

AGENDA NO: A-1

MEETING DATE: 4/13/09

MINUTES - MORRO BAY CITY COUNCIL  
CLOSED SESSION – MARCH 23, 2009  
CITY HALL CONFERENCE ROOM - 5:00 P.M.

Vice-Mayor Winholtz called the meeting to order at 5:00 p.m.

|          |                |               |
|----------|----------------|---------------|
| PRESENT: | Betty Winholtz | Vice-Mayor    |
|          | Carla Borchard | Councilmember |
|          | Rick Grantham  | Councilmember |
|          | Noah Smukler   | Councilmember |

|         |               |       |
|---------|---------------|-------|
| ABSENT: | Janice Peters | Mayor |
|---------|---------------|-------|

|        |                |               |
|--------|----------------|---------------|
| STAFF: | Andrea Lueker  | City Manager  |
|        | Robert Schultz | City Attorney |

CLOSED SESSION

MOTION: Councilmember Smukler moved the meeting be adjourned to Closed Session. The motion was seconded by Councilmember Grantham and unanimously carried. (4-0)

Vice-Mayor Winholtz read the Closed Session Statement.

**CS-1 GOVERNMENT CODE SECTION 54956.9(A); CONFERENCE WITH LEGAL COUNSEL REGARDING PENDING CLAIMS AND LITIGATION; STATUS REPORT ON THE HANDLING OF PENDING CLAIMS AND LITIGATION.** This is a report on the process of handling claims and litigation and no action may be taken on any matter not specifically listed. Council may request a specific matter be agendized in the future for action.

**CS-2 GOVERNMENT CODE SECTION 54956.9(A); CONFERENCE WITH LEGAL COUNSEL REGARDING PENDING LITIGATION.**

- **WALLICK vs. CITY OF MORRO BAY**

The meeting adjourned to Closed Session at 5:00 p.m. and returned to regular session at 5:45 p.m.

MOTION: Councilmember Smukler moved the meeting be adjourned. The motion was seconded by Councilmember Borchard and unanimously carried. (4-0)

The meeting adjourned at 5:45 p.m.

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING – MARCH 23, 2009  
VETERANS MEMORIAL HALL - 6:00 P.M.

Vice-Mayor Winholtz called the meeting to order at 6:00 p.m.

|          |                |                                  |
|----------|----------------|----------------------------------|
| PRESENT: | Betty Winholtz | Vice-Mayor                       |
|          | Carla Borchard | Councilmember                    |
|          | Rick Grantham  | Councilmember                    |
|          | Noah Smukler   | Councilmember                    |
| ABSENT:  | Janice Peters  | Mayor                            |
| STAFF:   | Andrea Lueker  | City Manager                     |
|          | Robert Schultz | City Attorney                    |
|          | Bridgett Bauer | City Clerk                       |
|          | Bruce Ambo     | Public Services Director         |
|          | John DeRohan   | Police Chief                     |
|          | Teresa McClish | Contract Planner                 |
|          | Mike Pond      | Fire Chief                       |
|          | Susan Slayton  | Administrative Services Director |
|          | Joe Woods      | Recreation & Parks Director      |

ESTABLISH QUORUM AND CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

MAYOR AND COUNCIL MEMBERS REPORTS, ANNOUNCEMENTS &  
PRESENTATIONS

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

PUBLIC COMMENT

Lily Stewart invited the public to Morro Bay High School's production of the musical "Lucky Stiff" which would be held March 26<sup>th</sup> – 28<sup>th</sup>.

David Weisman, representing the Alliance for Nuclear Responsibility, requested the City Council consider placing on a Council agenda a letter regarding the investigation of seismic retrofitting of the power plant (AB 42).

Colby Crotzer expressed concern with the management of City funds.

Hank Roth stated the Citizens Police Academy would be held on consecutive Thursdays April 23<sup>rd</sup> through June 18<sup>th</sup>.

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Pearl Munak requested the City’s assistance to lobby our representatives to allow SSI recipients to be able to receive food stamps.

Joan Solu announced the Dixon Spaghetti fundraiser would be held Friday, March 27<sup>th</sup>; and the Del Mar Elementary School fundraiser would be held Sunday, March 29<sup>th</sup> with an art auction, cow plop and barbeque.

