

MINUTES - MORRO BAY CITY COUNCIL  
CLOSED SESSION – SEPTEMBER 28, 2009  
CITY HALL CONFERENCE ROOM – 4:45 P.M.

Mayor Peters called the meeting to order at 4:45 p.m.

PRESENT:	Janice Peters	Mayor
	Carla Borchard	Councilmember
	Rick Grantham	Councilmember
	Noah Smukler	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 Smukler and unanimously carried. (5-0)

Mayor Peters read the Closed Session Statement.

**CS-1 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.

Property: 781 Market Street and the Corner of Pacific Street and Market Street.  
Negotiating Parties: George Salwasser and the City of Morro Bay.  
Negotiations: Purchase and Sale Conditions.

The meeting adjourned to Closed Session at 4:45 p.m. and returned to regular session at 5:20 p.m.

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

The meeting adjourned at 5:20 p.m.

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VETERANS MEMORIAL HALL - 6:00 P.M.

Mayor Peters called the meeting to order at 6:07 p.m.

PRESENT:	Janice Peters	Mayor
	Carla Borchard	Councilmember
	Rick Grantham	Councilmember
	Noah Smukler	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
	George Rees	Fire Captain
	Susan Slayton	Administrative Services Director
	Dylan Wade	Utilities/Capital Projects Manager

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 Schultz reported the City Council met in Closed Session, and no reportable action under the Brown Act was taken.

PUBLIC COMMENT

Keith Taylor expressed thanks to the community who supported Measure Q and who made it possible to receive the Fire Act Grant.

Hunter Kilpatrick announced the 28<sup>th</sup> Annual Harbor Festival would be held on October 3<sup>rd</sup> and 4<sup>th</sup>, and reviewed this year's events.

Gary Hixson stated he is going to have a television show on Channel 2, and addressed a variety of issues.

John Jones stated he filed a complaint with the State Water Resources Control Board for non-compliance against the City on decision 1633. He said in 1995, the City received a decision to appropriate water to outside the City limits, and had two years to comply with placing flow meters within the creek. Mr. Jones stated the City has never placed the flow meters in the creek and it was done by a biologist who said it needed to be done for the betterment of the fish and the public good. He requested the City comply with decision 1633, which would be in the City's best interest.

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Jack McCurdy addressed Item C-2 (Continued Discussion On State Water Resources Control Board Once-Through Cooling Statewide Policy) and the draft letter attached to the staff report. He said this policy is very important and will affect the community of Morro Bay directly. Mr. McCurdy stated the policy is vague and flawed, and the comments from the City to the State Board are commendable with appropriate points. He said CAPE will submit their comments to the Board. Mr. McCurdy also remembered Joe Giannini who recently passed away.

Tammie Haas, 4H Club, announced October 4-10 is “National 4-H Week”. She reviewed the benefits of being a 4-H member and noted the local club meets the first Tuesday of each month at the Grange Hall on Highway 41.

Mayor Peters closed the hearing for public comment.

Mayor Peters called for a break at 7:02 p.m.; the meeting resumed at 7:09 p.m.

A. CONSENT CALENDAR

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

A-1 RESOLUTION NO. 49-09 APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AND SALE AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE SALE OF THE SELLER’S PROPOSITION 1A RECEIVABLE FROM THE STATE; AND DIRECTING AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH; (ADMINISTRATIVE SERVICES)

**RECOMMENDATION: Adopt Resolution No. 49-09.**

A-2 PROCLAMATION DECLARING OCTOBER 2009 AS RIDSHARE MONTH”; (PUBLIC SERVICES)

**RECOMMENDATION: Adopt Proclamation.**

A-3 STATUS REPORT ON APPLICATIONS FOR ECONOMIC STIMULUS FUNDING; (ADMINISTRATION)

**RECOMMENDATION: Accept the status report for file.**

Councilmember Winholtz pulled Item A-1 from the Consent Calendar for public information.

