

MINUTES - MORRO BAY CITY COUNCIL
CLOSED SESSION – FEBRUARY 14, 2012
CITY HALL CONFERENCE ROOM - 5:00 P.M.

AGENDA NO: A-1

MEETING DATE: 02/28/2012

Mayor Yates called the meeting to order at 5:00 p.m.

PRESENT:	William Yates	Mayor
	Carla Borchard	Councilmember
	Nancy Johnson	Councilmember
	George Leage	Councilmember
	Noah Smukler	Councilmember
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney
	Susan Slayton	Administrative Services Director
	Bill Avery	Chief Negotiator

CLOSED SESSION

Mayor Yates adjourned the meeting to Closed Session.

Mayor Yates read the Closed Session Statement.

CS-1 GOVERNMENT CODE SECTION 54957.6; CONFERENCE WITH LABOR NEGOTIATOR. Conference with City Manager, the City's Designated Representative, for the purpose of reviewing the City's position regarding the terms and compensation paid to the City Employees and giving instructions to the Designated Representative.

CS-2 GOVERNMENT CODE SECTION 54956.8; REAL PROPERTY TRANSACTIONS. Instructing City's real property negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property as to two (2) parcels.

- **Property: 3300 Panorama Drive**
Negotiating Parties: US General Services Administration and City of Morro Bay
Negotiations: Purchase and Sale
- **Property: 895 Monterey Street**
Negotiating Parties: Woolley and City of Morro Bay
Negotiations: Voluntary Purchase and Sale

The meeting adjourned at 5:50pm.

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Mayor Yates called the meeting to order at 6:00 p.m.

PRESENT:	William Yates	Mayor
	Carla Borchard	Councilmember
	Nancy Johnson	Councilmember
	George Leage	Councilmember
	Noah Smukler	Councilmember
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney
	Jamie Boucher	City Clerk
	Rob Livick	Public Services Director
	Tim Olivas	Police Chief
	Mike Pond	Fire Chief
	Susan Slayton	Administrative Services Director
	Joe Woods	Recreation & Parks Director
	Sierra Davis	Assistant Planner

ESTABLISH QUORUM AND CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

MAYOR AND COUNCIL MEMBERS REPORTS, ANNOUNCEMENTS & PRESENTATIONS

CLOSED SESSION REPORT – City Attorney Robert Shultz reported that City Council met in Closed Session and no reportable action under the Brown Act was taken.

PUBLIC COMMENT

Chad and Amy Olivera, owners of the Waterfront Grill provided the City local business report. Located at 571 Embarcadero, in the Salt Building, the Waterfront Grill is open 5 days a week from 8am-8pm; they have been open since October. The Olivera's are excited to have developed a local following. On a personal note, they wanted to say that opening this restaurant has given them the opportunity to meet some very special people who have been very supportive, friendly and welcoming and they wanted to say THANKS for that.

Al Abrams is petitioning the FCC to get a license for a Morro Bay Community Radio station. This will be a non-profit commercial and partisan free station. They want to provide emergency capabilities, tourist information and the residents a voice as it will be a forum to provide information on local issues, events, sports, etc... He is looking to put together a board of people that want to be part of this exciting opportunity.

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Keith Taylor, acting as President of the Friends of the Fire Department, spoke about a fundraising opportunity via the sale of bricks that will be placed at the new Fire Department. The money raised by the sale of the bricks go towards scholarships benefitting the City's Reserve Firefighters in their on-going education. Tonight Keith presented David Gacad with a \$500 check to help with his costs as he attends Paramedic School.

Dan Reddell has order forms for people interested in donating to the Friends of the Fire Department's Brick Project. The cost is \$125/brick and includes an engraved personalized saying. If interested, people can contact Keith Taylor at 772-2852. Dan also introduced 2 new members to the Friends of the Fire Department Board – John and Meredith Fennacy.

Garry Johnson spoke on item D-2 (Discussion and Consideration of Regulating Public Smoking) stating that he has lost numerous friends to the hazards of smoking. He went on to give facts of the detriments of smoking including the effects of second hand smoke. He feels that this is a problem and we need to protect non-smokers. He feels having a workshop to discuss the problem and possible solutions would be a good idea.

