

MINUTES - MORRO BAY CITY COUNCIL
CLOSED SESSION – AUGUST 11, 2008
CITY HALL CONFERENCE ROOM - 5:00 P.M.

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

PRESENT:	Janice Peters	Mayor
	Melody DeMeritt	Councilmember
	Rick Grantham	Councilmember
	William Peirce	Councilmember
	Betty Winholtz	Councilmember

STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney

CLOSED SESSION

MOTION: Councilmember Grantham moved the meeting be adjourned to Closed Session. The motion was seconded by Councilmember Peirce and unanimously carried. (5-0)

Mayor Peters read the Closed Session Statement.

CS-1 GOVERNMENT CODE SECTION 54956.9(a); CONFERENCE WITH LEGAL COUNSEL REGARDING PENDING LITIGATION

- SPRINT PCS ASSETS V CITY OF MORRO BAY
- TRAVERS AND NORDIN V CITY OF MORRO BAY

The meeting adjourned to Closed Session at 5:00 p.m. and returned to regular session at 5:50 p.m.

MOTION: Councilmember Peirce moved the meeting be adjourned. The motion was seconded by Councilmember DeMeritt and unanimously carried. (5-0)

The meeting adjourned at 5:50 p.m.

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REGULAR MEETING – AUGUST 11, 2008
VETERANS MEMORIAL HALL - 6:00 P.M.

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

PRESENT:	Janice Peters	Mayor
	Melody DeMeritt	Councilmember
	Rick Grantham	Councilmember
	William Peirce	Councilmember
	Betty Winholtz	Councilmember
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney
	Bridgett Bauer	City Clerk
	Rick Algert	Harbor Director
	Bruce Ambo	Public Services Director
	John DeRohan	Police Chief
	Mike Pond	Fire Chief
	Susan Slayton	Finance Director
	Joe Woods	Acting Recreation & Parks Director

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE

MAYOR'S REPORTS & ANNOUNCEMENTS

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

PUBLIC COMMENT

Keith Taylor announced tickets are available for a fundraiser supporting the Police Department, Fire Department and Rotary Club with a chance to win a Prius or \$18,000.

Jim Nance encouraged citizens to support the Veterans Outreach for those who have served and are serving in the armed forces.

Nancy Castle stated Chess Live would be performing every second and fourth Sundays of the month at the giant chessboard on the Embarcadero. She also requested fabric for festival flags for the tents at the Harbor Festival.

Mayor Peters closed the hearing for public comment.

DECLARATION OF FUTURE AGENDA ITEMS – None.

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A. CONSENT CALENDAR

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

A-1 APPROVAL OF MINUTES FOR REGULAR CITY COUNCIL MEETING OF JULY 14, 2008; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 RESOLUTION NO. 48-08 AUTHORIZING THE ANNUAL TRANSFER OF EXCESS OPERATING CASH TO ACCUMULATION FUNDS; (FINANCE)

RECOMMENDATION: Adopt Resolution No. 48-08.

A-3 RESOLUTION NO. 49-08 ADOPTING REVISIONS TO THE MASTER FEE SCHEDULE; (FINANCE)

RECOMMENDATION: Adopt Resolution No. 49-08.

A-4 AUTHORIZATION TO FILE FEDERAL LITIGATION AGAINST VANCE AND LOLA JONES IN REGARD TO THEIR DERELICT AND ABANDONED VESSEL, THE ST. JOSEPH; (HARBOR)

RECOMMENDATION: Authorize litigation to ensure removal of the derelict and abandoned vessel, the St. Joseph, and obtain a judgment for delinquent mooring/docking fees.

Councilmember Winholtz pulled Item A-3 from the Consent Calendar.

MOTION: Councilmember Grantham moved the City Council approve the Consent Calendar with the exception of Item A-3. The motion was seconded by Councilmember Winholtz and carried unanimously. (5-0)

A-3 RESOLUTION NO. 49-08 ADOPTING REVISIONS TO THE MASTER FEE SCHEDULE; (FINANCE)

Councilmember Winholtz stated tenants should not be held responsible for paying a deposit for water service, and the property owner should be responsible for water service.

