

City of Morro Bay

City Council Agenda

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, FEBRUARY 8, 2011

**CLOSED SESSION – TUESDAY, FEBRUARY 8, 2011
CITY HALL CONFERENCE ROOM - 5:00 P.M.
595 HARBOR ST., MORRO BAY, CA**

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 as to one (1) parcel.

- Property Lease Site 75-77/75W-77W; 699 Embarcadero
Negotiating Parties: Morro Bay Marina, Inc. and City of Morro Bay
Negotiations: Lease Terms and Conditions

**IT IS NOTED THAT THE CONTENTS OF CLOSED SESSION MEETINGS
ARE CONFIDENTIAL AND EXEMPT FROM DISCLOSURE.**

**PUBLIC SESSION – TUESDAY, FEBRUARY 8, 2011
VETERANS MEMORIAL HALL - 6:00 P.M.
209 SURF ST., MORRO BAY, CA**

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE
MAYOR AND COUNCILMEMBERS ANNOUNCEMENTS & PRESENTATIONS
CLOSED SESSION REPORT

PUBLIC COMMENT PERIOD - Members of the audience wishing to address the Council on City business matters (other than Public Hearing items under Section B) 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 Mayor, 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 Council, as a whole, and not to any individual member thereof.
- The Council respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commission 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 City Council to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in City Council 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

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

A-1 APPROVAL OF CITY COUNCIL MINUTES FOR REGULAR MEETINGS OF JANUARY 11, 2011 AND JANUARY 25, 2011; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPOINTMENT OF VOTING DELEGATES TO THE CALIFORNIA JOINT POWERS INSURANCE AUTHORITY; (ADMINISTRATION)

RECOMMENDATION: Appoint Mayor Yates as the City’s representative of the California Joint Powers Insurance Authority, and appoint the City Manager and City Attorney as alternates.

A-3 ADOPTION OF ORDINANCE NO. 565 AMENDING SECTION 2.08.010 OF THE MORRO BAY MUNICIPAL CODE REGARDING COUNCIL MEETINGS TIME AND DATE; (CITY ATTORNEY)

RECOMMENDATION: Adopt Ordinance No. 565.

A-4 ADOPTION OF ORDINANCE NO. 566 AUTHORIZING AMENDMENT OF SECTION 20475 (DIFFERENT LEVEL OF BENEFITS; SECTION 21363.1 (3% @ 55 FULL FORMULA); AND SECTION 20037 (THREE-YEAR FINAL COMPENSATION) FOR NEW SWORN HIRES IN THE FIRE DEPARTMENT; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Ordinance No. 566.

A-5 2010 ANNUAL WATER REPORT; (PUBLIC SERVICES)

RECOMMENDATION: Adopt Resolution No. 12-11.

B. PUBLIC HEARINGS, REPORTS & APPEARANCES – NONE.

C. UNFINISHED BUSINESS – NONE.

D. NEW BUSINESS

D-1 PRESENTATION & FORMAL RECOGNITION OF THE “OFFICIAL CITY TREE OF MORRO BAY” VOTE; (COUNCIL)

RECOMMENDATION: Based on the final results of the public voting process, the Morro Bay Volunteer Tree Committee proposes the Council vote to formally recognize the Cypress *Cupressus macrocarpa* as the Official City Tree of Morro Bay.

D-2 REPORT FROM THE CITIZENS OVERSIGHT COMMITTEE PURSUANT TO MORRO BAY MUNICIPAL CODE (MBMC) SECTION 3.22.120; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Receive report, and take action as determined.

D-3 RESOLUTION NO. 13-11 ADOPTING THE MID-YEAR BUDGET AMENDMENTS; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Resolution No. 13-11.

D-4 DISCUSS OPTIONS FOR AMENDING PARKING REQUIREMENTS FOR NORTH MORRO BAY; (PUBLIC SERVICES)

RECOMMENDATION: Review options and direct staff accordingly.

D-5 DISCUSSION ON THE PREPARATION OF A BIG BOX ORDINANCE WHICH WOULD REGULATE THE SIZE AND APPEARANCE OF BIG BOX STORES; (PUBLIC SERVICES)

RECOMMENDATION: Review report, and direct staff on whether to draft a Big-Box ordinance and if so, provide direction regarding language for such an ordinance.

D-6 DISCUSSION OF TOPICS TO BE DISCUSSED AT THE JOINT CITY COUNCIL/PLANNING COMMISSION MEETING, FEBRUARY 22, 2011; (PUBLIC SERVICES)

RECOMMENDATION: Discuss potential topics for the February 22, 2011 joint City Council/Planning Commission meeting.

E. DECLARATION OF FUTURE AGENDA ITEMS

F. 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 THE CLERK'S OFFICE AT 772-6200 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL LOCATED AT 595 HARBOR STREET; MORRO BAY LIBRARY LOCATED AT 625 HARBOR STREET; AND MILL'S COPY CENTER LOCATED AT 495 MORRO BAY BOULEVARD DURING NORMAL BUSINESS HOURS.

MINUTES - MORRO BAY CITY COUNCIL
CLOSED SESSION – JANUARY 11, 2011
CITY HALL CONFERENCE ROOM - 5:00 P.M.

AGENDA NO: A-1
MEETING DATE: 02/08/11

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

CLOSED SESSION

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

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: 610 Embarcadero, Morro Bay, CA
Negotiating Parties: Stanley Trapp and the City of Morro Bay
Negotiations: Voluntary Purchase and Sale
- Negotiating Parties: City Tidelands Trust Leaseholders and the City of Morro Bay
Negotiations: Lease Terms and Conditions

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

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

The meeting adjourned at 5:50 p.m.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 11, 2011
VETERANS MEMORIAL HALL - 6:00 P.M.

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	Deputy City Clerk
	Eric Endersby	Harbor Operations Manager
	Susan Lichtenbaum	Harbor Business Manager
	Rob Livick	Public Services Director
	Tim Olivas	Police Chief
	Mike Pond	Fire Chief
	Susan Slayton	Administrative Services Director
	Kathleen Wold	Planning Manager
	Joe Woods	Recreation & Parks Director

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, Director of the Friends of the Morro Bay Fire Department, congratulated Todd Gailey and Bill Murphy of the Fire Department for the successful dog rescue down in Nipomo.

Robert Davis, representing the Morro Bay Citizens Bike Committee, thanked the City for the North Main Street Bike Lanes. He said the San Luis Obispo Council of Governments has requested a list of unmet bike needs throughout the county which the Citizens Bike Committee compiled a list for Morro Bay (which he listed for Council and the public's information).

D'Onna Kennedy announced a Veterans' Support Group meeting would be held on January 20th, 6:00 p.m. at the Eagles Lodge.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 11, 2011

The following people expressed opposition to Item D-2 (Consideration of Replacing the Current Planning Commission): Barbara Doerr, Ann Reeves, Dana Putnam, Dorothy Cutter, Roger Ewing, Nancy Beattie, Bob Doerr and Steve Hennigh.

John Weiss, Incoming President for the Morro Bay Chamber of Commerce, announced the Annual Chamber Installation Dinner would be held at the Inn at Morro Bay on January 13th at 5:30 p.m. He announced upcoming plans for 2011, and invited the public to come by the Chamber office at any time.

Steve Rodarte requested the City Council consider adopting an ordinance that prohibits people from smoking while driving in drive-through businesses.

Virginia Hiramatsu announced the Relay for Life meeting schedule for committee members and team captains. She said the Relay for Life Kick-Off will be held on March 10th, and a Bunko game to benefit Relay for Life as well as Rotary's Polio Plus has been scheduled for March 16th.

Alex Beattie requested the City Council consider special training for its administrative staff to include sensitivity and objectivity training.

Betty Winholtz stated moving the City Council meeting to Tuesday night is not being "business friendly" as it will hurt AGP Video who films the Council meetings. She also noted prior to the holidays, she submitted a complaint to City staff regarding a tree cutting without a permit in her neighborhood, and has not received a response.

Ken Vesterfelt stated the Friends of the Morro Bay Police Department are looking to the community for assistance in raising funds for a K9 dog for the department. He also noted an Emergency Vehicle Car Show will be held in the City on April 16th.

John Barta noted he was on the Planning Commission when the City Council fired them a few years back, and the City Council has that right.

Garry Johnson stated although he is neutral on the issue of the Planning Commission at this time, the people who are in opposition to the current Planning Commission being replaced are the same ones who wanted the Planning Commission fired eight years ago.

Steve Hennigh thanked the Council for the opportunity to speak in a public forum, and also encouraged the City to increase public awareness on meetings to allow the public to attend and speak their minds.

Mayor Yates closed the hearing for public comment.

Mayor Yates called for a break at 7:01 p.m.; the meeting resumed at 7:16 p.m.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 11, 2011

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 CITY COUNCIL MINUTES FOR THE SPECIAL MEETING OF DECEMBER 8, 2010 AND THE REGULAR MEETING OF DECEMBER 13, 2010; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 RESOLUTION NO. 01-11 TO REAFFIRM INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND (LAIF) AND DESIGNATE TRANSACTION OFFICERS; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Resolution No. 01-11.

A-3 RESOLUTION NO. 02-11 DESIGNATING AND AUTHORIZING INVESTMENT TRANSACTION OFFICERS; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Resolution No. 02-11.

A-4 RESOLUTION NO. 03-11 ADOPTING THE CITY OF MORRO BAY INVESTMENT POLICY AND DELEGATING AUTHORITY TO THE CITY TREASURER TO INVEST IDLE FUNDS; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Resolution No. 03-11.

A-5 RESOLUTION NO. 04-11 ESTABLISHING TRANSACTION OFFICERS FOR DOING BUSINESS WITH RABOBANK; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Resolution No. 04-11.

A-6 RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE CITY OF MORRO BAY - FIREFIGHTERS; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Resolution No. 05-11.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 11, 2011

A-7 APPROVAL OF A SUBLEASE AGREEMENT BETWEEN M&M REFRIGERATION AND MORRO BAY OYSTER COMPANY FOR A PORTION OF LEASE SITE 144/144W LOCATED AT 1287 EMBARCADERO; (HARBOR)

RECOMMENDATION: Adopt Resolution No. 06-11.

A-8 APPROVAL OF MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND THE CENTRAL COAST MARITIME MUSEUM ASSOCIATION FOR THE DESIGN AND PERMITTING PROCESS FOR A MARITIME MUSEUM IN THE FRONT STREET PARKING LOT; (PUBLIC SERVICES)

RECOMMENDATION: Approve the Memorandum of Understanding between the City and the Central Coast Maritime Museum Association for the Design and Permitting Process of a Maritime Museum in the Front Street Parking Lot.

Mayor Yates pulled Item A-1 from the Consent Calendar.

MOTION: Councilmember Borchard moved the City Council approve the Consent Calendar with the exception of Item A-1. The motion was seconded by Councilmember Johnson and carried unanimously. (5-0)

A-1 APPROVAL OF CITY COUNCIL MINUTES FOR THE SPECIAL MEETING OF DECEMBER 8, 2010 AND THE REGULAR MEETING OF DECEMBER 13, 2010; (ADMINISTRATION)

Mayor Yates referred to the minutes of December 13, 2010, page 11, and requested the following amendment:

- 1) simplify the arcade licensing ~~located at 725 Embarcadero Suite 105~~ **requirements** by removing the condition requiring annual review and approval by the City Council;

MOTION: Mayor Yates moved the City Council approve Item A-1 of the Consent Calendar as amended. The motion was seconded by Councilmember Johnson and carried unanimously. (5-0)

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 11, 2011

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 APPEAL OF THE PLANNING COMMISSION'S DECISION TO APPROVE COASTAL DEVELOPMENT PERMIT CP0-322 TO ALLOW THE INSTALLATION OF 9 SOLAR ARRAYS WITH THE ASSOCIATED STRUCTURES AND MECHANICAL EQUIPMENT. THE PROJECT AS PROPOSED ALSO INCLUDES THE TRIMMING OF MAJOR VEGETATION; (PUBLIC SERVICES)

Planning Manager Kathleen Wold stated the main issues surrounding this project are the proposed tree trimming, the view of the solar arrays from the beach area and Highway One and the California Environmental Quality Act (CEQA) analysis. Located within the California Coastal Commission's Appeal Jurisdiction this property requires a Coastal Development Permit to allow for installation of the solar arrays, the associated mechanical equipment including the inverters and meters and the associated structures. No other City permits are required due to the project proponent being a superior governmental agency (state agency) a subdivision of the State. On December 9, 2009 the San Luis Coastal Unified School District applied for a Coastal Development permit (CP0-322) to allow the installation of nine solar arrays including the associated structures and mechanical equipment. A public hearing was held by the Planning Commission on November 1, 2010, wherein they conditionally approved the project. On November 12, 2010 an appeal was filed with the City of Morro Bay requesting the City assume the CEQA jurisdiction, perform an Initial Study to identify the environmental impacts and incorporate mitigation measures via a Mitigated Negative Declaration. The San Luis Coastal United School District took the role as the lead agency, and conducted the CEQA review and determined that the project qualified for the following categorical exemptions under Class 2 (c), 3 (e) and 14. The appellant is appealing the school district as the Lead Agency responsibilities under CEQA Section 15051. The relief the appellant is seeking is to have the City assume the CEQA jurisdiction and perform an Initial Study to identify environmental impacts and incorporate mitigation measures via a Mitigated Negative Declaration. Staff has reviewed the appeal and determined that there was no evidence submitted into the record via the appeal document which substantiated that the San Luis Obispo Coastal Unified School District could not assume Lead Agency status under CEQA or that the project as conditionally approved is inconsistent with the City of Morro Bay's General Plan/Local Coastal Plan. Ms. Wold recommended the City Council uphold the Planning Commission's conditional approval.

Mayor Yates opened the hearing for public comment.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 11, 2011

Julie Tacker stated she has appealed this project because it is inconsistent with portions of the City's Visual Resources and Scenic Highway Element objective to enhance, protect and preserve the existing and potential visual resources of Morro Bay and its surroundings. She also said the project is specifically inconsistent with the City's Local Coastal Plan policies relating to protecting views along the coast and designated scenic area. Ms. Tacker stated this project invites visual blight into the City, and she requested the City take Lead Agency responsibilities assuming CEQA jurisdiction; perform an initial study to identify environmental impacts, and incorporate mitigation measures via a Mitigated Negative Declaration.

Brad Parker, Consultant for San Luis Coastal Unified School District, stated the Board of Education is very much behind this project. He said district-wide, this is approximately 1.7 megawatts of clean, renewable energy which will serve as an example for school children for generations. Mr. Parker stated "Attachment 3" in the staff report addresses the appeal contingencies; and, Council should find there is no basis for this appeal.

Piper Riley stated she supports this appeal based on the visual impact. She is also opposed to the removal of valuable trees and their habitat, the lack of environmental review and issues of wetland setback. She said she strongly feels these solar arrays should be installed on existing rooftops, and foresees the carports being a potential for vandalism or potentially hazardous for children who may climb on them. Ms. Riley requested Council consider the protection of vital habitat, visual beauty and consider safety issues by installing these solar panels on existing structures.

Barry Branin stated the school district has the authority to remove trees on their property. He stated the Planning Commission had recommended placing a condition on this permit to not decimate all of the trees on the property for placement of the solar arrays. Mr. Branin stated this project is ill-conceived and recommended the City Council uphold the appeal and takes back the role as Lead Agency.

Nancy Bast stated one condition of the permit that she thought was wise was to allow one year for a survey to be performed to see if the trees would affect the solar arrays before any tree trimming was done. She said she was in support of this appeal, and quoted California State Code 53067 relating to trees.

Barbara Doerr stated she was surprised with the high decibel levels that come from the solar arrays. She referred to a letter in the staff report regarding the Scenic Highway and noted the logic of how some parts of the highway are more attractive than others was a concern, and she thought it should have been countered by a statement that the City's goal is to make Morro Bay more attractive and beautiful.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 11, 2011

Betty Winholtz stated this is not a CEQA-exempt project. She said it is the City's job to review the school district's environmental review of this project in order to prove that it will not: damage the scenic views of Highway One; violate the Noise Ordinance; or, impact the City's Major Vegetation Policy.

Lindy Owen stated their Advisory Council in Los Osos reviewed this project closely and their concerns are the tree removal, the unattractive car port structures, child safety, and concerns of vandalism. She said the solar array panels should be installed on roof tops. Ms. Owen stated the trees that are proposed to be removed are irreplaceable.

Julie Tacker stated one proposed solar array close to a northern stream or drainage way supports a wetland habitat on the northern property line.

Brad Parker stated the project as approved by the Planning Commission removes no trees and does no tree trimming from any of the Monterey Cypress along Highway One. He said the view from Highway One will be improved by the plantings that will be provided. Mr. Parker stated at full power, the invertors can produce 65 decibels of noise and will be located away from classrooms and residential areas; at night there will be zero decibels. He said a committee reviewed proposals on where to locate the solar arrays, and carport structures were recommended instead of rooftops due to the potential of roof leaks over sensitive areas such as classrooms.

Mayor Yates closed the hearing for public comment.

The City Council commented on this appeal and was in consensus that they were in support of staff's review and Planning Commission's approval of this project.

MOTION: Councilmember Borchard moved the City Council deny the appeal and uphold the Planning Commission's conditional approval of Coastal Development Permit CP0-322 to allow the installation of 9 solar arrays with the associated structures and mechanical equipment; and, includes the trimming of major vegetation. The motion was seconded by Councilmember Johnson and carried unanimously. (5-0)

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 11, 2011

B-2 APPEAL OF THE PLANNING COMMISSION'S DECISION TO DENY CERTIFICATION OF THE MORRO BAY CAYUCOS SANITARY DISTRICT WASTEWATER TREATMENT PLANT ENVIRONMENTAL IMPACT REPORT AND DENIAL OF THE COASTAL DEVELOPMENT PERMIT CP0-339 AND CONDITIONAL USE PERMIT UP0-307; (PUBLIC SERVICES)

Planning Manager Kathleen Wold stated the Wastewater Treatment Plant (WWTP) is operated under a National Pollutant Discharge Elimination System (NPDES) Permit (No. CA0047881) issued by the US Environmental Protection Agency (USEPA) and the Central Coast Regional Water Quality Control Board (RWQCB). The current NPDES permit allows for the discharge of a blend of primary and secondary treated effluent to the ocean through the existing 27-inch diameter outfall pipeline. This discharge is in accordance with Section 301(h) of the federal Clean Water Act that modifies the requirement for full secondary treatment in certain cases. The City of Morro Bay and Cayucos Sanitary District has made a commitment to the Central Coast RWQCB to phase out the need for the 301(h) modified discharge permit by upgrading the WWTP to at least full secondary treatment by March 2014. The process of examining the various planning and design options was carefully analyzed during the past several years through a Facility Master Plan (FMP), which was prepared by Carollo Engineers. The process involved intense technical analysis and public input and discussion, which resulted in the current project description. Based on the analysis and public input, the Council and District Board adopted the final recommendation to upgrade the plant to tertiary treatment using an oxidation ditch with filtration as the preferred treatment option and retire many of the existing facilities. Since August 2006, the Joint Powers Authority (JPA), which is comprised of both the Morro Bay City Council and members of the Cayucos Sanitary District Board, have been working to develop an FMP for upgrade to the Morro Bay/ Cayucos Sanitary District WWTP through the twenty-year planning period. During this time, the JPA has been presented with various technical topics ranging from regulatory requirements to wastewater and biosolids treatment alternatives, and has consistently provided feedback and direction. Impacts on the receiving waters, the ratepayers in both communities, and local sustainability were topics that framed discussion in seven public meetings and other smaller technical subcommittee meetings. Based on the information contained in this report and all documents referenced within including the Morro Bay Cayucos Sanitary District Wastewater Treatment Plant EIR, Ms. Wold recommended the City Council approve Resolution Number 07-11 adopting the findings of fact to allow certification of the EIR, certify the EIR, approve Resolution Number 08-11 adopting the findings of approval for the Coastal Development Permit and Conditional Use Permit and finally conditionally approve Coastal Development Permit CP0-339 and Conditional Use Permit UP0-307.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 11, 2011

Tom Barnes from Environmental Science Associates is the City's CEQA consultant who gave a report on the Environmental Impact Report on the Wastewater Treatment Plant upgrade.

Mayor Yates opened the hearing for public comment.

The following people expressed opposition to the appeal of the Planning Commission's decision to deny the certification of the Morro Bay/Cayucos Sanitary District Wastewater Treatment Plant Environmental Impact Report and denial of the Coastal Development Permit and Conditional Use Permit: Dana Putnam, Joey Racano, Roger Ewing, Bob Stallard, Bob Doerr, Alex Beattie, Barry Branin, Andrew Christie, Piper Riley, Dorothy Cutter, Barbara Doerr, Lindy Owen, Jack McCurdy, Julie Tacker, Betty Winholtz, Steve Hennigh, Bill Weatherford, Jan Romanazi, Lee Johnson, Richard Margetson, Ann Reeves, Richard Sadowski, and Barbara Jo Osborne.

Nancy Bast requested Council hear all public comment on this matter.

John Barta stated in 2007, the City committed to a timeline of 2013 and spent hundreds of thousands of dollars and prepared two EIR's which should be forwarded to the Coastal Commission. He said the reason the plant is being moved slightly south is because it is on a floodplain. Mr. Barta requested Council grant the appeal, approve the EIR and move forward towards a better future.

Jim Hayes, Collections Division employee, addressed the amount of money it would cost to relocate the treatment plant due to the amount of plumbing and the lift station located at the existing plant.

Mayor Yates closed the hearing for public comment.

Mayor Yates called for a break at 9:10 p.m.; the meeting resumed at 9:25 p.m.

Dennis Delzeit, Project Manager, reviewed floodplain and zoning impacts and other issues raised by public comment.

Mayor Yates stated it is his responsibility to the rate payer to keep the sewer rate as reasonable as possible. He said he supports upholding the appeal to allow certification of the EIR.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 11, 2011

Councilmember Smukler stated it is inaccurate to compare the cost of the proposed Los Osos Wastewater Treatment Plant with this project because that community is much larger than Morro Bay and includes the installation of a new collection system. He said it is important to look at the long-term lifecycle costs of this project compared to alternative site options. Councilmember Smukler stated he has seen too many red flags with the proposed site to make a decision without evaluating alternative stand-alone sites. Councilmember Smukler stated he does not support this appeal, and he does support the Planning Commission's recommendation.

Councilmember Leage stated he supports moving forward with the project as proposed allowing changes in the plans as they come.

Councilmember Johnson stated the City's present treatment plant is located in an industrial zone that is also in a floodplain. She said she cannot understand why people think this is prime property. Councilmember Johnson stated in the long-term, the plan for the treatment plant is set up for reclamation when it becomes feasible. She said she was pleased to see the State Regional Water Quality Board sent the City a letter of support for the treatment plant upgrade.

Councilmember Borchard stated the current location of the treatment plant was purchased 50 years ago for the sole purpose of this use with room for expansion. She said based on the cost to move the plant to another site where there is no current infrastructure, the financial hardship passed on to the ratepayers would more than double, which she cannot support. Councilmember Borchard stated she supports the appeal.

Councilmember Smukler stated risks at the existing location to vital infrastructure should be further evaluated because some, such as sea level rise, weren't around when the Local Coastal Plan was adopted. He is concerned that the present project is proposed with a footprint, which staff has been directed to minimize the extent of its use, but it appears that future expansion of the facility will require sprawl into the surrounding area.

MOTION: Mayor Yates moved the City Council approve Resolution Number 07-11 adopting the findings of fact to allow certification of the EIR, certify the EIR, approve Resolution Number 08-11 adopting the findings of approval for the Coastal Development Permit and Conditional Use Permit and finally conditionally approve Coastal Development Permit CP0-339 and Conditional Use Permit UP0-307. The motion was seconded by Councilmember Johnson and carried with Councilmember Smukler voting no. (4-1)

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 11, 2011

B-3 ORDINANCE NO. 565 AMENDING MORRO BAY MUNICIPAL CODE SECTION 2.08.010 OF THE MORRO BAY MUNICIPAL CODE REGARDING COUNCIL MEETINGS TIME AND DATE - INTRODUCTION AND FIRST READING; (CITY ATTORNEY)

City Attorney Robert Schultz stated the City Council on December 13, 2010 directed Staff to change the City Council meeting dates from the second and fourth Mondays to the second and fourth Tuesdays. Mr. Schultz recommended the City Council accept public comment and move for introduction and first reading of Ordinance No. 565, by number and title only, amending Morro Bay Municipal Code Section 2.08.010.

