

City of Morro Bay

Citizens Oversight Committee Agenda

Acting as Citizens Finance Advisory Committee

Mission Statement

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

**REGULAR MEETING
TUESDAY, SEPTEMBER 20, 2016
VETERANS MEMORIAL HALL – 3:30 PM
209 SURF ST., MORRO BAY, CA**

ESTABLISH QUORUM AND CALL TO ORDER

COMMITTEE MEMBERS ANNOUNCEMENTS & PRESENTATIONS – WELCOME NEW MEMBERS

PUBLIC COMMENT PERIOD - Members of the audience wishing to address the Committee on business matters may do so at this time.

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

- When recognized by the Chairperson, 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 the Committee, as a whole, and not to any individual member thereof.
- The Committee respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commissioner, committee member 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 Committee to carry out its meeting will not be permitted, and offenders will be requested to leave the meeting.
- Your participation in Committee meetings is welcome, and your courtesy will be appreciated.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (805) 772-6205. Notification 24 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

A. CONSENT CALENDAR

1. APPROVAL OF MINUTES FOR THE JUNE 21, 2016, REGULAR CITIZENS OVERSIGHT/FINANCE ADVISORY COMMITTEE MEETING

NOTE: Since there was no quorum for the July 19th meeting, the June 21st minutes were not approved, and there are no minutes for July 19th to approve or post.

B. BUSINESS ITEMS

1. CONTINUED DISCUSSION ON BENCHMARKING MORRO BAY'S BUDGET TO SIMILAR CITIES
2. PRESENTATION ON ACTIONS TAKEN-TO-DATE TO CORRECT FY14/15 AUDIT FINDINGS
3. DISCUSSION ON USE OF PROCEEDS FROM SALE OF PROPERTY AT CORAL AND SAN JACINTO
4. DISCUSSION ON PRESENTATION OF QUARTERLY PERFORMANCE REPORTS, CONTRACTS AND INVESTMENT PORTFOLIO
5. PROGRESS UPDATE: PUBLIC-FRIENDLY BUDGET
6. FUTURE AGENDA ITEMS

C. SCHEDULE NEXT MEETING

The next regular meeting will be October 18, 2016.

D. 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 CITY HALL AT 772-6201 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE COMMITTEE AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL LOCATED AT 595 HARBOR STREET 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 REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

**MINUTES - CITIZENS OVERSIGHT/FINANCE ADVISORY COMMITTEE
REGULAR MEETING – JUNE 21, 2016
VETERANS MEMORIAL HALL – 3:30 P.M.**

MEMBERS PRESENT: Barbara Spagnola Chairperson
Marlys McPherson Member
David Betonte Member
Betty Forsythe Member

ABSENT: Roscoe Mathieu Member

STAFF PRESENT: Susan Slayton Administrative Services Director
Brooke Austin Deputy City Clerk

ESTABLISH QUORUM AND CALL TO ORDER

A quorum was established with all members, but Member Mathieu, present, and the meeting was called to order at 3:33 p.m.

COMMITTEE MEMBERS ANNOUNCEMENTS AND PRESENTATIONS

Chairperson Spagnola announced the recruitment for additional committee members has been extended and the new deadline is June 24th.

PUBLIC COMMENT PERIOD

The public comment period was opened. Seeing none, the public comment period was closed.

A. CONSENT CALENDAR

A-1 APPROVAL OF MINUTES FOR THE MAY 17, 2016 REGULAR CITIZENS OVERSIGHT/FINANCE ADVISORY COMMITTEE MEETING

<https://youtu.be/xSxsK1Wa0So?t=2m26s>

MOTION: Committee Member McPherson moved to approve the minutes from the May 17, 2016 meeting. The motion was seconded by Member Forsythe and carried unanimously, 4-0.

B. BUSINESS ITEMS

B-1 DISCUSSION OF FY 16/17 BUDGET

<https://youtu.be/xSxsK1Wa0So?t=3m48s>

Committee Members reviewed the Summary of All Budgeted Funds and inquired of Administrative Services Director Slayton to clarify Capital Replacement, Lower Cost Visitor Accommodations Mitigation, Parking In-Lieu, Utility Discount/Rebate, Accumulation Funds, General Fund Emergency Reserve, Revenue Estimates, Revenues Over(Under) Net Transfers and Expenditures. They reviewed All Funds Revenue by Category, which is a summary of the previous information just sorted differently; All Funds Expenditures by Category; General Fund Revenue by Source; General Fund Expenditures by Division and Category. The Board stated this is a good source for the Public-Friendly Budget Document and recommend receiving this summary prior to budget adoption in future years.