Rachel Borovay is San Luis Obispo County's Friday Night Live Coordinator for MBHS and LOMS, she went on to introduce local elementary, middle and high school students who all spoke on the effects of smoking. Students speaking on the issue were Isaac Stanton, Ariel, Paula, Haley Revalee, Hailey Ramos, Gabrina Narajas, Holly Requa, Angela Garelick, Rachel Ericson, Maddy Fugle, and Tiffany Revalee. They brought up the following topics as it relates to cigarette/tobacco use: ~causes cancer; ~bad for the environment; ~second hand smoke concerns; ~causes asthma; ~causes heart disease; and, ~stronger smoking regulations would decrease underage smoking.

Steve Hanson, the Medical Association member for the County Tobacco Control Coalition and Medical Director at Sierra Vista reiterated the concerns of the youth. He stressed that a third of the patients at the hospital are as a result of tobacco related illnesses; that stronger smoking regulations make parks and streets cleaner; that stopping smoking can add 15-17 years to a person's life; that he endorses Proposition 29 and thinks we should as well; and, that he feels going "tobacco free" is the way to go.

Melissa works with the Tobacco Control Program in San Luis Obispo's County Health Department and wants to thank Morro Bay for contemplating drafting an Ordinance as well as commended staff for their thorough staff report. One important area that hasn't been mentioned is tobacco retail licensing, which is a way to ensure compliance checks used to monitor the sales of tobacco to minors, are funded and run on a consistent basis.

Kathleen Carly, Manager of the Public Health Department that manages the tobacco health program echoed all the previous speakers' opinions on the issue of smoking. She brought up multi-unit housing and felt that apartment owners and/or managers would be on "your side"

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with the proposed regulations. She stressed that their program was in place to support us and can help in drafting a comprehensive ordinance.

Susan Maharry and Marlice Batestella with the Central Coast Women for Fisheries gave an update on their fundraising efforts for their public art project. To date they need \$54,000 more to complete the project. If interested in donating, you can visit their website located at www.womenforfish.org.

Jamie Irons announced the Black Mountain Trail Work Day being held on Sunday, March 11th at 8am. This project is being done in conjunction with State Parks and the CCCMB (Central Coast Concerned Mountain Bikers). He encouraged trail runners and riders to come out and support the trail.

Betty Winholtz spoke on agenda item A-1 (Approval of Minutes of Regular Meeting of January 24, 2012) as she wanted the phrase "...as a whole, our elected officials are..." be removed from her statement and instead add "...Councilmember Borchard is..." She also spoke on Item A-3 (Amendment #2 to Lease Site Agreement between the City of Morro Bay and GAFCO); she doesn't feel that splitting this development should be an issue but does feel that the Council should consider that the public benefit should come before personal benefit. In addition, there is a Eucalyptus tree on Morro Bay Blvd at the Reid Building that she is fearful is slowly dying, she hopes it isn't happening intentionally. And finally, she wanted to recognize the passing of Beverly Hardy, an active member of the community.

Joe Yukich spoke on Item A-2 (Authorization to Fill One Recreation & Parks Department Maintenance Worker II Position) requesting staff, in an effort to be more transparent, place more information in staff reports such as salary range and benefits. He also felt that some of our non-essential services can be contracted out.

Jim Ross, with Morro Bay Beautiful, stated that in only one hour, he picked up a baggie full of cigarette butts at the southbound off-ramp at the roundabout.

Laura Kelleher spoke in support of the beautification of Morro Bay; possibly with palm trees and bbq areas at the Rock, palm trees at the Chevron property, a public restroom at Toro Lane, and a public walkover at Highway 41 and Little Morro Creek Road.

Mayor Yates closed the hearing for public comment.

A. CONSENT CALENDAR

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

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A-1 APPROVAL OF CITY COUNCIL MINUTES FOR THE REGULAR MEETING OF JANUARY 24, 2012; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 AUTHORIZATION TO FILL ONE RECREATION AND PARKS DEPARTMENT MAINTENANCE WORKER II POSITION; (RECREATION & PARKS)

RECOMMENDATION: Authorize staff to fill position.

