticides) and THC levels. Edibles can also be labeled for potency by the manufacturer.

On January 18, 2012 the California Supreme Court voted unanimously to review how cities and counties regulate medical marijuana dispensaries based on four medical marijuana cases:

- *Pack v. City of Long Beach* involves a Court of Appeal ruling that Long Beach's medical marijuana dispensary ordinance was pre-empted by the federal Controlled Substances Act.
- *City of Riverside v. Inland Patient's Health & Wellness Center, Inc.* and *People v. G3 Holistic* concern Court of Appeal decisions upholding ordinances that banned medical marijuana dispensaries.
- *Traudt v. City of Dana Point* involves a Court of Appeals decision concerning an individual's standing to bring a lawsuit alleging a violation of state law with respect to a medical marijuana collective.¹

Mobile Delivery Collectives

Proposition 215 did not stipulate that all collective operations emanate from a "brick and mortar" collective, thereby leaving room for mobile delivery collectives. Mobile delivery collectives register medical marijuana patients as members and deliver medical marijuana to the members, usually at home. The members' obligation to the collective is the cash they contribute in exchange for the medical marijuana. Several of these collectives advertise in San Luis Obispo County, in the local media and online.

The Grand Jury heard testimony that as many as 40 delivery services currently operate within the incorporated and unincorporated areas of the county. Medical marijuana mobile delivery collectives are more difficult to regulate because they operate in multiple jurisdictions, which adds to law enforcement's challenges.

Cities within San Luis Obispo County and the county itself have ordinances prohibiting or regulating brick and mortar medical marijuana dispensaries, but there are no regulations

¹League of California Cities. "California Supreme Court Grants Review of Four Medical Marijuana Cases," January 20, 2012. www.cacities.org/Top/News/News-Articles/2012/January.

affecting medical marijuana mobile delivery collectives, with one exception. The city of Atascadero has approved an ordinance prohibiting mobile delivery collectives.

The lack of ordinances and regulations governing mobile delivery collectives at the local level has led to a chaotic situation. The Attorney General of California has issued General Guidelines regarding medical marijuana, but there are no local regulations to which mobile delivery collectives must adhere. As a result, law enforcement officials have few tools to evaluate whether mobile delivery collectives are operating legitimately.

Some collectives make a serious attempt to comply with Proposition 215 and SB 420, and the Attorney General Guidelines regarding medical marijuana; others pay little or no attention. The minimum age required to become a member of the collective varies; some allow members as young as 18, others have a minimum age of 21. Some collectives keep close records of their members and amounts disbursed, and verify physician authorizations for medical marijuana; others do not. A few collectives track medical marijuana from grower to collective to delivery driver, and to the collective member, and even weigh it at each stage, to ensure that there is no loss; others do not. Some collectives obtain local business licenses; most do not.

Although medical marijuana is authorized by physicians to treat certain conditions, it is not a prescription drug and is, therefore, subject to tax. Not all mobile delivery services, however, collect and pay sales taxes.

Finally, mobile delivery services conduct no testing of the product they sell. As a result, the quality of medical marijuana delivered can vary widely.

All city managers were asked if all businesses in their jurisdiction needed a business license. All answered in the affirmative, with Atascadero requiring a business tax. A search of the advertised delivery services in city records showed very few with business licenses. All city managers and Cal Poly law enforcement were asked how many medical marijuana delivery services operated within their jurisdiction. All answered none to their knowledge.

Local governments are simply not aware of the number of medical marijuana mobile collective delivery services operating in their jurisdictions and make no attempt to regulate these businesses. It is possible, however, for the county and the cities to take steps to require business licenses and fees for mobile delivery services. Additional revenue could then be generated for the county and the cities.

All the mobile collective delivery service managers interviewed by the Grand Jury operate within incorporated and unincorporated areas of the county, and one operates in a tri-county area. Membership agreements, recordkeeping and verification of physician authorizations were consistent for these collectives. Possession of a Sellers Permit and a Business License, as specified in the Attorney General Guidelines, however, was not consistent.

One interviewee stated that the local business environment actually encouraged creation of a growing “gray” or “black market” by forcing reputable mobile collective delivery services that attempt to comply with legal mandates out of business. The “grays and blacks” do not keep records or pay sales tax, thereby undercutting reputable mobile collective delivery services in pricing.

All of the managers interviewed agreed that testing for quality and potency would be appropriate and should be required. However, additional costs for testing would require higher prices that would likely drive their clients to the black market competition.

The Biggest Challenge: Enforcing the Law

California law enforcement agencies face a challenge in interpreting Proposition 215 for enforcement purposes. The law lacks clarity for agencies that are required to operate within “the letter of the law.” Initially, the Attorney General issued guidelines that proved helpful; over time, however, with legal challenges and various suggested interpretations, it has become increasingly difficult to separate the legal from the illegal.

For example, in December 2010, a San Luis Obispo County Narcotics Task Force operation resulted in the arrest of twelve local medical marijuana collective delivery service providers. This operation involved an undercover officer posing as a medical marijuana patient.

Issues emerged at the trial as a result of the investigation and interpretation of the law. There was a lack of consistency in the municipal requirement of a business license, seller's permit or incorporation as a California Mutual Benefit Non-Profit operation.

One of the county's high-ranking law enforcement officers approached the Governor (who in his former position as Attorney General formulated the Proposition 215 Guidelines) with the question, "What makes a 'collective' illegal?" The answer was "profits" but a definitive definition of "profit" in regard to collectives has not been provided by the state.

In 2011, the California Attorney General formally asked the legislature to clarify state law to bring "certainty and consistency" to law enforcement, the medical marijuana collectives and authorized patients. Areas to be addressed include: defining the contours of the right to collective and cooperative cultivation; what constitutes a "dispensary;" a definition of non-profit operation as it applies to providers; and, requirements for edible medical marijuana products.

At present, local governments that apply conflicting rules and regulations largely govern medical marijuana. A proposed November 2012 initiative would establish a medical marijuana enforcement bureau in the California Department of Consumer Affairs. This could be a step forward in assisting peace officers to perform their duties more efficiently and effectively.

Law enforcement officials in the county have linked two homicides and a dozen home invasions to medical marijuana. Some medical marijuana is diverted to non-patients, young people, and the black market. For public safety, it is important that law enforcement have guidelines to help determine who is a legal provider or user of medical marijuana.

CONCLUSION

Accurate medical marijuana usage estimates cannot be made due to the lack of regulatory reporting. County and most municipal officials are either uninformed or they ignore the mobile collective delivery services.

San Luis Obispo County has an ordinance allowing brick and mortar medical marijuana dispensaries, but the Board of Supervisors has denied all applications to date. Incorporated cities have ordinances that ban brick and mortar collectives, but most have no ordinance governing mobile delivery services in their communities, similar to the county. Unregulated mobile collective delivery services driving through our county and its communities with unknown sums of money and large quantities of medical marijuana invite potentially tragic consequences.

Safe access for authorized medical marijuana patients is the issue, and regulation is the key. Codes and ordinances could place specific, reviewable, measurable and enforceable conditions on dispensaries, as well as delivery services.

If governing bodies in the county would acknowledge these issues and act to mitigate them, authorized patients might then have safe access to medical marijuana and local governments could receive business license revenues. Also, law enforcement would have the means to distinguish between legitimate, state-authorized operations and those that are illegitimate, in other words, distinguish between “the good guys” and “the bad guys.”

FINDINGS

Finding 1: San Luis Obispo County has an ordinance allowing brick and mortar medical marijuana collectives, but the Board of Supervisors has rejected all applications to date.

Finding 2: Each incorporated city in the county has an ordinance prohibiting brick and mortar medical marijuana collectives within its city limits.

Finding 3: The county and incorporated cities in the county have not adopted an ordinance regarding medical marijuana mobile collective delivery services operating within their jurisdictions, with the exception of Atascadero.

Finding 4: Business licenses are required for all businesses operating in the incorporated and unincorporated areas of the county.

Finding 5: Many medical marijuana mobile collective delivery services operate in the incorporated and unincorporated areas of the county without a business license.

Finding 6: There is currently no way to determine the exact number of medical marijuana mobile collective delivery services operating in the incorporated and unincorporated areas of the county or on the Cal Poly campus.

Finding 7: There is no protocol for medical marijuana mobile collective delivery service recordkeeping.

Finding 8: Medical marijuana, including edibles, is not regulated by the County Health Department.

Finding 9: Home invasions and homicides have resulted from medical marijuana being present or grown in homes.

Finding 10: The County Health Department is designated to administer the medical marijuana ID program and it satisfies the requirements set forth in Proposition 215 and SB 420.

RECOMMENDATIONS

Recommendation 1: The County Board of Supervisors should convene a committee comprised of the County Sheriff, County Building and Planning staff, local public health officials, the County Tax Collector, the County Planning Commission, brick and mortar medical marijuana collective and mobile collective delivery service managers, medical marijuana physician providers, and community representatives. The purpose of the committee should be to develop a fair and viable local ordinance for brick and mortar medical marijuana collectives that provide authorized patients with safe access to contaminant-free medical marijuana in accordance with California law.

Recommendation 2: The county and incorporated cities in the county should develop an ordinance regarding medical marijuana mobile collective delivery services within their respective jurisdictions.

Recommendation 3: By code or ordinance, the county and each incorporated city in the county should require medical marijuana mobile collective delivery services operating within their jurisdiction to possess a business license and seller's permit.

Recommendation 4: Using business license records, seller's permits and sales taxes, the county and each incorporated city in the county should compile a list of medical marijuana mobile collective delivery services operating within their jurisdictions.

Recommendation 5: By code or ordinance, the county and each incorporated city in the county should require medical marijuana collectives and mobile collective delivery services to keep current records.

Recommendation 6: The County Health Department should consider establishing standards for edible medical marijuana sold in the county.

REQUIRED RESPONSES

The San Luis Obispo County Board of Supervisors is required to respond to **Findings** 1, 3, 4, 5, 6, and 7, and **Recommendations** 1, 2, 3, 4, and 5. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 24, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The City of Arroyo Grande is required to respond to **Findings** 2, 3, 4, 5, 6, and 7, and **Recommendations** 2, 3, 4, and 5. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 24, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The City of Atascadero is required to respond to **Findings**, 2, 4, 5, 6, and 7, and **Recommendations** 3, 4, and 5. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 24, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The City of Grover Beach is required to respond to **Findings** 2, 3, 4, 5, 6, and 7, and **Recommendations** 2, 3, 4, and 5. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 24, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The City of Morro Bay is required to respond to **Findings** 2, 3, 4, 5, 6, and 7, and **Recommendations** 2, 3, 4, and 5. The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 24, 2012**. Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The City of Paso Robles is required to respond to **Findings 2, 3, 4, 5, 6, and 7, and Recommendations 2, 3, 4, and 5.** The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 24, 2012.** Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The City of Pismo Beach is required to respond to **Findings 2, 3, 4, 5, 6, and 7, and Recommendations 2, 3, 4, and 5.** The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 24, 2012.** Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The City of San Luis Obispo is required to respond to **Findings 2, 3, 4, 5, 6, and 7, and Recommendations 2, 3, 4, and 5.** The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **September 24, 2012.** Please provide a paper copy and an electronic version of all responses to the Grand Jury as well.