B-2 PROGRESS UPDATE: PUBLIC-FRIENDLY BUDGET

<https://youtu.be/xSxsK1Wa0So?t=29m3s>

Committee Member Betonte, who is also a member of the subcommittee for Public-friendly Budget Documents, stated that there are basically three categories of documents – Budget at a Glance, a two-sided utility mailer; Budget in Brief, a few more pages, that could be added to website for those that want additional information; and the actual Budget, some of which incorporate the other two documents. He questioned what the focus of the subcommittee should be, documents or recommendations. Administrative Services Director Slayton stated that the City would like a Budget at a Glance and/or Budget in Brief document and recommendations of improvements for future budgets. She will provide the subcommittee with excel documents of budget information to use in creating documents.

The Board discussed needing different summaries for different audiences and including funding by goals and accomplishments, as well as, including a glossary or frequently asked question section. They understand staffing limitations, but would like to start making improvements and build on them each year. The Committee discussed pushing the Public-Friendly Budget Document Workshop to August to allow time to prepare sample documents for review and perform more public outreach.

B-3 BENCHMARKING MORRO BAY'S BUDGET WITH SIMILAR CITIES

<https://youtu.be/YPV44xMs27k?t=21m51s>

The Board discussed benchmarking and what the Council wants to get out of it. Committee Liaison John Heading stated that it was the intent of the Council to benchmark with other cities that might be similar, like the cities Management Partners used previously, to determine areas we might be spending more on than comparable cities. Council would like a higher level review of expenditures, identifying statistically significant differences and the reasons for such, and looking for ways to reduce expenditures.

Committee Member Betonte shared the Pioneer Institute Webpage on benchmarking which is an excellent resource for important metrics.

C. DECLARATION OF FUTURE AGENDA ITEMS

<https://youtu.be/YPV44xMs27k?t=43m56s>

The Committee would like to have future agenda items to review benchmarking, preparing for the public-friendly budget workshop, and an update of remediation steps taken to date in response to the 2014/2015 audit findings.

D. ADJOURNMENT

The meeting adjourned at 4:59 pm. The next Regular Meeting will be held Tuesday, July 19, 2016 at 3:30 p.m. at the Veterans Memorial Hall located at 209 Surf Street, Morro Bay, CA. It is anticipated the Public-Friendly Budget Workshop will be held in August.

Recorded by:

Brooke Austin
Deputy City Clerk



AGENDA NO:	B - 1
MEETING DATE:	September 20, 2016

Staff Report

TO: Chairwoman Spagnola and Committee Members **DATE:** July 12, 2016
FROM: Susan Slayton, Administrative Services Director
SUBJECT: Continued Discussion on Benchmarking Morro Bay's Budget to Similar Cities

The Committee will continue discussing this project with the goal of having a work product to present to the City Council at the October 25, 2016, regular meeting.



AGENDA NO:	B - 2
MEETING DATE:	September 20, 2016

Staff Report

TO: Chairwoman Spagnola and Committee Members **DATE:** July 8, 2016
FROM: Susan Slayton, Administrative Services Director
SUBJECT: Presentation on Actions Taken-to-Date to Correct FY 2014/15 Audit Findings

The City's audit firm, the Pun Group, performed its auditing services for the fiscal year ended June 30, 2015, and issued its reports, which contained audit findings (material weaknesses/significant deficiencies), presented as Finding 2015-001 (Issues 1-8), which were categorized as material weaknesses. A material weakness is a lack, or combination of inadequacies, in internal control, such that there is a reasonable possibility that a material misstatement of the City's financial statements will not be prevented, or detected and corrected on a timely basis.

Many of the findings were already corrected in 2015/16, but the response had to take into consideration only the situation as it stood in 2014/15. Please remember the audit was not finalized until **March 31, 2016**, so we are talking about awareness and actions taken within a three-month period.

The auditors agreed that a language barrier may have played a part in some misunderstandings about our processes. The individual, who interviewed staff, chose a newer member of our staff to question about processes; this person later told her supervisor she was very nervous when questioned, and in many cases, did not understand the questions asked by the interviewer, due to a language barrier, so she said "I don't know" as her answer to process questions. Additionally, staff pointed out a flaw in the random selection of personnel records, as it targeted part-time staff only.

Finding 2015-001, 1:

This finding was related to the lack of formal policies and procedures (e.g., a physical book entitled Policies and Procedures), and the lack of understanding and following of the Municipal Code.

Management's comment was while a comprehensive document of all policies is not in place, there are multiple policies and procedures in existence and practice. Desk manuals/job duties/procedure checklists do exist. Management has stated the comprehensive book of policies and procedures will be completed in 2016/17.

PROGRESS-TO-DATE: the manual has been established, and as time permits, documents are being collected and added.

Finding 2015-001, 2 & 7:

This finding was related to segregation of duties over disbursements, payroll and cash receipts processes.

