

# City of Morro Bay

## City Council Agenda

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### *Mission Statement*

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

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**REGULAR MEETING  
TUESDAY, MAY 26, 2015  
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

CLOSED SESSION REPORT

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

PUBLIC PRESENTATIONS – None

PUBLIC COMMENT - Members of the audience wishing to address the Council on City business matters not on the agenda may do so at this time. For those desiring to speak on items on the agenda, but unable to stay for the item, may also address the Council 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.

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 CLOSED SESSION CITY COUNCIL MEETING HELD ON MAY 12, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE CITY COUNCIL MEETING HELD ON MAY 12, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF AGREEMENT WITH CENTRAL COAST STATE PARKS ASSOCIATION FOR USE OF A PORTION OF MORRO ROCK PARKING LOT FOR THE SEA OTTER EXPERIENCE TRAILER PROGRAM; (RECREATION)

**RECOMMENDATION: Approve the Agreement with Central Coast State Parks Association.**

A-4 APPROVAL OF RESOLUTION 29-15 FOR ASSIGNMENT OF LEASE AGREEMENTS FOR LEASE SITES 67/67W AND 68/68W FROM THE VIOLE' FAMILY LLC TO VIOLE LA ROCHE LLC; (HARBOR)

**RECOMMENDATION: Adopt Resolution No. 29-15 authorizing the Assignment and Assumption of Lease Agreements for Lease Sites 67/67W and 68/68W.**

A-5 RESOLUTION NO. 28-15 APPROVING A NEW 10-YEAR MASTER LEASE BETWEEN THE CITY OF MORRO BAY AND MORRO BAY FISH COMPANY FOR LEASE SITE 129W-131W, LOCATED AT 1231 EMBARCADERO; (HARBOR)

**RECOMMENDATION: Adopt Resolution No. 28-15 approving a new Master Lease Agreement for Lease Site 129W-131W.**

B. PUBLIC HEARINGS

B-1 PUBLIC HEARING FOR THE ADOPTION OF RESOLUTION NO. 30-15 ESTABLISHING NEW WATER AND SEWER (WASTEWATER) RATES (USER FEES); (PUBLIC WORKS)

**RECOMMENDATION: Hold a Public Hearing and adopt both water and sewer (wastewater) rate (user fee) increases through the adoption of Resolution No. 30-15.**

B-2 RESOLUTION NO. 26-15 CONTINUING THE PROGRAM AND LEVYING THE ASSESSMENTS FOR THE 2015/16 FISCAL YEAR FOR THE MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT (MBTBID); (ADMINISTRATIVE SERVICES)

**RECOMMENDATION: Hold a Public Hearing and adopt Resolution No. 26-15 Continuing the Program and Levying the Assessments for FY 2015/16 for the Morro Bay Tourism Business Improvement District (MBTBID).**

C. UNFINISHED BUSINESS / SECOND READING AND ADOPTION OF ORDINANCES - NONE

D. NEW BUSINESS

D-1 DISCUSSION AND DIRECTION ON BUSINESS LICENSE MUNICIPAL CODE REVIEW; (ADMINISTRATION)

**RECOMMENDATION: Discuss and provide direction to staff.**

E. COUNCIL 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.**

MINUTES – MORRO BAY CITY COUNCIL  
SPECIAL CLOSED SESSION MEETING –  
MAY 12, 2015  
CITY HALL CONFERENCE ROOM – 5:00 P.M.

AGENDA NO: A-1  
MEETING DATE: May 26, 2015

PRESENT:	Jamie Irons	Mayor
	John Heading	Councilmember
	Christine Johnson	Councilmember
	Matt Makowetski	Councilmember
	Noah Smukler	Councilmember
STAFF:	David Buckingham	City Manager
	Joe Pannone	City Attorney
	Eric Endersby	Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

SUMMARY OF CLOSED SESSION ITEMS - The Mayor read a summary of Closed Session items.

CLOSED SESSION PUBLIC COMMENTS - Mayor Irons opened the meeting for public comments for items only on the agenda; seeing none, the public comment period was closed.

The City Council moved to Closed Session and heard the following items:

**CS-1 GOVERNMENT CODE SECTION 54956.8 - CONFERENCE WITH REAL PROPERTY NEGOTIATOR:**

Property: Lease Site 129W-131W, Morro Bay Fish Company, 1231 Embarcadero

Agency Negotiators: Joseph Pannone, City Attorney and Eric Endersby, Harbor Director

Under Negotiation: Price and Terms of Payment

**CS-2 PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Title: City Attorney

The City Council reconvened to Open Session.

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

ADJOURNMENT

The meeting adjourned at 5.55p.m.

Recorded by:

Dana Swanson,  
City Clerk

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING – MAY 12, 2015  
VETERAN’S MEMORIAL HALL – 6:00P.M.

PRESENT:	Jamie Irons	Mayor
	Noah Smukler	Councilmember
	John Headding	Councilmember
	Christine Johnson	Councilmember
	Matt Makowetski	Councilmember
STAFF:	David Buckingham	City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Rob Livick	Public Works Director
	Scot Graham	Community Development Manager
	Cindy Jacinth	Associate Planner
	Eric Endersby	Harbor Director
	Amy Christey	Police Chief

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 6:06pm

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

CLOSED SESSION REPORT

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

MAYOR AND COUNCILMEMBERS’ REPORTS, ANNOUNCEMENTS & PRESENTATIONS

PUBLIC PRESENTATIONS

<https://youtu.be/Ow0TurnRnWk?t=9m18s>

10 Year Budget Forecast Presentation

City Manager Buckingham presented a brief summary of the 10 year budget forecast report prepared by Management Partners and previously presented at a Special City Council Study Session on March 31, 2015.

Full video of March 31, 2015 Special City Council meeting can be found here:

<https://youtu.be/2aXt5LDKFLA>

The Management Partners 10-year Budget Forecast Report can be found here: <http://ca-morrobay.civicplus.com/DocumentCenter/View/8377>

## LEAP Update

Don Maruska presented an update on LEAP initiatives.

<http://ca-morrobay.civicplus.com/DocumentCenter/View/8471>

Highlights of recent activities include:

- Lighting up Downtown – several non-profits and local businesses banded together to install lights in the downtown area to make the area more inviting and engaging.
- The Sun Bulletin building will soon be occupied by Elemental Herbs, a local growing business.
- Future plans for the Morro Bay Aquarium involve collaborating with non-profit organizations and Cal Poly to provide a marine science and education center.
- The Boatyard evaluation is moving forward.

## PUBLIC COMMENT

<https://youtu.be/Ow0TurnRnWk?t=35m42s>

Chelsea Cutler, owner of Blissful Blossoms, provided the business spot. Blissful Blossoms is located 898 Main Street, #C, near Harbor Street. She has been in the floral business for five years and opened a storefront in January. She specializes in bouquets, weddings and large events. Please visit her website at [www.blissfulblossomsslo.com](http://www.blissfulblossomsslo.com) or call (805) 776-5067. Hours are Monday – Saturday, 10am – 5pm.

Susan Stewart, Morro Bay business owner and resident, expressed concern about tree maintenance and a shortage of available parking in the downtown area.

Jan Goldman, Morro Bay, announced the Chamber mixer will be held on Thursday, May 14<sup>th</sup> at Grandma's Yogurt and the Business Forum will be held on Thursday, May 21<sup>st</sup> at the Grill Hut at its new location on Quintana from 7:30-9:00.

Linna Thomas, business owner, spoke in opposition to the location of the current parklet on Main Street and delivered 18 pages of petition signatures asking the parklet be moved.

Betty Winholtz, Morro Bay, spoke in opposition of rate increases until costs can be delineated, and with Cayucos withdrawing support for new sewer plant, the costs are more nebulous. This vote should be postponed until we know the costs for the sewer.

John Barta, Morro Bay, shared information regarding water costs and urged fellow citizens to file a protest on water rates.

The public comment period was closed.

City Manager Buckingham responded to questions and concerns raised during the Public Comment period.

A. CONSENT AGENDA  
<https://youtu.be/Ow0TurnRnWk?t=1h8m18s>

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 CITY COUNCIL MEETING HELD ON APRIL 28, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 STATUS REPORT OF A MAJOR MAINTENANCE & REPAIR PLAN (MMRP) FOR THE EXISTING WASTEWATER TREATMENT PLANT; (PUBLIC WORKS)

**RECOMMENDATION: Receive and file.**

A-3 RATIFICATION OF CONTRACT WITH SAM TAYLOR FOR SERVICES AS DEPUTY CITY MANAGER; (ADMINISTRATION)

**RECOMMENDATION: Ratify contract with Deputy City Manager.**

The public comment period for the Consent Agenda was opened.

Janice House, Morro Bay, expressed concern regarding Item A-3, noting the new position was never posted publically which denied local people the opportunity to apply for this job.

The public comment period was closed.

Mayor Irons pulled Item A-3.

MOTION: Councilmember Smukler moved the Council approve Items A-1 and A-2. The motion was seconded by Councilmember Johnson and carried unanimously, 5-0.

A-3 RATIFICATION OF CONTRACT WITH SAM TAYLOR FOR SERVICES AS DEPUTY CITY MANAGER; (ADMINISTRATION)  
<https://youtu.be/Ow0TurnRnWk?t=1h12m14s>

**RECOMMENDATION: Ratify contract with Deputy City Manager.**

City Manager Buckingham presented the staff report and responded to Council inquiries.

The public comment period for Item A-3 was opened.

Janice House, Morro Bay, shared she was not questioning need for the position, just the process.

Betty Winholtz, Morro Bay, shared that process is the key to government. She is also concerned about increasing salaries during a time when you're raising fees.

Joan Solu, Morro Bay, appreciates seeing great candidate and wanting to hire them, however, there should be an open and transparent process for hiring. She hopes some of the opaque things in the job description come to the advisory boards for discussion.

The public comment period for Item A-3 was closed.

Councilmember Johnson understands internal changes with staff are always a challenge, especially for those with long-term relationships with the community. The Council is responsible for the City Manager and City Attorney. Council can express their opinions to the City Manager, but he makes decisions on staffing issues and is responsible for those changes. She also noted Mr. Buckingham received input and made adjustments to the severance package in response to that.

Councilmember Makowetski asked City Attorney Pannone if the process was legal. Mr. Pannone said the process followed was a legally acceptable, permitted process by the City's policies. Councilmember Makowetski stated that in terms of objectives and goals, this is a positive thing and he supports this hire.

Councilmember Heading shared he will support hiring of Mr. Taylor but was upset that when he received his Council packet there was a contract for hiring, not that the individual was recommended for hiring, but the process. This person has been significantly vetted by a large number of people. There was no need to hire a firm or go through a significant process when you have already found a person who has the skill set needed in Morro Bay. In the future, he recommends this presentation be made prior to the item being put on the agenda for approval. He has significant trust in the City Manager and his ability to discern the transferable skill set of this individual; this move this will help us achieve the goals set forth.

Councilmember Smukler appreciates that having the opportunity to review the contract after the fact is an odd situation; this is very much a trust situation. He believes we are adding a great member to the team, particularly the economic development aspect.

Mayor Irons takes the comments regarding process seriously. This pushes his process comfort zone as well. The presentation addressed some concerns and he appreciates the severance adjustments.

**MOTION:** Councilmember Johnson moved the Council ratify the contract, as amended, with Mr. Sam Taylor as Deputy City Manager. The motion was seconded by Councilmember Heading and carried unanimously, 5-0.

B. PUBLIC HEARINGS

- B-1 RESOLUTION NO. 22-15 DECLARING THE INTENTION TO CONTINUE THE PROGRAM AND LEVY ASSESSMENTS FOR THE 2015/16 FISCAL YEAR FOR THE MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT (MBTBID) AND SCHEDULING A PUBLIC HEARING TO LEVY THE ASSESSMENTS; (ADMINISTRATIVE SERVICES)  
<https://youtu.be/Ow0TurnRnWk?t=2h3m59s>

Director Slayton presented the staff report.

The public comment period for Item B-1; seeing none, the public comment period was closed.

MOTION: Councilmember Headding moved the Council approve Resolution No. 22-15, as amended by staff. The motion was seconded by Councilmember Makowetski and carried unanimously, 5-0.

- B-2 RESOLUTION NO. 23-15 APPROVING THE ENGINEER'S REPORT AND DECLARING THE INTENT TO LEVY THE ANNUAL ASSESSMENT FOR THE CLOISTERS LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS)  
<https://youtu.be/Ow0TurnRnWk?t=2h7m17s>

Director Livick presented the staff report.

The public comment period for Item B-2 was opened; seeing none, the public comment period was closed.

Councilmember Johnson expressed appreciation to staff for their efforts to solve customer-service issues. Councilmember Smukler concurs noting, in particular, the concern about sprinklers in the median strip and planting of annuals. Mayor Irons made note of building up capitol funds over a couple of hears to take on projects as they come up.

MOTION: Councilmember Johnson moved the Council approve Resolution 23-15 approving the Engineer's Report and declaring the intent to levy the annual assessment for the Cloisters Landscaping and Lighting Maintenance Assessment District and setting the public hearing for June 23, 2015. The motion was seconded by Councilmember Smukler and carried unanimously, 5-0.

- B-3 RESOLUTION NO. 24-15 APPROVING THE ENGINEER'S REPORT AND DECLARING THE INTENT TO LEVY THE ANNUAL ASSESSMENT FOR THE NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS)  
<https://youtu.be/Ow0TurnRnWk?t=2h20m2s>

Director Livick presented the staff report.

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

MOTION: Councilmember Headding moved the Council approve Resolution No. 24-15 approving the Engineer's Report and declaring the intent to levy the annual assessment for the North Point Natural Area Landscaping and Lighting Maintenance Assessment District and setting the public hearing for June 23, 2015. The motion was seconded by Councilmember Makowetski and carried unanimously, 5-0.

C. UNFINISHED BUSINESS / SECOND READING AND ADOPTION OF ORDINANCES

C-1 DISCUSSION AND DIRECTION FOR FUTURE MORRO BAY WATER RECLAMATION FACILITY (WRF) AND MONTHLY WRF PROJECT PROGRESS UPDATE; (PUBLIC WORKS)

<https://youtu.be/Ow0TurnRnWk?t=2h23m39s>

City Manager Buckingham presented the staff report and, along with Director Livick, responded to Council inquiries.

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

Bob Keller, Morro Bay, supports staff recommendation #1 and approval of Resolution 25-15.

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

Councilmember Smukler asked staff to continue its outreach to the community of Cayucos.

Mayor Irons suggested inserting, "Commit to 'working cooperatively with CSD'" in items J and K of the Resolution. He believes Cayucos is looking toward a package deal that they believe can be completed in 3 years. If that is successful, we will operate the current plant for two years alone.

Councilmember Johnson agrees it's good to stay in touch with Cayucos. She looks forward to a project that has received initial and early support from the State Water Board and Coastal Commission and stands by the April 30 Resolution and the Resolution presented tonight, including the Mayor's recommended edits to items J & K.

MOTION: Mayor Irons moved the Council approve Resolution No. 25-15 with amendments to items J and K, inserting, "working cooperatively with CSD." The motion was seconded by Councilmember Johnson and carried unanimously, 5-0.

- C-2 ADOPTION OF ORDINANCE NO. 592 AMENDING SUBSECTION 14.08.090 O. OF THE MORRO BAY MUNICIPAL CODE RELATING TO *SALE AND USE OF FIREWORKS*; (POLICE)  
<https://youtu.be/Ow0TurnRnWk?t=4h6m18s>

Chief Christey presented the staff report.

The public comment period for Item C-2; seeing none, the public comment period was closed.

MOTION: Mayor Irons moved the Council adopt Ordinance 592 after reading title only and waiving further reading. The motion was seconded by Councilmember Makowetski and carried unanimously, 5-0.

- C-3 ADOPTION OF ORDINANCE NO. 593 ADDING CHAPTER 9.34 TO THE MORRO BAY MUNICIPAL CODE (MBMC) BANNING THE POSSESSION OF CERTAIN INTOXICATING COMPOUNDS KNOWN AS SYNTHETIC DRUGS; (POLICE)  
<https://youtu.be/Ow0TurnRnWk?t=4h7m52s>

Chief Christey presented the staff report.

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

MOTION: Councilmember Headding moved the Council adopt Ordinance 593 by reading title only and waiving further reading. The motion was seconded by Councilmember Johnson and carried unanimously, 5-0.

D. NEW BUSINESS

- D-1 DISCUSS ADVISORY BOARD JOINT MEETINGS AND RECOGNITION EVENT FOR ADVISORY BOARD MEMBERS; (COUNCIL)  
<https://youtu.be/Ow0TurnRnWk?t=4h9m30s>

Mayor Irons presented the report and responded to Council inquiries.

There was Council consensus for an annual recognition event to show appreciation for members of the City's Advisory Boards. City Manager Buckingham noted there will be a placeholder for this in the FY 16 budget. Council discussed having joint meetings with various advisory bodies, as needed, or requested.

The public comment period for Item D-1 was opened; seeing none, the public comment period was closed.

- E. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS - None  
<https://youtu.be/Ow0TurnRnWk?t=4h20m32s>

ADJOURNMENT

The meeting adjourned at 10:36pm.

Recorded by:

Dana Swanson  
City Clerk



AGENDA NO: A-3

MEETING DATE: May 26, 2015

## Staff Report

**TO:** Honorable Mayor and City Council **DATE:** May 18, 2015  
**FROM:** Celeste English, Recreation Administrative Technician  
**SUBJECT:** Approval of Agreement with Central Coast State Parks Association for use of a portion of Morro Rock parking lot for the Sea Otter Experience Trailer Program

### **RECOMMENDATION**

Staff recommends the City Council approve the proposed Agreement between the Central Coast State Parks Association (CCSPA) and the City of Morro Bay (CMB) for use of a portion of Morro Rock parking lot on Saturdays and Sundays, June 21, 2015 through September 6, 2015, for the Sea Otter Experience Trailer Program.

### **FISCAL IMPACT**

No fiscal impact is realized by approving the agreement.

### **BACKGROUND**

CCSPA, in partnership with California State Parks, promotes public awareness and stewardship of our natural resources and cultural heritage, now, and for future generations. As a non-profit organization they support interpretation, education, and volunteer efforts in local state parks. The Sea Otter Experience Trailer Program is staffed by California State Park Docents and members of the CCSPA. The experienced volunteers provide current scientific information related to the sea otters found in Morro Bay, and bay ecosystems, that allow visitors to learn how to preserve and protect the bay and all its living creatures in a fun, hands-on learning experience.

### **DISCUSSION**

Previous Agreements with CCSPA had been approved by staff; however, after reviewing the City's Contractual Authority matrix, it has been determined the proposed Agreement can only be approved by City Council.

### **CONCLUSION**

Staff recommends the City Council approve the proposed Agreement between the CCSPA and the CMB for use of a portion of Morro Rock parking lot for the Sea Otter Experience Trailer Program. The Sea Otter Experience Trailer Program provides valuable information to Morro Bay visitors on the importance of preserving and protecting our bay and the living creatures that make their home in the fragile bay waters.

### **ATTACHMENT**

Public Area Use Permit Application for the Sea Otter Experience Trailer Program.

Prepared By: CE

Dept Review: CE

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

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

LICENSE AGREEMENT

BY AND BETWEEN

CITY OF MORRO BAY

AND

CENTRAL COAST STATE PARKS ASSOCIATION



## **L I C E N S E   A G R E E M E N T**

This License Agreement ("License") is made as of this 26<sup>th</sup> day of May, 2015 by and between the CITY OF MORRO BAY, a municipal corporation ("Licensor"), and CENTRAL COAST STATE PARKS ASSOCIATION, a local agency of the State of California ("Licensee").

### **1.      LICENSED AREA, CONDITION OF SITE**

The licensed area, hereinafter called "Site," shall be that portion of Morro Rock parking lot on the bayside of Coleman Drive, outlined in blue as shown on the attached Site Map labeled "Exhibit A" and incorporated herein.

### **2.      USE**

Licensee may use the site for the Sea Otter Experience Trailer Program scheduled on Saturdays and Sundays during the License Term, as defined below.

### **3.      TERM**

The term of this License Agreement shall commence on June 21, 2015 and terminate on September 6, 2015 ("Termination Date"), unless held-over as outlined in Section 5 herein (the "License Term"). Either party may terminate this License Agreement at any time for any reason upon 30 days written notice to the other party.

### **4.      FEES**

Licensee shall not be obligated to pay to Licensor any fee for this License.

### **5.      PROPERTY TAXES**

The parties do not intend this License Agreement to convey an interest in real property. However, if any property taxes are levied as a result of this License Agreement, then Licensee shall be solely responsible to pay those taxes.

### **6.      RESTRICTIONS UPON USE**

Licensee agrees, in connection with the use and operation of the Site, Licensee shall use the Site only for the Sea Otter Experience Trailer Program. Furthermore, Licensee agrees it shall not:

- a.      Permit any use of the Site or any part thereof in a manner likely to cause injury, damage or an unsafe condition for the general public or the guests, employees, agents and contractors of Licensee;
- b.      Permit undue accumulations of garbage, trash, rubbish or any other refuse by the guests, employees, agents and contractors of Licensee or cause or allow any circumstances or acts on the Site by the guests, employees, agents and contractors of Licensee which will result in pollution of Morro Bay.
- c.      Permit any use of the Site by the guests, employees, agents and contractors of Licensee which will cause a cancellation of any insurance policy covering the Sea Otter Experience Trailer Program, or any part thereof, or any building or improvements thereon, any activity by the guests, employees, agents and contractors of Licensee which may be prohibited by any insurance policies covering the storage area, said buildings or improvements.

- d. Dispose of waste water, or pollute the area of the site and area within 150 feet of the site in any manner.
- e. Erect, place, operate or maintain any improvement within the Site, nor conduct any such business, in violation of the terms of this License, or in violation of any regulation, order of law, statute, bylaw or ordinance of a governmental agency having jurisdiction over the Site.

## **7. SIGNS**

All signs placed on the Site shall be in accordance with the "Sign Ordinance of the City of Morro Bay" and, shall be approved by the Community Development Manager or designee. "Sign" shall have the meaning set forth in said Sign Ordinance.

## **8. GOVERNMENTAL REQUIREMENTS**

So long as Licensee continues to operate and use the Site, Licensee shall comply with each and every requirement of all policies of public liability insurance which Licensee is required to have in force with respect to the Site. The judgment of any court of competent jurisdiction or the admission of Licensee in any action or proceeding against it, whether Licensor be a party thereto or not, that Licensee has violated any such ordinance or statute in the use of the Site shall be conclusive of that fact as between Licensor and Licensee.

## **9. ADDITIONAL ALTERATIONS AND REPAIRS**

Licensee shall not make any alterations to the Site and shall notify the Recreation and Parks Director or designee of any damage or required repairs.

## **10. ASSIGNMENT AND SUBLETTING**

This License is personal in nature and may not be assigned or transferred by either party.

## **11. INSURANCE**

Licensee shall, at Licensee's own cost and expense, secure promptly after the execution of this License and maintain during the entire License Term, a broad form commercial general liability insurance policy or policies which insures Licensee's public liability, property damage and business automobile exposures with the combined single limit of not less than \$1,000,000.00 issued by an insurance company acceptable to Licensor and authorized to issue liability insurance in California, and which shall list Licensor as the named primary additional insured, without offset to Licensor's policies as respects all operations of Licensee. Any deductibles or self-insured retentions must be declared to and approved by Licensor. The terms of said policies may be for such period as shall be designated by Licensee; provided however, that within two (2) months prior to the expiration date of such insurance terms, Licensee shall procure other policies of said insurance so that between the execution of this License and the commencement of the License Term, and throughout the entire License Term or any renewal thereof, or until the sooner termination hereof, Licensor, its officials, employees, agents and volunteers shall always be added as named primary additional insured under the policies of comprehensive general liability, business automobile coverage, and property damage insurance, in accordance with the foregoing.

Licensee shall within ten (10) days after the execution of this License and promptly thereafter when any such policy is replaced, rewritten, or renewed, deliver to Licensor a true and correct copy of a certificate executed by the insurance company or companies or their authorized agent evidencing such policy or policies and an endorsement to the policy naming the City of Morro Bay as primary additional insured.

Each insurance policy required by this License shall contain a provision that it cannot be canceled for any reason nor can the coverage or limits be reduced unless ten (10) days prior written notice of the cancellation or reduction is given to Licensor in the manner required by this License for service of notices on Licensor by Licensee.

## **12. HOLD HARMLESS**

Licensee agrees to defend, protect, indemnify and hold harmless Licensor, its officers, officials and employees, from and against any and all liability or loss, costs or expense, including reasonable attorney's fees arising from or relating to this License Agreement.

## **13. DESTRUCTION**

This License shall remain in full force and effect, including Licensee's obligation to pay rent, in all events of destruction to the Site, unless otherwise modified or terminated by the mutual written agreement of the Licensor and Licensee.

## **14. DEFAULT**

In the event Licensee shall fail to perform any agreement, covenant or condition set forth in this License Agreement, the License Agreement may be terminated upon thirty-days' written notice from Licensor.

## **15. NOTICES**

If at any time after the execution of this License it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, then such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the registered or certified United States mail, return receipt requested, postage prepaid and

(1) if intended for Licensor shall be addressed to:

City Manager  
City of Morro Bay  
595 Harbor Street  
Morro Bay CA 93442

and (2) if intended for Licensee shall be addressed to:

Central Coast State Parks Association  
Rouvaishyana, Museum Manager  
20 State Park Road  
Morro Bay, CA 93442

or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Any notice so mailed shall be deemed to have been given as of the time the same is deposited in the United States mail.

## **17. UTILITIES**

No utilities are available on the site.

## **18. MISCELLANEOUS**

- a. In case any one or more of the provisions contained in this License shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this License, but this License Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.
- b. Nothing in this License Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to anyone not a party, except as otherwise expressly provided herein.
- c. The words "Licensor" and "Licensee" as used herein shall include a corporation and include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. If there be more than one Licensor and Licensee, the obligations hereunder imposed upon Licensor and Licensee shall be joint and several.
- d. Time is of the essence of each and all of the agreements, covenants and conditions of this License.
- e. This License shall be interpreted in accordance with and governed by the laws of the State of California. The language in all parts of this License shall be, in all cases, construed according to its fair meaning and not strictly for or against Licensor or Licensee.
- f. This License constitutes the entire agreement between Licensor and Licensee with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written. This License may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Licensor and Licensee.

IN WITNESS WHEREOF, Licensor and Licensee have executed this License Agreement by proper persons thereunto duly authorized as of the date first hereinabove written.

**CITY OF MORRO BAY**

**CENTRAL COAST STATE PARKS  
ASSOCIATION**

By: \_\_\_\_\_  
[Authorized City Representative or Mayor]

By: \_\_\_\_\_  
Rouvaishyana, Museum Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Dana Swanson, City Clerk

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Joseph W. Pannone, City Attorney

Date: \_\_\_\_\_

**EXHIBIT A**



**LOCATION OF CENTRAL COAST STATE PARKS ASSOCIATION  
SEA OTTER EXPERIENCE TRAILER PROGRAM**

2015

PERMIT #:



City of Morro Bay
Recreation and Parks
1001 Kennedy Way - Morro Bay, CA 93442
(805) 772-6278 - FAX: (805) 772-2693

PUBLIC AREA USE PERMIT APPLICATION

Group or Company Name: (Applicant's Name) CA St. Parks / Central Coast St. Parks Assoc.

Resident Non-Resident Profit Non-Profit IRS #: 51-0198869

Contact Person: Rouvaishyana

Mailing Address: 20 State Park Rd.

City: Morro Bay State: CA Zip: 93442

Telephone: Home: Work: 772-2694x105 Fax: Cell: 776-2564 EMAIL: rouvaishyana@parks.ca.gov

FACILITY REQUESTED (\*no electricity available)

- Del Mar Park, Lila Keiser Park, Coleman, Centennial Parkway, Monte Young Park\*, Hillside Area, BBQ Area, City Park, Giant Chessboard, Court 1 OR Court 2, Meadow Area\*, East Field, Anchor Memorial\*, Bayshore Bluffs, Open Public Space (please specify), Hockey Rink\*, West Field, Tidelands, Morro Rock, Court 1 OR Court 2, Cloisters, Morro Rock Parking Lot - Target Rock

Note that sea otters may move. Aug. 1, 2, 8, 9, 15, 16, 22, 23, 29, 30, Sept. 5, 6

EQUIPMENT REQUESTED

- Volleyball Set, Bocce Ball, Horseshoes, Barricades, Softball Set, Other:

EVENT DATE AND TIME REQUESTED

Day and Date: June 21, 27, 28; July 4, 5, 11, 12, 18, 19, 25, 26, 5
Set-up Time: From: 10:30 AM To: 11 AM
Event Time: From: 11 AM To: 3 PM
Clean-up Time: From: 3 PM To: 3:30 PM
TOTAL HOURS: 5

EVENT INFORMATION

Name of Event: Sea Otter Experience trailer
Purpose: Educate visitors about sea otters & bay habitat
Estimated Attendance: 150-200+ each day
Will a fee be charged? NO YES: please explain: But educational items & toys are sold.
Do you plan to have amplified music/sound (ie: live music, DJ, PA System, etc.)? NO YES: Explain
Will alcohol be consumed? NO YES Will alcohol be sold? NO YES (An ABC License will be required)
Will a bounce house be provided at this event? NO YES: Name of company:
Will any other attraction be provided at this event? NO YES: Explain: Educational trailer, info table, spotting scopes
If you want your event to be listed on the community calendar and/or website, and to learn about other potential promotional opportunities, please contact the Morro Bay Chamber of Commerce at (805) 772-4467.