Mayor Yates opened the hearing for public comment.

Betty Winholtz stated when going on-line and researching information on other communities, she found they maintain this type of change in their municipal code. She requested the City Council not amend this policy by resolution and maintain it in the Municipal Code.

Mayor Yates closed the hearing for public comment.

MOTION: Councilmember Borchard moved the City Council approve for first reading and introduction by number and title only, Ordinance No. 565 amending Morro Bay Municipal Code Section 2.08.010 of the Morro Bay Municipal Code Regarding Council Meetings Time and Date. The motion was seconded by Councilmember Smukler and carried unanimously. (5-0)

C. UNFINISHED BUSINESS – NONE.

D. NEW BUSINESS

D-1 CITY COUNCIL ANNUAL MEETING SCHEDULE; (ADMINISTRATION)

City Manager Andrea Lueker presented to the City Council the 2011 annual meeting schedule as follows: 1) regular meeting dates are the second and fourth Tuesdays of each month with the exception of July 26th, November 22nd and December 27th, which are traditionally, canceled; and 2) the City Council and Planning Commission normally meet twice each year for a joint meeting. These meetings have been scheduled on a variety of dates, including 5th Monday's as well as on regular City Council meeting days an hour prior to the normal starting time. For 2011, it is recommended the joint City Council/Planning Commission meetings are held one hour prior to a regular City Council meeting. Suggested dates are February 22nd at 5:00 p.m. and September 13th at 5:00 p.m. Ms. Lueker recommended the City Council accept the annual meeting schedule, or advise staff of any conflicts.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 11, 2011

MOTION: Mayor Yates moved the City Council accept the annual meeting schedule as proposed by staff. The motion was seconded by Councilmember Leage and carried unanimously. (5-0)

D-2 CONSIDERATION OF REPLACING THE CURRENT PLANNING
COMMISSION; (CITY COUNCIL)

Mayor Yates stated the Planning Commission should be business and citizen friendly, and should be respectful of the enormous amount of time applicants and staff put into a project to prepare the project for presentation before the Planning Commission. In recent years, the Commission has repeatedly nit-picked projects, attempted to act as a Design Review Board, and generally been non-supportive and combative with staff's decisions. With three Planning Commission vacancies, and based on recent actions of the existing Planning Commission, Mayor Yates recommended the City Council agree to replace the entire Planning Commission noting this decision would work well with the application deadline for Advisory Board vacancies of January 19, 2011 and interview date of January 24, 2011.

Councilmember Leage stated he agrees with Mayor Yates; this is a critical time and everyone needs to work together.

Councilmember Smukler stated he is disappointed with this report because these are the type of people he would like to see on the Planning Commission. He said he thought the staff report was disrespectful to the Commission and feels they deserve an apology. Councilmember Smukler expressed concern of what type of message this might send to those who might consider serving on a City board.

Councilmember Johnson stated the Planning Commission does not know what their responsibilities and powers are. She said when first on the Planning Commission, she was trained on the Sphere of Influence, Local Coastal Plan, General Plan, Land Use Plans, Zoning Ordinance and Variances, and served at the will of the Council. Councilmember Johnson stated all new Planning Commissioners need adequate training. She said the Planning Commission is not an architectural review committee; there is no view ordinance or color code for private homes. Councilmember Johnson stated applicants and staff should be treated with respect. She said she will vote against replacing the Planning Commission at this time; however, she recommended the Planning Commission receive training regarding their roles and responsibilities.

Councilmember Borchard stated she agrees the Planning Commission does require further training on its responsibilities. She said she feels removing the remaining two Planning Commissioners would be divisive in the community, and she would not be opposed to appointing two alternates to the Planning Commission.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 11, 2011

Mayor Yates withdrew this item from consideration.

No further action was taken on this item.

E. DECLARATION OF FUTURE AGENDA ITEMS – None.

ADJOURNMENT

The meeting adjourned at 10:56 p.m.

Recorded by:

Jamie Boucher
Deputy City Clerk

AGENDA NO: A-1

MEETING DATE: 02/08/11

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 25, 2011
VETERANS MEMORIAL HALL - 6:00 P.M.

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
	Bridgett Kessler	City Clerk
	Eric Endersby	Harbor Operations Manager
	Susan Lichtenbaum	Harbor Business Manager
	Rob Livick	Public Services Director
	Tim Olivas	Police Chief
	Mike Pond	Fire Chief
	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 – there was no Closed Session report.

PUBLIC COMMENT

Dan Rivoire, Executive Director of the San Luis Obispo County Bicycle Coalition, expressed appreciation to the City for the road and bicycle lane improvements made in Morro Bay.

Dan Reddell read a statement from Chamber of Commerce President John Weiss providing the community with an update on the Chamber of Commerce.

Joan Solu, Chair of the Tourism Business Improvement District Advisory Board reviewed recommendations made by the Advisory Board relating to the Visitors Center.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 25, 2011

Betty Winholtz referred to Item A-2 (Approval Of Resolution 11-11 Amending the Council Policies & Procedures Manual Regarding Regular Meeting Times and Placing Items on the Agenda) – specifically Policy 1.2, stating to allow the Mayor unlimited access as to what can be placed on the agenda while other members of Council need consensus is unfair; she recommended removing this policy. She also referred to Item C-1 (Resolution on Creation and Details of a Facility Maintenance Account, to include a Prioritized List of Projects and Costs) and requested clarification on the priority ranking of the projects and costs of specific projects that were listed in the staff report. Ms. Winholtz also recommended the consideration of a public bathroom in the downtown area. Ms. Winholtz referred to Item C-2 (Continued Discussion on the Visitors Center) and requested clarification on why City funds are being used to pay wages, taxes and billboard items. She also referred to D-3 (Discussion of Change of Meeting Dates and Times, and Number of Board Members for Commissions and Advisory Boards) stating she is disappointed that Council would pigeon-hole the Recreation & Parks Commission and Public Works Advisory Board for reduction in membership and frequency in meeting times.

Melody DeMeritt, Chair of the Local Chapter of the Sierra Club, referred to a report received by City staff from the Coastal Commission regarding the upgrade to the Wastewater Treatment Plant. She said the Sierra Club has filed an appeal of the City Council's approval of the Environmental Impact Report for the upgrade to the Wastewater Treatment Plant to the Coastal Commission.

Barry Brannin announced for public information that he has forms in order to file any appeal to the Coastal Commission.

John Barta referred to Item C-2 stating this is not the time to continue as in times past; it is time to look at the big picture and move forward.

Bob Crizer addressed Items A-5 (Acceptance of the Community-Wide and Government Operations 2005 Baseline Greenhouse Gas Emissions Inventory Report) and noted this is a generational issue. He also addressed Item D-2 (Discussion of Instituting Urgency Interim Ordinance Prohibiting Wind Turbines for 45 Days) stating he is working towards providing renewable energy at a low cost to residents and businesses by attaching wind turbines to roof tops. Mr. Crizer stated there is not a height limit issue with the wind turbines, and requested Council's support in allowing renewable energy in the City.

Tom Gregory requested information on the City's plans for permitting medical marijuana dispensaries in the City.

Mayor Yates closed the hearing for public comment.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 25, 2011

A. CONSENT CALENDAR

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

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 CITY COUNCIL MINUTES FOR THE REGULAR MEETING OF JANUARY 11, 2011; (ADMINISTRATION)

RECOMMENDATION: This item was pulled from the agenda.

A-2 APPROVAL OF RESOLUTION 11-11 AMENDING THE COUNCIL POLICIES & PROCEDURES MANUAL REGARDING REGULAR MEETING TIMES AND PLACING ITEMS ON THE AGENDA; (CITY ATTORNEY)

RECOMMENDATION: Adopt Resolution No. 11-11.

A-3 AUTHORIZATION TO REPLACE THE ASSISTANT ENGINEER POSITION IN THE UTILITIES/CAPITAL PROJECTS DIVISION; (PUBLIC SERVICES)

RECOMMENDATION: Authorize the replacement of the Assistant Engineer position, revise the salary schedule, and authorize the backfilling of any successful internal candidate's position.

A-4 AWARD OF CONTRACT TO BROUGH CONSTRUCTION, INC. OF ARROYO GRANDE, CA FOR THE PROJECT NO. MB-2010-W1: DESAL PRODUCT WATER LINE REPLACEMENT; (PUBLIC SERVICES)

RECOMMENDATION: Waive a minor bid irregularity and award the project contract to Brough Construction, Inc., in the amount of \$149,181.00.

A-5 ACCEPTANCE OF THE COMMUNITY-WIDE AND GOVERNMENT OPERATIONS 2005 BASELINE GREENHOUSE GAS EMISSIONS INVENTORY REPORT; (PUBLIC SERVICES)

RECOMMENDATION: Receive report for information and file.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 25, 2011

Councilmember Smukler pulled Items A-2 and A-3 from the Consent Calendar.

MOTION: Councilmember Borchard moved the City Council approve Items A-4 and A-5 of the Consent Calendar. The motion was seconded by Councilmember Johnson and carried unanimously. (5-0)

A-2 APPROVAL OF RESOLUTION 11-11 AMENDING THE COUNCIL POLICIES & PROCEDURES MANUAL REGARDING REGULAR MEETING TIMES AND PLACING ITEMS ON THE AGENDA; (CITY ATTORNEY)

Councilmember Smukler stated he will not be voting in support of the proposed amendments because it does not give the City Council the leverage to manage or be a part of the agenda process.

MOTION: Councilmember Johnson moved the City Council approve Item A-2 of the Consent Calendar. The motion was seconded by Councilmember Leage and carried with Councilmember Borchard and Councilmember Smukler voting no. (3-2)

A-3 AUTHORIZATION TO REPLACE THE ASSISTANT ENGINEER POSITION IN THE UTILITIES/CAPITAL PROJECTS DIVISION; (PUBLIC SERVICES)

Councilmember Smukler expressed concern with the proposed increase in pay for this position; and, he would also like to discuss the two-tier structure before hiring a new position.

MOTION: Councilmember Smukler moved the City Council authorize staff to replace the Assistant Engineer position with a temporary hire until the benefits for that position have been negotiated. The motion was seconded by Councilmember Borchard and carried with Mayor Yates and Councilmember Leage voting no. (3-2)

Mayor Yates called for a break at 7:00 p.m.; the meeting resumed at 7:10 p.m.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 25, 2011

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 566 AUTHORIZING AMENDMENT OF SECTION 20475 (DIFFERENT LEVEL OF BENEFITS; SECTION 21363.1 (3% @ 55 FULL FORMULA); AND SECTION 20037 (THREE-YEAR FINAL COMPENSATION) FOR NEW SWORN HIRES IN THE FIRE DEPARTMENT; (ADMINISTRATIVE SERVICES)

City Manager Andrea Lueker stated the City Council adopted the Resolution of Intention on January 11, 2011, and this Ordinance is required by the Public Employee Retirement System (PERS) in order to amend the PERS contract. Ms. Lueker recommended the City Council approve the introduction and first reading of Ordinance No. 566 authorizing the amendment of Different Level of Benefits, 3% @ 55 Full Formula and Three-Year Final Compensation for new sworn hires in the Fire Department.

Mayor Yates opened the hearing for public comment.

John Meyers stated the change made to the Fire Department labor agreement reduces the City's portion of pension costs for new hires by 56%. He said Council should consider additional opportunities by requiring current employees to increase their participation in paying 5% of their wages towards their pensions which would produce an instant savings of \$350,000 per year to the City.

Dan Glesmann stated last year, one in every six dollars spent in the General Fund went to cover cost of employee pensions. He said making significant changes to the pension plan is a very good start to achieving sustainability and reducing the future cost commitments while increasing City revenues. Mr. Glesmann stated achieving this will contribute to the City's long-term financial strength.

Tom Gregory stated businesses that would increase the City's tax base would also help the City's economy.

Mayor Yates closed the public comment hearing.

MOTION: Councilmember Johnson moved the City Council approve the introduction and first reading of Ordinance No. 566 authorizing the amendment of Different Level of Benefits, 3% @ 55 Full Formula and Three-Year Final Compensation for new sworn hires in the Fire Department. The motion was seconded by Councilmember Borchard and carried unanimously. (5-0)

City Manager Andrea Lueker read Ordinance No. 566 by number and title only.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 25, 2011

C. UNFINISHED BUSINESS

C-1 RESOLUTION ON CREATION AND DETAILS OF A FACILITY
MAINTENANCE ACCOUNT, TO INCLUDE A PRIORITIZED LIST OF
PROJECTS AND COSTS; (RECREATION & PARKS)

City Manager Andrea Lueker stated the City's management of real property assets has lacked the resources to adequately support a deferred maintenance account for all scheduled property. The approval of Resolution No. 10-11, the establishment of a General Fund Deferred Maintenance, would give immediate relief to the General Fund and satisfy the required maintenance for the current City-owned real property. The initial start up General Fund Deferred Maintenance allocation would be approximately \$210,000 transferred from the proceeds of the sale of 781 Market Street. Priority maintenance will be given to building and mechanical systems including roofing, plumbing, electrical and air handling. Fund allocations would be realized by approved City Council directive and encumbered annually. Ms. Lueker recommended the City Council adopt Resolution 10-11 to establish a fund for General Fund Deferred Maintenance for the maintenance and management of City owned real property.

MOTION: Mayor Yates moved the City Council: 1) adopt Resolution No. 10-11 amending the transfer amount from \$210,000 to \$201,000 from the proceeds of the sale of the 781 Market Street property; 2) direct staff to be aggressive with the repairs in order of the A, B, C grouping priorities listed in Exhibit "A" of the staff report; and 3) direct staff to bring back an economic analysis on the Shasta Street properties regarding demolition vs. rehabilitation. The motion was seconded by Councilmember Borchard and carried unanimously. (5-0)

C-2 CONTINUED DISCUSSION ON THE VISITORS CENTER;
(ADMINISTRATION)

City Manager Andrea Lueker stated on June 28, 2010 during the annual review of the Visitors Center Agreement, the City Council amended the Agreement to include language regarding a financial review of the Visitors Center operations at the end of the 2009/10 fiscal year. In September 2010, the Chamber provided this information to the City Administrative Services Director, and she performed a financial review. On November 8, 2010, staff brought forward a second staff report, which requested the City Council to provide further direction to staff on the following issues: 1) financial review of the 2009/2010 fiscal year; 2) funding of the Visitors Center from the Tourism Business Improvement District Assessment; and 3) representation on the Chamber Board for Visitors Center oversight. Staff has made progress with each directive, even with the

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 25, 2011

significant changes in personnel with the Chamber and in particular the new Chamber Executive Director. During the November City Council meeting, areas of concern were accountability, transparency, City representation on the Chamber Executive Board and increased review of finances. Ms. Lueker recommended Council review the staff report, the progress that has been made on the direction provided to staff from the November 8, 2010 City Council meeting and provide further direction regarding the Visitors Center.

The City Council directed staff to: 1) reschedule this item as a public hearing within sixty (60) days to include an analysis and time study; 2) invite stakeholders; and, 3) explore the concept of a workshop.

No further action was taken on this item.

D. NEW BUSINESS

D-1 RESOLUTION AUTHORIZING THE HARBOR BUSINESS MANAGER TO EXECUTE LEASE RENTAL PAYMENT PLANS TO ASSIST EMBARCADERO TIDELANDS LEASEHOLDERS WITH CASH FLOW AND TO RETAIN EMBARCADERO BUSINESSES; (HARBOR)

Councilmember Leage stepped down due to a conflict of interest.

Harbor Business Manager Susan Lichtenbaum stated the Embarcadero Leaseholders have been struggling economically over the last two years as a result of the recession affecting the entire country. The City Council considered Embarcadero Tideland Leaseholder requests relating to lease site rent in Closed Session on January 11, 2011. Council directed staff to agendaize an item to consider setting up payment plans for Embarcadero Tideland Leaseholders. Ms. Lichtenbaum recommended the City Council adopt Resolution No. 09-11 authorizing the Harbor Business Manager to execute lease rental payment plans to assist Embarcadero Leaseholders with cash flow and to retain Embarcadero businesses.

Councilmember Borchard and Councilmember Smukler commented they would prefer quarterly payments rather than month-to-month payments.

MOTION: Mayor Yates moved the City Council extend the payment plan outlined in Resolution No. 21-10 through fiscal year 2011/2012. The motion was seconded by Councilmember Smukler.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 25, 2011

Mayor Yates stated he will vote in support of this motion only so there will not be a split vote, otherwise he would regularly vote in opposition.

VOTE: (4-0-1)

Councilmember Leage returned to his seat with the City Council.

D-2 DISCUSSION OF INSTITUTING URGENCY INTERIM ORDINANCE
PROHIBITING WIND TURBINES FOR 45 DAYS; (PUBLIC SERVICES)

Mayor Yates stated five wind turbines have been installed on the residential roof at 482 Estero Avenue, and has generated community comments both in favor and against this use. The concerns are quality of life and degradation of property values; arguments in favor are in support of alternative energy and property rights. Mayor Yates requested Council discuss allowing rooftop wind turbines in the City, and decide if a 45-day moratorium on installation is necessary. A 45-day moratorium would require a 4/5 majority vote.

Consensus of Council was in support of allowing wind turbines in the City due to property rights and noting they are a good source of sustainable energy.

No further action was taken on this item.

D-3 DISCUSSION OF CHANGE OF MEETING DATES AND TIMES, AND
NUMBER OF BOARD MEMBERS FOR COMMISSIONS AND ADVISORY
BOARDS; (CITY ATTORNEY)

City Manager Andrea Lueker stated the City Council has changed their meeting date from the 2nd and 4th Monday to the 2nd and 4th Tuesday each month, which now conflicts with the Recreation and Parks Commission meeting. With the change in the City Council meetings, staff is interested in also changing the Planning Commission meeting to the 1st and 3rd Wednesday each month. In a review of meeting agenda size and topics, staff believes that meeting six times each year for both the Public Works Advisory Board and the Recreation and Parks Commission will meet the needs of the City. Should there be a situation where a meeting is needed a special meeting can easily be called for either board. Ms. Lueker stated recruitment for both the Recreation and Parks Commission and the Public Works Advisory Board has traditionally been difficult, with very infrequent periods of a full seven member board. Staff is recommending the City Council consider reducing these two boards to five members. Ms. Lueker recommended the City Council consider the change in meeting times as proposed, and the reduction in the number of board members on the Recreation and Parks Commission and the Public Works Advisory Board, and advises staff accordingly.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 25, 2011

Councilmember Smukler stated he does not support reducing the Public Works Advisory Board to five members.

MOTION: Mayor Yates moved the City Council approve: 1) changing the Planning Commission meeting schedule to the 1st and 3rd Wednesday of the month; 2) reducing the Public Works Advisory Board to a five member board; and 3) amending the Recreation & Parks Commission and Public Works Advisory Board meeting schedule to alternate every 3rd Thursday of the month beginning with Recreation & Parks Commission in January. The motion was seconded by Councilmember Borchard and carried with Councilmember Smukler voting no. (4-1)

E. DECLARATION OF FUTURE AGENDA ITEMS – None.

ADJOURNMENT

The meeting adjourned at 8:55 p.m.

Recorded by:

Bridgett Kessling
City Clerk



AGENDA NO: A-2

MEETING DATE: 02-08-11

Staff Report

TO: Honorable Mayor and City Council **DATE:** February 1, 2011

FROM: Bridgett Kessling, City Clerk

SUBJECT: Appointment of Voting Delegates to the California Joint Powers Insurance Authority

RECOMMENDATION:

It is recommended the City Council appoint Mayor Yates as the official representative of the City of Morro Bay on the California Joint Powers Insurance Authority (CJPIA); and, appoint City Manager Andrea Lueker and City Attorney Robert Schultz as alternates.

BACKGROUND:

On June 23, 2003, the City Council adopted Resolution No. 38-03 approving the City's membership to the CJPIA. The rules of this Point Powers Agency call for each member agency to appoint a member of its governing body to serve as a representative on the CJPIA Board of Directors. The CJPIA also calls for member agency staff to serve as alternates. The full Board of Directors meets once a year in July to elect officers and review claims experience.

Prepared By: B. Kessling

Dept Review: _____

City Manager Review: _____

City Attorney Review: _____

RESOLUTION NO. 38-03

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, COUNTY OF SAN LUIS OBISPO, CALIFORNIA, APPROVING EXECUTION OF THE JOINT POWERS AGREEMENT CREATING CALIFORNIA JOINT POWERS INSURANCE AUTHORITY, AND FURTHER APPROVING PARTICIPATION IN ITS JOINT PROTECTION PROGRAM PROVIDING LIABILITY COVERAGE THROUGH SELF-INSURANCE, LOSS POOLING AND EXCESS INSURANCE

THE CITY COUNCIL

City of Morro Bay, California

THE CITY COUNCIL OF THE CITY OF MORRO BAY DOES HEREBY FIND AND RESOLVE AS FOLLOWS:

WHEREAS, pursuant to the provisions of Sections 990, 990.4, 990.8 and 6500 of the Government Code, CALIFORNIA JOINT POWERS INSURANCE AUTHORITY ("CALIFORNIA JPIA") has been created by a Joint Powers Agreement; and

WHEREAS, a Joint Protection Program has been developed by said CALIFORNIA JPIA pursuant to the provisions of said Agreement; and

WHEREAS, Article 21 of said Agreement provides for additional members to become parties to the Joint Powers Agreement creating the CALIFORNIA JPIA, after the first year of its operation, and thereupon enter the Joint Protection Program providing General and Automobile Liability Coverage through self-insurance and loss pooling; and

WHEREAS, the self-insurance and loss pooling programs of the CALIFORNIA JPIA, as well as its group insurance coverage programs, offer significant advantages to the City in terms of cost, protection, risk management and loss control advice and assistance, and entering such programs would be and is in the best interest of this City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY DOES HEREBY RESOLVE, ORDER AND DETERMINE THE FOLLOWING:

Section 1. That the Mayor of the City of Morro Bay is hereby authorized and directed to execute the Joint Powers Agreement on behalf of the City of Morro Bay binding the Member to the terms and conditions of said Agreement.

Section 2. That the City of Morro Bay hereby joins the Joint Protection

Program of CALIFORNIA JPIA, providing self-insurance and loss pooling for General and Automobile Liability for a period of not less than three (3) years.

Resolution No. 38-03
Page Two

PASSED AND APPROVED by the City Council of the City of Morro Bay this 23rd day of June 2003 by the following vote:

AYES: Elliott, Peirce, Peters, Winholtz, Yates

NOES: None

ABSENT: None

WILLIAM YATES, Mayor

ATTEST:

BRIDGETT BAUER, City Clerk

I hereby certify, under the penalty of perjury, that the above and foregoing is a true and correct copy of Resolution No.38-03 as adopted by the City Council of the City of Morro Bay, on the 23rd day of June 2003.

BRIDGETT BAUER, City Clerk



AGENDA NO: A-3

MEETING DATE: February 8, 2011

Staff Report

TO: Honorable Mayor and City Council **DATE:** February 1, 2011
FROM: Rob Schultz, City Attorney
SUBJECT: Adoption of Ordinance No. 565 Amending Section 2.08.010 of the Morro Bay Municipal Code Regarding Council Meetings Time and Date

RECOMMENDATION:

Staff recommends that the City Council adopt Ordinance No. 565

SUMMARY:

Ordinance 565 was introduced at the Council meeting held on January 11, 2011. This is the second reading, after which the Ordinance is adopted and will become effective on the 31st day after its passage.

Prepared By: _____ Dept Review: _____
City Manager Review: _____
City Attorney Review: _____

ORDINANCE NO. 565

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF MORRO BAY TO AMEND SECTION 2.08.010
OF THE MORRO BAY MUNICIPAL CODE**

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

The City Council of the City of Morro Bay does ordain Section 2.08.010 – “Council Meetings Time and Date” be amended as follows:

WHEREAS, Section 2.08.010 of the Morro Bay Municipal Code sets forth the time and date of the City Council; and

WHEREAS, the City desires to amend the City Council meeting dates to the second and fourth Tuesdays of each month; and

WHEREAS, the City of Morro Bay needs to amend Section 2.08.010 in order to make this change; and

WHEREAS, following the Public Hearing, and upon consideration of the testimony of all persons, the City council of the City of Morro Bay does ordain Section 2.08.010

2.08.010 - Time and date. Regular meetings of the city council shall be established by City Council Resolution as set forth in the Council Policies and Procedures Manual.