Management's comments refuted this finding for disbursements and cash receipts processes, as we work very hard to involve as many people in both processes. However, we did not have a management staff member **SIGNING** off on reports or checklists. With payroll, we also did not have someone **SIGNING** off on reports or checklists, but did have reviews in place. This process was mostly completed by one person, but reviews did occur; the process has significantly changed.

PROGRESS-TO-DATE: during the 2014/15 audit period, we implemented electronic timesheets, removing the second-party manual time sheet entry activity. Electronic timesheets were fully implemented in 2015/16, with all employees entering hours worked through a secure portal, password protected. Payroll retrieves the electronic information, and reviews it for accuracy. If any errors are discovered, payroll has the ability to reject the time sheet for correction, or make corrections to the time sheet, if the error is not discovered in a timely manner (late submission by employee). If payroll makes a change, the employee is notified, **by the payroll system**, with an email, indicating a change was made to the employee's time entry.

Beginning in April, the payroll process register is signed by the Administrative Services Director, **prior to payroll distribution and payment**. The payroll process checklist is reviewed and signed off by the individual assigned as the payroll backup. We have always had the payroll backup or the Administrative Services Director separate and prepare the payroll checks and direct deposit advices for pickup by the departments, who sign a form when departmental payroll is picked up.

Previous reviews for both payroll and accounts payable occurred by notifying the Administrative Services Director, both in written format (payroll) and e-mail, of the amount of distribution. This information has been recorded in an Excel spreadsheet for many years by the Administrative Services Director, and this process continues.

Also beginning in April, we have the accounts payable backup signing off on the accounts payable process register, after she reviews it for accuracy. The accounts payable process checklist is also signed off by the backup individual. Cash receipts have always been signed off and carefully separated as best as possible with a small staff.

Finding 2015-001, 3:

This finding was related to reconciling standalone processes, such as the HdL building permits, Active recreation registration, and HdL business tax certificate software products.

PROGRESS-TO-DATE: we have always received reports directly from these standalone systems, but do not have the ability to **transfer** information from the standalone system to the City's main financial software product. This was the crux of the finding.

We are in the process of implementing a new product, CityWorks, which will have transfer protocol for

both building permits and business tax certificate processes.

Regarding Active recreation registration and payment software, there is an issue with this product. Old deposits continue to be reported as unreconciled, and with the significant change in personnel in Recreation, there is a significant challenge with exploring and correcting this problem. Management is well-aware of the issue, and is working on resolution.

Finding 2015-001, 4:

This finding was related to our lack of a purchase order system.

PROGRESS TO DATE: the City has purchased a purchase order module, installed it, and has a procedure manual under review by the City Attorney. This was all accomplished prior to the issuance of the audit findings, but not during the 2014/15 audit period. We will have the purchase order system up and running the 2016/17 fiscal year.

Finding 2015-001, 5:

This finding was related to cash disbursements not being signed off by authorized personnel.

PROGRESS TO DATE: we have a procedure in place, whereby Department Directors have submitted samples of their signatures for comparison to invoice authorization, and have authorized certain management/supervisory personnel to sign invoices, in the Director's absence. If the proper signatures are missing, invoices are returned to the originating department to be properly signed off. This process was implemented in April/May 2016. The accounts payable clerk has copies of the form signed by authorized signers, as well as the designated person, as does the Administrative Services Director. This helps the clerk identify the signature of the person signing to ensure they are authorized.

Finding 2015-001, 6:

This finding was related to Personnel Action Forms not adequately approved and retained by the City, and staff receiving approvals /charges that were informal or verbal.

PROGRESS TO DATE: management was unclear about this finding and challenged the auditor, who revisited our processes by requesting a new selection of employees' personnel files to review. With the new selection, there were no errors discovered. The first selection contained mainly part-time employees, who were in the process of being converted from contracts to Personnel Action Forms (PAF) in recording their hiring information and pay information. Staff is continuing its diligence in obtaining all personnel changes on PAFs or in written format. Staff did not, and does not, take verbal changes for personnel actions.

Finding 2015-001, 8:

This finding was related to expenditures exceeding budgets, without amendments.

PROGRESS TO DATE: staff reviewed the 2015/16 3rd quarter budgets and took additional amendment requests to Council. This practice will continue to ensure compliance with spending and budgets.

Regarding Findings 2015-002, 003 and 004, these are activities that will occur with the fiscal year end process for 2015/16 (September 2016).



AGENDA NO:	B - 3
MEETING DATE:	September 20, 2016

Staff Report

TO: Chairwoman Spagnola and Committee Members **DATE:** July 8, 2016

FROM: Sub-Committee Members Betonte, Spagnola, and McPherson

SUBJECT: Progress Update: Public-Friendly Budget

This is the Sub-Committee's opportunity to present its efforts made on researching/creating a more Public-Friendly Budget document and presentation. The Committee will routinely discuss this topic for a recommendation to the City Manager by January 2017.