SITE INFORMATION

- Electricity required? YES
City streets and/or parking areas must be closed for this event. YES
Temporary structures are to be built for this event. YES
Tents or canopies will be used for event cooking. YES
Open flames, refueling of vehicles or other fire hazards exist for this event. YES

- General Liability Insurance with a Policy Endorsement naming the City as Additional Insured will be required for all events.
This application must be accompanied by a Permit Processing Fee and Security Deposit check.
Applicants providing bounce houses must provide their own generators. Bounce houses may not be operated from the power sources at the park.
If closures of City streets and/or parking areas are requested the permit must be submitted at least 30 working days in advance. Closures of City streets and/or parking areas will require additional conditions of approval and/or fees.
Public places are Smoke Free Zones, therefore smoking is prohibited within the permitted area(s).

AGREEMENT FOR USE OF CITY PROPERTY:

"The undersigned, herein known as the applicant, understands and agrees that he/she and/or the organization that he/she represents shall assume all risks for loss, damage, liability, injury, cost or expense that may occur during or as a result of use listed above; the applicant further agrees that in consideration of permission to use City property above, he/she and/or the organization will defend, indemnify, and hold harmless the City of Morro Bay and the City's officials, employees and agents from and against all claims, liability, damages, and/or injuries to persons and property (including demands, losses, actions, causes of actions, damages, liabilities, expenses, charges, assessments, fines or penalties of any kind, and costs including attorney fees and litigations expenses) from any cause arising out of or relating (directly or indirectly) to this Permit for use of City property. The applicant further agrees to be personally responsible for any damage sustained to the grounds, building, fixtures or equipment, as a result of their use of City property. The applicant further certifies that he has read (or had interpreted), understands and agrees to abide by any and all attached reservation policies of the City of Morro Bay Recreation and Parks Department."

Rouvaishyana
Applicant's Signature

4/16/15
Date

(RULES AND REGULATIONS ON BACK)

## POLICIES FOR USE OF PARK FACILITIES, PUBLIC OPEN SPACE AND EQUIPMENT

All City parks and facilities are intended for the recreational use of the residents of the City of Morro Bay in conjunction with the activities of the Recreation and Parks Department. When not in use for recreation programs or other City business, etc., property may be used by public groups and individuals for social, cultural or recreational activities regardless of race, age, sex, color or creed, in accordance with the following rules:

- A. Use of City property shall not be granted, when for any reason as determined by the Recreation and Parks Department, such use may not be in the best interest of the Department or the City of Morro Bay.
- B. The City of Morro Bay is NOT responsible for accidents, injury or loss of individual property in any of its facilities or parks.
- C. The individual or organization granted use of the property shall be held responsible for reimbursing the City for any loss, cost incurred or damage to City property caused
- D. Permission for use of property will be granted upon the condition that all rules governing use of open space below will be followed. **PERMISSION MAY BE REVOKED AT ANY TIME FOR FAILURE TO DO SO.** These rules are subject to change by the Recreation and Parks Commission of the City of Morro Bay

### RULES FOR OPEN SPACE AND PUBLIC PROPERTY USE

- A. Individuals or groups desiring use of public space must complete a Public Area Use Permit with the Recreation and Parks Department no more than four (4) months prior to the date requested and at least fifteen (15) working days prior to the date of use. **(ADDITIONAL TIME IS REQUIRED FOR LARGE EVENTS)** Any request more than four (4) months in advance must be accompanied by a letter requesting waiver of the four (4) month policy.
- B. A minimum Security Deposit of \$150 will be required with the filing of this application. **\*\*For Multi-Area, Entire Park or Multi-Day Events and any Event where alcohol is served or there is live music a Security Deposit of \$500 will be required. The deposit is refundable if the property is left clean and undamaged. If additional cleaning and repair is needed, post-event charges will be deducted from the Security Deposit and balance refunded by check.**
- C. No use shall be granted in such a matter as to constitute a monopoly for the benefit of any person or organization.
- D. If the application for use is found in good order, after review by the Director or appointed representative, the use permit shall be granted. The application shall serve as a permit upon signature of the Director, payment of all fees, compliance with any conditions of approval and submittal of all required documents. **PERMITS WILL BE ISSUED TO ADULTS ONLY.**
- D. The sale or consumption of alcoholic beverages is hereby prohibited unless permission has been granted by the Recreation and Parks Department Office. Any sales and/or consumption of alcoholic beverages in parks or public open space shall be subject to the rules and regulations of the Alcoholic Beverage Control Board. A liquor license is due five (5) days prior to the event.
- E. Groups conducting sales will be assessed a percentage of the gross or a flat fee.
- F. No advertising shall be exhibited and no solicitations or sale made on open space or on the grounds of a park without prior written permission from the Recreation and Parks Director and in some instances a Business License.
- G. Users shall be required to provide liability insurance naming the City of Morro Bay as additional insured from an "A" rated company. Both a Certificate of Insurance and a Policy Endorsement are needed.
- I. Reservations may be cancelled by the Recreation and Parks Director upon two (2) days notice to the group or permit holder. **INCLEMENT WEATHER CANCELLATIONS MAY BE MADE AT ANY TIME.**
- J. Keys, when approved for checkout, must be obtained in advance from the Recreation and Parks Office, and must be returned by the next business day after use.
- K. Cleanup must be accomplished within the time established in the agreement. Cleanup services and use fees are NOT provided as part of the permit fee. Any cleanup by City Staff will be charged to the organization or group. All trash generated by the event should be put into the trashcans and/or dumpsters.
- L. **NO CAMPING OR OVERNIGHT PARKING IS ALLOWED IN CITY PARKS.**

### RULES FOR SPORT FACILITY RENTAL

- A. Individuals or groups desiring use of sports facilities must complete a Public Area Use Permit with the Recreation and Parks Department no more than four (4) months prior to the date(s) requested and at least twenty (20) working days prior to the date(s) of use. Any request more than four (4) months in advance must be accompanied by a letter requesting waiver of the four (4) month policy.
- B. A Security Deposit of \$500 will be required with the filing of the application. The deposit is refundable if the facilities and equipment are left clean and undamaged.
- C. Ball diamond preparation may be completed by the applicant if the following requirements are adhered to:
  - ◆ Preps must be done at the beginning of the day and every three (3) games thereafter.
  - ◆ No dragging of field surfaces off the field (grass or paths) should occur.
  - ◆ The plates, pitching or rubber or base posts will not be driven over or dragged over.
  - ◆ No substance or material will be added to the field surface at any time.
- D. Field preparation by City employees will require the payment of a fee by the applicant prior to the tournament or activity.
- E. All activities or events scheduled for City sports facilities may require a tournament director assigned by the City. This rule can only be waived by the Director of Recreation and Parks. Applicant shall pay the fee for the cost of the tournament director.
- F. City employed umpires and scorekeepers will not be scheduled by the Recreation and Parks Department. However, they may be contacted by the applicant to work at the activity or event.
- G. Groups conducting sales will be assessed a percentage of the gross or a flat fee.
- H. Trash containers will be provided for the applicant. The applicant will be responsible for the cleanliness of the park post-event. Dumpsters are located proximate to all facilities for the applicants use. Additional park maintenance may be subject to additional fees placed on permit.
- I. No vehicles, other than service vehicles, are allowed to drive on parkland or open space areas.
- J. The application shall serve as a permit upon signature of the Director, payment of all fees, compliance with any conditions of approval and submittal of all required documents. **PERMITS WILL BE ISSUED TO ADULTS ONLY.**
- K. Any group finding it necessary to cancel its reservation should do so at least five (5) calendar days prior to the date reserved. Failure to do so will result in assessment of a 20% administration fee to the group or individual. Processing Fee is non-refundable.
- L. Reservations may be cancelled by the Director upon two (2) days notice to the group or permit holder. **INCLEMENT WEATHER CANCELLATIONS MAY BE MADE AT ANY TIME.**

### RULES FOR BOUNCE HOUSES

- A. Groups or individuals planning to provide a bounce house or other attraction must indicate so on the application.
- B. The applicant must provide a copy of the Certificate of Liability Insurance for the company providing the equipment or attraction.
- C. The applicant must pay a special use deposit of \$50 to the Recreation and Parks Department. If no damage occurs as a result of the special use, the deposit will be
- D. Applicants providing bounce houses must provide their own generators (generators are available from the bounce house companies for a small charge). Bounce houses may not be operated from the power sources available at the reserved park.



## **CONCLUSION**

The Violes are tenants in good standing, and staff recommends that the City Council approve Resolution No. 29-15 allowing the Assignment of the Lease Agreements for Lease Sites 67/67W and 68/68W, as presented.

## **ATTACHMENTS**

1. Resolution No. 29-15.
2. Assignment and Assumption documents for Lease Sites 67/67W and 68/68W.
3. Overhead view of the lease sites.

**RESOLUTION NO. 29-15**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
ASSIGNING LEASE SITE 67/67W AND 68/68W LOCATED AT  
575 AND 591 EMBARCADERO ROAD TO VIOLE LA ROCHE LLC**

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

**WHEREAS**, the City of Morro Bay is the lessor of certain properties on the Morro Bay Waterfront described as City Tidelands leases and properties; and

**WHEREAS**, Ynez Viole' O'Neil and The Viole' Family LLC have been lessees of Lease Site 67/67W since 1983, were assigned Lease Site 68/68W in October, 2014, and is a tenant in good standing; and

**WHEREAS**, The Viole' Family LLC has applied for assignment of the Master Lease for Lease Sites 67/67W and 68/68W to Viole La Roche LLC; and

**WHEREAS**, both assignments are from one LLC to another LLC, with no LLC ownership changes.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California, as follows:

1. The Mayor is hereby authorized to execute said Assignment and Assumption Agreements for Lease Sites 67/67W and 68/68W as approved by the City Attorney.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 26th day of May, 2015 on the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
JAMIE L. IRONS, Mayor

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk

<p>This document is recorded for the benefit of the City of Morro Bay and is exempt from recording fees, pursuant to Government Code Sections 6103 and 27383.</p> <p>RECORDING REQUESTED BY: City of Morro Bay</p> <p>WHEN RECORDED MAIL TO: City of Morro Bay City Attorney 595 Harbor Street Morro Bay, CA 93442</p>	<p style="text-align: center;">Space above reserved for use of County Recorder</p>
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**ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement is made and entered into as of this 26th day of May, 2015, by and between The Viole’ Family LLC, a California limited liability company (hereinafter referred to as “Assignor”) and Viole’ La Roche LLC, a California limited liability company (hereinafter referred to as “Assignee”).

1. Assignee acknowledges the City of Morro Bay (the “City”) has leased certain premises to Assignor under a Lease adopted December 8, 2008, that commenced on January 1, 2009, known as Morro Bay Lease Site 67/67W (the “Master Lease”). Assignee acknowledges any assignment of the Master Lease is subject to prior approval by the City’s City Council and is also subject to prior execution of this Agreement between Assignor and Assignee.
2. On the Effective Date (defined below), Assignee agrees (i) to comply with all the terms and conditions of the Master Lease, (ii) to assume all liabilities required under the Master Lease and any amendments, (iii) to defend, indemnify and hold harmless the City and its officers, employees and representatives from and against, any and all claims, lawsuits, costs and expenses, including reasonable attorney’s fees and court costs arising from, or in any way related to the Master Lease, in accordance with the terms set forth in the Master Lease, and (iv) to maintain liability insurance in the manner, form and amount required by Master Lease and any amendments, thereto, with the City, its officers, employees and representatives, included as an additional insureds without offset against the City’s insurance.
3. Assignor hereby assigns to Assignee all rights, title and interest Assignor has in the Master Lease, effective on the Effective Date. The “Effective Date” is the date this

instrument is recorded in the Office of the San Luis Obispo County Recorder, if it has been signed on behalf the City, Assignor and Assignee.

- 4. Assignor confirms to the City Assignor has no actual knowledge or reasonable cause to believe any release of hazardous substance has come to be located on/or beneath the real property during the term of Assignor's occupation of the leased premises that has not been reported pursuant to Health & Safety Code Section 253597.
- 5. This instrument may be executed in counterparts, each of which shall constitute an original and both of which shall constitute a single instrument.

The Viole' Family LLC, a California limited liability company

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Ynez Viole O'Neill, Trustee of the Ynez Viole O'Neill Living Trust UTD June 30, 2005, Sole Member

The undersigned consents to and accepts, on and after the Effective Date, assignment & assumption of the payment of rent, including all percentage of gross sales rent, and performance of all duties and obligations of tenant as set forth in the Master Lease.

Viole' La Roche LLC, a California limited liability company

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Ynez Viole O'Neill, Trustee of the Ynez Viole O'Neill Living Trust UTD June 30, 2005, Sole Member

The City, Lessor named in the Master Lease, consents to this Assignment upon the conditions set forth above. The City also consents to the agreement by Assignee to assume, on and after the Effective Date, the payment of rent, including all percentage of gross sales rent, and tenant's performance of all duties and obligations as set forth in the Master Lease. This Assignment has been approved by the City's City Council on or prior to the date set forth below.

City of Morro Bay

Dated: \_\_\_\_\_, 2015

---

By: Jamie L. Irons, Mayor  
City of Morro Bay

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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\_\_\_\_\_  
Notary Public

<p>This document is recorded for the benefit of the City of Morro Bay and is exempt from recording fees, pursuant to Government Code Sections 6103 and 27383.</p> <p>RECORDING REQUESTED BY: City of Morro Bay</p> <p>WHEN RECORDED MAIL TO: City of Morro Bay City Attorney 595 Harbor Street Morro Bay, CA 93442</p>	<p style="text-align: center;">Space above reserved for use of County Recorder</p>
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**ASSIGNMENT AND ASSUMPTION AGREEMENT**

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1. Assignee acknowledges the City of Morro Bay (the “City”) has leased certain premises to Assignor under a Lease adopted December 8, 2008, that commenced on January 1, 2009, known as Morro Bay Lease Site 68/68W (the “Master Lease”) and assignment adopted October 28, 2014. Assignee acknowledges any assignment of the Master Lease is subject to prior approval by the City’s City Council and is also subject to prior execution of this Agreement between Assignor and Assignee.
2. On the Effective Date (defined below), Assignee agrees (i) to comply with all the terms and conditions of the Master Lease, (ii) to assume all liabilities required under the Master Lease and any amendments, (iii) to defend, indemnify and hold harmless the City and its officers, employees and representatives from and against, any and all claims, lawsuits, costs and expenses, including reasonable attorney’s fees and court costs arising from, or in any way related to the Master Lease, in accordance with the terms set forth in the Master Lease, and (iv) to maintain liability insurance in the manner, form and amount required by Master Lease and any amendments, thereto, with the City, its officers, employees and representatives, included as an additional insureds without offset against the City’s insurance.
3. Assignor hereby assigns to Assignee all rights, title and interest Assignor has in the Master Lease, effective on the Effective Date. The “Effective Date” is the date this

instrument is recorded in the Office of the San Luis Obispo County Recorder, if it has been signed on behalf the City, Assignor and Assignee.

- 4. Assignor confirms to the City Assignor has no actual knowledge or reasonable cause to believe any release of hazardous substance has come to be located on/or beneath the real property during the term of Assignor's occupation of the leased premises that has not been reported pursuant to Health & Safety Code Section 253597.
- 5. This instrument may be executed in counterparts, each of which shall constitute an original and both of which shall constitute a single instrument.

The Viole' Family LLC, a California limited liability company

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Ynez Viole O'Neill, Trustee of the Ynez Viole O'Neill Living Trust UTD June 30, 2005, Sole Member

The undersigned consents to and accepts, on and after the Effective Date, assignment & assumption of the payment of rent, including all percentage of gross sales rent, and performance of all duties and obligations of tenant as set forth in the Master Lease.

Viole' La Roche LLC, a California limited liability company

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Ynez Viole O'Neill, Trustee of the Ynez Viole O'Neill Living Trust UTD June 30, 2005, Sole Member

The City, Lessor named in the Master Lease, consents to this Assignment upon the conditions set forth above. The City also consents to the agreement by Assignee to assume, on and after the Effective Date, the payment of rent, including all percentage of gross sales rent, and tenant's performance of all duties and obligations as set forth in the Master Lease. This Assignment has been approved by the City's City Council on or prior to the date set forth below.

City of Morro Bay

Dated: \_\_\_\_\_, 2015

---

By: Jamie L. Irons, Mayor  
City of Morro Bay

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STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public





AGENDA NO: A-5

MEETING DATE: May 26, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** May 18, 2015

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Resolution No. 28-15 Approving a New 10-Year Master Lease between the City of Morro Bay and Morro Bay Fish Company for Lease Site 129W-131W, located at 1231 Embarcadero

### **RECOMMENDATION**

Staff recommends the Council adopt Resolution No. 28-15, approving a new Master Lease Agreement for Lease Site 129W-131W, as-proposed.

### **ALTERNATIVES**

Council may elect not to approve Resolution No. 28-15 for the proposed lease agreement, and direct staff accordingly.

### **FISCAL IMPACT**

If approved, then there will be an immediate increase to the annual base minimum rent of approximately \$6,000, with the likely potential of additional rent amounts from the seafood poundage unloaded at the lease site.

### **BACKGROUND**

In December 2012, City Council approved the assignment of Lease Site 129W-131W from Brett Cunningham/Morro Bay Fish Co., Inc., to Central Coast Seafood of Atascadero, a wholly-owned subsidiary of Santa Monica Seafood Company. Central Coast Seafood continues to operate the business as Morro Bay Fish Company (MBFC). The assigned six-year lease expired this past September and is currently in holdover status.

To date, department staff and representatives of MBFC have met numerous times to negotiate suitable terms and conditions of the new lease. In addition, staff has brought those negotiations to the City Council twice over the past year in Closed Session for updates and direction.

### **DISCUSSION**

Based on Council direction, MBFC and staff have agreed to the lease terms and conditions as outlined in

01181.0024/253609.1

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

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

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

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

the attached draft lease. The standard “modern” City lease format is being used with all standard terms, conditions and insurance requirements in place. Of particular note are the following terms of the new lease:

Section 1.01 Term: 10-year lease term commencing upon approval of lease.

Section 2.01 Annual Minimum Rent: Annual minimum rent to be based on the standard 8% of the appraised lease site value. Minimum initial guaranteed annual rental amount of \$12,000 per year based on the latest \$150,000 property appraisal as commissioned by City. Standard annual CPI rent adjustment and 5-year re-appraisal and minimum rent re-calculation to apply.

Section 2.04 Landing or Unloading Rent: Inclusion of additional rent requirement of \$.01 per pound for all seafood products unloaded across the dock and \$2 per ton for wetfish (squid) unloaded, with percentage rents due in any amount that exceeds the minimum base rent.

Section 13.02 Operation of Full Service Fish Buying Station: Tenant to continue to operate a full-service fish and seafood buying and unloading station, and must make hoists and other equipment available to other licensed fish buyers at commercially reasonable rates. Tenant not to refuse service to other licensed fish buyers or refuse to unload boats of others except for commercially reasonable reasons.

Section 13.03 Operation of Ice Making Machine: Tenant agrees to operate and maintain the ice making machine and associated equipment on behalf of the City including blowing ice to customers, collection of fees, paying all utilities and insurance related to the machine, coordinating all maintenance and repair needs of the machine in concurrence with City staff and conducting basic daily preventive-type maintenance and repairs. City to be responsible for maintenance and repair costs beyond basic daily needs, with Tenant to retain 10% of ice revenues for City maintenance and repair expenditures. Current annual ice revenues are approximately \$60,000. In addition, Tenant not to refuse service to any customers except for commercially reasonable reasons, and must set an ice price at no more than 10% of the coast-wide average as determined by City.

Section 13.05 Prohibition of Interference with Adjacent Lease Sites and Access Corridor: Tenant’s operations not to interfere with the operations of the adjacent lease sites, and Tenant must ensure that a 10-foot wide corridor on the northern end of their lease site be made available, as needed, for their northern lease neighbor’s unloading activities, including no interference with those unloading activities.

Section 13.06 Construction of Improvements: Tenant to spend an initial \$40,000 on needed wharf and piling repairs, and to continue to be responsible for the ongoing wharf and piling maintenance. In addition, tenant to conduct a wharf inspection at the 5-year mark and spend an additional \$40,000 for major maintenance and repair as indicated by the 5-year inspection.

## **CONCLUSION**

MBFC is currently a tenant in good standing and has a good track record of lease and property management to date. Staff is recommending adoption of Resolution No. 28-15 approving a new 10-year Master Lease Agreement for Lease Site 129W-131W as-proposed and agreed-upon by MBFC and City.

**ATTACHMENTS**

1. Resolution 28-15
2. Mark-up version of Master Lease Agreement
3. Overhead view of lease site

**RESOLUTION NO. 28-15**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
APPROVING A 10-YEAR LEASE AGREEMENT  
BETWEEN THE CITY OF MORRO BAY AND  
MORRO BAY FISH COMPANY FOR LEASE SITE 129W-131W,  
LOCATED AT 1231 EMBARCADERO**

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

**WHEREAS**, the City of Morro Bay is the lessor of certain properties on the Morro Bay Waterfront described as City Tidelands leases and properties; and

**WHEREAS**, Morro Bay Fish Company has been the lessee of Lease Site 129W-131W since 2012 and is a tenant in good standing; and

**WHEREAS**, Morro Bay Fish Company is proposing to continue to operate as a full-service fish and seafood buying station, continue to operate the City's ice-making machine and complete improvements of said property consisting of major maintenance and repair of the underlying wharf; and

**WHEREAS**, in accordance with the City's Master Lease Policy, the City and lessee have agreed to a new 10-year lease agreement for Lease Site 129W-131W, located at 1231 Embarcadero.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California, as follows:

1. The attached new Lease Agreement for Lease Site 129W-131W is hereby approved.
2. The Mayor is hereby authorized to execute said Lease Agreement.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 26th day of May, 2015 on the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
JAMIE L. IRONS, Mayor

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk

# LEASE

This ~~Lease~~EASE is made and entered into by and between the CITY OF MORRO BAY, a municipal corporation of the State of California herein called CITY, and Morro Bay Fish Company, a California corporation herein called TENANT (sometimes referred to, individually, as the Party or collectively, as the "Parties").

## WITNESSETH

WHEREAS, the State of California granted certain tide and submerged lands located within the CITY limits of CITY to the County of San Luis Obispo and to its successors, being Chapter 1076, Statutes of 1947, as amended by Chapter 413, Statutes of 1955, Chapter 1874, Statutes of 1957, and Chapter 70, Statutes of 1960, first extraordinary session; which Statutes may be amended from time to time by the Legislature of the State of California; all of which Statutes are expressly recognized and agreed to be in full force and effect by the Pparties hereto; and

WHEREAS, the Pparties hereto recognize and agree ~~that~~ on July 17, 1964, ~~the CITY of Morro Bay, Lessor herein,~~ succeeded to all of the right, title and interest of the County of San Luis Obispo in and to all of the tide and submerged lands conveyed to said County by the State of California pursuant to the above mentioned acts; and

WHEREAS, judgment has been entered on October 14, 1968, in the case of ~~CITY of Morro Bay~~, Plaintiff, versus County of San Luis Obispo, and State of California, Defendants, by the Superior Court of the State of California in and for the County of San Luis Obispo, #30417, adjudging and decreeing, among other things, that the title to said tide and submerged lands so conveyed by the State of California to the County of San Luis Obispo in trust, as set forth above, passed automatically to ~~the CITY of Morro Bay~~ upon the date of its incorporation as a CITY on the 17th day of July, 1964; and

WHEREAS, TENANT accepts ~~thise within~~ Lease with full knowledge that there is no warranty of title in and to the within described premises by CITY to TENANT; and

WHEREAS, in order to develop and improve Morro Bay Harbor and to assist in carrying out the provisions of the tideland grant as aforesaid, and in order to provide facilities for the accommodation of those using Morro Bay Harbor, CITY desires to lease to TENANT the within described property upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the covenants to be performed and the rental to be paid by TENANT to CITY, CITY leases to TENANT, and TENANT leases from CITY, all of the following premises (herein collectively referred to as the "Premises") in ~~the CITY of Morro Bay~~, County of San Luis Obispo, State of California, described as follows: Lease Site 129W-131W (the "Premises").

~~The~~ Premises ~~property~~ is delineated on Parcel Map of ~~the CITY of Morro Bay~~ No. 68-30, which map was recorded on October 10, 1968, in Book 3, Page 10 of Parcel Maps in the Office of the County Recorder, San Luis Obispo County, California. A copy of said Map is attached hereto as Exhibit A and made a part hereof by reference.

## Article 1 FIXED TERM

### Section 1.01 Term.

The term of this Lease shall be a period of 10 years, commencing July 1, 2015 (the "Commencement Date") and, ~~The terminating of this Lease shall terminate~~, without notice, on June 30, 2025, unless sooner terminated as herein provided (the "Term").

### Section 1.02 No Extensions.

The ~~Term of this Lease~~ shall not be extended nor shall this Lease be renewed. Requests for continued use of the Premises after the Term shall be treated as an application for a new lease and shall require appropriate application to ~~the CITY~~ with all required supporting information and documents, CITY'S City Council approval and the execution of a new CITY lease, containing the then most current terms, covenants, conditions and rent schedules.

### Section 1.03 Hold Over.

~~If~~ Should TENANT holds the ~~demised~~ Premises after the expiration of the ~~Term of this Lease~~ with the consent of ~~the CITY~~, express or implied, then such holding over (in the absence of a written agreement between CITY and TENANT with respect thereto) shall be deemed to create a tenancy from month ~~to~~ month, terminable on thirty ~~days~~' (30 ~~days~~') ~~days~~ written notice from either party to the other, at a monthly rental equal to two hundred percent (200%) of the average total Rent per month for the twelve (12) months immediately preceding the expiration of this Lease, and otherwise subject to each and every term, covenant and condition of this Lease.

**Section 1.04 Replacement.**

As of the Commencement Date ~~of this Lease~~, this Lease shall extinguish and replace every prior lease between CITY and TENANT respecting the Premises, if any. Any right or interest held by the TENANT pursuant to any existing lease with respect to the Premises which is not granted pursuant to this Lease shall be extinguished as of the Commencement Date of this Lease.

**Article 2 RENT**

**Section 2.01 Annual Minimum Rent.**

TENANT agrees to pay to CITY a minimum guaranteed annual rental for the use and occupancy of the Premises, in an initial amount of \$12,000 per year (the "Annual Minimum Rent"), payable in advance in equal semiannual installments on January 1 and July 1 each year during the term of the Lease. If the Commencement Date is other than January 1 or July 1, then TENANT shall pay, on the Commencement Date, the proportionate amount of the Annual Minimum Rent payable for the period from the Commencement Date until the next payment date of January 1 or July 1, as the case may be. If the term of the Lease expires on a date other than December 31 or June 30, then TENANT'S final installment of the Annual Minimum Rent shall be proportionate to the time remaining in the Tterm. All Rent, including the Annual Minimum Rent and the Percentage Rent, shall be paid in lawful money of the United States of America, without offset or deduction and shall be paid to CITY at City Hall located at 595 Harbor Street, Morro Bay, California, or at such other place or places CITY may from time to time designate by written notice delivered to TENANT.

**Section 2.02 CPI Adjustment to Annual Minimum Rent.**

(1) The Pparties agree ~~that~~, commencing July 1, 2016, as of every July 1 following the Commencement Date (each, a "CPI Adjustment Date"), except as outlined in section 2.03 hereof, the Aannual Minimum Rent shall be adjusted in direct proportion to any upward or downward movement in the Consumer Price Index for January 1, 2015 which is hereby agreed to be 239.72 (Base Index). The percentage adjustment for any given year shall be based on the monthly average Index for the calendar year immediately preceding the CPI Adjustment Date as compared with the Base Index. The Consumer Price Index referred to herein is the Consumer Price Index (all items indexes, all urban consumers) for Los Angeles - Anaheim - Riverside, California, compiled and published by the United States Department of Labor, Bureau of Labor Statistics, 1982-84 Base Year = 100 (the "Index")

(2) The Annual Minimum Rent shall be adjusted as of each CPI Adjustment Date, and will remain in effect as adjusted until the next CPI Adjustment Date. As an illustration only, if the Base Index (Jan. 1, 1999 CPI) is 166.1 and the monthly average CPI for 2000 is 171.6, then the percentage increase is equal to 3.31%. Therefore, the Annual Minimum Rent would be increased by 3.31% as of July 1, 2001, and would continue at that rate through June 30, 2002.

(3) If the United States Department of Labor, Bureau of Labor Statistics, shall cease to compile and make public the Index as now constituted and issued, but shall substitute another index in its place, then said substituted index shall be used for the purpose of adjusting the Annual Minimum Rent for the Premises. If the Index is changed so that the base year differs from that in effect on the Lease Commencement Date, then the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics.