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Councilmember Smukler stated at the Air Pollution Control Board meeting, they voted to send a letter in support of SB 67 (California: Property tax revenues: Proposition 1A receivables), and he recommended the City do the same.

**MOTION:** Councilmember Smukler moved the City Council approve Resolution No. 49-09; and, direct staff to submit a letter in support of Senate Bill 67 declaring the City's intent to participate in the program and the City's thankfulness for the ability to retain those funds in a short-term manner. The motion was seconded by Councilmember Winholtz and carried unanimously. (5-0)

Mayor Peters pulled Item A-2 from the Consent Calendar to make a presentation.

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

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

**B. PUBLIC HEARINGS, REPORTS & APPEARANCES**

**B-1 POLICY DISCUSSION ON WATER SERVICES OUTSIDE OF CITY LIMITS;  
(PUBLIC SERVICES)**

Utilities/Capital Projects Manager Dylan Wade stated the City of Morro Bay's Municipal Code indicates, "The City will furnish water service in accordance with the regulations contained in this chapter and in accordance with other applicable ordinances, to any property within the City limits and to such areas outside the City limits as the Council may designate." From time to time since the incorporation of the City, water meters and water services have been provided to customers outside of the City limits. Some of these connections were made following the procedure outlined in the Municipal Code with a designation by Council while others were made in order to secure access or water for the City. There are others that have no available records pertaining to their connection. Currently, the City has water service at twelve locations outside of the City limits. Because of the degradation to the water quality and the changes in regulations, the City no longer has the ability to both maintain the pumping of wells in the Chorro Groundwater Basin while providing water to customers in the basin that meets all State and Federal standards. In order to both provide water to the customers outside the City limits and maintain the Chorro Groundwater resource for the benefit of the customers within the City limits, major modifications to the City's infrastructure would be required. These modifications would be needed to effectively deal with the nitrate contamination while also providing disinfection of the occasional bacteriological contamination events

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that impacts the Chorro Groundwater Basin. The degradation of water quality in the Chorro Valley, coupled with the connection of water services to the pumping line, and further complicated by more stringent regulations, will continue to strain the City's water resources until resolved. Mr. Wade recommended the City Council review the policy for providing water service outside of the City limits, and direct staff on whether to continue to provide water services outside of the City limits.

Mayor Peters opened the hearing for public comment.

The following people expressed the importance of the City maintaining a water source in the Chorro Valley: Russ Banner, Bill Martony, Millie Benson, Mike Burton, Scott Young, Carrie Burton, Vera Peirce, Dustin Lamone, Tammie Haas, Barbara Doerr, Edward Peirce, and Connie Papin.

Mayor Peters closed the public comment hearing.

Councilmember Grantham stated the City is years away from being able to afford a plant that will provide tertiary effluent and in the absence of State and Federal grants it will be years before the City will have the money to invest in reclamation, which is also very expensive. He said with the new groundwater rule and increased regulations, quality of water and degradation of the City's water supply, which the City is trying to mitigate, the sphere of influence and annexation of properties would not come close to taking care of the proposed solutions. Councilmember Grantham stated when it is said that the City cannot guarantee clean and safe water for its citizens in its current situation he has to look at his responsibility to the citizens of Morro Bay.

Councilmember Winholtz stated the City has spent \$1-2 million on the desalination plant to remove brackish water from the Morro Valley; why would the expense of \$1 million from the water fund on the Chorro Valley seem so outrageous. She said she would prefer not to make a decision tonight.

Councilmember Smukler stated this is a complex issue and a decision should not be made tonight. He said he would like to begin conversations that include the major stakeholders, i.e. the San Luis Obispo County Regional Water Quality Control Board, State Water Quality Control Board and the National Estuary Program.

Councilmember Borchard stated she would like staff to start working towards taking the next steps in the process.

Mayor Peters stated discussions need to take place on the options presented by staff.

