

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – OCTOBER 28, 2014
VETERAN’S MEMORIAL HALL – 6:00P.M.

AGENDA NO: A-2
MEETING DATE: 11/12/2014

PRESENT:	Jamie Irons	Mayor
	Christine Johnson	Councilmember
	Nancy Johnson	Councilmember
	George Leage	Councilmember
	Noah Smukler	Councilmember
STAFF:	David Buckingham	City Manager
	John Fox	Assistant City Attorney
	Jamie Boucher	City Clerk
	Rob Livick	Public Services Director
	Joe Woods	Recreation & Parks Director
	Eric Endersby	Harbor Director
	Amy Christey	Police Chief
	Steve Knuckles	Fire Chief
	Susan Slayton	Administrative Services Director

ESTABLISH QUORUM AND CALL TO ORDER – the meeting was called to order at 6:00pm.
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE

CLOSED SESSION REPORT

Mayor Irons reported that with regards to the Closed Session Items, the Council did not take any reportable action pursuant to the Brown Act.

MAYOR AND COUNCILMEMBERS’ REPORTS, ANNOUNCEMENTS & PRESENTATIONS

PUBLIC PRESENTATIONS - None

PUBLIC COMMENT

Chris Jewel, owns Reclaimed Antique Woodwork, located at 1612 Main Street in the pink art deco building. He specializes in architectural antiques; he repurposes them into other things. He’s enjoyed this new line of work and hopes people will come in to take a look.

Betty Winholtz spoke on Item C-1 – the MAS Compliance Audit Program stating that she wrote the Council asking for a reevaluation and is glad to hear that the City Manager has listened and it will be coming forward.

Richard Sadowski announced a family friendly Halloween event being held this Friday at Shoreline Church, located at the old Morro Elementary called Light Night Halloween. Everybody is invited to this family friendly, safe alternative event.

Susan Stewart encouraged people to attend the Pastel Exhibit at the Morro Bay Art Center. This is an international show and it's brilliant. It is a free event; the Art Center is open Monday thru Sundays from noon – 4pm. She also encouraged people to join the Art Center, its only \$35/year.

Jenifer Redman thanked the many volunteers and volunteer groups for their involvement with the Annual Morro Bay Avocado Margarita Festival. It was a wonderful event, put on by a strong committee with over 100 volunteers, and was host to local visitors and tourists alike. The event celebrates the world's best Avocado and was a wonderful fundraiser for all who participated. All who came, celebrated, enjoyed and helped raise money for local Morro Bay. Regarding Item C-1, she hopes that the Council will come up with a plan to support Morro Bay businesses with this audit issue and continues to keep Morro Bay a successful City to do business in.

Dawn Beattie is a listener and supporter of 97.3 Community Radio. She encouraged everybody to listen to the station.

Anika Valasquez, a student at Family Partnership Charter School spoke on a "Free the Children Campaign" called "We Scare Hunger". During Halloween, they will show up asking for canned goods that can be donated to this cause. Items can also be donated at the old Morro Elementary Library Room.

Nancy Castle advertised the Eco Rotary Electronic Waste Recycling Fundraiser being held on November 1st from 9am-1pm at Coast Electronics. On November 9th, the Historical Society Meeting will be held at the Fire Department and will feature our current as well as our 2 most recently retired Fire Chiefs. The meeting will begin at 4:30pm. She also thanked Councilmembers Smukler and Christine Johnson for their work on the EBAC Resource Fair.

The public comment period was closed.

A. CONSENT AGENDA

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 SPECIAL CITY COUNCIL MEETING HELD ON OCTOBER 14, 2014; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE SPECIAL CITY COUNCIL MEETING HELD ON OCTOBER 14, 2014; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FOR THE CITY COUNCIL MEETING HELD ON OCTOBER 14, 2014; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-4 APPROVE THE USE OF GOVERNMENTAL IMPACT FEES TO REFURBISH THE DEL MAR PARKING LOT AND WALKWAY; (RECREATION & PARKS)

RECOMMENDATION: Authorize staff to use Governmental Impact Fees (Parks) to augment funds available in the Park Fee Fund and Tennis Court Project Fund for refurbishing the parking lot and walkway at Del Mar Park.