The San Luis Obispo County Health Department is required to respond to **Findings 8 and 10, and Recommendation 6.** The responses shall be submitted to the Presiding Judge of the San Luis Obispo County Superior Court by **August 27, 2012.** Please provide a paper copy and an electronic version of all responses to the Grand Jury as well. The mailing addresses for delivery are:

Presiding Judge	Grand Jury
Presiding Judge Barry T. LaBarbera Superior Court of California 1050 Monterey Street San Luis Obispo, CA 93408	San Luis Obispo County Grand Jury P.O. Box 4910 San Luis Obispo, CA 93402

The e-mail address for the Grand Jury is: GrandJury@co.slo.ca.us

APPENDIX A

ONLINE SOURCES*

CA Attorney General Guidelines:

www.ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf

Medical Marijuana Identification Card Program:

www.slocounty.ca.gov/health/publichealth/mmic_htm

Driving Miss Mary Jane, David Freed, January/February 2012:

www.Miller-Mcune.com

Medical Marijuana Raid In SLO County Raises Questions:

www.sanluisobispo/2011/01/08/1436280/medical-marijuana-raid.html

Proposition 215, Health & Safety Code 11362.5:

www.cannorml.org/laws/hsc11362_5.html

Senate Bill 420, Health and Safety Code 11362.7:

www.potdoc/bill_sb_420.html

Testing for Contaminants and Potency in Medical Marijuana:

www.Halent.com

Marijuana Addiction and Medical Marijuana Patients:

www.cannabisdoctorsnetwork.com/marijuana-addiction-symptoms.php

www.cmanet.org/medicalmarijuana

www.mbc.ca.gov/media/releases_2004_05_13_marijuana.html

<http://sanluisobispo.areaconnect.com/doctors>

[http://en.wikipedia.org/wiki/California_proposition_15_\(1996\)](http://en.wikipedia.org/wiki/California_proposition_15_(1996))

CA Attorney General's Letter to Lawmakers, December 21, 2011:

www.californiaprogressreport.com/site/attorney-general-issues-letter-lawmakers-medical-marijuana

Regulation of Medical Marijuana Dispensaries to be considered by the California Supreme Court:
www.sanluisobispo.com/2012/01/19/1913641/marijuana-dispensaries-california-html#storylink=cpy

Delivery Services Map:
www.californiawatch.org/public-safety/map-medical-marijuana-delivery-services-california

Delivery Services by Zip:
www.weedmaps.com

Marijuana Edibles:
www.fhwcc.org/edibles/

Medical Marijuana: Inhalation vs. Edibles:
www.marijuanamedicine.com/2009/06/medical-marijuana-inhalation-vs-edibles-why-is-it-so-different/

Cannabis Doctors Network:
www.cannabisdoctorsnetwork.com/marijuana-addiction-symptoms.php

Canada:
www.hc-sc.gc.ca/dhp-mps/marihuana/about-apropos/faq-eng.php

Colorado:
www.cdphe.state.co.us/hs/medicalmarijuana
<http://reason.com/blog/2012/03/05/us-attorney-in-colorado-says-all-state-1>

Mendocino County:
www.mendocinosheriff.com
www.mendocinocountry.com/independent/1cannabis/2policy/9.31passes.html

*To be useful these links may best be copied and pasted into a browser

California Penal Code

933. (a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department.

933.05. (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

AGENDA NO: A-3

MEETING DATE: 8/28/12

RESOLUTION NO. 45-12

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA, DIRECTING A TIMELINE
FOR COMPLETION OF CAPITAL PROJECTS APPROVED BY COUNCIL**

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

WHEREAS, the City Council on an annual basis funds a variety of large and small capital projects, Measure Q projects and large maintenance projects (in excess of \$25,000); and

WHEREAS, the desire of the City Council and the citizens is to see City projects move forward in a timely manner; and

WHEREAS, the community expects the City to move swiftly in implementing capital projects; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, that estimated completion dates for capital projects will be included on the Schedule for Capital Projects page, in the Schedule of Measure Q Budget Requests page(s) and/or the Schedule of Proposed Maintenance Projects in excess of \$25,000 page in the Annual Budget document, indicating when the City will begin work on the capital, Measure Q and major maintenance project(s); and

BE IT FURTHER RESOLVED that included in the staff report at the time the funding is approved for each capital, Measure Q or maintenance project in excess of \$25,000, staff will include a timeline for project completion; and

BE IT FURTHER RESOLVED that a Delayed Project Status Report will be generated by the City Manager's office each quarter and appear on the consent calendar of the City Council agenda at the first meeting of each quarter, and contain the following information:

1. Project name;
2. Brief description of the project (unless the name is self-explanatory);
3. Name of the department head responsible for the project;
4. Brief explanation for the delay; and
5. Revised completion date.

The Delayed Project Status Report will include projects from all funds, and will remain on the Delayed Project Status Report until they are completed or cancelled.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 28th of August 2012, by the following vote:

AYES:

NOES:

ABSENT:

WILLIAM YATES, Mayor

ATTEST:

JAMIE BOUCHER, City Clerk

MANAGEMENT AGREEMENT

THIS AGREEMENT is made the 11th day of August, 2012 by and between the City of Morro Bay. ("CITY") and Estero Bay Community Radio ("EBCR"), a California non-profit corporation.

RECITALS

WHEREAS, CITY is the Federal Communications Commission ("FCC") licensee of non-commercial LPFM radio station K____-FM ("Station") at Morro Bay, CA.; and

WHEREAS, EBCR is an experienced noncommercial station broadcaster and the CITY desires that EBCR undertake the full management and operation of the Station for and on the behalf of CITY; and

WHEREAS, CITY expects that management and operation by EBCR will promote quality public radio programming over the facilities of the Station; and

WHEREAS, CITY and EBCR wish to collaborate in ways that will advance the educational objectives of both parties.

NOW, THEREFORE, in consideration of the above recitals and mutual promises and other good consideration, the receipt and sufficiency of which are hereby acknowledged by CITY and EBCR, the parties agree as follows:

AGREEMENT

1. MANAGEMENT

EBCR hereby agrees to manage and operate the Station under the supervision and control of the CITY, as licensee. The management services provided herein shall include all aspects of the full operation and management of the Station, including, but not limited to, the production and acquisition of programming, administration of all Station activities and personnel, employment and training of all personnel for the administration and operation of the Station, financial and accounting services, engineering services, development of financial support, and compliance with all applicable laws and regulations.

2. TERM OF AGREEMENT

This Agreement shall commence on the 1st day of September, 2012, and it shall continue in full force and effect until terminated in accordance with the provisions of the Agreement.

3. TERMINATION

This Agreement may be terminated upon thirty (30) days prior written notice by either party to the other. Notwithstanding the above, both parties agree that the CITY may cancel this Agreement immediately without prior written notice if, in the sole judgment of the CITY, the station is being operated by EBCR in a manner contrary to the CITY, the public interest, convenience and necessity, FCC rules and regulations, the Communications Act of 1934, as amended, or in a manner which may cause loss of the FCC license to the CITY.

4. COMPENSATION

No compensation will be paid by either party to the other under this Agreement. The parties acknowledge that their respective undertakings and commitments herein, designed to ensure the provision of high quality public radio programming on the Station, constitute sufficient consideration and compensation for this Agreement.

5. LICENSE RENEWAL ACTIVITIES

The CITY, as FCC licensee, has the ultimate responsibility with respect to all activities in connection with FCC license renewals, application for power increases and such other filings and reports as may be required by the FCC. EBCR agrees to assist and advise the CITY in all such activities and to prepare all necessary documents, filings and reports for the CITY in a timely manner, including required public file documentation.

6. RESPONSIBILITY OF CITY

The CITY and EBCR agree and acknowledge that the operation of the Station in compliance with all laws, rules and regulations of the FCC is the ultimate responsibility of CITY. Nothing in this agreement shall be construed as limiting, transferring, assigning or relieving CITY of such responsibility.

7. OVERSIGHT AND CONTROL

Notwithstanding anything in this Agreement to the contrary, the CITY shall retain and exercise oversight and control of the activities and operations of the Station. Without limiting the foregoing, the CITY shall have the right: (a) to promulgate basic Station policies regarding personnel, finances and programming; (b) to direct the day-to-day activities of EBCR's employees or agents (but only to the extent that they relate to the proper operation of the Station under FCC rules and policies); (c) to inspect the Station's facilities at any time during operation; (d) to consult with Station personnel, review FCC-required operating and maintenance records and procedures, and investigate operational complaints.

8. STANDARDS OF OPERATION

EBCR agrees that it will manage and operate the Station in such a manner in order to produce and to acquire radio programming of community value; to combine these programs into a nonprofit radio service of the highest quality for broadcast to the people of Estero Bay; to reflect the culture, events, issues and ideas of Estero Bay and its people.

9. INSURANCE

EBCR shall maintain in full force and effect during the term of this Agreement and any extensions or renewals thereof the following types of insurance and in the amounts set forth:

- (a) Broadcast libel insurance - at least \$1,000,000
- (b) General liability - at least \$1,000,000
- (c) Workers Compensation- as required by law

All such policies of insurance shall name the CITY as an additional named insured and provide that coverage may not be reduced or terminated without at least thirty (30) days prior written notice to the CITY.

10. ACCOUNTING

EBCR shall keep full and adequate financial and accounting records of its activities in connection with the Station and make such records, including, but not limited to bank records, ledgers, accounts, journals, and audits, available for inspection by the CITY upon reasonable prior written notice. PPR shall cause its operations and records to be audited annually by an independent Certified Public Accountant.

11. REPORTS

EBCR shall submit to the CITY a monthly written report of activities of the Station. Once per year, EBCR shall include in such report, EBCR's most current audited financial statement, a summary of the Station's programming service, personnel actions (including EEO compliance), and finances for the period covered by the report.

12. RELATIONSHIP

EBCR is authorized to hold itself as the manager and operator of the station. EBCR is authorized in its name to enter into contracts in connection with its operation of the Station in the ordinary course of business. EBCR shall be responsible for all contracts and financial obligations that it has entered into on behalf of the Station, and shall include pertinent information regarding such contract in EBCR financial reports described in Section 10.

Except as otherwise specifically set forth in this Agreement, no partnership, joint venture, employment, agency, or other relationship is created between the parties. EBCR is not authorized to represent itself in any way as representing the CITY, nor is EBCR authorized to enter any contract for or on behalf of the CITY, except with the prior written consent of the CITY.

13. INDEMNIFICATION

EBCR shall indemnify, defend, and hold harmless the CITY, and its officers, employees, and agents (“CITY indemnity”), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable Legal counsel’s fees and costs of litigation (“claims”), arising out of EBCR’s performance of its obligations under this Agreement or out of the operations conducted by EBCR, including the CITY’s active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the CITY. In the event the CITY indemnitee are made a party to any action, lawsuit, or other adversarial proceeding arising from EBCR’s performance of this Agreement, EBCR shall provide a defense to the CITY indemnity, or at the CITY’s option, reimburse the CITY indemnitee their costs of defense, including reasonable Legal counsels’ fees, incurred in defense of such claims.

