

# 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, MARCH 10, 2015 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

CLOSED SESSION REPORT

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

PUBLIC PRESENTATIONS

- Tourism Bureau Quarterly Presentation
- CivicSpark Presentation

PUBLIC COMMENT - Members of the audience wishing to address the Council on City business matters not on the agenda may do so at this time. For those desiring to speak on items on the agenda, but unable to stay for the item, may also address the Council 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 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

A. CONSENT AGENDA

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

A-1 APPROVAL OF MINUTES FOR THE REGULAR JOINT MEETING OF THE CITY COUNCIL, PLANNING COMMISSION, HARBOR ADVISORY BOARD, RECREATION & PARKS COMMISSION, TOURISM BUSINESS IMPROVEMENT DISTRICT ADVISORY BOARD, CITIZENS OVERSIGHT COMMITTEE, PUBLIC WORKS ADVISORY BOARD AND WRF CITIZENS ADVISORY COMMITTEE HELD ON FEBRUARY 23, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE SPECIAL CITY COUNCIL MEETING HELD ON FEBRUARY 24, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF MINUTES FOR THE CITY COUNCIL MEETING HELD ON FEBRUARY 24, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-4 STATUS REPORT OF A MAJOR MAINTENANCE & REPAIR PLAN (MMRP) FOR THE EXISTING WASTEWATER TREATMENT PLANT; (PUBLIC WORKS)

**RECOMMENDATION: Receive and file.**

A-5 WATER RECLAMATION FACILITY (WRF) PROJECT UPDATE; (PUBLIC WORKS)

**RECOMMENDATION: Receive and file.**

A-6 AWARD OF CONTRACT FOR LEASE OF A SKID STEER TO CAT FINANCIAL; (PUBLIC WORKS)

**RECOMMENDATION: Authorize the Public Works Director to execute Lease Agreement.**

A-7 DEDICATION OF RIGHT-OF-WAY EXTENSION FOR IRONWOOD AVENUE AND ACCEPTANCE OF IRONWOOD AVENUE RIGHT-OF-WAY AND A PUBLIC STORM DRAIN EASEMENT; (PUBLIC WORKS)

**RECOMMENDATION: Adopt Resolution 11-15 making and accepting a Right-of-Way Dedication, accepting a storm drain easement, authorizing the Mayor to sign necessary documents and directing staff to record those documents.**

A-8 APPROVAL OF PROCLAMATION COMMENDING AND HONORING POLICE SERGEANT DAVID BERGANTZEL ON HIS RETIREMENT; (ADMINISTRATION)

**RECOMMENDATION: Approve and file.**

B. PUBLIC HEARINGS

B-1 REVIEW AND ADOPT FINAL FUNDING RECOMMENDATIONS FOR THE 2015 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS; (COMMUNITY DEVELOPMENT)

**RECOMMENDATION: Adopt Resolution No. 10-15 approving final funding recommendation for the 2015 Community Development Block Grant (CDBG) funds.**

C. UNFINISHED BUSINESS / SECOND READING AND ADOPTION OF ORDINANCES

C-1 DISCUSSION AND DIRECTION REGARDING INCREASED FINES FOR USE OF ILLEGAL FIREWORKS; (POLICE)

**RECOMMENDATION: Review and discuss report and provide staff direction.**

D. NEW BUSINESS

D-1 DISCUSSION AND CONSIDERATION OF AN ORDINANCE TO BAN THE POSSESSION AND SALE OF SYNTHETIC SPICES AND/OR SYNTHETIC BATH SALTS; (POLICE)

**RECOMMENDATION: Review and discuss report and provide staff direction.**

E. COUNCIL 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 772-6205 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.**

**IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE THAT REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.**

**AGENDA NO: A-1**

**MEETING DATE: March 10, 2015**

MINUTES REGULAR JOINT MEETING  
FEBRUARY 23, 2015  
COMMUNITY CENTER MULTI-PURPOSE ROOM  
1001 KENNEDY WAY

On February 23, 2015 Open Joint Meetings of the City Council, Planning Commission, Harbor Advisory Board, Recreation & Parks Commission, Tourism Business Improvement District Advisory Board, Citizens Oversight Committee, Public Works Advisory Board and WRF Citizens Advisory Committee were held for the purpose of providing Ethics and Brown Act Training designed to meet the State Ethics Requirements for Local Officials (AB1234).