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MOTION: Councilmember Winholtz moved the City Council direct staff to begin conversations with the property owners of the Chorro Valley regarding their source of water; and return to Council to discuss a source of water with disconnection as a potential. The motion was seconded by Councilmember Smukler.

Councilmember Winholtz, Councilmember Smukler and Councilmember Borchard requested the public comment period be reopened.

Mayor Peters opened the hearing for public comment.

The following people reiterated the importance of the City maintaining a water source in the Chorro Valley: Scott Young, Bob Doerr, Carrie Burton, Bill Martony, Russ Banner, and Barbara Doerr.

Mayor Peters closed the public comment hearing.

VOTE: The motion carried unanimously. (5-0)

MOTION: Councilmember Smukler moved, as part of these conversations, the City Council include the stakeholders of the National Estuary Program, San Luis Obispo County Regional Water Quality Control Board and State Water Quality Control Board with a notice of the City's conversations and existing situation, and that we elude to our intent for future discussions about decision 1633 and collaborative actions to address the water quality issue in the Chorro Basin. The motion was seconded by Councilmember Winholtz and carried unanimously. (5-0)

Mayor Peters called for a break at 8:50 p.m.; the meeting resumed at 8:58 p.m.

C. UNFINISHED BUSINESS

C-1 RESOLUTION DETAILING STRATEGIES TO PREVENT AND REDUCE VACANCIES ON THE EMBARCADERO AND TO STIMULATE BUSINESS; (HARBOR)

Harbor Director Rick Algert stated at the September 14, 2009 meeting, the City Council reviewed a report on City Tidelands leases, revenues and rental structures and considered a similar resolution. The City Council directed staff that changes are made to the previous resolution to allow office uses with no time limit on second floor spaces only and to set fiscal year 09/10 minimum annual rents at the same amount as they were in fiscal year 08/09, effectively waiving Consumer Price Index increases in fiscal year 09/10. Leases that were due for their five-year adjustment in 09/10 based on either 75% of the total annual rent paid in the last five years or 8% of the appraised amount of the

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underlying property shall be adjusted so that the minimum annual rent is either the five-year adjustment amount or the fiscal year 08/09 amount, whichever is lower. A clause was added to the resolution to clarify that the resolution is for this year only unless the City Council should choose to reinstate this action in future years or take other similar actions at a later date. Mr. Algert recommended the City Council adopt Resolution No. 47-09 approving strategies to prevent and reduce vacancies on City properties on the Embarcadero and to stimulate business.

Councilmember Winholtz requested the following statement be added as part of the record:

“If an office use did go in and five years down the line the office use left, they would be subject to having to put in a commercial/visitor-serving use at that time. The one use that is established during this year continues; but after that it goes back to whatever the policy is at the time.” (statement made by Mayor Peters)

**MOTION:** Councilmember Winholtz moved the City Council adopt Resolution No. 47-09 approving strategies to prevent and reduce vacancies on City properties on the Embarcadero and to stimulate business. The motion was seconded by Councilmember Borchard and carried unanimously. (5-0)

**C-2 CONTINUED DISCUSSION ON STATE WATER RESOURCES CONTROL BOARD ONCE-THROUGH COOLING STATEWIDE POLICY; (PUBLIC SERVICES)**

City Attorney Robert Schultz stated the State Water Resources Control Board issued a notice of public hearing to receive comments on the proposed Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling. The proposed policy establishes technology-based standards to implement the Federal Clean Water Act section 316(b) and reduce the harmful effects associated with cooling water intake structures on marine and estuarine life. The proposed policy would apply to the 19 existing power plants including Morro Bay, that currently have the ability to withdraw over 15 billion gallons per day from the State’s coastal and estuarine waters using a single-pass system, also known as once-through cooling. According to the State Water Board staff, the intent of the proposed policy is to protect marine and estuarine life from the impacts of once-through cooling without disrupting the critical needs of the State’s electrical generation and transmission system. This latest Board draft continues to require the phase-out of once-through cooling systems in existing plants, despite a recent U.S. Supreme Court decision permitting regulators to compare the costs of replacing the systems against the environment and other benefits resulting from such replacements. The Morro Bay Power Plant would have until 2016 to be in compliance. Mr. Schultz recommended the City Council discuss and approve the draft letter to the State Water Resources Control Board regarding comments on the Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling.