INTRODUCED at a regular meeting of the City Council of Morro Bay, held on the 11th day of January, 2011 by motion of Councilmember Borchard, seconded by Councilmember Smukler.

PASSED AND ADOPTED on the 8th day of February, 2011, by the following vote:

AYES:
NOES:
ABSENT:

WILLIAM YATES, Mayor

ATTEST:

BRIDGETT KESSLING, City Clerk

APPROVED AS TO FORM:

ROBERT SCHULTZ, City Attorney



AGENDA NO: A-4

MEETING DATE: 2/8/2011

Staff Report

TO: Honorable Mayor and City Council **DATE:** December 29, 2010

FROM: Susan Slayton, Administrative Services Director

SUBJECT: Adoption of Ordinance No. 566 Authorizing Amendment of Section 20475 (Different Level of Benefits; Section 21363.1 (3% @ 55 Full Formula); and Section 20037 (Three-Year Final Compensation) for New Sworn Hires in the Fire Department

RECOMMENDATION:

Adoption of Ordinance No. 566 authorizing the amendment of Different Level of Benefits, 3% @ 55 Full formula and Three-Year Final Compensation for new sworn hires in the Fire Department.

FISCAL IMPACT:

While there won't be a significant fiscal impact at the outset, by virtue of the change of retirement formula, the City will see substantial savings as we hire new employees to replace our existing employees who either retire or move on to other agencies. It is known that the new employer contribution rate for the new hires will be 15.592% of reportable earnings as opposed to the current rate of 35.173%.

DISCUSSION:

Per the contract amendment process, on January 11, 2011 the City Council adopted Resolution No. 05-11 approving the Resolution of Intention to approve an amendment to contract between the Board of Administration California Public Employees' Retirement System and the City of Morro Bay (Firefighters); and on January 25, 2011 the City Council was introduced to and heard the first reading of this Ordinance. Staff is presenting this item tonight in order to complete the required action.

CONCLUSION:

Per the requirements of the PERS contract amendment process, adopt Ordinance No. 566.

Prepared By: Jboucher

Dept Review: _____

City Manager Review: _____

City Attorney Review: _____

ORDINANCE NO. 566

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY
AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE
CITY COUNCIL OF THE CITY OF MORRO BAY AND THE BOARD OF
ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
SYSTEM (GOVERNMENT CODE SECTION 20475 - DIFFERENT LEVEL OF BENEFITS,
SECTION 21363.1 - 3% @ 55 FORMULA, AND SECTION 20037 - THREE YEAR FINAL
COMPENSATION FOR LOCAL FIRE MEMBERS ONLY)**

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

The City of Council of the City of Morro Bay does ordain as follows:

SECTION 1. That an amendment to the contract between the City Council of the City of Morro Bay and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked "Exhibit", and such reference made a part hereof as though herein set out in full.

SECTION 2. The Mayor of the City Council is hereby authorized, empowered, and directed to execute said amendment for and on behalf of said Agency.

SECTION 3. This Ordinance shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage, it, or a summary of it, shall be published once, with the names of the City Council members voting for and against the same, in a newspaper of general circulation published in the City of Morro Bay.

INTRODUCED at the regular meeting of the City Council held on the 25th day of January 2011, by motion of Councilmember Nancy Johnson and seconded by Councilmember Carla Borchard.

PASSED, APPROVED, AND ADOPTED, by the City Council of the City of Morro Bay, on the 8th day of February, 2011 by the following vote to wit:

AYES:

NOES:

ABSENT:

William Yates, Mayor
City of Morro Bay

Bridgett Kessler, City of Morro Bay



AGENDA NO: A-5

MEETING DATE: February 8, 2011

Staff Report

TO: Honorable Mayor and City Council **DATE:** February 1, 2011

FROM: Rob Livick, Public Services Director

SUBJECT: 2010 Annual Water Report

RECOMMENDATION:

Staff recommends that the City Council adopt Resolution No. 12-11 approving the following:

1. Allocate the mix of residential units as 60 percent single-family and 40 percent multi-family units; and authorize the corresponding water equivalency allocation for residential uses at 50 WEUs (water equivalency units).
2. Process Residential Allocations limits on a first-come first-serve basis, based on the priorities contained in the current General Plan and Local Coastal Plan policies;
3. Authorize allocation of 130% of the residential water equivalency units or 65 WEUs to commercial and industrial projects, within the priority categories consistent with the current Local Coastal Plan and General Plan policies.

FISCAL IMPACT:

There are no fiscal impacts directly associated with the allocation of water equivalency units. Staff performs the annual water report and makes the recommendation on the authorizing of water equivalency units as a routine annual task.

BACKGROUND:

Pursuant to the Amended Section 13.20.060 of the Municipal Code, the Annual Water Report has been prepared by the Public Services Department and forwarded to the City Council for consideration and adoption. This report describes the uses that have received water equivalency allocations in 2010 (Table 1), and provides the Director's recommendation regarding the building allocation for residential units and the suggested mix of multi-family and single family residential units for 2010 as indicated in City Council Resolution No. 78-00. That resolution indicates that the City Council would continue to set an annual limit on residential units and their mix as set forth in Ordinance 266. In addition, this report provides a snapshot of the City's population (Table 2), water production (Table 3), per capita water use trends (Table 4), and water loss estimates (Tables 5 & 6).

Prepared By: _____ Dept Review: _____
City Manager Review: _____
City Attorney Review: _____

DISCUSSION:

History of the WEU's allocation:

Historically the City Council allocated a total of 160 residential WEUs for both types of residential and a 130 percent of that allocation to commercial and industrial until 2002. That number was increased to a total of 230 residential WEUs until the 2006 allocation approval when the Council reduced the total by half or to 115 WEU.

Water Management Plan: In December 2008 the City Council reviewed the conditions of the community's long-term potable water supply and as a result approved the Water Management Plan Status Report. This report, performed at least every 5 years, looked at: "any changes in climatic, hydrological, technological, or political conditions that could affect the City's long-term water supply whether negatively or positively." It was determined as a result of the review that the existing resources are adequate and sustainable for build-out of the community in accordance with the General Plan. The City Council authorized a water usage study that was prepared by the City's consulting engineering firm and it was determined that there is adequate water for the build-out of the City under the current General Plan.

Potable Water Production Data: As shown in Table 3, for calendar year 2010 a total of 74 acre-feet of water was extracted from the City's Chorro Basin, 54 acre feet came from the Morro Basin, 873 acre-feet were delivered from the State Water Project (SWP), and 258 acre feet from the desalination plant. Table 3 shows the total water production for this year was 1259 acre-feet.

Table 4 provides an historical record of water production and use from 1960 through 2010. Beginning in 1997, per capita water use has been re-calculated, based upon the amount of water delivered to customers (metered/sold) rather than gross production, to closely reflect actual community consumption practices.

Table 5 shows the calculations for this year's un-metered and unaccounted water loss, and Table 6 provides the history of unaccounted water loss from 1985 through 2010. Unaccounted water loss continues to be a low at approximately 0.2%

The 2010 average consumption was 106 gallons per capita per day (gpcd). In accordance with the Water Management Plan (page 1, Section 2), this consumption is below the 130-gpcd threshold.

Water Allocation Mix: Water equivalencies units (WEUs's) are allocated each year for residential, commercial and industrial uses. Tables 1, shows that historically the majority of residential permits issued have been single family units. The current allocation mix provides sufficient allocations for the single family development while providing sufficient multiple family allocations to encourage and facilitate their development. The City's new Housing Element indicates that in the next five years Morro Bay's fair share of housing unit will be 98 residential units. While development may continue to be slow in the next year it is important to note that over the next 5 years housing units are anticipated to increase by 98 units. Staff recommends that the Council continue to allocate as it had done in 2007-2010 50 residential WEU be allocated for the 2011 with 60 percent of these units allocated to single family and 40 percent to multiple family and that 115 WEUs (130% of residential) be allocated to commercial/Industrial uses.

Summary of 2010 activity:

The Council authorized 50 WEUs's for 2010 with 60 percent to be used for single family dwellings and 40 percent for multiple family dwellings with no rollovers. These WEU's were allocated on a first-come, first-serve basis. The tracking of the WEU's utilized in 2010 indicates that a total of 10.28 WEU's were used as follows:

- Commercial/Residential .74
- Single Family 9.54
- Multiple Family none.

This is not a comprehensive list of all building activity but rather a list of those activities which required a WEU allocation.

CONCLUSION:

By adopting this report and recommendation the Council decisions on the 2011 water allocation program and the mix of single family and multi-family residential units based on Ordinance 266 allowances will be followed.

ATTACHMENTS

- A. Table 1: Distribution of Water Equivalency Units
- B. Table 2: Population
- C. Table 3: Water Production
- D. Table 4: Per Capita Water Use
- E. Table 5: Unaccounted for Water Loss 2008
- F. Table 6: Historical Unaccounted for Water Loss

RESOLUTION NO. #12-11

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY,
CALIFORNIA, APPROVING THE 2010 ANNUAL WATER PROGRESS
REPORT AND ADOPTING A WATER ALLOCATION PROGRAM FOR 2011**

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, Chapter 13.20 of the Morro Bay Municipal Code, calls for the City Council of the City of Morro Bay to adopt a yearly Water Allocation Program based on a report by the Public Services Director after review by the City of Morro Bay Planning Commission and Public Works Advisory Board; and

WHEREAS, the Local Coastal Program Land Use Plan and Ordinance Number 266, requires the City Council to set an annual limit on new residential units and to prescribe the mix of multi-family and single family residences allowed within that limit; and

WHEREAS, on the 8th day of February, 2011, the City Council did hold a duly noticed Public Hearing on the 2010 Annual Water Progress Report and the proposed 2011 Water Allocation Program.

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

A. The City Council of the City of Morro Bay hereby receives and accepts the 2010 Annual Progress Water Report as submitted by Public Services Director, as incorporated herein as if attached hereto; and

B. A Water Allocation Program for the year 2011 is hereby adopted by the City Council of the City of Morro Bay containing the following elements:

1. Allocate the mix of residential units at 60 percent single-family and 40 percent multi-family units; and authorize the corresponding water equivalency allocation for residential uses at 50 weu's (water equivalency units or weu's).
2. Process Residential Allocations limits on a first-come/ first-serve basis, based on the priorities contained in the current General Plan and Local Coastal Plan policies. Unused multiple family residential weu's may be rolled over to single family dwellings after September 30, 2011;

3. Authorize allocation of 130% of the residential water equivalency units to commercial and industrial projects, within the priority categories consistent with the current Local Coastal Plan and General Plan policies:
4. The potential for rolling over unused water allocations to next year is not precluded by this action.

PASSED, APPROVED, AND ADOPTED, by the City of Morro Bay City Council, at a regular meeting held on this 8th day of February, 2011 by the following vote:

AYES:

NOES:

ABSENT:

WILLIAM YATES, Mayor

ATTEST:

BRIDGETT KESSLING, City Clerk

**Table 1
HISTORIC TRACKING OF ALLOCATIONS**

Allocations tracked on a calendar year basis

Allocation Year (January 1- December 31)	Total WEU Available	Number of Residential WEUs available	Single Family Residential WEUs allocated	Number of SFR Units	Multiple Family Residential WEUs allocated	Number of Multiple Family Units	Number of Commercial/Industrial WEU available	Commercial "A"	Commercial "B"	Industrial	Total WEU Allocated
2010	115	50	9.54	10	0	0	65		0	0	10.28
2009	115	50	2.62	5	2.62	0	65	0	0	0	2.62
2008	115	50	6.54	7	1.6	1	65	3.97	0	0	12.11
2007	115	50	25.7	28	10.2	18	65	1.15	0	0	37.44
2006	230	100	35.62	37	5.76	8	130	3	3.84	0	48.22
2005	230	100	40.48	46	6.17	10	130	15.5	1.63		63.78
2004	230	100	28	28	11.42	19	130	0	2.44	0	41.86
2003	262	100	54	54	8.86	15	130	7.56	0	0	70.42
2002	160	69.52	28	28	5.24	8	90	6.1	9.3	0	48.64
2001	160	69.52	63	63	6.89	11	90	4.77	0	0	74.66
2000	160	69.52	68	68	4.86	9	90	9.39	0	0	82.25
1999	160	69.52	53	53	1.32	2	90	0	0	0	54.38
1998	156	68	56.62	66	6.48	18	90	1.38	0	0	64.48

Allocations tracked on a fiscal year basis.

Allocation Year (July 1 of previous year to June 30 of the year shown)	Total WEU Available	Number of Residential WEUs available	Single Family Residential WEUs allocated	Multiple Family Residential WEUs allocated	Number of Commercial A WEU available	Commercial "A" allocated	Number of Commercial B WEU available	Commercial "B" allocated	Number of Industrial WEU available	Industrial allocated	Total WEU Allocated
1997	153.13	66.12	7.54	0.36	62.37	0.05	0.05	11.71	12.93	0	7.95
1996	153.13	66.12	23	0	62.37	62.37	11.71	2.63	12.93	0	88.00
1995	146.65	63.74	29.44	0	60.11	19.15	11.29	4.06	12.46	0	52.83
1994	147.6	63.74	29	0.36	60.11	0	11.29	0	12.46	0	29.36
1993	149.55	64.58	43	1.56	60.9	9.54	11.44	0.57	12.63	0	54.67
1992	149.55	64.58	46	10.25	60.9	0	11.44	8.07	12.63	0.43	64.75

Notes:

In 2003 there was a one time allocation for Colmer Tract 2285

In 1998, 2000, 2001 & 2002 there were residential rollover of WEUs

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TABLE 2
PROJECTED GROWTH RATES VERSUS ACTUAL POPULATION INCREASES

Year	Population		Units Per Ord. 266 Projections	Housing Actual No. Of Housing Units ³
	Population Per Ord. 266/LCP ¹	Actual Population ²		
1980	9425	9064	N/A	5180
1981	9705	9206	N/A	5298
1982	9998	9297	N/A	5302
1983	10298	9435	N/A	5326
1984	10400	9599	N/A	5363
1985	10505	9747	5440	5403
1986	10610	9881	5517	5473
1987	10716	9819	5594	5548
1988	10823	9975	5671	5638
1989	10931	10133	5748	5647
1990	11040	9664	5825	5694
1991	11150	9806	5902	5760
1992	11262	9736	5979	5760
1993	11489	9979	6056	5845
1994	11489	10071	6133	5877
1995	11604	9518	6210	5888
1996	11720	9687	6287	5922
1997	11837	9696	6364	5960
1998	11955	9845	6441	6005
1999	12123	9871	6518	6048
2000	12196	9981	6595	6104
2000	12196	10410 *	6595	6104
2001	12200 ⁴	10486	6672 ⁴	6178
2002	12200 ⁴	10510	6672 ⁴	6220
2003	12200 ⁴	10510	6672 ⁴	6289
2004	12200 ⁴	10522	6672 ⁴	6336
2005	12200 ⁴	10270	6672 ⁴	6392
2006	12200 ⁴	10491	6672 ⁴	6437
2007	12200 ⁴	10436	6672 ⁴	6483
2008	12200 ⁴	10506	6672 ⁴	6492
2009	12200 ⁴	10555	6672 ⁴	6496
2010	12200 ⁴	10608	6672 ⁴	6506

¹ This column represents population based on Ordinance 266's projected growth of 77 units per year. These figures indicate that the City's growth rate is behind the Ordinance 266 schedule.

² Actual population figures are taken from the California Department of Finance "Housing Estimates" report. The 1990 decennial census is the benchmark for the estimates prior to 2000. After 2000 the 2000 decennial census is used and a second entrée for 2000 shows the adjustment for the new census. The figures represent totals as of January 1st of each year indicated. The population figure includes an estimated 21% vacancy rate. A lower vacancy rate would result in a higher population.

³ The total number of Housing units includes the addition of all new residential units to the City's Housing Stock, as well as the deduction of all units lost through demolition, removal, or change of use from residential to non-residential.

⁴ This is the maximum population or housing under Ordinance 266 without an election to allow further building.

* In 2000 there were two population statistics provided one from the California Department of Finance and the other from the Federal Census

TABLE 3**WATER PRODUCTION DATA 1980 – 2010**
(in Acre Feet)

Year	Chorro Basin	Morro Basin	R/O Plant	State Water	Total
1980	1079	672	---	---	1651
1981	1143	584	---	---	1727
1982	1061	526	---	---	1587
1983	995	537	---	---	1532
1984	1097	572	---	---	1669
1985	1108	582	---	---	1690
1986	1059	552	---	---	1611
1987	1124	531	---	---	1655
1988	1120	528	---	---	1648
1989	1047	512	---	---	1559
1990	963	564	---	---	1527
1991	808	449	---	---	1256
1992	1049	270	---	---	1319
1993	994	397	---	---	1391
1994	954	460	---	---	1414
1995	986	420	---	---	1418
1996	1261	240	---	---	1501
1997	985	249	---	301	1535
1998	38	---	---	1288	1326
1999	34	---	---	1359	1393
2000	4	---	---	1396	1400
2001	11	---	---	1399	1410
2002	1	32	48	1373	1454
2003	1	28	13	1379	1421
2004	49	213	10	1205	1477
2005	204	150	0	1007	1361
2006	257	80	25	1009	1371
2007	276	35	19	1116	1446
2008	184	52	28	1175	1439
2009	235	80	64	1069	1448
2010	74	54	258	873	1259



AGENDA NO: D-1

MEETING DATE: 2/8/2011

Council Report

TO: Mayor and City Council

DATE: February 8, 2011

FROM: Councilmember Smukler

SUBJECT: Presentation & Formal Recognition of the “Official City Tree of Morro Bay” Vote

RECOMMENDATION: Based on the final results of the public voting process, the Morro Bay Volunteer Tree Committee proposes the Council vote to formally recognize the Cypress *Cupressus macrocarpa* as the Official City Tree of Morro Bay.

FISCAL IMPACT: Morro Bay Beautiful, The Bay News (Tolosa Press) and the Morro Bay Volunteer Tree Committee covered all costs and facilitation so financial impacts were no more than minimal City Staff time spent directing voters to the self guided info kiosk at City Hall.

SUMMARY: It is a common practice for incorporated cities to declare an official city tree and flower. Morro Bay has an official City Flower, the Dahlia. The City supports information, education, and social events to honor this flower and market the natural beauty of Morro Bay. As an official “Tree City USA” that has pride in and receives many benefits from our urban forest, it is logical that the city would declare an official city tree. The voting process was open to all citizens of Morro Bay.

Voting opportunities/locations included:

- 4 weeks of mail-in ballots printed in Tolosa Press’s “The Bay News”
- 4 City Council, 1 Planning Commission & 1 PWAB meetings
- Christmas Street Fair, 8 Farmer’s Markets (Downtown & Spencer’s)
- City Hall (3 Months), Business Forums, Morro Bay Beautiful Board meeting and a MB Historical Society meeting

Nearly 500 citizens voted for what tree they thought represented the city of Morro Bay, each giving their City address and only one vote per person. The Volunteer Tree Committee came up with five trees with strong historical significance in Morro Bay. Each ballot also gave a sixth option for a “write in”. The Cypress got more than double the votes of any other tree, 194 votes. Second place went to the tree we call the Red Flowering Eucalyptus, which is now called *Corymbia ficifolia* and was planted a few decades ago as the premier street tree in the Downtown Business District.

Final Results (triple counted and certified by the Tree Committee)

Monterey Cypress	193
Red Flowering Eucalyptus	83
Avocado	71
Channel Island Oak	67
Blue Gum Eucalyptus	28
Canary Island Date Palm	19

Write-ins:

Coastal Redwood	3
Arbutus Marina	2
Monterey Pine	2
Coast Live Oak	1
Sequoia Redwood	1
Fremontia	1
Ginko	<u>1</u>
Total Votes	472



BACKGROUND:

Having an official city tree or city flower does not mean the City of Morro Bay will plant that tree or flower all over the city. The dahlia has been the official City Flower for years, and we do not see the flower planted extensively on public property. The Cypress is a coastal California Native, was planted by the City’s founding fathers, and is found throughout the city and surrounding countryside. The City is not obligated to plant *Cupressus macrocarpa* (Monterey Cypress) as a street tree or on public property.

Designation of an official city tree or city flower recognizes their special connection to the community and creates an opportunity to publicize and market these specimens with pride.

CONCLUSION:

The Morro Bay Volunteer Tree Committee, in collaboration with Morro Bay Beautiful and The Bay News, has conducted an honorable and well-publicized voting process. The citizens of Morro Bay have conclusively chosen the Cypress *Cupressus macrocarpa* as the official City Tree of Morro Bay. The City Council should recognize these results as sufficient, and vote to identify the Cypress *Cupressus ‘macrocarpa’* as the official City Tree of Morro Bay.



AGENDA NO: D-2

MEETING DATE: 02/8/2011

Staff Report

TO: Honorable Mayor and City Council **DATE:** February 1, 2011
FROM: Susan Slayton, Administrative Services Director
SUBJECT: Report from the Citizens Oversight Committee Pursuant to Morro Bay
Municipal Code (MBMC) Section 3.22.120

RECOMMENDATION:

Staff recommends that Council accept the report, and take action as determined.

SUMMARY:

Pursuant to the MBMC Section 3.22.120, the Citizens Oversight Committee met on December 8, 2010, to review the 2009/10 unaudited transactions and 2010/11 year-to-date transactions for the District Transaction Tax (Measure Q ½ cent sales tax) Fund. The Committee has provided its letter related to that review, and staff is requesting direction from Council.

BACKGROUND:

In November 2006, Morro Bay voters approved a ½ cent local sales tax measure (Measure Q) for community benefit. This tax has generated approximately \$700,000 per year, and has been historically divided between Fire, Police, Streets and Storm Drains.

Prior to that election, Ordinance No. 519 was adopted on August 14, 2006, creating Chapter 3.22 of the MBMC, Transactions and Use Tax. Section 3.22.120 establishes the Citizens Oversight Committee, a permanent advisory committee that meets semi-annually to review the revenue and expenditures from the collection of the tax. Section 3.22.120(E) states that the committee shall review a semi-annual expense report of the City relative to activities funded with the additional general purpose local sales tax monies, and that not later than the last day of the sixth month following the end of each City fiscal year, the Committee will present its findings and conclusions to the City Council for its review.

DISCUSSION:

The Committee was very pleased with the 2009/10 uses of Measure Q funds, and had no issues/adjustments with any of the expenditures. The members did provide a letter with comments, and one, in particular, needs further explanation/background: the debt service for Fire Station #1's Administrative Building.

Prepared By: _____

Dept Review: _____

City Manager Review: _____

City Attorney Review: _____

Page 1 of 2

With the 2009 - 2011 biennial budget, \$168,000 of Measure Q money was earmarked for the debt service on Fire Station #1's Administrative Building in both the 2009/10 and 2010/11 fiscal years, for a total of \$336,000. When the 2009 – 2011 biennial budget was adopted, staff was working with the U.S. Department of Agriculture (USDA) on a loan for \$3,000,000 to complete the Building; at that time, the American Recovery and Reinvestment Act (ARRA) of 2009 had been signed by President Obama, but no project/use list of the money established. Once the list of eligible projects/uses was released, our Fire Station project was submitted for funding, and in September 2009, we were notified that we had been awarded \$1,600,000. This enabled us to reduce the need from the USDA to approximately \$1,500,000 (\$1,400,000 for construction and an additional \$100,000 for covered incidentals).

The \$168,000 was the original annual estimate on the debt service payment to the USDA, based on a \$3,000,000 loan. With the ARRA award, the USDA loan amount was reduced to \$1,400,000, lowering the debt service to \$87,000 annually. The USDA does require that one debt service payment be held in reserve, so an additional \$87,000 will be required to be funded in Year 1 of the loan. The USDA has agreed to loan us \$1,500,000, which will provide an additional \$100,000 for approved incidentals.

The 2009 – 2011 allocations (a total of \$336,000) are now intended to be used for expenditures that will not be covered by ARRA or the USDA. To date, the City has spent over \$250,000 on Fire Station #1's Administrative Building for design work that will not be covered by either ARRA or the USDA. Additionally, there are elements of the new station that will need to be funded outside of the ARRA grant and USDA loan, such as the station alerting system, radio systems, and furnishings. The two years of allocating \$168,000 (a total of \$336,000) for USDA debt service are now needed to fund these expenditures, as the General Fund does not have sufficient funds to do so. Therefore, it is imperative that this money remain in the control of the Capital Projects Manager, and should be renamed as Fire Station #1 Administrative Building Construction Costs as the Committee recommended.