A-3 APPROVAL OF AMENDMENT #2 TO THE LEASE AGREEMENT FOR LEASE SITE 110-112/110W-112W, AND 20' OF THE EASTERLY PORTION OF 111.5W, BETWEEN THE CITY OF MORRO BAY AND GAFCO INC., LOCATED AT 1185 EMBARCADERO; (CITY ATTORNEY)

RECOMMENDATION: Adopt Resolution 10-12 approving Amendment #2 to the lease agreement for Lease Site 110-112/110W-112W and 20' of the easterly portion of 111.5W, between the City of Morro Bay and GAFCO, located at 1185 Embarcadero.

Councilmember Smukler pulled Item A-1 and A-2 from the Consent Calendar; Mayor Yates pulled Item A-3.

A-1 APPROVAL OF CITY COUNCIL MINUTES FOR THE REGULAR MEETING OF JANUARY 24, 2012; (ADMINISTRATION)

Councilmember Smukler requested staff review Ms. Winholtz's public comments and bring the minutes back at the next meeting for approval. No action was taken on Item A-1.

A-2 AUTHORIZATION TO FILL ONE RECREATION AND PARKS DEPARTMENT MAINTENANCE WORKER II POSITION; (RECREATION & PARKS)

Councilmember Smukler requested staff put more detail into these requests to fill positions to include salary range and benefit package.

MOTION: Councilmember Smukler moved the City Council approve Item A-2 of the Consent Calendar. The motion was seconded by Mayor Yates and carried unanimously. (5-0)

A-3 APPROVAL OF AMENDMENT #2 TO THE LEASE AGREEMENT FOR LEASE SITE 110-112/110W-112W, AND 20' OF THE EASTERLY PORTION OF 111.5W,

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BETWEEN THE CITY OF MORRO BAY AND GAFCO INC., LOCATED AT
1185 EMBARCADERO; (CITY ATTORNEY)

Mayor Yates pulled this item in order for Councilmember Leage to step down due to a conflict of interest.

Councilmember Leage stepped down from the dais.

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

Mayor Yates called for a break at 7:01 p.m.; the meeting resumed at 7:17 p.m.

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 M. ARETE AND J. ROSS APPEALS OF MEDINA PRJECT; AMENDMENT TO
S00-089 AND CPO-276; (PUBLIC SERVICES)

Assistant Planner, Sierra Davis presented her staff report on this item stating that there were 2 appeals on this project, one from Michele Arete and one from James Ross.

Michele Arete, an appellant, presented her appeal and began by saying she was here representing 200 petition and letter signers. In addition, she wanted it known that she is in support of development appropriate to the area; Ms. Arete then gave specific policy/regulation interpretations establishing the basis of her appeal. Ms. Arete isn't saying "don't build", just build according to the laws and policies as well as the July 19, 2010 permit. She also requested the City ask US Fish and Wildlife to perform a 2 day and night assessment of red legged frogs in the area. She feels the applicant must also go back to the 5 agencies that are involved in these decisions for additional information as the applicant is amending his permit, their information is outdated and current reports are necessary to proceed. The 5 agencies are: Army Corps of Engineers, US Fish and Wildlife (red legged frogs), Water Quality Control Board, Fish and Game (willows), and California Coastal Commission. CEQA must be in compliance as now there is encroachment on the creek. These agencies must be contacted and made aware of the new modifications and be given the opportunity to review current encroachment and determine if there are noncompliance violations of state and federal laws.

James Ross, an appellant, thanked the Planning Department for providing him all the paperwork and answers to his questions. Mr. Ross stated that he is not against the project but is definitely against going so close to the ESH. He doesn't feel it is necessary to go further into the 25 foot zone. He feels that a 10 foot access to the rear property is sufficient. He also expressed concern about the drainage of the new parcel. He asked the City make sure they

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don't approve so many exceptions to our codes and ordinances as they take away from the quality of life the people who live here enjoy.

Johnny Medina, the applicant, stated they are just trying to make adjustments necessary based on the July 19th approval to gain access to the lot in the back. The first approval wouldn't allow access for a second driveway, everything else proposed with this new amendment is within the boundaries.