**Section 2.03 Calculation of New Annual Minimum Rent.**

At the end of the initial five (5) years and of each five-year period thereafter, a new Annual Minimum Rent shall be calculated for the following five-~~(5)~~-year period (each, a "Subsequent Rental Period") as follows:

(1) The Annual Minimum Rent shall be subject to adjustment by appraisal as of the fifth anniversary of the Commencement Date and every five years thereafter (each, an "Appraisal Adjustment Date"). CITY, at its own cost and expense, shall retain an independent qualified appraiser for determination of the fair market value of said premises. Not more than nine (9) months prior to each Appraisal Adjustment Date, CITY shall provide written notice to TENANT of the pending appraisal and the appraiser selected by ~~the~~ CITY to determine the fair market value of the Premises, excluding fixtures and improvements unless such are expressly included in the description of the leasehold hereinabove. If TENANT does not reject CITY's appraiser in writing and within thirty (30) days ~~after~~ CITY's notice of its determination, then the Annual Minimum Rent for the Subsequent Rental Period shall be in the amount determined by CITY as outlined in this Section 2.03. If TENANT rejects CITY's appraiser within thirty (30) days following CITY's notice to TENANT, then within fifteen (15) days after such ~~thirty~~30-day period, each party, at its own cost, shall select an independent professionally designated appraiser who is a member of the American Institute of Real Estate Appraisers, or the Society of Real Estate Appraisers with a designation of MAI (Member of American Institute), SRPA (Senior Real Estate Analysis), to appraise the fair market value of the Premises. CITY may rely on its original appraisal, or select a new appraiser, at its cost. If a party does not appoint an appraiser within fifteen (15) days after the other party has given notice of the name of its

appraiser, then the single appraiser appointed shall be the sole appraiser. Each appraiser shall conduct an independent appraisal within thirty (30) days after appointment. If the Parties are unable to agree on the Annual Minimum Rent for the Subsequent Rental Period within thirty (30) days after receiving the appraisal(s), then each Party shall select one member of a three-member committee. The two so selected members shall select the third member, and thatis committee shall by majority vote select one or the other of the appraisals. The Annual Minimum Rent determined on the basis of the selected appraisal shall be final and binding and all costs associated with the three-member committee shall be paid equally by CITY and TENANT.

(2) In the event ~~that~~ the appraisal process is not concluded on or before the Appraisal Adjustment Date, the Annual Minimum Rent shall be adjusted retroactively to such Appraisal Adjustment Date as set out hereinbelow when said appraisal process is completed.

(3) The total Rent payable, including both the Annual Minimum Rent and the Landing or Unloading Rent for each year within the applicable previous five-year period, shall be averaged to produce the average annual total Rent payable for such previous period.

(4) The new Annual Minimum Rent for the five-year period commencing on each Appraisal Adjustment Date shall be the greater amount of seventy-five percent (75%) of the average of the total yearly Rent payable during the previous five-year period (as set out in subparagraph 2.03 (3)C, above) or eight percent (8%) of the fair market value of the Premises (as established in subparagraph 2.03 (1)A, above.) The new Annual Minimum Rent shall be divided by two to determine the semiannual payments and shall be paid by TENANT to CITY on the first of each January and July thereafter. This new Annual Minimum Rent shall be adjusted each following year in proportion to any increase in the Consumer Price Index as set out in Section 2.02 of this Lease. The base index shall be adjusted upon each Calculation of new Annual Minimum Rent as set out in this section so that the Base index for CPI adjustment shall be the Consumer Price Index for January 1 of the year of the calculation of new Annual Minimum Rent.

#### **Section 2.04 Landing or Unloading Rent.**

(1) In addition to the Annual Minimum Rent, TENANT agrees to pay to CITY at the time and in the manner hereinafter specified, as additional Rent for the use and occupancy of the Premises, a sum equal to: (a) \$.01 per pound of Seafood, as defined below, excluding Wetfish, as defined herein; and, (b) \$2.00 per ton of Wetfish of ~~TENANT'S~~ products, hereinafter defined, landed or unloaded at or across the Premises, less the amount of the Annual Minimum Rent paid pursuant to this Lease (the "Landing or Unloading Rent").

(2) The term "Seafood" as used herein, shall mean the total pound weight of all seafood products landed or unloaded at or across the Premises, whether or not those products are used for

human consumption, including those products unloaded for TENANT's own use and distribution or those ~~Seafood~~ products landed or unloaded by others, as evidenced by all California Department of Fish and Wildlife fish landing receipt data indicating the Premises as the place of landing or unloading. The term "Wetfish" as used herein, shall mean the total ton weight of all squid landed or unloaded at or across the Premises, including those ~~squidWetfish~~ landed or unloaded for TENANT's own use and distribution or those ~~squidWetfish~~ landed or unloaded by others, as evidenced by all California Department of Fish and Wildlife fish landing receipt data indicating the Premises as the place of landing or unloading.

(3) TENANT shall keep or cause to be kept full, complete, and accurate records, and books of account in accordance with legal and accepted accounting and fish landing or unloading receipt practices showing the total amount of Seafood and Wetfish landings, as defined herein, made each calendar month in, on or from the Premises. TENANT shall keep said records and books of account within San Luis Obispo County and shall notify CITY in advance of their location at all times. Said records and books of account, including any sales tax reports or fish landing receipts that TENANT may be required to furnish any government or governmental agency shall at all reasonable times be open to the inspection of CITY, CITY'S auditor, or other authorized representative or agent of CITY. TENANT consents to the release of sales tax and fish landing receipt information to CITY and on demand will furnish to CITY a copy of the sales tax reports, fish landing receipts, quarterly reports and any audit reports of sales for confidential internal use of ~~the~~ CITY in determining Seafood and Wetfish amounts landed or unloaded on the Premises. TENANT consents and authorizes CITY to request such information directly from the State Board of Equalization or other state agency with which sales tax and fish landing receipt information is filed.

(4) By July 31 of each year, TENANT shall furnish CITY with a statement, to be certified by TENANT as current, true and accurate, which shall set forth the Seafood and Wetfish amounts landed or unloaded in, on or from the Premises for the previous twelve (12) calendar months, ending June 30, just concluded, and the authorized deductions, if any, therefrom; and with it TENANT shall pay to CITY the amount of the Landing or Unloading Rent which is due to CITY as shown thereby. If TENANT shall at any time cause an audit of sales of TENANT'S business to be made by a public accountant, ~~then~~ TENANT shall furnish CITY with a copy of said audit without cost or expense to CITY. CITY may, once in any twelve-month period, cause an audit of the business of TENANT to be made by a public accountant of CITY'S own selection. TENANT shall, upon receiving written notice of CITY'S desire for such an audit deliver and make available all such books, records and fish landing receipt data to the public or certified public accountant selected by CITY. Furthermore, TENANT shall promptly on demand reimburse CITY for the full cost and expense of said audit, ~~if should~~ the audit discloses ~~that~~ the

questioned statement or statements understated Seafood and Wetfish landing or unloading amounts by five percent (5%) or more but less than ten percent (10%). In the event ~~that~~ an audit performed at CITY'S request discloses ~~that~~ TENANT understated Seafood and Wetfish landing or unloading amounts by less than 5%, the cost of such audit shall be paid by CITY. In the event ~~that~~ any audit or other review of records discloses that the amounts reported as Seafood and Wetfish landing or unloading amounts was understated by TENANT by ten percent (10%) or more, CITY shall not only be entitled to recover from TENANT all costs of audit and review but shall also be entitled to recover from TENANT a penalty equal to two times the Landing or Unloading Rent due pursuant to this Lease on such unreported amounts. Whenever any audit discloses ~~that~~ Seafood and Wetfish landing or unloading amounts were understated by any amount, TENANT shall immediately pay the additional Landing or Unloading Rent therein shown to be payable by TENANT to CITY, together with interest at the Default Rate thereon, from the date the Landing or Unloading Rent was payable until the date paid.

(5) CITY shall be entitled at any time within five (5) years after the receipt of any such Landing or Unloading Rent payment, to question the sufficiency of the amount thereof and/or the accuracy of the statement or statements furnished by TENANT to justify the same. For the purpose of enabling CITY to check the accuracy of any such statement or statements, TENANT shall, for said period of five (5) years after submission to CITY of any such statement, keep all of TENANT'S records, including sales tax returns, all fish landing and unloading data and other data which in any way bear upon or are required to establish in detail TENANT'S landing or unloading amounts and shall upon request make the same available to CITY for examination.

#### **Section 2.05 Reimbursements.**

If TENANT fails to perform any term or covenant of this Lease, then CITY may, but is not obligated to, perform such term or covenant, and TENANT shall reimburse CITY for the costs incurred by CITY for such performance ~~therefore~~ as additional Rent hereunder. As an illustration and not as a limitation, if TENANT fails to procure the insurance required by this Lease, then CITY may, but is not obligated to, obtain such insurance, with the cost of the premiums, plus 5%, being due to CITY upon demand as additional Rent.

#### **Section 2.06 Penalty and Interest.**

(1) If any Rent is not received within ten (10) days following the date on which the Rent first became due, then TENANT shall pay a late penalty of ten percent (10%) of the amount of the Rent in addition to the Rent.

(2) In addition to the penalty, TENANT shall pay interest at the rate of one percent (1%) per month or fraction thereof or the maximum amount permitted by law as of the date this Lease

is signed, whichever is greater (the "Default Rate"), on the amount of the Rent, exclusive of the penalty, from the date on which Rent first became delinquent until paid. The term "Rent" includes any sums advanced by ~~the~~CITY and any unpaid amounts due from TENANT to ~~the~~ CITY.

### **Article 3 USE OF PREMISES**

#### **Section 3.01 Permitted Uses.**

The Premises shall, during the term of this Lease, be used only for the purpose of operating and conducting thereon and therein a full-service fish buying and ice service station. At the Commencement Date~~of the lease~~, such uses include landing, unloading, buying, selling, storing and transporting Seafood and Wetfish~~fish and seafood products~~, ice making and sales and temporary berthing of commercial fishing vessels ancillary to landing and unloading operations.

#### **Section 3.02 Unauthorized Use.**

TENANT agrees to conduct and allow only those uses authorized in Sections 3.01 and 13.02~~hereinabove~~ at the Premises. ~~A and that~~ any unauthorized use of the Premises~~thereof~~ shall constitute a breach of this Lease and shall, at the option of CITY, terminate this Lease.

#### **Section 3.03 Operation of Business - Hours of Operation.**

Failure to actively and diligently conduct the business authorized herein constitutes a breach of this Lease~~agreement~~ and shall, at the option of CITY, terminate this lease.

(1) TENANT shall during the term of this Lease conduct business of the nature specified in Section 3.01 of this Lease on the Premises in an efficient and diligent manner and keep the Premises open for the conduct of business in the manner described in Section 13.02 of this Lease. This provision shall not apply if the Premises shall be closed and the business of TENANT is temporarily shut down for a period not to exceed fourteen (14) calendar days in any calendar year to make necessary repairs, maintenance or other construction deemed necessary by TENANT. This provision shall not apply if the Premises shall be closed and the business of TENANT is temporarily shut down as authorized or required by ~~the~~CITY'S City Manager or on account of strikes, walkouts, or causes beyond the control of TENANT or for not more than three (3) days out of respect to the memory of an officer, employee, or close relative of any officer or employee of TENANT.

(2) TENANT shall operate TENANT'S business on the Premises with due diligence and efficiency and in like manner as comparable businesses operated in ~~the~~CITY or the coastal area

of San Luis Obispo County, so as to produce the maximum amount of Gross Sales and gross receipts from services which may be produced from TENANT'S business; and TENANT at all times shall carry on Premises, a stock or merchandise of such size, character, and quality as is reasonable, designed to produce the maximum return to TENANT, when the sale of merchandise is a permitted use under this Lease.

**Section 3.04 Competition.**

During the term of this Lease, TENANT shall not directly nor indirectly acquire or establish any similar or competing business within a radius of five (5) miles from the location of the Premises; provided, however, that TENANT may, with prior written approval from CITY, own or operate more than one business, whether or not competing and similar along the Embarcadero upon CITY lease sites. The purpose of this section is to prevent and prohibit TENANT from reducing revenue to CITY by diverting business from the operation at the Premises to another similar business owned by TENANT within ~~the~~ CITY, but not upon a CITY lease site from which CITY is paid rent based on Gross Sales.

**Section 3.05 Hazardous Materials.**

(1) TENANT shall not transport, use, store, maintain, generate, dispose, release, treat or discharge any "Hazardous Material" (as defined below) upon or about the Premises (such activities being hereafter referred to as "Hazardous Materials Activities"), nor permit TENANT'S employees, agents, or contractors to engage in Hazardous Materials Activities upon or about the Premises, except as allowed by applicable law. The term "Hazardous Material" for purposes hereof shall mean any chemical, substance, material or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body. All Hazardous Materials Activities at the Premises shall be conducted strictly in accordance with all applicable laws and regulations. If TENANT shall transport any hazardous waste from the Premises, then such transportation shall be done only by a contractor duly licensed to haul hazardous waste and shall use only a duly licensed disposal site approved by TENANT'S liability insurer.

(2) TENANT shall promptly notify CITY of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party against TENANT or the Premises relating to any loss or injury resulting from any Hazardous Material on or from the

Premises, and (iii) any matters where TENANT is required by applicable law to give a notice to any governmental or regulatory authority respecting any Hazardous Material on the Premises. CITY shall have the right (but not the obligation) to inspect the Premises, to take such remedial action on the Premises, as CITY may deem appropriate, and to join and participate, as a party, in any legal proceedings or actions affecting the Premises initiated in connection with any environmental, health or safety law.

(3) If any Hazardous Material is released, discharged or disposed of by TENANT or its employees, agents or contractors, on or about the Premises in violation of the foregoing provisions, then TENANT shall immediately notify CITY. CITY may elect either to take such remedial action as CITY deems appropriate, in which event TENANT shall reimburse CITY for all costs thereof within ten (10) days after demand, or direct TENANT to perform such remediation. If CITY directs TENANT to perform the remediation, then TENANT shall immediately take such remedial action, as CITY shall direct. TENANT shall, properly and in compliance with applicable laws clean up and remove the Hazardous Material from the Premises and any other affected property at TENANT'S expense. If CITY directs TENANT to perform remediation hereunder and if TENANT ~~shall~~fails to comply with the provisions of this Section within five (5) days after written notice by CITY, or such shorter time as may be required by applicable law or in order to minimize any hazard to persons or property, then CITY may (but shall not be obligated to) arrange for such compliance directly or as TENANT'S agent through contractors or other parties selected by CITY at TENANT'S expense (without limiting CITY'S other remedies under this Lease or applicable law).

**Section 3.06 Tidelands Trust.**

TENANT shall use and occupy the Premises in strict compliance with the Tidelands Trust purposes under which the Premises or any portion thereof are held by CITY pursuant to the grants from the State of California as set forth in this Lease.

**Section 3.07 Compliance with Law.**

TENANT shall, at no cost to CITY, comply with all of the requirements of all local, municipal, county, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in the use of the Premises all local, municipal and county ordinances, rules, regulations and orders and state and federal statutes, rules, regulations and orders now in force or which may hereafter be in force (collectively, "Legal Requirements") provided that TENANT shall not be required to comply with any Legal Requirement imposed by ~~the~~ CITY that would substantially deprive TENANT of a material benefit under this lease unless such Legal Requirement has been imposed or required by a

county, state or federal authority. The judgment of any court of competent jurisdiction, or the admission of TENANT in any action or proceeding against TENANT, whether CITY be a party thereto or not, that TENANT has violated any such Legal Requirement in the use of the Premises shall be conclusive of that fact as between CITY and TENANT.

**Section 3.08 Waste or Nuisance.**

TENANT shall not commit or permit the commission by others of any waste on the Premises; TENANT shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined by law on the Premises; and TENANT shall not use or permit the use of the Premises for any unlawful purpose.

**Section 3.09 Use by CITY.**

(1) Subject to TENANT's rights hereunder to possession of the Premises, CITY may grant licenses to, or otherwise authorize, other persons and entities permitting uses of the Morro Bay Harbor.

(2) CITY also retains and reserves for itself, its successors and assigns, all oil, gas, petroleum and other mineral or hydrocarbon substances in and under the lands leased hereby together with right to prospect and extract all such substances.

## **Article 4 CONSTRUCTION, ALTERATION AND REPAIRS**

**Section 4.01 Construction Approval.**

(1) TENANT shall not make or permit any other person to make any alterations or structural additions or structural modifications to the Premises or to any structure thereon or facility appurtenant thereto if the cost thereof shall exceed ~~Ten~~ Thousand ~~D~~ollars (\$10,000), without the prior written consent of CITY. The consent to be obtained pursuant to this Section 4.01(1) shall be requested from ~~CITY'S~~ the Harbor Director, or ~~the CITY's~~ s designee, ~~for CITY.~~ If the Harbor Director or any future successor to the duties of the ~~City's~~ Harbor Director, or ~~the CITY's~~ s designee, gives such consent to proceed, it is understood that such consent is given by CITY only in its capacity as the landlord under this Lease and not as the permit-issuing authority. TENANT remains obligated to obtain any needed building permits and comply with all applicable planning processes.

(2) Where required by the Morro Bay Municipal Code, California Coastal Act, Corps of Engineers or any other state or federal agency having authority over the proposed project, then all Conditional Use Permits, Concept Plans, Precise Plans, Coastal Development Plans, and any

other required plans or permits shall be applied for and approved prior to any construction, alteration or repairs.

**Section 4.02 Construction Bond.**

(1) Prior to the commencement of any construction the cost of which is greater than the amount of ~~O~~ne ~~H~~undred ~~T~~housand ~~D~~ollars (\$100,000), TENANT shall file with the ~~Morro Bay~~CITY'S City Clerk a final detailed Civil Engineer's, Registered Architect's or Licensed and Bonded General Contractor's estimate of the cost of construction and installation of improvements on the Premises. Said estimate must be submitted to ~~the~~CITY'S City Engineer for approval. TENANT shall file with ~~the Morro Bay~~CITY'S City Clerk a faithful performance bond, in a form and issued by a corporate surety company satisfactory to CITY, in an amount satisfactory to CITY, but not in excess of one hundred percent (100%) of the final detailed cost estimate, securing the faithful performance of TENANT or its contractor in the completion of said construction.

(2) TENANT shall also file with ~~the Morro Bay~~CITY'S City Clerk a labor and materials bond, in a form and issued by a corporate surety company satisfactory to CITY, in an amount satisfactory to CITY but not in excess of one hundred percent (100%) of the final detailed cost estimate, securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of said construction.

(3) In lieu of the above referenced bonds, TENANT may post cash deposits or may make other mutually satisfactory arrangements to guarantee the completion of construction projects. In the event the contractor bonds the project, CITY may be named as additional indemnitee to comply with these requirements.

**Section 4.03 Mechanics' Liens.**

At all times during the term of this Lease, TENANT shall keep the Premises and all buildings, installations and other improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. TENANT further agrees to at all times, save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with any improvement, repairs, or alterations on the Premises, and the cost of defending against such claims, including reasonable attorneys' fees. ~~If~~Should TENANT fail to pay and discharge or cause the Premises to be released from such liens or claim of liens within ten (10) days after the filing of such lien or levy, ~~then~~ TENANT shall upon written notification be required to immediately deposit with CITY a bond conditioned for payment in full of all claims on which said lien or levy has been filed. Such bond shall be acknowledged by TENANT as principal and

by a company or corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety. The beneficiary of any security instrument which instrument is on record with CITY, shall have the right to file such a bond on behalf of TENANT. CITY shall have right to post and keep posted on the Premises notices of non-responsibility and any other notices that may be provided by law or which CITY may deem proper for the protection of CITY and Premises from such liens. TENANT shall give CITY notice at least twenty (20) days prior to commencement of any work on the Premises to afford CITY the opportunity to post such notices.

**Section 4.04 Ownership of Improvements.**

The Parties agree ~~that~~ CITY has the option and right to require TENANT to remove all buildings, structures, installations, improvements of any kind or other property belonging to or placed upon the Premises by TENANT at the termination of this Lease, however occurring, providing CITY gives notice, in writing, no later than thirty (30) days prior to the termination of the Lease, of its decision to require ~~that~~ such improvements be removed. The Parties agree ~~that~~ if ~~the~~ CITY exercises its option, then at the termination of this Lease, however occurring, TENANT shall have sixty (60) days thereafter to remove all buildings, structures, facilities, installations, improvements and other property belonging to TENANT from the Premises. If CITY exercises such option and TENANT fails to remove all such improvements and other property within sixty (60) days after the termination of this Lease, then CITY shall have the right to have any or all such improvements and other property removed at the expense of TENANT. If CITY does not exercise its option to remove (or require the removal of) the improvements and other property, then title to such improvements and other property shall vest in CITY and TENANT shall not remove same.

**Article 5 LEASEHOLD MORTGAGES**

Tenant shall not mortgage, securitize or hypothecate the leasehold interest in whole or any part without the prior written approval of CITY as evidenced by a resolution of the CITY'S City Council ~~of the City of Morro Bay~~.

**Article 6 REPAIRS, MAINTENANCE AND RESTORATION**

**Section 6.01 Maintenance by TENANT.**

At all times during the term of this Lease, TENANT shall, at TENANT'S own cost and expense, keep and maintain all improvements now or hereafter on the Premises in good order and repair and in a safe and clean condition. Furthermore, TENANT shall, at TENANT'S own

cost and expense, maintain at all times during the term of this Lease the whole of the Premises in a clean, sanitary, neat and orderly condition. CITY may, at the sole option of CITY, clean and clear the Premises, at TENANT'S cost and expense, in the event TENANT fails to clean and clear the Premises in accordance with this Section to the satisfaction of CITY after fifteen ~~(15)~~ days' written notice to TENANT from CITY of CITY'S intent to exercise this option.

**Section 6.02 Seawalls and Revetment.**

At all times during the term of this Lease, TENANT shall at TENANT'S own cost and expense repair, maintain, replace and rebuild as necessary, the improvements, pilings, bulkheads, seawalls, revetment, piers, posts and any structures or other improvements located in the water portion of the Premises. Further, TENANT shall at TENANT'S own cost and expense conduct maintenance surveys at reasonable intervals to locate and determine needed repairs.

**Section 6.03 Legal Requirements.**

At all times during the term of this Lease, TENANT, at no cost to CITY, shall:

- (1) Make all alterations, additions, or repairs to the Premises or the improvements or facilities on the Premises required by any Legal Requirements (as defined in Section 3.07, above) now or hereafter made or issued;
- (2) Observe and comply with all Legal Requirements now or hereafter made or issued respecting the Premises or the improvements or facilities located thereon;
- (3) Obtain all required permits pursuant to the Morro Bay Municipal Code or State law prior to the initiation of any repair or maintenance activity; and
- (4) Indemnify, defend and hold harmless CITY and the property of CITY, including the Premises, ~~free and harmless~~ from any and all liability, loss, damages, fines, penalties, claims and actions resulting from TENANT'S failure to comply with and perform the requirements of this section.

**Section 6.04 Failure to Repair.**

In the event failure to repair results in a hazardous or unsafe condition, CITY shall have the right and option, but not the obligation, to close and prohibit access to the unsafe portion of the Premises until such repairs are completed and accomplished and the Premises rendered safe for public use. In addition, if TENANT fails to repair any hazardous or unsafe condition within ten (10) days of written notice thereof from CITY, then CITY shall have the right, but not the obligation, to perform such repair at TENANT'S expense. TENANT shall reimburse CITY for any such repair undertaken by CITY, promptly upon CITY'S demand, as additional Rent. Failure by CITY to enforce any of the provisions of this Article shall not constitute a waiver of

these provisions and CITY may at any time enforce all of the provisions of this Article, requiring all necessary repairs, rebuilding or replacement.

**Section 6.05 Inspection by CITY.**

CITY or CITY'S agents, representatives, or employees may enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether TENANT is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect CITY'S interest in the Premises under this Lease or to perform CITY'S duties under this Lease.

**Section 6.06 TENANT'S Duty to Restore Premises.**

(1) Except as provided in Section 6.07, below, if at any time during this Lease, any improvements now or hereafter on the Premises are destroyed in whole or in part by the elements, or any other cause not the fault of TENANT or CITY, this Lease shall continue in full force and effect and TENANT, at TENANT'S own cost and expense, shall repair and restore the damaged or destroyed improvement(s) according to the original plan thereof or according to such modified plans therefore as shall be approved in writing by CITY. The work of permitting, repair and restoration shall be commenced by TENANT within one hundred eighty (180) days after the damage or destruction occurs shall be pursued with due diligence, and shall be completed not later than one year after the work is commenced, unless the ~~parties hereto~~ parties mutually agree, in writing, to an extension. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for construction work on the Premises set forth in Article 4 of this Lease. Any failure by TENANT either to commence or to complete repair and restoration as required by this Section 6.06 shall be a material default under this Lease.

(2) Any and all insurance proceeds that become payable at any time during the term of this Lease because of damage to or destruction of any improvements on the Premises shall be paid to TENANT and applied by TENANT toward the cost of repairing and restoring the damaged or destroyed improvements in the manner required by this Section 6.06, or, if this Lease is terminated, then applied as provided in Section 6.07. Except as set forth in Section 6.08 below, TENANT'S obligation to restore pursuant to this Section shall exist whether or not funds are available from insurance proceeds.

**Section 6.07 Termination of Lease for Destruction.**

(1) Notwithstanding the provisions of Section 6.06 of this Lease, TENANT shall have the option of terminating this Lease as provided in this Section 6.07 if:

(a) During the ~~last fifteen (15) years of the~~ Term of this Lease, any improvements now or hereafter on the Premises are so damaged or destroyed by the elements or any cause not the fault of TENANT or CITY, that they cannot be repaired and restored as required by Section 6.06 of this Lease at a cost not exceeding thirty-five percent (35%) of the cost of replacing all improvements if they had been totally destroyed at the time of such damage. ~~;~~

~~(b) During the last ten (10) years of the term of this Lease, any improvements now or hereafter on the Premises are so damaged or destroyed by the elements or any cause not the fault of TENANT or CITY, that they cannot be repaired and restored as required by Section 6.06 of this Lease at a cost not exceeding fifteen percent (15%) of the cost of replacing all improvements if they had been totally destroyed at the time of such damage.~~

(2) TENANT may exercise its right to terminate pursuant to this Section 6.07 by providing written notice to CITY within one hundred eighty (180) days following damage or destruction as described herein. Such termination shall be effective on the last day of the calendar month following the month in which TENANT provides its notice.

(3) If TENANT fails to commence or complete repair and restoration as required by Section 6.06, then CITY shall have all rights and remedies with respect to TENANT's default, including, but not limited to, termination of this Lease pursuant to Article 11.

(4) If this Lease is terminated as a result of damage or destruction, then any insurance proceeds received with respect to the improvements shall be applied or distributed in the following order:

(a) first, to the demolition of the improvements and removal of all demolition debris; then

(b) to any accrued and unpaid Rent as of the effective date of the termination; then

(c) to each Lender under a Leasehold Encumbrance, in order of lien priority, an amount not to exceed the amount due under such Leasehold Encumbrance; then

(d) to CITY, an amount equal to the present value, as of the date of termination, of the total Annual Minimum Rent for the remainder of the Term; then

(e) the remaining proceeds, if any, to TENANT.

**Section 6.08 Destruction Due to Risk Not Covered by Insurance.**

Notwithstanding anything to the contrary in Section 6.06 of this Lease, TENANT shall have the right to terminate this Lease at any time if the improvements on the Premises are damaged or destroyed by a casualty for which TENANT is not required under this Lease to carry insurance and the cost to repair or restore such improvements exceeds fifty percent (50%) of the fair market value of all the improvements on the Premises immediately prior to the damage or destruction.

**Article 7 INDEMNITY AND INSURANCE**

**Section 7.01 Indemnity Agreement.**

(1) TENANT shall indemnify, defend and hold harmless CITY, and the property of CITY (including the Premises and any improvements now or hereafter on the Premises), and the CITY'S officers, officials, employees and volunteers ~~harmless~~ from any and all liability, claims, loss, damages, and expenses, including attorney fees and litigation expenses, resulting from TENANT'S occupation and use of the Premises or any negligent act or omission of ~~the~~ TENANT or any of its subtenants, employees, contractors or anyone for whom TENANT may be liable, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including TENANT or any person who is an employee or agent of TENANT, or by reason of the damage to or destruction of any property, including property owned by TENANT or by any person who is an employee or agent of TENANT, from any cause whatever while such person or property is in or on the Premises or in any way connected with the Premises or with any of the improvements or personal property on the Premises;

(b) The death or injury of any person, including TENANT or any person who is an employee or agent of TENANT, or by reason of the damage to or destruction of any property, including property owned by TENANT or any person who is an employee or agent of TENANT, caused or allegedly caused by either (i) the condition of the Premises or any improvement placed on the Premises by TENANT, or (ii) any act or omission on the Premises by TENANT or any person in, on, or about the Premises with or without the permission and consent of TENANT;

(c) Any work performed on the Premises or materials furnished to the Premises at the instance or request of TENANT or any person or entity acting for or on behalf of TENANT;

or

(d) TENANT'S failure to perform any provision of this Lease or to comply with any Legal Requirement imposed on TENANT or the Premises.

(2) TENANT'S obligations pursuant to this Section to indemnify, defend and hold harmless do not extend to any liability, claim, loss, damage or expense caused by~~arising from~~ CITY'S active negligence or willful misconduct.

**Section 7.02 Liability Insurance.**

During the term of this Lease, TENANT shall maintain at its cost Commercial General Liability insurance with coverages at least as broad as ISO Forms labeled “City of Morro Bay Insurance requirements for Lessees,”; Certificate of Insurance – City of Morro Bay”, and “Additional Insureds – Managers or Lessors of Premises” attached hereto as Exhibit B and made a part hereof as may be updated or changed from time to time at the sole discretion of the CITY, insuring against claims for bodily injury (including death), property damage, contractual liability, personal injury and advertising injury occurring on the Premises or from operations located in any part of the Premises. Such insurance shall afford protection in amounts no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage, provided that if insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Premises or the general aggregate limit shall be twice the occurrence limit stated in this Section. All liability insurance carried by TENANT hereunder shall name CITY, its officers, officials, employees and volunteers as additional insureds, and shall be primary insurance with respect to such additional insureds. TENANT shall include all its subtenants as insureds under TENANT's liability policies or shall furnish separate certificates and endorsements for each subtenant. All coverages for subtenants shall comply with all requirements of this Article Seven.

**Section 7.03 Worker's Compensation.**

TENANT shall maintain at TENANT'S own expense and keep in full force and effect during the term of this Lease, Worker's Compensation Insurance as provided by law. Said insurance shall contain a waiver of subrogation rights against CITY. TENANT shall also maintain employer's liability insurance with minimum coverage of \$1,000,000 per accident for bodily injury or disease.