Included with this staff report are:

1. Memo from the Citizens Oversight Committee;
2. District Transaction Tax Fund carryover report;
3. District Transaction Tax Fund balance sheet; and
4. District Transaction Tax Fund income statement.

TO: Mayor Yates and City Council Members
FROM: District Transaction Tax (Q) Oversight Committee
DATE: January 17, 2011
RE: Fiscal Year 2009/2010 Review

In the fiscal year ending June 30, 2010 the District Transaction Tax Fund (Q) received \$710,947 in revenue from taxes, interest and investment gains. Expenditures and transfers were \$497,788. The ending fund balance as of June 30, 2010 was \$987,733.

We have attached the Fund balance sheet, income statement and carryover report for your information.

On December 8th the Oversight Committee held a public meeting at the Community Center and reviewed all of the transactions in and out of the fund. Below is a narrative that addresses our findings.

Police Department--- in addition to servicing the internal debt for vehicles, the Police Department used their allocated funds to purchase firearms and related equipment for sworn officers. They also used funds to replace radar units and purchase tasers.

Recommendation---None

Fire Department--- used their Transactions Tax (Q) allotment to hire one full time firefighter/paramedic and added additional reserve hours and overtime hours to achieve a goal of having four firefighters on each shift. This personnel expense was previously accepted as contributing to an improvement in Public Safety. They also purchased other miscellaneous equipment and made some minor improvements on the Bonita Street station.

Recommendations---in the fiscal year 2009/10 the Fire Department budgeted \$191,000 for staff. They spent approximately \$149,000 leaving a carry over balance of \$42,000. The Committee feels that the City follow the same policy that is currently in place in the other City funds to not allow carry over of unspent personnel costs (wages, benefits etc) and therefore this \$42,000 carryover should be transferred to "unallocated" and re-budgeted in the next fiscal year.

In 2009/10 and again in 2010/11 the Fire Department has budgeted \$168,000 each year for "debt service" for the yet to be built Administrative/Living quarters addition to the new Fire Station. We did not object to the expense however we do feel that since there is no loan in place that the line item descriptions should be changed to something that more clearly defines why the Fire Department will have accrued \$336,000 by the end of this fiscal year.

Streets---The biggest portion of the Street Department expenditures were spent on the roundabout and related repaving on Morro Bay Blvd. Measure Q funds were used to level out a number of sidewalks throughout town.

Recommendations---None

Storm Drains----Again the largest expense was related to the work that was done to the utilities under the roundabout. A major storm drain at the intersection of Sunset and Main was also replaced.

Recommendations---None

General Discussion

We spent the majority of our meeting discussing the balance in the Fund. The carryover amount of unspent money in the fund when added to this year's budget is over one and one half million dollars. The Committees' concern is that the Citizens voted to increase their taxes to see improvements in the City and they would like to see some tangible results. There are number of reasons why this money has been accumulating, some of which are out of the City's control. Mr. Livick explained to the Committee that street repaving was so expensive that he needed to accrue several years' worth of allocations to just do a single project. The new addition to the Fire Department is being delayed by a backlog of requests at FEMA. Regardless of the reasons for any of the delays, it was agreed that staff needs to do a better job of communicating to the public about plans to spend the money. To improve these communications some of the actions that the staff expects to take are:

Erecting simple portable signs at any public works project where Measure Q funds are involved reading something like "your ½ cent Measure Q sales tax dollars at work"

This spring the Public Service Director is going to present the Pavement Management Plan to the Public Works Advisory Board and City Council. This plan will detail what street/gutter/sidewalks repair or replacements will take place in the future. This information will be well circulated. The Committee recommended that the staff consider putting out several permanent signs in locations that will be affected within a couple of years that might note "your ½ cent sales tax Measure Q tax dollars will pay for repaving this street in the Summer of 2012"

Finally we recommend that in future budgets the City Council not only ask the staff to be specific about the uses of Measure Q funds, but also have the staff provide their best estimate of a time frame for when the money for projects will actually be spent.

Respectively submitted,


Homer Alexander


Michael Durick


Elaine Giannini


Dan Glesmann


Barbara Spagnola

c: Andrea Lueker, Chiefs Olivas and Pond; Directors Livick, Slayton and Woods

District Transaction Tax (Q)

Combining prior year carry over with 2010/11 budget

	Carry Over From Prior Years	2010/11 Adopted Budget	Total
Fire	\$31,147		31,147
Fire-staff + O/T transfer	41,936	191,121	233,057
Fire-Debt Service	168,000	168,000	336,000
Sub Total Fire	241,083	359,121	600,204
Streets	232,698	125,000	357,698
Streets-curb/gutter/Potholes/sidewalks		140,196	140,196
Sub Total Streets	232,698	265,196	497,894
Storm Drains+ NEP	163,882	125,000	288,882
Police	(30,881)		(30,881)
City Communication		35,000	35,000
Public Safety	39,932	43,247	83,179
Sub Total Police	9,051	78,247	87,298
City Hall Generator		110,000	110,000
Unallocated	295,587	(237,564)	58,023
Total	942,301	700,000	\$1,642,301

City of Morro Bay

Detail Balance Sheet

Through Date: 6/30/2010

Account	6-30-10 Balance	6-30-09 Balance	Net Change	Change Percentage
Fund: Sales and Use Tax Measure Q				
1001 Cash In Treasury	942,301	697,967	244,334	35.01%
1062 GASB 31 Adjustments	1,935	791	1,144	144.63%
1155 Miscellaneous Receivable	0	94,500	(94,500)	-
1230 Due From Other Gov't	49,280	0	49,280	-
Total Assets	993,516	793,258	200,258	25.00%
Liabilities				
2011 Payroll Payable	3,079	(0)	3,079	-
2020 Accounts Payable	2,167	18,684	(16,516)	-88.40%
2182 Health Ins, Employee Ded.	537	(0)	537	-
Total Liabilities	5,783	18,684	(12,901)	(69.00%)
2930 Unreserved Fund Balance	987,733	774,574	213,159	27.52%
Total Fund Equity	987,733	774,574	213,159	27.52%

Department:	42.10	Fire Department	Budget Amount	YTD-Actual	Budget v. Act	%	Prior Year
4110	Regular Pay		\$59,074.00	\$46,761.48	\$12,312.52	79%	\$0.00
4120	Overtime Pay		\$35,640.00	\$13,782.01	\$21,857.99	39%	\$0.00
4599	Other Pay		\$0.00	\$4,984.56	(\$4,984.56)	+++	\$0.00
4910	Employer Paid Benefits		\$52,387.00	\$39,636.88	\$12,750.12	76%	\$0.00
5108	Communication Supplies		\$0.00	\$0.00	\$0.00	+++	\$1,293.00
5199	Misc. Operating Supplies		\$0.00	\$1,110.63	(\$1,110.63)	+++	\$0.00
5201	Other Expense		\$0.00	\$1,251.00	(\$1,251.00)	+++	\$0.00
5530	Small Tools		\$0.00	\$0.00	\$0.00	+++	\$1,411.49
6106	Contractual Services		\$0.00	\$0.00	\$0.00	+++	\$10.57
6199	Other Professional Svc		\$0.00	\$1,900.00	(\$1,900.00)	+++	\$0.00
6601	Outside Equip. Repair/Mat		\$0.00	\$0.00	\$0.00	+++	\$8,460.10
6602	Outside Structural Repair		\$0.00	\$3,350.55	(\$3,350.55)	+++	\$1,089.16
6603	Outside Ground Repair		\$0.00	\$934.00	(\$934.00)	+++	\$0.00
6604	Outside Vehicle Repair/Maint		\$0.00	\$1,605.75	(\$1,605.75)	+++	\$0.00
7102	Buildings & Structures		\$168,000.00	\$0.00	\$168,000.00	0%	\$0.00
7202	Trucks		\$0.00	\$0.00	\$0.00	+++	\$272,318.77
Department totals:		Fire Department	\$315,101.00	\$115,316.86	\$199,784.14	37%	\$284,583.09
Department:	5230	Street Maintenance	\$0.00	\$0.21	(\$0.21)	+++	\$11.27
5199	Misc. Operating Supplies		\$0.00	\$2,474.06	(\$2,474.06)	+++	\$0.00
5502	Building Maint. Supplies		\$275,000.00	\$33,043.11	\$241,956.89	12%	\$8,349.70
6106	Contractual Services		\$0.00	\$0.00	\$0.00	+++	\$0.00
Department totals:		Street Maintenance	\$275,000.00	\$35,517.38	\$239,482.62	13%	\$8,360.97
Department:	5235	Storm Drain/Creek Maint.	\$0.00	(\$2,533.05)	\$2,533.05	+++	\$7,650.92
5199	Misc. Operating Supplies		\$0.00	\$1,999.60	(\$1,999.60)	+++	\$0.00
6105	Consulting Services		\$150,000.00	\$44,989.95	\$105,010.05	30%	\$48,998.00
6106	Contractual Services		\$0.00	\$0.00	\$0.00	+++	\$0.00
Department totals:		Storm Drain/Creek Maint.	\$150,000.00	\$44,456.50	\$105,543.50	30%	\$56,648.92
Department:	7710	Interfund Transactions	\$0.00	\$176,602.00	(\$176,602.00)	+++	\$0.00
8501	Transfers Out-Roundabout		\$44,020.00	\$44,020.00	\$0.00	100%	\$0.00
8510	Transfer To General Fund-Reserves		\$0.00	\$0.00	\$0.00	+++	\$0.00
Department totals:		Interfund Transactions	\$44,020.00	\$220,622.00	(\$176,602.00)	501%	\$0.00
REVENUE Totals:			\$750,000.00	\$710,947.05	\$39,052.95	95%	\$941,592.89
EXPENDITURE Totals:			\$892,071.00	\$497,788.12	\$394,282.88	56%	\$453,777.42
FundSales & Use Tax Measure Q NET GAIN</LOSS>:			(\$142,071.00)	\$213,158.93	(\$355,229.93)		\$487,815.47



AGENDA NO: D-3

MEETING DATE: 02/08/11

Staff Report

TO: Honorable Mayor and City Council **DATE:** February 1, 2011

FROM: Susan Slayton, Administrative Services Director

SUBJECT: Resolution No. 13-11 Adopting the Mid-Year Budget Amendments

RECOMMENDATION:

Staff recommends that Council adopt Resolution No. 13-11, authorizing the budget amendments, as revised at this meeting.

FISCAL IMPACT:

Revenue amendments:

General Fund	\$	188,500
Transit	\$	21,500

Expenditure amendments:

General Fund	\$	188,500
Measure Q Fund	\$	38,000
General Fund Reserve	\$	138,233
Harbor Operations	\$	7,000

SUMMARY:

The 2010/11 mid-year performance reports are presented, along with the requested budget amendments that are summarized above. Staff recommends that Council review the requested amendments, then adopt Resolution No. 13-11, with any revisions made at this meeting.

DISCUSSION:

The requested budget amendments are presented on the attached pages with a description justifying each request. Separately provided are December 31, 2010 budget performance reports for all funds.

The economy is stabilizing, and Morro Bay is more fortunate than the other cities in the County, as we have not suffered similar sales and property tax losses due to our uniqueness (no “big box” stores, no auto dealers). We have weathered this recession with very little financial loss, again compared to other areas in the County, State and nation.

Prepared by: _____ Dept Review: _____

City Manager Review: _____

City Attorney Review: _____

The General Fund's performance is as anticipated. Some one time money has not shown up, which explains the low revenue percentage (47%). An example of this is the franchise money that arrives in March and April. Transient Occupancy Tax (TOT) is always a full month behind, so the December report actually has only TOT for July through December. Another big issue with revenues is timing. State agencies are hanging on to their money to earn as much interest as possible before releasing it. The COPS grant in the SLESF Fund 282 is now being released quarterly, instead of one lump sum in October.

Expenditures are also subject to timing, although the volatility is not as great as with revenues. Some expenditures are made at the beginning of the year, so an expenditure account may have 80% spent, but will not incur further expenditures at the same rate. Or, like Recreation and Parks expenditures, purchases are made based on activities planned. As of December 31, 2010, the General Fund had expended 55% of its budget.

With the adoption of the 2010/11 budget, the Community Promotions and Visitors Center budgets were cut by 5%, which amounted to \$5,675 and \$8,026 respectively. Council requested staff to revisit these cuts for possible reinstatement based on the TOT performance. As of December 31, 2010, TOT revenues equal 53% of the budget, the same percentage of receipt as last year based on the same time frame and budget amount. However, the City is entering its slow season for tourism, and staff does not feel that the current year's performance is great enough to warrant restoring those budgets. It is staff's firm belief to not fund any additional amounts to the Visitors Center or the Community Promotions Committee.

REQUESTED AMENDMENTS:

With the 2010/11 budget, the General Fund Reserve contained \$165,513 in excess of the 27.5% reserve requirement; these budget adjustments ask for \$138,233, with \$100,000 of that to be a loan to City funds to be repaid with energy savings recognized, per the enclosed list. The balance of the requests from reserves is \$9,000 for the Police Department, \$8,500 for Public Services Department, and \$21,500 for Transit. A small excess revenue (\$767) is reducing the amount from \$139,000 to \$138,233.

In February 2010 (Resolution No. 07-10), the City authorized staff to enter into an agreement with the California Energy Commission to receive a grant for \$55,983 plus participate in a low-interest loan for \$95,000, to be repaid with energy savings. In December 2010, staff received the loan documents, informing us that the loan was tied to the American Recovery and Reinvestment Act (ARRA). This small loan would be subject to the extensive amounts of reporting and records retention that are required with all ARRA projects. In addition, the mandated purchasing constraints would significantly increase the costs of such replacements as the refrigerators found in the Veterans Building and Community Center, and various facility air conditioning/heating units. This caused staff to reconsider the value of entering into such a small, interest-bearing loan with such huge staff commitment and restrictions. As such, staff declined the participation in the loan program, but remains convinced that energy-saving projects are of great worth. With this rationale, staff suggests the use of General Fund Reserves to complete these projects. The \$100,000 loan would be repaid in 8 years based on dollars saved on energy costs.

The Police Department is requesting funds to purchase expiring Level III High-Risk ballistic vests.

The replacement of these vests was not included in the 2010/11 operating budget proposal, and there are insufficient funds in the Police Department's budget for this purpose.

The Public Services Department is requesting funds for 7 participants (5 Planning Commissioners and 2 staff members) to attend the League of California Cities Planning Institute. There are no extra funds in the Public Services budget for this purpose.

The Transit Fund is experiencing a revenue shortfall due to the 2010/11 changes in program delivery, and is requesting a transfer of \$21,500 from the General Fund Reserve. The transfer will not occur until year end, and will not exceed \$21,500 without further Council authorization. After reviewing the first six months of the new Morro Bay Transit fixed route and Call-A-Ride service, projected annual farebox revenues for FY 2010/11 are estimated to be \$21,500 less than originally budgeted, and no corresponding expenditures can be reduced without making cuts to service or increasing fares. One reason for this is the number of Call-A-Ride trips is fewer than originally estimated, in part due to the constraints on who can use Call-A-Ride (currently senior, disabled and K-12 only). There are some former regular Dial-A-Ride riders who are not using the fixed route because they live up steep streets in north or south Morro Bay, but could use the Call-A-Ride service, if allowed by policy. There is capacity available to open the Call-A-Ride trips to all members of the general public. Staff is currently developing a survey to send to all MB residents to determine if there are minor adjustments that could be made that are designed to increase ridership and fare revenue. The survey results and any subsequent recommendations for service or fare changes will be brought to the Council in late April/early May. Staff feels that expanding the use of Call-A-Ride to all users now may reduce the need for the full \$21,500 from General Fund Reserves. If Reserve use is not approved, service cuts will be required.

The Fire Department is requesting the use of Measure Q funds in the amount of \$38,000 to benefit from a one-time opportunity to purchase two new, 12 lead electrocardiograph/defibrillator (ecg) machines. San Luis Ambulance is purchasing 27 units, and negotiated a 20% reduction in cost; the company is offering us the same price. This price includes the trade-in value we will receive for our two 3 lead ecg units that are 11 years old. The County is moving toward the standard use of 12 lead units for field identification of patients qualifying for rapid catheterization. If this is not approved, these units will not be able to be purchased.

The Harbor Department is requesting an adjustment to its budget in the amount of \$7,000 to cover the cost of watercraft insurance. This insurance was not charged to the Harbor Department last year, which explains its omission from the original budget document. If needed, funds will be taken from the Harbor Accumulation Fund to cover this expense.

Resolution No. 13-11, adopting the mid-year budget amendments, is presented for approval. The Resolution's supporting spreadsheet will reflect any amendments made at this meeting.

RESOLUTION NO. 13-11

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AUTHORIZING THE 2010/11 MID-YEAR AMENDMENTS TO THE CITY'S
OPERATING AND CAPITAL IMPROVEMENT BUDGETS**

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

WHEREAS, the City of Morro Bay is required to appropriate and expend public funds to conduct its day-to-day business activities; and

WHEREAS, the City Council adopted the original Operating and Capital Improvement Budgets on June 14, 2010 by Resolution No. 28-10; and

WHEREAS, the City Council deems it necessary to amend said budgets.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, that the operating budgets of the City of Morro Bay are amended by additional revenues and expenditures as shown on the attached schedule.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8th day of February 2011, by the following vote:

AYES:

NOES:

ABSENT:

WILLIAM YATES, Mayor

ATTEST:

BRIDGETT KESSLING, City Clerk



AGENDA NO: D-4

MEETING DATE: 02/08/11

Staff Report

TO: Honorable Mayor and City Council **DATE:** February 1, 2011

FROM: Kathleen Wold, Planning Manager

SUBJECT: Discuss Options for Amending Parking Requirements for North Morro Bay

RECOMMENDATION:

Review options and give direction to staff.

FISCAL IMPACT:

A minimal amount of staff time has been spent on preparing this report, however if staff were to be directed to prepare an amendment to the Zoning Ordinance/Local Coastal Plan there would be fees for noticing, filing fees for environmental determinations and costs associated with staff time.

BACKGROUND:

Recently there have been a few instances where vacant buildings located in the North Main Street area have had difficulty establishing new business. One issue when establishing a new business has been the requirement to provide additional parking if the new use is more intense and therefore requires additional parking. At the December 13, 2010 City Council meeting Councilmember Borchard requested that staff provide a report on the status of parking in the North Main Street area to include options for modifications or amendments to City requirements which would address buildings where the number of stalls is nonconforming to today standards.

DISCUSSION:

The purpose of the parking regulations contained within the Zoning Ordinance is to minimize street congestion and traffic hazards; and to provide safe and convenient access to land uses. With this goal in mind the Zoning Ordinance contains policies which regulate when parking is required, how much parking is required and how the parking is provided. Section 17.44.020.A.1 states: For every structure erected or enlarged, and for all land devoted to a new use, and for any structure or land changed to a more intensive use that would require the provision of more parking spaces over what already exists, off-street parking spaces shall be provided in accordance with the requirements and standards of this chapter, a change, expansion or intensification of land use which would increase the number of parking spaces required as provided in this title shall be based only upon the number of spaces required for the change or expansion.

Prepared by: _____ Dept. Review: _____

City Manager Review: _____

City Attorney's Review: _____

This means that when a business applies to occupy a building that the proposed use is reviewed pursuant to the previously approved uses at the location to determine if the new use is more intensive and therefore would require additional parking. When it is determined that additional parking is required that business owner is notified and given all options available to satisfy the requirement.

Currently the code allows for the following:

- Meet the increase parking demand on site.
- Meet the increase parking demand on site other than the site where the use is located provided that the site is located within 600 hundred feet of the use to be served and an adequate recorded indenture is provided.
- Pay a Parking In-Lieu fee if the subject site is within the Parking Management Plan area and it is determined that the reasonable and practical development of the property precludes the provision of required parking on site.
- Creation of a Parking Assessment District.

Other cities provide exemptions for older buildings deficient in parking to facilitate conversion from one business use to another. Sometimes these exemptions are based within a specific geographical area, a defined base limit for intensification such as intensification of 10% or 20% allowed then additional parking will be required or a complete exemption for any change in use but not structural additions. The following is a list of options to consider:

- Create a specific area (a map with boundaries) in the North Morro Bay area for an exemption to section 17.44.020 or allow the exemption city wide.
- Define a framework for the exemption. For instance all existing buildings built before the current code was adopted (1988) would be exempt from Section 17.44.020 if the change in use did not result in an increase in parking demand of more than 20 percent. The framework must take into consideration the overall purpose of the regulations which is minimize street congestion and traffic hazards while providing adequate safe and convenient access to land uses. As such a blanket exemption would not be favored but rather exemptions with adequate safe guards to ensure compliance with the stated overall purpose of the chapter.
- Create a Parking Assessment District to provide parking in the area. A Parking Assessment District while effective would be a difficult option to get buy-in from the property owners in the area. While owners of commercial property in the area want relief from the burden of providing parking in order make their property more marketable to businesses, most would probably not find themselves agreeable to incurring an additional assessment to support parking facilities in this current economy.
- Amend the Parking Management Plan and establish a new parking in-lieu district area and associated fee. The two districts (the Downtown area and the

Embarcadero area) currently established within the city have been viable options for businesses to pursue when parking could not be accommodated on site. The advantage to pursuing this option is that the procedures already exist and utilizing a procedure already in use in other areas of the city would not have the potential create inequitable circumstances as it relates to parking within the city.

CONCLUSION:

This report gives a broad overview of the situation occurring in the North Main Street area and a few of the possible solutions to the problem, the Council should consider the issue and give direction to staff.

ATTACHMENTS

Also attached is a “whitepaper” entitled “Big-Box Ordinance and Conditional Use Permit Tool Kit” (Attachment B) that is very useful.

This Staff Report also reviews big-box ordinances in San Luis Obispo County, and the options to consider in an ordinance.

DISCUSSION:

Because there is no statewide ordinance in California that regulates supercenters, each city or county must decide if, and in what manner, it will restrict the ability of large scale businesses to establish stores in their area.

The County of San Luis Obispo and the cities of Paso Robles, Atascadero, San Luis Obispo and Arroyo Grande have ordinances limiting the size of retail buildings. The City of Santa Maria has also adopted a big-box ordinance. The cities of Grover Beach, Pismo Beach and Morro Bay do not have an ordinance regulating the size or type of retail buildings.

In Paso Robles, the City’s big-box ordinance is a standard noted in the Zoning Ordinance. It states that for commercial buildings with greater than 90,000 square feet of gross floor area, nontaxable merchandise floor area shall not exceed 8% (7,200 square feet) of the total gross floor area of the building. The ordinance essentially only limits “superstores” selling food items, but it still allows for the construction of larger retail buildings.

The City of San Luis Obispo’s big-box ordinance can be found in several sections of the City’s Zoning Regulations (MC 17.16.035), in the descriptions for each zoning district (17.38.020 through 17.46.020), and in the Community Design Guidelines (Section 3.2). Rather than limiting the area to nontaxable goods, San Luis Obispo set an overall limit to the size of large retail stores. Under no circumstances is a building larger than 140,000 square feet allowed. The Code states that once a retail building exceeds 60,000 square feet, the project must go before the planning commission. The building may be permitted to be larger than 60,000 square feet and up to 140,000 square feet if findings are made that:

1. The proposed use will serve the community, in whole or in significant part, and the nature of the use requires a larger size in order to function.
2. The building in which the use is to be located is designed in discrete elements that respect the scale of development in the surrounding area.
3. The new building is designed in compliance with the City’s design guidelines for large-scale retail projects.

The City of Arroyo Grande’s Municipal Code (Section 16.52.220) has a sliding scale for determining the amount of space available for nontaxable merchandise that is based on the overall size of the store. In short, the larger the store is, the lower the percentage of items that may be

devoted to nontaxable merchandise. Specifically the Code states that “no new store may be constructed in excess of 90,000 square feet, nor an existing store expanded if the resulting square footage exceeds 90,000 square feet, unless it meets the standards for the sale of nontaxable merchandise set forth below:

1. If total square footage for sales is to exceed 250,000 square feet, no more than 1% of total square footage may be devoted to nontaxable merchandise.
2. If total square footage for sales is to exceed 140,000 square feet, no more than 2% of total square footage may be devoted to nontaxable merchandise.
3. If total square footage for sales is to exceed 90,000 square feet, no more than 3% of total square footage may be devoted to nontaxable merchandise.”