Mayor Yates opened the hearing for public comment.

William Gallick has lived on Whidbey Way for 33 years and has seen many changes over the years. He has seen the creek area adversely impacted which is very upsetting. In July 2010, it was his understanding that there was access and the buffer wouldn't be impacted. He was also under the impression that there would be restoration in the area and to date, he hasn't seen any. While he understands the need for Medina's access, he doesn't want to see the buffer reduced and requests that the appeals be upheld.

Jamie Irons, former Planning Commissioner who heard this project while on the board stated that the decision made in 2010 by the Planning Commission wasn't appealed at that time. The layout of the first house resulted in the current constraints being seen right now. He feels that the Council should uphold the appeal and go back to the original approved project of 2010.

Laura Mounce gave a historical perspective of the destruction of the willows in the area. She also questioned why the applicant hasn't restored the ESHA area as was a condition for approval of the original house. She too asks the 5 agencies come out and make current reports to include the issue of the red legged frog sightings.

Betty Winholtz contends that there is the perception that this hearing is only about buffer setback when it isn't. The appeals include previous unfulfilled conditions and maintenance of the conservation easement. She also contends that Local Coastal Plan Policy 11.14 is the crux of the major issue and that the ESHA must be considered as ESHA. She also is questioning what setback or buffer is legally permissible, as LCP Policy 11.14 uses the phrase "but in no case shall the buffer..." and she feels that "shall" is not a negotiable word. Finally, Ms. Winholtz states that there is no take of private property for public use as the applicant originally purchased this property knowing it contained an ESHA.

Joe Yukich is aware that 151 people have signed a petition and feels that Council should listen to their constituents.

John Barta maintains that America is a "can do" nation and that the Medina's just want a little piece of the "American Dream." He feels others have questioned whether this is even an ESHA - the creek is nothing but a drain that's underneath the whole condo project that goes for 2 blocks and then pops out into this area - it's hardly an ESHA but even if it is, the biologists

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have spoken and there is no damage here. The applicant isn't asking for anything beyond the existing wall and feels there is a simple solution which would be to ask for a simple easement.

Mayor Yates closed the hearing for public comment.

Councilmember Borchard asked staff if an easement was an option which Public Services Director Livick responded that even with an easement, the driveway would still encroach into a portion of the 25 foot ESH buffer.

Councilmember Johnson asked clarification of staff regarding the following issues: the project's conditions of approval; drainage issues; the cutting down of willows; location of the proposed driveway; what part does the existing wall play in the ESH; if the driveway is permitted, can we require it be constructed of a permeable surface; and, possible granting of an easement. She is willing to stand by the 2010 Planning Commission decision to use a common driveway.

Councilmember Leage feels that they could be able to use the common driveway and still get around the corner to which Public Services Director said was a possibility though it isn't the proposal submitted by the applicant.

Councilmember Smukler also feels there is sufficient room with the existing driveway to utilize a common driveway. The 2010 Planning Commission also thought so; and it's his intent to stand by the 2010 Planning Commission decision.

Mayor Yates feels it is wrong to force someone to use an existing driveway when they want 2 separate stand-alone properties without an easement; they are staying on the same side of the existing retaining wall; he doesn't have a problem with granting this.

MOTION: Councilmember Borchard moved the City Council uphold the appeal and direct the project to follow the 2010 Planning Commission approval. The motion was seconded by Councilmember Smukler and carried 4-1 with Mayor Yates voting no.

**B-2 REVIEW OF DRAFT ZONING TEXT AMENDMENT A00-013
AMENDING SECTION 17.48.32 (SECONDARY UNITS); (PUBLIC
SERVICES)**

Public Services Director provided his staff report regarding the status of secondary units. City Council last heard this item back on March 22, 2011 where there was direction to return with the discussed amendments to MBMC Section 17.48.320, at a future meeting. The proposed secondary unit revision was then discussed at the December 7, 2011 and January 4, 2012 Planning Commission meetings where they also made recommendations which are a part of this report.