<http://youtu.be/JcE222j9DIc>

Session I began at 3:00pm and concluded at 5:05pm  
Session II began at 6:00pm and concluded at 8:08pm

Prepared by:

Dana Swanson  
City Clerk

MINUTES - MORRO BAY CITY COUNCIL  
SPECIAL MEETING – FEBRUARY 24, 2015  
MORRO BAY VETERAN’S HALL  
209 SURF STREET – 4:30 P.M.

PRESENT:	Jamie Irons	Mayor
	Christine Johnson	Councilmember
	John Heading	Councilmember
	Matt Makowetski	Councilmember
	Noah Smukler	Councilmember
STAFF:	David Buckingham	City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Rob Livick	Public Works Director
	Susan Slayton	Administrative Services Director

ESTABLISH QUORUM AND CALL TO ORDER

PUBLIC COMMENT RE: ITEMS ON THE AGENDA

The public comment period for Item I was opened; seeing none, the public comment period was closed.

SPECIAL MEETING AGENDA ITEM:

- I. STUDY SESSION TO REVIEW PRELIMINARY RECOMMENDATIONS FOR WATER AND SEWER RATES  
<HTTP://YOUTU.BE/E08VYUENJBU?T=5M23S>

Public Works Director Livick introduced Alex Handlers of Bartle Wells Associates who presented draft findings from the preliminary water and sewer rate study, along with recommendations from the Public Works Advisory Board meetings held on January 29 and February 19, 2015.

There was Council consensus to move forward with the rate study with alternative tier structures, for staff to bring back options for further discussion of pass-through for State Water Project cost increases, and to initiate the Prop. 218 process. Council discussed the importance of strict language defining emergency situations so it is not taken advantage, as well as a policy that would require periodic review of water and sewer rates so the City does not face similar problems in the future.

Mayor Irons requested staff bring back for discussion policies with regard to the water enterprise fund to ensure revenues meet expenses.

**MOTION:** Councilmember Smukler moved the Council direct staff to develop a Proposition 218 initiation program as presented and recommended by staff and the Public Works Advisory Board, and return to a public hearing with proposal and details including a public outreach and education program, options and recommendations for low income program based on alternative funding models, more detail for the State water pass-thru program, water shortage rate surcharge with strict emergency criteria language, desal operation surcharge, and a policy option to ensure future policy for periodic rate review. The motion was seconded by Councilmember Johnson and carried unanimously, 5-0.

ADJOURNMENT

The meeting adjourned at 6:13p.m.

Recorded by:

Dana Swanson  
City Clerk

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING – FEBRUARY 24, 2015  
VETERAN’S MEMORIAL HALL – 6:00P.M.

PRESENT:	Jamie Irons	Mayor
	John Headding	Councilmember
	Christine Johnson	Councilmember
	Matt Makowetski	Councilmember
	Noah Smukler	Councilmember
STAFF:	David Buckingham	City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Rob Livick	Public Works Director
	Eric Endersby	Harbor Director
	Joe Woods	Recreation Director
	Susan Slayton	Administrative Services Director
	Scot Graham	Community Development Manager

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 6:25pm

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

CLOSED SESSION REPORT

MAYOR AND COUNCILMEMBERS’ REPORTS, ANNOUNCEMENTS & PRESENTATIONS

Mayor Irons asked to pull Item A-3 to present the Proclamation Declaring Tuesday, February 24, 2015 as “World Spay Day” to Robin Coleman of Woods Humane Society. Council concurred.

PUBLIC PRESENTATIONS

<http://youtu.be/ZIwtvR83qvw?t=11m46s>

- Update on the status of LEAP Program  
Don Maruska provided an update on the LEAP program, current efforts, action teams and current members. They are preparing for a March 24 presentation to Council for support. All plans are located on the City website at [www.morro-bay.ca.us/LEAP](http://www.morro-bay.ca.us/LEAP)

PUBLIC COMMENT

<http://youtu.be/ZIwtvR83qvw?t=17m46s>

Ali Gale of the Salt Air Studio provided the business spot. She opened her business in Marina Square Gallery on the Embarcadero about six months ago. Everything is handmade in the USA, some locally, using organic and recycled materials. One of her main products is Wool Dryer

Balls, a natural alternative to disposable dryer sheets and fabric softener. The Salt Air Studio is open daily from 11am to 6pm.