**Section 7.04 Property Insurance.**

TENANT shall, at its cost, at all times during the term of this Lease keep all improvements and other structures on the Premises, as well as any and all additions, improvements and betterments thereto, insured for one hundred percent (100%) of their full

replacement cost with no co-insurance provision against loss or destruction by the perils covered by "all risk" (excluding earthquake) property damage insurance policies. Any loss payable under such insurance shall be payable to TENANT, CITY, and any Lender under a Leasehold Encumbrance pursuant to Article 5 of this Lease, as their interests may appear, and such proceeds shall be used and applied in the manner required by Article 6 of this Lease.

**Section 7.05 Additional Coverage.**

TENANT shall also maintain, at its expense, the insurance described in this Section 7.05.

(1) If TENANT has (or is required by any Legal Requirement to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then TENANT shall maintain liquor liability coverage in appropriate amounts. TENANT shall require any subtenant who has (or is required by any Legal Requirement to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage.

(2) TENANT shall maintain "all risk" (excluding earthquake) property damage insurance covering TENANT's personal property located at the Premises, in amounts not less than the full replacement value of such personal property. CITY shall have no interest in the proceeds of such insurance.

(3) TENANT shall, at TENANT's own expense, obtain and maintain any additional insurance coverages that CITY may reasonably require. As illustration only and not as a limitation, in appropriate circumstances such additional insurance may include increased general liability limits, business interruption coverage, business automobile liability, boiler and machinery insurance and/or builder's risk insurance. However, TENANT shall not be required to maintain additional coverages that are in excess of those typically maintained by similarly situated tenants in the Morro Bay area.

**Section 7.06 General Requirements.**

Except as specifically provided to the contrary, all the insurance required pursuant to this Article Seven shall be subject to the requirements of this Section 7.06.

(1) Maintenance of proper insurance coverage is a material element of this Lease and failure to maintain or renew coverage or to provide evidence of coverage and/or renewal may be treated by the CITY as a material breach of contract. TENANT shall forward ~~the~~ CITY'S specifications and forms to TENANT'S insurance agent for compliance.

(2) CITY may at any time require TENANT to increase the minimum coverage limits for insurance required by this Lease, but every such increase shall be reasonable under the circumstances.

(3) All policies shall be issued by insurance companies authorized to issue such insurance in California, with an A.M. Best's rating of no less than A:VII.

(4) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees and volunteers; or the TENANT shall provide a financial guarantee satisfactory to CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(5) Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be cancelled or reduced, except after thirty-~~(30)~~ days' prior written notice by certified mail, return receipt requested, has been given to CITY.

(6) TENANT shall furnish CITY with certificates and amendatory endorsements effecting the coverage required by this Lease. The endorsements shall be on forms provided by CITY or on other than CITY's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by CITY before use of the Premises, and promptly following any renewal or replacement. CITY reserves the right at any time to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

(7) TENANT'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be excess of TENANT'S insurance and shall not contribute with it.

**Section 7.07 No Subrogation.**

TENANT agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, TENANT shall look solely to its insurance for recovery. TENANT hereby grants to the CITY, on behalf of any insurer providing insurance to either TENANT or CITY with respect to TENANT'S occupancy of the Premises, a waiver of any rights to subrogation which any such insurer of said TENANT may acquire against the CITY by virtue of the payment of any loss under such insurance. Each insurance policy required under this Lease including those insuring TENANT against claims, expense, or liability for injury to persons or property

shall provide that the insurer shall not acquire by subrogation any right to recovery which TENANT has expressly waived in writing prior to the occurrence of the loss.

**Section 7.08 TENANT'S Waiver.**

TENANT hereby waives any right of recovery against CITY for each claim, expense, liability, or business interruption, or other loss, except where caused by CITY'S active negligence or willful misconduct. TENANT agrees, ~~that~~ to the extent ~~that~~ TENANT fails to acquire insurance, TENANT shall not have any claim against CITY for any loss that results from a risk or peril that would have been included in such insurance.

**Section 7.09 Insurance Not a Limit.**

The insurance requirements of this Article ~~7~~Seven are independent of, and do not limit or modify, TENANT'S indemnification and other obligations pursuant to this Lease.

## **Article 8 TAXES AND FEES**

**Section 8.01 TENANT to Pay Taxes.**

TENANT shall pay, before delinquency, all taxes and assessments levied upon or assessed to TENANT on the Premises by reason of this Lease or of any equipment, appliances, improvement, or other development of any nature whatsoever, erected, installed, or maintained by TENANT or by reason of the business or other activity of TENANT upon or in connection with the Premises. TENANT shall be solely responsible to pay all possessory interest taxes applicable to the Premises.

**Section 8.02 TENANT to Pay License and Permit Fees.**

TENANT shall pay any fees imposed by law for licenses or permits for any business or activities including construction by TENANT upon the Premises.

**Section 8.03 Utilities.**

TENANT shall pay, or cause to be paid, and hold harmless CITY and the property of CITY, including the Premises, ~~free and harmless~~ from all charges for the furnishing of gas, water, electricity, telephone service, and for other public utilities to the Premises during the term of this Lease and for the removal of garbage and rubbish from the Premises during the term of this Lease.

## Article 9 CONDEMNATION

### Section 9.01 Total Condemnation.

If title and possession to all of the Premises is permanently taken for any public or quasi-public use under any statute, or by the right of eminent domain, then this Lease shall terminate on the date that possession of the Premises is taken, and both CITY and TENANT shall thereafter be released from all obligations, including Rent, all of which shall be prorated to the date of termination, except those specified in Section 9.02 of this Lease.

### Section 9.02 Condemnation Award.

Any compensation or damages awarded or payable because of the permanent taking of all or any portion of the Premises by eminent domain shall be allocated between CITY and TENANT as follows:

(1) All compensation or damages awarded or payable for the taking by eminent domain of any land that is part of the Premises shall be paid to and be the sole property of CITY free and clear of any claim of TENANT or any person claiming rights to the Premises through or under TENANT.

(2) All compensation or damages awarded or payable which is specifically attributed by the taking party to the "good will" of TENANT'S business shall be paid to and be the sole property of TENANT.

(3) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where only a portion of the Premises is taken by eminent domain, and TENANT is not entitled to or does not terminate this Lease, shall be applied in the manner specified in Section 9.04 toward the replacement of such improvements with equivalent new improvements on the remaining portions of the Premises.

(4) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where this Lease is terminated because of the taking by eminent domain, whether all or only a portion of the Premises is taken by eminent domain, shall be allocated between CITY and TENANT as follows:

(a) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, not expired shall belong to and be the sole property of TENANT.

(b) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, expired shall belong to and be the sole property of CITY.

(c) The term "time of taking" as used in this Section shall mean 12:01 a.m. of the date that the agency or entity exercising the eminent domain power, takes, title, or the date that it takes physical possession of the portion of the Premises, whichever shall first occur.

(5) Any severance damages awarded or payable because only a portion of the Premises is taken by eminent domain shall be the sole and separate property of CITY.

**Section 9.03 Termination for Partial Taking.**

IfShould, during the term of this Lease, title and possession of only a portion of the Premises isbe taken for any public or quasi-public use under any statute, or by right of eminent domain, then TENANT may, at TENANT'S option, terminate this Lease by serving written notice of termination on CITY within ninety (90) days after TENANT has been deprived of actual physical possession of the portion of the Premises taken for such public use. This Lease shall terminate on the first day of the calendar month following the calendar month in which the notice of termination described in this section is served on CITY. On termination of this Lease pursuant to this Article, all subleases and subtenancies in or on the Premises or any portion of the Premises created by TENANT under this Lease shall also terminate and the Premises shall be delivered to CITY free and clear of all such subleases and subtenancies; provided, however, that CITY may, at CITY'S option, by mailing written notice to a subtenant allow any subtenant to attorn to CITY and continue such subtenant's occupancy on the Premises as a TENANT of CITY. On termination of this Lease pursuant to this section, however, both CITY and TENANT shall be released from all obligations under this Lease, except those specified in Section 9.02 of this Lease.

**Section 9.04 Rent Abatement for Partial Taking.**

IfShould, during the term of this Lease, title and possession of only a portion of the Premises isbe taken under the power of eminent domain by any public or quasi-public agency or entity and TENANT does not terminate this Lease, then this Lease shall terminate as to the portion of the Premises taken under eminent domain on the date actual physical possession of the portion taken by eminent domain is taken by the agency or entity exercising the eminent domain power. Furthermore, the Rent payable under this Lease shall, as of that time be reduced in the same proportion of the Premises taken by eminent domain bears to the full value of the Premises at that time; provided, however, that TENANT shall make a good faith effort to replace any

improvements or facilities with equivalent new facilities on the remaining portion of the Premises and do all other acts at TENANT'S own cost and expense required by the eminent domain taking to make the remaining portion of the Premises fit for the use specified in this Lease.

**Section 9.05 Conveyance in Lieu of Eminent Domain.**

A voluntary conveyance by CITY, with the consent of TENANT, of title to all or a portion of the Premises to a public or quasi-public agency or entity in lieu of and under threat by such agency or entity to take the same by eminent domain proceedings shall be considered a taking of title to all or such portion of the Premises under the power of eminent domain subject to the provisions of this Article.

**Section 9.06 Temporary Taking.**

If the possession of the Premises or any portion thereof should be taken under the power of eminent domain by any public or quasi-public agency or entity for a limited period not extending beyond the term of this Lease, then this Lease shall not terminate (except as provided in this Section 9.06) and TENANT shall continue to perform all its obligations hereunder, except only to the extent that TENANT is prevented from performing such obligations by reason of such taking. TENANT shall be entitled to receive the entire amount of compensation or damages awarded because of such temporary taking. If a temporary taking extends for more than thirty-six (36) months, then TENANT shall have the right to terminate this Lease, and TENANT shall be entitled to receive, out of the compensation or damages awarded because of such temporary taking, the amount that is attributable to the period of time up until the effective date of TENANT'S termination of this Lease.

**Article 10 ASSIGNMENT AND SUBLEASING**

**Section 10.01 No Assignment Without CITY'S Consent.**

Except as provided in this Article 10, TENANT shall not assign or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Premises or any of the improvements that may now or hereafter be constructed or installed on the Premises without the express written consent of CITY evidenced by resolution first had and obtained. Any assignment or transfer by TENANT without the prior written consent of CITY, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of CITY, terminate this Lease. A consent by CITY to one assignment shall not be deemed to be a consent to any subsequent assignment of this Lease by TENANT. CITY shall not unreasonably nor arbitrarily withhold its approval to the assignment or transfer of this Lease to an assignee

who is financially reliable and qualified to conduct the business for which this Lease was granted. It is mutually agreed ~~that the~~ TENANT'S qualifications are a part of the consideration for granting of this Lease and said party does hereby agree to maintain active control and supervision of the operation conducted on the Premises.

**Section 10.02 Change of Ownership as Assignment.**

For purposes of this Article 10, the following transactions will be deemed to be assignments or transfers:

(1) If TENANT is a partnership or limited liability company:

(a) A change in ownership effected voluntarily, involuntarily, or by operation of law, within a twelve-month (12-month) period, of twenty-five percent (25%) or more of the partners or members or twenty-five percent (25%) or more of the partnership or membership interests; or

(b) The dissolution of the partnership or limited liability company without its immediate reconstitution.

(2) If TENANT is a closely held corporation (i.e., one whose stock is not publicly held and not traded through an exchange or over the counter):

(a) The sale or other transfer, within a twelve-month (12-month) period, of more than an aggregate of twenty-five percent (25%) of the voting shares of TENANT (other than to immediate family members by reason of gift or death); or

(b) The dissolution, merger, consolidation, or other reorganization of TENANT.

**Section 10.03 Application for Assignment.**

A condition of an assignment shall be ~~that~~ TENANT shall file with the CITY an application to assign the leasehold prepared by the prospective assignee. Concurrently with filing the application, TENANT shall pay a reasonable fee associated with the cost of processing said application, in cash or certified or cashier's check to enable CITY adequately to investigate the proposed assignee's qualifications as a permitted assignee. CITY shall not be required to account for the use of the sum paid. If the proposed assignee's net worth on the date of assignment is not sufficient to reasonably guarantee successful operation of the Premises in compliance with all applicable CITY, County, State and federal requirements, then CITY may withhold approval of the assignment or condition it upon TENANT'S guarantee of such assignee's obligations hereunder for such period as CITY deems advisable. Net worth shall

mean the amount by which the total of all assets shall exceed the total of all liabilities as determined in accordance with general accepted accounting principles as approved by CITY'S auditor, or other authorized representative or agent.

**Section 10.04 Probate Transfer of Assignment.**

If TENANT is an individual, then nothing herein contained will prevent the transfer of this Lease by will, or by operation of law under the intestacy provisions of the California Probate Code as it may be amended from time to time. Probate sale of the leasehold interest will not be permitted without the consent of the CITY, evidenced by resolution, first had and obtained.

**Section 10.05 No Sublease Without CITY'S Consent.**

TENANT shall not sublease the whole nor any part of the Premises, or license, permit, or otherwise allow any other person (the employees of TENANT excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of CITY's Harbor Director, or any future successor to the duties of ~~the~~ CITY's Harbor Director. A consent to one subletting, occupation, licensing or use shall not be deemed to be a consent to any subsequent subletting, occupation, licensing or use by another person. Any sublease or license without CITY'S written consent shall be void, and shall at CITY'S option, terminate this Lease. CITY shall not unreasonably nor arbitrarily withhold its consent to sublet to one who is qualified and financially reliable. CITY'S consent to any occupation, use, or licensing shall be in CITY'S sole and absolute discretion. Notwithstanding any provisions herein to the contrary, the terms "assignment," "subletting," "occupation," or "use," shall not be construed or interpreted to mean or include the temporary, short term renting or leasing of boat slips, motel, hotel, or apartment accommodations on the premises.

**Section 10.06 Subtenant Subject to Lease Terms.**

Any and all subleases shall be expressly made subject to all the terms, covenants, and conditions of this Lease. In no event shall the term of any sublease extend beyond the term of this Lease. Subject to Section 10.09, termination of this Lease prior to the expiration of this Lease term shall also terminate any and all subleases. A breach of the terms of this Lease by a subtenant shall constitute a breach on the part of TENANT and shall subject both the subtenant and TENANT to all the remedies provided to CITY herein and by law. Failure by any subtenant to report Gross Sales or to pay Percentage Rent due from subtenant shall constitute a breach of this lease. TENANT hereby agrees to and does guarantee payment of such Percentage Rent due by a subtenant under the terms of this lease.

**Section 10.07 Consent Form Agreement.**

Prior to any consent by CITY to any sublease hereof, TENANT shall cause to be executed between TENANT and any subtenant an agreement making the CITY a third party beneficiary, in a form acceptable to CITY, whereby the subtenant agrees to be bound by all of the terms, covenants and conditions of this Lease. Further, it is agreed by TENANT ~~that~~ any default by the subtenant of any of the terms, covenants and conditions of this Lease shall be deemed to be violations by TENANT of this Lease and that all remedies of CITY for such violation, including termination of this Lease, shall immediately be enforceable by CITY against TENANT. TENANT shall apply any and all monies received from any subtenant first to the payment of obligations of the subtenant to CITY.

**Section 10.08 TENANT and Guarantor Remain Liable.**

Prior to approval by CITY to any sublease hereof, TENANT shall agree to be primarily and jointly and severally liable to CITY for all obligations due CITY by any subtenant, including the payment of rents, and TENANT shall agree ~~that~~ CITY may proceed directly against TENANT for any obligation owing CITY by the subtenant. If this Lease is guaranteed, then neither the sublease nor CITY'S approval thereof shall release the guarantor from its obligations pursuant to the guaranty.

**Section 10.09 Nondisturbance.**

On the terms set forth below, CITY may enter into agreements with subtenants providing that in the event of any termination of this Lease prior to the expiration date, CITY will not terminate or otherwise disturb the rights of the subtenant under such sublease, but will instead honor such sublease as if such agreement had been entered into directly between Landlord and such subtenant, conditioned upon such subtenant's agreement to attorn to Landlord and full performance of all obligations under the sublease in question ("Non-Disturbance Agreement"). CITY agrees to execute a Non-Disturbance Agreement in connection with a particular sublease provided that Tenant provides CITY with a copy of the sublease, and the Non-Disturbance Agreement is customary in form and substance and otherwise reasonably acceptable to CITY.

**Article 11 DEFAULT AND TERMINATION**

**Section 11.01 Abandonment by TENANT.**

IfShould TENANT breaches this Lease and abandons all or any part of the Premises prior to the scheduled expiration of the term of this Lease, then CITY may continue this Lease in effect by not terminating TENANT'S right to possession of the Premises, in which event CITY

shall be entitled to enforce all CITY'S rights and remedies under this Lease including the right to recover the Rent specified in this Lease as it becomes due under this Lease.

**Section 11.02 Termination for Breach by TENANT.**

All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the term hereby demised to TENANT. ~~If Should~~ TENANT fails to perform any covenant, condition, or agreement contained in this Lease, except for payment of any Rent or other monetary amount due, and such failure is not cured within thirty (30) days after written notice thereof is served on TENANT, then CITY may terminate this Lease immediately, and in the event of such termination, TENANT shall have no further rights hereunder and TENANT shall thereupon forthwith remove from the Premises and shall have no further right or claim thereto and CITY shall immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

**Section 11.03 Termination for Failure to Pay Rent.**

If any payment of Rent is not made as herein provided and such failure to pay is not cured within three (3) days after written notice thereof is served on the TENANT, then CITY shall have the option to immediately terminate this Lease; and in the event of such termination, TENANT shall have no further right or claim thereto and CITY shall immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

**Section 11.04 Lender May Cure Default.**

CITY shall afford the Lender under any Leasehold Encumbrance of record with CITY, as provided in Article 5 of this Lease, the right to cure any default by TENANT of the covenants, conditions, or agreements hereof, ~~as provided in Article 5 of this Lease~~.

**Section 11.05 Attorneys' Fees.**

In the event the CITY finds it necessary to retain an attorney in connection with the default by the TENANT or enforcement of any of the terms, conditions, and covenants of this Lease, even though litigation is not instituted, TENANT shall pay to CITY its reasonable attorneys' fees. Non-payment of attorneys' fees by TENANT within three (3) days after written notice is served on TENANT shall give rise to an independent legal action by CITY to collect same. If CITY is successful in such legal action, CITY shall also be entitled to attorney fees and costs for the collection action. To the extent that CITY is represented by CITY'S the City Attorney, a reasonable sum for such attorneys' services will be included as attorney's fees.

**Section 11.06 Damages for Breach.**

IfShould TENANT defaults in the performance of any covenant, condition or agreement contained in this Lease and the default be incurable or not be cured within the time period set forth hereinabove, then CITY may terminate this Lease and:

(1) Bring an action to recover from TENANT:

(a) The worth at the time of award of the unpaid rent which had been earned at the time of termination of the Lease;

(b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of the Lease until the time of award exceeds the amount of rental loss that TENANT proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that TENANT proves could be reasonably avoided; and

(d) Any other amount necessary to compensate CITY for all detriment proximately caused by TENANT'S failure to perform its obligations under this Lease; and

(2) Bring an action, in addition to or in lieu of the action described in subparagraph (1) of this Section, to re-enter and regain possession of the Premises in the manner provided by the laws of unlawful detainer of the State of California then in effect.

**Section 11.07 Cumulative Remedies.**

The remedies available to CITY in this Article shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Lease.

**Section 11.08 Waiver of Breach.**

The waiver by CITY of any breach by TENANT of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by TENANT either of the same or a different provision of this Lease.

**Section 11.09 Surrender of Premises.**

On expiration or sooner termination of this Lease, TENANT shall surrender the Premises, and, subject to Section 4.04, all improvements in or on the Premises, and all facilities in any way

appertaining to the Premises, to CITY in good, safe, and clean condition, reasonable wear and tear excepted.

## Article 12 MISCELLANEOUS

### Section 12.01 Attorneys' Fees.

~~If~~Should any litigation ~~is~~be commenced between the ~~P~~parties to this Lease concerning the Premises, this Lease, or the rights and duties of either in relation thereto, ~~then~~ the ~~P~~party, CITY or TENANT, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted in the litigation, to a reasonable sum as and for its attorneys' fees in such litigation, which shall be determined by the court in such litigation or in a separate action brought for that purpose. The "prevailing" party shall mean the ~~P~~party who obtains substantially the relief sought by that ~~P~~party. To the extent ~~that~~ CITY is represented by ~~the~~ CITY'S City Attorney, a reasonable sum for such attorney's~~'~~ services will be included as attorney's~~'~~ fees.

### Section 12.02 Notices.

Any and all notice or demands by or from CITY to TENANT, or TENANT to CITY, shall be in writing. They shall be served either personally, or by registered or certified mail. Any notice or demand to CITY may be given to:

Harbor Director  
1275 Embarcadero  
Morro Bay, California 93442

with a copy to:

City Manager of the City of Morro Bay  
City Hall  
595 Harbor Street  
Morro Bay, CA 93442

Any notice or demand to TENANT may be given at:

Morro Bay Fish Company  
Attention: Giovanni S. Comin, President  
5495 Traffic Way  
Atascadero, CA 93422

with a copy to:

Anthony J. Cigliano, President  
Santa Monica Seafood Company  
18531 S. Broadwick Street  
Rancho Dominguez, CA 90220

Such addresses may be changed by written notice by either party to the other party.

**Section 12.03 Governing Law and Jurisdiction.**

This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision concerning this Lease arises. CITY and TENANT consent to exclusive personal and subject matter jurisdiction in the Superior Court of the State of California in and for the county where the Premises are located, and each party waives any claim that such court is not a convenient forum. Each party hereby specifically waives the provisions of California Code of Civil Procedure Section 394, and any successor statute thereto.

**Section 12.04 Binding on Successors.**

Subject to the provisions herein relating to assignment and subletting each and all of the terms, conditions, and agreements herein contained shall be binding upon and inure to the benefit of the successors and assigns of any and all of the ~~Parties hereto~~; and all of the ~~Parties hereto~~ shall be jointly and severally liable hereunder.

**Section 12.05 Partial Invalidity.**

~~If~~Should any provision of this Lease ~~is~~be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, then the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

**Section 12.06 Sole and Only Agreement.**

This Lease, including all exhibits incorporated by reference, constitutes the sole and only agreement between CITY and TENANT respecting the Premises and the leasing of the Premises to TENANT. Any other agreements or representations respecting the Premises and their leasing

to TENANT by CITY, which are not expressly set forth in this Lease, are null and void. The lease terms herein specified correctly set forth the obligations of CITY and TENANT as of the date of this Lease. No modification, amendment, or alteration of this Lease shall be valid unless it is in writing and signed by both parties.

**Section 12.07 Modification.**

This ~~Lease~~ agreement shall not be modified except pursuant to a written agreement executed by ~~CITY'S~~ the Mayor and City Clerk pursuant to prior CITY's City Council approval. Notwithstanding CITY'S City Council approval, no agreement shall become effective until such agreement is in fact executed by ~~CITY'S~~ the Mayor ~~and~~ AYOR and ~~City~~ ITY ~~Clerk~~ LERK. TENANT understands ~~that~~ this Lease agreement may not be modified by oral statements by any person representing ~~the~~ CITY, including ~~CITY'S~~ the Mayor and City Clerk. TENANT specifically agrees not to rely on oral statements, purported oral waivers, or purported oral modifications and agrees not to rely upon purported written modifications unless they meet the requirements of this paragraph and are approved in writing pursuant to formal City Council action and a subsequent written modification signed by ~~the~~ CITY'S Mayor and City Clerk. If the title of any person authorized to act for CITY under this Lease shall be changed during the term of this Lease, then the person who succeeds to substantially the same responsibilities with respect to ~~the~~ CITY shall have the authority to act for CITY under this Lease.

**Section 12.08 Time of Essence.**

Time is expressly declared to be the essence of this Lease.

**Section 12.09 Memorandum of Lease for Recording.**

CITY and TENANT shall, at the request of either at any time during the term of this Lease, execute a memorandum or "short form" of this Lease, which shall describe the P ~~p~~ parties, set forth a description of the P ~~leased~~ p premises, specify the T ~~term of this Lease~~, and incorporate this Lease by reference.

**Article 13 SPECIAL PROVISIONS PECULIAR TO THIS LEASE SITE**

The following provisions apply to this Lease site only:

**Section 13.01 Rescission of Old Lease**

CITY and TENANT understand and agree ~~that~~ this L ~~ease~~ rescinds and revokes the previous lease between CITY and TENANT more particularly described as that certain lease

originally made ~~with~~ TENANT ~~Morro Bay Fish Company~~ and dated September 22, 2008, for ~~the~~ said Premises, including all amendments made thereto.

### **Section 13.02 Operation of Full Service Fish Buying Station**

TENANT agrees to operate the Premises as a full service fish buying and unloading station. TENANT shall make the hoists and other equipment on the Premisessite available at commercially reasonable fees to any licensed commercial fish buyer on a first-come, first-served basis; ~~provided,~~ that TENANT may establish commercially reasonable hours for TENANTS operation of the hoists and equipment. TENANT may only refuse service to other licensed fish buyers if TENANT has commercially reasonable reasons for said refusal, such as unpaid bills or fees to TENANT or illegal or unsafe operations by users. ~~If~~ Should there ~~is~~ be a dispute between TENANT and CITY of what constitutes “commercially reasonable” fees, hours, and reasons for refusal of service, then TENANT agrees ~~that~~ CITY shall be the sole determinant for defining ~~th~~ ese terms as outlined in this section. CITY may, at its sole discretion, allow TENANT to operate at less than the minimum proscribed hours required due to sea, weather, acts of God, or other reasons. TENANT at no time shall refuse service to any commercial fisherman, including unloading their vessels, unless TENANT has commercially reasonable reasons for said refusal as outlined above.

### **Section 13.03 Operation of Ice Making Machine**

(1) TENANT agrees to operate and maintain the CITYity-owned ice making machine and associated equipment for ~~the~~ CITY, including blowing ice to customers, collection of fees, paying all utilities related to the machine, insuring the machine and conducting basic daily maintenance and repairs.

(2) TENANT shall retain 10% of all Gross Ice Sales to be deposited into a dedicated account, hereinafter referred to as “Ice Accumulation Account.”

(3) The Ice Accumulation Account shall be used for maintenance and repair needs beyond those considered basic daily needs, with CITY paying for maintenance and repair needs beyond those funded from the available Ice Accumulation Account revenues. At the beginning of each CITY-fiscal year beginning July 1, all maintenance and repair conducted on the ice machine for the upcoming year shall be by mutual consent, collaboration and planning between TENANT and CITY. ~~If~~ Should a dispute arises s as to maintenance and repair to be performed, then CITY shall be the sole determinant as to the nature and scope of maintenance and repair to be performed.

(4) TENANT may set commercially reasonable limits on the amount of ice that may be purchased, and set commercially reasonable hours during which ice is available, but may not discriminate against or refuse service to any party in providing ice services except for commercially reasonable reasons. TENANT shall not charge more than 10% above the coast-wide average cost, as determined by CITY, of ice sales to the commercial fishing industry. IfShould there be a dispute between TENANT and CITY of what constitutes “commercially reasonable” reasons for refusal of service or hours ice is available, TENANT agrees ~~that~~ CITY shall be the sole determinant for defining thatese terms as outlined in this section.

(5) The term “Gross Ice Sales” as used herein, shall mean (subject to the exceptions and authorized deductions as hereinafter set forth) the total selling price and the total amount received by TENANT from all ice sales and services rendered in, on or from the Premises by TENANT, its sublessees, licensees or concessionaires, both for cash and on credit, and if on credit whether or not payment be actually made thereof.

(6) Notwithstanding the other provisions of Section 13.03, the term “Gross Ice Sales” shall not include the following items:

(a) Credits and refunds made to customers for ice or ice services not rendered; and,

(b) Any sales or excise taxes otherwise includable in Gross Ice Sales as defined in this Section because such taxes are part of the total selling price of ice or ice services rendered in, on or from the Premises, where TENANT must account for and remit the taxes to the government entity or entities by which they are imposed; and

(c) With respect to credit card sales, fees retained or withheld by the issuer and/or merchant bank pursuant to TENANT'S Ss credit card acceptance agreement.

(d) Ice used by TENANT or any subsidiary thereof or therefore.

(7) TENANT shall keep or cause to be kept full, complete, and accurate records, and books of account in accordance with accepted accounting practices showing the total amount of Gross Ice Sales, as defined herein, made each calendar month in, on or from the Premises. TENANT shall keep said records and books of account within San Luis Obispo County and shall notify CITY in advance of their location at all times. Furthermore, TENANT shall at the time of sale in the presence of the customer cause the full selling price of ice or ice services rendered in, on or from the Premises to be recorded in a manner consistent with accepted accounting and commercial practices. Said records, books of account, cash register tapes, including any sales

tax reports that TENANT may be required to furnish any government or governmental agency shall at all reasonable times be open to the inspection of CITY, CITY'S auditor, or other authorized representative or agent of CITY. TENANT consents to the release of sales tax information to CITY and on demand will furnish to CITY a copy of the sales tax reports, quarterly reports and any audit reports of sales for confidential internal use of the CITY in determining Gross Ice Sales for TENANT. TENANT consents and authorizes CITY to request such information directly from the State Board of Equalization or other state agency with which sales tax information is filed.

(8) By July 31 of each year, commencing in 2016, TENANT shall furnish CITY with a statement, to be certified by TENANT as current, true and accurate, which shall set forth the Gross Ice Sales made in, on or from the Premises for the previous twelve (12) calendar months, ending June 30, just concluded, and the authorized deductions, if any, therefrom; and with it TENANT shall indicate the 10% amount of Gross Ice Sales retained by TENANT.