14. NOTICES

Any written notice to any party required or permitted under this Agreement shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the second (2nd) day after mailing if mailed to the party to whom notice is to be given, by first class mail, postage prepaid, and addresses to the addressee at the address stated opposite its name below, or at the most recent address, specifies by written notice, given to the sender by the addressee under this provision.

If to CITY:

City of Morro Bay
Robert Schultz, City Attorney
595 Harbor Street
Morro Bay, CA 93442

If to EBCR:

Estero Bay Community Radio
Title: _____
Address: _____

15. **HEADINGS**

The paragraph headings in no way define, limit, extend or interpret the scope of this Agreement or of any particular paragraph hereof.

16. **SEVERABILITY**

In the event that any provisions of this Agreement shall be held invalid, illegal, or unenforceable, the same shall not affect in any respect whatsoever the validity of any other provisions of this agreement.

17. **BINDING ON SUCCESSORS**

The provisions of this Agreement shall, subject to the terms and conditions hereof, be binding upon and inure to the benefit of the successors and assigns of each party.

18. **COMPLETE AGREEMENT**

This Agreement contains the entire agreement of the parties and, except as specifically referred to herein, all prior obligations, proposals and agreements relating to the subject matter hereof have been merged herein. This Agreement shall not be modified or amended except by agreement in writing duly executed by all parties hereto.

19. **ATTORNEYS' FEES**

Should any litigation be commenced between the parties hereto or their representatives concerning any provision of this Agreement or the rights and duties of any person or entity in relation thereof, the party or parties prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorneys' fees and court costs in such litigation which shall be determined by the court in such litigation or in a separate action brought for that purpose.

20. **NO ASSIGNMENT**

This Agreement and all of its rights and obligations may not be assigned by EBCR without the prior written consent of the CITY, which consent may be withheld in the CITY's sole discretion.

21. **INCORPORATION BY REFERENCE**

Not Applicable.

22. **GOVERNING LAW**

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California.

IN WITNESS WHEREOF, the parties to this Agreement have duly executed this Agreement as of the date set forth.

CITY

The City of Morro Bay

By _____
Andrea Lueker, City Manager

EBCR

Estero Bay Community Radio
A California non-profit corporation

By: _____

Title: _____



AGENDA NO: B-1

MEETING DATE: August 28, 2012

Staff Report

TO: Honorable Mayor and City Council **DATE:** August 22, 2012

FROM: Rob Livick, PE/PLS – Public Services Director/City Engineer

SUBJECT: Appeal of Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 for the Conversion of 820 Square Feet of Commercial Space to a Residential Unit and a Parking Exception to Waive the Requirement of Two Covered and Enclosed Parking Spaces and Providing Two Open and Uncovered Parking Spaces, Located at 2176 Main Street (Pina Naran, Applicant).

RECOMMENDATION

Staff recommends that the City Council overturn the Planning Commission’s denial and approve the requested Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 for the conversion of 820 square feet of commercial space to a residential unit and a parking exception to waive the requirement of two covered parking spaces and providing two open and uncovered spaces; subject to the Findings included as Attachment “1” and the Conditions of Approval as included as Attachment “2” and the site development plans dated May 3, 2012.

FISCAL IMPACT

The appeal was filed on a Coastal Development Permit outside the appeals jurisdiction and as such there is a \$250.00 fee associated with this appeal. Should the appellant/applicant prevail the appeal fee will be refunded, therefore fees associated with the appeal will be absorbed by the City. The costs associated with processing this appeal are the noticing fees and staff’s time writing the report, preparing notices, and attending the City Council meeting.

SUMMARY

At their June 6, 2012 meeting the Planning Commission denied a Minor Use Permit and Coastal Development Permit for the conversion of an existing commercial space into a residential unit in an existing building consisting of commercial space on the first floor and a two (2) bedroom residential unit and a one (1) bedroom residential unit on the second floor. Approximately 820 square feet of the first floor is proposed to be converted from commercial space to a one bedroom residential unit.

Prepared by: RL Dept. Review: RL

City Manager Review: _____

City Attorney’s Review: _____

An appeal was filed on June 14, 2012 by Pina Naran. Ms. Naran's appeal requests that the City Council overturn the Planning Commission denial and approve the project per staff's recommendations.

BACKGROUND

The applicant has requested that an existing commercial space be converted into a residential unit. The existing building consists of commercial space on the first floor and a two (2) bedroom residential unit and a one (1) bedroom residential unit on the second floor. Approximately 820 square feet of the first floor is proposed to be converted from commercial space to a one bedroom residential unit.

The applicant has also requested a parking exception to waive the requirement for two covered parking spaces. The existing property has 3 covered and enclosed parking spaces for the existing residential uses and 4 open and uncovered parking spaces. The parking for the proposed unit will be accommodated by the existing open and uncovered parking spaces.

DISCUSSION

The following section states each of the appellant's grounds for the appeal. The appellants comments are in plain text and staff responses are italicized.

Appellant Pina Naran bases an appeal of the project on the following grounds:

The applicant and agent did not receive notice of the hearing and did not have an opportunity to represent the project at the hearing.

Notifications were sent to the applicant's address as listed on the application but was returned to the City, No Such Number – Unable to Forward. The application contained the wrong street address and has been corrected.

Staff has prepared the necessary findings for approval including that the project is consistent with the City's General Plan, Local Coastal Plan and the Municipal Code.

CONCLUSION:

The project as proposed is consistent with the General Plan, Local Coastal Plan, and Municipal Code for development standards. Pursuant to the regulations in Mixed Use Area "F" - the mixture of all uses shall be evaluated on a parcel-by-parcel basis for an appropriate mix of uses in the zone district. The Planning Commission shall make the determination if the proposed use is an appropriate mix of uses to maintain the mixed commercial residential zone district.

Staff recommends that the City Council overturn the Planning Commission's denial and approve

the requested Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 for the conversion of 820 square feet of commercial space to a residential unit and a parking exception to waive the requirement of two covered parking spaces and providing two open and uncovered.

ATTACHMENTS

Attachment 1: Findings for approval

Attachment 2: Conditions of approval for Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043.

Attachment 3: Appeal

Attachment 4: Planning Commission staff report, findings and conditions of approval

Attachment 5: Planning Commission minutes from June 6, 2012.

ATTACHMENT 1

FINDINGS

SITE: 2176 MAIN STREET

PROJECT DESCRIPTION: Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 for the conversion of 820 square feet of commercial space to a residential unit and a parking exception to waive the requirement of two covered parking spaces and providing two open and uncovered parking spaces.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

- A. Pursuant to the California Environmental Quality Act the project is categorically exempt pursuant Section 15301, Class 1 for existing facilities. The exemption provided for interior or exterior alterations involving such things as interior partitions, plumbing and electrical conveyances.

COASTAL DEVELOPMENT PERMIT FINDINGS

- A. The project as proposed is consistent with the applicable provisions of the certified Local Coastal Plan. The Local Coastal Plan is consistent with the General Plan and the project meets minimum density requirements and therefore meets the LCP.
- B. For every development between the nearest public road and the sea or the shoreline of any body of water, the Planning Commission shall make a specific finding that such development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act. *The property is not located between the nearest public road and the sea, therefore the property does not need to provide access pursuant to Chapter 3 of the California Coastal Act.*

CONDITIONAL USE PERMIT FINDINGS

- A. The establishment, maintenance, or operation of the use applied for will, under the circumstances of the particular case, will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use. *The proposed project is a residential use in an existing mixed use building therefore the use will not be detrimental to the surrounding uses.*
- B. The use will not be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the City. *The proposed use will not be injurious*

or detrimental to the property and improvements in the neighborhood or general welfare, as the project meets the General Plan and Municipal Code.

PARKING EXCEPTION FINDINGS

- A. Special Circumstances. The exception will not constitute a grant of a special privilege inconsistent with the driveway or parking limitations upon other properties in the vicinity and the reduced parking or alternative to the parking design standards of this chapter will be adequate to accommodate on the site all parking needs generated by the use. *The existing parking accommodated on the site is three covered and enclosed parking spaces for the existing residential uses and 4 uncovered parking spaces for the fabrication and retail uses. The existing parking configuration accommodates a greater number of parking spaces for the uses on site than a configuration with 5 covered and enclosed parking spaces. The existing configuration provides the required number of parking spaces and accessible parking spaces; therefore it is not a grant privilege.*

- B. Health, Safety or General Welfare. The exception will not adversely affect the health, safety or general welfare of persons working or residing in the vicinity and that no traffic safety problems will result from the proposed modification or parking standards. *The project site will provide the required number of parking spaces to service all uses on site therefore the parking will not adversely affect the surround uses.*

- C. Applicant's Full Enjoyment. The exception is reasonably necessary for the applicant's full enjoyment of uses similar to those upon the adjoining real property. *The parking exception would allow for the conversion of the retail space to a residential unit. The applicant has been unable to utilize or rent the fabrication area and the conversion would create an economically viable use.*

CONDITIONS OF APPROVAL

SITE: 2176 MAIN STREET

PROJECT DESCRIPTION: Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 for the conversion of 820 square feet of commercial space to a residential unit and a parking exception to waive the requirement of two covered parking spaces and providing two open and uncovered parking spaces.

STANDARD CONDITIONS

1. This permit is granted for the land described in the staff report dated June 6, 2012, for the project depicted on plans dated May 3, 2012 on file with the Public Services Department, as modified by these conditions of approval, and more specifically described as follows:

Site development, including all buildings and other features, shall be located and designed substantially as shown on plans, unless otherwise specified herein.

2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this approval and is diligently pursued thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Said extensions may be granted by the Public Services Director, upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code, General Plan and Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.
3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Public Services Director. Any changes to this approved permit determined not to be minor by the Director shall require the filing of an application for a permit amendment subject to Planning Commission review.
4. Compliance with the Law: (a) All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval, (b) This project shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use Plan and General Plan for the City of Morro Bay.

5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. Applicant understands and acknowledges that City is under no obligation to defend any legal actions challenging the City's actions with respect to the project. This condition and agreement shall be binding on all successors and assigns.
6. Compliance with Conditions: The applicant's establishment of the use and/or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed hereon shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Public Services Director and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.
7. Compliance with Morro Bay Standards: This projects shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use plan and General Plan for the City of Morro Bay.
8. Conditions of Approval on Building Plans: Prior to the issuance of a Building Permit, the final Conditions of Approval shall be attached to the set of approved plans. The sheet containing Conditions of Approval shall be the same size as other plan sheets and shall be the last sheet in the set of Building Plans.

PLANNING CONDITIONS

1. Deed Restriction: The areas proposed to remain office space and fabrication shall be deed restricted to remain as such uses until such time the required residential parking is provided onsite.