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MOTION: Councilmember Winholtz moved the City Council adopt Resolution No. 49-08 adopting revisions to the Master Fee Schedule with the deletion of the utility deposit for tenants only, and request staff to return with an ordinance that would make property owners responsible for application of water bills. The motion was seconded by Councilmember Grantham and carried unanimously. (5-0)

Mayor Peters called for a break at 6:55 p.m.; the meeting resumed at 7:10 p.m.

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 RESOLUTION NO. 53-08 SUPPORTING THE ESTABLISHMENT OF AN OFF LEASH DOG PARK AT DEL MAR PARK AND AUTHORIZING STAFF TO PROCESS GENERAL PLAN AND MASTER PLAN AMENDMENTS ON BEHALF OF MORRO PUPS; (CITY ATTORNEY)

City Attorney Robert Schultz stated an off-leash dog park located in Morro Bay has been a topic of discussion for several years. The last action taken by the City Council was on April 28, 2008 when it adopted a Memorandum of Understanding with Morro Bay Pups. Pursuant to the MOU with Morro Bay Pups, on June 5, 2008 the Recreation & Parks Commission reviewed and approved the proposed design concept for an off-leash dog area within Del Mar Park and directed staff to forward a recommendation to amend the Master Plan for Del Mar Park directly to City Council. Mr. Schultz recommended the City Council adopt Resolution No. 53-08 supporting the establishment of an off-leash dog park at Del Mar Park and authorize staff to process General Plan and Master Plan amendments on behalf of Morro Bay Pups.

Mayor Peters opened the hearing for public comment.

The following people expressed support for establishing an off-leash dog park at Del Mar Park: Roger Ewing, Mary Stallard, Noah Smukler, George Bomely, Nancy Williams, Ilean Doering, Mary Norby, Steven Marketello, Joe Hoeflich, and Jane von Koehe.

The following people expressed opposition to establishing an off-leash dog park at Del Mar Park: Jeanne McIntosh, Patrick Ayotte, Mike Anderson and Lindsay Ayotte.

Mayor Peters closed the public comment hearing.

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Councilmember Winholtz expressed support for an off-leash dog park at Del Mar Park. She said traffic and flooding concerns should be addressed, and traffic should be directed away from the Island Street parking area. Councilmember Winholtz stated tourists should be directed to go to a beach that is accessible to walking their dogs to reduce the impact to this dog park.

Councilmember Peirce stated although he sympathizes with the Island Street neighborhood, this is a good location for a dog park.

Councilmember Grantham stated he is encouraged with this proposed plan and location. He said there should be a restriction that all dogs remain on a leash until they are in the designated off-leash area.

Councilmember DeMeritt stated she is an enthusiastic supporter of this dog park. She said it is necessary with the limited areas available on the smaller lots in the City for dogs to run.

Mayor Peters expressed support for this dog park. She said the parking should not impact Island Street, and the dogs will be interacting with each other and there should not be too much noise. Mayor Peters encouraged the neighboring property owners to participate in the upcoming meetings to review the requirements of this dog park.

MOTION: Councilmember DeMeritt moved the City Council adopt Resolution No. 53-08 supporting the establishment of an Off-Leash Dog Park at Del Mar Park and authorizing Staff to process General Plan and Master Plan Amendments on behalf of Morro Pups. The motion was seconded by Councilmember Grantham and carried unanimously. (5-0)

Mayor Peters called for a break at 7:50 p.m.; the meeting resumed at 8:00 p.m.

B-2 CONTINUED PUBLIC HEARING FROM AUGUST 4, 2008 ON THE RECONSIDERATION OF THE APPEAL OF THE PLANNING COMMISSION'S APPROVAL AND THE CITY COUNCIL'S DENIAL OF A CONDITIONAL USE PERMIT AND COASTAL DEVELOPMENT PERMIT FOR A WIRELESS TELECOMMUNICATIONS FACILITY AT 545 SHASTA AVENUE. (CITY ATTORNEY)

City Attorney Robert Schultz stated the proposed facility would consist of the removal of the existing cross and subsequent installation of a RF-friendly cross with one, three-panel electromagnetic satellite antenna to be located entirely within the cross, and construction of a twenty-foot deep by ten-foot wide fenced equipment storage area. Mr. Schultz reviewed the history of this application:

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- On August 20, 2007, the Planning Commission approved the applicant's request for Coastal Development Permit and Conditional Use Permit approvals for the erection of a wireless telecommunications facility at 545 Shasta Avenue.
- On August 29, 2007, Ann Travers and Barbara Nordin appealed the Planning Commission's approval of a wireless telecommunications facility at this location.
- On October 22, 2007, after considering evidence presented by interested parties during a public hearing, the City Council voted to overturn the approval of the Planning Commission and denied the application.
- On November 21, 2007, in response to the City Council's denial of its application, Sprint filed a Complaint in Federal Court against the City.
- On June 9, 2008, the City Council approved a settlement agreement that disposed of all such matters and controversies that were raised or could have been raised in the litigation including allowing Sprint to construct a wireless telecommunications facility at 545 Shasta Avenue and dismissal of the litigation.
- On July 8, 2008, the City received a letter from an attorney for Ann Travers and Barbara Nordin alleging the City violated the Brown Act at the June 9, 2008 City Council meeting.
- On July 14, 2008, the City Council rescinded the action taken at the June 9, 2008 meeting pertaining to the granting of any permit or entitlement for the construction of a wireless telecommunications facility at 545 Shasta Avenue.
- On August 4, 2008, the City Council scheduled a public hearing for reconsideration of the appeal of the Planning Commission's approval and the City Council's denial of a wireless telecommunications facility at 545 Shasta Avenue; this public hearing was continued to this meeting.

Mr. Schultz recommended the City Council rescind any and all previous action taken by City Council in regard to this project and conditionally approve the project by adopting a motion including the following actions:

- A. Find that the Mitigated Negative Declaration is complete and adequate under the requirements of the California Environmental Quality Act (CEQA) and that it was considered in reviewing the merits of the proposed project;
- B. Adopt the Findings for Approval, including findings required by CEQA;

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- C. Approve the Conditional Use Permit and Coastal Development Permit subject to the Conditions of Approval.

Ann Travers, appellant, stated the City should continue the moratorium on wireless telecommunications facilities until it has an updated ordinance that will make a level playing field for all wireless telecommunication facilities. She said she has been in contact with staff of Representative Lois Capps' office to consider support for the amendment to the Telecommunications Act to enable more local control for local jurisdictions to work with the various telecommunication vendors in a fair and equitable way.

Michael Jencks, attorney for appellants, stated companies enforcing the Telecommunications Act have superior resources to local jurisdictions in attempting to preserve local authority. He said the appellants question the sufficiency to the mitigations of the Negative Declaration. Mr. Jencks stated the appellants' only requested relief or action is that the City imposes a moratorium on approval of any permits for the installation of cell sites until local rules and regulations have been developed and approved by the City Council. In addition, the appellants have concern with potential health implications of wireless telecommunications facilities.

Barbara Nordin, appellant, stated at the October 22, 2007 Council meeting, the City Council voted against the location of this proposed wireless telecommunication facility. She said the City should have the welfare of its community in mind rather than giving in to a large corporation.

Scott Yamaguchi, attorney for the applicant, urged the City Council to implement the federal judgment and settlement agreement and proceed with approving the project and submitting the permits. He said the federal courts made clear that the Federal Telecommunications Act must be given force and trumps state and local court decisions. Mr. Yamaguchi stated it could be a costly mistake by the City by incurring legal fees by not following through and implementing the federal judgment.

Mayor Peters opened the hearing for public comment.

The following people expressed support for the construction of a wireless telecommunications facility at 545 Shasta Avenue: Bud Zeuschner, Jerry Anderson, Walter Shoub, Donna Baker, Sandra Gordon, Charles Erickson, Diane Ludin, and Leonore Erickson.

The following people expressed opposition to the construction of a wireless telecommunications facility at 545 Shasta Avenue: Peter Risley and Roger Ewing.

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Michael Jencks, attorney for the appellants, stated one of the primary concerns with the Telecommunications Act is there is no discrimination between cellular service providers. He said the federal court action preempts the act of radiation safety standards. Mr. Jencks stated the conditions of this project are woefully inadequate in environmental and land use issues.

Scott Yamaguchi, attorney for the applicant, stated the federal settlement agreement in this case imposed certain obligations that were approved by the federal judge. He recommended the City implement the judgment made in federal court.

Mayor Peters closed the public comment hearing.

Councilmember Winholtz stated her concern is with impacting property values by placing commercial uses in a residential area. Another concern she has is with the emissions from a cell tower and the affect on the flight patterns of birds. Councilmember Winholtz stated unfortunately the lawsuit places a defining role with this decision and the City has a mild chance of being successful at the federal level. She said it is important to note that Sprint has had a difficult time locating a tower in the City because it is not a desirable use in the locations that are proposed.