Additionally, the Committee should discuss topics/plans to prepare for the August 30th workshop.



AGENDA NO:	B - 4
MEETING DATE:	September 20, 2016

Staff Report

TO: Chairwoman Spagnola and Committee Members **DATE:** July 8, 2016
FROM: Susan Slayton, Administrative Services Director
SUBJECT: Discussion on Use of the Proceeds from the Sale of Property at Coral and San Jacinto

The Committee will discuss the sale of this property, and provide its recommendation to Council for use of the proceeds. The staff reported presented to Council on September 13th is included.



AGENDA NO: A-7

MEETING DATE: September 13, 2016

Staff Report

TO: Honorable Mayor and City Council **DATE:** September 12, 2016
FROM: Scot Graham, Community Development Manager
SUBJECT: Approval of Purchase and Sale Agreement for Real Property at 2783 Coral Avenue

RECOMMENDATION

Staff recommends the City Council authorize a change in sale terms for the vacant City-owned property located at 2783 Coral Avenue to Jeff Mayer.

ALTERNATIVES

1. The Council may decide not to alter terms of sale.
2. The Council may direct staff to alter terms in some other manner directed by a majority of the Council.

FISCAL IMPACT

The City Council authorized sale of the subject property to Jeff Mayer in the amount of \$799,000.00 on July 12, 2016, through adoption of Resolution 59-16 (see Attachment 1). The purchase agreement between the City and Jeff Mayer became effective on July 19, 2016. If the Council agrees to the change in terms described below, the sale will proceed for the price identified above plus 5% interest over the term of the agreement.

Should the Council decide to reject the terms, Jeff Mayer has indicated that he will not purchase the property.

BACKGROUND/DISCUSSION

The City Council adopted Resolution No. 59-16 authorizing sale of the Coral Avenue property to Jeff Mayer, on July 12, 2016. The City subsequently entered into a purchase agreement with Mr. Mayer on July 19, 2016. The purchase agreement includes a 120-day escrow and the following terms:

- Seller to cooperate with Buyer as is reasonably necessary during escrow in connection with California Coastal Commission issue requiring an amendment to the original Cloisters CDP A-4-MRB-91-044
- Seller to cooperate pursuant to City policy regarding removal of eucalyptus tree removal on the property.

On August 24, 2016, Mr. Mayer forwarded to David Buckingham, City Manager, a letter outlining his concerns related to purchase of the property (Mayer Letter provided as Attachment 2). Mr. Mayer has been conducting his due diligence related to purchase and entitlement of the property, including permitting of a subdivision through both the City and Coastal Commission permitting process. This research has led Mr. Mayer and his team to conclude that permitting will result in substantial investment of both time and money on his part, potentially taking as much as two years for entitlement. Based on these conclusions Mr. Mayer is not willing to move forward with purchase and has requested

Prepared By: SG

Dept Review: SG

City Manager Review: _____

City Attorney Review: _____

amendment to the purchase agreement to include the following terms:

- Additional nonrefundable deposit in the amount of \$30,000, bringing total deposit to \$50,000
- Buyer will immediately close escrow and deliver to City a Buyer's promissory note secured by the first deed of trust encumbering the property for the balance of the purchase price (\$749,000)
 - Payment of 5% interest annually, paid in monthly installments, compounded monthly from the close of escrow.
 - Maturity of the Note at 36-months following close of escrow; or
 - 30-days following buyers receipt of all necessary and final/non-appealable land use entitlements and approvals for the project and the running of any applicable statutes of limitation relating to initiation of legal action challenging the entitlements or the project.

The City has been in active negotiations related to the above requested changes. Staff agrees with the changes and finds them reasonably necessary to allow the purchase to proceed. However, the City did request and has received concurrence from Mr. Mayer for the addition of the following terms:

- Interest will continue to accrue during any period where the legal action is brought against the project
- Inclusion of an indemnification clause related to Entitlement Litigation

It should be noted that Mr. Mayer has signed and forwarded to the City the First Amendment to the purchase agreement, which includes the above referenced terms.

By sale of the property, the City is not committing to any future development or use of the property. Such use and development would be required to proceed through the City and Coastal Commission's land use entitlement procedures.

CONCLUSION

Staff recommends that the City Council concur with the revised purchase agreement terms and direct staff to proceed with execution of First Amendment to the purchase agreement.