Rick Gilligan announced a meeting regarding the Community Aquatics Center on April 4<sup>th</sup>. He also expressed support for Item B-1 (Master Plan Amendment/Special Use Permit/Coastal Development Permit to Designate and Improve a One-Acre Area Within Del Mar Park for Use as an Off-Leash Dog Park).

Frank Silva, Morro Bay Garbage, stated “Clean Up Week” is scheduled for the week of April 6<sup>th</sup>–10<sup>th</sup>, which is a community service provided free to single-family residential customers.

Melody DeMeritt announced the Morro Bay Kite Festival Parade is scheduled on April 25<sup>th</sup>, and expressed her desire that Morro Bay Boulevard would be paved by that date. She also stated the discussion of a four-year mayoral term is anti-democratic.

Vice-Mayor Winholtz closed the hearing for public comment.

Vice-Mayor Winholtz called for a break at 7:04 p.m.; the meeting resumed at 7:15 p.m.

A. CONSENT CALENDAR

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

- A-1 APPROVAL OF MINUTES FOR THE REGULAR CITY COUNCIL MEETING OF MARCH 9, 2009; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-2 AMENDMENT TO THE FLEXIBLE SPENDING ACCOUNT BENEFIT FOR DEPENDENT CARE EXPENSES CONTRIBUTION LIMIT; (ADMINISTRATIVE SERVICES)

**RECOMMENDATION: Authorize the maximum contribution limit in the Flexible Spending Account Program for Dependent Care expenses to be set at \$5,000.**

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A-3 STATUS REPORT ON APPLICATIONS FOR ECONOMIC STIMULUS FUNDING; (ADMINISTRATION)

**RECOMMENDATION: Accept the Status Report on Applications for Economic Stimulus Funding for file.**

A-4 LETTER OF SUPPORT FOR LIABILITY IMMUNITY BILL (AB 634); (ADMINISTRATION)

**RECOMMENDATION: Approve sending the letter of support for Liability Immunity Bill (AB 634).**

A-5 PROCLAMATION DECLARING APRIL 2009 AS "FAIR HOUSING MONTH"; (PUBLIC SERVICES)

**RECOMMENDATION: Adopt Proclamation.**

A-6 PROCLAMATION DECLARING APRIL 2009 AS "MONTH OF THE CHILD" AND "CHILD ABUSE PREVENTION MONTH" AND APRIL 11, 2009 AS "DAY OF THE CHILD"; (ADMINISTRATION)

**RECOMMENDATION: Adopt Proclamation.**

A-7 PROCLAMATION DECLARING AMERICAN HUMANE SOCIETY'S "EVERY DAY IS TAG DAY"; (ADMINISTRATION)

**RECOMMENDATION: Adopt Proclamation.**

A-8 CONTINUATION OF EMERGENCY PER PUBLIC CONTRACT CODE SECTION 22050 FOR THE INSTALLATION OF ENERGY RECOVERY EQUIPMENT; (PUBLIC SERVICES)

**RECOMMENDATION: Determine the necessity to continue the emergency per Public Contract Code 22050 for the installation of desalination plant energy recovery equipment.**

Vice-Mayor Winholtz pulled Items A-6 and A-7 from the Consent Calendar in order to make presentations.

**MOTION:** Councilmember Borchard moved the City Council approve Items A-6 and A-7 of the Consent Calendar. The motion was seconded by Councilmember Smukler and carried unanimously. (4-0)

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MOTION: Councilmember Grantham moved the City Council approve the remainder of the Consent Calendar. The motion was seconded by Councilmember Borchard and carried unanimously. (4-0)

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 MASTER PLAN AMENDMENT/SPECIAL USE PERMIT/COASTAL DEVELOPMENT PERMIT TO DESIGNATE AND IMPROVE A ONE-ACRE AREA WITHIN DEL MAR PARK FOR USE AS AN OFF-LEASH DOG PARK; (RECREATION & PARKS)