The County of San Luis Obispo also uses a sliding scale. The County limits retail uses of 90,000 square feet to 139,999 square feet to no more than 3% of the floor area being devoted to nontaxable merchandise. For uses of 140,000 to 250,000 square feet, no more than 2% of the floor may be devoted to nontaxable merchandise; and for buildings exceeding 250,000 square feet, only 1% of floor space may be dedicated to nontaxable merchandise. The County also requires a reporting requirement. The owner(s) of a retail trade use exceeding 90,000 square feet of floor area must annually provide a report to the County’s Department of Planning and Building specifying the square footage of the retail store and the percentage of the floor area the square footage represents that was devoted to the sale of nontaxable merchandise during the previous year. The report must be filed no later than February 28 of the following year.

In order to draft a big-box ordinance, Staff will need specific direction from the Council. To facilitate discussion and direction to Staff, the following questions should be considered:

- **Does the Council want to direct staff to draft a big-box ordinance regulating certain retail uses, i.e. supercenters?**

YES OR NO

- **If the direction to staff is to create the ordinance, the next decision involves the size of the store to be regulated.**
- **What is the square footage threshold a store must cross to be subject to this ordinance?**
- **Should the ordinance set a maximum size for retail stores or will the ordinance be limited to preventing the amount of nontaxable items a store can sell?**

Most cities that have big-box ordinances regulate only the amount of nontaxable merchandise a store can sell if it exceeds a certain size, however the City of San Luis Obispo ordinance states that in no case will a retail building be larger than 140,000 square feet.

- **What will the basis be for regulating the sale of nontaxable goods, and what will the limit be?**

- 1. Regulate by % of total floor space*
- 2. Regulate by % of goods sold*
- 3. Regulate by % of inventory*

- **Should a sliding scale that reduces the amount of space available to non-taxable goods as the building gets larger be used for different building sizes?**
- **Should design standards be developed for buildings exceeding a certain size? If so what size? What design items should the ordinance cover?**

Parking, landscapes, building entrances, exterior materials, design, roof lines, lighting or signage.

CONCLUSION:

Staff recommends that you review the report and provide direction on whether Staff should begin the process of drafting a Big Box Ordinance.



ATTACHMENT A

AGENDA NO: D-2
Meeting Date: 9/28/98 Action: _____

Staff Report

TO: City Council
FROM: Mayor Novak
DATE: September 18, 1998
SUBJECT: Request to Agendize the Discussion of a General Plan Amendment to the City's Zoning Ordinance Relating to Commercial Retail Shopping Centers that Regulate Floor Area Devoted to Non-Taxable Sales in Stores Exceeding 90,000 Square Feet

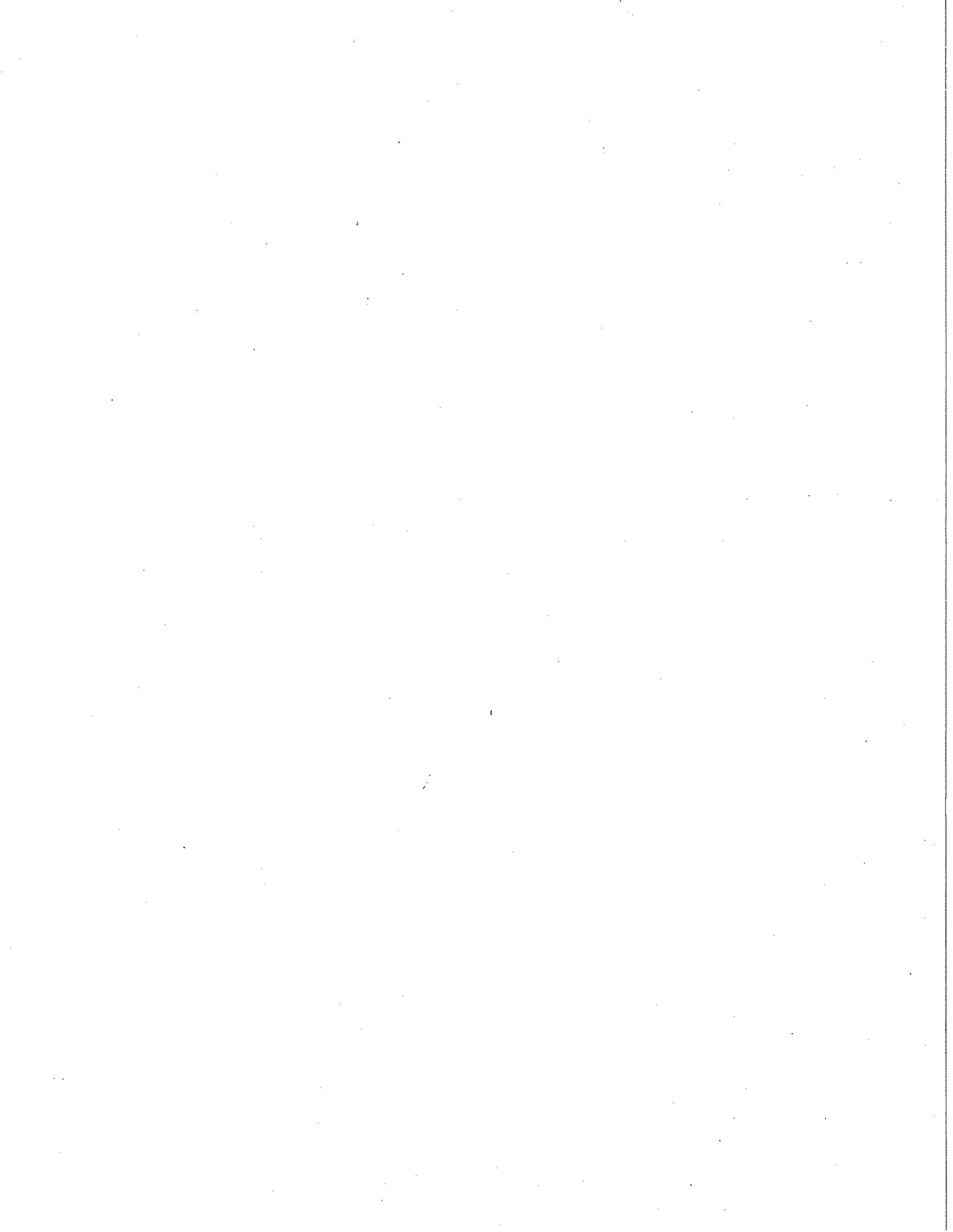
RECOMMENDATION

Direct staff to work with Mayor Novak on preparing a report to Council for adopting a General Plan amendment to the City's Zoning Ordinance relating to commercial retail shopping centers that regulate floor area devoted to non-taxable sales in stores exceeding 90,000 square feet.

BACKGROUND

It is requested this item be discussed for consideration at a future Council meeting. Attached is a memorandum obtained from the City of Santa Maria providing more details about the plan amendment that their City has adopted.

Prepared By: CW Dept. Review: _____
City Manager Review: _____
City Attorney Review: _____



M E M O R A N D U M

Community Development Department

September 12, 1997

TO: Planning Commission

FROM: Community Development Department Director,
William Orndorff 

SUBJECT: GENERAL PLAN TEXT AMENDMENTS (RETAIL SHOPPING CENTERS),
GP-97-01 AND ZONING TEXT AMENDMENTS, Z-97-01, E-97-16

RECOMMENDATION

It is recommended that the Planning Commission adopt a resolution finding no significant environmental impact associated with the subject amendments and recommending that City Council approve the General Plan and Zoning Text Amendments related to commercial retail shopping centers and permitted uses there in.

INTRODUCTION

The purpose of this general plan amendment and zoning text change is to preserve the City's existing shopping centers that are generally located along Broadway and Main Street.

These centers provide convenient shopping and employment in close proximity to most residential neighborhoods in the City. This distribution of shopping and employment creates a land use pattern that reduces the need for vehicular trips and encourages walking and biking for shopping, services and employment.

The City of Santa Maria is also trying to maintain its central coast retail share because the City is very dependent on income from retail sales which totals 42 percent of the General Fund Budget. For comparison purposes, the next largest general fund income sources, property tax and vehicle license fees, each represent 11 percent of the general fund budget. In addition, the retail business and retail market is an ever changing industry. Due to the evolution in retail demand changing from strip centers in the 1960's, downtown redevelopment in the 1970's, big box retail in the 1980's, factory outlet centers and lately superstores that contain everything, including groceries, under one roof in the 1990's, it appears necessary to address commercial uses to preserve the City's existing desirable land use patterns. The proposed general plan and zoning text amendments will require primarily retail sales in freeway and regional shopping centers and will regulate the floor area devoted to non-taxable sales in stores exceeding 90,000 sq. ft.

The City Council, through a legislative action in 1996, conditioned the approval of the Crossroads Regional Commercial center to address the issue concerning the percentage of floor area devoted to non-retail sales. The condition of approval is reproduced as follows: *taxable*

"As per City Council action on November 19, 1996, by adopting Ordinance 96-15, a special condition was established regulating the amount of floor area devoted to non-taxable merchandise (food products) in commercial uses that exceed 90,000 sq. ft."

"For commercial uses exceeding 90,000 sq. ft., the total gross floor area devoted to non-taxable merchandise, including food products, shall not exceed eight (8)% of the total gross floor area of the building."

The above is a condition of the ordinance approving the zone change for the Crossroads general plan and zone change. It is now recommended that these provisions be codified and therefore, apply Citywide in order to preserve the City's distribution of retail/commercial centers.

BACKGROUND

The City of Santa Maria has eleven shopping centers that either contain or previously contained a grocery store. These shopping centers were mainly established along Broadway and Main Street to service the community as growth occurred, see Attachment (A). In most cases, a grocery store served as the "major attractor" in the shopping center. In addition, many neighborhood and community retail and service oriented commercial businesses were established in the shopping center as accessory to the primary grocery store.

In centers where the primary grocery store either closed or moved, high vacancy rates occurred and/or deterioration took place in the remaining center. Examples include, Peppertree Plaza; Santa Maria Shopping Center, Penney's; Alpha Beta Center; and Broadway Plaza. For the residents in the area, longer trips became necessary to acquire day-to-day consumer goods.

The retail shopping centers are located on property zoned Central Business District (C-1) and General Commercial (C-2). The General Plan, Land Use Element, Page 15, describes the "purpose" and "types of uses" that are associated with these commercial land use designations which are reproduced in-part as follows:

"To provide areas which offer convenience goods and services to local residents without disrupting residential character of an area"... "Types of uses include supermarkets, convenience grocery stores, drug stores, laundermats, bakeries, shoe repair shops"... "To include the majority of retail uses outside the central core, particularly along the lineal development corridors which have emerged."...

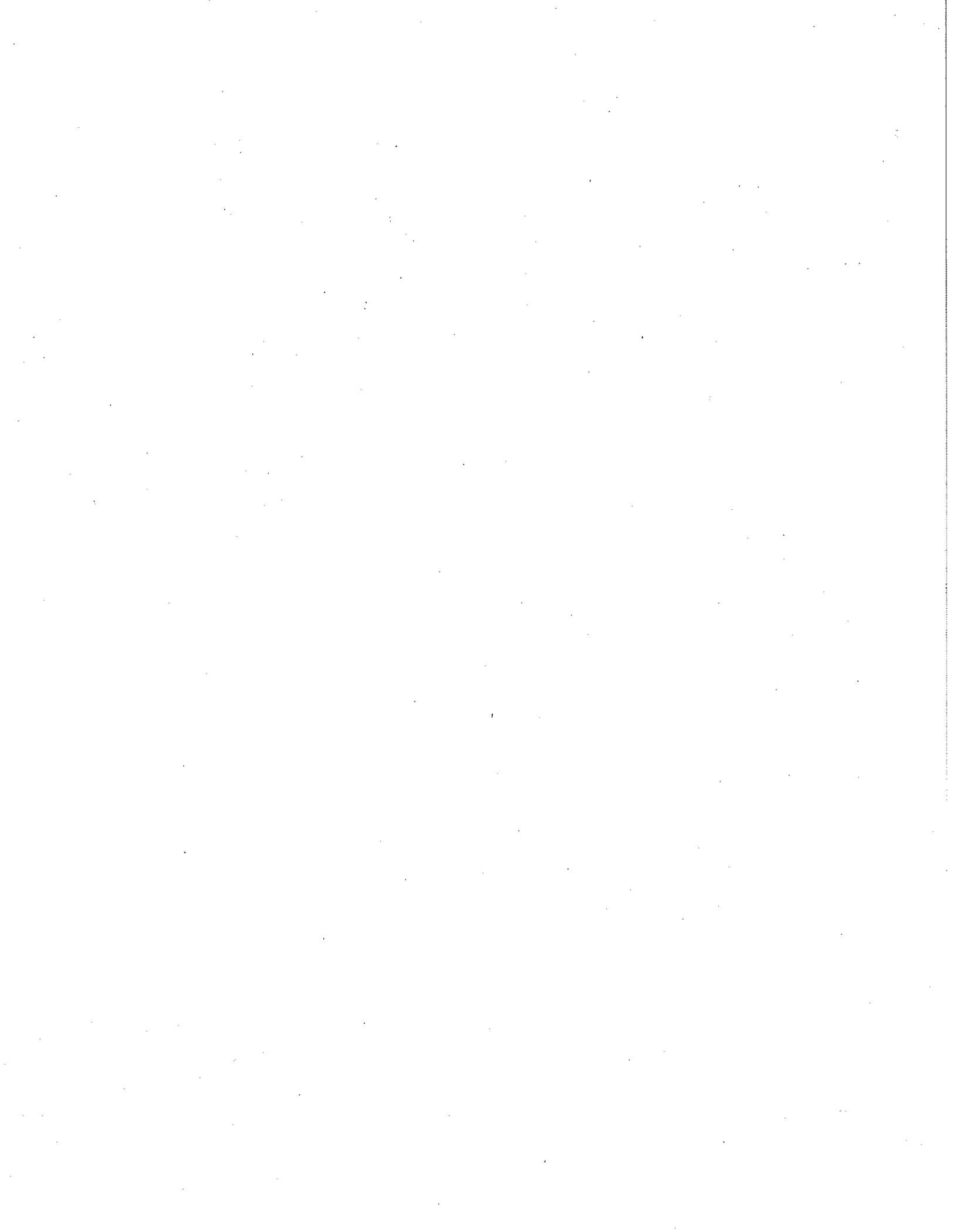
These policy statements recognize the importance of maintaining the City's strip commercial shopping centers.

As very large commercial developments continue to develop, the City must be aware of the direct and indirect effects this development will have on the City's existing commercial retail centers. The City should encourage predominately retail uses and discourage large non-taxable retail uses from these large commercial centers. A regional oriented, non-taxable retail store could cause grocery stores in existing strip centers to close and significantly change land use and employment patterns throughout the City. Once the strip center grocery store (major attractor) is closed, the closure of other retail establishments soon follow. For these reasons, the following general plan and zone amendments are proposed.

General Plan, Land Use Element Amendments

The Land Use Element of the General Plan contains many goals, policies and objectives that are related to the subject amendments. Some of these general plan policies will require amendments and new policies should be added to support the proposed goal to preserve and maintain existing community oriented shopping centers.

Pages 23, 26 and 27 of the Land Use Element have been reproduced containing the recommended amendments and additions necessary to complement the proposed zoning amendments.



ATTACHMENT B

Midwest Environmental ADVOCATES *pro bono publico*

Big-Box Ordinance and Conditional Use Permit (CUP) Tool-Kit

Authors:

Brent Denzin

Attorney

Equal Justice Works Fellow

Erin Elizabeth Hupp

Law Clerk at Midwest Environmental Advocates, 2006

American Planning Association, Planning and Law Division Fellow, 2006

Masters in City and Regional Planning and Juris Doctor Candidate

University of North Carolina at Chapel Hill, 2008

Last updated: August 29, 2007

Midwest Environmental Advocates, Inc. is a nonprofit environmental law center that provides technical assistance and legal representation to communities and groups working to protect the public's right to clean air, clean water and clean government.

**BIG BOX ORDINANCE AND CONDITIONAL USE PERMIT
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I. INTRODUCTION

A well-constructed big-box ordinance equips a community with tools to make educated decisions about big-box development in their area. Having a big-box ordinance in place *before* a big-box retailer applies for a permit ensures that your government is aware of your community's values and standards when processing the big-box retailer's application. Prevention is the best protection against unwise land use.

This section of the tool-kit includes guidelines that a community should consider when drafting a big-box ordinance. In addition to the components addressed below, take time to protect your ordinance from efforts to avoid its requirements. Make sure that your big-box ordinance is very clear and precise. Include a glossary so that there is no mistake as to what the ordinance intends. The more measures you include, the stronger your big box ordinance will be. Make sure you include both case-specific conditional use permit requirements and clearly defined size caps. A diverse and complete big-box ordinance will set basic standards while reserving authority to address site-specific impacts that threaten community vision and land use goals.

Big-box ordinances are not the only way to ensure wise land use planning in your community. You may also promote smaller businesses and smart growth in your community's Zoning Ordinance or Comprehensive Plan. For example, Turlock, California, amended their ordinance to include neighborhood stores.¹

II. DEFINITION OF A BIG-BOX

A. Link Definition of Big-Box Store to Conditional Use Permits

While it may seem obvious to those drafting the ordinance, make sure to stress the need to specify the big-box development as a "conditional use" subject to a conditional use hearing process.² Conditional use permit applications should include a detailed map and description of the development. The conditional use permit application should be subject to individual review and consideration by the planning commission.

Example: Turlock, California, amended its ordinance to specify that a conditional use permit (CUP) is required for certain large-scale retail stores (discount stores and discount clubs).³

Example: Mount Shasta, California, requires proposals for stores over 20,000 square feet to obtain a conditional use permit.⁴

B. Including a Size Cap

Size caps are a clear-cut way to create a standard for big-box retail in your area. The size cap is recognition that, at a certain size, retail establishments simply exceed the needs of the community and will start to drain its resources. Size caps are vital to any effective ordinance.

Without these caps, it is likely that your community will end up with a 400,000 square foot store. That is not the protection your community deserves.

The exact size used in the ordinance is determined by the community. Many communities select a size between 25,000 and 80,000 square feet. To give you some perspective, here are some average sizes for typical developments provided by the New Rules Project in Minneapolis, MN:

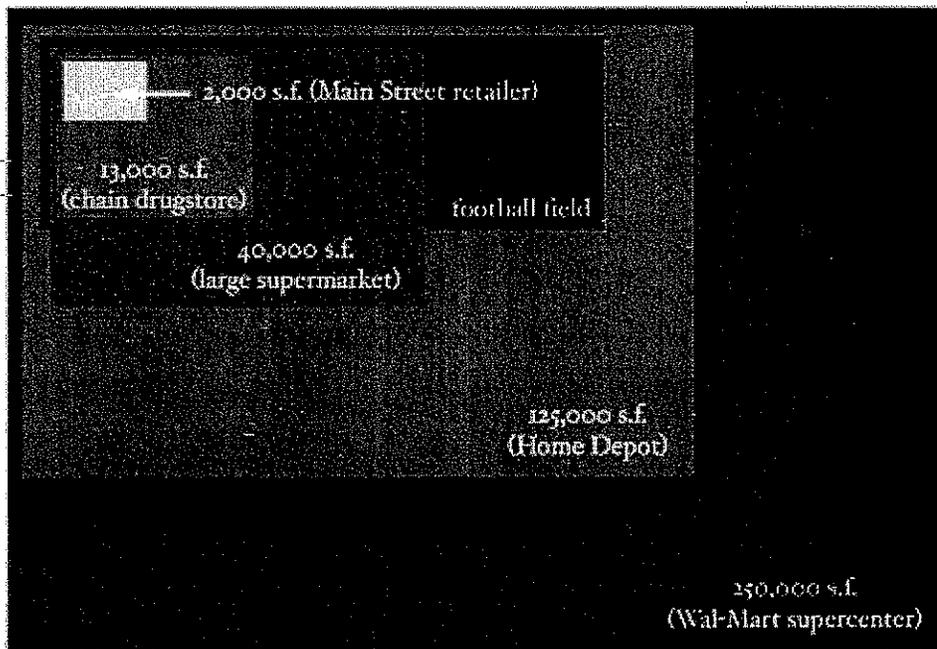


Chart: A normal downtown retailer is 2,000 sq. ft.; a large supermarket is 40,000 sq. ft.; a football field is 57,600 sq. ft.⁵ Astonishingly, some big-box developments range from 125,000 - 200,000 sq. ft.⁶

Wal-Mart and Target are currently building "supercenters," which are 180,000 to 250,000 square feet, or between 4.1 to 5.7 acres.⁷ Other earlier-generation big box retail stores such as Wal-Mart outlets, Home Depot, Lowe's, Office Depot, and Bed Bath & Beyond, have sizes ranging from 60,000 to 140,000 square feet.⁸ Barnes & Noble and Borders Books stores range from 25,000 to 45,000 square feet and free-standing chain drugstores such as Walgreens are usually from 11,000-15,000 square feet.⁹

- **TIP:** Include language that does not allow the city council simply to change the square footage limit of the big-box cap, thereby severely weakening the big-box ordinance. In other words, it is a straightforward process to alter the square footage limit in a big box ordinance. This vulnerability underscores the need for other conditional requirements in your big box ordinance. For example, including certain stormwater regulations or impervious surface limits in your big-box ordinance will

ensure that the box's impact on the community is limited should the council later decide to amend the size cap. See the Impervious Surface Section below.

Finally, your community may tailor the size cap according to land use designation. If one size does not fit all, then choose the varying size cap.

Example: Bennington, Vermont, defined a big-box as 75,000 square feet in the commercial district and 50,000 square feet in the rest of the town.¹⁰

1. Include Outlots and Multiple Retailers in the Size Cap.

Make sure that the calculated square foot size of the big-box includes outlots,¹¹ outdoor sale areas, and storage. In Calvert County, Maryland, Wal-Mart is attempting to skirt a size cap law by erecting two adjacent stores.¹² Communities can avoid this by structuring the definitions within their ordinances to treat retailers occupying multiple buildings as a single retail use subject to the size cap.

➤ **TIP:** Include multiple retailers under one size cap if applicable.

Example: In Hailey, Idaho, shopping centers with multiple tenants are allowed up to 50,000 square feet in the business zone¹³, 36,000 square feet in the limited business zone¹⁴, and 25,000 square feet in other industrial and commercial zones.¹⁵

2. Cap the Roof Size of the Big-Box

Promote big-box development that considers the "footprint," or the size of the land that the big-box occupies. A larger size big-box has more negative effects than a smaller footprint.

Example: Hailey, Idaho, limits the roof area of all retail stores to 36,000 square feet.¹⁶

Example: Monona, Wisconsin, approved a Wal-Mart Supercenter on the site of a vacant K-Mart store. Due to lack of available land, the Wal-Mart Supercenter was forced to fit a Supercenter into a 14-acre plot of land, roughly half the size of their usual sites.¹⁷

3. Consider Defining a Big-Box by the Number of Vehicle Trips it Will Generate Per Day.

Example: Greenfield, Massachusetts, defines retail that must adhere to their big -box ordinance by their square footage **OR** if they generate more than 500 vehicle trips per day.¹⁸

III. LINKING YOUR BIG-BOX ORDINANCE TO OTHER DOCUMENTS

Like other land use ordinances, the big-box ordinance should reflect a community's long-term plans and vision. The big-box ordinance is likely not the first time the community has set forth a vision for city growth. Make sure the ordinance supports this greater vision.

A. Link Big-Box Ordinance to Comprehensive and Land Use Plans

Linking the big-box ordinance to the Comprehensive and Land Use Plans legitimizes these plans, which otherwise are only advisory documents until 2010.¹⁹ This link forces the town council to consider whether the effects of the development coincide with the community's land use vision.

B. Link the Big-Box Ordinance to the Zoning Ordinances

Linking the big-box ordinance to the zoning ordinance ensures that big-box retailers conform to parking, stormwater, and other requirements set out in the zoning code.