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Mayor Peters made grammatical amendments to the letter.

Councilmember Winholtz referred to page 8 of Appendix A, and recommended adding another bullet to the letter requesting Morro Bay is moved to the earliest possible date that would meet the Board's requirements.

MOTION: Councilmember Winholtz moved the City Council approve the letter written to the State Water Resources Control Board with the amendments made by Council. The motion was seconded by Councilmember Borchard and carried unanimously. (5-0)

D. NEW BUSINESS

D-1 DECLARATION OF A WATER EMERGENCY AND INSTITUTION OF MANDATORY CONSERVATION REQUIREMENTS DURING THE STATE WATER PROJECT SHUTDOWN; (PUBLIC SERVICES)

Public Services Director Bruce Ambo stated the State Water Project annual maintenance shutdown is tentatively scheduled to begin on October 19th for three week duration with water deliveries resuming November 10<sup>th</sup>. Depending upon when the actual date of the shutdown, staff is recommending the City initiate mandatory water conservation measures to reduce demand during this critical period and preserve the City's water supply. Municipal Code Section 13.04.345 sets for the "Mandatory Water Conservation Requirements" with varying levels of water supply emergency or severity that is tied to increasing degrees of mandatory conservation ranging from Level A (Normal Water Supply Conditions), Level B (Moderately Restricted Water Supply Conditions), Level C (Severely Restricted Water Supply Conditions), Level D (Critical Water Supply Conditions), and Level E (Emergency Water Supply Conditions). These regulations generally restrict outdoor water use, irrigation, restaurant, and marina and waterfront use of water. Mr. Ambo recommended the City Council adopt Resolution No. 50-09 declaring a water emergency during the State Water Project annual maintenance shutdown and instituting mandatory conservation requirements, and authorizing the Public Services Director to take any and all actions that will best conserve water during this emergency.

Councilmember Smukler requested the Green Building Incentive Program be included in the water conservation requirements. He also noted he is in the process of organizing a North Coast Grey Water Workshop that may be held on November 10<sup>th</sup>; it will be a public outreach and educational opportunity on grey water use and on water conservation measures with the State Water shutdown.

Councilmember Borchard suggested downgrading the water restrictions to Level B once the State Water delivery has resumed.

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Councilmember Winholtz suggested the following amendments to Resolution No. 50-09:  
Fourth WHEREAS:

**WHEREAS**, in accordance with Morro Bay Municipal Code 13.04.330 Council water conservation powers, that the City Council declares an emergency water condition ~~will exist~~s, ~~during the State Water Project shutdown;~~

Second **BE IT FURTHER RESOLVED:**

**BE IT FURTHER RESOLVED**, that the Public Services Director is hereby authorized and directed to implement ~~Critical~~ **Severely Restricted** Water Supply Conditions, Section 13.04.345C of the Morro Bay Municipal Code in conjunction with his powers of enforcement as outlined in Section 13.04.340 of the Morro Bay Municipal Code that will best conserve water during the State Water Project shutdown.

Third **BE IT FURTHER RESOLVED:**

**BE IT FURTHER RESOLVED**, the conservation measures shall begin October 19, 2009 when the State Water Project annual maintenance shutdown is tentatively scheduled.