Planner Teresa McClish stated Morro Bay Pups, working through a joint venture Memorandum of Understanding with the City of Morro Bay, is proposing to designate and construct an off-leash dog park consisting of an amendment to the Parks and Recreation Facilities Plan for the provision of the off-leash dog park in order to provide consistency with the City's General Plan; and a Coastal Development Permit and Special Use Permit for the development of the off-leash dog park, including perimeter fencing of a one-acre area within the northwestern portion of Del Mar Park for off-leash dogs. Existing vegetation is proposed to remain and includes managed turf and cypress trees. The hours of operation of the dog park are from 7:00 a.m. to sunset, coinciding with the hours of operation of Del Mar Park. The proposed improvements consists of chain link fencing, double-entry gates, signage outlining the appropriate rules and regulations including required clean-up after dogs, bulletin board, sanitary mitt/bag dispenser and trash receptacles all of which are designed to be conducive for the safe enjoyment of the dog park. There is no lighting proposed. The Planning Commission reviewed and unanimously approved the project at their March 2, 2009 meeting. Ms. McClish recommended the City Council review the information provided, consider public testimony, and conditionally approve the project by adopting the findings in "Exhibit A"; approve the amendment to the Parks and Facilities Master Plan as shown in "Exhibit B"; and approve the Coastal Development Permit and Special Use Permit subject to the conditions included in "Exhibit C" and the Site Development Plans in "Exhibit "D".

Vice-Mayor Winholtz opened the hearing for public comment.

Steve Eckes, representing Morro Bay Pups, stated they unconditionally support the staff's recommendation on the dog park. He said Morro Bay Pups look forward to the prospect of this park being named in honor of the Jody Giannini Family in appreciation of their extraordinary generosity. Mr. Eckes stated Morro Bay Pups has achieved 80% of their fundraising goal.

Vice-Mayor Winholtz closed the public comment hearing.

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Recreation and Parks Director Joe Woods stated the Recreation and Parks Department has supported the off-leash dog park concept since its inception, along with the Del Mar Park Master Plan amendment, which includes this off-leash dog park area. He said as applicant, the Recreation and Parks Department staff agrees with the report that has been provided by Planning staff, and looks forward to the relationship with Morro Bay Pups throughout the construction and maintenance stages of this off-leash dog park.

Councilmember Grantham referred to the hours of operation, and suggested changing the hours to 8:00 a.m. opening on weekdays, and 9:00 a.m. on weekends. He noted Ironwood Avenue has a lot of traffic especially on Sundays when church is in session.

Councilmember Smukler suggested literature or a condition that directs participants of the dog park to access the southern approach of Ironwood Avenue. He also suggested using the Adopt-a-Tree Program and planting larger trees along the north side of the park for visibility and noise buffers. Councilmember Smukler stated he supports the hours of operation to begin at 8:00 a.m.

Councilmember Borchard stated she supports the project as presented along with Councilmember Grantham's suggested time change due to the surrounding residential area. She said she does not see an issue with traffic, as there is a balance between Island Street and Ironwood Avenue.

Councilmember Winholtz suggested the hours of operation be the same as weekend construction hours, which begin at 8:00 a.m. She also agreed that traffic should be directed to Ironwood Avenue because it is not as residential as Island Street.

MOTION: Councilmember Grantham moved the City Council conditionally approve the project by adopting the findings in "Exhibit A"; approve the amendment to the Parks and Facilities Master Plan as shown in "Exhibit B"; and approve the Coastal Development Permit and Special Use Permit subject to the conditions included in "Exhibit C" **with an amendment that the hours of operation are from 8:00 a.m. to sunset**, and the Site Development Plans in "Exhibit "D". The motion was seconded by Councilmember Borchard and carried unanimously. (4-0)

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B-2 HEARING TO CONSIDER PUBLIC TESTIMONY REGARDING THE  
ESTABLISHMENT OF THE MORRO BAY TOURISM BUSINESS  
IMPROVEMENT DISTRICT (MBTBID) AND LEVY OF ASSESSMENTS;  
(CITY ATTORNEY)