A-5 APPROVAL OF PROCLAMATION DECLARING NOVEMBER 15, 2014 AS ARBOR DAY; (PUBLIC SERVICES)

RECOMMENDATION: Adopt Proclamation.

A-6 APPROVAL OF RESOLUTION 69-14 FOR THE ASSIGNMENT AND ASSUMPTION OF LEASE SITE 68/68W (HARBOR FRONT SUITES, HELD) LOCATED AT 591 EMBARCADERO FROM 591 EMBARCADERO, LLC TO THE VIOLE' FAMILY, LLC; (HARBOR)

RECOMMENDATION: Approve Resolution 69-14, for the Assignment and Assumption of Lease Site 68/68W.

A-7 AUTHORIZATION TO SUBMIT CALTRANS SUSTAINABLE TRANSPORTATION PLANNING GRANT APPLICATION; (PUBLIC SERVICES)

RECOMMENDATION: Adopt Resolution 70-14 authorizing staff to submit a grant application to the California Department of Transportation (Caltrans) for a Sustainable Communities grant in the amount of \$249,000 for the preparation of the Morro Bay Sustainable Transportation Study and Adaptation Strategies Plan and \$34,000 grant match.

A-8 REVIEW OF THE QUARTERLY FINANCIAL STATUS REPORTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2014; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Receive and file.

A-9 RESOLUTION NO. 72-14 ADOPTING THE MEMORANDUM OF UNDERSTANDING (MOU) WITH THE SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU) LOCAL 620 AND RELATED COMPENSATION; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Resolution No. 72-14, approving the two-year MOU with the Service Employees International Union (SEIU) Local 620.

A-10 RESOLUTION NO. 71-14 AUTHORIZING THE CITY OF MORRO BAY TO ENTER INTO A 2014/2015 BOATING SAFETY AND ENFORCEMENT EQUIPMENT GRANT CONTRACT WITH THE STATE OF CALIFORNIA DIVISION OF BOATING AND WATERWAYS IN THE AMOUNT OF \$50,000 FOR PURCHASE OF TWO NEW ENGINES FOR HARBOR PATROL VESSEL 68; (HARBOR)

RECOMMENDATION: Adopt Resolution No. 71-14 authorizing the Harbor Director to execute and manage the attached Boating Safety and Enforcement (BS&E) Equipment Grant Contract Agreement #C8957115 with the California Division of

Boating and Waterways (DBW) for \$50,000 for the funding of two new Mercruiser gasoline engine and outdrive packages for twin Harbor Patrol vessel 68.

A-11 RESOLUTION NO. 73-14 ADOPTING THE MEMORANDUM OF UNDERSTANDING (MOU) WITH THE MORRO BAY FIRE FIGHTERS ASSOCIATION AND RELATED COMPENSATION; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Resolution No. 73-14, approving the two-year MOU with the Morro Bay Fire Fighters Association.

A-12 AWARD OF CONTRACT FOR PROJECT NO. MB2015-ST – 01 STREET REHABILITATION; (PUBLIC SERVICES)

RECOMMENDATION: Award contract as recommended.

A-13 AUTHORIZATION TO REBID CONTRACT FOR THE PROJECT NO. MB-2013-S2: MORRO CREEK MULTI-USE TRAIL AND BRIDGE PROJECT; (PUBLIC SERVICES)

RECOMMENDATION: Reject all bids and authorize staff rebid the project as soon as possible.

The public comment period was opened for the Consent Calendar; seeing none, the public comment period was closed.

Mayor Irons pulled Items A-8 and A-13 and Councilmember Nancy Johnson pulled Items A-9 and A-11 from the Consent Calendar.