(9) If TENANT shall at any time cause an audit of sales of TENANT'S business to be made by a public accountant, then TENANT shall furnish CITY with a copy of said audit without cost or expense to CITY. CITY may, once in any twelve-month period, cause an audit of the business of TENANT to be made by a public accountant of CITY'S own selection. TENANT shall, upon receiving written notice of CITY'S desire for such an audit deliver and make available all such books, records and cash register tapes to the public or certified public accountant selected by CITY. Furthermore, TENANT shall promptly on demand reimburse CITY for the full cost and expense of said audit, if should the audit discloses s-that the questioned statement or statements misreported Gross Ice Sales by five percent (5%) or more but less than ten percent (10%). In the event ~~that~~ an audit performed at CITY'S request discloses ~~that~~ TENANT misreported Gross Ice Sales by less than 5%, the cost of such audit shall be paid by CITY. In the event ~~that~~ any audit or other review of records discloses ~~that~~ the amounts reported as Gross Ice Sales was misreported by TENANT by ten percent (10%) or more, CITY shall not only be entitled to recover from TENANT all costs of audit and review but shall also be entitled to recover from TENANT a penalty equal to two times the amount misreported pursuant to this Lease on such misreported amounts. Whenever any audit discloses ~~that~~ Gross Ice Sales were misreported by any amount, TENANT shall immediately reimburse the Ice Accumulation Account if audit discloses ~~that~~ revenues are due said account, together with interest at the Default Rate thereon, from the date the Gross Ice Sales were due the Ice Accumulation Account payable until the date paid.

(10) CITY shall be entitled at any time within five (5) years after TENANT'S receipt of any Gross Ice Sales, to question the sufficiency of the amount thereof and/or the accuracy of the statement or statements furnished by TENANT to justify the same. For the purpose of enabling CITY to check the accuracy of any such statement or statements, TENANT shall, for said period of five (5) years after submission to CITY of any such statement, keep all of TENANT'S records, including sales tax returns, all cash register tapes and other data which in any way bear upon or are required to establish in detail TENANT'S Gross Ice Sales and any authorized deductions therefrom as shown by any such statements and shall upon request make the same available to CITY for examination.

#### **Section 13.04 Equipment on Premises**

TENANT and CITY agree ~~that~~ TENANT shall be the sole determinant with regard to equipment installed and/or utilized on Premises, subject to any and all required permits or codes.

TENANT and CITY further agree ~~that~~ any CITY-owned equipment on Premises, if utilized by TENANT, shall be maintained by TENANT at TENANT'S sole cost and expense, unless or until TENANT ceases utilization of ~~that~~ equipment. ~~If~~ TENANT ceases to use ~~that~~ equipment, ~~then~~ TENANT may remove, sell or otherwise dispose of it with prior written consent of CITY'S Harbor Director. CITY agrees to not withhold consent provided TENANT is removing, selling or otherwise disposing of ~~that~~ equipment for TENANT'S commercial or business purposes. Any proceeds from sale of CITY-owned equipment shall be retained by CITY.

**Section 13.05 Prohibition on Interfering with Adjacent Lease Sites and Access Corridor**

TENANT shall take all necessary steps, management measures, and vessel berthing configurations so ~~that~~ at no time, will TENANT'S operations interfere with, block, or adversely affect adjacent or nearby Lease Sites or their operations. TENANT shall keep the northerly 10 feet in a north to south direction for the entire east to west length of the Premises, hereinafter Access Corridor as described in Exhibit A, on Lease Site 131W free and clear of any and all permanent installations or equipment, and TENANT shall at all times allow free and open access to the Access Corridor for the use of vehicles actively unloading fish at the hoist operated there by the adjacent lease holder. If ~~thesaid~~ hoist is not in active use, ~~then~~ TENANT may store easily removable gear and equipment in the Access Corridor.

**Section 13.06 Construction of Improvements**

CITY and TENANT agree ~~that~~ TENANT will invest in piling and dock decking capital improvements to the Premises as herein outlined and valued at a minimum of \$40,000 in the initial five ~~(5)~~-year term of ~~this~~ Lease. The nature and scope of said capital improvements shall be on a meet and confer basis with CITY'S Harbor Director. Failure to complete said improvements as evidenced by a final building permit inspection as required by ~~the CITYity of Morro Bay~~, in addition to providing proof of expenses as evidenced by copies of invoices by June 30, 2020 shall be a material default of the Lease Agreement and subject to any remedies outlined in Article 11 herein, including termination of the Lease.

CITY and TENANT further agree ~~that~~ in 2022 TENANT shall conduct a dock and piling inspection to the extent necessary to determine further capital improvements needed with a project scope valued at a minimum of \$40,000 to be completed by TENANT on a meet and confer basis with CITY'S Harbor Director. Failure to complete said improvements as evidenced by a final building permit inspection as required by ~~the CITYity of Morro Bay~~, in addition to providing proof of expenses as evidenced by copies of invoices by December 1, 2022 shall be a material default of ~~this~~ Lease ~~Agreement~~ and subject to any remedies outlined in Article 11 herein, including termination of the Lease

TENANT acknowledges ~~that~~ construction of TENANT'S proposed improvements of the Premises requires, but may not be limited to, obtaining a permit from the California Coastal Commission, U.S. Army Corps of Engineers, and a ~~CITYity~~ Building Permit. It is the TENANT'S obligation to fully investigate the issues and costs in obtaining these permits. Failure to obtain any and all required permits and approvals for said construction shall not be a reason for failure to comply with this Section. TENANT further acknowledges ~~that said~~

construction of TENANT'S improvements may require repair or replacement of all or portions of the docks, existing buildings, revetments, access ways, sidewalks, drainage systems and other current improvements on the Premises to the standards of CITY'S the City Engineer and TENANT agrees to meet these standards through review and revision of final Building Plans prior to issuance of a Building Permit for the construction of improvements on the Premises.

During construction of improvements, TENANT shall take all measures to:

- A. Avoid any pollution of the atmosphere or littering of land or water by or originating in or about the Premises or caused by TENANT'S construction activities;
- B. Keep the noise level on the Premises to a minimum so that persons in the neighborhood will be able to comfortably enjoy business and facilities in the area;
- C. Prevent any pollutants, including but not limited to petroleum products, from entering Morro Bay waters;
- D. Avoid negative impacts on surrounding businesses;
- E. Prohibit storage of materials or equipment on public property and avoid parking or traffic delays or impairment without prior consent of CITY.
- F. Keep the construction site in a sightly, orderly, and safe manner at all times.

EXECUTED on \_\_\_\_\_, 2015, at \_\_\_\_\_,  
\_\_\_\_\_ County, California.

CITY OF MORRO BAY

TENANT

Morro Bay Fish Company

\_\_\_\_\_  
Jamie L. Irons, MAYOR

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Joseph W. Pannone, CITY ATTORNEY

ATTEST:

\_\_\_\_\_  
Dana Swanson, CITY CLERK

EXHIBIT A  
COPY OF PARCEL MAP

**L E A S E**

by and between

the CITY OF MORRO BAY

("CITY")

and

MORRO BAY FISH COMPANY ("TENANT")

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# EXHIBIT B

## CITY OF MORRO BAY

595 Harbor St.  
Morro Bay, CA 93442  
(805) 772-6200  
FAX (805) 772-7329

### INSURANCE REQUIREMENTS FOR LESSEES (NO AUTO RISKS)

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

#### *Minimum Scope of Insurance*

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
3. Property insurance against all risks of loss to any tenant improvements or betterments.

#### *Minimum Limits of Insurance*

Lessee shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
3. Property Insurance: Full replacement cost with no coinsurance penalty provision.

City of Morro Bay  
Insurance Requirements for Lessees

***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

***Other Insurance Provisions***

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to the Lessee.
2. The Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

***Verification of Coverage***

Lessee shall furnish the City with original certificates and amendatory **endorsements** effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the City **before** use of City premises. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

City of Morro Bay  
Insurance Requirements for Lessees

***Sub-lessee***

Lessee shall include all sub-lessees as insureds under its policies or shall furnish separate certificates and endorsements for each sub-lessee. All coverages for sub-lessees shall be subject to all of the requirements stated herein.

Insurance\SpecC  
Rev. 8/01

City of Morro Bay  
Insurance Requirements for Lessees

Reproduction of Insurance Services Office, Inc. Form

**INSURER:** ISO Form CG 20 11 11 85 (Modified)  
**POLICY NUMBER:** Commercial General Liability  
**ENDORSEMENT NUMBER:**

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED -- MANAGERS OR LESSORS OF PREMISES**

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART.

**SCHEDULE**

1. Designation of Premises (Part Leased to You):
2. Name of Person or Organization (Additional Insured): City of Morro Bay
3. Additional Premium:

(If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**WHO IS AN INSURED** (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization shown in the schedule.

Modifications to ISO form CG 20 11 11 85:

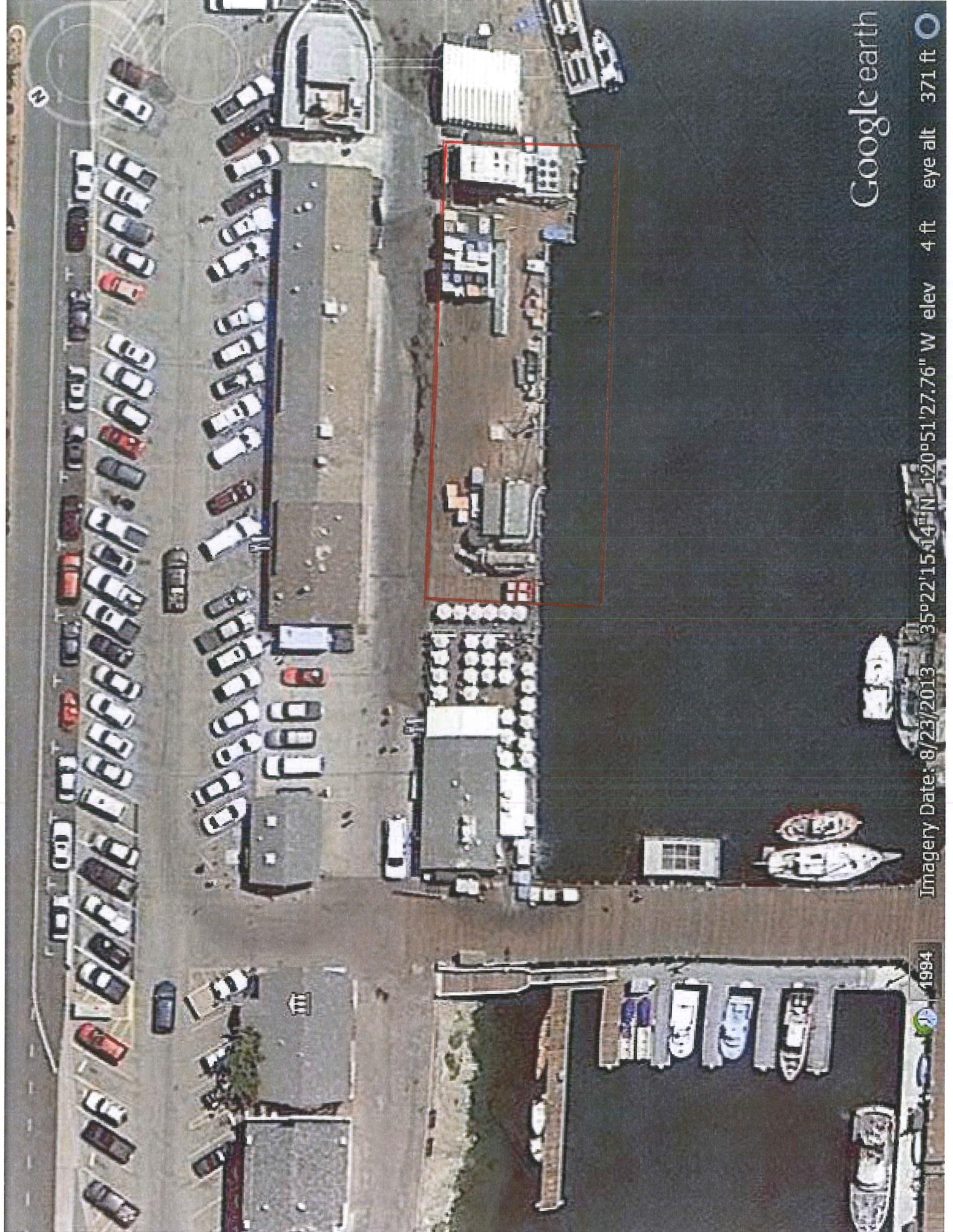
1. The Insured scheduled above includes the Insured's elected or appointed officers, officials, employees and volunteers.
2. This insurance shall be primary as respects the Insured shown in the schedule above, or if excess, shall stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the Insured scheduled above shall be in excess of this insurance and shall not be called upon to contribute with it.
3. The insurance afforded by this policy shall not be canceled except after thirty days prior written notice by certified mail return receipt requested has been given to the City.

\_\_\_\_\_  
Signature-Authorized Representative

\_\_\_\_\_  
Address

CG 20 11 11 85 Insurance Services Office, Inc. Form (Modified)  
Insurance\Form#3  
Rev. 8/01





Google earth

Imagery Date: 8/23/2013 35°22'15.14"N 120°51'27.76"W elev 4 ft eye alt 371 ft

1994



AGENDA NO: B-1

MEETING DATE: May 26, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** May 21, 2015

**REVISED:** May 22, 2015

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

**SUBJECT:** Public Hearing for the Adoption of Resolution No. 30-15 Establishing New Water and Sewer (Wastewater) Rates (User Fees)

### **RECOMMENDATION**

Hold a Public Hearing and, as a result, adopt both water and sewer (wastewater) rate (user fee) increase through the adoption of Resolution No. 30-15

### **ALTERNATIVE**

1. Continue the item and provide direction to staff regarding any modifications to the sewer or water rate structures.

### **FISCAL IMPACT**

Both the water and wastewater funds have current obligations and will require future expenses which are not adequately funded by the current rate structures. That situation has existed for quite some time because the City has not increased water rates for the last 20 years. The last time sewer rates went through the Proposition 218 process was in 2007, and the Council adopted a new rate structure with an escalation clause that was valid for five years. Additionally, the current rate structures of both revenue streams do not produce adequate funds to meet the City's obligations for debt coverage ratios for the bonds issued for capital improvements for those services. The Sewer and Water Study prepared by Bartle Wells Associates (BWA) recommends an increase in rates and modifications to the rate structures to correct those fiscal imbalances.

### **DISCUSSION**

The City Council reviewed the water and sewer rates at a Special Study Session on February 24, 2015. At that February study session, the Council formed a consensus regarding the basic sewer and water rates for residential and non-residential users. That consensus was to proceed with the needed studies and noticing requirements for the Council to consider necessary increases in those rates.

The item was brought back to the Council at the March 24, 2015 regular meeting for the Council to finalize the proposed rates and set the date for a public hearing to receive protests and potentially

Prepared By: \_\_\_RL\_\_\_ Dept Review: \_\_\_RL\_\_\_

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

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

approve the rates. Also at the March 24, 2015 meeting, the Council discussed the importance of outreach to educate the community on the Prop 218 vote; uncertainty with regard to State water pass thru and the likelihood the State will not have a project ready in the 5-year time frame; the importance of community buy-in and potential risk of including the State water pass thru surcharge at this time. The action at the meeting was for Council approve the water and sewer rate structures, as presented, with the surcharge for desal facility use and water shortage emergency rates.

The below charts show a summary of the information regarding the recommended increases in those rates:

Proposed Water Rates							
	Current	Projected Water Rates					
		2015/16	2016/17	2017/18	2018/19	2019/20	
<b>Fixed Monthly Charge</b>	\$16.43	\$23.00	\$26.00	\$28.00	\$30.00	\$32.00	
<b>Water Quantity Charges (\$/hcf)</b>							
Tier 1	0 - 3 hcf	\$0.00	\$3.00	\$4.00	\$5.00	\$5.50	\$6.00
Tier 2	4 - 10 hcf	5.56 - 5.74	6.00	7.00	7.50	8.00	8.50
Tier 3	11- 50 hcf	5.77 - 7.81	9.00	9.50	10.00	10.50	11.00
Tier 4	>50 hcf	7.85 - 13.68	12.00	12.50	13.00	13.50	14.00
<i>1 hcf = one hundred cubic feet = 748 gallons</i>							

Proposed Sewer Rates							
	Current 2014/15	Proposed					5-Year Impact
		2015/16	2016/17	2017/18	2018/19	2019/20	
<b>RESIDENTIAL</b>							
<i>Charge per residential dwelling unit</i>							
Single Family	\$45.59	\$55.00	\$62.50	\$70.00	\$77.00	\$83.00	\$37.41
Multi-Family/Condo	45.59	44.00	50.00	56.00	61.60	66.40	varies
% of Single Family		80%	80%	80%	80%	80%	
<b>NON-RESIDENTIAL</b>							
<i>Rate per hcf of metered water use</i>							
Class A - Low Strength	\$4.63	\$6.50	\$7.95	\$9.37	\$10.57	\$11.40	\$6.77
Class B - Domestic Strength	5.82	7.98	9.65	11.29	12.67	13.61	7.79
Class C - Moderate Strength	8.03	10.19	11.86	13.50	14.89	15.82	7.79
Class D - Mod-High Strength	10.45	12.55	14.18	15.78	17.13	18.03	7.58
Class E - High Strength	13.38	15.89	17.84	19.75	21.36	22.46	9.08
Minimum Annual Charge	51.77	44.00	50.00	56.00	61.60	66.40	14.63

### Additional Rates and surcharges

#### Temporary Surcharge for Desalination Facility Operations

The City’s desalination plant was originally constructed in 1992 to provide water supply during a drought emergency and was subsequently upgraded in 2009. The plant served as the City’s primary source of water supply for a few months of 2010 and is currently used on a very limited basis to treat high-nitrate groundwater to supplement supply from the State Water Project. The plant provides a source of backup and emergency water supply in case of future State Water Project supply reductions or service outages. In future years, the plant may potentially be used as a primary source of supply.

The plant treats water via reverse osmosis to produce high-quality drinking water. The relatively high operating costs for running the plant during potential future water shortage emergencies are not factored into the proposed water rate increases. As such, a surcharge to recover the plant’s operating costs during periods of use is needed. The surcharge would be billed based on a customer’s metered water use and would only be levied for periods when the desalination plant is in operation.

The proposed maximum surcharge is based on the cost of producing drinking water from seawater. The surcharge is reduced to account for a corresponding reduction in water purchases from the State Water Project. The proposed maximum surcharge for desalination facility operations is \$3.00 per hcf (hundred cubic feet). This equates to slightly over \$0.40 per 100 gallons, or 4/10ths of a cent per gallon.

The proposed maximum surcharge will be subject to an automatic inflationary adjustment to keep the charge aligned with cost inflation. The inflationary adjustment will be based on the change in the U.S. City Average Consumer Price Index (CPI) for All Urban Consumers from the January 2015 index of 233.707.

**Water Shortage Emergency Rates**

Proposed Water Shortage Emergency Rates are designed to help the water enterprise remain financially stable during periods of emergency water shortages and reduced water sales. The City’s 2010 Urban Water Management Plan includes a Water Shortage Contingency Plan that identifies a staged response plan for responding to water supply shortages. The plan includes five stages of water demand cutbacks that would be triggered by the City in response to escalating levels of water supply shortages.

The City is currently in a Stage 3 Water Shortage and has implemented conservation requirements for “Severely Restricted Water Supply Conditions”. The City has already taken substantial steps to help ensure adequate water supply during periods of drought and does not anticipate needing to take more extreme measures at this time. However, more severe water shortages could require additional cutbacks in customer demand and result in future revenue shortfalls.

The following table shows proposed maximum Water Shortage Emergency Rates effective on or after July 1, 2015. These emergency rates can be phased in by City Council authorization in response to an escalating water shortage emergency and would apply to metered water use. Pursuant to California law, any future Water Shortage Emergency Rates implemented will not exceed the City’s cost of providing service. The City will only implement Water Shortage Emergency Rates, as needed, to support financial stability under a more-severe Stage 4 or Stage 5 water shortage emergency.

<b>PROPOSED MAXIMUM WATER SHORTAGE EMERGENCY RATES</b>					
<b>Water Shortage Contingency Plan Stages<sup>1</sup></b>	<b>Stage 1</b>	<b>Stage 2</b>	<b>Stage 3</b>	<b>Stage 4</b>	<b>Stage 5</b>
<b>Water Supply Shortage</b>	<b>Normal</b>	<b>Moderate</b>	<b>Severe</b>	<b>Critical</b>	<b>Emergency</b>
<b>Water Shortage %</b>	< 5%	5% - 15%	15% - 25%	25% - 50%	> 50%
<b>Maximum Water Shortage Emergency Rates<sup>2</sup></b>					
<u>Tier</u>	<u>Use in Tier</u>				
Tier 1	0 - 3 hcf	-	-	\$8.18	\$12.85
Tier 2	4 - 10 hcf	-	-	11.59	18.20
Tier 3	11- 50 hcf	-	-	15.00	23.56
Tier 4	>50 hcf	-	-	19.09	29.98

1 Based on Water Shortage Contingency Plan from 2010 Urban Water Management Plan.

2 Can be implemented by City Council authorization in response to a Stage 4 or Stage 5 water shortage emergency.

**Protest Procedure/Public Notice**

Pursuant to the requirements of Proposition 218, notice of the proposed water and sewer rates were mailed to the owners of record for a parcel or parcels along with every non-duplicative mail receptacle in Morro Bay. Written protests against the proposed rate increase are to be received by the City Clerk prior to the end of this public hearing. Those eligible to protest the proposed rates are property owners and water or sewer customers within the City limits. If written protests are filed by

a majority of the affected property owners or customers; the proposed rate changes cannot not be imposed.

On April 7, 2015, 8,931 notices containing a description of the rationale for the rate increases, a user fee schedule through July 2019, and written protest information were mailed to the owners of record for a parcel or parcels or a tenant directly liable for payment of the fees subject to the proposed rate change. To date, approximately 263 protests have been received; staff will be providing a final tabulation at the public hearing. There needs to be 2,707 protests to constitute over 50-percent of the water accounts. Staff has received numerous telephone calls requesting information on the proposed rate schedule as well.

### **Water Rates and Cost of Service Allocation**

In recent weeks there have been questions raised regarding the legitimacy of tiers in water rates. On April 20, 2015, the Fourth Appellate District issued its long-awaited decision in *Capistrano Taxpayers Association Inc. v. City of San Juan Capistrano* (“San Juan Capistrano”). The San Juan Capistrano decision expressly rejects the idea that tiered water rates are inherently unconstitutional pursuant to Proposition 218. However, the decision also holds that a tiered rate structure unsupported by actual cost of service calculations for each tier is unconstitutional. As a result, unless San Juan Capistrano is reheard by the Fourth District or reviewed by the California Supreme Court, tiered rate structures may be vulnerable to challenge to the extent they are not tied to identifiable, incremental costs correlating to the tiers.

BWA developed updated water rates with the following modifications to the rate structure:

- Water quantity charges are phased in for the first three units of water.
- Fixed monthly charges continue to recover approximately one-third of total rate revenues. While the fixed charges are disproportionately low compared to the City’s fixed expenses, this level of fixed revenue recovery is in line with industry norms and conservation-oriented rates.
- Proposed water quantity rates transition to a four-tiered inclining rate structure. Under the draft proposed rate structure, customers would first purchase water in the lowest tier before purchasing water in successive higher tiers as use increases. Due to a transition in rate structure, billing impacts will vary based on water use.
- A detailed cost recovery allocation was developed supporting the proposed rates for fiscal year 2019/20. Rates in intervening years are phased in from current levels to the proposed levels calculated for 2019/20 to help minimize the annual impact due to rate structure modifications in addition to overall rate increases.
- The proposed rates were developed based on reasonable and equitable allocations for cost recovery from the City’s fixed charges and tiered quantity charges. Based on the allocations, fixed monthly service charges will recover approximately 34% of total rate revenues and water quantity charges will recovery roughly 66% of total rate revenues.
- The roughly 66% of costs designated for recovery from the City’s water quantity charges are further allocated for recovery from each rate tier based on the following assumptions:

- Costs attributable to all water use are allocated on a pro-rata basis to all water use. This results in each rate tier recovering a pro-rata share of costs based on the percentage of water consumed in each tier.
- Costs related to meeting peak demands are allocated more toward higher tiers in recognition that higher tier water use accounts for a disproportionately higher share of demand during peak use months and therefore is the underlying driver of the need for sizing facilities to meet peak demands. Costs attributable to peak demand are attributed to 15% of Tier 2 water use, 35% of Tier 3 water use, and 60% of Tier 4 water use. No peak costs are allocated for cost recovery from Tier 1.
- Many costs – such as costs for operating and maintaining facilities – are incurred providing service to meet both average demands and peak demands. The partial share of these costs allocated for variable revenue recovery are further allocated two-thirds to all water use and one-third to meeting peak demands.
- In total, costs are recovered as follows:
  - Fixed rate cost recovery: 34%
  - Variable rate cost recovery: 66%, of which costs are recovered
    - Pro-rata allocation to all water use: 47.4%
    - Allocation to peak use: 18.7% (in line with peak monthly demand in excess of average monthly demand based on analysis of historical water use)

### **Sewer Rates and Cost of Service Allocation**

BWA developed sewer rates based on a cost-of-service approach that include some incremental modifications to the City's sewer rate structure.

- Residential rates are revised to include fixed monthly charges per dwelling unit only and eliminate the additional volumetric charges levied on water use over the monthly allowance. Only a small amount of revenues are currently generated by the volumetric charges, and they may be recovering charges for outdoor water use that does not get returned to the sewer system.
- Under the proposed residential rates, multi-family residential units and condominiums would pay reduced charges equal to 80% of the single family charge based on analysis of winter water use data and proposed cost allocations.
- Although the City's non-residential rates list 18 customer classes, these customers are billed only five different sewer rates. The proposed rates continue to include five rate classes, with each class defined based on wastewater strength (Low, Domestic, Moderate, Mod-High, and High Strength).

- New rates were developed based on a cost of service methodology that equitably recovers costs for wastewater flow and strength from each customer class. Costs were allocated for recovery via the wastewater treatment parameters of flow, Biological Oxygen Demand (BOD), and Suspended Solids (SS). Costs allocated to each parameter were then divided by the total estimated loadings for each parameter, resulting in unit costs for flow (\$ per hcf) and strength (\$ per pound for BOD and SS). These unit costs were then applied to the wastewater characteristics of each customer class resulting in new rates for each class based on common underlying unit costs.
- Rate adjustments from current rates to proposed maximum rates in 2019/20 were phased in over five years.
- The minimum charge for non-residential sewer accounts is revised from being higher than the current fixed residential charge, to the reduced flat monthly charge proposed for multi-family residential accounts, equal to 80% of the single family rate.

### **CONCLUSION**

The current water and sewer funds are not fiscally sustainable given the capital, maintenance needs and bond obligations for both funds. The rate structures proposed by BWA would resolve those needs and allow the City to be in compliance with its bond covenants. Staff recommends the City Council conduct a public hearing on this matter and, as a result, adopt water and sewer rate increases via the adoption of Resolution No. 30-15

### **ATTACHMENTS**

Summary of Protests (An update will be provided at the hearing)

### **LINKS TO REFERENCE MATERIALS (On City Website)**

[Water and Sewer Rate Study](#)

[Proposition 218 Notice](#)

**RESOLUTION NO. 30-15**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
ESTABLISHING USER RATES FOR  
WATER AND SEWER (WASTEWATER) SERVICE**

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

**WHEREAS**, the City of Morro Bay undertook a water and sewer rate study to determine whether the current rate structures adequately provided for the maintenance, operation and replacement/rehabilitation of its water and sewer systems; and

**WHEREAS**, the community of Morro Bay seeks to replace its 62-year-old wastewater treatment plant with a new water reclamation facility and to provide for a properly functioning wastewater collection system, complying with the State Water Resources Control Board requirements and the City of Morro Bay Sewer Collection System Master Plan; and

**WHEREAS**, after review of relevant financial data, it has been determined existing Water and Sewer (Wastewater) System rates and charges presently generate insufficient revenue for prudent operation of the systems for the adequate health, safety, and welfare of the community as well as to meet its contractual financing-related obligations; and

**WHEREAS**, the City is required, by State law and City policy, to collect sufficient revenues to cover the costs of operating the water and sewer systems. Those revenues allow the City to safely and reliably provide water to the residents and businesses of Morro Bay and to convey and treat wastewater, generated by the homes and businesses of the City, to protect human health and ensure the environment is safe from the accidental release of effluent into the natural ecosystem. Costs that must be recovered through rate revenue include utilities, equipment, supplies, as well as salaries and benefits of the City staff and financing required reserves. In addition, revenue generated from those rates is used to pay for capital improvements, such as a new water reclamation facility, sewer lift stations and the rehabilitation and replacement of water pipes, sewer pipes, water meters, fire hydrants and other associated equipment. Revenues are also used to pay off debt incurred in the process of installing or constructing significant capital improvements; and

**WHEREAS**, the proposed rates reflect the cost of providing service to all customers through the apportionment of costs based on customer, capacity, and demand characteristics; and

**WHEREAS**, it has been determined the recommended rates do not exceed the reasonable cost of providing water or sewer services and, as such, the proposed rates are not levied for general revenue purposes; and

**WHEREAS**, in accordance with Government Code section 50076, "As used in this article, "special tax" shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes;" and

**WHEREAS**, a notice of the public hearing regarding the proposed changes to the wastewater rates was mailed to each rate payer not less than forty-five days prior to the public hearing, in compliance with Section 6 of Article XIII-D of the Constitution of the State of California; and

**WHEREAS**, that public hearing was held before the City Council on May 26, 2015; and

**WHEREAS**, at the public hearing on May 26, 2015, \_\_\_\_\_ persons were present and spoke in opposition to the proposal; and \_\_\_\_\_ persons were present and spoke in support of the proposal; and

**WHEREAS**, on May 26, 2015, the City Clerk advised the Council that \_\_\_\_\_ written protests of the proposal were received prior to the hearing; and

**WHEREAS**, on May 26, 2015, the City Council received \_\_\_\_\_ written rate increase protests that were submitted at the time of the public hearing; and

**WHEREAS**, at the conclusion of the public hearing, the City Clerk tabulated the number of written protests received and reported there was not a majority protest of the proposed water or sewer rate increase by owners or authorized representatives of identified parcels receiving such services; and

**WHEREAS**, based on the information presented, including the staff reports and comments from the members of the public, the City Council of the City of Morro Bay finds the following:

- A. The purposes of the updated water rates established pursuant to this Resolution are to:
- Recover the reasonable estimate cost of services for which the rates are charged
  - Provide such costs allocated among City customers so as to bear a fair and reasonable relationship to customers' burdens on and benefit from City water or sewer services
  - Secure the financial stability of the water and sewer systems
  - Ensure high quality services
  - Provide a sound financial plan that meets existing ongoing operations and maintenance and debt service obligations which will assist in funding capital improvement projects.
- B. The updated water service rates established pursuant to this Resolution are not levied for general revenue purposes.