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Councilmember Smukler asked for a review of history as to how we came to the existing regulations of the 900 square feet to both Public Services Director Livick and City Attorney Schultz. He followed up with a question of whether we did a review of other coastal communities in our county of what their regulations are for secondary units.

Mayor Yates opened the hearing for public comment.

Jamie Irons brought up the fact that there is no data from Planning staff or the public that the current Ordinance even had a problem. He also questioned why it wasn't certified back in 2005. There was a 3 day public workshop when this Ordinance was originally crafted and now Council majority is asking to revise that process; he asked that Council reconsider these actions and send it back to a public workshop to do it the right way.

Betty Winholtz concurred with Mr. Irons. She is concerned with the potential of being able to build 2 homes on a lot, each 1200 square feet and then subdivide them and sell both off. She feels there are 3 things being repeated in the staff report that she wants to correct. She feels it is in error that: we are fixing our Ordinance in regards to compliance with State law; that we are increasing small affordable housing units; and, that we are ensuring compatibility with existing neighborhoods. We should listen to public input and shouldn't undermine the public process.

John Barta commented that the granny unit issue is not about land being subdivided and sold separately, never was and never will be. Granny units are there because they allow us to have a healthy community. No one is going to be required to build a 1200 sq foot granny unit. From 2005 to the present we have had a more restrictive process and as a result, very few granny units have been built. In order to have a viable community where people can afford to live, we will need a robust granny unit program.

Mayor Yates closed the hearing for public comment.

Councilmember Smukler felt that there wasn't enough data to move forward with this tonight. He also feels we would be abandoning the public process by moving forward. If we plan on changing, we should have another public workshop. He feels that 900 square feet is a fair and more affordable number and wants to stick with the existing Ordinance that was developed through the public process and move forward with the certification of that.

Councilmember Leage thinks the owner of the property should have the choice of up to 1200 square feet and agrees that just because you can, doesn't mean you will. He doesn't feel 1200 square feet is too big as long as the property owner feels they can rent it out.

Mayor Yates doesn't see a problem with this and feels it's irrelevant to compare us with what other communities are doing. He also doesn't feel that 1200 square feet is too big nor does he feel that everybody building a secondary unit to 1200 square feet will occur.

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Councilmember Johnson is good with this as well. She feels that 1200 square feet is still a reasonably sized smaller home and that this subject has been “workshopped” enough as we’ve had 2 public hearings already.

Councilmember Borchard agreed, public process has been on-going on this issue and in fact we are having a public process on it right now. A 1200 square foot limit would help the applicants expedite a project as well as save costs without having to go to a CUP. This should also help with our housing inventory.

MOTION: Councilmember Borchard moved the City Council approve Item B2 as presented in the staff report. The motion was seconded by Councilmember Leage and carried 4-1 with Councilmember Smukler voting no.

C. UNFINISHED BUSINESS – None.

D. NEW BUSINESS

D-1 DISCUSSION ON THE CLOSURE OF ATASCADERO STATE BEACH (MORRO STRAND); (ADMINISTRATION)

City Manager Andrea Lueker presented the staff report requesting the budget amendments as presented.

San Luis Obispo Coast District Superintendent, Nick Franco also spoke. He stated that the park closures were as a result of state-wide budget cuts. Morro Strand State Park was one of 70 parks slated to be closed. There are 3 options to keeping a park open: donor agreements, concession agreements and operating agreements. In an effort to keep our park open, there have been on-going discussions with Cal Poly. If there is nothing in place by March or April, the State will have to move forward with plans to close the park but they will still keep the talks open.

All Councilmembers were in total support of keeping the park open.

Mayor Yates stated that July was probably the worst possible time for this to occur. He also knows of someone who has expressed interest in running the park.

Councilmember Smukler thinks the discussions with Cal Poly are promising as that fits within our mission.

Councilmember Leage wants to do all we can to keep the park open.

Councilmember Johnson wanted to know how people can get ahold of Mr. Franco. (805) 927-2065; nfranco@hearstcastle.com

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Councilmember Borchard was concerned with the snowy plover monitoring and how that might impact somebody's ability to run the park as the monitoring process is very expensive.

No action was taken as this item was informational only.