MOTION: Councilmember Christine Johnson moved the City Council approve Items, A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-10 and A-12 from the Consent Calendar as presented. The motion was seconded by Councilmember Smukler and carried unanimously, 5-0.

Ayes: Irons, C. Johnson, N. Johnson, Leage, Smukler

No's: None

A-8 REVIEW OF THE QUARTERLY FINANCIAL STATUS REPORTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2014; (ADMINISTRATIVE SERVICES)

Mayor Irons pulled this item to allow Administrative Services Director Susan Slayton provide a brief oral update.

MOTION: Councilmember Smukler moved to approve Item A-8 of the Consent Calendar as presented. The motion was seconded by Councilmember Christine Johnson and carried unanimously, 5-0.

Ayes: Irons, C. Johnson, N. Johnson, Leage, Smukler

No's: None

A-9 RESOLUTION NO. 72-14 ADOPTING THE MEMORANDUM OF UNDERSTANDING (MOU) WITH THE SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU) LOCAL 620 AND RELATED COMPENSATION; (ADMINISTRATIVE SERVICES)

A-11 RESOLUTION NO. 73-14 ADOPTING THE MEMORANDUM OF UNDERSTANDING (MOU) WITH THE MORRO BAY FIRE FIGHTERS ASSOCIATION AND RELATED COMPENSATION; (ADMINISTRATIVE SERVICES)

Councilmember Nancy Johnson pulled both items feeling it was important to let the public know these two employee groups as well as the other 3 employee groups contracts have been approved and will cost \$413,000 over the next 2 years. She feels staff needs and deserves the money but also feels the public needs to know how much we are spending.

MOTION: Councilmember Nancy Johnson moved to approve Items A-9 and A-11 of the Consent Calendar as presented. The motion was seconded by Councilmember Smukler and carried unanimously, 5-0.

Ayes: Irons, C. Johnson, N. Johnson, Leage, Smukler

No's: None

Councilmember Smukler asked Ms. Slayton to provide a short negotiation history. He also pointed out that we saved money not spending it on an outside negotiation consultant contract.

A-13 AUTHORIZATION TO REBID CONTRACT FOR THE PROJECT NO. MB-2013-S2: MORRO CREEK MULTI-USE TRAIL AND BRIDGE PROJECT; (PUBLIC SERVICES)

Mayor Irons pulled this item to give Public Services Director Rob Livick the opportunity to respond to it. Mr. Livick stated they are look for Council to reject all bids and authorize staff to rebid the project as no bids came in at or under the project budget. There are possible cost savings via the hydro-seeding maintenance, the piles for the bridge foundation system and the pedestrian pathway itself. As an alternative, the Council could authorize the additional funds and direct staff to work with the apparent low bidder to work on a deductive change order to achieve those cost savings. Both options have their risks.

Mayor Irons stated that considering the timeline of getting everything done, it would be prudent to consider a special meeting to consider the award if needed.

MOTION: Mayor Irons moved to approve Item A-13 of the Consent Calendar as presented. The motion was seconded by Councilmember Christine Johnson and carried unanimously, 5-0.

Ayes: Irons, C. Johnson, N. Johnson, Leage, Smukler

No's: None

B. PUBLIC HEARINGS - None

C. UNFINISHED BUSINESS / SECOND READING AND ADOPTION OF ORDINANCES

C-1 DISCUSSION AND DIRECTION ON THE MUNICIPAL AUDIT SERVICES (MAS) BUSINESS LICENSE COMPLIANCE AUDIT PROGRAM; (ADMINISTRATION)