BUILDING CONDITIONS

1. One Hour Construction: Walls and ceiling between the new residential unit and the commercial areas and residential units above need to be one hour construction with sound transmission control rating of 50.
2. Smoke detectors, GFI and AFCI: Smoke detectors, GFI and AFCI will have to be

- installed where required by code.
3. Fire Sprinklers: The fire sprinklers will have to altered to comply with the requirements of the Fire Code.
 4. Laundry Facilities: Laundry facilities will be required for the new residence.

FIRE CONDITIONS

1. Emergency Access: Project shall provide a Knox Box at the main entrance, wall mounted no higher than 7 feet, and appropriate keys for emergency Fire Department access.
2. Fire Sprinkler System: The existing NFPA 13 Automatic Fire Sprinkler System was installed in October 2000 and designed to provide sprinkler protection for B, F-2, U and R-3 occupancies. The project is conditioned to perform the required five-year service and inspection (California Code of Regulations, Title 19, Article 4, Section 904 and NFPA 25). Additionally, due to a change to a change in occupancy (F-2 to R-3) we require a sprinkler plan submittal for all system modifications, in accordance with 2007 Californai Fire Code, Chapter 9.
3. Occupancy Separations: Project shall provide the required occupancy separations (F-2 to R-3)
4. Fire Department Access to Equipment: Fire equipment shall be identified in approved manner. Rooms containing controls for fire detection, Alarm Panel (FACP), electrical equipment shall be indentified for fire department use. Provide approved signage for all control equipment (CFC Section 510).

PUBLIC WORKS CONDITIONS

1. Video Inspection: Conduct a video inspection of the conditions of existing sewer lateral. Submit a DVD to City Public Services Department. DVD shall be submitted prior to building permit issuance. Repair or replace as required to prohibit inflow/infiltration.
2. Driveway: The driveway approach on Main Street shall be upgraded to meet ADA requirements; a four foot path of travel with 2% max cross slope is required behind the driveway approach.



CITY OF MORRO BAY
 PUBLIC SERVICES DEPARTMENT
 APPEAL FORM

RECEIVED
 ATTACHMENT 3
 JUN 14 2012

City of Morro Bay

Public Services Department

APPEAL FROM THE DECISION OR ACTION OF (GOVERNING BODY OR CITY OFFICER):

Planning Commission

APPEAL OF SPECIFIC DECISION OR ACTION:

Denied request for existing

commercial unit to residential

PERMIT TYPE BEING APPEALED (IE. COASTAL PERMIT, USE PERMIT, TENTATIVE SUBDIVISION):

DATE DECISION OR ACTION RENDERED:

June 6, 2012

APPELLANT (PLEASE PRINT):

Pina Naran

SIGNATURE:

Pina Naran

ADDRESS:

670 Main St MB.

TELEPHONE NUMBER:

805 550 6960

GROUND FOR THE APPEAL (ATTACH SHEETS AS NECESSARY):

Applicant : agent did not receive notice of hearing and did not have opportunity to represent project at hearing

REQUESTED RELIEF OR ACTION:

overturn Planning Commission denial : approve project per staff recommendation

FOR OFFICE USE ONLY

DATE APPEAL FILED:

June 14, 2012

ACCEPTED BY:

Staff

APPEAL BODY:

CC

DATE OF APPEAL HEARING:

August 14, 2012



AGENDA NO: B-1

MEETING DATE: June 6, 2012

Staff Report

TO: Planning Commissioners

DATE: May 30, 2012

FROM: Sierra Davis, Assistant Planner

SUBJECT: Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 for the Conversion of 820 Square Feet of Commercial Space to a Residential Unit and a Parking Exception to Waive the Requirement of Two Covered and Enclosed Parking Spaces and Providing Two Open and Uncovered Parking Spaces.

RECOMMENDATION:

CONDITIONALLY APPROVE THE PROJECT by adopting a motion including the following action(s):

- A. Adopt the Findings included as Exhibit "A";
- B. Approve the Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 subject to the Conditions included as Exhibit "B" and the site development plans dated May 3, 2012.

APPLICANT/AGENT: Pina Naran / John MacDonald, Architect

LEGAL DESCRIPTION/APN: 068-281-003

PROJECT DESCRIPTION: The applicant has requested that an existing commercial space be converted into a residential unit. The existing building consists of commercial space on the first floor and a two (2) bedroom residential unit and a one (1) bedroom residential unit on the second floor. Approximately 820 square feet of the first floor is proposed to be converted from commercial space to a one bedroom residential unit.

The applicant has also requested a parking exception to waive the requirement for two covered parking spaces. The existing property has 3 covered and enclosed parking spaces for the existing residential uses and 4 open and uncovered parking spaces. The parking for the proposed unit will

Prepared By: _____

Dept Review: _____

be accommodated by the existing open and uncovered parking spaces.

PROJECT SETTING:

<u>Adjacent Zoning/Land Use</u>			
North:	Mixed Commercial Residential/High Density Residential/North Main Street Specific Plan (MCR/R-4/SP) Commercial Service Use	South:	Mixed Commercial Residential/High Density Residential/North Main Street Specific Plan (MCR/R-4/SP) Commercial Service Use
East:	Duplex Residential (R-2) Residential Use	West:	Highway 1

<u>Site Characteristics</u>	
Site Area	6,000 square feet
Existing Use	Commercial and Residential
Terrain	Flat/Graded
Vegetation/Wildlife	Landscaping
Archaeological Resources	Property not within 300 feet of archeological resource.
Access	Main Street

<u>General Plan, Zoning Ordinance & Local Coastal Plan Designations</u>	
General Plan/Coastal Plan Land Use Designation	Mixed Area Use 'F'
Base Zone District	Mixed Commercial Residential
Zoning Overlay District	High Density Residential
Special Treatment Area	N/A
Combining District	N/A
Specific Plan Area	North Main Street Specific Plan
Coastal Zone	Located in Coastal Zone, but in the original or appeals jurisdiction.

PROJECT ANALYSIS:

Background

The existing building received entitlements from Planning Commission on July 17, 2000 for a Coastal Development Permit, Conditional Use Permit and Variance. The existing building is approximately 4,795 square feet with 1,645 square feet for retail, office and fabrication uses, 742 square feet for covered and enclosed parking for the residential uses and 2,484 square feet for two residential units on the second floor.

The original project also included an application for variance for the reduction in the southern side yard setback from 10 feet to 3 feet. The variance was granted and the existing building

was constructed 3 feet from the southern property line.

Environmental Determination

Pursuant to the California Environmental Quality Act the project is categorically exempt pursuant Section 15301, Class 1 for existing facilities. The exemption provided for interior or exterior alterations involving such things as interior partitions, plumbing and electrical conveyances.

Project Specifics

The existing building was developed as a mixed use building of commercial space and residential uses. The first floor was developed with retail and office space, and two fabrication rooms. The first floor was also developed with a two car garage and a one car garage for the two residential units on the second floor.

The existing fabrication use on the first floor is divided into two rooms. The first room is 448 square feet (20'10"x21'6") and the second rooms is 754 square feet (15'6"X48'8") for 1202 square feet of fabrication use. The existing first floor also has 285 square feet (19'x15') for retail and office space. The fabrication uses are parked at a 1 parking space to 500 square feet of floor area and requires 2 (2.4) parking spaces for this use. The retail and office space is parked at a ratio of 1 parking space to 300 square feet of floor area and the use would require 1 (0.95) parking space.

The second floor consists of a two bedroom residential unit and a one bedroom residential unit. The original project provided three covered and enclosed parking spaces for the residential units

The total parking required for the existing uses on site is 3 covered and enclosed parking spaces of the residential uses and 3 parking spaces for the fabrication and office/retail uses. The site can accommodate the parking required for all existing uses. The existing parking lot also has one accessible parking space.

The larger 754 square foot fabrication room is proposed for conversion to a two bedroom residential unit. The smaller 448 square foot fabrication room and office/retail rooms will remain the same. The proposed residential unit approximately 802 square foot conversion and is larger than the existing 754 square foot room as a new exterior entrance and entrance area will be constructed.

The parking required for the uses on site will remain the same for the retail/ office space, fabrication room, and second floor residential uses as they are not proposed for conversion or alteration. The proposed two bedroom residential unit on the first floor requires two covered parking spaces, however the applicant has applied for a parking exception to waive the requirement. The parking would be accommodated as two open and uncovered parking spaces on site.

General Plan

The General Plan has designated this area of the city as Mixed Use Area F. Mixed Use Area F states: “A mixture of all uses as appropriate shall be encouraged. An evaluation of appropriate uses on a parcel-by-parcel basis will be conducted during the implementation phase.”

The existing property has a mixture of uses that include the first floor uses for commercial and fabrication uses with residential uses on the second story. The mixture of uses will be predominately residential with ancillary retail and fabrication uses. Pursuant to the General Plan Mixed Use Area F, the evaluation of the appropriate mixture of residential and commercial uses shall be made on a case by case basis. The floor area for the retail and fabrication uses currently are less than the residential and residential parking uses. In this case the residential uses will become the predominate use of the site.

Zoning Ordinance

The zoning on the property is Mixed Commercial Residential and Multiple-Residential (R-4) which is a district where a combination of commercial uses is mixed with high density residential. The existing property meets lot coverage, height, parking and setbacks pursuant to a variance for a reduced interior side yard setback from the southern property line.

The proposed project does not propose any changes to the exterior of the building; therefore it meets all titles of the Zoning Ordinance. However the parking will be affected because the proposed conversion of the commercial space to residential required two covered parking spaces. The applicant has applied for a parking exception for open and uncovered parking spaces to meet the parking requirements.

North Main Street Specific Plan Overlay

The North Main Street Specific Plan overlay requires that development meet the zoning regulations and standards for the zoning district and also adhere to the special requirements of the specific plan.

The specific plan has development standards that the Planning Commission must find that the project has met before approving a use permit for any use in the North Main Street Specific plan. The project must adhere to the following:

1. Mature trees preservation. *The project is not requesting to remove or disturb any mature trees on site.*
2. Roofline Variation, maximum height is generally two stories and gives the guidelines for 1/3 of west facing elevation shall not exceed 25 feet however it is intended as a guideline and Planning Commission may vary from this guideline. *The proposed project is requested for interior alteration that will not affect the exterior of the building.*

Off-Site Improvements: In approving any conditional use permit the following will be required as conditions or approval.

1. Curb, Gutter, Sidewalk and Street Trees

2. Intersection Improvement Fees
3. Landscaping Improvement Fees
4. Other Improvements
5. Deferments

The proposed project is on an existing developed property and all off-site improvements were addressed with the Conditional Use Permit in 2000 for the development of the vacant site with the development existing on the site today.

PUBLIC NOTICE: Notice of this item was published in the San Luis Obispo Tribune newspaper on May 25, 2012 and all property owners of record within 300 feet and occupants within 100 feet of the subject site were notified of this evening's public hearing and invited to voice any concerns on this application.

The public notice specified that the parking exception was for one covered and enclosed parking space and one open and uncovered parking space. The requested parking exception is to waive the requirement for two covered and enclosed parking. The proposed project required two covered and enclosed parking spaces because the unit has two bedrooms.