ATTACHMENT(S)

1. Resolution 59-16
2. Mayer, August 24, 2016 Letter
3. First Amendment to Purchase Agreement

RESOLUTION NO. 59-16

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AUTHORIZING THE SALE OF CITY OWNED PROPERTY LOCATED AT
2783 CORAL AVENUE APN: 065-386-015**

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

WHEREAS, the City of Morro Bay desires to sell certain City-owned property located at 2783 Coral Avenue in the City of Morro Bay, with APN: 065-386-015 (the "Sale Property"), bounded to the West by Coral Avenue, North by San Jacinto and East by State Highway 1; and

WHEREAS, Jeff Mayer has submitted an offer in the amount of \$799,000.00 to the City for purchase of the Sale Property; and

WHEREAS, the Planning Commission, on April 19, 2016, adopted Resolution No. 13-16 finding the sale of the vacant City-owned property consistent with the City of Morro Bay General Plan; and

WHEREAS, the Council finds there is no present or anticipated future use of the Sale Property, for public purposes; and

WHEREAS, the sale of the Sale Property is both consistent with the City's General Plan and is for the benefit of the City's citizens;

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

1. The City Council hereby finds the sale of the Sale Property is in the public interest.
2. The City Council hereby finds the sale of the Sale Property for the amount of \$799,000.00 is in the public interest for the common benefit of the City's citizens and is not below the fair market value of the Sale Property.
3. The City Council approves the sale of the Sale Property to Jeff Mayer in the amount of \$799,000.00 less sales commission, escrow and closing costs.
4. The City Manager or his designee is authorized to execute the Purchase Sale Agreement and all other documents to effectuate the sale of the Sale Property.

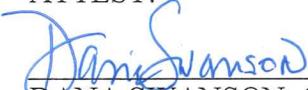
PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on this 12th day of July, 2016 on the following vote:

AYES: Irons, Headding, Johnson, Makowetski, Smukler
NOES: None
ABSENT: None
ABSTAIN: None



JAMIE L. IRONS, Mayor

ATTEST:



DANA SWANSON, City Clerk

Jeffrey S. Mayer
1467 W Shaw Avenue
Fresno, CA 93711

August 24, 2016

Mr. David Buckingham
City Manager
City of Morro Bay, CA
595 Harbor Street
Morro Bay, CA 93442-1957

Re: 2783 Coral Avenue Morro Bay, CA 93442 APN: 065-386-015

Dear Mr. Buckingham,

As you know, we entered in to a Vacant Land Purchase Agreement and Joint Escrow Instructions for the subject Property that became effective on July 19, 2016. Since that time, we have been reviewing matters of title, and conducting our research in to the feasibility of developing the property as a residential subdivision with 6 single family homes located thereon. We have also completed a Phase 1 Environmental Site Assessment, have reviewed the previous (and now expired) Conditional Use Permit, Vesting Tentative Map, and other related correspondence in an effort to determine the likelihood of obtaining the necessary approvals from the City of Morro Bay, and the California Coastal Commission for the aforementioned development. We currently understand these "entitlements" to include, but not be limited to, a Conditional Use Permit/Amendment to the Cloisters Tract approval, a Vesting Tentative Map, an Amendment to the City of Morro Bay Local Coastal Plan, and a Coastal Development Permit, and whatever necessary CEQA certification is deemed necessary by your staff, along with the required engineering and related studies that may be required as a part of these entitlements.

I would like to specifically thank Scot Graham and your Community Development staff for their cooperation and willingness to continually take our calls and meet to review the information we have had questions about. It is refreshing to work with such a responsive team.

As we discussed in our telephone discussion today, the entitlement process with the City will take several months, and possibly up to a year to complete, and then there will be a subsequent process with the California Coastal Commission. This total process will require significant investment in the engineering, studies and application fees, and could take up to two years, not including any significant challenges or litigation. Based on our findings, we are not willing to purchase the property according to the terms of the current Agreement. That said, we believe it is in the best interest of the City to amend the Agreement in a way that addresses our concerns, and ultimately accomplishes your goal to sell the Property.

Mr. David Buckingham
Page 2
August 24, 2016

We are proposing that we amend the Agreement as follows:

The Purchase Price shall be evidenced in the form of cash in the amount of \$50,000 and a Promissory Note held by the City of Morro Bay for the balance of the Purchase Price. The Promissory Note would be secured by a First Deed of Trust on the Property.

The Terms of the Promissory Note would be:

Principal: \$749,000.00

Interest Rate 5% per annum, paid with monthly installments of Interest only.

Maturity: The earlier of 36 months from the Date of the Note, or the date that is 30 days following the final approval for the Property that allows the subdivision and development of the Property in to six (6) single family home sites, including all appeal periods or statutory timeframes for litigation challenging such entitlements/approvals. In the event the entitlements are challenged through litigation, the Maturity Date shall be "tolled" until said litigation is finally adjudicated.

If this Amendment is acceptable to the City, we are prepared to waive any remaining contingencies, and proceed with Close of Escrow on the Property on or before September 30, 2016.

We will also agree that this Amendment is conditioned on obtaining the consent from Frankie Ciano/Ciano Real Estate that any commission due to Ciano Real Estate related to this transaction shall be paid by the City on a "cash received" basis, and not upon the Close of Escrow.