- **TIP:** Since big-box developments are not average developments, do not treat them like average developments. Recall that a normal downtown retailer is 2,000 sq. ft.; a large supermarket is 40,000 sq. ft.; a football field is 57,600 sq. ft.; and a big-box development ranges from 125,000 - 200,000 sq. ft! Accordingly, increase the requirements set out by the zoning code and promote innovative techniques for the big-box to reduce stormwater runoff and impervious pavement in your big box ordinance. See Impervious Pavement section below.

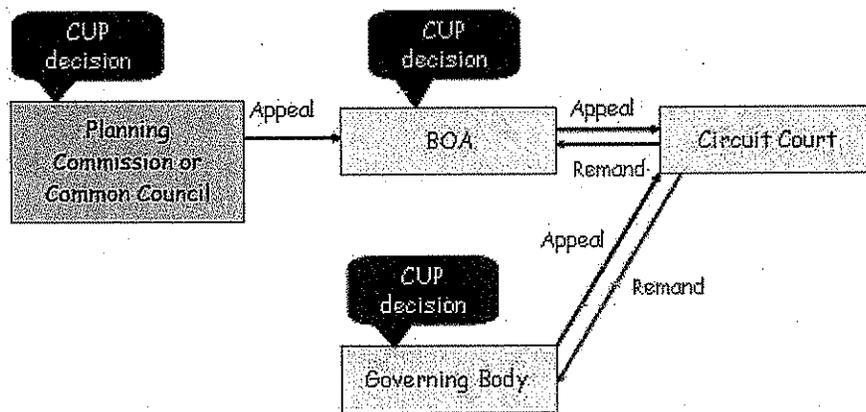
IV. SETTING CONDITIONAL USE STANDARDS

While proactive ordinances, like big-box ordinances, are the most effective way to deter big-box sprawl, even the most effective ordinances may not equip a community for all situations. If your community does not have a big-box ordinance, or if the ordinance does not cover all impacts of a big-box development, you can still take action using a Conditional Use Permit (CUP).²⁰

Zoning codes generally recognize two categories of uses that are allowed in each zoning district: 1) standard permitted uses; and 2) conditional uses. When a land use is considered a conditional use, the Applicant must receive a CUP before construction can begin. CUP applications are generally reviewed by the Planning & Zoning Committee/Commission (herein "Plan Commission") or, in rare cases, the Common Council. As part of the review, the governing body may request that the applicant satisfy conditions that address the Commission's concerns regarding the project's impact. This is a critical stage for citizen input for two reasons: 1) the CUP stage is often the last opportunity for public input in the planning process before the local government approves the development; and 2) the Plan Commission has a unique opportunity to assess and minimize impacts with CUP conditions.

Throughout this tool-kit are examples of communities that have successfully used CUP conditions to limit adverse environmental, economic, and community impacts from large developments. With the following conditions as a guide, you can get involved in the CUP hearings and make sure your Commission adequately addresses foreseeable impacts before they are imposed on your community.

Overview of the Conditional Use Permit (CUP) Process²¹



Generally, during the CUP application process, the Plan Commission must determine:

- 1) Whether the use proposed in the application will be injurious to the neighborhood or otherwise detrimental to the public welfare; and
- 2) Whether the use will be in harmony with specific zoning conditions *and* the general purpose and intent of your community's zoning ordinances (and possibly the Comprehensive Plan/Land Use Element, depending on the locality).²²

In many cases, appropriate conditions for approval are set forth in the zoning ordinances. However, when considering a CUP application, the governing body has the legal authority to require applicants to meet additional conditions that are not explicitly listed in the ordinances, if necessary to meet the goals and purpose of the zoning code or comprehensive plan.²³

Below is a list of conditions that communities may request as part of a CUP application review. This list is not comprehensive and conditions will be more or less applicable depending on the situation. While many of the examples cite big-box ordinance requirements, these requirements can and should be imposed as a CUP conditions regardless of whether they are specifically set forth in your community's zoning ordinances.

V. REQUIRING A SITE PLAN

Before the Plan Commission can evaluate a project's impact, it needs a detailed site plan that expands beyond the building design. Among other details, the site plan should identify environmental characteristics of the site and surrounding area, the site's drainage pattern, and specific landscaping features.

Example: Homer, AK requires that a site plan show "the location of setbacks, easements, all existing and proposed buildings and structures, access points, buffering, vehicular and pedestrian circulation patterns, parking, loading and delivery areas, mechanical equipment, drainage, landscaping, and the specific location of the use or uses of the development, elevation plans of all proposed structures, and other information necessary to establish that the requirements will be met."²⁴

VI. LIMITING IMPERVIOUS PAVEMENT

Any effort to reduce unnecessary impacts from big-box retail should begin by addressing the sprawling, one-level, big-box design. Big-box developments often replace undeveloped open spaces with 20-40 acres of impervious surface (i.e. asphalt, roofing). The new parking lots and roofs create approximately 16-times more polluted runoff than the former open space, nearly all of which ends up in nearby waterways.²⁵ Without treatment, pollutants like oil, grease, phosphorus, road salt, and dirt, can seriously impair otherwise healthy water bodies. Partly due to the single-story big-box design, communities are paving land at a rate 3 times faster than population growth.²⁶ Consequently, increased urban runoff has become a leading cause of degradation in many waters across the country.²⁷

Additionally, impervious surfaces do not allow storm water to filter back into the soil and replenish your community's groundwater supply. The loss of groundwater in addition to the direct impact on surface waters creates a serious impact on your local resources. In many communities, groundwater supply is already a serious concern, yet the government continues to allow infiltration areas to be replaced by parking lots.

To be sustainable, site designs must attempt to maintain as much of the natural function of the land as possible. The development plan should strive to be "hydrologically-neutral," meaning that post-development infiltration and runoff volumes are equal to the pre-development rates and stormwater is effectively managed on-site. On-site storm water management restores the water cycle, replenishes the groundwater, and reduces runoff to nearby water bodies. Additionally, on-site infiltration saves community costs associated with large catch basins, pipes, and off-site storage ponds to control stormwater.²⁸

Finally, sprawling big-box footprints lead to sprawling commercial districts. Big-box districts often dwarf downtown areas due to their one-level design and extensive surface parking. As commercial developments extend farther from residential areas, the public is forced to drive farther to shop. Currently, the distance people drive on a daily basis is increasing 3-times faster than would be expected given population growth.²⁹ In addition to the unnecessary increase in air

pollution, which already violates EPA standards in at least 10 Wisconsin counties,³⁰ the public is wasting gas driving to buy everyday goods in distant locations.

Given these goals, Plan Commissions should require applicants to evolve from the one-level building and surface parking designs and take steps to meet the project's objectives while minimizing impervious surface. For example, the following conditions and incentives have allowed other communities to shrink big-box developments and promote sustainable, controlled growth:

A. Multi-level, Structured Parking

Communities can start reducing impervious surfaces by eliminating the outdated, sprawling big-box parking lot design. Structured parking helps reduce environmental impacts and preserve open space by providing the same number of parking places on a smaller footprint. For example, putting the parking beneath the store eliminates roughly half the store's impervious surface.³¹ Turning a 30-acre big-box development into a 15-acre big-box development dramatically reduces the amount of polluted runoff that is sent into our rivers, lakes and streams. More importantly, this smaller footprint raises possibilities for "infill" development in existing, vacant commercial areas.³²

Fortunately, surface parking is not a necessary part of the big-box package. Big-box developments can and should use underground parking and/or parking structures to meet parking needs. Plan Commissions do not need to look far to find big-box retailers that are fitting into smaller spaces with structured parking.³³ Yet, outdated designs continue to circulate around Wisconsin. To protect the community from unnecessary sprawl and stormwater impacts, communities should condition CUP approval on multi-level, structured parking.

Example: In Monona, WI, the City approved a Wal-Mart Supercenter on the site of a vacant K-Mart store. Due to lack of available land, the Wal-Mart Supercenter was forced to fit a 200,000-square foot Supercenter into a 14-acre plot of land, roughly half the size of their usual sites. To fit into this smaller footprint, the Monona Wal-Mart Supercenter uses underground parking. The use of underground parking in Monona, WI, shows that Wal-Mart and other big-box retailers have the ability to eliminate the above-ground parking lots.³⁴

B. Require Smaller Parking Lots

In addition to underground/structured parking lots, communities may require the developer to reduce the size of their parking lot by minimizing the size of each stall and/or number of total parking stalls. To minimize parking lot size, communities can use actual average parking demand instead of the maximum peak season rate. Alternatively, your community can follow the standard published by the Institute for Transportation Engineers (ITE). ITE standards require that this would be no more than 6.25-7 spots per 1,000 sq. ft.³⁵

Example: Oregon, WI, will be proposing a paved parking ratio of no more than 120% of the minimum parking ratio identified by ITE.³⁶

Example: Stoughton, WI, requires a maximum of four parking spaces/1,000 square feet of gross floor area for buildings 25,000-400,000 square feet.³⁷

- **TIP:** Check to make sure that the developer is not using the highest number in the local zoning code or ITE's range of recommended parking lot sizes. While the trend toward larger sport utility vehicles (SUVs) is often cited as a reason to use larger parking stalls, stall width requirements in most local parking codes are much larger than the widest SUVs.³⁸

C.Require that Parking Lots be Distributed Around the Building

The CUP may require that parking lots be distributed around the structure so that distance between the building and the sidewalk is reduced. By bringing the building closer to the road, the design encourages pedestrian traffic and will likely lower the footprint (scale) of the building.

Example: Wauwatosa, WI, requires that no more than 30% of the parking lot be located on any side of the big-box that is facing the street unless approved by the Plan Commission.³⁹

Example: Homer, AK, does not allow more than 50% of the parking between the front facade of the building and abutting streets or adjacent arterials.⁴⁰

D.Give Incentives for Pervious Pavement

Big-box stores can limit impervious asphalt surfaces by replacing portions of the parking lot with porous pavement. Porous pavement is made with asphalt, gravel, or concrete which allows water to filter through underlying soil and replenish groundwater. Often porous pavement is used in areas of the parking lot that do not receive heavy traffic, such as parking stalls, cart areas and cross walks. Due to the pollutants found in parking lots, porous pavements may not be appropriate in areas immediately adjacent to sensitive water bodies, water supplies, or in areas with high water tables.⁴¹ Nevertheless, when used in the right locations, porous pavement can be a great way to limit storm- water runoff.

Example: Wal-Mart's experimental stores in Aurora, CO, and McKinney, TX, are test spots for porous pavement.⁴²

Example: Philadelphia, PA, is using porous pavement to create places (for example, public basketball courts) where rain will be readily absorbed into the ground.⁴³

E.Give Incentives for Big-Box Retailers to Install Green Roofs, Rain Gardens, and other Low-Impact Development Designs.

Low-impact development (LID) designs should be a condition of approval for large retailers. EPA has identified a long list of LID designs that reduce impervious surfaces.⁴⁴ Retailers can

use rain gardens, bio-swales and other natural features to absorb stormwater before it enters a detention pond. Finally, rain barrels and cisterns allow big-box retailers to save money and protect the environment by re-using stormwater for non-potable uses.

Some LID designs have a variety of secondary benefits. For example, green roofs (or "roof gardens") not only reduce stormwater,⁴⁵ but also reduce heat from paved surfaces, regulate the building's energy costs (heating and cooling costs), protect the roof membrane, resulting in a material lifespan that is twice as long as conventional roofs, and provide an aesthetically pleasing alternative to large warehouse roofs.⁴⁶

Example: Chicago, IL, provides incentives to developers who install green roofs.⁴⁷

Example: Minneapolis, MN, made incentives for green roofs, rain gardens, and other LID designs when it restructured its stormwater utility fees in March 2005.⁴⁸

F.Promote Mixed-Use Development

As demonstrated in many older city centers, mixed use developments can be a great way to reduce our need for sprawling parking lots. Instead of separating the places we live from the goods and services we need, mixed-use developments include residences, restaurants, movie theaters, and other retail stores within walking distance from your neighborhood. By reducing our reliance on cars for everyday goods, mixed-use developments are a convenient way to downsize parking lots and promote sustainable growth.

Example: Duany, Plater-Zyberk & Co. created a mixed-use plan for Wal-Mart in Pass Christian, Alabama. The Pass Christian design would call for encircling the store's parking lot with multi-level retail shops and apartments as well as minimizing the overall footprint of the store. This parking lot formation would hide the parking lot from view from the street and provide Wal-Mart a base of potential shoppers in adjacent apartments.⁴⁹

VII.LANDSCAPING

As discussed above, there are a variety of landscaping options that can actively reduce impacts from big-box development. For example, rain gardens and bioswales are vegetated channels that slow down and help infiltrate storm water runoff before it is drained to a detention pond.⁵⁰ These natural areas should be interspersed throughout the parking lot to help break up large areas of impervious pavement and allow storm water to infiltrate the ground, replenishing groundwater rather than running off-site. Planted bioswales and berms also reduce the temperature of the big-box site, by removing heat-absorbing asphalt.

Example: Chicago's landscape ordinance requires any new parking lot of 3,000 square feet or more to install landscape islands and trees within the lot.⁵¹

Example: Wal-Mart's experimental environmentally sustainable big-box retail store in McKinney, TX, includes bioswales and berms.⁵²

Example: Homer, AK, requires buffers and landscaped islands with native vegetation.⁵³

Example: Stoughton, WI, requires developers to plant certain species of trees on-site.⁵⁴

VIII. LEED CERTIFICATION

LEED® (Leadership in Energy and Environmental Design) is a green Building Rating System® that is a voluntary, consensus-based national standard for developing high-performance, sustainable buildings. While LEED – RETAIL® standards are still in their pilot phase, LEED standards for other categories of design can provide an effective standard for promoting green, energy efficient big-box designs.⁵⁵ For example, big-box retailers could adhere to the LEED-NC® for new construction and major renovations.⁵⁶

To comply with LEED® standards, a developer is given a checklist at the time s/he applies for certification. A LEED®-accredited professional then utilizes the LEED® standards, as governed by the U.S. Green Building Council, to evaluate the building. The checklist includes criteria such as the reuse of building material, natural lighting, efficient energy use, and low-emitting materials. For those criteria that are not met, the Plan Commission and Developer can analyze the costs and benefits of meeting such criteria.⁵⁷

There are many public benefits of requiring LEED-certified buildings. Energy efficient buildings reduce the community's need for energy and decrease environmental impacts of generating energy.⁵⁸ Additionally, private sectors stand to benefit from LEED certification because 1) LEED buildings pay for themselves within four years with a 25%-40% return on their investment, and 2) LEED certified buildings have an average bottom line savings of 30% energy savings, 30-50% water savings, and 50-97% waste cost savings.⁵⁹

Example: Madison, WI, attempted to require Wal-Mart Stores to build under LEED standards. Wal-Mart fought the requirement but the City would not budge. Wal-Mart in turn declined to develop a retail store in Madison.⁶⁰

Example: For every rezoning application involving a large development area, the city of Chamblee, Georgia's new zoning ordinance will require a LEED analysis for informational purposes. However, Chamblee's new ordinance does not allow lack of LEED certification to be a factor in the rezoning decision.⁶¹

Example: The City of Chicago's Mayor Daley mandated that all new municipal buildings in Chicago be LEED certified.⁶²

IX. IMPACT FEES

Contrary to conventional wisdom, not all developments create net economic benefits for the community in the long-run. In fact, additional development can be a burden on existing communities if the costs associated with expanded police and fire services, road expansion and maintenance, increased school enrollment, stormwater control, and extension of sewer and water lines outweigh the tax benefits. Additionally, new developments may degrade environmentally sensitive areas, increase our reliance on car travel, or create other long-term costs. After the big-box is built, communities are often left to take necessary, and often expensive, measures to address these impacts.

Impact fees transfer these infrastructure costs directly to the developer and/or property owner who creates the additional costs. Impact fees can be used as long as they are in an amount that does not exceed the proportionate share required to serve the new development.⁶³ Impact fees are used to relieve governments from bearing the initial costs of new development, not to impose an arbitrary charge for development.⁶⁴

- **TIP:** Municipalities often use impact fees to install and maintain stormwater management facilities on newly developed sites in Wisconsin.⁶⁵

In Wisconsin, communities may collect impact fees for the following land uses:^{66/67}

- Facilities for collecting and treating sewage
- Facilities for collecting and treating storm and surface waters
- Facilities for pumping, storing, and distributing water
- Parks, playgrounds, and other recreational facilities
- Solid waste and recycling facilities
- Fire protection facilities
- Law enforcement facilities
- Emergency medical facilities and libraries.

- **TIP:** Due to statutory time limitations for collecting fees,⁶⁸ make sure that permits are conditioned on payment of the impact fee.
- **TIP:** Propose that your community enact an ordinance that allows impact fees for the above-listed facilities. If your community already has such an ordinance, advocate that the Plan Commission include impact fees in the CUP.

Example: Londonderry, NH, enacted an impact fee ordinance that applies to all new development.⁶⁹ According to this kind of ordinance, a big-box retailer could be required to pay impact fees for expanding water and sewer capacity.

X. REQUIRING A MANDATORY COMMUNITY IMPACT ANALYSIS

Big-box developments have an impact on the entire community's economy, traffic, and environment. Unfortunately, many Plan Commission reviews fail to consider impacts outside of the immediate site area. A Community Impact Analysis is a collection of separate economic, environmental, and traffic impact studies that analyze the development's community-wide impacts. The community-based, comprehensive analysis allows the Plan Commission to evaluate whether a proposed development will promote real growth in the community or offset short-term growth with long-term costs.

Community Impact Analyses should include an independent analysis of the economic, fiscal, and community impacts of big-box development.

- **TIP:** Often, big-box impacts are regional. Consider including a region-wide impact analysis that the Regional Plan Commission needs to approve before the applicant proceeds with their application. For example, the Cape Cod Commission requires a regional planning agency to approve or reject proposals for new construction larger than 10,000 square feet and changes of use for commercial sites that exceed 40,000 square feet. This review process includes a public hearing.⁷⁰ Similarly, New Jersey just introduced a bill to require regional impact analyses.⁷¹

A. Communities Should Independently Select Consultants

Independently selected consultants are more likely to conduct impartial impact analyses than consultants hired by the applicant. To avoid biased results, require that the municipality select the consultant.

B. Require Developers to Pay for the Impact Analysis

While independently selected consultants are necessary, communities should not have to bear the cost of an impact analysis. The developer is applying for a permit and, therefore, the developer bears the burden of convincing the governing body that the project will meet zoning regulations and protect the public's health and welfare. Therefore, it seems logical that the applicant pay for the impact studies.

Example: Bennington, VT, requires a Community Impact review for stores over 30,000 square feet that must be conducted by an independent consultant chosen by the city, and the developer pays costs.⁷²

Example: Middletown, RI, requires that developers submit detailed impact statements and pay a fee to cover the town's cost of hiring consultants to review the impact statements and offer independent analyses. For shopping centers and other commercial development, the fee is \$100 per 1,000 square feet of gross floor space.⁷³

C.Require Developers to Meet Specific Requirements with the Impact Analysis

To ensure that the study will include all necessary information for the council to make an educated decision, the Plan Commission should set clear directives for each impact study.

Example: Homer, AK, requires the following data:⁷⁴

- Estimated cost of necessary infrastructure expansion;
- Net impacts on current business district;
- Net change in sales tax and property tax base, revenues, and overall land values; and
- The estimated net impacts to local employment, wages and salaries, locally retained profits, property taxes, and sales taxes.

Example: Wauwatosa, WI, requires:⁷⁵

- Traffic and parking conditions on site and surrounding area;
- Municipal utilities and services;
- The physical and ecological characteristics of the site and the surrounding land, including wetlands, floodplain vegetation, wildlife habitat, and other environmental conditions;
- The scenic, historic, and archeological character of the community;
- The economic impact of the project on local businesses and residents, including number and types of jobs created, and amount of local labor to be used; and
- The amount, type, and location of potential spin-off development, impact of changing land use patterns and potential for development pressure on surrounding neighborhoods.

D.Include 10-20 year Horizon for Community Impact Study

Some big-box impacts are not felt until a few years after they have moved into the community. Make sure that the CUP is conditioned on Community Impact Studies that assess long-term impacts.

Example: Homer, AK, requires a 10-year horizon.⁷⁶

XI.REQUIRE A MANDATORY ENVIRONMENTAL IMPACT ANALYSIS

Whether part of a Community Impact Study or a separate process, all governing bodies should analyze the impact that a proposed development will have on your community's natural resources and environmental quality. Big-box development accelerates sprawl, increases your community's reliance on cars, and paves over large areas of land for one-level buildings and surface parking lots. Overtime, these sprawling developments can degrade your community's air and water quality and deplete groundwater resources. Governing bodies have the authority and responsibility of minimizing impacts to public health and the environment by making educated development decisions. To make responsible development decisions, communities need to take an accurate look at the anticipated environmental impacts of each development decision.

- **TIP:** Big-box developments should not be viewed in a bubble. If there are other sprawling parking lots in the area, these areas should be included in the environmental impact analysis. Additionally, expected future growth should be included. After one farm is turned into a commercial center and the infrastructure shifts to service the area, the surrounding property will likely follow. A realistic look at environmental effects will include the possibility of additional parking lots on neighboring land as a likely secondary impact of placing the first big-box in this area.

XII. REQUIRE A MANDATORY TRAFFIC DEMAND MANAGEMENT REPORT (TDM) AND TRAFFIC IMPACT ANALYSIS (TIA)

Before turning farm fields into commercial centers, communities should make sure they have the infrastructure to sustain these developments over time. Big-box supercenters instantly add an estimated 11,000 new car trips to area roads every day.⁷⁷ Often, this traffic is diverted from city centers to areas that had not previously served heavy traffic flow. The increased traffic can turn rural and small downtown streets into traffic jams with new cars that are heading to and from the new big-box retailer.

As a result, big-box developments can dramatically alter a community's way-of-life. Once walkable streets often start to resemble highway districts and quiet nights are replaced by 24-hour activity. Additionally, increased traffic may pose a threat to public safety and welfare. Increased traffic lowers air quality, increases traffic accidents, and discourages healthy forms of transportation, like biking and walking.

CUP conditions should be used to maintain a healthy community and protect the community's way-of-life. First and foremost, the Plan Commission should require a Traffic Impact Analysis (TIA) and Transportation Demand Management Report (TDM), which analyze the impacts that will stem from increased traffic in the area. These reports generally recommend specific strategies to help maintain efficient, sustainable use of roadways. These strategies may improve mobility and minimize the negative impacts of vehicular travel by modifying travel behavior around development.

To protect the community, the Plan Commission can condition CUP approval on the developer's ability to maintain an acceptable "level of service" for all roadways affected by the increased traffic.⁷⁸ Level of Service (LOS) is a measurement used by the Institute of Traffic Engineers to evaluate traffic flow. LOS is evaluated using a range from A to F, with LOS A representing the best traffic operating conditions because there is little or no delay and LOS F characterizing the worst conditions with significant delay. LOS A through D are usually considered acceptable, and LOS E is usually considered representative of conditions where improvements are needed. An operating condition of LOS F is unacceptable and improvements are required. Specifically, LOS criteria for traffic signals are stated in terms of the average control delay per vehicle, typically for a 15-minute analysis period. For example:

LEVEL OF SERVICE CONTROL DELAY PER VEHICLE FOR SIGNALLED INTERSECTION (sec.):⁷⁹

- A: Less than or equal to 10.0**
- B: 10.1 to no more than 20.0**
- C: 20.1 to no more than 35.0**
- D: 35.1 to no more than 55.0**
- E: 55.1 to no more than 80.0**
- F: 80.1 and greater**

LEVEL OF SERVICE CONTROL DELAY PER VEHICLE FOR UNSIGNALLED INTERSECTION (sec.):⁸⁰

- A: Less than or equal to 10.0**
- B: 10.1 to no more than 15.0**
- C: 15.1 to no more than 25.0**
- D: 25.1 to no more than 35.0**
- E: 35.1 to no more than 50.0**
- F: 50.1 and greater**

Sustainable communities grow over time, not overnight. Before adding 11,000 car trips to certain areas of the community, the Plan Commission should decide whether the size and location of the proposed development fits into the existing infrastructure. CUP permits should be conditioned on a traffic study and a plan to take all appropriate measures required to address traffic impacts on the area. If your community's infrastructure cannot handle 11,000 new car trips, the Plan Commission can push a smaller development or different location. Ultimately, local governments can use these traffic studies to plan commercial districts. Communities can save infrastructure costs and protect existing business by expanding the existing commercial district instead of creating new districts for big-box development

Example: Madison, WI, requires a Traffic Demand Management Report (TDM) for a store with more than 40,000 sq. ft. or more than 100 employees.⁸¹

- **TIP:** Ask your planning commission to require a level of service C or better (i.e., A, B, or C).
- **TIP:** Tell your planning board that they should prohibit any single commercial development that will incrementally increase the existing level of traffic on affected roadways by more than 5%.⁸²

XIII. REQUIRE ACCESS TO ALTERNATIVE MODES OF TRANSPORTATION

A. Require Bicycle and Pedestrian Facilities

Big-box developments are built around cars. Large parking lots and multi-lane access roads create an environment where bikers and walkers are discouraged. If your community is concerned with active living and accessibility of commercial development, ask your Plan Commission to include conditions for pedestrian and bicycle access in the CUP process.