C. The rates set forth in this Resolution are intended to meet operating expenses, meet financial reserve needs and requirements, secure funding for capital improvement projects necessary to maintain service with existing service areas, and recover costs necessary to maintain the current level of City-water services. As such, adoption of the rates proposed in the staff reports and resolution as they relate to water and sewer services to City customers, is not a "project" within the meaning of the California Environmental Quality Act (CEQA), Public Resources Code subsections 21080 (b) (8) (A) (C) and (D)", which state: meeting operating expenses, including employee wage rates and fringe benefits"; "meeting financial reserve needs and requirements" and "obtaining funds for capital projects necessary to maintain service within existing service areas."

**WHEREAS**, in adopting the rates set forth in this Resolution, the City Council of the City of Morro Bay is exercising its powers under California Constitution Article XI, Section 7, which states: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws"; and

**WHEREAS**, the procedures followed and the rates adopted are in compliance with California Constitution Article XIII D, "Property-Related Fees and Charges"; and

**WHEREAS**, there is not a protest of the proposed water or sewer service rate increases by a majority of the owners, or authorized representatives, of identified parcels receiving such services; and

**WHEREAS**, rates shall apply to and be paid by the City customers at the times, and in the amounts and otherwise apply and be administered with the rates as prescribed in this Resolution to be effective July 1, 2015 and the July 1 of each fiscal year through and including July 1, 2019, and those rates and schedule are hereby incorporated into this Resolution; and

**WHEREAS**, the rates and all portions of this Resolution are severable and should any of the rates or any portion of this Resolution be proven to be invalid and unenforceable by a body of competent jurisdiction, then the remaining rates and/or Resolution portions shall be and continue in full force and effect except for those rates and/or Resolution that have been judged to be invalid; and

**WHEREAS**, this Resolution will become effective immediately upon adoption.

**NOW, THEREFORE**, the City Council of the City of Morro Bay hereby resolves the following:

**SECTION 1: FINDINGS.** The City Council hereby adopts all the above recitations as findings and conclusions, which are based on substantial evidence presented to the City Council through staff reports, professional studies and oral and written testimony received and considered by the

City Council during the process of considering the rates and issues regarding the subject matter of this Resolution (the “Record of Proceedings”).

**SECTION 2: DETERMINATION.** Based upon then findings and conclusions set forth above, the City Council determines: the Record of Proceedings establishes the costs listed Exhibit A, as those incurred by the City in providing water and sewer services to City customers are reasonable estimates of the costs of providing such services, and the revisions recommended in previous and current staff reports for existing water and sewer rates are necessary to recover the reasonable, estimated cost of providing such services for which the rates are charged, to allocate such costs among City customers so that they bear a fair and reasonable relationship to customers and to secure the financial stability of the City of Morro Bay water or sewer systems in accordance with the analysis conducted in current and prior staff reports. There was no majority protest of the proposed water or sewer rate increases. Therefore, the rates as set forth in Exhibit A are approved and adopted and, effective July 1, 2015 and the July 1 of each fiscal year through and including July 1, 2019, those rates shall, as and when applicable, supersede and replace the existing rates established and repealing resolutions in conflict thereto.

**SECTION 3: COLLECTION.** The City Council hereby directs the rates and charges established by this Resolution shall be billed and collected together with charges for other utility services rendered by the City of Morro Bay.

**SECTION 4: ENFORCEMENT.** In the enforcement of the collection of the rates and charges established herein, the City of Morro Bay may use any available remedy at law or in equity; provided, however, that said rates and charges shall not be collected by means of the San Luis Obispo County Assessor’s roll of real property taxes, nor shall any delinquent rates or charges be enforced by means of a lien on real property.

**PASSED AND ADOPTED** by the Morro Bay City Council at a regular meeting thereof held on the 26<sup>th</sup> day of May, 2015 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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JAMIE L. IRONS, Mayor

ATTEST:

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DANA SWANSON, City Clerk

EXHIBIT A

**Water Rates**

The City is proposing to phase in a series of water rate increases over the next five years as shown on the table on the next page. The proposed water service charges include both 1) a fixed monthly Service Charge levied on each account regardless of water use, plus 2) Water Quantity Charges billed based on metered water use each billing period. The proposed Water Quantity Charges are billed via four inclining rate tiers with water purchased first in Tier 1 and then subsequently in higher tiers as water use increases.

<b>PROPOSED WATER RATES</b>							
	<b>Current Rates</b>	<b>Effective on bills sent on or after</b>					
		<b>July 1 2015</b>	<b>July 1 2016</b>	<b>July 1 2017</b>	<b>July 1 2018</b>	<b>July 1 2019</b>	
<b>Fixed Monthly Charge</b>	\$16.43	\$23.00	\$26.00	\$28.00	\$30.00	\$32.00	
<b>Water Quantity Charges</b>							
<i>Billed per 100 cubic feet of metered water use (\$/hcf)</i>							
<u>Tier</u>	<u>Use in Tier</u>						
Tier 1	0 - 3 hcf	\$0.00	\$3.00	\$4.00	\$5.00	\$5.50	\$6.00
Tier 2	4 - 10 hcf	5.56 - 5.74	6.00	7.00	7.50	8.00	8.50
Tier 3	11- 50 hcf	5.77 - 7.81	9.00	9.50	10.00	10.50	11.00
Tier 4	>50 hcf	7.85 - 13.68	12.00	12.50	13.00	13.50	14.00

1 hcf = 100 hundred cubic feet = 748 gallons

**Temporary Surcharge for Desalination Facility Operations**

The proposed maximum surcharge is based on the cost of producing drinking water from seawater. The surcharge is reduced to account for a corresponding reduction in water purchases from the State Water Project. The proposed maximum surcharge for desalination facility operations is \$3.00 per hcf (hundred cubic feet). This equates to slightly over \$0.40 per 100 gallons, or 4/10ths of a cent per gallon. This surcharge can be implemented by City Council authorization in response to a need to run the desalinization facility for an extended period.

The proposed maximum surcharge will be subject to an automatic inflationary adjustment to keep the charge aligned with cost inflation. The inflationary adjustment will be based on the change in the U.S. City Average Consumer Price Index (CPI) for All Urban Consumers from the January 2015 index of 233.707.

**Water Shortage Emergency Rates**

The following table shows proposed maximum Water Shortage Emergency Rates effective on or after July 1, 2015. These emergency rates can be phased in by City Council authorization in response to an escalating water shortage emergency and would apply to metered water use. Pursuant to California law, any future Water Shortage Emergency Rates implemented will not exceed the City’s cost of providing service. *The City will only implement Water Shortage Emergency Rates as needed to support financial stability under a more-severe Stage 4 or Stage 5 water shortage emergency.*

<b>PROPOSED MAXIMUM WATER SHORTAGE EMERGENCY RATES</b>					
<b>Water Shortage Contingency Plan Stages<sup>1</sup></b>	<b>Stage 1</b>	<b>Stage 2</b>	<b>Stage 3</b>	<b>Stage 4</b>	<b>Stage 5</b>
<b>Water Supply Shortage</b>	<b>Normal</b>	<b>Moderate</b>	<b>Severe</b>	<b>Critical</b>	<b>Emergency</b>
<b>Water Shortage %</b>	< 5%	5% - 15%	15% - 25%	25% - 50%	> 50%
<b>Maximum Water Shortage Emergency Rates<sup>2</sup></b>					
<u>Tier</u> <u>Use in Tier</u>					
Tier 1      0 - 3 hcf	-	-	-	\$8.18	\$12.85
Tier 2      4 - 10 hcf	-	-	-	11.59	18.20
Tier 3      11- 50 hcf	-	-	-	15.00	23.56
Tier 4      >50 hcf	-	-	-	19.09	29.98

1 Based on Water Shortage Contingency Plan from 2010 Urban Water Management Plan.

2 Can be implemented by City Council authorization in response to a Stage 4 or Stage 5 water shortage emergency.

**Sewer Rates**

<b>PROPOSED SEWER RATES</b>						
	<b>Current Rates</b>	<b>Effective on bills sent on or after</b>				
		<b>July 1 2015</b>	<b>July 1 2016</b>	<b>July 1 2017</b>	<b>July 1 2018</b>	<b>July 1 2019</b>
<b>RESIDENTIAL SEWER RATES</b>						
<i>Fixed monthly charge per residential dwelling unit</i>						
Single Family	\$45.59	\$55.00	\$62.50	\$70.00	\$77.00	\$83.00
Multi-Family/Condominium	45.59	45.59	50.00	56.00	61.60	66.40
<b>NON-RESIDENTIAL SEWER RATES</b>						
<i>Billed per 100 cubic feet of metered water use (\$/hcf)</i>						
Class A - Low Strength	\$4.63	\$6.50	\$7.95	\$9.37	\$10.57	\$11.40
Class B - Domestic Strength	5.82	7.98	9.65	11.29	12.67	13.61
Class C - Moderate Strength	8.03	10.19	11.86	13.50	14.89	15.82
Class D - Mod-High Strength	10.45	12.55	14.18	15.78	17.13	18.03
Class E - High Strength	13.38	15.89	17.84	19.75	21.36	22.46
<i>Minimum Monthly Charge</i>	<i>\$51.77</i>	<i>\$45.59</i>	<i>\$50.00</i>	<i>\$56.00</i>	<i>\$61.60</i>	<i>\$66.40</i>

1 hcf = 100 hundred cubic feet = 748 gallons

Class A - Low Strength includes schools, laundromats, carwashes, city and public facilities, & water softener accounts.

Class B - Domestic Strength includes professional offices, retail stores, mobile home parks, and all other standard-strength commercial accounts.

Class C - Moderate Strength includes motels, retirement homes with dining facilities, and mortuaries.

Class D - Mod-High Strength includes hotels with dining rooms or restaurants, and mixed-use accounts where high-strength sewage accounts for between an estimated 25% to 75% of total wastewater flow.

Class E - High Strength includes restaurants, bakeries, and seafood processors.

*Note: The City reserves the right to estimate wastewater strength and assign customer class.*

Count	Name	Situs Street Number	Situs Street Name	Water Account Number	APN	Date Received	Which Rates Protesting
1	Alex & Nancy Beattie	564	Acacia St.	None listed	None listed	5/18/15	Water & Sewer
2	Don Laster	2840	Alder Ave.	None listed	068-212-007	5/18/15	Water & Sewer
3	Robert W. Frank	2900	Alder Ave.	None listed	068-192-011	5/19/15	Water & Sewer
4	Ramona Hedges	1090	Allesandro	None listed	066-092-010	4/22/15	Water & Sewer
5	Judi Brown	1045	Allesandro St.	None listed	None listed	5/21/15	Water & Sewer
6	R.C. Christie and D.I. Christie	917	Anchor St.	23003150002	None listed	5/18/15	Water & Sewer
7	R.C. Christie and D.I. Christie	919	Anchor St.	23003100001	None listed	5/18/15	Water & Sewer
8	Susan Sylvester	953	Anchor St.	None listed	None listed	5/18/15	Water & Sewer
9	Nancy Trujillo	375	Arbutus Ave.	31000750012	None listed	5/20/15	Water & Sewer
10	Pamala Iwasaki	453	Arbutus Ave.	None listed	None listed	4/30/15	Water & Sewer
11	Carla Wixom	437	Arcadia Ave.	None listed	None listed	5/14/15	Water & Sewer
12	Robert L. Hyde	438	Arcadia Ave.	None listed	None listed	5/7/15	Water & Sewer
13	Jeff Anderson	575	Atascadero Rd.	None listed	None listed	5/18/15	Water & Sewer
14	Steve Semas	155	Azure St.	None listed	None listed	5/19/15	Water & Sewer
15	Carson Bird	971	Balboa St.	None listed	None listed	5/18/15	Water & Sewer
16	Margaret A. Quigley	996	Balboa St.	None listed	None listed	5/18/15	Water & Sewer
17	Annette Lackland	214	Barlow Ln.	None listed	None listed	5/19/15	Water & Sewer
18	Marc Lewis & Pam McDonald	624	Bay Ave.	None listed	None listed	5/19/15	Water & Sewer
19	John E. & Melanie A. Bachman	690	Bay Ave.	None listed	066-085-016	5/6/15	Sewer
20	William Albrecht	168	Bayshore Dr.	None listed	None listed	5/14/15	Water & Sewer
21	Steve Semas	213	Beach St.	None listed	None listed	5/19/15	Water & Sewer
22	Homer W. Alexander	340	Bernardo Ave.	19001350003	066-236-019	5/21/15	Water & Sewer
23	JR Cleeves	380	Bernardo Ave.	19001100003	None listed	5/20/15	Water & Sewer
24	Jerrilyn Croyle	437	Bernardo Ave.	None listed	None listed	5/14/15	Water & Sewer
25	Douglas Ryan	462	Bernardo Ave.	None listed	None listed	5/13/15	Water & Sewer
26	Margaret Ryan	462	Bernardo Ave.	None listed	None listed	5/14/15	Water & Sewer
27	Douglas T Ryan	466	Bernardo Ave.	None listed	None listed	5/12/15	Water & Sewer
28	Margaret Ryan	466	Bernardo Ave.	None listed	None listed	5/14/15	Water & Sewer
29	Mary Wainscott	481	Bernardo Ave.	None listed	None listed	5/20/15	Water & Sewer
30	Jerry Weber	505	Bernardo Ave.	None listed	None listed	5/21/15	Water & Sewer
31	Sally C. Mingo	672	Bernardo Ave.	18001150002	None listed	5/19/15	Water & Sewer
32	Gerald Evan Redman	1251	Berwick	5003275001	None listed	5/18/15	Water & Sewer
33	Linda M. Stedjee	2848	Birch Ave.	None listed	None listed	5/13/15	None listed
34	Don Mierau	592	Blanca St.	None listed	None listed	5/14/15	Water & Sewer
35	Gerald Evan Redman	1280	Bolton Dr.	None listed	None listed	5/18/15	Water & Sewer
36	Norma Montgomery	1307	Bolton Dr.	None listed	None listed	5/11/15	Water & Sewer

37	Richard & Michelle Cobbs	1395 Bolton Dr.	None listed	None listed	5/20/15	Water & Sewer
38	John Glesmann	244 Bradley Ave.	20001150-003	None listed	5/4/15	Water & Sewer
39	Genevieve Peters	275 Bradley Ave.	19004850-004	066-262-015	5/11/15	Water & Sewer
40	James & Ruth Bianchi	751 Cabrillo Pl.	None listed	None listed	5/12/15	Water & Sewer
41	Joan Mihay	785 Cabrillo Pl.	02000032-001	None listed	5/13/15	Water & Sewer
42	Joseph Attinello	790 Cabrillo Pl.	20000300003	066-272-007	5/18/15	Water & Sewer
43	Nona Jane Siragusa	915 Carmel St.	None listed	066-201-056	5/18/15	Water & Sewer
44	Shannon McNeely	939 Carmel St.	28001800-005	None listed	5/13/15	Water
45	Alex Rupp	951 Carmel St.	28001700002	None listed	5/21/15	Water & Sewer
46	George E. Tays	981 Carmel St.	None listed	066-204-009	5/19/15	Water & Sewer
47	William E. Stafford	987 Carmel St.	None listed	None listed	5/18/15	Water & Sewer
48	George E. Tays	992 Carmel St.	None listed	066-204-010	5/19/15	Water & Sewer
49	Larry A. Knapp	2830 Cedar Ave.	None listed	None listed	5/8/15	Water & Sewer
50	Gerald H. Ramos	2850 Cedar Ave.	None listed	None listed	5/21/15	Water & Sewer
51	Merle J. Aleshire	2958 Cedar Ave.	57003700-005	None listed	4/27/15	Water & Sewer
52	Malyne Gauss	2988 Cedar Ave.	None listed	None listed	5/21/15	Water & Sewer
53	A.J. Wright	775 Center	19003100001	066-265-015	5/15/15	Water & Sewer
54	James W. Galloway	780 Center Ct.	None listed	None listed	5/19/15	Water & Sewer
55	Paula Hulet	1249 Clarabelle Dr.	None listed	None listed	5/21/15	Water & Sewer
56	David & Sharon Lindgren	1308 Clarabelle Dr.	None listed	None listed	5/18/15	Water & Sewer
57	Ann Reisner	1315 Clarabelle Dr.	None listed	None listed	5/11/15	Water & Sewer
58	Sally M. Kenfield	1336 Clarabelle Dr.	None listed	None listed	5/15/15	Water & Sewer
59	Catherine E. Novak	1341 Clarabelle Dr.	None listed	068-155-008	5/12/15	Water & Sewer
60	Pamla Sines & Charlene Nungaray	1351 Clarabelle Dr.	None listed	None listed	5/11/15	Water & Sewer
61	Lola McClintock	3131 Coral Ave.	74003700002	None listed	5/19/15	Water & Sewer
62	Amos B. & Karen Acevedo	774 Cuesta St.	61003910-003	None listed	5/4/15	Water & Sewer
63	David L Thomas & Justine J Thomas	102 Dana Wy.	None listed	None listed	5/18/15	Water & Sewer
64	David Peter	190 Dana Wy.	None listed	None listed	5/18/15	Water & Sewer
65	Jeffrey C. & Deborah L.K. Barker	571 Dawson St.	None listed	065-034-015	4/23/15	Water & Sewer
66	Karen Donaldson	455 Driftwood St.	11000530007	None listed	5/18/15	Water & Sewer
67	William S. Woodson	211 Dunes St.	None listed	None listed	4/13/15	Water & Sewer
68	James Hayes	2610 Elm Ave.	None listed	None listed	5/14/15	Water & Sewer
69	David L Thomas	540 Embarcadero	None listed	066-132-007	5/18/15	Water & Sewer
70	David L Thomas	590 Embarcadero	None listed	066-131-015	5/18/15	Water & Sewer
71	David L Thomas	590 Embarcadero	None listed	066-131-014	5/18/15	Water & Sewer
72	Bertha Tyler	595 Embarcadero	None listed	None listed	5/18/15	Water & Sewer
73	Amelia A. Mason	897 Embarcadero	None listed	None listed	5/18/15	None listed
74	David Peter	899 Embarcadero	None listed	None listed	5/18/15	Water & Sewer
75	David L Thomas	No # Embarcadero	None listed	066-132-012	5/18/15	Water & Sewer

76 James Tobias	2254 Emerald Cr.	77004205-002	None listed	5/5/15	Water & Sewer
77 William B Morris	472 Estero Ave.	None listed	None listed	5/18/15	Water & Sewer
78 Sylvia Marson & Wayne Johnson	473 Estero Ave.	None listed	066-191-020	4/24/15	Water & Sewer
79 Christina Morris	475 Estero Ave.	None listed	None listed	5/18/15	Water & Sewer
80 Gregory Workman	525 Estero Ave.	None listed	None listed	5/21/15	Water & Sewer
81 Wayne & Judith Welch	624 Estero Ave.	17002650002	None listed	5/20/15	Water & Sewer
82 James Jensen	683 Estero Ave.	None listed	None listed	5/15/15	Water & Sewer
83 Elizabeth J. Novak	445 Fairview Ave.	29002000011	066-205-016	5/14/15	Water & Sewer
84 Patricia Costa	2790 Fir Ave.	None listed	068-227-010	5/20/15	Water & Sewer
85 Stephen B Carnes	333 Fresno Ave.	None listed	None listed	5/19/15	Water & Sewer
86 W. Douglas Riddell	340 Fresno Ave.	None listed	None listed	5/15/15	Water & Sewer
87 Charles Awbrey	344 Fresno Ave.	None listed	None listed	5/15/15	Water & Sewer
88 Marlene Peter	349 Fresno Ave.	None listed	None listed	5/14/15	Water & Sewer
89 Caroline Van Winkle	436 Fresno Ave.	None listed	None listed	5/18/15	Water & Sewer
90 Larry R. Landis	454 Fresno Ave.	None listed	None listed	5/5/15	Sewer
91 Richard Woods	474 Fresno Ave.	None listed	None listed	5/21/15	Water & Sewer
92 Dean & Bertha Tyler	481 Fresno Ave.	None listed	066-194-022	5/14/15	Water & Sewer
93 Cynthia Hawley	510 Fresno Ave.	None listed	None listed	5/15/15	Water & Sewer
94 Thomas J. Keylon	555 Fresno Ave.	None listed	None listed	5/18/15	Water & Sewer
95 John Weiss	611 Fresno Ave.	None listed	None listed	5/13/15	Water & Sewer
96 Carol L. Miller	671 Fresno Ave.	21001700005	None listed	5/21/15	Sewer
97 Bertha Tyler	1108 Front St.	08003700-002	None listed	5/14/15	Water & Sewer
98 Bertha Tyler	1124 Front St.	08003750-006	None listed	5/14/15	Water & Sewer
99 Gary L. Walker	2230 Greenwood Ave.	None listed	None listed	5/18/15	Water & Sewer
100 Lorie E. Noble	2920 Greenwood Ave.	59001050-001	None listed	5/13/15	Water & Sewer
101 Terry Wildman	2439 Hemlock Ave.	None listed	None listed	5/6/15	Water & Sewer
102 Michael P. & Sandra C. Tannler	2715 Hemlock Ave.	None listed	None listed	5/21/15	Water & Sewer
103 Carrie Osterthaler	1240 Hillcrest Dr.	None listed	None listed	5/15/15	Water & Sewer
104 Edward J. Sylvester	1245 Hillcrest Dr.	None listed	068-156-006	5/18/15	Water & Sewer
105 Amalia & Gerald Mason	2749 Indigo Cr.	None listed	None listed	5/18/15	Water & Sewer
106 Rafael E & Kathleen A Marti	2779 Indigo Cr.	None listed	065-387-040	5/20/15	Water & Sewer
107 Cliff & Melinda Taylor	2063 Ironwood Ave.	None listed	None listed	5/21/15	Water & Sewer
108 Diane Etchison	2420 Ironwood Ave.	60002200-009	068-273-037	4/22/15	Water & Sewer
109 Howard C. Howard	2745 Ironwood Ave.	None listed	None listed	5/21/15	Water & Sewer
110 Gordon & Franciel Willey	2845 Ironwood Ave.	None listed	None listed	5/18/15	Water & Sewer
111 Rick & Claire Grantham	2940 Ironwood Ave.	None listed	None listed	5/19/15	Water & Sewer
112 Richard Snyder	2960 Ironwood Ave.	None listed	None listed	5/15/15	Water & Sewer
113 Evans Cowan	350 Island St.	None listed	None listed	5/6/15	Water & Sewer
114 Pauline Stansburg	145 Java St.	74003300001	None listed	5/19/15	Water & Sewer

115 David Nelson	2580 Juniper Ave.	None listed	None listed	5/11/15	Water & Sewer
116 Elaine Giannini	2990 Juniper Ave.	None listed	None listed	5/20/15	Water & Sewer
117 Michael Del Puppo	2290 Juniper St.	None listed	None listed	5/14/15	Water & Sewer
118 Judith A. Landers	437 Kern Av.	None listed	None listed	5/18/15	Water & Sewer
119 John M. Keely	200 Kern Ave.	None listed	None listed	5/19/15	Water & Sewer
120 William & Kathleen Welles	201 Kern Ave.	None listed	None listed	5/1/15	Water
121 Ronald L. Forester	285 Kern Ave.	20003475001	None listed	5/21/15	Water & Sewer
122 James W. Galloway	298 Kern Ave.	None listed	None listed	5/19/15	Water & Sewer
123 Anne O'Brien	310 Kern Ave.	None listed	None listed	5/15/15	Water & Sewer
124 Carl J. & Judy L. Grilli	416 Kern Ave.	None listed	None listed	4/15/15	Water & Sewer
125 Charlene Griffin	525 Kern Ave.	None listed	None listed	5/19/15	Water & Sewer
126 Elaine Giannini	585 Kern Ave.	None listed	None listed	5/20/15	Water & Sewer
127 Janice Peters	635 Kern Ave.	21003450-002	066-157-005	5/11/15	Water & Sewer
128 John S. Wilcox	305 Kings Ave.	29001100-001	None listed	5/11/15	Water & Sewer
129 Heidi Sandoval	596 Kings Ave.	None listed	None listed	5/14/15	Water & Sewer
130 Charles L Renberg	2681 Koa Ave.	6825801897	068-258-018	5/6/15	Water & Sewer
131 Mary Thomas	156 Kodiak St.	74003000001	None listed	5/19/15	Water & Sewer
132 Brenda E. Agee	430 La Jolla St.	6003500-002	None listed	5/11/15	Water & Sewer
133 George Salwasser	431 La Jolla St.	None listed	None listed	5/15/15	Water & Sewer
134 Georgia DeBrum	440 La Jolla St.	None listed	None listed	5/18/15	Water & Sewer
135 Robert J. Purcott	499 La Jolla St.	None listed	None listed	5/21/15	Water & Sewer
136 Neil & Lorraine Farrell	510 La Jolla St.	None listed	None listed	5/13/15	Water & Sewer
137 Charles K. Reasor	541 La Jolla St.	None listed	None listed	5/11/15	Water & Sewer
138 George Salwasser	495 Las Tunas St.	None listed	None listed	5/15/15	Water & Sewer
139 Douglas Ryan	956 Las Tunas St.	None listed	None listed	5/13/15	Water & Sewer
140 Bruce Pilnick	1180 Las Tunas St.	None listed	None listed	5/18/15	Water & Sewer
141 Chrisan Pilnick	1180 Las Tunas St.	None listed	None listed	5/18/15	Water & Sewer
142 Michael Del Puppo	2542 Laurel St.	None listed	None listed	5/14/15	Water & Sewer
143 Charlee Lowe	411 Luzon	None listed	None listed	5/21/15	Sewer
144 Malyne Gauss	461 Luzon	None listed	None listed	5/21/15	Water & Sewer
145 George Salwasser	481 Luzon	None listed	None listed	5/15/15	Water & Sewer
146 George Salwasser	491 Luzon	None listed	None listed	5/15/15	Water & Sewer
147 William Farrell	115 Luzon St.	None listed	065-113-054	5/20/15	Water & Sewer
148 Louis A. Rodriguez	524 Madera Ave.	2300170011568	None listed	5/18/15	Water & Sewer
149 John C MeyerS	324 Main St.	None listed	None listed	5/20/15	Water & Sewer
150 Helen L Meyers	324 Main St.	None listed	None listed	5/20/15	Water & Sewer
151 Manzar Foroohar	372 Main St.	None listed	None listed	5/13/15	Water & Sewer
152 Anne Marie Schnetzler	388 Main St.	None listed	None listed	5/14/15	Water & Sewer
153 Richard & Sandra Rowe	462 Main St.	10003500-011	None listed	5/18/15	Water & Sewer