CONCLUSION: The project as proposed is consistent with the General Plan, Local Coastal Plan, and Municipal Code for development standards. Pursuant to the regulations in Mixed use Area F the mixture of all uses shall be evaluated on a parcel-by-parcel basis for an appropriate mix of uses in the zone district. The Planning Commission shall make the determination if the proposed use is an appropriate mix of uses to maintain the mixed commercial residential zone district.

The Staff recommends that the Planning Commission approve the requested Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 for the conversion of 820 square feet of commercial space to a residential unit and a parking exception to waive the requirement of two covered parking spaces and providing two open and uncovered.

Exhibits:

Exhibit A – Findings

Exhibit B – Conditions of Approval

Exhibit C – Graphics/Plan Reductions

EXHIBIT A**FINDINGS****SITE: 2176 MAIN STREET**

PROJECT DESCRIPTION: Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 for the conversion of 820 square feet of commercial space to a residential unit and a parking exception to waive the requirement of two covered parking spaces and providing two open and uncovered parking spaces.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

- A. Pursuant to the California Environmental Quality Act the project is categorically exempt pursuant Section 15301, Class 1 for existing facilities. The exemption provided for interior or exterior alterations involving such things as interior partitions, plumbing and electrical conveyances.

COASTAL DEVELOPMENT PERMIT FINDINGS

- A. The project as proposed is consistent with the applicable provisions of the certified Local Coastal Plan. The Local Coastal Plan is consistent with the General Plan and the project meets minimum density requirements and therefore meets the LCP.
- B. For every development between the nearest public road and the sea or the shoreline of any body of water, the Planning Commission shall make a specific finding that such development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act. *The property is not located between the nearest public road and the sea, therefore the property does not need to provide access pursuant to Chapter 3 of the California Coastal Act.*

CONDITIONAL USE PERMIT FINDINGS

- A. The establishment, maintenance, or operation of the use applied for will, under the circumstances of the particular case, will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use. *The proposed project is a residential use in an existing mixed use building therefore the use will not be detrimental to the surrounding uses.*
- B. The use will not be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the City. *The proposed use will not be injurious or detrimental to the property and improvements in the neighborhood or general welfare,*

as the project meets the General Plan and Municipal Code.

PARKING EXCEPTION FINDINGS

- A. Special Circumstances. The exception will not constitute a grant of a special privilege inconsistent with the driveway or parking limitations upon other properties in the vicinity and the reduced parking or alternative to the parking design standards of this chapter will be adequate to accommodate on the site all parking needs generated by the use. *The existing parking accommodated on the site is three covered and enclosed parking spaces for the existing residential uses and 4 uncovered parking spaces for the fabrication and retail uses. The existing parking configuration accommodates a greater number of parking spaces for the uses on site than a configuration with 5 covered and enclosed parking spaces. The existing configuration provides the required number of parking spaces and accessible parking spaces; therefore it is not a grant privilege.*
- B. Health, Safety or General Welfare. The exception will not adversely affect the health, safety or general welfare of persons working or residing in the vicinity and that no traffic safety problems will result from the proposed modification or parking standards. *The project site will provide the required number of parking spaces to service all uses on site therefore the parking will not adversely affect the surround uses.*
- C. Applicant's Full Enjoyment. The exception is reasonably necessary for the applicant's full enjoyment of uses similar to those upon the adjoining real property. *The parking exception would allow for the conversion of the retail space to a residential unit. The applicant has been unable to utilize or rent the fabrication area and the conversion would create an economically viable use.*

EXHIBIT B**CONDITIONS OF APPROVAL****SITE: 2176 MAIN STREET**

PROJECT DESCRIPTION: Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 for the conversion of 820 square feet of commercial space to a residential unit and a parking exception to waive the requirement of two covered parking spaces and providing two open and uncovered parking spaces.

STANDARD CONDITIONS

1. This permit is granted for the land described in the staff report dated June 6, 2012, for the project depicted on plans dated May 3, 2012 on file with the Public Services Department, as modified by these conditions of approval, and more specifically described as follows:

Site development, including all buildings and other features, shall be located and designed substantially as shown on plans, unless otherwise specified herein.

2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this approval and is diligently pursued thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Said extensions may be granted by the Public Services Director, upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code, General Plan and Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.
3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Public Services Director. Any changes to this approved permit determined not to be minor by the Director shall require the filing of an application for a permit amendment subject to Planning Commission review.
4. Compliance with the Law: (a) All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval, (b) This project shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use Plan and General Plan

for the City of Morro Bay.

5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. Applicant understands and acknowledges that City is under no obligation to defend any legal actions challenging the City's actions with respect to the project. This condition and agreement shall be binding on all successors and assigns.
6. Compliance with Conditions: The applicant's establishment of the use and/or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed hereon shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Public Services Director and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.
7. Compliance with Morro Bay Standards: This projects shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use plan and General Plan for the City of Morro Bay.
8. Conditions of Approval on Building Plans: Prior to the issuance of a Building Permit, the final Conditions of Approval shall be attached to the set of approved plans. The sheet containing Conditions of Approval shall be the same size as other plan sheets and shall be the last sheet in the set of Building Plans.

PLANNING CONDITIONS

1. Deed Restriction: The areas proposed to remain office space and fabrication shall be deed restricted to remain as such uses until such time the required residential parking is provided onsite.

BUILDING CONDITIONS

1. One Hour Construction: Walls and ceiling between the new residential unit and the commercial areas and residential units above need to be one hour construction with sound transmission control rating of 50.

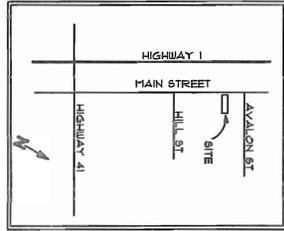
2. Smoke detectors, GFI and AFCI: Smoke detectors, GFI and AFCI will have to be installed where required by code.
3. Fire Sprinklers: The fire sprinklers will have to altered to comply with the requirements of the Fire Code.
4. Laundry Facilities: Laundry facilities will be required for the new residence.

FIRE CONDITIONS

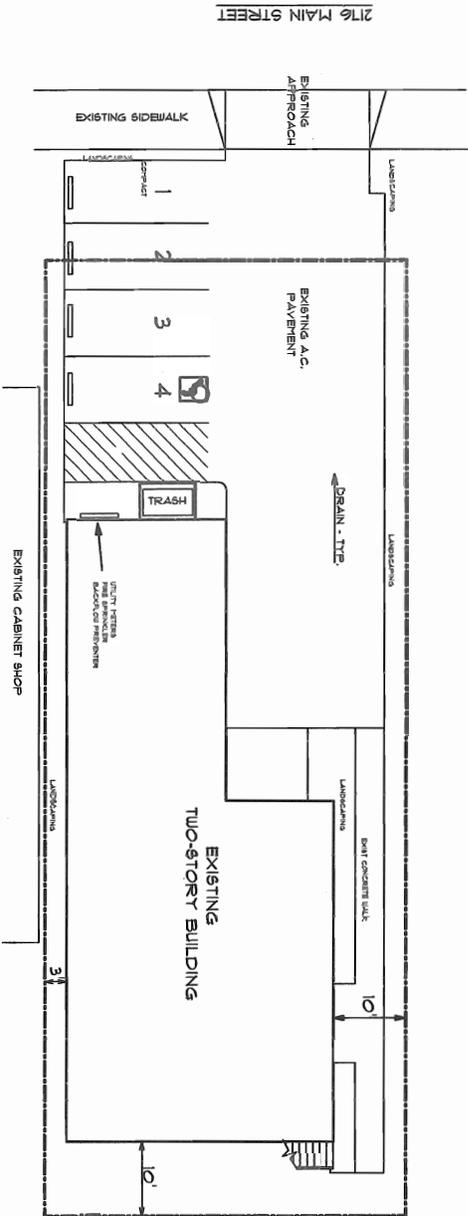
1. Emergency Access: Project shall provide a Knox Box at the main entrance, wall mounted no higher than 7 feet, and appropriate keys for emergency Fire Department access.
2. Fire Sprinkler System: The existing NFPA 13 Automatic Fire Sprinkler System was installed in October 2000 and designed to provide sprinkler protection for B, F-2, U and R-3 occupancies. The project is conditioned to perform the required five-year service and inspection (California Code of Regulations, Title 19, Article 4, Section 904 and NFPA 25). Additionally, due to a change to a change in occupancy (F-2 to R-3) we require a sprinkler plan submittal for all system modifications, in accordance with 2007 Californai Fire Code, Chapter 9.
3. Occupancy Separations: Project shall provide the required occupancy separations (F-2 to R-3)
4. Fire Department Access to Equipment: Fire equipment shall be identified in approved manner. Rooms containing controls for fire detection, Alarm Panel (FACP), electrical equipment shall be indentified for fire department use. Provide approved signage for all control equipment (CFC Section 510).

PUBLIC WORKS CONDITIONS

1. Video Inspection: Conduct a video inspection of the conditions of existing sewer lateral. Submit a DVD to City Public Services Department. DVD shall be submitted prior to building permit issuance. Repair or replace as required to prohibit inflow/infiltration.
2. Driveway: The driveway approach on Main Street shall be upgraded to meet ADA requirements; a four foot path of travel with 2% max cross slope is required behind the driveway approach.



VICINITY MAP



SITE PLAN

1/8" = 1'-0"

PROJECT SUMMARY:
 CONVERT APPROXIMATELY 800 S.F. OF COMMERCIAL SPACE INTO A TWO BEDROOM RESIDENTIAL SPACE OF 800 S.F.

OWNER:
 PINA NARANJO
 160 MAIN STREET
 MORRO BAY, CA 93442
 805.772.7140

PROJECT ADDRESS:
 216 N. MAIN STREET
 MORRO BAY, CA 93442

LEGAL DESCRIPTION:
 LOT - 3 066-981-003
 CITY OF MORRO BAY

PARKING:
 4 - UNCOVERED SPACES
 3 - COVERED SPACES

EXISTING WELDING SHOP

SHEET INDEX

A-1	SITE PLAN
A-2	EXISTING LOWER FLOOR PLAN
A-3	EXISTING UPPER FLOOR PLAN
A-4	RETIRED LOWER FLOOR PLAN

RECEIVED

MAY 03 2012



City of Morro Bay
 Public Services Department

John MacDonald, Architect
 2813 Santa Barbara Avenue
 Carpinteria, CA 93430
 Office 805.959.1399
 FAX 805.959.1544

John MacDonald, Architect
 2813 Santa Barbara Avenue
 Carpinteria, CA 93430
 Office 805.959.1399
 FAX 805.959.1544

STRUCTURAL ENGINEER:

ENERGY ANALYSIS:

SOILS ENGINEER:

RESIDENTIAL CONVERSION
 216 MAIN STREET
 MORRO BAY, CA

SITE PLAN

SHEET A-1
 OF 4 SHEETS

AGENDA ITEM: A- 1DATE: June 20, 2012ACTION: APPROVED

SYNOPSIS MINUTES - MORRO BAY PLANNING COMMISSION
 REGULAR MEETING – JUNE 6, 2012
 VETERANS MEMORIAL HALL – 6:00 P.M.

Chairperson Grantham called the meeting to order at 6:00 p.m.