City Attorney Robert Schultz stated this item continues the process to establish the Morro Bay Tourism Business Improvement District by asking Council to take public testimony regarding the intention to form a district and levy assessments within the City's jurisdiction. The purpose of today's public meeting is to receive oral and written protests by the owners of lodging businesses within the City's jurisdiction that pay 50% or more of the proposed assessment, no further proceedings may be taken for a period of one year. If there is not such a majority protest, the formation process will continue to the public hearing on April 13, 2009 to consider the ordinance establishing the Morro Bay Tourism Business Improvement District. A second and final reading would be held on April 27, 2009. The Parking and Business Improvement Area Law of 1989, Streets and Highways Code Section 36500 et seq., sets out the sequence of events required for the formation of a Business Improvement District. Mr. Schultz recommended the City Council receive public testimony regarding the establishment of the Morro Bay Tourism Business Improvement District and levy of assessments and then direct staff to bring forth the draft Ordinance establishing the Morro Bay Tourism Business Improvement District for first reading and introduction at the April 13, 2009 City Council meeting.

Vice-Mayor Winholtz opened the hearing for public comment.

Joan Solu stated the motel/hoteliers would like to move forward with the appointment of an advisory board, and requested the City name the two candidates that would serve on the board from the Community Promotions Committee. She said at present no administrative fee has been designated in the ordinance, and requested it be publicly stated if there will or will not be a fee.

Jonni Biaggini stated it is important that the advisory board be seated by May 1, 2009 in order to move forward with the marketing plan and budgeting. She also noted it should be stated if there will be an administrative fee or not.

Harold Biaggini stated he agrees with the above speakers.

Mike Casola stated he appreciates the City's efforts in this matter.

Vice-Mayor Winholtz closed the public comment hearing.

Council asked questions for clarification.

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MOTION: Councilmember Grantham moved the City Council direct staff to bring forth the draft Ordinance establishing the Morro Bay Tourism Business Improvement District for first reading and introduction at the April 13, 2009 City Council meeting. The motion was seconded by Councilmember Smukler and carried unanimously. (4-0)

Vice-Mayor Winholtz called for a break at 8:12 p.m.; the meeting resumed at 8:22 p.m.

B-3 ADOPTION OF ORDINANCE NO. 544 AMENDING TITLE 5 BUSINESS LICENSES AND REGULATIONS, CHAPTERS 5.04 AND 5.09 REGARDING DELIVERY VEHICLES: FIRST READING/INTRODUCTION; (ADMINISTRATIVE SERVICES)

City Attorney Robert Schultz stated on October 27, 2008, staff brought forth an agenda item to discuss the requirement of a business license from businesses that make deliveries in Morro Bay. The Municipal Code Section 5.04.050 states: “There is hereby imposed, upon the businesses, trade professions, callings, and occupations specified in this title, license fees as established annually in the Business License Rate Schedule.” Staff interpreted this to mean that every individual, partnership or corporation that is doing business in Morro Bay is responsible for paying a business license unless it is not legal for the City to charge it. This logic was applied to delivery trucks, as they: 1) benefit from the advertising on their delivery vehicles; 2) are profiting from the sales of their wares; 3) should pay a similar fee, as required of the other businesses within the City limits; 4) have access to the same emergency services as do the license-paying businesses; 5) negatively impact our infrastructure; and 6) do not pay to support our City services as do our license-paying businesses. Mr. Schultz recommended the City Council approve Ordinance No. 544 amending Title 5: Business Licenses and Regulations, Chapters 5.04 and 5.08 regarding delivery vehicles for first reading and introduction.

Vice-Mayor Winholtz opened the hearing for public comment; there were no comments, and Vice-Mayor Winholtz closed the public comment hearing.

Councilmember Winholtz stated she has mixed emotions regarding this issue because there are larger vehicles that are using City streets, and then there are smaller vehicles that deliver goods to businesses that pass on fees to their customers.

Councilmember Borchard stated there are vendors that drive large vehicles and come into the City seven days per week, they utilize City services and facilities, and when the fuel costs were so high they charged the merchants that were in the hospitality business fuel charges.

Councilmember Smukler stated he agrees with Councilmember Borchard’s comments.

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Councilmember Grantham stated he supports this Ordinance in order to support Morro Bay consumers who pay delivery fees a break.