154 Peter Marlene Tre Etal	890 Main St.	None listed	066-062-001	5/15/15	None listed
155 David & Marlene Peter	898 Main St.	None listed	None listed	5/18/15	Water & Sewer
156 George Salwasser	2130 Main St.	None listed	None listed	5/15/15	Water & Sewer
157 Steve Semas	2200 Main St.	None listed	None listed	5/19/15	Water & Sewer
158 Michael Del Puppo	2300 Main St.	None listed	None listed	5/14/15	Water & Sewer
159 Jarrod & Monica Whelan	2716 Main St.	None listed	None listed	5/21/15	Sewer
160 Henry Roth	3166 Main St.	67003050-001	None listed	5/6/15	Water & Sewer
161 Frances Laursen	908 Marina	None listed	None listed	4/8/15	Water & Sewer
162 None listed, no signature	908 Marina	None listed	None listed	5/15/15	Water & Sewer
163 Mary Jo Unruh	731 Marina St.	None listed	None listed	5/15/15	Water & Sewer
164 Paula Hulet	765 Marina St.	None listed	None listed	5/21/15	Water & Sewer
165 Paula Hulet	767 Marina St.	None listed	None listed	5/21/15	Water & Sewer
166 Mary Jo Unruh	785 Marina St.	None listed	None listed	5/15/15	Water & Sewer
167 Roberta Moore	825 Marina St.	None listed	None listed	5/20/15	Water & Sewer
168 Paula Radke	1129 Market Ave.	None listed	None listed	5/21/15	Water & Sewer
169 Elaine Giannini	1173 Market Ave.	None listed	None listed	5/20/15	Water & Sewer
170 Thomas Dowell	920 Mesa St.	None listed	None listed	5/20/15	Water & Sewer
171 Fred Arnoldi	925 Mesa St.	24001200-007	See note	5/13/15	Water & Sewer
172 Virginia Cullum	953 Mesa St.	None listed	None listed	5/18/15	Water & Sewer
173 Kenneth Sorenson	954 Mesa St.	None listed	066-162-045	5/21/15	Water & Sewer
174 Malyne Gauss	958 Mesa St.	None listed	None listed	5/21/15	Water & Sewer
175 Wayne Colmer	424 Morro Ave.	None listed	None listed	5/18/15	Water & Sewer
176 Penelope Lynn Sitko	485 Morro Ave.	None listed	None listed	4/20/15	Water & Sewer
177 Oliver Borba	1035 Morro Ave.	None listed	None listed	5/15/15	Water & Sewer
178 Garry W Johnson	1145 Morro Ave.	None listed	None listed	5/19/15	Water & Sewer
179 Garry W Johnson	1165 Morro Ave.	None listed	None listed	5/19/15	Water & Sewer
180 Lynn Enns	1167 Morro Ave.	None listed	None listed	5/18/15	Water & Sewer
181 Lynn Enns	1169 Morro Ave.	None listed	None listed	5/18/15	Water & Sewer
182 John Nowel	1250 Morro Ave.	None listed	None listed	4/23/15	Water & Sewer
183 Harry Franklin	1265 Morro Ave.	None listed	None listed	5/11/15	Water & Sewer
184 Ronald Reisner	330 Morro Bay Blvd.	None listed	None listed	5/11/15	Water & Sewer
185 ? Can't read signature	735 Napa Ave.	8002500005	None listed	5/18/15	Water & Sewer
186 Karl Champlin	370 Nassau St.	None listed	065-062-025	5/20/15	Water & Sewer
187 Debby Laster	481 Nassau St.	None listed	065-059-016	5/18/15	Water & Sewer
188 Ronald Kessling	2480 Nutmeg Ave.	None listed	None listed	5/21/15	Water & Sewer
189 William H. Peirce	2501 Nutmeg Ave.	61005250-002	None listed	5/11/15	Water & Sewer
190 Leroy Richards	351 Oahu St.	None listed	None listed	5/21/15	Water & Sewer
191 Jerry Weber	560 Olive St.	None listed	None listed	5/21/15	Water & Sewer
192 Coy S. House, Jr.	130 Orcas St.	None listed	065-111-032	5/14/15	Water & Sewer

193 Katira Kackloudis	331 Orcas St.	68002050008	None listed	5/21/15	Water & Sewer
194 George Salwasser	218 Pacific St.	None listed	None listed	5/15/15	Water & Sewer
195 George Salwasser	226 Pacific St.	None listed	None listed	5/15/15	Water & Sewer
196 George Salwasser	234 Pacific St.	None listed	None listed	5/15/15	Water & Sewer
197 George Salwasser	240 Pacific St.	None listed	None listed	5/18/15	Water & Sewer
198 Summer Birchell	475 Pacific St.	None listed	None listed	5/18/15	Water & Sewer
199 Steve Zaragou	872 Pacific St.	21002375010	None listed	5/21/15	Water & Sewer
200 Michael Wilson	957 Pacific St.	25001450003	None listed	5/18/15	Water & Sewer
201 Brian Salber	165 Panay St.	None listed	None listed	5/4/15	Water & Sewer
202 Coy S. House, Jr.	196 Panay St.	None listed	065-106-046	5/14/15	Water & Sewer
203 Coy S. House, Jr.	196 Panay St.	None listed	065-106-047	5/14/15	Water & Sewer
204 Janice Trombetta	415 Panay St.	None listed	None listed	5/21/15	Water & Sewer
205 Kathryn Bysouth	3390 Panorama Dr.	None listed	None listed	5/21/15	Water & Sewer
206 Floretta M Meissner	929 Pecho St.	None listed	066-163-038	5/15/15	Water
207 Tom Sciortino	966 Pecho St.	None listed	None listed	5/20/15	Water & Sewer
208 M.D. Murphy	972 Pecho St.	None listed	None listed	5/21/15	Water & Sewer
209 Adella R Galindo	984 Pecho St.	23001500002	None listed	5/18/15	Water & Sewer
210 Coy S. House, Jr.	330 Pico St.	None listed	068-332-036	5/14/15	Water & Sewer
211 Patricia Garrison & Melody Maddox	474 Piney Wy.	None listed	066-191-014	5/18/15	Water & Sewer
212 Natalie Bridges	498 Piney Wy.	None listed	None listed	5/18/15	Water & Sewer
213 Carla Wixom	660 Ponderosa St.	None listed	None listed	5/14/15	Water & Sewer
214 David L Thomas	1640 Preston Ln.	None listed	068-291-018	5/18/15	Water & Sewer
215 David L Thomas	No # Preston Ln.	None listed	068-291-018	5/18/15	Water & Sewer
216 Coast Electronics (signed by John Weiss)	510 Quintana	None listed	None listed	5/14/15	Water & Sewer
217 Richard & Sandra Rowe	387 Quintana, Rd. Unit B	3003350006	None listed	5/18/15	Water & Sewer
218 Steve Semas	111 Rennell St.	None listed	None listed	5/19/15	Water & Sewer
219 Keith Taylor	418 Rennell St.	None listed	None listed	5/14/15	Water & Sewer
220 Louise Bello	951 Ridgeway St.	None listed	None listed	5/21/15	Water & Sewer
221 Peter Nashed	133 Sandpiper Cr.	None listed	None listed	5/14/15	Water & Sewer
222 Don & Gail Phares	171 Sandpiper Ln.	None listed	None listed	5/14/15	Water & Sewer
223 Nancy Hillenburg	172 Sandpiper Ln.	None listed	None listed	5/14/15	Water & Sewer
224 John Barta	1232 Scott St.	None listed	066-021-040	5/20/15	Water & Sewer
225 John Barta	1240 Scott St.	None listed	066-021-038	5/20/15	Water & Sewer
226 Lynn Enns	1254 Scott St.	None listed	None listed	5/18/15	Water & Sewer
227 Lynn Enns	1256 Scott St.	None listed	None listed	5/18/15	Water & Sewer
228 Harry & Darlene Black	395 Selby St.	None listed	None listed	5/14/15	Water & Sewer
229 Thomas O. Rost	640 Sequoia Ct	59005170-004	065-150-013	5/7/15	Water & Sewer
230 Dale Reddell	680 Sequoia Ct.	None listed	None listed	5/15/15	Water & Sewer
231 Daniel T. Deutsche	687 Sequoia Ct.	None listed	None listed	5/15/15	Water & Sewer

232 Cecil Reece	391 Sequoia St., Unit #4	57002650-006	065-148-015	5/7/15	Water & Sewer
233 Barbara Fageol	270 Shasta Ave.	None listed	None listed	5/20/15	Water & Sewer
234 Richard C. Wall	299 Shasta Ave.	None listed	066-254-008	5/18/15	Water & Sewer
235 Joe Nungaray	426 Shasta Ave.	13001350001	066-187-011	5/18/15	Water & Sewer
236 Thomas Rocky Cotta	360 Sicily St.	69003600002	None listed	5/20/15	Water & Sewer
237 Dixie R. Patterson	475 South Bay Blvd.	None listed	None listed	5/18/15	Water & Sewer
238 Wayne Colmer	485 South Bay Blvd.	None listed	None listed	5/18/15	Water & Sewer
239 Wayne Colmer	495 South Bay Blvd.	None listed	None listed	5/18/15	Water & Sewer
240 George Salwasser	410 Sunset Ave.	None listed	None listed	5/15/15	Water & Sewer
241 Wayne Colmer	1951 Sunset Ave.	None listed	None listed	5/18/15	Water & Sewer
242 Wayne Colmer	1953 Sunset Ave.	None listed	None listed	5/18/15	Water & Sewer
243 Wayne Colmer	1955 Sunset Ave.	None listed	None listed	5/18/15	Water & Sewer
244 Joyce Ford	206 Surf St.	None listed	None listed	5/21/15	Water & Sewer
245 Joyce Ford	210 Surf St.	None listed	None listed	5/21/15	Water & Sewer
246 Christine Barrett	216 Surf St.	None listed	None listed	5/18/15	Water & Sewer
247 Carol Skrah	335 Surf St.	3001700002	None listed	5/21/15	Water & Sewer
248 Marcia A. Shep	395 Surf St. Unit A	None listed	None listed	5/19/15	Water & Sewer
249 Richard Dorflinger	340 Tahiti St.	None listed	None listed	5/19/15	Water & Sewer
250 Julie D. & Roy D. Jr. Spina	426 Tahiti St.	70002500-001	None listed	5/4/15	Water & Sewer
251 Katherine Young	3330 Tide Ave.	71000400007	None listed	5/19/15	Water & Sewer
252 June Fluegel	461 Tulare Ave.	None listed	None listed	5/21/15	Water & Sewer
253 John A. King	655 Vista, St. Unit B	None listed	None listed	5/11/15	Water & Sewer
254 Bertha Tyler	1105 West Ave.	None listed	None listed	5/14/15	Water & Sewer
255 Bertha Tyler	1107 West Ave.	01002300-001	None listed	5/14/15	Water & Sewer
256 John Alcorn	1105 West Ave.	01002320-005	None listed	5/14/15	Water & Sewer
257 Richard M. Barnes	511 Whidbey St.	None listed	None listed	5/15/15	Water & Sewer
258 Harry Stroup & Charlette Stroup	561 Yerba Buena St.	None listed	None listed	5/15/15	None listed
259 Gregg Edwards	436 Zanzibar St.	None listed	None listed	5/21/15	Water & Sewer
260 Louis Purio	454 Zanzibar St.	72004080004	None listed	5/18/15	Water & Sewer
261 Zoe Millhollin	488 Zanzibar St.	72004300001	None listed	5/21/15	Water & Sewer
262 Stevie Anderson	506 Zanzibar St.	None listed	None listed	5/20/15	Water & Sewer
263 Eric Foor	537 Zanzibar St.	72005250002	065-035-021	5/21/15	Water & Sewer



AGENDA NO: B-2

MEETING DATE: May 26, 2015

# Staff Report

**TO:** Honorable Mayor and City Council                      **DATE:** May 19, 2015

**FROM:** Susan Slayton, Administrative Services Director

**SUBJECT:** Resolution No. 26-15 Continuing the Program and Levying the Assessments for the 2015/16 Fiscal Year for the Morro Bay Tourism Business Improvement District (MBTBID)

## RECOMMENDATION

Staff recommends the City Council hold a public hearing, record testimony for/against the continuation of the MBTBID, and adopt Resolution No. 26-15.

## ALTERNATIVES

Based on testimony received during the public hearing, the City Council can either:

1. Adopt the Resolution; or
2. Reject the Resolution and direct staff accordingly.

## FISCAL IMPACT

Estimated revenue for 2015/16 is \$775,406 in assessments, all dedicated to marketing.

## SUMMARY

This is the final step in the reaffirmation of the MBTBID, which results in the authorization of the 3% assessments, as required by State law. Staff requests the City Council hold the public hearing to receive testimony for and/or against the continuation of the MBTBID, and then adopt Resolution No. 26-15.

## BACKGROUND

The Morro Bay Tourism Business Improvement District (MBTBID) was established through that enactment of Chapter 3.60 to the Morro Bay Municipal Code. The MBTBID is an improvement district, comprised of hotel businesses that self-assess 3% of the charges, per occupied room, per night, for all transient occupancies. The improvement district was established under the State of California Streets and Highway Code sections 36500 *et seq.* Annual reaffirmation of the improvement district is required.

Prepared By: SS

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

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

City Attorney Review: JWP

At the City Council's April 28 and May 12, 2015 meetings, staff presented the annual reports and draft budget for the MBTBID. On May 12, 2015, the City Council held a public hearing, declaring its intention to continue the MBTBID program and levy the assessments. No testimony, either for or against, was presented, and Council adopted Resolution No. 22-15, declaring the intention to continue the program and assessments for the 2015/16 fiscal year. Also at that meeting, May 26, 2015 was set as the date for the final public hearing, during which members of the public may speak for or against the continuation of the MBTBID program and assessment.

### **DISCUSSION**

This is the final step in the required annual affirmation of the MBTBID program and authorization of the 3% assessment levy. The first step was the approval of the reports on April 28, 2015, and setting the first public hearing. The second step was the public hearing held on May 12, 2015, where City Council adopted Resolution No. 22-15, declaring their intent to continue the activities and levy the assessments. That Resolution was published in the Tribune on May 17, 2015.

Based on the testimony presented at the May 12<sup>th</sup> public hearing, the City Council made the decision to continue the program and levy the assessments. After tonight's public hearing, if the City Council decides to move forward with continuing the MBTBID program and levying the assessments, then Council should adopt Resolution No. 26-15. If the Council decides against the program and assessments, then Council will need to state that for the record, and direct staff accordingly.

**RESOLUTION NO. 26-15**

**RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MORRO BAY, CALIFORNIA,  
CONTINUING THE PROGRAM AND LEVYING THE ASSESSMENTS FOR THE  
2015/16 FISCAL YEAR FOR THE MORRO BAY TOURISM BUSINESS  
IMPROVEMENT DISTRICT (MBTBID)**

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

**WHEREAS**, the Parking and Business Improvement Area Law of 1989, Sections 36500 *et seq.*, of the California Streets and Highway Code authorizes cities to establish and review business improvement areas of the purpose of promoting tourism; and

**WHEREAS**, on April 13, 2009, the City Council held a public hearing and first reading of Ordinance 546 to establish the Morro Bay Tourism Business Improvement District (MBTBID), and adopted Ordinance 546 at its April 27, 2009 meeting, which set the MBTBID assessments at 3% from June 1, 2009 to May 31, 2010, and 2% from June 1, 2010 and thereafter;

**WHEREAS**, Ordinance 546 added Chapter 3.60 to the Morro Bay Municipal Code (MBMC); and

**WHEREAS**, on June 1, 2010, the MBTBID assessments returned to the 2% level, as established by then MBMC section 3.60.050; and

**WHEREAS**, on September 13, 2010, the City Council held a public hearing and first reading of Ordinance 562 to amend MBMC section 3.60.050, changing the assessment percentage to 3%, and adopted Ordinance 562 at its September 27, 2010 meeting; and

**WHEREAS**, on May 11, 2015, the advisory board requested the renewal of the TBID for the 2015/16 fiscal year (the seventh year of operation) to continue its activities, and the City Council has approved this renewal for the past five years; and

**WHEREAS**, all other findings of Ordinances 546 and 562 remain unchanged; and

**WHEREAS**, on April 28 and May 12, 2015, staff presented the annual report for the fiscal year 2013/14 (the fifth year of the TBID), the adopted budget for 2014/15, and the budget plan for 2015/16, attached to this Resolution as Exhibit A; and

**WHEREAS**, the budget plan generally describes the activities to be marketing activities, which attract and extend overnight stays in Morro Bay hotels, as well as the operation of the Visitors Center, whose outreach to potential visitors is key; and

**WHEREAS**, it is the intention of the City Council to levy and collect 3% assessments from the hoteliers within the TBID for the 2015/16 fiscal year; and

**WHEREAS**, at the public meeting held on April 28, 2015, City Council additionally set the

public hearing for the intent to levy the TBID assessment for May 12, 2015, at 7:00 p.m., to be held at the Morro Bay Veterans Memorial Hall located at 209 Surf Street, Morro Bay, California, in accordance with the California Streets and Highway Code sections 36534 and 36535; and

**WHEREAS**, Resolution No. 22-15 declaring the intention to continue the program and levy assessments from the hoteliers and notifying them of the May 26, 2015 public hearing was published in the Tribune on May 17, 2015; and

**WHEREAS**, at the May 12, 2015 hearing, City Council scheduled May 26, 2015, at the Morro Bay Veterans Memorial Hall located at 209 Surf Street, Morro Bay, California for the final public hearing to consider testimony for and against renewal of the TBID assessment, in accordance with the California Streets and Highway Code sections 36534 and 36535; and

**WHEREAS**, on May 26, 2015, the City Council conducted the public hearing regarding the renewal of the TBID for the 2015/16 fiscal year, where affected businesses had the opportunity to protest the TBID renewal, with the following results:

FOR:

AGAINST:

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

1. The above recitations are true and correct, and incorporated herein by reference.
2. The City Council, having affirmed the annual report and budgets on April 28 and May 12, 2015, at regular meetings, declares the renewal of the Morro Bay Tourism Business Improvement District for the 2015/16 fiscal year, and instructs the hoteliers to levy and collect 3% assessments for overnight stays of 30 days or less.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay, at a regular meeting thereof held on the 26<sup>th</sup> day of May, 2015 by the following vote:

AYES:

NOES:

ABSENT:

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JAMIE L. IRONS, Mayor

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DANA SWANSON, City Clerk



AGENDA NO: D-1

MEETING DATE: May 26, 2015

## Staff Report

**TO: Honorable Mayor and City Council**

**DATE: May 22, 2015**

**FROM: David Buckingham, City Manager**

**SUBJECT: Morro Bay Business License Municipal Code Review**

### **RECOMMENDATION**

Staff recommends the City Council pass a motion:

1. Affirm:
  - the general structure of our business tax system, and
  - all independent contractors should be treated equally, whether they work under the roof of a single registered business, work under the roof of several registered businesses or work independently, and
  
2. Direct staff to return with an ordinance amending the MBMC to:
  - establish a No-Business-Tax-Required Threshold,
  - make minor revisions in the area of real estate professionals to clarify when a real estate professional must register and pay a business tax,
  - to remove the now-expired Business Tax Amnesty from the MBMC,
  - designate the “receipt” for payment of a business tax is a Business Tax Certificate, not a Business License, and
  
3. Schedule annual updates and publication of the Master Tax Schedule and the Tax Collector’s Business Tax Memo that clarifies requirements for business registration and taxes in the City of Morro Bay.

### **FISCAL IMPACT**

While not known precisely, the fiscal impact of the recommended actions is likely neutral. Those actions will excuse a relatively small number of very small businesses from the requirement to pay the business license tax. At the same time, those actions will confirm some independent contractors who previously have not paid business taxes are required to do so.

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Prepared By: DWB

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

City Manager Review: DWB

City Attorney Review: JWP

## **BACKGROUND**

In July 2014, the City Council approved an audit of business taxes in Morro Bay. That audit spawned some measurable community concern. In November 2014, the City Council made two changes to the Morro Bay Municipal Code (MBMC), one providing a limited time amnesty from penalties resulting from the audit, and another creating a new “low revenue business” reduced rate business tax for businesses that gross under \$12,000 per year. The Council also directed staff to conduct a review of the MBMC, involving business community stakeholders, to identify other appropriate changes to our business tax regulations.

## **DISCUSSION**

Between January 2015 and April 2015, staff assessed the MBMC as directed. Those assessments included many individual conversations with business owners, two formal stakeholder forums with a broad range of business community stakeholders and additional meetings with specific groups, including several meetings with real estate professionals.

Some of the key agenda items included:

- a. Current regulations: modify or start over?
- b. Type of system: flat rate or gross receipts?
- c. Simplification: discuss appropriate measures to simplify current code.
- d. Independent contractors: full businesses or not? and How to treat those who primarily conduct business under the roof of an existing, registered business. (Barbers, beauticians, etc.)
- e. Infrequent activity: best method to address infrequent sales/visits.
- f. Innovation: how can we use technology to be more efficient?
- g. Wholesalers: How to best implement the business tax for wholesalers making infrequent visits to Morro Bay.
- h. Realtors: brokers and agents, offices in town and out of town.
- i. Overhaul of system: The potential of a major revision to our business tax regulations, moving from the current system of a flat rate with a per-employee surcharge tax, to a tiered gross receipts system.

## **General Conclusion**

After many meetings, conversations and emails, perhaps this email from a very involved downtown merchant best sums up where we ended up:

“Very interesting analysis. What it seems to get back to, is that aside from some minor adjustments, we actually have a pretty fair system already.”

## **No-Business-Tax-Required Threshold**

Two areas of significant concern included how to deal with infrequent sales visits. First is the wholesaler who may only visit Morro Bay two to four times a year. Second are those many hobbyist businesses in Morro Bay, such as artists who do not rent space in a gallery and who may only sell a few relatively inexpensive paintings a year. Another area is those who sell a small amount of items on consignment.

With the support of most business community stakeholders and most/all hobbyists, staff recommends Morro Bay adopt a new gross receipts threshold below which no business tax is assessed and no registration is required.

Staff recommends the threshold be set at \$4,000, one third of the Low-revenue business tax threshold of \$12,000.

Thus, any business, excluding non-profits, grossing less than \$4,000 annually in the City of Morro Bay would not be required to pay any business tax or register that business. Of course, depending on the type of business, it may still require permits and other approvals from the City.

That would mean the vast majority of infrequently visiting wholesalers, infrequently visiting yoga instructor, hobby artist, etc., would not require registration with the City and would pay no business tax.

Staff recommends Council pass a motion directing staff to bring an ordinance to amend the MBMC to establish such a threshold below which no business tax and registration is required.

### **Independent Contractors**

A second area of general concern was independent contractors working under the roof of another tax paying and registered business. There is certainly some remaining interest in creating a special category for independent contractors who work exclusively under the roof of another existing registered business (*i.e.*, barbers, beauticians). However, there are also enough legitimate concerns creating this (or other) special categories, and some evidence the other “protections” already in place, such as the gross revenue thresholds noted above, to tip the scales against creating a special category.

- There are many versions of independent contractors (barber in a barber shop, seminar leader in a teaching business, counselor in a counseling office, instructor in a yoga studio) and determining which to place in a special category, and which not to, would become a less-than simple exercise.
- Further, trying to track if an independent contractor is working in only one, or in more than one, otherwise registered business would be even more cumbersome. If an independent contractor barber works at two different shops, both of which are registered business taxpayers, is he/she a full business, or to pay a lower rate, but at each business?
- There was positive discussion the \$12,000 low-revenue business threshold has actually gone a long way to solve the friction associated with independent contractors. That is, an independent contractor who makes under \$12,000 in Morro Bay already gets the low-revenue business tax and registration exemption. Thus, the independent contractor who teaches 10 classes a year and grosses \$5,000 in Morro Bay already qualifies for the low-revenue discount.
- A new ‘No Business Tax Certificate’ threshold would further help.
- Based on all the discussion, staff recommends all independent contractors should be treated equally, whether they work under the roof of a single registered business, work under the roof of several registered businesses or work independently. They would pay the normal \$137/year (\$11.33 a month) tax, or qualify for low revenue business tax. That is already in the MBMC and in the Tax Collectors Business Tax Memo.

## **Real Estate Professionals**

Some angst remains in the out-of-town real estate professional community about Morro Bay requiring out-of-town brokers and agents to obtain a business license. Staff and counsel still believe that is both appropriate and legal. If an out-of-town builder must register and pay a business tax to build a house in Morro Bay, an out of town lumber yard must do the same to provide the lumber for that house and an out-of-town electrician must do likewise to wire that house, then it seems fair and reasonable an out-of-town broker/agent should have to register and pay a business tax to list or sell the house. The MBMC is currently quite clear on this subject. Staff will continue to refine the process for licensing out-of-town brokers/agents and the proposed online system should make that process even easier. Staff recommends Council pass a motion directing staff to bring minor code revisions in the area of real estate professionals.

## **Gross Revenue Based Tiered Business Tax**

There was initially, and in the end, broad consensus we should keep a flat-rate system and not move to a gross-receipts based system. Flat-rate in this instance means a flat rate plus a per-employee supplement.

There was some discussion of a broadly tiered rate based on gross receipts, something like under \$100K of gross receipts pays \$75, \$100-\$500K pays \$100, \$500-\$1M pays \$150, etc.

While that system has merits it is not recommended for two reasons. Partially, because there is still concern about using any form of tiered tax based on gross receipts. Primarily, however, because moving to such a system would necessarily require voter approval based on various Propositions. Thus, even if we wanted to, we could not implement such a system before November 2016.

## **License vs. Tax Certificate**

Staff also believes the MBMC should be revised to clarify the purpose of the City's business tax system is to generate revenue to pay for general City services provided to businesses and not to regulate those business activities. There are other provisions of City and State law that regulate businesses. One way of accomplishing that clarification is by referring to the document a business tax payer receives upon payment of a business tax as a Business Tax Certificate not a Business License. Doing that may also assist our customers and community in understanding payment of the tax does not mean all required permits have been obtained and land use, public safety and other regulations have been satisfied.

## **SUMMARY**

Staff conducted significant outreach with a broad representation of Morro Bay business owners. General consensus was reached:

- to maintain our current flat rate + per employee surcharge system,
- create a new 'No Business Tax Certificate Required' threshold,
- that independent contractors working under the roof of an existing business must register and pay the business tax,
- that out of town real estate professionals are required to register and pay a Morro Bay business tax to conduct a real estate transaction, and
- that we should not consider tiered rates based on gross revenues at this time.

## **RECOMMENDATION**

Staff recommends Council:

1. Affirm:
  - the general structure of our business tax system, and
  - all independent contractors should be treated equally, whether they work under the roof of a single registered business, work under the roof of several registered businesses or work independently, and
  
2. Direct staff to return with an ordinance amending the MBMC to:
  - establish a No-Business-Tax-Required Threshold,
  - make minor revisions in the area of real estate professionals to clarify when a real estate professional must register and pay a business tax,
  - to remove the now-expired Business Tax Amnesty from the MBMC,
  - designate the “receipt” for payment of a business tax is a Business Tax Certificate, not a Business License, and
  
3. Schedule annual updates and publication of the Master Tax Schedule and the Tax Collector’s Business Tax Memo that clarifies requirements for business registration and taxes in the City of Morro Bay.

## **ATTACHMENTS**

Tax Collector’s Business Tax Memo, dated December 11, 2014  
City Memo, Business Tax Code Review, dated February 12, 2015  
City Memo, Business Tax Code Review, dated March 25, 2015



# City of Morro Bay

Morro Bay, CA 93442

(805) 772-6201

[www.morro-bay.ca.us](http://www.morro-bay.ca.us)

December 11, 2014

Memorandum for Public Dissemination

Subject: Morro Bay Business License Code Overview

1. **Purpose.** The purpose of this memorandum is to clarify requirements for business licenses in the City of Morro Bay. Chapter 5 of the Morro Bay Municipal Code (MBMC) is the governing document for Business License fees and taxes in the City. This memo articulates the City of Morro Bay's interpretation of our Code, and puts parts of Chapter 5 of the MBMC into "layperson's terms," to provide a more readable reference for all of our businesses and residents. In all cases, the MBMC is the controlling document, and this memo is subordinate to it.
2. **Business Code Update.** This document is based on the City Code as of 13 December 2014. In Jan – Jun 2015, the City of Morro Bay is conducting a thorough review and update of the Business License portion of our City Code. Concerns or complaints with the current code, and the interpretations laid out herein, should be directed to the tax collector and will be carefully considered during the update process in the first six months of 2015.
3. **Amnesty and Low Revenue Business Ordinance Changes.** On Dec 13, 2014 two Morro Bay ordinance changes came into effect. The reduced-cost license for Low Revenue Businesses is addressed in paragraph k below. The 90-day amnesty from penalties, through Mar 13, 2015, is addressed in a separate City memorandum published December 12, 2014, Subject: Morro Bay Business License Changes – Amnesty and Low Revenue Businesses and available for download at: <http://ca-morrobay.civicplus.com/index.asp?NID=82>.
4. **General Observations.** Following are some general observations about Business Licenses in Morro Bay:
  - a. It is unlawful for any person or entity to transact any business, trade, profession, calling or occupation in the City of Morro Bay, whether or not

carried on for profit, without first having obtained a business license from the City.

- b. Licenses are transferable with a payment of \$2 within 15 days of taking ownership of the licensed business.
- c. Business licenses are issued in our Public Services Department, located at 955 Shasta Street.
- d. The cost of a business license varies by the type of business that is being conducted. The charges are established in our Business Tax Rate Schedule which is available online at: <http://www.morro-bay.ca.us/DocumentCenterii.aspx?FID=96>.
- e. The Morro Bay Business License Tax Rate Schedule, (link above) sets the annual tax rates for various types of business licenses in Morro Bay. For general reference, a few examples are provided here:

1) Basic Business License	\$137
2) Additional Employee Tax	\$32
3) General Contractor	\$270
4) Sub-Contractor	\$137
5) Home Occupation Permit	\$137
6) 1-time Home Occupation Processing Fee	\$66
7) Low Revenue Business Reduced Tax Permit	\$33
8) Art, Hobby / Handicraft Exhibitor (\$6/day)	\$44

- 5. **Appeal Process.** The City of Morro Bay has a robust and accessible appeal process for business license tax issues.
  - a. Should an individual or entity disagree with the calculation or interpretation of taxes due, as determined by the business license office or a City-contracted auditor, the business is encouraged to appeal such decision to the Tax Collector in City Hall at 595 Harbor Street.
  - b. Should a business disagree with the decision of the tax collector, it may appeal that decision to the City Council.
- 6. **City Interpretation.** Following is City interpretation / clarification of various types of businesses in relation to our Code.
  - a. **Major Exemptions.**
    - 1) **Agriculture Exemption.** A seller is not required to obtain a business license for peddling his/her own agricultural, pastoral, or dairy products

that are raised by the seller. This includes fish and game caught by the seller. Selling these products in an altered state, for example, packaged fish fillets or fruit marmalade requires a business license.

2) **Charitable and non-profit organization exemption.** Registered charitable and non-profit organizations are required to complete a business license application form. With proof of IRS designation, such non-profit entities are not required to pay a license tax. The City maintains a list of non-profit organizations operating in the city (non-profits are required to pay the \$1 State ADA fee; see paragraph o below).