City Manager David Buckingham presented the staff report, providing an update on the City's business license audit and provided recommendations for how to best proceed. Staff is asking Council to pass 2 motions resulting in a change to our current muni code: provide a 90 day amnesty period that forgives penalties for all businesses who obtain a current business license and pay appropriate unpaid taxes; and, establish a gross receipts threshold that all businesses with gross receipts under a certain dollar amount could purchase a business license for a nominal processing tax to be added to the master fee schedule. The effects of these changes would provide that all past due penalties for any business, whether contacted by the City or MAS or has yet to be contacted by either, that obtains a valid business license in the amnesty period, will be forgiven and that a very small business who demonstrates gross receipts under an established threshold would be eligible for a lower annual business license. The audit was conducted to ensure a level playing field for all businesses, to collect lost revenue, and to identify businesses operating without a license. The MAS contract states that MAS has no collection authority; is to identify entities working in Morro Bay without a license; communicates that which is due to the businesses; are paid after taxes/penalties are collected and forwards their collected monies to the City; and, the City conducts an appropriate appeals process. MAS conducts the audit by contacting businesses with existing licenses to ensure they are paying the appropriate level of tax as well as identifying businesses operating in Morro Bay without a license. The current status of the audit is that MAS has made contact with all Morro Bay business license holders with some cases being closed, some have complied and some are in the protest stage. We are in the first year of a 3 year contract. Staff feels that moving forward, we could receive an additional \$200,000 in annual revenues. The appeal process was described as follows: business owners work with MAS and send a protest letter with separate payment for the license and penalties; protests are handled by the City; protest letter should include a detailed explanation for why penalties should be waived; the Morro Bay tax collector will consider each protest, make a determination and send a letter of determination; there is a 15 day appeals period; if appealed, the Council would make a final determination. Staff feels it's important to pass these motions as its apparent that we haven't had an effective audit system in Morro Bay for a long period of time and many businesses are out of compliance; there is also measurable confusion about what businesses require a license; and, finally many very small businesses would suffer undue financial hardship having to pay back taxes at the regular rate. A timeline was proposed: 10/28 – pass both motions; 11/4± hold a special meeting for ordinance introductions; 11/12 – adoption of ordinances; 12/12 – ordinances become effective; 12/13 – City begins refund process to those businesses who have paid penalties; 3/12 – last day of amnesty period; and 3/13 – no business is eligible for the automatic forgiveness.

Mayor Irons recused himself as he is currently in the protest process and is to date, being assessed penalties.

Councilmember Smukler would like to see us extend our communications on the amnesty to Cayucos and Los Osos. He would also like to see a third element to the motions to address revising the code itself so that it was easier to understand.

The public comment period for Item C-1 was opened.

Janice Peters praised the Council for their immediate response to this issue and the concerns of the businesses. She noted that budget restrictions happen, ie: losing our code enforcement officer and then things don't get done. One of the main learning points from this is communication – Council and staff needs to be aware of the potential impact this, or any item, could have on our business community. If you do have a windfall of money, she hopes some of it will be put back into advertising and promotion locally.

Susan Stewart also appreciates the immediate response. She disagrees with the staff report stating that businesses were used to being coddled when this was done in house; she feels no one has ever accused the City of having an easy or friendly business environment. Morro Bay is mostly made up of small family owned businesses that contribute to our community. They provide products and services directly to the public. She appreciates we are working towards more reasonable and comprehensive codes. She still thinks we also need to look at the vendor license requirements for those vendors who come to town only a few times a year.

Kerrigan Mahan apologized for his behavior at the Chamber Business Forum. He still feels we are creating a hostile work environment with this audit. He wondered why we hired MAS as they don't have a good reputation. He went on record that he has dismissed them.

Melanie Williams Mahan also stated that MAS doesn't have a good reputation amongst other cities. MAS hasn't shown them any reasons for needing a business license. They feel harassed. She is disappointed in the way this situation has been handled; we hired first and asked questions later.

Cyndee Edwards, on behalf of Chamber members, recommended the City leadership act swiftly and was pleased that we did so tonight. The manner in which the audit came about and the hiring of a third party collector created anxiety and fear and could have been avoided. Our businesses are the lifeline of the City. She hopes the process is made fair and equitable, that we relieve the business owner of their anxiety and provide clear and concise communication before an audit is set into motion.