Example: Stoughton, WI, includes a clause in its big-box ordinance that requires bicycle parking on site, pedestrian facilities, and connections to adjacent properties. According to the ordinance, "The development shall provide secure, integrated bicycle parking at a rate of one bicycle rack space for every 50 vehicle parking spaces. ... The entire development shall provide for safe pedestrian and bicycle access to all uses within the development, connections to existing and planned public pedestrian and bicycle facilities, and connections to adjacent properties."⁸³ Whether or not a big-box ordinance exists, this requirement can be imposed as a CUP condition to protect your community from traffic impacts.

Example: Wauwatosa, WI, requires, "Continuous internal pedestrian walkways, no less than six feet in width shall be provided from the public sidewalk or right-of-way to the principal customer entrance of all principal buildings on the site."⁸⁴

- **TIP:** Although the above clauses are a good start, accessibility is often dependent on site location. Advocate for smaller footprints and site location that foster bicycle and pedestrian access within the downtown area of your community.

- **TIP:** Pedestrian-scaled developments also promote non-vehicle traffic. As suggested above, Plan Commissions can encourage pedestrian travel by removing large parking lots and placing stores closer to roadways and sidewalks.

B. Require Public Transport Access On-site

In addition to walking and biking, commercial developments should be located near existing public transportation routes to promote mass transportation.

Example: Wauwatosa, WI, also requires that "sidewalks shall also connect the store to transit stops on or off-site and to nearby residential neighborhoods" in its big-box ordinance.⁸⁵ Again, whether or not a big-box ordinance exists, this requirement can be imposed as a CUP condition to protect your community from traffic impacts.

XIV. LIGHTING REGULATIONS

Big-box lighting is bright and usually lasts 24-hours-a-day, becoming a nuisance for adjacent landowners. A CUP can require that a big-box take steps to minimize light pollution.

Specifically, the CUP may require that big-box lighting be only a certain number of "candles" bright, restrict the height of lights, or require light hoods.

Example: Stoughton, WI, requires a maximum brightness: "At a minimum, as measured over ambient lighting conditions on a clear night, exterior lighting shall not exceed more than one-half foot-candles above ambient levels along all property lines, and shall not exceed an average illumination level of 3.6 foot-candles nor provide below a minimum of 0.9 foot-candles in public parking and pedestrian areas."⁸⁶ Stoughton also requires a maximum height of 20 feet for all lamp poles.⁸⁷

XV. OUTDOOR STORAGE

Big-box stores often include large outdoor storage facilities. Outdoor storage of fertilizers and other potential pollutants can create a stormwater hazard. To help prevent water pollution, communities can require big-box retailers to store pesticides and other chemicals indoors.⁸⁸

- **TIP:** Make sure that the site plan includes outdoor storage areas in their net square footage calculation.

XVI. REGULATING SIGNS

Large big-box signs and billboards often ruin scenic vistas. Communities can create scenic overlays to protect vistas in their zoning ordinances or set conditions on the number, height, size, and design of big-box signs.

Example: Stoughton, WI, limits the number of signs allowed in a big-box development. The ordinance also includes logos in their definition of a "permitted sign." Stoughton gives guidelines that the signage be "modest, coordinated, and complimentary. . ."⁸⁹

Example: North Elba, NY, requires that applicants show that the proposed project "will not result in a clearly adverse aesthetic impact." The court upheld the planning board's decision to deny Wal-Mart a CUP based on the visual character of the town, which is dependent on tourism.⁹⁰

XVII. ELIMINATE UNNECESSARY TRAFFIC AND PARKING LOT ACTIVITY

Certain big-boxes allow campers to park in their unused parking lots overnight. Often this use creates a 24-hour strain on community's police resources. Environmentally, this extra use increases oil and grease accumulation on the parking lot, which exacerbates stormwater runoff pollution. A community can rectify this situation by including a stipulation in the CUP that excludes campers from parking overnight in big-box parking lots and requires big-boxes to post appropriate signs.

Example: Homer, AK, requires "No overnight camping" signs.⁹¹

XVIII. OUTLOTS⁹²

Good planning strategies include proposed outlots as part of the big-box, in both square footage and mobility. Outlots and buildings within outlots should not be planned as isolated parcels. The location of outlots/buildings should be carefully planned to promote pedestrian connections to other uses and buildings on the site and to minimize the need to make multiple trips within a site by car.

Example: Stoughton, Wisconsin's big-box ordinance requires that outlots be considered in the planning of a big-box development and that the outlot design be comparable with the main store.⁹³

XIX. DEVELOPER AGREEMENTS

- **Make sure that any agreement between the City and the developer lists all costs that the developer must cover.**

Example: Stoughton, WI, includes a *Developer's agreement* in their big-box ordinance. "The developer shall enter into a development agreement with the city, which shall include the payment of all utilities including but not limited to storm water, sanitary sewer, and street infrastructure, and the commitment to adhere to the policy on vacation of existing sites per subsection (20), above. Off-site improvements may also be required."⁹⁴

Additionally, make sure the community knows that the City is considering big-box development. A public hearing should be held before a City enters discussion of a developer agreement. Finally, the agreement should assure maintenance of all stormwater reduction features. The City should have on-going influence on the vast quantities of stormwater that is collected and/or treated on the site.

The agreement should not assume or promise permit approval and should be clearly enforceable in court.

XX. INCLUDE A PLAN FOR WHEN/IF THE SITE IS VACATED

Some big-boxes are known for vacating old stores and leaving the community with an empty site. Empty big-box sites can escalate the dilapidation of an area. These vacant sites waste large areas of commercial space, create an unsafe and unlit area and continue to amass large quantities of polluted stormwater.

Example: Wauwatosa, WI, requires that "if the facility is vacated, the owner or operator, within twelve months, shall submit, to the Plan Commission, a plan contemplating the

removal or reuse of the facility."⁹⁵ If the plan is not "acceptable to the Plan Commission", then the Commission can find funds to re-use the site in any way permitted by law.⁹⁶

XXI. HOURS OF OPERATION

Many big-box retailers like to be open 24 hours-a-day. Overnight stores use more energy, create around-the-clock noise, and often attract more crime.⁹⁷ To alleviate the concerns over a 24-hour retail center, communities should consider creating a condition that limits big-boxes' hours of operation.

XXII. CONCLUSION

CUP permits can be an effective tool for sustaining community standards. While communities should be addressing big-box development far before the CUP hearing, the specific conditions within CUPs can dramatically change the impact that a big-box store has on your community. Contact your local representatives and Plan Commission members and let them know that these conditions are necessary to help alleviate some of the damage caused by big-box development.

- ¹ TURLOCK, CA., MUN. CODE § 9-3-202 (2007), available at <http://www.ci.turlock.ca.us/outsidelink.asp?link=http://www.codepublishing.com/CA/Turlock> (last visited July 5, 2007) (now allowing for neighborhood stores in most residential districts).
- ² A conditional use permit (CUP) is a permit for uses that are not normally allowed in a certain site because of the community's zoning ordinance. CUPs require a public hearing and subject the applicant-developer certain conditions made by the community in order to ensure that this abnormal use of the site is for the public good. Approval of a CUP is not a change in zoning.
- ³ TURLOCK, CA., MUN. CODE § 9-3-302 (2007), available at <http://www.ci.turlock.ca.us/outsidelink.asp?link=http://www.codepublishing.com/CA/Turlock> (last visited July 5, 2007).
- ⁴ See The New Rules Project, Retail Business Size Cap and Community Impact Review—Mt. Shasta, CA, available at <http://www.newrules.org/retail/mtshasta.html> (last visited July 5, 2007).
- ⁵ The New Rules Project, How Big Is Too Big?, <http://www.newrules.org/retail/howbigisbig.html> (July 3, 2007).
- ⁶ *Id.*
- ⁷ *Id.*
- ⁸ *Id.*
- ⁹ *Id.*
- ¹⁰ See The New Rules Project, Bennington, Vermont Adopts Big-Box Ordinance, Jan. 27, 2005, http://www.newrules.org/retail/news_slug.php?slugid=281 (last visited July 3, 2007) (discussing the ordinance adopted in January of 2005).
- ¹¹ An outlot is a lot that is not a buildable lot at the time of subdivision development, but is an excess piece of land.
- ¹² See The New Rules Project, Wal-Mart Tries to Skirt Maryland Size Cap Law, Mar. 9, 2005, available at http://www.newrules.org/retail/news_slug.php?slugid=289 (last visited July 5, 2007).
- ¹³ HAILEY, ID., CODE, § 4.7.5(f)(2) (2007), available at http://www.haileycityhall.org/Codes_Plans/planning.asp#zoningOrd (last visited July 5, 2007).
- ¹⁴ § 4.5.5(g).
- ¹⁵ E.g., §§ 4.8.5(g) (light industrial zone), 4.12.3.4(c) (service commercial industrial zone).
- ¹⁶ See NATIONAL TRUST FOR HISTORIC PRESERVATION, RETAIL CAPS FOR RETAIL GLUT: SMART GROWTH TOOLS FOR MAIN STREET 2 (2002), available at http://www.nationaltrust.org/smartgrowth/toolkit_retailcaps.pdf (last visited July 5, 2007).
- ¹⁷ Press Release, Monona Mayor Robb Kahl, Wal-Mart Press Release (May, 2005) (on file with author).
- ¹⁸ GREENFIELD, MA., MUN. CODE § 200-7.12(B)(1) (2007) available at http://www.townofgreenfield.org/1planoffic/pdfs_planoffice/Zoning%20Bylaw.pdf (last visited July 5, 2007).
- ¹⁹ In Wisconsin, comprehensive plans are considered advisory until January 1, 2010. See *Step Now Citizens Group v. Town of Utica Planning & Zoning Comm.*, 264 Wis. 2d 662, 683, 663 N.W.2d 833 (Ct. App. 2003) (concluding that a land use plan is not mandatory but merely advisory).
- ²⁰ There are several steps before the CUP stage at which residents may take action to address big-box development. For example, if the retailer is interested in land outside the city limits, the land will need to be annexed and your community has a right to have its voice heard throughout the annexation process. Also, if the land is not zoned for commercial use, it will need to be rezoned and the community can become involved in the rezoning. For more information, see MEA's [Annexation Tool-Kit](#).
- ²¹ Lynn Markham, University of Wisconsin Steven's Point Center for Land Use, *New Court Decisions Regarding Conditional Use Permits*, 5 THE LAND USE TRACKER, fig. 1 (Fall 2005), available at <http://www.uwsp.edu/cnr/landcenter/tracker/fall2005/condusepermits.html> (last visited Jul. 6, 2007).
- ²² Lynn, Markham, University of Wisconsin Steven's Point Center for Land Use, *Conditional Uses: What Are They, Who Decides Them, and What Conditions May Be Included*, 3 THE LAND USE TRACKER (Spring 2004), available at <http://www.uwsp.edu/cnr/landcenter/tracker/spring2004/conditionaluses.html> (last visited Jul. 6, 2007); see *Kraemer & Sons, Inc. v. Sauk Co. Bd. of Adjustment*, 183 Wis.2d 1, 10-12; 515 N.W.2d 256 (Wis. 1994).
- ²³ *Kraemer & Sons, Inc.*, 183 Wis.2d at 10-12; see generally Office of Land and Information Services, Wis. Dep't of Admin., Wisconsin's Comprehensive Planning Legislation: Statutory Language Changes from 1999 Wisconsin Act. 9, and Technical Revisions from AB 872, signed into law by Governor Thompson on May 10, 2000 (Sept. 24, 2001), available at <http://www.doa.state.wi.us/dhir/documents/compplanstats.pdf> (last visited Jul. 6, 2007).
- ²⁴ HOMER, AK., MUN. CODE § 21.61.105(d) (2007), available at <http://clerk.ci.homer.ak.us/document/2161.htm#c105> (last visited Jul. 6, 2007).
- ²⁵ See U.S. Environmental Protection Agency, Questions About Your Community: Which has the worst per capita sprawl problem: Atlanta, Boston, or Los Angeles?, <http://www.epa.gov/region1/communities/sprawl.html> (last updated June 7, 2007).
- ²⁶ See National Resources Defense Council, "Paving Paradise: Sprawl and the Environment", <http://www.nrdc.org/cities/smartGrowth/rpave.asp>

²⁷ U.S. ENVIRONMENTAL PROTECTION AGENCY, POLLUTED RUNOFF (NONPOINT SOURCE POLLUTION), <http://www.epa.gov/owow/nps/Section319II/intro.html> (last visited Jul. 6, 2007) (“Today, nonpoint source pollution remains the nation’s largest source of water quality problems. . . . The most common nonpoint source pollutants are soils and nutrients that stormwater runoff picks up as it flows overland to rivers and streams[.] . . . Other common nonpoint sources pollutants include . . . salts, oil, grease, toxic chemicals, and heavy metals.”); see U.S. ENVIRONMENTAL PROTECTION AGENCY, AFTER THE STORM, EPA 833-B-03-002 (Jan. 2003), available at http://www.epa.gov/weatherchannel/storm_water.html (last visited Jul. 6, 2007); see U.S. ENVIRONMENTAL PROTECTION AGENCY, MANAGING URBAN RUNOFF, EPA841-F-96-004G (1996), available at <http://www.epa.gov/owow/NPS/facts/point7.htm> (last visited Jul. 6, 2007) (stating that EPA data shows runoff from urban areas to be the leading source of impairments to surveyed estuaries and the third largest source of impairments to surveyed lakes).

²⁸ See U.S. Environmental Protection Agency, *Managing Storm Water Runoff to Prevent Contamination of Drinking Water*, SOURCE WATER PROTECTION PRACTICES BULLETIN, EPA 816-F-01-020 (Jul. 2001), available at http://www.epa.gov/safewater/sourcewater/pubs/fs_swpp_storm_water.pdf (last visited Jul. 6, 2007) (describing how to manage storm water runoff near sources of drinking water and why this is important).

²⁹ Brookings Inst. Press Briefing, *Why Congestion Is Here To Stay, And Will Get Worse* (June 14, 2004), available at <http://www.anthonysdowns.com/congestiontostay.htm> (last visited Jul. 5, 2007) (stating that from 1980-2000, the total population of the U.S. rose 24%, yet the total number of miles traveled increased 80%).

³⁰ U.S. Environmental Protection Agency, 8-Hour Ground-level Ozone Designations: Region 5: State Designations, <http://www.epa.gov/ozonedesignations/regions/region5desig.htm> (last updated June 21, 2007).

³¹ McCCLURE ENGINEERING, STORM WATER MANAGEMENT REPORT FOR WAL-MART STORE 3857-00 AT 2151/2101 ROYAL AVE., MONONA, WI (June 30, 2005). (Note: This report is unpublished, but is a public record and available through Public Records Law. Contact City of Monona, WI City Clerk for details.)

³² The Dane County Better Urban Infill Development (BUILD) Program defines infill development as “the economic use of vacant land (or the restoration or rehabilitation of existing structures or infrastructure) in already urbanized areas where water, sewer, and other public services are in place that maintain the continuity of the original community fabric.” For this definition and more information on infill development in Dane County, WI, see the Program’s website at <http://www.countyofdane.com/plandev/community/build/about.asp#infill> (last visited Jul. 5, 2007).

³³ For example, Wal-Mart recently opened a store in Monona, WI with underground parking. See City of Monona Newsletter (June 2006), <http://www.monona.wi.us/vertical/Sites/%7B4EF64B30-DEE6-486B-A007-DF1B9404319B%7D/uploads/%7B00BE08FF-4FD6-4C5F-B2AC-10617C6D46E4%7D.PDF> (last visited July 6, 2007).

³⁴ McCCLURE ENGINEERING, TRAFFIC IMPACT STUDY FOR WAL-MART SUPERCENTER, MONONA (Mar. 4, 2005) (study conducted by Traffic Analysis & Design, Inc. for McClure Engineering).

³⁵ See INSTITUTE OF TRANSPORTATION ENGINEERS, PARKING GENERATION (2d ed. 1987) (1985).

³⁶ VILLAGE OF OREGON, WI., CODE § 17-704(7)(a) (2007).

³⁷ STOUGHTON, WI., MUN. CODE § 78-453 (2007), available at <http://wsll.state.wi.us/ordinances.html> (follow “Stoughton: City” link) (last visited July 5, 2007).

³⁸ CENTER FOR WATERSHED PROTECTION, BETTER SITE DESIGN FACT SHEET: GREEN PARKING (citing CENTER FOR WATERSHED PROTECTION, BETTER SITE DESIGN: A HANDBOOK FOR CHANGING DEVELOPMENT RULES IN YOUR COMMUNITY (Center for Watershed Protection, 1998), available at http://www.stormwatercenter.net/Assorted%20Fact%20Sheets/Tool4_Site_Design/GreenParking.htm (last visited July 5, 2007).

³⁹ WAUWATOSA, WI., MUN. CODE § 24.25.030(n) (2007), available at <http://www.bpcnet.com/codes/wauwatosa/> (last visited July 5, 2007).

⁴⁰ HOMER, AK., MUN. CODE § 21.61.105(k)(5)(c) (2007), available at <http://clerk.ci.homer.ak.us/document/2161.htm#c105> (last visited July 5, 2007).

⁴¹ Leo Pierre Roy, *The Perils of Parking Lots*, LAND DEVELOPMENT TODAY (April 10, 2006), available at <http://www.landdevelopmenttoday.com/Article632.htm> (last visited July 5, 2007).

⁴² Wal-Mart, Wal-Mart’s Experimental Stores, <http://www.walmartfacts.com/articles/3058.aspx> (last updated May 7, 2007) (last visited July 5, 2007).

⁴³ *Philadelphia Tackles Rainwater Runoff Pollution* (Nat’l Pub. Radio broadcast Sept. 29, 2006), available at <http://www.npr.org/templates/story/story.php?storyId=6165654> (last visited July 5, 2007).

⁴⁴ U.S. ENVIRONMENTAL PROTECTION AGENCY, LOW-IMPACT DEVELOPMENT DESIGN STRATEGIES: AN INTEGRATED DESIGN APPROACH (June 1999), available at <http://www.epa.gov/OWOW/nps/lidnatl.pdf> (last visited July 6, 2007).

⁴⁵ U.S. Environmental Protection Agency, Heat Island Effect, Green Roofs, <http://www.epa.gov/hiri/strategies/greenroofs.html> (last visited July 5, 2007).

⁴⁶ Green Roofs Organization, Green Roofs for Healthy Cities, <http://www.greenroofs.net/> (follow the "About Green Roofs" link) (last visited July 5, 2007); Green Roofs Organization, About Green Roofs, (May 31, 2005) http://www.greenroofs.net/index.php?option=com_content&task=view&id=26&Itemid=40 (last visited July 5, 2007). Vegetation can extend the life of a roof. This is because less solar energy reaches the roof substrate, limiting damage from UV radiation as well as daily temperature fluctuations, which cause repeated contraction and-expansion. U.S.

ENVIRONMENTAL PROTECTION AGENCY, *supra* note 25.

⁴⁷ Sydney Schwartz, *Greener Pastures for Urban Rooftops*, COLUMBIA NEWS SERVICE (Mar. 1, 2005), available at <http://jscms.jrn.columbia.edu/cns/2005-03-01/schwartzs-greenroofs> (last visited July 6, 2007).

⁴⁸ See City of Minneapolis Department of Public Works, Dedication, Regulation, Sticks and Carrots: The Story of one City's Efforts to Reclaim the Mississippi River (Feb. 7, 2007), available at <http://www.pca.state.mn.us/publications/presentations/lakepepin-chellsen0207.pdf> (last visited July 6, 2007).

⁴⁹ *Wal-Mart Commits to Charrette in Mississippi*, 11 NEW URBAN NEWS (March, 2006), available at <http://www.newurbannews.com/Wal-MartMar06.html> (last visited July 6, 2007).

⁵⁰ Fairfax County, VA, LID BMP Fact Sheet – Bioswales, (Feb. 28, 2005), available at http://www.lowimpactdevelopment.org/ffxcty/1-4_bioswale_draft.pdf (last visited July 6, 2007).

⁵¹ CHICAGO, IL., CODE § 10-32-220 (2007); see THE NEW RULES PROJECT, <http://www.newrules.org/environment/chiland.html> (describing the July 1999 amendments to Chicago's landscape ordinance, making it stricter) (last visited June 6, 2007).

⁵² "Wal-Mart, *supra* note 22.

⁵³ HOMER, AK., CODE § 21.61.105(L)(7), available at <http://clerk.ci.homer.ak.us/document/2161.htm#c105> (last visited June 6, 2007).

⁵⁴ STOUGHTON, WI., MUN. CODE Ch. § 78-467(15)(d) (2007), available at <http://wsll.state.wi.us/ordinances.html> (follow "Stoughton: City" link) (last visited July 6, 2007).

⁵⁵ U.S. Green Building Council, LEED for Retail, <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=298> (last visited July 6, 2007). This website contains links to pdf drafts of the Green Building Rating System, which is currently being developed by LEED, for new construction and major renovations in the retail sector.

⁵⁶ U.S. Green Building Council, LEED for New Construction, <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=220> (last visited July 6, 2007).

⁵⁷ U.S. GREEN BUILDING COUNCIL, LEED BROCHURE (2005), available at <https://www.usgbc.org/ShowFile.aspx?DocumentID=746> (last visited July 6, 2007); see also U.S. Green Building Council, Power Point presentation, available at https://www.usgbc.org/FileHandling/show_general_file.asp?DocumentID=1035 (last visited July 6, 2007).

⁵⁸ U.S. GREEN BUILDING COUNCIL, LEED BROCHURE, <https://www.usgbc.org/ShowFile.aspx?DocumentID=746> (last visited July 6, 2007); see also U.S. GREEN BUILDING COUNCIL, Power Point presentation, https://www.usgbc.org/FileHandling/show_general_file.asp?DocumentID=1035 (last visited July 6, 2007).

⁵⁹ *Id.*

⁶⁰ *Sprawl-Busters, Sam's Club Rejected for Refusal to Build Green Store* (June 2, 2002), <http://www.sprawl-busters.com/search.php?readstory=952> (last visited July 6, 2007).

⁶¹ CHAMBLEE, GA., CODE Art. II § 203(f) (2007). ("Applications for developments containing greater than fifty thousand (50,000) square feet of gross floor area shall submit a LEED (Leadership in Energy and Environmental Design) check-list at the time of application. The check list shall be completed by a LEED Accredited Professional and shall utilize the most recent version of the LEED program as governed by the U.S. Green Building Council. The LEED review shall document the specific elements of LEED certification that can and cannot be met and shall include a cost estimate for each element whether it is being met or not. The LEED review process shall not be a factor in the approval or denial of any development. The LEED check list shall be reviewed by the City Planner but shall not be a part of the application as it moves forward through the remainder of the approval process. LEED analysis is for informational purposes only and is intended to aid the City in facilitating the awareness of better-building practices within the City.")

⁶² See Sam Newberg, *Greening a City From the Top Down*, URBAN LAND, Mar. 2007, at 77, available at <http://joe-urban.com/wp-content/uploads/2007/05/urban-land-march-2007-green-chicago.pdf> (last visited July 6, 2007).

⁶³ Nolan, Dolan Exactions case

⁶⁴ WIS. STAT. § 66.0617 (2007).

⁶⁵ WIS. STAT. § 66.0617.

⁶⁶ WIS. STAT. § 66.0617(1)(f).