Councilmember Peirce stated his comments remain the same and he continues to support staff's recommendation.

Councilmember Grantham stated he is unwilling to place the City in a precarious position with the federal judicial system. He stated he would support the agreement with Sprint.

Councilmember DeMeritt stated corporations invented the Federal Communication Act. She said the danger of cell phone towers has not been proven. Councilmember DeMeritt stated winning over federal court is not likely and this is a difficult decision.

Mayor Peters stated the original vote on this project was based on land use, which at the time was not in the City's zoning ordinance. She said the City has no ordinance over the placement of cell phone towers in residential areas at this time; however, a moratorium has since been enacted. Mayor Peters stated it is the Council's responsibility to protect the public from entering into a federal court lawsuit.

Councilmember Winholtz referred to Exhibit "A" of the staff report and requested to remove findings H and M; Council concurred.

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MOTION: Councilmember Grantham moved the City Council approve a Conditional Use Permit and Coastal Development Permit to allow for the establishment of a wireless telecommunications facility at 545 Shasta Avenue with the amendments made to Exhibit “A”, finding H (removal of the word “and”), and the removal of finding “M”. The motion was seconded by Councilmember Peirce and carried with Councilmember DeMeritt voting no. (4-1)

C. UNFINISHED BUSINESS – None.

D. NEW BUSINESS

D-1 CONSIDERATION OF PARTICIPATION IN THE VECTOR CONTROL BENEFIT ASSESSMENT DISTRICT; (ADMINISTRATION)

City Manager Andrea Lueker introduced Curtis Batson, Director of the San Luis Obispo County Environmental Health Agency who gave a report on the County Vector Control Program. Mr. Batson stated on April 1, 2008 the San Luis Obispo County Board of Supervisors authorized the Health Agency’s Environmental Health Division to proceed with a property owner assessment ballot measure to create a benefit assessment intended to provide permanent annual funding for a vector control program. The proposed vector control services would consist of public education, surveillance, abatement and response to disease outbreaks for all vectors and vector-borne diseases. The County expects to conduct the ballot measure in May 2009, and each city has the option of participating in the Vector Control Program.

Councilmember Winholtz expressed concern with the control over the City, and the program appears to be expanded without the need being demonstrated.

Councilmember Peirce stated the program’s main focus is on abating mosquitoes, which he is comfortable with.

Councilmember Grantham stated the West Nile Virus is a good enough reason to support this program.

Councilmember DeMeritt stated she is opposed in participating in this program because there is no great need in Morro Bay. She said the Department of Fish & Game already maintains the creeks and streams located in the City.

Mayor Peters stated she would support placing this on the ballot so the citizens can decide if they would like to participate in this program.

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MOTION: Councilmember Grantham moved the City Council approve the City's participation in placing the Vector Control Program as a measure on the ballot in May 2009. The motion was seconded by Councilmember Peirce and carried with Councilmember DeMeritt and Councilmember Winholtz voting no. (3-2)

D-2 RESOLUTION NO. 50-08 DETERMINING ISSUANCE OF AN ALCOHOL BEVERAGE CONTROL PERMIT FOR A WINE TASTING ROOM LOCATED AT 307 MORRO BAY BOULEVARD; (ADMINISTRATION)

City Manager Andrea Lueker stated an application was made for a permit from the Department of Alcoholic Beverage Control (ABC) to operate a wine tasting room at 307 Morro Bay Boulevard. ABC automatically denies permits to sell alcohol beverages if there is an "undue concentration" of licenses in the census tract. In order for the ABC to issue the license, they require the local governing body to determine that the "public convenience and necessity" would be served by the issuance of the license. The Police Department has reviewed this application and has no significant concerns at this time with a wine tasting room at this location.

MOTION: Councilmember Peirce moved the City Council adopt Resolution No. 50-08 determining issuance of an Alcohol Beverage Control Permit for a Wine Tasting Room located at 307 Morro Bay Boulevard. The motion was seconded by Councilmember Winholtz and carried unanimously. (5-0)

ADJOURNMENT

The meeting adjourned at 9:18 p.m.

Recorded by:

Bridgett Bauer
City Clerk