**MOTION:** Councilmember Winholtz moved the City Council adopt Resolution No. 50-09 declaring a City-wide water emergency as amended by Council. The motion was seconded by Councilmember Grantham and carried unanimously. (5-0)

**D-2 APPROVAL OF RESOLUTION 51-09 REGARDING CITY'S INTENTION TO SELL THE CITY-OWNED PROPERTY AT 781 MARKET AND THE CITY-OWNED PROPERTY AT THE CORNER OF PACIFIC AND MARKET IN MORRO BAY, CALIFORNIA; (CITY ATTORNEY)**

City Attorney Robert Schultz stated the City obtained ownership on the property located at the Northeast corner of Market Avenue and Pacific Street in 2001. The property was purchased for \$500,000 using parking in-lieu funds. The City Council will need to make findings that there is no longer a need for this property. It is suggested the City Council determine the parking lot on this property is underutilized because of the location away from the Embarcadero and downtown area. If the property is sold, the parking in-lieu fund will have to be reimbursed \$500,000. The City obtained 781 Market Avenue in 2002; General Fund monies were used for the purchase of this property, and also included the property at 714 Embarcadero. Since 2002, the City has unsuccessfully issued a series of Request for Proposals to develop the properties into a hotel/conference center. The City Council will need to make findings that there is no longer a need for this property. It is suggested the City Council determines this property is vacant, and has no

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potential to be developed as a City facility. Government Code section 37421 allows for the sale of any city-owned building and/or property by adoption of a resolution of intention to sell City property. The purpose of this resolution is to allow for any person to protest the proposed sale. The meeting for final action is scheduled for October 12, 2009. Mr. Schultz recommended the City Council adopt Resolution No. 51-09 regarding the City's intention to sell the City-owned real property located at 781 Market Avenue and the City-owned real property located at the corner of Pacific Street and Market Avenue in Morro Bay, California.

**MOTION:** Councilmember Grantham moved the City Council adopt Resolution No. 51-09 regarding the City's intention to sell the City-owned real property located at 781 Market Avenue and the City-owned real property located at the corner of Pacific Street and Market Avenue in Morro Bay, California. The motion was seconded by Councilmember Borchard and carried unanimously. (5-0)

**D-3 DISCUSSION OF CITY'S NOTICING POLICY; (ADMINISTRATION)**

City Manager Andrea Lueker stated the City Council has discussed the issue of public outreach and noticing throughout the years. The City Attorney, in September 2005, compiled a lengthy and in-depth report on the City's legal requirement on public noticing. From that report, the issue became more narrow and dealt with public noticing for development proposals which the City Council provided specific direction. This issue was brought forward as a result of some concerns voiced by stakeholders during a recent JPA meeting regarding the Wastewater Treatment Plant upgrade. The chief concern among the stakeholders was their lack of notification of the meeting. As would be expected, the City adheres to the legal requirements in regard to noticing the public. In addition, the City takes an additional step in placing all public meetings on the City's new website under the "Calendar of Events" section of the homepage. Staff suggested the City of Morro Bay capital projects that require an Environmental Impact Report (EIR) to be conducted, the City will provide courtesy noticing for all meetings that pertain to said project; and, the City will amend the homepage of the City's website to change "Calendar of Events" to "Calendar of Meetings & Events"; the City will also change the "View all Events" to "View all Meetings & Events". Ms. Lueker recommended the City Council approve the procedure of notification of stakeholders in City of Morro Bay capital projects that require EIR.

**MOTION:** Councilmember Winholtz moved the City Council approve the procedure of notification of stakeholders and individuals in City of Morro Bay capital projects that require Environmental Impact Reports. The motion was seconded by Councilmember Smukler and carried unanimously. (5-0)

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E. DECLARATION OF FUTURE AGENDA ITEMS

Councilmember Smukler requested to agendaize a discussion on the consideration of the evaluation of water reclamation for Chorro Valley and the evaluation of local alternative water options; Councilmember Borchard and Councilmember Winholtz concurred.

ADJOURNMENT

The meeting adjourned at 10:06 p.m.

Recorded by:

Bridgett Bauer  
City Clerk