MOTION: Councilmember Borchard moved the City Council deny the approval of Ordinance No. 544 amending Title 5: Business Licenses and Regulations, Chapters 5.04 and 5.08 regarding delivery vehicles. The motion was seconded by Councilmember Smukler and carried with Councilmember Grantham voting no. (3-1)

B-4 ADOPTION OF ORDINANCE NO. 545 AMENDING TITLE 5 BUSINESS LICENSES AND REGULATIONS, CHAPTERS 5.04 REGARDING DURATION OF LICENSE AND FEE PAYMENT – PRORATING: FIRST READING/INTRODUCTION; (ADMINISTRATIVE SERVICES)

City Attorney Robert Schultz stated on October 27, 2008, staff brought forth an agenda item to maintain the one-year business license renewal cycle and change the renewal dates to coincide with the business start date. Staff contacted the business license software vendor and learned the program can be switched to an annual, monthly renewal cycle for a small fee. Council agreed to maintain a one-year business license renewal cycle, and change the renewal date to coincide with the business start date, and directed staff to return with an ordinance amending the Municipal Code. Mr. Schultz recommended the City Council approve Ordinance No. 545 amending Morro Bay Municipal Code Title 5, Section 5.04.160 entitled *Duration of license* to change the expiration date to coincide with the end of the month in which the business started, and amending Section 5.04.260 *Fee payment – prorating* to remove all references to prorating.

Vice-Mayor Winholtz opened the hearing for public comment; there were no comments, and Vice-Mayor Winholtz closed the public comment hearing.

MOTION: Councilmember Grantham moved the City Council approve Ordinance No. 545 amending Title 5 Business Licenses and Regulations, Chapters 5.04 regarding Duration of License and Fee Payment–Prorating for first reading and introduction. The motion was seconded by Councilmember Borchard and carried unanimously. (4-0)

City Manager Andrea Lueker read Ordinance No. 545 by number and title only.

C. UNFINISHED BUSINESS – None.

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D. NEW BUSINESS

D-1 RECOMMENDATION FROM BOARDS AND COMMISSIONS ON BY-LAW  
AMENDMENTS; (ADMINISTRATION)

City Manager Andrea Lueker stated on December 8, 2008, the City Council directed each Advisory Board and Commission to review its by-laws and return to Council with recommendations.

The Harbor Advisory Board recommended the following amendment be made to the Absence from Meetings Section of the by-laws to read as follows: “*At the Department Director’s discretion in consultation with the Chair and Vice Chair, an absence may be excused and not count against the Board Member.*”

The Recreation & Parks Commission recommended the following amendment be made to the City Council Policies and Procedures (which apply to the Boards and Commissions) regarding Cancellations of a Meeting: “Except in the case of an emergency or *mutually agreed upon by Staff and the Chair prior to the noticing of a regular meeting*, a regular meeting can only be canceled by an affirmative vote of the majority of Council at a previously noted meeting.”

The Community Promotions Committee noted conflicting information regarding the “Qualifications” section of its by-laws and requested the following amendment: “*Four of the 7 members of the Community Promotions Committee must be* residents and registered voters of the City during the term of appointment, ...”

The City Council denied the recommended amendment on the Cancellation of Meetings policy and concurred it should remain the same.

The City Council denied the recommended amendment on the Absence from Meetings policy and concurred it should remain the same.

MOTION: Councilmember Borchard moved the City Council approve the following amendment to the Community Promotions Committee Qualifications section: “*Four of the 7 members of the Community Promotions Committee must be* residents and registered voters of the City during the term of appointment, ...”. The motion was seconded by Councilmember Grantham and carried unanimously. (4-0)

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E. DECLARATION OF FUTURE AGENDA ITEMS

Councilmember Smukler requested to agendize the consideration of an amendment to Morro Bay Municipal Code 3.08.100(E)(2) regarding preference to local vendors; Council concurred.

Councilmember Smukler requested an update on the funding for the back-up generator for City Hall and Dial-a-Ride; Council concurred

Councilmember Winholtz requested to agendize a letter regarding seismic retrofitting of the power plant (AB 42); Council concurred.

Councilmember Winholtz requested to agendize a letter regarding Pearl Munak's request to lobby our representatives to allow SSI recipients to be able to receive food stamps; Council concurred.

Councilmember Winholtz requested to agendize a discussion on the formation of a committee regarding the Fire Department service options; Council concurred.

ADJOURNMENT

The meeting adjourned at 8:51p.m.

Recorded by:

Bridgett Bauer  
City Clerk