

Monterey City Council

Statement from Closed Session May 17, 2011

Re: Wharf and Waterfront Leases

“The City Council Special Study session held on 23rd 2011 to review Willard McCrone’s allegations that past City Councils dealt with the Waterfront leases in an improper or illegal manner was followed by a Closed Session to discuss whether to initiate any litigation based on Mr. McCrone’s legal theories to void or invalidate the leases based on the alleged impropriety of past City Council actions.

After listening to the City Attorney; the City’s outside attorney, whose law firm has expertise in the leasing of public lands; the former City Attorney, who was involved with the 1991 leases; several attorneys representing leaseholders and various members of the public, the City Council has come to the conclusion that it will not pursue litigation as the facts and the applicable law do not support it.

The foundation of Mr. McCrone’s argument is that the City owns the buildings on the Wharf and at other Waterfront locations. However, the City Council finds that the leases, that have been in place for over twenty years, clearly state that the buildings are the property and responsibility of the lease holders, as evidenced by the attached excerpt from the leases. The City does not have the right to possess those buildings as the City never exercised the ninety day lease provision to allow it to possess those buildings. Based on the facts that the City Council currently knows, ownership of those buildings was properly negotiated as a part of the lease extensions in the early nineties and was not a gift of public funds by the City Council, at that time.

Further, the City Council finds that the City is adhering to City Charter requirements and is receiving fair-market rents based on the MAI appraisals of the properties from 2007-2009, as confirmed by the Monterey Superior Court, and the fact that the public interest has been served by the leases. The Council emphasizes that there will be occasions where the public interest is not necessarily served by maximizing rental return on the lease of the public property. For example, the leases for the Maritime Museum and the Monterey Bay Aquarium have an objective other than maximum lease revenue. At times, lease terms will need to be created to ensure the economic viability of desired city redevelopment on parcels involving city lands. While the City Council had already made policy decisions regarding new lease holds that were much different and much more revenue aggressive than past city leases. Mr. McCrone has re-energized that effort.

Finally, the City Council heard no evidence nor have they seen any documents that lead them to the conclusion that any previous City Council member acted in an illegal, corrupt or unethical manner or in ultra vires of their authority. The City Council thanks Mr. McCrone for his efforts,

even though the City Council does not arrive at the same conclusion as he presented at the City Council meeting or in his comments to the press and public.”

The following are Wharf Lease excerpts regarding ownership as referenced in the preceding closed session announcement:

“B. CONSTRUCTED IMPROVEMENTS. Lessee has previously constructed an approved structure or structures upon the premises consisting of building, deck, and piling improvements. Before any further work of construction, alteration, or repair is commenced on the premises, Lessee shall comply with all of the following conditions and provisions unless City’s written waiver is first obtained:

C. OWNERSHIP OF IMPROVEMENTS. All improvements constructed on the premises by Lessee as permitted by this lease, including all buildings and parking lots or facilities, shall be owned by Lessee until expiration of the term, including the option if exercised, or earlier termination of this lease. All improvements on the premises ninety-one (91) days after the expiration or sooner termination of this lease shall, without compensation or demand, then become City’s property, free and clear of all claims, liens, and encumbrances to or against them by Lessee or any other person, and Lessee shall defend and indemnify City against all liability and loss arising from such claims, liens, and encumbrances or from City’s exercise of the rights conferred by this paragraph. Lessee shall execute, acknowledge and deliver to City, within ninety (90) days after surrender of the premises, a valid and recordable quitclaim deed covering all of the leasehold premises including all buildings, fixtures, equipment, and property remaining thereon.”