Thank you again for taking the time to discuss this matter, and for your willingness to consider this Amendment.

Sincerely,



Kevin Huber



Jeffrey S. Mayer

Copy: Mr. Scot Graham-Community Development Director Morro Bay, CA
Mr. Fritz Huber
Mr. Frankie Ciano

FIRST AMENDMENT TO VACANT LAND
PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS
(2783 Coral Avenue, Morro Bay, CA)

This FIRST AMENDMENT TO VACANT LAND PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("First Amendment"), dated for reference purposes only September __ 2016, is entered by and between the CITY OF MORRO BAY, a municipal corporation ("Seller"), and JEFF MAYER and/or his assignee ("Buyer").

RECITALS

A. Seller and Buyer entered into that certain Vacant Land Purchase Agreement and Joint Escrow Instructions dated for reference purposes on or about July 1, 2016 (as amended, the "Purchase Agreement"), pursuant to which Seller agreed to sell to Buyer, and Buyer agreed to purchase from Seller, upon the terms and conditions of the Purchase Agreement, certain real property owned by Seller and located at 2783 Coral Avenue, Morro Bay, San Luis Obispo County, California 93442 (Assessor's Parcel No. 065-386-015) and more particularly described in the Purchase Agreement;

B. Buyer's has completed his preliminary study and investigation of the Property and has determined completing the land use entitlement process necessary for the subdivision of the Property into six (6) single-family home sites, as contemplated by Buyer, (the "Project") will require a greater amount of time and the expenditure of a significantly greater amount of money. Accordingly, pursuant to the Purchase Agreement, Buyer notified Seller Buyer is currently unwilling to proceed with the Close of Escrow;

C. The parties have determined it is in their mutual interest to expedite a Close of Escrow by restructuring the financing terms set forth in the Purchase Agreement to provide for, among other things, an additional deposit and increased Seller financing; and

D. The parties now desire to amend the Purchase Agreement as hereinafter set forth.

AMENDMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements in this First Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Definitions and Recitals. Capitalized terms that are not defined in this First Amendment shall have the meanings given to them in the Purchase Agreement. The parties acknowledge and agree to the truthfulness of the foregoing recitals, which are hereby incorporated into this First Amendment.

2. Increased Deposit. Buyer shall deliver to Escrow Holder an increased deposit in the amount of \$30,000.00, for a total down payment amount of \$50,000.00 ("Down Payment") within five (5) business days after the complete execution and delivery of this First Amendment.

The Down Payment shall be non-refundable and is intended to serve as liquidated damages pursuant to paragraph 27B, except in the event of Seller's default or failure of a material condition to Closing.

3. Seller Financing. Buyer agrees to deliver to Seller through Escrow at Closing Buyer's promissory note ("Note") secured by a deed of trust ("Deed of Trust") encumbering the Property in favor of Seller for the balance of the purchase price (\$749,000.00), bearing interest at the rate of five percent (5%) per annum, compounded monthly, from the Close of Escrow, payable in monthly installments of interest only (in arrears) beginning on October 1, 2016, and continuing until maturity, unless paid sooner. The forms of Note and Deed of Trust shall be as reasonably agreed to by the parties at least three (3) business days prior to the Close of Escrow, but shall contain the following terms and conditions:

(a) Maturity of the Note: Upon the earlier to occur of:

(i) 36 months following the Close of Escrow;

(ii) 30 days following (1) Buyer's receipt of all necessary and final/non-appealable land use entitlements and approvals for the Project (from all governmental agencies, commissions or authorities having jurisdiction over the Project) (collectively the "Entitlements") and (2) the running of any applicable statutes of limitation relating to initiating legal action to challenge the Entitlements or the Project; or

(iii) 30 days following Seller's written notice to Buyer after Seller, acting reasonably and in good faith, determines Buyer has failed to either pursue the Entitlements for the Project or defend any legal action relating to the Entitlements or the Project; provided, that if the latter occurs Seller shall have no obligation to defend that legal action.

(b) Suspension of Monthly Note Payments: In the event Buyer is a party to or is otherwise forced to defend (or commence) legal action related to the Entitlements, monthly payments due pursuant to the terms of the Note shall be suspended for so long as Buyer is involved in such legal action. Notwithstanding the suspension of payments, interest shall continue to accrue on the outstanding balance of the Note.

(c) Indemnification Related to Entitlement Litigation. Buyer shall defend and indemnify Seller from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, reasonable attorney's fees, disbursements and court costs) which may arise from the Project and/or the Project's approval, whether based on Seller's CEQA determination or other governmental decision; provided that Buyer's obligation to indemnify does not apply to the extent Seller is found liable for gross negligence or willful misconduct.