D-2 DISCUSSION AND CONSIDERATION OF REGULATING PUBLIC SMOKING;
(CITY ATTORNEY)

City Attorney presented his staff report requesting Council's direction regarding whether to prepare an Ordinance extending regulations of secondhand smoke in the City.

Councilmember Johnson brought this forward as a result of public request. She feels that it is important to incorporate all seven (7) of the stated protections for outdoor public places (1- dining areas, 2- entryways, 3- public events, 4- recreation areas, 5- service areas, 6- sidewalks, 7- worksites) and wanted to add "drive-up windows" to #5, add "and streets" to #6, as well as add a #8 City owned vehicles and a #9 licensed child care homes. She is unsure about her feelings on #7. She would also like to see us address regulations on housing and licensing but realizes that we may want to start slower. She encourages this move forward to a public hearing.

Councilmember Borchard is supportive of moving forward with some of these actions. She agrees with #'s 1-5, is on the fence with #6 and isn't supportive of #7; she feels designated smoking areas could work; but doesn't want to pursue housing regulations or permit fees at this time.

Councilmember Smukler is also in agreement with what has been laid out. He is interested in talking about the tobacco sales concept but hopes that if we move forward with that component, it could be self-funded. He would like to see a licensing component included now as opposed to waiting as he feels it will save staff time, we will be able to utilize the Tobacco Control for their help, as well as address the sales to minors' part.

Chief Olivas presented some information on the possible regulations of tobacco sales.

Councilmember Leage is fearful that we would be dealing with a slippery slope as it will be very difficult to pass an Ordinance that you can't enforce. He also feels this could be a deterrent to tourists as he feels that probably 20% of our tourists smoke. He also feels that we need to consider that smokers have a right to smoke.

Mayor Yates agrees that there are inappropriate places to smoke but doesn't feel we need to go to this length. He also agrees that enforcement will be a problem. He can go along with some of this but that regulating smoking on sidewalks is going too far.

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MOTION: Councilmember Johnson moved the City Council bring forward for Public Hearing addressing items 1-7 in the Protections for Outdoor Public Places section found in the staff report, adding “and drive up windows” to #5, adding “and streets” to # 6, adding item 8 (city owned vehicles) and adding item 9 (licensed child care homes). The motion was seconded by Councilmember Borchard and carried 3-2 with Mayor Yates and Councilmember Leage voting no.

MOTION: Councilmember Smukler moved the City Council move forward with a regulation concept for tobacco sales as discussed. The motion was seconded by Councilmember Johnson and carried 3-2 with Mayor Yates and Councilmember Leage voting no.

D-3 DISCUSSION AND CONSIDERATION OF AMENDMENTS TO MORRO BAY MUNICIPAL CODE CHAPTER 5.24 REGARDING TAXICABS; (CITY ATTORNEY)

City Attorney Rob Schultz presented his staff report and is looking for direction from Council as to whether you would like us to streamline this process. He stated that the current Taxi Cab Ordinance was written in 1964.

Mayor Yates, in the spirit of streamlining the municipal code, wants to make this licensing process simple.

Councilmember Smukler agrees that taxi operations are helpful in the community; he is intrigued by the Danville Code; he also feels it is imperative that vehicles have clear licensing and markings as he doesn't want to lose the public safety component; he also wants to ensure there is “revocability” in the language.

Councilmember Johnson wants to see this simplified as well but also wants to ensure public safety.

Councilmember Borchard echo's the sentiments that we offer a safe ride for any passenger in our community. She questioned whether our current Ordinance is similar in kind to other Ordinances in the County. She can be supportive of a change to a more streamlined version.

MOTION: Mayor Yates moved the City Council direct the City Attorney bring back amendments to Morro Bay Municipal Code Chapter 5.24 regarding taxicabs with the goal of streamlining and simplifying the regulations. The motion was seconded by Councilmember Johnson and carried unanimously. (5-0)

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E. DECLARATION OF FUTURE AGENDA ITEMS

Councilmember Borchard requests staff look at residential development impact fee reductions; Mayor Yates and Councilmember Johnson concurred.

ADJOURNMENT

The meeting adjourned at 10:32 p.m.

Recorded by:

Jamie Boucher
City Clerk