Jeff Eckles, Morro Bay resident, business owner and President of the Morro Bay Community Foundation announced the Annual Dixon Spaghetti Dinner will be held on Friday, March 20. The event helps raise funds to help children participate in a variety of programs available through the Morro Bay Recreation Department.

Abby Diodati, Morro Bay, spoke regarding Agenda Item D-3, representing the Bike Parade Committee sharing the committee is willing to offer its services to put on the bike parade during the 4<sup>th</sup> of July event this year.

Meg Crocket, President of Pacific Wildlife Care, thanked the City of Morro Bay and Morro Bay Tourism Bureau for \$1,000 donation and asked the Council and citizens to recognize they provide a critical service treating birds, land mammals and reptiles that are injured or orphaned. Pacific Wildlife is in need of volunteers, members and donors. The hotline number is 543-WILD.

Linna Thomas, Morro Bay business owner, expressed appreciation for Pacific Wildlife and the work they do. She also presented signed petitions opposing the parklet, noting the petition is regarding the parklet only and is not directed at any business.

Ray David, Morro Bay resident and realtor, spoke in opposition to the need for realtors to hold a business license, noting the realtors work for brokers under their business license and it should not be the agent's responsibility.

Ted Dumond spoke on behalf of KC Caldwell, Morro Bay, asking for clarification regarding business license requirements for local artists. She is a beginning artist who joined the Morro Bay Art Association recently to meet other artists and get their feedback. She asks for consideration of those who do not sell online or at Art in the Park.

William Austin, owner and broker for Pacific Beach Properties, spoke in opposition to the need for realtors to have a business license. He believes this is an unfair tax and asks why agents are charged more than employees.

Dianne Ravin, Morro Bay, spoke on behalf of Morro Bay Art Association and the requirement for each member to have a business license to show their work. She noted a previous ruling for a lower fee for those earning less than \$12,000, and suggested another tier for those with revenues less than \$1,200 be excluded from the tax schedule.

Park Merrill, Morro Bay resident and member of the Morro Bay Art Association, noted the Association award smart grants to high school art students, provides education opportunities for children, hosts an art show during the Morro Bay Bird Festival, partners with Morro Bay Historical Society, and Art in the Park, all with volunteer labor and one part-time employee. All Art in the Park participants must have business licenses.

Janice House, Morro Bay resident, spoke regarding Measure Q and questioned the potential bond measure to fund street repairs. She believes there are additional Measure Q funds to pay for street repairs and Council should not look to citizens to fund an additional revenue stream for streets. She also spoke regarding Citizens Finance Committee, asking what problem the Council is trying to solve.

Valerie Seymour, Morro bay hotelier on the waterfront, spoke regarding concerns with traffic patterns, particularly the Embarcadero and Beach Street intersection. She congratulates the City on the bridge project, but noted we need to deal with vehicle traffic as well.

David Nelson, Morro Bay, spoke regarding the type of technology planned for the Water Reclamation Facility, asking the Council to look in a new direction. He also noted the need for better signage leading tourists to Morro Bay, and a late report in the Tribune noting the power plant has been taken off the market.

The public comment period was closed.

A. CONSENT AGENDA

<http://youtu.be/ZIwtvR83qvw?t=1h5m10s>

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

A-1 APPROVAL OF MINUTES FOR THE SPECIAL CITY COUNCIL MEETING HELD ON FEBRUARY 10, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE CITY COUNCIL MEETING HELD ON FEBRUARY 10, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF THE PROCLAMATION DECLARING TUESDAY, FEBRUARY 24, 2015 AS “WORLD SPAY DAY”; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-4 ADOPTION OF 2015-16 CITY GOALS AND PROGRAM OBJECTIVES; (ADMINISTRATION)

**RECOMMENDATION: Adopt the 2015-16 City Goals and Program Objectives, as presented.**

A-5 APPROVAL OF THE PROCLAMATION CELEBRATING THE GRAND RE-OPENING OF THE MORRO BAY LIBRARY ON MARCH 1, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve and file.**

A-6 CONSIDERATION AND ADOPTION OF RESOLUTION NO. 09-15 UPDATING THE CITY'S CONFLICT OF INTEREST CODE; (ADMINISTRATION / CITY ATTORNEY)

**RECOMMENDATION: Adopt Resolution 09-15.**

MOTION: Councilmember Heading moved the Council approve the Consent Agenda items. The motion was seconded by Councilmember Smukler and carried unanimously, 5-0.