PRESENT:	Rick Grantham	Chairperson
	Paul Nagy	Commissioner
	Jessica Napier	Commissioner
	John Fennacy	Commissioner

ABSENT:	John Solu	Vice-Chairperson
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STAFF:	Kathleen Wold	Planning and Building Manager
	Sierra Davis	Assistant Planner

ESTABLISH QUORUM AND CALL TO ORDER
 MOMENT OF SILENCE / PLEDGE OF ALLEGIANCE
 PLANNING COMMISSIONER ANNOUNCEMENTS

Commissioner Napier announced the findings from the Subdivision Ordinance Subcommittee which was formed to find ways to streamline the permit process. The subcommittee worked with staff to find inconsistencies in the ordinance. She noted in their findings, they discovered there is a disconnect between staff and applicants and stated that streamlining the process will most likely come from staff and applicants understanding each other better. Their recommendation is that 1 Commissioner and 1 Councilmember from the Subcommittee should walk through the planning process on a non-Commission permit application and then identify and record reasons for delays. Secondly, materials should be given to applicants to more fully explain permit requirements and process.

Chairperson Grantham announced he attended the grand opening of Albertsons today and second, congratulated the persons who prevailed in the election. Third, the second annual K9 Walk-a-Thon is this Saturday, June 9, 2012 from 10am to 2pm which is a fundraiser to help with the on-going costs of having a police dog.

PUBLIC COMMENT

Chairperson Grantham opened Public Comment period.

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION
REGULAR MEETING – JUNE 6, 2012

Nicole Foster, booth renter at Catch a Wave salon addressed the issue of signs and her business' struggle to attract customers and spoke in favor of sandwich board signs. She stated when she was required to remove her sandwich board sign, her business and other booth renters' business dropped dramatically. She stated she has plenty of space in front of her business to place this type of sign that would not block or clutter the sidewalk.

Joe Yukich, business owner in Morro Bay, addressed the elections results and stated the incumbents lost because they alienated the business community over the sign ordinance. He stated he hopes the new Council will be more understanding and supportive of local businesses.

Amber Badertscher, owner of Nibble Nook, addressed the issue of signage and stated her business has low visibility in its location and therefore she needs to be able to have better signage. Her location has space that could be used for signs that would not be in the public right of way. She referenced receiving a threatening letter from the City to take her signs down before the Memorial Day weekend. She stated she feels targeted as a small business owner because the big businesses such as McDonalds and Taco Bell were not sent a sign letter.

Joanna and Ricky, owners of Metro PCS and new residents of Morro Bay, addressed the issue of signage. When they first moved into town, they had signage which resulted in great walk-in traffic. Once they were forced to take down their teardrop signs, they had a dramatic reduction in customers. Their location on Quintana due to being up on a hill is very hard to see without the right signage. Where they had placed their teardrop sign did not block the right of way nor block pedestrians and they hope they can put the sign back up to attract customers. Ricky stated they have 30-50 signatures from small business owners in support of their position. They know the signs work and questioned what the point of having a business in Morro Bay is without signs.

Chairperson Grantham closed Public Comment period.

PRESENTATIONS – None.

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

A. CONSENT CALENDAR

- A-1 Approval of minutes from Planning Commission meeting of May 16, 2012
Staff Recommendation: Approve minutes as submitted.

MOTION: Chairperson Grantham moved to approve A-1 from the Consent Calendar. Commissioner Nagy seconded and the motion passed unanimously. (4-0).

B. PUBLIC HEARINGS

- B-1 **Case No.:** Conditional Use Permit #UP0-240, Parking Exception #AD0-043 and Coastal Development Permit #CP0-294.
Site Location: 2176 Main Street

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION
REGULAR MEETING – JUNE 6, 2012

Proposal: The applicant is seeking to convert 820 square feet of commercial space to a residential unit and a parking exception to waive the requirement of two covered and enclosed parking spaces allowing one covered and one open space.

CEQA Determination: Categorically Exempt 15301, Class 1

Staff Recommendation: Conditionally approve with conditions.

Staff Contact: Sierra Davis, Assistant Planner, (805) 772-6270

Davis presented the staff report.

Chairperson Grantham opened Public Comment period and hearing none closed Public Comment period.

Commissioner Napier stated changing one of the commercial spaces into a residential space does not change this from a mixed use to residential, since one unit will still be commercial.

Commissioner Nagy referenced Chapter 17.4 of the City's Zoning Ordinance which states that in combining a mixed use overlay zone, the commercial use should be the primary use and that it states that 50% of the gross floor area shall be devoted to office or commercial uses. Nagy stated from his viewpoint this project exceeds the 50% requirement.

Wold clarified that past Council direction has been to take it on a case by case basis, therefore applicants have not been held to the strict interpretation of 50% as referenced by Commissioner Nagy.

Commissioner Fennacy stated support for the project and said parking may be an issue but he thinks it is sufficient.

Grantham stated he talked to neighboring business owners who expressed support to him and he also stated support for the project.

MOTION: Commissioner Fennacy moved to adopt the findings included in Exhibit "A" and approve the Minor Use Permit #UP0-240, Coastal Development Permit #CP0-294 and Parking Exception #AD0-043 subject to the Conditions included as Exhibit "B" and the site development plans dated May 3, 2012.

The motion was seconded by Chairperson Grantham and failed 2-2 with Commissioners Nagy and Napier voting no.

Wold clarified that a 2-2 vote means a denial of the project.

UNFINISHED BUSINESS

C-1 Current and Advanced Planning Processing List

Staff Recommendation: Receive and file.

Wold reviewed the Work Program with Commissioners.

SYNOPSIS MINUTES – MORRO BAY PLANNING COMMISSION
REGULAR MEETING – JUNE 6, 2012

NEW BUSINESS – None

DECLARATION OF FUTURE AGENDA ITEMS

ADJOURNMENT

The meeting adjourned at 6:40 pm to the next regularly scheduled Planning Commission meeting at the Veteran's Hall, 209 Surf Street, on Wednesday, June 20, 2012 at 6:00 pm.

Rick Grantham, Chairperson

ATTEST:

Rob Livick, Secretary



AGENDA NO: D-1

MEETING DATE: 8/28/2012

Staff Report

TO: Honorable Mayor and City Council **DATE:** August 22, 2012
FROM: Joseph Woods, Recreation and Parks Director
Robert Schultz, City Attorney
SUBJECT: Discussion on the Formation of a Cloisters Advisory Board to Make Recommendations Regarding Cloisters Maintenance Work

RECOMMENDATION

It is recommended that the City Council review the attached draft By-Laws for the proposed Cloisters Advisory Board and direct staff to either advance the By-Laws to a final document or continue our current administration of the Assessment District.

DISCUSSION

On May 22, 2012, the City Council directed staff to prepare a report for the consideration of forming a separate Cloisters Advisory Board, to provide an avenue for owners to review, advise and recommend to the City Council on items related to the District's maintenance work. Staff has prepared a set of draft By-Laws, which are attached, for your review.

Staff has held several neighborhood meetings with participating property owners to discuss District concerns and maintenance issues. The neighborhood meetings which have been facilitated by staff members, Joe Woods and Rob Schultz, have been held at the Community Center. Our last meeting was held on August 8, 2012, where we discussed the maintenance contract with K.D. Janni and met their representative, Evan Moffitt. Our next neighborhood meeting is tentatively scheduled for November 7, 2012.

CONCLUSION

It is recommended that the City Council review the attached draft By-Laws for the proposed Cloisters Advisory Board and direct staff to either advance the By-Laws to a final document or continue our current administration of the Assessment District.

Prepared By: JMW

Dept. Review: JMW

City Manager Review: _____

City Attorney Review: RWS

CITY OF MORRO BAY CLOISTERS ASSESMENT DISTRICT ADVISORY BOARD BY-LAWS

PURPOSE AND AUTHORITY

The Cloisters Assessment District Advisory Board was created to review, advise and recommend to the City Council on items pertaining to the work and improvements undertaken for the Cloisters Landscaping and Lighting Maintenance Assessment District formed in 1996, and the costs thereof paid from the levy of the annual assessments (the “Improvements”), which are described in the Engineer’s Report dated June 9, 2006, and, are generally described as follows:

Installation, maintenance and servicing of public improvements, including but not limited to: turf, ground cover, shrubs, and trees, other landscaping, irrigation systems, fencing, signage, trails, walkways, recreation facilities lighting, restroom facilities, parking and all necessary appurtenances, and labor, materials, supplies, utilities and equipment. The public resources maintained and improved by the assessments from the District are further summarized as follows:

- 4 acres of park land
- 24.4 acres of open space meadow and natural land
- 5.5 acres of wetland
- 1.6 acres of medians and parkways
- Street trees and public right-of-way

The Board shall make reports and recommendations to the various city boards, commissions or the City Council on the above matters. When requested to do so, will review items referred by other city boards, commissions or the City Council. Resulting reports and recommendations will be included in presentations before the City Council.

APPOINTMENT

The Cloisters Assessment District Advisory Board shall be comprised of a minimum of three (3) to a maximum of five (5) voting members, all of which must be homeowners in the Cloisters Assessment District and qualified electors of the City of Morro Bay. Appointments and the filling of vacancies shall be made by the City Council.

TERMS OF OFFICE

Members shall serve, without compensation, for a period of four (4) years commencing February 1st in the year specified when members are appointed. Appointments shall be made

in such a manner so as no more than three members' terms expire concurrently. Unanticipated vacancies shall be filled for the duration of the unexpired term only.

QUALIFICATIONS

A member must be a homeowner in the Cloisters Assessment District and a registered voter of the City during the term of appointment, unless excepted by State Law or Council approved special requirements; must be at least 18 years of age at the time of appointment; and, may not be an Elected Official, Officer, or Employee of the City of Morro Bay. (Council Policies and Procedures, Section 6.6.1)

ABSENCE FROM MEETINGS

Absence of a Board Member from three (3) consecutive meetings or four (4) meetings in any consecutive 12-month period will constitute the voluntary resignation of the absent member and the position will be declared vacant.

ORGANIZATION

At the first regular meeting in each year wherein newly appointed Members are seated, the Members shall elect a Chairperson and Vice-Chairperson who shall hold office for a period of one year. The Chairperson shall preside over meetings, appoint appropriate sub-committees, and direct the affairs of the Committee. In the absence of the Chairperson, duties of the office shall be performed by the Vice-Chairperson. If both the Chair and Vice-Chair are absent, the remaining quorum shall appoint one member to preside at that meeting. The City of Morro Bay staff will maintain accurate minutes of the official activities of the Committee.

PROCEDURE

Regular meetings shall be held monthly on a regular schedule. The meetings shall be open to the public. The date, time and location along with the meeting agenda shall be noticed in accordance with Government Code Sections 54970-54975. The Chair may close meetings to public comments, provided that the action is consistent with the Brown Act. Agendas, reports, meetings and any and all actions shall be governed by the requirements of the Brown Act, as amended.