Ann Calhoun responded to the \$2500 fee, is it gross or net? She feels it should be cost after materials. Her observation is that this issue isn't ready for "prime-time"; maybe some fine tuning needs to happen first. For example, definitions need to be made clearer. She applauded the Council for acting so quickly.

Mary Van Zee owns Treasures Antique and Mall where she has over 75 vendors in the store and 48 more that do consignment. She feels most won't remain in the store if they have to pay this business license fee. She would also like to see the small business license set based on a net not gross figure.

Jennifer Redman was pleased that both Council and staff have clearly heard the voice of local businesses; she thanked everybody for doing so. She also appreciates the steps being taken. She would like staff to take a look at the \$2500 figure as well as the gross vs net issue. She also hoped that we will continue to work with businesses on the code.

Doug Tobias attended the Chamber's MAS Business Forum. He feels there is a misrepresentation of claim, he stated that no one is required to contract with MAS as a third party intervener; the authority lies with the City and their tax collection.

The public comment period for Item C-1 was closed.

Councilmember Nancy Johnson feels that this item should have initially been pulled and discussed and she apologized that they didn't know at the time what would happen. She agrees that the concept of net vs gross is very important. She asked staff if people can say no to MAS and work directly with the City. Staff confirmed that while it would be preferable to work with MAS; yes, they can work directly with the City.

Councilmember Smukler spoke on the low threshold exemption - gross vs net and hoped we could come up with a motion tonight that takes care of that in a temporary fashion and then look more closely at it when looking to update the entire code. He wishes we had started the whole process with this meeting tonight and apologizes for not having done so.

Councilmember Leage also apologized; he feels that Council let the public down. He/they should have looked into this a little more, no one thought it would have gone this far.

Councilmember Christine Johnson also apologized; the concept looked good on paper and was a need that we had. The silver lining is that we can clean this process up.

MOTION: Councilmember Smukler moved approval of Motion #1 as presented which provides the 90 day amnesty period for businesses. The motion was seconded by Councilmember Christine Johnson and carried 4-0-1 with Mayor Irons having recused himself.

Ayes: C. Johnson, N. Johnson, Leage, Smukler

No's: None

Recused: Irons

Mayor Irons returned to the dais.

MOTION: Councilmember Smukler moved approval of Motion #2 with an adjustment replacing "establish **gross receipts** threshold" with "establish **recommended** threshold". The motion was seconded by Councilmember Nancy Johnson and carried unanimously, 5-0.

Ayes: Irons, C. Johnson, N. Johnson, Leage, Smukler

No's: None

MOTION: Councilmember Smukler moved to direct staff to initiate a code and master fee schedule update for business licenses that includes process, definitions, flat vs gross rates, employees, etc. as well as include a strong stakeholder participation component. The motion was seconded by Councilmember Nancy Johnson and carried unanimously, 5-0.

Ayes: Irons, C. Johnson, N. Johnson, Leage, Smukler

No's: None

C-2 PRESENTATION AND REVIEW OF REPORT REGARDING INITIAL FINDINGS ON HYDROLOGIC EVALUATION OF THE POTENTIAL BENEFITS TO THE CITY WATER SUPPLY FROM INCREASING WASTEWATER DISCHARGE TO EITHER

MORRO OR CHORRO CREEK BY CLEATH HARRIS ASSOCIATES; (PUBLIC SERVICES)