**b. Residential / Transient Real Estate, Lodging, Property Rental, etc:**

1) All transient lodging establishments must have a business license. This includes hotels, motels, RV Parks, Vacation Rentals, and B&Bs.

2) Property management agencies, whether managing apartment buildings, vacation rentals or other lodging operations require a business license.

3) Owners of single-family homes, who rent three or less properties for 31 days or longer, do not require a business license. Owners, who rent four or more single-family homes, are considered a business, and require a license.

**c. Commercial Property Management, Rentals, etc.:**

1) Commercial property owners, who rent one or more spaces in a commercial property, are in the property management business, and require a business license to manage that property (as do the businesses operating from that commercial space).

2) Property Management Businesses, including sole proprietorships, LLCs, Trusts, Partnerships, etc., that use a different office / mailing address from the property they manage, are required to have one business license for the Management Business and a separate business license for each location the business manages.

3) A Property Management business, such as an LLC that operates from the same address as a property it manages, does not require a separate business license for the property it manages.

**d. Independent Contractors.** Generally, businesses that provide a service to another business, or to a private individual, are considered independent contractors, and are required to have a business license for any work performed in Morro Bay. Independent Contractors are businesses, not employees. Employees of existing businesses (W2 employees) are covered

under their employer's business license. Examples of independent contractors include:

- 1) A barber or beautician who rents space in an existing barbershop or salon, and conducts business from that space.
- 2) A person who provides lessons, classes or other instruction at an existing business, such as fitness classes / instruction at a gym, yoga instruction at a studio, an instructor at a training center, etc.

**e. Contractors and Sub-Contractors.** All contractors/sub-contractors who perform business in the City of Morro Bay must have a business license. Contractors generally engage in two kinds of business: running their contracting business, and performing their contracted work.

- 1) Contractors, who manage all, or part of, their business from the City of Morro Bay, require a business license. Activities that indicate the management of a contracting business may include: managing the business; placing/accepting business calls; preparing/processing bids; receiving business-related mail; billing/invoicing; preparing business-related bank deposits.
- 2) Out-of-town contractors and sub-contractors, who perform contract work in Morro Bay, must have a business license. Out-of-town contractors / sub-contractors, who are performing work in Morro Bay, may be eligible for a reduced-fee license for one-time work / projects.

**f. Delivery by vehicle.**

- 1) Generally, any business that delivers goods to another business in the City of Morro Bay requires a business license. For example, a beverage distributor that delivers beverages to Morro Bay businesses, or a paper supplier that delivers copy paper to a Morro Bay business, requires a business license.
- 2) Commercial carriers, who pay a business license tax levied in accordance with the Highway Carriers Uniform Business License Tax Act, are exempt. (UPS, FEDEX, etc.)

**g. Businesses with Morro Bay addresses that conduct most of their business outside of Morro Bay.**

- 1) In general, a business based in Morro Bay, even if it conducts most of its work outside of the City, and even if the work it does in Morro Bay is conducted in a home, must have a business license.
- 2) For example, a semi-retired consultant, who only performs consultation work a few times a year, requires a business license, if some of the

following examples of business-related activities are taking place in Morro Bay: receiving business related mail; managing the business; placing/accepting business calls; receiving/preparing/processing bids; billing/invoicing.

**h. Thrift Stores, Consignments, Galleries, etc.**

- 1) Thrift Stores, Galleries, Consignment Shops, etc., require a business license.
- 2) Persons or entities that rent space in other businesses (such as thrift stores or galleries) are not employees of that store / gallery, and therefore, require a business license to rent space and conduct sales.
- 3) Some such businesses that are very small, especially hobbyists and artists, may be eligible for Morro Bay's low-revenue business reduced tax license. (see paragraph k below)
- 4) Consigning goods for sale in such shops and galleries, on a regular basis, is a business that likely requires a business license.
- 5) Individuals, who occasionally consign a personal item for sale on consignment, are not likely a business and do not require a business license.
- 6) For examples of 4 and 5 immediately above, a hobbyist who makes tables in his/her spare time, and sells those tables at a thrift store, is engaged in the business of selling tables, and requires a license. However, a person who buys a new watch, and consigns their old watch for sale at a consignment shop, is not in the business of selling watches, and does not require a business license.

**i. Art, Hobby or Handicraft Shows and Exhibitions**

- 1) Unless exempt, the organizer/sponsor of such show and exhibitions must have a business license.
- 2) Additionally, each artist/hobbyist/crafter must obtain a business license to participate in such shows/exhibitions. If participants choose not to purchase an annual business license, then a reduced-cost, one-time permit is available. (See the Business License Tax Rate Schedule.)

**j. Home Occupations.** A home occupation is a business that is conducted primarily from the private residence of the business owner.

- 1) Home occupations are not permitted to have employees work at the residence, other than those individuals who live in the home where the business is conducted.

- 2) Businesses that have a Home Occupation Business Permit do not require an additional Business License.
- 3) Any business that is conducted in the residence of the business owner must obtain a home occupation permit. Examples of home occupations are notaries, certified public accountants, hobbyists (arts and crafts), contractors/sub-contractors/consultants, landscapers, etc.
- 4) A business, such as a contractor, that conducts a portion of the management of the business from a private residence likely requires a Home Occupation Permit (see also paragraph e above).
- 5) When two independent businesses are run from the same private residence, both businesses require a home occupation permit. For example, if both a general contractor business and a CPA business are managed from the same home, then both businesses require a business license.
- 6) Home occupations require a one-time Permit Processing Fee for review and approval of the application by the Planning, Building, Police and Fire Departments.
- 7) Home Hobbyists may be eligible for a reduced-cost Home Occupation Exception. This reduced-cost permit is available to home occupations in which the business profit in question is primarily intended to supplement or augment another primary source of income. For example, a retired person, whose primary income is some source of retirement income, and who paints a few pictures a year to supplement that income, may be eligible for a reduced-cost home occupation permit.

**k. Low Revenue Business Exemption.** Businesses, whose gross revenue is below the poverty level, are eligible for a reduced-cost Low Revenue Business License.

- 1) The low revenue business license threshold is currently less than \$12,000 annually. The license amount is currently \$32 / year.
- 2) Businesses must demonstrate to the tax collector their gross income is below \$12,000 / year.

**l. Garage or Yard Sales.** Offering for sale, to the general public, household goods or personal belongings of the occupant of the residence where the sale is held.

- 1) Residents may conduct two (2) garage sales per year with a free permit issued at City Hall.
- 2) More than two sales per year requires a business license.

**m. Solicitors and Itinerant (Transient) Merchants.** Definitions for these are in the MBMC. Solicitors and Itinerant (Transient) Merchants require a business license.

**n. Employees of Businesses.** Employees of businesses do not require a business licenses; they fall under the license of the business that employs them.

1) All businesses are required to pay an additional fee for the average number - using a full time equivalent (FTE) methodology - of employees working at the business.

2) The FTE can be determined by totaling the annual working hours of all full-time, part-time, and seasonal employees, and dividing that total by 2,000. Any fractional amount larger than .5 is rounded up.

3) For example, if the annual hours total is 9,000, dividing by 2,000 equals 4.5 employees, which would be reported as 4 full-time employees. If the total is 9,500, dividing by 2,000 equals 4.75 employees, which would be reported as 5 full-time employees.

**o. State Mandated ADA Fee.** All businesses, including non-profits, are required to pay a \$1 fee annually for the Local Disability Access (SB 1186) program, which went into effect on January 1 2013, and ends December 31, 2018.



Susan Slayton  
Director of Administrative Services / Tax Collector



## CITY OF MORRO BAY

CITY HALL  
595 Harbor Street  
Morro Bay, CA 93442

### Memorandum For Record

From: Dave Buckingham, City Manager

Subject: Business License Code Review

Date: February 12, 2015

1. **Purpose.** The purpose of this memo is to capture the key points of discussion from a Business License Code review stakeholders meeting held 11 Feb 15 in the Fire Station Training room. The meeting had excellent participation and representation from across the community with 15-20 business leaders, residents and staff. The purpose of the meeting was to get community input as the staff works to refine / rewrite the City of Morro Bay business license code as directed by Council in Oct 2014.
2. **Attendees:** Attendees included:
  - a. Community Stakeholders: Rich Buquet, Ann Reisner, Rob Kitzman, Jon Elliot, Paul Merkel, Linna Thomas, Penny Harrington, Cyndee Edwards, John Weiss, Jeff Eckles, Susan Stewart, Kelly Wells, Jennifer Redman, Carla Wixom
  - b. Staff: Dave Buckingham, Joe Pannone, Susan Slayton, Scot Graham, Jamie Boucher
3. **Agenda.** The agenda for the meeting included:
  - a. Current code: modify or start over?
  - b. Type of system: flat rate or gross receipts?
  - c. Simplification: discuss appropriate measures to simplify current code
  - d. Independent contractors: full businesses or not?
  - e. Infrequent activity: best method to address infrequent sales / visits
  - f. Innovation: how can we use technology to be more efficient?
4. **Key Notes.** Following are some key notes from the meeting:
  - a. **Current Code – modify or start over?**
    - 1) There was broad consensus (no disagreement in fact) that our current code is generally acceptable and that we should refine our current code and not spend the time or the money hiring a consultant to rewrite our code.
    - 2) This consensus is due in part because most believe the City's December 11, 2014 memo subject "Morro Bay Business License Code Overview" has gone a long way to clarify understanding of our code.
  - b. **Type of System: flat rate or gross receipts?**
    - a. There was broad consensus (no disagreement in fact) that we should keep a flat-rate system and not move to a gross-receipts based system. Flat-rate in this instance means a flat rate plus a per-employee supplement.

c. **Simplification.** There is broad consensus that simple is better. That said, when we started discussing details, some ideas quickly moved from simple to complex. For example, treating service providers differently than retailers, or, treating professionals different from service (personal care) providers. A challenge will be balancing simplicity with special interests.

d. **Independent Contractors.**

- 1) There is broad interest in special treatment for independent contractors who work under the roof of an existing, licensed business. This category includes barbers, beauticians, massage therapists, yoga instructors, and contractors who teach classes at various businesses.
- 2) Discussion centered on the idea of allowing independent contractors who work under the roof / auspices of an existing, licensed business to qualify for a business license at a reduced rate commensurate with the "employee" rate. The independent contractor would still be treated as a business, but under those certain conditions would qualify for a reduced rate license.
- 3) The alternate view is that a business is a business and a business that rents space from another business should be treated the same way as a business that rents an entire storefront.
- 4) One idea to address this issue was to increase the "low revenue" threshold, requiring all independent contractors to have a full (\$137) business license, but allowing those with low revenue to qualify for a reduced rate (\$32) business license.
- 5) My conclusion is it appears there are three options:
  - i. Require all independent contractors to have a full business license.
  - ii. Offer a reduced rate (\$32) business license to independent contractors who work under the roof and the auspices of an existing licensed business. (Barbers, etc)
  - iii. Require all independent contractors to have a full (\$137) business license but raise the revenue threshold for the low revenue (\$32) business license.
- 6) Staff will research how other similar communities address this issue which some in the group thought was a good idea.

e. **Infrequent Activity.** There is broad interest in special treatment for businesses that conduct business in Morro Bay infrequently.

- 1) Examples include: an itinerant merchant who comes through Morro Bay a few times a year to sell a product wholesale to a retail merchant. A yoga instructor who comes to Morro Bay a few times a year to teach a class at an existing and licensed studio. A barber who comes to Morro Bay infrequently to cover for someone on vacation.
- 2) There was broad consensus that the itinerant merchant who visits Morro Bay once every other month or so should be treated differently from the business that delivers to Morro Bay five days a week. This discussion also noted that if the system were simple, the City may well collect a tax from these merchants when it would otherwise not because these merchants may not report themselves.

- 3) Staff is considering how we might implement a system like this. One idea is a pay-per-visit approach with perhaps 6 visits topping out at approximately the full business tax rate. That is, if the full business license tax is \$140, then each iterant visit requires a \$23 tax certificate and after the 6<sup>th</sup> annual visit ( $6 \times \$23 = \$138$ ) no additional license is required.
- 4) There was some discussion on treating wholesale merchants, service providers and professionals differently – and that is where we go from relatively simple to somewhat complex.

f. **Other Notes.** Following is a brief review of other notes and comments.

- a. The application and tax schedules are confusing. Make them simpler.
- b. Simplify / better explain the employee formula.
- c. What about relators and consignment shops?
- d. For reference, a full Morro Bay Business license currently costs around \$11.50 per month.



David W. Buckingham  
City Manager  
City of Morro Bay



# CITY OF MORRO BAY

CITY HALL  
595 Harbor Street  
Morro Bay, CA 93442

## Memorandum For Record

**From:** Dave Buckingham, City Manager

**Subject:** Business License Code Review

**Date:** March 25, 2015

1. **Purpose.** The purpose of this memo is to capture the key points of discussion from a Business License Code review stakeholders meeting held 25 Mar 15 in the Fire Station Training room. The meeting had good participation with about 17 total participants including business representatives, residents and four Morro Bay City staff. There was significant representation from the real estate community and moderate participation from other businesses. (The Feb 2015 stakeholder meeting had excellent participation from many Morro Bay Downtown and Embarcadero businesses.) The purpose of the meeting was to get community input as the staff works to refine / rewrite the City of Morro Bay business license code as directed by Council in Oct 2014.
2. **Agenda.** The agenda for the meeting focused on:
  - a. How to best implement the business license tax for wholesalers making infrequent visits to Morro Bay.
  - b. How to treat independent contractors, especially independent contractors who primarily conduct business under the roof of an existing, licensed business. (Barbers, beauticians, etc)
  - c. Significant discussion on the effect of business licensing on the real estate industry.
  - d. The potential of a major revision to our business license code, moving from the current system of a flat rate with a per-employee surcharge tax, to a tiered gross receipts system.
3. **Overview.** Excepting ongoing concerns from the real estate community, especially in simplification and with regard to the status of agents, it appears that there may be general agreement on the issues of infrequent and independent contractors. Following are some key notes from the meeting:
  - a. **No Business Tax Certificate Threshold.** As a way of addressing both the infrequent visit issue, and also addressing the issue of hobby artists, other hobbyists, and likely many consignment store businesses, we discussed the potential of an ordinance change creating a threshold below which no business license tax certificate would be required at all.
    - 1) Using \$5,000 as an example, but not necessarily as a recommended level, this provision would stipulate that any business that grossed under \$5,000 would pay zero tax and would not even require a business license.
    - 2) So, whether a home-based artist, a visiting yoga instructor, a band performing at an event, or a wholesaler visiting once or ten times, if gross revenue earned in Morro Bay was below \$5,000 for the year then no license would be required and no business license tax would be collected.

- 3) The City may require a business license to regulate certain types of businesses – especially those with a public safety nexus – regardless of gross revenue.
- 4) Coupled with the City’s existing low-revenue business tax of \$32 for businesses grossing under \$12,000 per year, the City would effectively establish two low-revenue thresholds:

Gross Revenue	Business License Tax
0-\$4,999	0
5,000 – 11,999	\$32

- b. **Independent Contractors.** While there is certainly some remaining interest in creating a special category for independent contractors that work exclusively under the roof of an existing licensed business (ie, barbers, beauticians, etc), there are enough legitimate concerns creating this (or other) special categories, and some evidence the other “protections” in place, such as the gross revenue thresholds noted above, to tip the scales to not creating a special category.
  - a. There are many versions of independent contractors (barber in a barber shop, seminar leader in a teaching business, counselor in a counseling office, instructor in a yoga studio) and determining which to place in a special category, and which not to, would become a less-than simple exercise.
  - b. Further, trying to track if an independent contractor is working in only one, or in more than one, otherwise license business would be even more cumbersome. If an independent contractor barber works at two licensed different shops, is he/she a full business, or pay a lower rate but at each business?
  - c. There was positive discussion that the \$12,000 low revenue business threshold has actually gone a long way to solve the friction associated with independent contractors. That is, an independent contractor that makes under \$12,000 in Morro Bay already gets the low-revenue business license exemption, thus the independent contractor who teaches 10 classes a year and grosses \$5,000 in Morro Bay already qualifies for the low-revenue discount.
  - d. A new ‘No Business Tax Certificate’ threshold would further help.
  - e. Based on all the discussion, it appears that all independent contractors should be treated equally, whether they work under the roof of a single licensed business, work under the roof of several licensed businesses or work independently. They would pay the normal \$137/year (\$11.33 a month) tax.
- c. **Realtors.** There was significant discussion about the real estate industry. Some points:
  - a. Nothing has changed for Morro Bay based brokers. Similar to all other Morro Bay businesses, they pay \$137 base tax plus a per agent and per employee surcharge.
  - b. There is disagreement about the status of agents. For the purposes of real estate transactions, the CA Board of Realtors treats them like employees. However, for the

purposes of taxes, they are treated as independent contractors. So, how to treat agents of out of town brokers remains a point of discussion.

- c. Like everyone, out of town brokers want a system that is easy to use. Going forward, the city has a fairly straightforward system for licensing out of town brokers and agents and will continue to work to simplify that system.
  - d. Most of the friction with licensing of realtors involves the distinction between brokers and agent and who is required to get a license and when.
  - e. In determining at what point an out of town realtor requires a business license, our code is broader than our written procedures. That is, for example, our code could be interpreted to require a business license for even putting an offer to purchase but our practice is that a buyer's agent does not require a license until the purchase closes. The City will look at modifying our code to more closely articulate our practice.
- d. **Longer Term Change.** There has been some discussion of whether our current system is the most simple and most fair. The current system is generally a flat dollar amount (\$137) with a per employee surcharge (\$32) or some other charge to approximate size of businesses such as a per-room charge (\$5) for hotels. Various other systems have been suggested, each of which would result in increasing the tax of at least one business by at least one dollar and would all thus have to go to a vote of the people in Nov 2016. Thus, they are not discussed here in detail but some of the discussion, unedited, is included at attachment.



David W. Buckingham  
City Manager  
City of Morro Bay

Attachment 1 – Discussion on different business license tax systems.

All,

Some brief observations:

This conversation has circled around from simplicity to fairness to best method of measuring scope of biz activity. That is great.

Concerns about the "per employee" calculation spawned a simplified tiered system with broad categories based on revenue. Desire for simplicity led to thoughts about just a very few categories. Interest for fairness moves quickly away from simple - re ideas treating restaurants differently from hotels differently from retail differently from personal service differently from professional service.

- There are two basic approaches:

1. A system that take no account of size of business.
2. A system that take account of size of business.

John's Weiss's very simple concept is an example of #1. It takes no account of size of business and Albertsons (with 100+ employees and likely \$20+ in gross revenue) would pay the same tax as a sole proprietor retail biz with no employees.

We've been talking about two basic approaches to take into account size of business: # of employees or some accounting of revenue.

2a. Our current system is an example of the # of employees approach and is actually pretty straight forward. Almost every biz pays a flat \$137 plus \$32 per employee. Hotels are slightly different counting number of rooms instead of number of employees as a measure of size of biz.

2b. Gross receipts is perhaps a more common measure of size of biz, but I say that acknowledging that I don't think anyone (including me / the City) wants the kind of complex gross receipts system where the tax is something like 50 cents per \$1000 of gross revenue, etc,etc. Dave Peter's concept is a modified gross revenue system that uses very broad tiers of revenue as a simpler way of measuring size of biz instead of # of employees. That system, for those who may not have looked at it closely, said, generally, any biz with under \$250K of annual gross rev pays X, biz in the \$250K - \$1M band pay X+, gross rev above \$1M pays X++, etc.

So, question 1:

- 1a. do we want a system that takes no account of the size of a business, requiring the same \$ tax from Albertsons as from the Galley as from Summer Cottage as from a successful professional artist? Or,
- 1b. Do we want a system that take some account of size of business?

Question #2 . . . if the answer to the above is 1b - (some accounting for size of biz) then, which option do we prefer:

2a. The current system based on # of employees.

2b. Some system akin to Dave Peter's concept that measures gross revenue but does so in very broad tiers.

2c. Some other system that account for Albertsons and the barber shop differently.

All that was to provide some context, the following is to provide some assessment of where we are.

Based on the City's current financial condition, our basic approach to any change is that it must be revenue neutral. We have no interest in making a change to increase revenue (ie, a tax increase), but, nor can we afford a change that decreases revenue.

So, a change to a 1a system that takes no account of size of business would have to go to a vote of the people because it would result in increasing that tax on at least one business. If Albertson's current bix license tax based on # of employees is ~\$3300, and Summer Cottages biz license tax is ~\$150 and both were paying the same exact amount, then Albertson's tax would likely decrease and a sole proprietorship with one employee would likely increase. Someone's taxes will necessarily increase, even just \$1, and thus requires a vote.

Similarly, a change to a 2b broad tiered revenue system would also increase at least 1 business's tax at least 1 dollar - and thus would requires a vote.

Even simply increasing the fee for street vendors requires a vote.

So, these kinds of changes could not be made until Nov 16 at the earliest.

In the meantime, we are talking about making appropriate clarifications and modifications to our current code and should bring those to Council by July. More on that in a summer of our meeting yesterday morning that I hope to get out to you today or on the weekend.

In the meantime, really, would love thoughts on the questions above:

1. A system that take no account of size of business or a system that take account of size of business.
2. If accounting for size of business, stick with counting employees / rooms, or consider some other method such as tiered gross revenue?

Thanks,

--Dave

>>> "Penny Harrington" <chiefpenny@charter.net> 3/26/2015 9:30 AM >>>

Any time you get into a gross receipts situation, you are going to have issues and take a lot of staff time/appeal time. I do agree that a simple list is the best. I also agree that the fee for street vendors needs to be raised and be consistently applied from event to event.

Penny

**From:** flamingos@charter.net [flamingos@charter.net]

**Sent:** Thursday, March 26, 2015 9:19 AM

This really does present an easy and workable process. Simple to explain and understand.  
Janice

**From:** [sstew49815@aol.com](mailto:sstew49815@aol.com)

**Sent:** Thursday, March 26, 2015 8:37 AM

This makes sense to me. I would really hate to see us go to gross receipts due to staff time and extra paperwork. Besides, you would always be operating based on the previous year.

On Mar 26, 2015, at 8:05 AM, John Weiss <[jweiss@infostations.com](mailto:jweiss@infostations.com)> wrote:

Great thoughts. Keeping it simple and easy to enforce makes the most sense to me. For example:

- 1) Free standing businesses \$100-125
- 2) Businesses inside a business, street vendors \$40-50
- 3) Home based businesses \$75-100
- 4) Contractors and subs-contractors \$40-50
- 5) By day license fee \$15-25/day

Thanks for the discussion.

John Weiss,

Coast Electronics

In Morro Bay since 1978

PS In contrast, my Los Osos store business license is \$30 per year.

805-748-9615

On Tue, Mar 24, 2015 at 3:30 PM, David Buckingham <[DBuckingham@morro-bay.ca.us](mailto:DBuckingham@morro-bay.ca.us)> wrote:

All,

Couple things:

First, I had assessment districts on my mind when I wrote "Prop 218" below. Actually should have been Prop 26/62. Point here is that the City cannot raise taxes without a vote of the people. There is likely no way to implement the tiered system, should we recommend that, without impacting taxes of at least one business. The next election at which this could be addressed is Nov '16. Thus, we can likely not move to that system now - but we could certainly begin planning now to move that way. To be clear, I am not at all advocating for increasing the BL tax. However, changing to a tiered system would almost certainly increase the BL tax of at least one business by at least one dollar - and thus taking this to the voters would likely be essential. The same is true for any move to any gross receipts based system - so we are likely left with working within our current code / tax structure, with the opportunity only of: 1) making things clearer, and 2) exempting certain taxpayers or reducing taxes.

Thus, we may be in the process of making additional minor clarifications and adjustments now, and then making a major revision in 18 months.

Second, for our meeting tomorrow, from our meeting last month, I believe there are two main issues to consider:

- 1) Infrequent sales visits
- 2) Independent Contractors working under the roof of existing licensed businesses.

Seems to be 3 approaches for infrequent visits:

- 1) Exempt a certain number of visits.
- 2) Set a threshold under which no business license at all is required.
- 3) No change - a BL is required - and perhaps a better easier system to get a "short duration" license.

Approaches to Independent Contractors operating under a licensed business (barbers, beauticians, etc) . . .  
:

- 1) No change - require a business license - with the existing low-revenue exemption and potential new "no license required threshold" - being in place.
- 2) Change the code to reduce the tax on independent contractors who work solely under one licensed business.

Were there other major areas of discussion to address?

Other ideas we should be prepared to discuss?

Thanks,

--Dave

>>> <flamingos@charter.net> 3/24/2015 1:02 AM >>>

I agree with David Peter's and Susan Stewart's comments. As a former home-based photographer, the tier would seem fair.

Janice

**From:** David Buckingham

**Sent:** Monday, March 23, 2015 5:38 PM

Hi Dave,

Thanks very much for this, and for your previous note on subject which I pasted below for reference.

A couple thoughts:

1. Love simplicity. And love this simple approach. Without getting bogged down in the numbers, though, this would likely require a prop 218 process because it would likely pose a tax increase on some businesses. Might we be able to structure it so it does not, maybe, and we can check.
2. Will be interested in hearing about this pseudo gross-receipts approach. I definitely don't want the city getting in the business of calculating taxes based on gross rev . . .
3. Will also be interested in hearing thoughts on "small" businesses - including your thoughts. I anticipate there will be some interest in additional brackets for under \$250K revenue. At what point, though, does it become an argument for argument than for need? There are certainly some in need, but a \$100 annual license is a little over \$8 per month.

Reference "double dipping":

1. It is the norm across the states. I learned through all of this that Sysco actually has a department that keeps track of municipal business licenses.
2. Less so for brick and mortar businesses, but one of the things the "double dipping" does is level the playing field for our home town businesses. It means an Atascadero electrician must have the same license as a Morro Bay electrician.
3. And, from a revenue perspective, that would likely be hit the city revenue that we could not sustain and we have no interested in passing that on to home-town businesses.

Thoughts?

--Dave

>>> David Peter <[dave@galleymorrobbay.com](mailto:dave@galleymorrobbay.com)> 3/23/2015 2:22 PM >>>

It seems as if there is at least some support for a tier-based model. Unfortunately I cannot attend the meeting this week, so I prepared a simple table of what a tier-based model might look like (see attached PDF file). If nothing else, it might at least help focus discussion about what types of businesses we have operating in Morro Bay, and what categories they fall into. I believe the majority of business we have operating here will fall into the seven categories you see listed in the table, however I'm sure there'll be exceptions.

As per my previous email, please do not place emphasis on the numbers in the table — they are simply place-holders for the purposes of discussion. They should be replaced with whatever the appropriate amount to charge is for any specific type of business in any given tier. It is worth noting, however, that if there were agreement that the pricing tiers themselves were the right ones to use, that annual revenue was the sole criteria used to determine what one should pay, and that “type” of business was not a factor, then this model could be simplified even further. Essentially the first four columns in this table could be collapsed into one, and any type of business whose license was tier-based would pay an annual fee based on the revenue tier they fall into. Non tier-based businesses, such as those in the last three columns, would simply pay an annual fee for conducting business in Morro Bay regardless of annual revenue.

Also, I tend to agree with Susan's point about double dipping — being licensed where you are based and also having to pay an additional fee in each city where you make deliveries. Think about a food purveyor such as Sysco or U.S. Foods — these are national companies that deliver to restaurants in thousands of cities of across the country. Are they really required to purchase a business license in each and every one of these cities? Doesn't make sense to me.

Nevertheless, I've included a column for these types of companies in the tiered section of the table, but perhaps their license fee should be based on a non-tiered model, if they are being charged at all.

I hope you have a productive meeting, and that at least some of this info is useful. I'm sorry that I cannot participate on Thursday.

Dave

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I'm not a fan of another tax based on a percentage of gross revenue. Those of us located on the west side of Embarcadero, south of Beach street, already pay a pretty hefty tax on gross revenue — in our case it's 3% of food sales and 10% of liquor sales. It's a big chunk out of our hide every July...

I think one of the problems many people had with the fee being based on number of employees was how to calculate it. Not everyone understood what an FTE was, and the City's definition of what an FTE is differs from how the IRS defines one. Also, with a fee being based solely on number of employees (or revenue) there's probably a tendency for businesses to "fudge" numbers down when self reporting in order to save money.

I'd advocate for something really simple to understand, that eliminates the business owner's obligation to calculate anything. Perhaps a tiered scale of some sort with the fee being based on either type of business, gross revenue, a combination of these, or some other criteria. Tiers might be \$50, \$100, \$250, \$500, \$750, \$1000, for example. You fall into a certain category, and you pay a specific annual fee and you can plan for that.

Just an example of how it might work.

Small businesses with under \$25k annual revenue - \$50 (stall in antique shops, etc.)  
Small business with retail location and less than \$100k revenue — \$100  
Independent contractors providing services in Morro Bay \$100 (plumbers, electricians, etc.)  
Restaurants/hotels with less than \$1m annual revenue - \$250  
Restaurants/hotels with \$1m - \$2m annual revenue - \$500  
Restaurants/hotels with more than \$2m annual revenue \$750  
Lots of other categories that need to be defined.

THESE ARE JUST RANDOM THOUGHTS TO PRESENT A FRAMEWORK OF HOW THIS MIGHT WORK — I HAVE NOT PUT ANY REAL THOUGHT INTO THESE NUMBERS, NOR IF THEY ARE FAIR, SO DON'T START THROWING TOO MANY FLAMES. I JUST WANTED TO ILLUSTRATE HOW A SIMPLER, EASIER TO UNDERSTAND SOLUTION MIGHT WORK.