All advisory board meetings will be conducted in strict compliance with the City Council Policies and Procedures Manual. Where used in the City Council Policies and Procedure Manual, the term "City Council" shall mean the "Board" or "Commission", the term "Mayor" shall mean "Chairperson and the term "Councilmember" shall mean "Board" or "Commission. In all matters and things not otherwise provided for in the by-laws or the Policies and Procedures of the City Council, proceedings shall be governed by "Robert's Rules of Order," revised edition. However, no ordinance, resolution, proceeding or other action of the City Council pertaining to the Committee shall be invalidated or the legality

thereof otherwise affected by the failure or omission to observe or follow “Robert’s Rules of Order.”

Communication between the Advisory Group, its members and the Council shall be in accordance with the City Council Policies and Procedures as currently adopted.

QUORUM

A majority of voting members shall constitute a quorum.

CITY STAFF

The City Manager or the designee of the City Manager shall be responsible for preparing agendas, reports, and minutes pertaining to Committee business and shall attend the Committee meetings.

BY-LAW AMENDMENTS

All amendments to the By-Laws shall be approved by the City Council.

2. Public Property or Public Right-of-Way. If sales, display, dining, or storage is to occur on any public property or public right-of-way, written permission for same shall be first obtained from the city administrator; and
 3. Private Property. If sales, display, dining, or storage is to occur on any private property, written permission for same shall be first obtained from the director; and
 4. Other Conditions. The city administrator or director may impose such conditions on the granting of permission for temporary sales, display, dining, or storage as deemed reasonable or necessary to ensure that the activity is not detrimental to the public health, safety or general welfare.
- C. Longer Term Temporary Special Events and Outdoor, Sales, Display, Dining or Storage.
1. Minor Use Permit. Outdoor sales, display, dining, and storage may be permitted with a minor use permit for longer periods of time than in subsection B of this section for an area of less than one hundred twenty-five square feet in conjunction with an existing business. Outdoor dining and plant sales may be permitted for an area of up to six hundred square feet when in conjunction with an existing restaurant or business.
 2. Outdoor Uses. Said outdoor uses may include the addition of one nonpermanent sign not to exceed four square feet in area. Said sign shall be subject to a sign permit. Fees applicable to permanent signs are applicable to these nonpermanent signs.
- D. Procedures for Special Event Outdoor Sales, Display, Dining or Storage. Application for a temporary special event, outdoor sales, display dining, or storage shall be made by the applicant as provided in Section [17.30.020](#) (*Ord. 445 § 3 (part), 1995*)

17.30.050 - Temporary use permits.

- A. Temporary Use Permits. The temporary uses listed in this section may be allowed by the zoning administrator under an administrative temporary use permit. The administrator may attach such conditions to the permit as are necessary to assure that the temporary use complies with the intent of this section.
1. Subdivision Real Estate Sales Office. A temporary real estate sales office may be established in a residential development for the first sale of property in that development. Such an office may be located within a residence or a common or temporary building. If a temporary building is used, it shall be removed upon termination of the use. Sales offices shall not be used for more than six months except that upon approval of the director, they may be continued for one successive period of not more than six months or until sale of the residences or lots.
 2. Christmas Tree Sales. Premises within nonresidential districts may be used for the temporary sale of cut or growing Christmas trees, provided that:
 - a. Dates Permitted. Sales shall not be conducted before Thanksgiving Day or after December 31st; and
 - b. Trees, Signs and Temporary Structures. All trees, signs and temporary structures shall be kept within the limits of the property and shall be removed within ten days after the close of the sale.

3. Temporary Refrigeration. Premises within nonresidential districts on or near the waterfront that are associated with the processing or wholesale sale of fish, may be used to place temporary refrigeration facilities, provided that:
 - a. Length of Use. The temporary refrigeration facilities will be allowed only for a period not exceeding two weeks within any six months;
 - b. Use Conflicts. The installation of the facilities is found by the director not to conflict with the use of the premises or with the enjoyment of neighboring premises;
 - c. Power Source. The temporary refrigeration facilities shall be operated by a power source from the electric public utility.
 4. Temporary Storage for Construction, Utility and Public Works Projects. A temporary storage area may be allowed for materials and equipment use for approved construction, utility or public works projects.
 5. Other Temporary Events and Uses. Temporary events or uses may be allowed by the director which are not intended to extend longer than six months and which are determined to not impact neighboring uses, environmentally sensitive habitat areas, or otherwise create significant impacts.
 6. Special Conditions of Approval. A temporary use shall require the approval of a regular use permit when the zoning administrator determines that special conditions of approval may be necessary to insure compliance with this section or special circumstances require a planning commission determination that the temporary use complies with the intent of this section.
- B. Procedures for Approval of Temporary Use Permits. A public hearing shall not be required on the application for temporary use permits on which the zoning administrator is authorized to act. However, the site of said use shall be visibly posted ten days prior to the approval authorizing the said use.
- C. Appeal of the Zoning Administrator's Decision.
1. Issuance and Appeal. Use permits and variances shall not be issued until ten days have elapsed from the granting thereof and, in case an appeal is filed from the zoning administrator's decision thereon, shall not be issued until decision shall be made by the planning commission on such appeal. In case the applicant or any other person is not satisfied with the action of the zoning administrator or any use permit or variance application, he may, within ten days appeal in writing to the planning commission. The fee for such appeal shall be set by the city council.
 2. Public Hearing of Appeal. Upon receipt of such appeal, the planning commission shall set the matter for public hearing; said hearing shall be held within sixty days following such receipt, notice thereof to be given as provided by law. Notice shall also be given to the zoning administrator who shall submit a report to the planning commission setting forth the reasons for the action by the zoning administrator. Such report shall be submitted in writing or by representation at the hearing.

(Ord. 445 § 3 (part), 1995)

2.24.040 - Uses of parks/facilities requiring permits.

- A. Any persons or organizations must obtain a permit for use of any portion of any public recreational facilities, parks or other public property of the city for the purposes provided in this chapter, in the manner set forth by the recreation and parks commission.
- B. If application for permit is found in good order and in compliance with guidelines adopted by the recreation and parks commission, the persons or organizations shall be granted use of the facility, park and/or city land as requested.
- C. In the event the director or a duly appointed representative refused to grant the permit, the applicant may appeal such refusal in writing to the recreation and parks commission by filing notice thereof in writing with the director within thirty days following refusal of the permit. The commission shall consider such appeal at its next meeting following the filing of such appeal. The commission, by majority vote, may affirm or overrule the action of the director and may, in overruling, impose such conditions or changes as the commission deems reasonable.
- D. Uses requiring a person or organization to obtain a permit include the following:
 - 1. Persons or groups proposing to erect or maintain a table, booth or similar structure;
 - 2. Groups of persons, exceeding seventy-five in number;
 - 3. Persons or groups desiring to reserve a facility or park for a limited time for their exclusive use;
 - 4. Any persons or groups desiring to make solicitations or sales;
 - 5. Any person or group desiring to hold a contest, demonstration or exhibit in a park or facility for which an admission or entrance fee is charged;
 - 6. Any person or group engaging in the sale or consumption of an alcoholic beverage as defined in [Chapter 9.18](#) of this code.
- E. All permits issued pursuant to this chapter are to be honored by all persons or groups when presented with a valid copy of this permit.

(Ord. 471 § 1 (part), 1998; Ord. 462 § 1, 1997; Ord. 276 (part), 1986)

(Ord. No. 558, 5-24-10)

CONCLUSION

Review this report and direct staff accordingly.



AGENDA NO: D-3

MEETING DATE: 8/28/12

Staff Report

TO: Honorable Mayor and City Council

DATE: August 21, 2012

FROM: Andrea K. Lueker, City Manager

SUBJECT: Discussion and Recommendation of the Morro Bay Chamber of Commerce being Housed in a City-Owned Facility

RECOMMENDATION

Staff recommends the City Council review and approve the request from the Chamber of Commerce to be housed in the City-owned facility located at 715 Harbor Street (Fire Department Administrative Building).

BACKGROUND

Over the past 18 months the City Council has spent significant time in determining the best way to harness and increase tourism dollars in Morro Bay. At their February 28, 2012 meeting, the City Council was presented a staff report entitled "Discussion of Director of Tourism and Formation of a Tourism Board". After discussion, the City Council approved six separate motions including a motion to direct staff to initiate dialog with the Chamber of Commerce and the Tourism Bureau separately about potential locations of their offices and operations within City facilities as well as a motion to invite the Chamber of Commerce to develop an economic development plan and submit it to the City Council for review (an outline of this plan will be submitted under separate cover and is not part of this discussion).

Over the past several months, staff has met with both the Chamber of Commerce and Tourism Business Improvement District (TBID) regarding this issue. City staff, along with representatives of both groups, has also visited several facilities that are within the purview of the City to help each group determine what, if any of the facilities, would work best for their needs.

DISCUSSION

The Chamber of Commerce has reviewed a number of City sites and has determined that the building located at 715 Harbor, now housing the Fire Department, would best meet their needs. Staff has included the request from the Chamber of Commerce which indicates that with the expanded direction of Economic Development, the Chamber would be able to utilize a significant portion of the building.

Prepared By: _____

Dept Review: _____

City Manager Review: _____

City Attorney Review: _____

In addition, in discussions with the TBID representatives regarding their search for locations for a Visitors Center and office space, they are not interested in the 715 Harbor Street site for a Visitors Center nor are they likely interested in that site for the location of the Director of Tourism. However, should they at some point need office space for that individual and associated office staff, an office space could be made available. Should the City approve this use, the Chamber of Commerce would be responsible for tenant improvements, utilities and insurance, upon approval by the City. The City would enter into a use agreement, making sure each group's responsibilities are clear.

In terms of future planning, this building is a modular facility with a life span of 20-30 years and the site that it sits on has previously been contemplated for a Civic Center site, with several plans completed, but never approved or adopted as a Civic Center Master Plan. It is important to bring up that allowing the Chamber of Commerce use of this facility will not affect the City's ability to continue to master plan for a Civic Center area sometime in the future.



August 1, 2012

Morro Bay City Council
595 Harbor Street
Morro Bay, Ca. 93442

Dear Council Members,

As of January 1, 2013, the Morro Bay Chamber of Commerce will no longer be providing Visitor Center Services to the community, so we will no longer need to rent a prime visitor-serving location. In looking for a location better suited to economic development, we have found that two locations currently owned by the City would make ideal choices for serving our business community.

With a little renovation, the Transportation Building on Harbor Street would provide a very basic facility for the Chamber and its Economic Development program. The second location, the Fire Department Administration Building, would be ideal. It is our understanding that the Fire Department will be moving into their new offices towards the end of the year.

The 2400 ft. sq. MBFD Administration Building would afford the Chamber the type of space that would enhance economic development in Morro Bay. We would have office and conference space for our economic development partners' use in Morro Bay. Those partners include SCORE, the SBDC, the Business Entrepreneurial Center, the Economic Vitality Corporation, Cal Poly, and Cuesta College. We would have the opportunity to provide incubator space and support for several start-up businesses. We would have classroom space for educating our business community and helping them keep current with ever-changing business practices. Both these activities would greatly enhance the goals of the Economic Development partnership recently approved by City Council.