4. Close of Escrow. Close of Escrow shall occur on or before September 30, 2016.

5. Commission. Notwithstanding anything to the contrary contained in the Purchase Agreement or any listing or other representation agreement between Seller and Ciano Real Estate Inc. ("Agent") regarding the Property, Agent and Seller agree any commission or compensation otherwise payable by Seller upon the Close of Escrow shall be paid when and only to the extent of cash received by Seller on account of the Purchase Price.

6. Further Assurances; Cooperation. Each of the parties shall execute such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the parties and carry out the terms of this First Amendment. Without limiting the foregoing, the parties shall execute and deliver such instructions as necessary to transfer the escrow and Buyer's deposit to the Escrow Holder designated herein and to cause the Preliminary Report to be issued expeditiously.

7. No Further Amendment. Except as expressly provided in this First Amendment, the Purchase Agreement remains unmodified and in full force and effect. Further, all the terms and provisions of the Purchase Agreement apply to this First Amendment except as modified by this First Amendment.

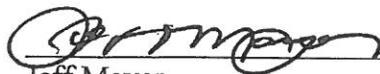
8. Interpretation. The provisions of this First Amendment shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question. In the event of any inconsistency between this First Amendment and the Purchase Agreement, the terms of this First Amendment shall prevail.

9. Counterparts. This First Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. To facilitate execution of this Agreement, the parties may execute and exchange by electronic mail or telephone facsimile counterparts of the signature pages.

IN WITNESS WHEREOF, the parties have executed this First Amendment on the dates below written.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)

BUYER:



Jeff Mayer

Dated: September 9, 2016.

SELLER:

CITY OF MORRO BAY, a
municipal corporation

By: _____
Jamie Irons, Mayor

Dated: September ____, 2016.

ATTEST:

Dana Swanson, City Clerk

APPROVED AS TO FORM:

Joseph W. Pannone,
City Attorney

Agreed as to Paragraph 5:

Ciano Real Estate, Inc., a
California corporation

By: 

Frank M. Ciano, President



AGENDA NO: A-4

MEETING DATE: July 12, 2016

Staff Report

TO: Honorable Mayor and City Council **DATE:** July 01, 2016

FROM: Scot Graham, Community Development Manager

SUBJECT: Approval of Sales Agreement with Jeff Mayer for the Purchase of 2783 Coral Avenue (Coral / San Jacinto); APN: 065-386-015

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 59-16 authorizing the sale of the vacant City owned property, located at 2783 Coral Avenue to Jeff Mayer.

ALTERNATIVES

The Council may decide not to sell the Coral Avenue property.

FISCAL IMPACT

The property is listed at \$799,000.00 and the City has received a full price offer. Through sale of the property, the City would receive the full sale price minus sales commissions, 50% of the escrow fees and closing costs. The City would also realize an increase in property tax based on both the sales price and later on any increase in value associated with development of the property.

BACKGROUND/DISCUSSION

The property is comprised of approximately one acre of vacant land located at 2783 Coral Avenue as further identified on the Maps figures provided below:

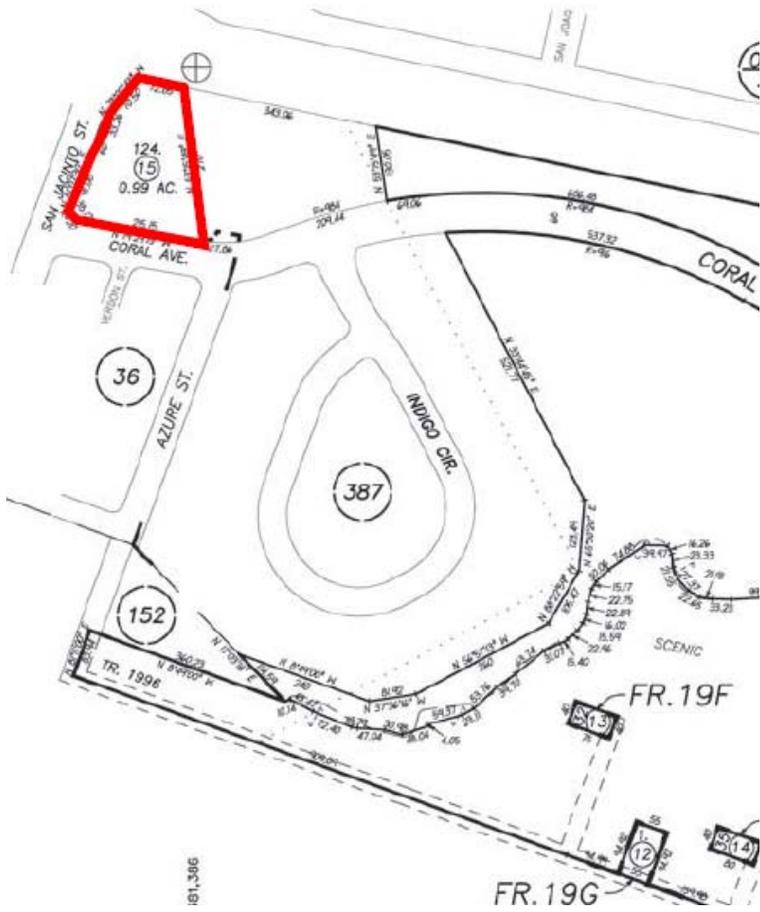
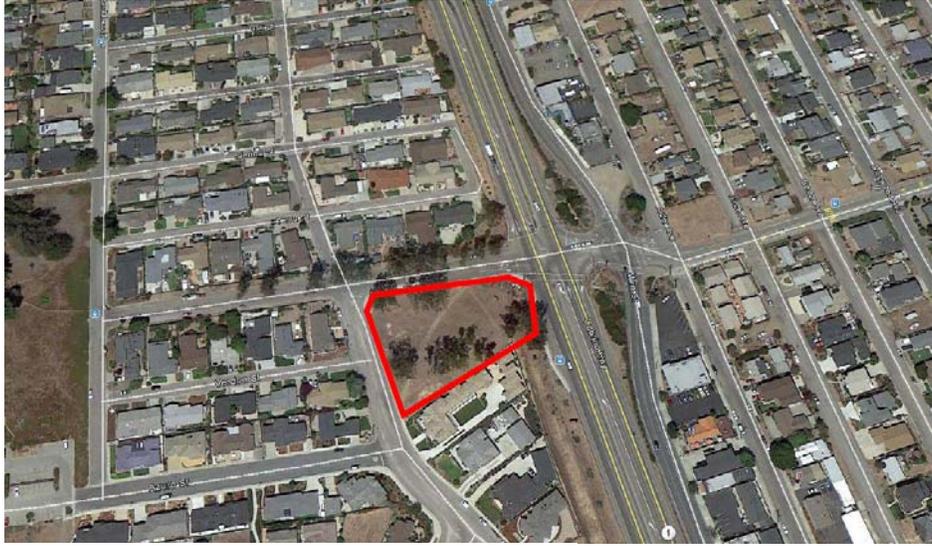
01181.0003/272189.1

Prepared By: SG

Dept Review: SG

City Manager Review: DWB

City Attorney Review: JWP



The property was previously dedicated to the City of Morro Bay for fire station purposes in association with the Cloisters residential subdivision. The City subsequently determined the site was not well suited for a fire station and the City Council directed sale of the property. The property maintains a Coastal Resource Residential (CR) zoning designation with Golf Course (GC) and Planned Development (PD) overlays.

In order to carry out the sale direction provided by the Council, the City hired Ciano Real Estate to act as the City's broker. The City received interest from two parties at the \$799,000 asking price; LVDC LLC (Gerald Robinson) and Jeff Mayer; however, Mr. Robinson eventually withdrew his offer, which allowed Mr. Mayer's offer to move forward without competition. Mr. Mayer's offer includes a 120-day escrow and the following stipulations:

- The City will cooperate with Mr. Mayer as is reasonably necessary during escrow in connection with California Coastal Commission issue requiring an amendment to the original Cloisters CDP A-4-MRB-91-044
- The City will cooperate, pursuant to City policy, regarding removal of eucalyptus tree removal on the property.

The above referenced stipulations will not obligate the City to the expenditure of substantial resources as they both involve permitting processes that currently exist in the City. In order to amend the existing Cloister's approvals, the Buyer will have to process project amendments through both the City and the Coastal Commission.

Removal of onsite trees, also involves an existing City permitting process that is laid out in Council Resolution No. 39-07(Major Vegetation Removal, Replacement and Protection Guidelines). Specifically, removal of major vegetation requires the approval of a Coastal Development Permit, which necessitates Planning Commission approval.

At its meeting on April 19, 2016, the Planning Commission determined the sale of the subject property is in conformity with the City's General Plan. Such a determination is required by Government Code section 65402 before the City can sell any real property it owns.

By sale of the property, the City is not committing to any future development or use of the property. Such use and development would be required to proceed through the City and Coastal Commission's land use entitlement procedures.

CONCLUSION

Staff recommends the City Council adopt Resolution No. 59-16 authorizing sale of the 2783 Coral Avenue property to Jeff Mayer in the amount of \$799,000.00 (See Attachment A).



AGENDA NO:	B - 5
MEETING DATE:	September 20, 2016

Staff Report

TO: Chairwoman Spagnola and Committee Members **DATE:** July 8, 2016

FROM: Sub-Committee Members Betonte, Spagnola, and McPherson

SUBJECT: Progress Update: Public-Friendly Budget

This is the Sub-Committee's opportunity to present its efforts made on researching/creating a more Public-Friendly Budget document and presentation. The Committee will routinely discuss this topic for a recommendation to the City Manager by January 2017.