⁶⁷ Unfortunately, the Wisconsin legislature has recently reduced the avenues that municipalities may use to charge impact fees. See WIS. STAT. § 66.0617; see also Richard A. Lehmann, *Recent Amendment To the Impact Fee Law Raises Concern*, 11 BOARDMAN LAW FIRM MUNICIPAL LAW NEWSLETTER 1-2, (July 2006), available at,

http://www.boardmanlawfirm.com/muni_newsletter/muniJul06.pdf (last visited July 6, 2007).

⁶⁸ Wis. STAT. § 66.0617(6)(g).

⁶⁹ TOWN OF LONDONDERRY, NEW HAMPSHIRE, IMPACT FEE CALCULATION FORM (2003), available at http://www.londonderrynh.org/impact_fees_revised_2003_1.pdf (last visited July 6, 2007).

⁷⁰ See BARNSTABLE CO., MA., CODE Ch. F § 4(a), available at <http://www.capecodcommission.org/regulatory/ImpactFeeRegulations.pdf> (last visited July, 6, 2007).

⁷¹ See Assemb. 2701, 212th Leg. (NJ 2006). Text of the New Jersey bill is available at <http://www.newrules.org/retail/mirnj.pdf> (last visited July 7, 2007).

⁷² The New Rules Project, Bennington, Vermont Adopts Big-Box Ordinance (Jan. 27, 2005), available at http://www.newrules.org/retail/news_slug.php?slugid=281 (last visited July 6, 2007). Note that Bennington Vermont is an example of a city where the size cap located in the big-box ordinance was changed after the ordinance was enacted. However, Bennington's impact study requirement remains to help maintain community values and keep the big-box ordinance effective. The New Rules Project, Store Size Cap and Community Impact Assessment – Bennington, Vermont (Apr. 7, 2005), available at <http://www.ilsr.org/newrules/retail/sizebennington.html> (last visited July 6, 2007).

⁷³ MIDDLETON, RI., CODE § 310(d)(3) (2007), available at <http://www.middletonri.com/documents/building/Zoning%20Ordinance%20October%2030%202006.pdf> (last visited July 6, 2007).

⁷⁴ HOMER, AL., MUN. CODE § 21.61.105(L)(2) available at <http://clerk.ci.homer.ak.us/document/2161.htm#c105> (last visited July 6, 2007).

⁷⁵ WAUWATOSA, WI., MUN. CODE § 24.25.015 (A) (2007), available at <http://www.wauwatosa.net/ImageLibrary/Internet/BigBoxOrdinanceFinal.pdf> (last visited July 6, 2007).

⁷⁶ HOMER, AL., MUN. CODE § 21.61.105(L)(2).

⁷⁷ See, e.g., INSTITUTE OF TRAFFIC ENGINEERS, TRIP GENERATION (2001); see also Traffic Analysis & Design, Inc., Traffic Impact Study for Wal-Mart Supercenter Monona, USH 12/18 and South Towne Drive, Monona, WI. (Mar. 4, 2005).

⁷⁸ See Steven J. Dush Gregory P. Muhonen, *The Language of Traffic*, THE COMMISSIONER (Amer. Planning Assn., Spring 2002), available at <http://www.planning.org/thecommissioner/spring02.htm> (last visited July 6, 2007).

⁷⁹ See Auburn School Department, Lake Street Project: Traffic Analysis, available at <http://www.auburnschl.edu/Projects/LakeStreet/EaselBoardTexts.pdf> (last visited July 6, 2007).

⁸⁰ *Id.*

⁸¹ MADISON, WI., CODE §§ 33.02(4)(b),(f)-(i), 33.02(24)(b), 28.09(3)(d)(24) (2007); see City of Madison Legislative File Number 00418 (Version 5 of Madison's Draft Big-Box Ordinance, as adopted in final form), available at <http://www.ci.madison.wi.us/planning/bigboxfinalpdf.pdf> (last visited July 6, 2007).

⁸² Wal-Mart Watch, Comprehensive Plans, http://walmartwatch.com/battlemart/go/cat/comprehensive_plans (last visited July 6, 2007) (see the "Comprehensive Plan Example Items" section of this fact sheet).

⁸³ STOUGHTON, WI., MUN. CODE, § 78-467 (10)(a)(e) (2007) available at <http://wsll.state.wi.us/ordinances.html> (follow "Stoughton: City" link) (last visited July 6, 2007).

⁸⁴ WAUWATOSA, WI., MUN. CODE § 24.25.030 (F) (2007), available at <http://www.wauwatosa.net/ImageLibrary/Internet/BigBoxOrdinanceFinal.pdf> (last visited June 7, 2007).

⁸⁵ *Id.*

⁸⁶ STOUGHTON, WI., MUN. CODE, § 78-467 (16)(b) (2007) available at <http://wsll.state.wi.us/ordinances.html> (follow "Stoughton: City" link) (last visited June 7, 2007).

⁸⁷ § 78-467 (16)(c).

⁸⁸ See, e.g., Cawtawba Riverkeeper, Wal-Mart's Impact to Water Quality, <http://www.catawbariverkeeper.org/wal-mart%20%20> (last modified Nov. 11, 2005) (last visited July 6, 2007).

⁸⁹ STOUGHTON, WI., MUN. CODE, § 78-467 (17) (2007) available at <http://wsll.state.wi.us/ordinances.html> (follow "Stoughton: City" link) (last visited July 6, 2007).

⁹⁰ See John R. Nolon, *Protecting Scenic Assets: Regulations Based on Study, Expert Reports and Rationality*, NEW YORK LAW JOURNAL (June 17, 1998), available at Pace Law School Land Use Law Center <http://www.law.pace.edu/landuse/scennyj.htm> (last accessed June, 2006); see also *Wal-Mart Stores Inc., et al. v. Planning Bd. of the Town of North Elba*, 668 N.Y.S.2d 774, 238 A.D.2d 93, 98-99 (App. Div. 1998).

⁹¹ HOMER, AK., CODE § 21.61.105(L)(5)(b) (2007), available at <http://clerk.ci.homer.ak.us/document/2161.htm#c105> (last visited July 6, 2007).

⁹² Definition of an outlot is that it is not a buildable lot at the time of subdivision development, but is an excess piece of land.

⁹³ STOUGHTON, WI., MUN. CODE, § 78-467 (23) (2007) available at <http://wsll.state.wi.us/ordinances.html> (follow "Stoughton: City" link) (last visited June 7, 2007).

⁹⁴ 78 § 78-467 (21).

⁹⁵ WAUWATOSA, WI., MUN. CODE § 24.25.040(B) (2007), available at <http://www.bpcnet.com/codes/wauwatosa/> (last visited July 6, 2007).

⁹⁶ § 24.25.040(B).

⁹⁷ Al Norman, SLAM-DUNKING WAL-MART: HOW YOU CAN STOP SUPERSTORE SPRAWL IN YOUR HOMETOWN. (Raphael Marketing, July 15, 1999). Crime section excerpt from the book is available at: <http://walmartwatch.com/img/documents/CrimeAtWalMart.pdf> (last visited July 6, 2007).

CONCLUSION:

Staff recommends that the City Council consider and discuss potential discussion topics for the February 22, 2011 joint City Council/Planning Commission meeting; including a review of the Planning Commission's recommendations for meeting topics that were considered at their February 7, 2011 meeting.

Attachment:

1. Current and Advance Planning Processing List



City of Morro Bay Public Services Current Project Tracking Sheet

Agenda Item _____
Date: _____
Action: _____

New items or items which have been recently updated are italicized. Approved projects are deleted on next version of log.

#	Applicant/Property Owner	Project Address	Date	Permit Numbers	Project Description/Status	Project Planner
Hearing or Action Ready						
1	City of Morro Bay & Cayucos	160 Atascadero	7/1/08	EIR	WWTP Upgrade. Submitted 7/1/08, Preparing Notice of Preparation, Staff reviewing Ad Min Draft EIR. Modifications to project description underway and subsequent renoticing. Staff reviewing screencheck document. Public draft out for review and comments. Comment period open until 11/4/2010. Project scheduled for 12-6-2010 P.C. Project rescheduled for 12/20/2010.	RL
30 -Day Review, Incomplete or Additional Submittal Review						
2	<i>James Maul</i>	<i>530, Morro Ave 532, 534</i>	<i>3/12/10</i>	<i>SP0-323 & UP0-282</i>	<i>Parcel Map. CDP & CUP for 3 townhomes. Incomplete letter sent 4/20/10. Met with applicant 5/25/10. Resubmittal 11/8/10.</i>	<i>KW</i>
3	Walter & Karen Roza	595 Driftwood	3/30/10	UP0-285 S00-103 CP0-325	Coastal Development Permit, Use Permit, Parcel Map Demo Reconstruct SFR & 2nd Unit. VPM, CUP & CDP. Pending resubmittal. Revised plans submitted on 9/1/10. Staff working on project environmental.	KW
4	Dan Reddell	550 Morro Bay Blvd	6/14/10	UP0-293	Farmer's Market. Conditional Use Permit for vendors and events. Resubmittal 6/17/10. Scheduled for 9/20/10 PC Mtg. Met with agent 8/24/10 and discussed feasibility of project, needs to be revised. Resubmitted 12/29/10.	SD
5	Morro Bay Chamber	Main between Pacific and Harbor	8/9/10	UP0-298	Use Permit to establish the Farmer's Market on Main Street between Harbor and Pacific Streets. The market will be conducted every Saturday between 2 p.m. and 7 p.m. With a maximum of 50 vendors. Continued to 1/3/10 PC Meeting. Applicant has continued project to date uncertain.	SD
6	Frantz	499 Nevis	9/27/10	CP0-337	New SFR. Incomplete Letter 10/7/10. Meeting with applicant's representative on 11/16/2010.	SD
7	<i>Taurus Sulaitis</i>	<i>540 Fresno</i>	<i>11/15/10</i>	<i>UP0-306</i>	<i>SFR Addition. Incomplete letter 7/13/10. Resubmittal 11/15/10. Met with applicant on 12/21/10. Incomplete letter 12/21/10.</i>	<i>SD</i>
8	Ortega	525 & 527 Atascadero	12/21/10	CP0-340 UP0-308	Compact In-Fill Development. Requested additional documents from agent on 1/20/11. Working on environmental document.	SD
9	St. Timonhy Church	962 Piney Way	12/22/10	UP0-309	Belfry. Project noticed 1/21/11.	SD
10	Romero	2690 Nutmeg	1/3/11	CP0-342	Concurrent Processing. New SFR. Project noticed 1/21/11.	SD

#	Applicant/Property Owner	Project Address	Date	Permit Numbers	Project Description/Status	Project Planner
Projects in Process						
11	Rudolph Kubes	1181 Main & Bonita	11/23/06	UP0-086 & CP0-130	Morro Mist 20 Lot SFR Subdivision. Submitted 11/23/06, SRB 3/15/06, Staff requested information Resubmitted 8/16/06 MND analysis needed MIND Complete 7/20 PC 8/20/07 Continued date uncertain revised project smaller units still 100% residential. Applicant has redesigned project and resubmitted on June 1, 2009. Project under review. Letter sent to applicant regarding issues on 7/2009. Subsequent meeting with applicant team 8/2009. Staff has had additional correspondence with the applicant. Project tentatively scheduled for Planning Commission late February/early March 2010. Applicant considering redesign of project. Change in agent. Project resubmitted on June 29, 2010, project routine to various divisions for comments and conditions. Resubmittal 7/6/10. Initial Study needs to be revised to reflect new project submitted. Revised Initial Study pending submittal of new Geotechnical study by applicant. New I.S./MND routed for review and review period completed as of November 29, 2010.	KW
12	Burt Caldwell, (Embarcadero 801 LLC)	801 Embarcadero	5/15/08	UP0-212	Conference Center. Submitted 5/15/08, Inc Ltr 5/23 Resubmitted MND Circulating 7/15/08 PC 9/2 Approved, CC 9/22/08 Approved, CDP granted by CCC. Waiting for Precise Plan submittal. Applicant has submitted a request for a time extension on November 4, 2010. Extension granted, now expires 12/11/11.	KW
13	Dan Reddell	1 Jordan Terrance	7/25/08	UP0-223 & CP0-285	New SFR. Submitted 7/25/08, Inc. Later 8/19/08; resubmitted 2/24/09, project under review. Letter sent to agent regarding issues. Applicant and staff met 1/20/10 on site to further discuss issues. Resubmittal 2/16/10. Administrative Draft Initial Study complete. Comment review period ends 6/22/10. Comments recieved on MND.	JH/KW
14	California State Park	201 State Park Drive	2/11/09	CP0-303 & UP0-254	Solar Panels at the State Park with the addition of one carport structure for support of the panels. Coastal Development Permit and Conditional Use Permit. Comments sent 3/23/10.	SD/KW
15	Tank Farm	1290 Embarcadero	2/27/10	N/A	Tank Demo. Demo of seven tanks at the Morro Bay Power Plant. Materials submitted and under review. All materials submitted to date have been reviewed and sent back to the applicant. Applicant indicated to staff that the project is on hold until better weather in 2011.	SD
16	City of Morro Bay	Citywide	5/1/10	AD0-047	Text Amendment modifying Section 17.68 "Signs". Planning Commission placed the ordinance on hold pending additional work on definitions and temporary signs.-5/17/2010	KW
Environmental Review						

#	Applicant/Property Owner	Project Address	Date	Permit Numbers	Project Description/Status	Project Planner
17	Larry Newland	Embarcadero	11/21/05	UP0-092 & CP0-139	Embarcadero-Maritime Museum (Larry Newland) . Submitted 11/21/05, Incomplete 12/15/05 Resubmitted 10/5/06, tentative CC for landowner consent 1/22/07 Landowner consent granted. Incomplete 3/7/07. Resubmitted 5/25/07 Incomplete Letter sent 6/27/07 Met to discuss status 10/4/07 Incomplete 2/4/08. Met with applicants on 3/3/09 regarding inc. later. Applicant resubmitted additional material on 9/30/2009. Met with applicants on 2/19/2010. Environmental documents being prepared. Applicant working with City Staff regarding an lease for the subject site.	KW
18	Chevron	3072 Main	12/31/08	CP0-301	Remove Underground Pipes . Submitted 12/31/08, environmental reports submitted for review 5/8/09. Project under review. Project routed to other agencies for comment. Environmental being processed. Requested additional documentation 4/29/10.	SD
19	Giovanni DeGarimore	1001 Front	3/22/10	UP0-284	Floating Dock . CUP to reconfigure existing side tie floating dock to include 4 new finger floating docks, 50 ft. x 4 ft. Incomplete letter sent 4/26/10. Resubmittal 6/10/10. Resubmittal 6/29/10. Incomplete Letter 7/29/10. Resubmittal 7/30/10. Incomplete Letter and Request for Addition funds 8/24/10. Staff is currently working on environmental documents. Resubmittal 1/25/11.	SD
Coordinating with Other Jurisdictions						
20	City of Morro Bay	887 Atascadero	3/9/09	N/A	Nutmeg Water Tank Upgrade (City of Morro Bay CIP project) . Oversight of County of San Luis Obispo application process. Preapplication meeting 3/9/09. Consultant coordination meeting 3/12/09.	KW
21	John King	60 Lower State Park	7/2/08		Lower parking lot resurface and construction of 2 new stairways . Submitted 7/02/08, PC Tent 10/6, PC Date TBD Applicant coordinating w/ CCC 10/20/08.	KW
Projects Continued Indefinitely or No Response to Date on Incomplete Letter						
22	SLO County	60 Lower State Park	09/28/04	CP0-063	Master Plan for Golf Course . Submitted 9/28/04, On hold per applicant, project to be amended. Resubmitted 2/9/07 Tentative PC 3/19/07 Continued, date uncertain; Planting trees.	KW
23	Cameron Financial	399 Quintana	04/11/07	CP0-233	New Commercial Building . Submitted 4/11/07, Inc. Letter 5/09/07. Sent letter 1/25/2010 to applicant requesting direction, letter returned not deliverable	KW
24	West Millennium Homes	895 Monterey	7/10/07	CUP-151 S00-067 & CP0-215	Mixed-use building . 16 residential units and 3 commercial units, Submitted 7/10/07, Inc Later 7/25 Resubmitted 1/14/08 SRB 3/10/08.	KW
25	Kenneth & Lisa Blackwell	2740 Dogwood	07/20/07	UP0-178	Addition to nonconforming residence . Submitted 7/20/07, Complete, tentative PC 9/17/07 Continued, date uncertain Resubmitted 10/31/07, PC 12/17/07 Continued, date uncertain.	KW

#	Applicant/Property Owner	Project Address	Date	Permit Numbers	Project Description/Status	Project Planner
26	Jeff Gregory	1295 Morro	09/25/07	CP0-254	Coastal Development Permit to allow a second single family residence on lot with an existing home. Incomplete letter sent 10/9/2007. Intent to Deem Application Withdrawn Letter sent 12/29/09. Response from applicant 1/8/10 keep file open indefinitely.	KW
27	Nicki Fazio	360 Cerrito	08/15/07	CP0-246	Appeal of Demo/Rebuild SFR and 2 trees removal. Continued to a date uncertain.	KW
28	Cathy Novak	263 Main Street	09/12/07	CP0-258/S00-078	Lot line Adjustment. Application has had no activity from the applicant since 2007. A Parcel Map was finalized for the property.	SD
29	Ron McIntosh	190 Olive	8/26/08	UP0-232 &CP0-288	New SFR. Submitted 8/26/08, Inc. Letter 9/24/08; Resubmitted 12/10/08, 1/9/09 request for more information. Applicant resubmitted on 2/06/09. Environmental under review. Applicant and City agree to continuance. Applicant put project on hold.	SD
30	Pina Noran	2176 Main	10/3/08	CUP-35-99 & CDP-66-99R	Convert commercial space to residential use. Submitted 10/03/08, Inc. Later 10/22/08, resubmitted 2/5/09. Project still missing vital information for processing 11/30/09. Called applicant 3/22/10 and requested information. Applicant is considering a redesign of the project.	KW
31	Candy Botich	206 MainWater Lease Site 34 Main & Oak St.	6/17/09	CP0-310	New Parking. Project under review. Agent given DRT comments July 10, 2009. Applicant submitted redesigned project 9/30/2009. Associated application submitted for a parking exception for the lease site generating the parking demand.	KW
32	Bob Crizer	206 Main Street, water lease site 34	11/9/09	AD0-047	Oak Street Parking Exception. Also see 206 Main Street (Botich). Request to allow parking spaces to be placed on Oak Street to replace parking currently provided at 206 Main Street. Waiting for parties to resolve issue of ownership.	KW
33	Debbie Dover	500 Quintana	4/21/10	UP0-289	UP0-289, Use Permit Outdoor Fitness Classes. Incomplete letter sent 5/11/010. Applicant resubmitted 5/14/2010. Spoke to Ginger 6/3/10 discussed project. Comment letter 6/3/10. Project Noticed for Admin Action 6/16/10. Waiting on addition information.	SD
34	Hamrick Associates	1129 Market	6/10/10	UP0-291	Remodel and Addition. Incomplete letter 6/23/10. Submitted additional information 6/30/10. Submitted additional information 7/7/10. Building Comments. 7/9/10. Met with agent 7/15/10. Applicant will resubmit addressing fire/building comments.	SD
Projects in Building Plan Check						
35	Lou McGonagill	690 Olive	6/7/10	Building	SFR Addition. 1,000 sf. addition with garage. Incomplete letter 6/28/10. Resubmittal 9/29/10. Incomplete Memo 11/16/10.	SD
36	Taurus Sulaitis	540 Fresno	6/23/10	Building	SFR Addition. Incomplete letter 7/13/10. Resubmittal 11/15/10. Met with applicant on 12/21/10. Incomplete letter 12/21/10.	SD
37	Frantz	499 Nevis	9/27/10	Building	New SFR. Incomplete Memo 10/7/10.	SD
38	Camee	977 Las Tunas	10/11/10	Building	Tenant Improvements	KW
39	Viole/Held	575 - 591 Embarcadero	11/1/10	Building	New Commercial Building. Incomplete Memo 12/2/10.	SD
40	St. Timothy Church	962 Piney Way	11/23/10	Building	New Commercial Addition. Incomplete memo 1/18/11.	SD

#	Applicant/Property Owner	Project Address	Date	Permit Numbers	Project Description/Status	Project Planner
41	Hall	2234 Emerald Circle	12/2/10	Building	New SFR. Incomplete Memo 12/21/10.	SD
42	Romero	2690 Nutmeg	1/3/11	Building	Concurrent Processing New SFR. Project noticed 1/21/11.	SD
43	Pete's Auto	375 Quintana	1/18/11	Building	Wind Turbines. 2 permits.	SD
Aging Building Permits - No response from applicant in more than 90 days.						
44	Don Doubleddee	360 Morro Bay Blvd	5/15/09	Building	Mixed Use Project - Ciano. Comments sent 2/25/10.	SD
45	Valori	2800 Birch Ave	2/10/10	Building	Remodel/Repair. Sunroom, garage, and study. Comments sent 2/24/10	SD
46	Colhover	2800 Dogwood	3/8/10	Building	New SFR. Comments sent 3/25/10.	SD
47	Ronald Stuard	490 Avalon	4/22/10	Building	SFR Addition. 79 sf. bedroom addition. Comments sent 4/27/10.	SD
48	Joe Silva	570 Avalon	5/12/10	Building	SFR Addition. 84 sf. addition. Comments sent 5/17/10.	SD
49	Pam & Bob Hyland	2754 Indigo Circle	7/22/10	Building	New SFR. CP0299/UP0-248 ISSUANCE BY PC ON MARCH 2, 2009. Incomplete Letter 8/24/10.	SD
50	Mike Wilson	957 Pacific	8/24/10	Building	Demo/Rebuild. Incomplete letter 8/26/10.	SD
Projects & Permits with Final Action						
51	Saurwein	2708 Alder	12/8/10	Building	New SFR. Deemed complete 12/14/10.	SD
52	Luce	2431 Reno	9/28/10	Building	Single Family Addition. Incomplete memo 11/8/10. Resubmittal 12/9/10. Deemed complete 12/14/10.	SD
53	Rodgers	941 Marina	12/1/10	AD0-059	Parking Exception and Addition to NC Structure. Noticed 12/21/10.	SD
54	Heller	271 Palm	11/24/10	AD0-058	Parking Exception. Noticed 12/21/10.	SD
55	Daniels	606 Agave	10/13/10	CP0-338	New SFR. Incomplete Letter 11/16/10. Incomplete. Resubmittal 11/24/10. Deemed Complete for noticing 12/16/10.	SD
56	Daniels	606 Agave	10/13/10	Building	New SFR. Incomplete Letter 11/16/10. Deemed Complete for noticing 12/16/10.	SD
57	John & Alair Hough	285 Main	2/16/10	Building	SFR Addition. Second unit over detached garage. Comments sent 3/19/10. Resubmittal 6/10/10. Comments sent 6/16/10. Resubmittal 9/8/10. Project plans not consistent with approved planning plans. Incomplete memo 11/8/10. Resubmittal 12/8/10.	SD
58	Adams	244 Shasta	12/6/10	Building	Addendum to Building Permit #28476.	SD
59	Lau	2780 Main Street	1/4/11	SP-132	Sign Permit.	SD



City of Morro Bay
 Public Services
 Advanced Planning Work Program

Work Item	Planning Commission	City Council	Coastal Commission	Comments	Estimated Staff Hours
Neighborhood Compatibility Standards	TBD	TBD			120 to 160
Strategic plan for managing the greening process					200 to 300
	Annual Updates	Annual Updates			
AB811	continuing with updates				120 to 160
Safety Element	Approved	TBD			20 to 40
Draft Urban Forest Management Plan	TBD	TBD			200 to 300
CEQA Implementation Guidelines	TBD	TBD	NA		120 to 160
Update CEQA checklist pursuant to SWMP (2/2011)	TBD	TBD			120 to 160
Downtown Visioning	TBD	TBD			120 to 160
PD Overlay	TBD	TBD			80
Annexation Proceeding for Public Facilities		TBD			TBD
Sign Ordinance Update	Continued to hold workshop		TBD		50 to 100
<i>Planning Commission Generated Items</i>					
Work Item	Requesting Body				Estimated Staff Hours
Pedestrian Plan	Planning Commission				TBD
<i>Items Requiring Further Analysis When Received Back From The Coastal Commission</i>					
Work Item	Plng. Comm.	City Council	Coastal Comm.		Estimated Staff Hours
Updated Zoning Ordinance	TBD	TBD			1,800
Updated General Plan/LCP	TBD	TBD			1,800