Public Services Director Rob Livick introduced John Rickenbach for further comments who framed the Cheath-Harris Geologists technical memoranda in terms of the whole project. The floor was then given to Spenser Harris, of Cleath Harris Geologists for his presentation. Mr. Harris then proceeded to outline his Technical Memoranda regarding City of Morro Bay Water Supply Benefits Analyses in the Morro and Chorro Valleys using a PowerPoint presentation. Mr. Harris first discussed the benefits of adding additional flow to Chorro Creek and the relative benefit to the City's wells in the lower Chorro Valley. Graphics included exhibits that address creek flow and well production, creek correlation graphs, estimates of creek flow and well production with an average of 1.5 million gallons per day of additional treated wastewater discharged to the creek and an estimate of additional well production for both wet and drought years. Mr. Harris then addressed potential benefits in the Morro Valley by making reclaimed water available to agriculture operations to replace that being withdrawn from ground water, i.e. "in-lieu" recharge. Mr. Harris addressed the assumptions in the memo and provided graphics that detailed groundwater elevations, reclaimed water benefits and potential increases in water available for City use. Mr. Harris summed up his presentation with a table that reflected the amount of water that would be available to the City to use through the application of treated wastewater in the Morro and Chorro Valleys. The amount of water available to the City wells in the Chorro Valley ranged from 510 – 900 Acre Feet per year of additional water. While in the Morro Valley the range was 320 – 900 Acre feet per year. The analyses also assumed that discharge in the Chorro Valley included contributions from both the City of Morro Bay and the Cayucos Sanitary District; while the Morro Valley only included the City's reclaimed wastewater. Mr. Harris went on to state there are other factors to consider in both scenarios including: water rights, environmental demand, agricultural water user contracts and basin safe yield.

Council asked if the CSD were included in the Morro scenario would the benefit increase, Mr. Harris stated "by approximately 400 acre feet per year of additional water".

The public comment period for Item C-2 was opened.

Bill Martoney stated that it sounds like most of the year in Chorro Valley, the bulk of the water would be going downstream into the ocean and in the Morro Valley, as far as the farmers, the potential for reusing the recycled water is great. He asked if we have water rights to the Chorro Valley, it's his understanding that we don't. It seems the Morro Valley has the biggest benefit. If we ship this water to the farmers, in turn its water in the Morro Valley that the farmers aren't using, and that is the water that will benefit the City.

Marla Jo Bruton Sadowski would like clarification on where on the County road the water flows into Canet and into the underground aquifer. The CMC plant has a requirement to keep .75 flow in the stream before they can use any reclaimed water. She asked where the County water for Dairy Creek and other uses is coming from when the flow isn't there. She also asked where the JPA stands, do we have a legal JPA contract? It feels Morro Bay is at a disadvantage not knowing that Cayucos is doing and is concerned with our financial welfare.

The public comment period for Item C-2 was closed.

Councilmember Smukler wants to be reassured we receive feedback from the WRFCAC regarding their thoughts on each report we have heard to date as we build towards the decision point.

This report was received and filed.

C-3 DISCUSSION ON ENGAGING MANAGEMENT PARTNERS TO UPDATE THE MAY 2008 ASSESSMENT OF CITY ORGANIZATION AND FINANCIAL OPTIONS; (ADMINISTRATION)

City Manager David Buckingham presented the staff report.

MOTION: Mayor Irons moved to proceed beyond 11:00pm. The motion was seconded by Councilmember Christine Johnson and failed 2-3 with Councilmembers Nancy Johnson, Smukler and Leage voting no.

Ayes: Irons, C. Johnson

No's: N. Johnson, Leage, Smukler

The public comment period for Item C-3 was opened; seeing none, the public comment period was closed.

Mayor Irons stated during the campaign, every candidate remarked on the Management Partners Study and desire to expand and use it as a valuable tool.

MOTION: Mayor Irons moved to take the staff recommendation and move forward and do the update on the Management Partners assessment. The motion was seconded by Councilmember Smukler and carried unanimously 5-0.

Ayes: Irons, C. Johnson, N. Johnson, Leage, Smukler

No's: None

Councilmember Smukler suggested we look at removing/postponing activity #10, wastewater pro formas, for re-evaluation, it may not need to be included.

D. NEW BUSINESS - None

E. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

Mayor Irons requested a discussion on updating the Council Policies and Procedures in the upcoming year; all Councilmembers concurred.

ADJOURNMENT

The meeting adjourned at 10:55 p.m.

Recorded by:

Jamie Boucher
City Clerk