In order to maximize resources for economic development, the Chamber requests a rent of \$1.00 per year. The Chamber would pay all utilities and insurance associated with the facility.

The Chamber Board is excited about its new partnership and focus with the City on economic development and looks forward to a long and productive relationship with the City of Morro Bay. Thank you for your consideration.

Best regards,

A handwritten signature in blue ink, appearing to read "Craig Schmidt".

Craig Schmidt, CEO
Morro Bay Chamber of Commerce



AGENDA NO: D-4

MEETING DATE: 8/28/12

Staff Report

TO: Honorable Mayor and City Council

DATE: August 21, 2012

FROM: Andrea K. Lueker, City Manager

SUBJECT: Update from the California State Lands Commission Hearings held on August 14 & 20, 2012 and Direction to Staff for Further Monitoring of the Seismic Testing for Diablo Canyon

RECOMMENDATION

Staff recommends the City Council review the update from the August 14 and 20, 2012 hearings regarding the Seismic Testing for Diablo Canyon and provide direction to staff on further monitoring.

BACKGROUND

The City of Morro Bay City Council authorized a letter be sent to the California State Lands Commission (attached) regarding the Draft Environmental Impact report for the Central Coastal California Seismic Imaging Project (CCCSIP) which outlined a number of areas of concern which include:

- The need for vessels to enter and leave the Morro Bay Harbor
- The extension of recreational rockfish season to December 31st
- A portion of the project boundary is within a highly rich Marine Protected Area
- The testing period will occur during slower fishing production times
- Fishing in the area is in a “precipitous” decline
- The impact of lower fishing volumes on the Individual Fish Quota (IFQ) program

Based on these impacts, the City requested that both short-term and long-term mitigation to the City and Morro Bay Fishermen, as well as a full account of the effects on the local ecosystem and meaningful and effective mitigation measures to offset those effects, be provided.

At their hearings held on August 14 and 20, 2012, the California State Lands Commission certified the Environmental Impact Report for this project, with future hearings necessary and approvals needed from the California Coastal Commission, APCD, Fish and Game and others. The State Lands Commission issued a permit with some modifications which include reducing the size of the area to be tested, restricting the dates of testing to November 1st through December 31st and, should the work not be concluded during the first year cycle, automatic renewal for a second year would occur.

Prepared By: _____

Dept Review: _____

City Manager Review: _____

City Attorney Review: _____

DISCUSSION

Councilmember Smukler requested this as a future agenda item at the August 14, 2012 City Council meeting and garnered support for the item to appear at this meeting. As the item is still tracking through, City Council may wish to provide further direction to staff in order to remain informed on these issues, including the following:

1. Direct staff to continue to track this item and keep the City Council informed of any scheduled meeting(s) in front of the California Coastal Commission, Fish and Game and/or others.
2. Direct staff to keep in contact with other stakeholders, including the Native American Organizations, Fishing Associations, and others.
3. Direct staff to identify and evaluate additional ways to address and comment on topics of concern including:
 - a. The mitigation and claims process
 - b. Impact on others groups such as the tourism communities, restaurants, (landside impacts), etc.
 - c. Monitoring plan during and after the testing



City of Morro Bay

City Attorney Department
Morro Bay, CA 93442
805-772-6568

AGENDA NO: A-4

MEETING DATE: 04/24/2012

April 23, 2012

Jennifer DeLeon, Project Manager
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825

RE: Draft Environmental Impact Report for the Central Coastal California Seismic Imaging Project (State Clearinghouse No. 2011061085)

Dear Ms. DeLeon:

The following comments on the Draft Environmental Impact Report for the Central Coastal California Seismic Imaging Project are submitted by the City of Morro Bay.

The City of Morro Bay shares the concerns in the Draft Environmental Impact Report (DEIR) for Pacific Gas & Electric Company's (PG&E) proposed Central Coastal California Seismic Imaging Project related to the severe impacts resulting from seismic blasting from arrays of towed massive airguns during an 82-day, 24/7 period from September to December 2012. Therefore, the City of Morro Bay agrees with the findings in the Draft Environmental Impact Report that states:

The Project would generate potentially significant environmental impacts on air quality, terrestrial and marine biological resources, greenhouse gases (GHGs), land use and recreation, and noise. Impacts to air quality, marine biological resources, and land use and recreation, remain Significant and Unavoidable even after all appropriate and feasible mitigation measures are applied. The EIR found Significant and Unavoidable impacts to fin, humpback and blue whales resulting from noise. Substantial impact on the Morro Bay stock of the harbor porpoise is also considered to be significant; based on this threshold, is Significant and Unavoidable. Project impacts on sea otters are also considered to be Significant and Unavoidable because of the proximity of the survey to sea otter habitat. The Project is also expected to have Significant and Unavoidable impacts on air quality and greenhouse gases. Significance thresholds for air pollutants are developed by taking into consideration the levels at which individual project emissions would result in cumulatively considerable impacts.

ADMINISTRATION
595 Harbor Street

CITY ATTORNEY
595 Harbor Street

FINANCE DEPARTMENT
595 Harbor Street

FIRE DEPARTMENT
715 Harbor Street

HARBOR DEPARTMENT
1275 Embarcadero Road

POLICE DEPARTMENT
850 Morro Bay Boulevard

PUBLIC SERVICES
955 Shasta Avenue

RECREATION & PARKS
1001 Kennedy Way

Clearly, the impacts from the Central Coastal California Seismic Imaging Project would be tremendous and would have significant known and unknown effects on our local ecosystem, in addition to effects to our City's and the local fishing community's economy, both recreational and commercial, from revenue lost from the study's effects on commercial fishing, sport fishing, and whale and marine mammal watching.

Although the City of Morro Bay agrees with the above findings, that the Seismic surveying proposed by the Pacific Gas & Electric threatens "significant and unavoidable impacts" to fish, mammals, persons in the water and to fishing seasons, many of the Applicant Proposed Measures fall far short of realistic and meaningful mitigations for those impacts. In addition, the DEIR fails to adequately address many other concerns for the City of Morro Bay.

The DEIR fails to take into account the need for vessels to enter and leave the Morro Bay Harbor. The project proposes to keep all vessels out of the entire Project Boundary for the entire 82 days (Pages 4.10-13 to 4.10-16). The Project Boundary goes completely across the mouth of the Morro Bay Harbor and would preclude any vessels from leaving or entering the harbor for 82 days. This is an extremely important issue since the Morro Bay Harbor is designated as a "Harbor of Safe Refuge" and is the only protected harbor between Monterey and Santa Barbara, as well as home to United States Coast Guard and Morro Bay Harbor Patrol. Both of these entities cannot have any restrictions on access to the harbor mouth or elsewhere due to patrol responsibilities and in case of emergency.

The DEIR fails to take into account that the recreational rockfish season has been extended from the more recent November 15 close date to December 31. This impact will extend over into our local community, which will suffer due to their inability to sell coffee, fuel, breakfasts, bait, etc., because of the closure of fishing areas.

The DEIR fails to take into account that a portion of the project boundary is within a highly rich Marine Protection Area (MPA). The MPAs are intended to protect the State's marine life and habitats, marine ecosystems, and marine natural heritage, as well as to improve recreational, educational and study opportunities provided by marine ecosystems subject to minimal human disturbance. The Marine Protection Areas have been designed to create areas of no fishing in order to enhance areas outside MPAs. This project will result in the "take" of fish, larvae and eggs in violation of and destroying the whole purpose of the MPA. In addition, "take" will also occur in the Federally protected Rock Cod Conservation Area (RCA). The fishermen are not exempt from a "take" of fish in protected areas, and the same should be the case under the law for PG&E.

The DEIR incorrectly states that operations of the project will be occurring during a slower fishing production time period as the City experiences its best fishing during the fall and early winter months. The DEIR at page 4.12-13 / 4.13-14 establishes that the three primary fisheries in the City's ports have high production levels during the project time frame, only really dropping off somewhat during the holidays in December. Obviously this is the best weather time of year, and is the reason why PG&E has designated this time of year to commence the project.

The DEIR, on page 4.13-3, incorrectly states that the commercial fishing activity of the area is in "precipitous" decline by quoting an outdated study, the *2008 Morro Bay and Port San Luis Commercial Fisheries Business Plan*, when in fact, according to the *2011 Morro Bay Commercial Fisheries Economic Impact Report*, "Earnings for fishermen at the dock (EVV) in

Morro Bay have jumped to \$4.3 million in 2010 from a 20 year low of \$1.7 million in 2007, an increase of over 250%. Earnings are translated into wages for crew, purchases of fuel, ice, supplies, offloading fees, bait and baiting services as well as vessel and gear repair, gear purchases, association dues and slip fees" (Lisa Wise Consulting, May 2011, page 3). And on page 9 of this report it is stated, "Fishing activity has been on the rise in San Luis Obispo County and the number of trips has increased from 3,102 in 2007 to 4,211 in 2010, an approximate 36% increase." The City has serious issue with the DEIR in that regard as it downplays the commercial fishing industry and activity and its importance to the local and regional economies, and therefore the Commercial Catch and Landing Data Trends section of the DEIR starting on page 4.13-3 is highly suspect. And finally, the applicable mitigation measures summarized for commercial fishing impacts on Table 4.10-11 consist entirely of developing and implementing a "Communication Plan" with local fishing and boating interests. This is completely unacceptable and does not address the real impacts that will be experienced by the fishing fleet now and well into the future.

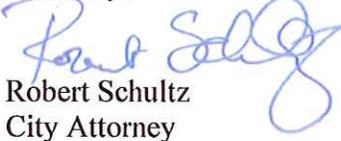
In addition, effects to the recreational fishing fleet, both passenger-for-hire sportfishers as well as private boaters, will be similarly significant and the mitigations proposed under Table 4.10-4 consist of the same "Communication Plan" approach. This too is unacceptable.

The DEIR fails to take into account that the National Marine Fisheries/NOAA has placed the Individual Fish Quota (IFQ) program into affect and is working on implementing this program in Morro Bay. IFQs are allocated according to the recent catch history of the fishery. Those with bigger catches generally get bigger quotas. This project would be very costly as fisherman would lose one fourth of the year's overall production lowering the local IFQ'S to the fishermen of this area and cause a loss of the annual income to local fishermen over the long term.

Lastly, while the State Lands Commission and PG&E may have met the minimum noticing requirements for this project and its documentation, given the nature and scope of this project, and its potential known and unknown impacts, the timeline for comment on this DEIR is woefully inadequate for meaningful analysis and comment by the public and seems on a fast track suited only to PG&E and their project calendar and commitments.

Based upon the foregoing, it is the City of Morro Bay's position that if this study goes on as planned, there will be serious damage to our local economy from revenue lost from the study's effects on commercial fishing, sport fishing and whale and marine mammal watching, as well as the countless other businesses that depend on them for their livelihood. Therefore, if this project were to proceed as proposed, there must be fair mitigation, both short term and long term, to the City and fishermen of Morro Bay, as well as full account of the effects on the local ecosystem and meaningful and effective mitigation measures to offset those effects.

Sincerely,


Robert Schultz
City Attorney

cc: Mayor & Council
City Manager
Harbor Director