B. PUBLIC HEARINGS - NONE

C. UNFINISHED BUSINESS / SECOND READING AND ADOPTION OF ORDINANCES

C-1 STATUS UPDATE ON THE MORRO BAY POWER PLANT AND POTENTIAL DIRECTION; (ADMINISTRATION / PUBLIC WORKS)  
<http://youtu.be/ZIwtvR83qvw?t=1h5m56s>

City Manager Buckingham presented the staff report and responded to Council inquiries.

The public comment period for Item C-1 was opened.

David Nelson, Morro Bay, expressed concern regarding EPA investigation of 17 sites of concern for serious pollution and noted the deed restrictions will make it very difficult to sell the power plant property. He asks the City be proactive and work with EPA to get the property be cleaned of pollution.

Barbara Doerr, Morro Bay, stated the City is in control of the future use of the power plant property. Zoning is the City's strongest tool to shape redevelopment and protect the health and welfare of the residents. Don't wait until a future developer comes forward. Be proactive and do something now to rezone this and the WWTP property.

Bob Doerr, Morro Bay, asks the Council gather input and decide what the appropriate future uses for the power plant site should be. Citizens want to support economic development of the site and increase economic viability for the city as a whole. He also asks the City investigate the legality of PG&E's actions to limit future development by way of a deed restriction.

Eric Nelson, Los Osos resident and Pacific Wildlife Care board member shared that Pacific Wildlife is currently located on Dynegy property. Their lease expires 2021 and they want to work with City to solidify their future in Morro Bay. Morro Bay is an ideal location for caring for injured wildlife, and the city clearly recognizes the value of our wildlife.

The public comment period for Item C-1 was closed.

Council discussed continued City support of Pacific Wildlife, encouraging further APCD monitoring of potential site pollution, future development of this property, along with the WWTP and Lila Keiser property, and the need to be proactive, strategic and identify potential partners in the endeavor.

There was Council consensus to appoint a subcommittee consisting of Mayor Irons and Councilmember Headding to be the point persons in communications related to power plant property.

D. NEW BUSINESS

D-1 DISCUSSION ON USE OF DISTRICT TRANSACTION TAXES (MEASURE Q) TO PAY FOR UNFUNDED MANDATES; (ADMINISTRATIVE SERVICES)  
<http://youtu.be/ZIwtvR83qyw?t=2h28m14s>

Administrative Services Director Slayton presented the staff report and responded to Council inquiries.

The public comment period for Item D-1 was opened.

Homer Alexander, Morro Bay, disagrees with staff recommendation to pay for unfunded mandates regardless of their purpose. He worked on the ballot measure and is familiar with what the voters were told. The opposition said the money would end up in the general fund and he agrees this practice is an indirect way for staff to free up general fund monies for other purposes.

The public comment period for Item D-1 was closed.

Council expressed appreciation for the work the Citizens Oversight Committee has done. Council agrees with the language in Resolution No. 46-12 and supports use of Measure Q funds for any item that falls into one of the four Measure Q approved categories. Council agrees it is helpful for staff to identify any unfunded mandate recommended be paid for with Measure Q funds during the budget process for further discussion.

MOTION: Councilmember Smukler moves Council affirm and stand by Resolution No. 46-12 and requests future Measure Q budget requests to pay for unfunded mandates be noted in the budget item. The motion was seconded by Councilmember Makowetski and carried unanimously, 5-0.

D-2 UPDATE AND REVIEW OF A MEMORANDUM OF UNDERSTANDING (MOU) WITH CAYUCOS SANITARY DISTRICT FOR THE PRELIMINARY WORK NEEDED FOR THE DESIGN & CONSTRUCTION OF THE NEW WATER RECLAMATION FACILITY (WRF); (PUBLIC WORKS)  
<http://youtu.be/ZIwtvR83qyw?t=3h16m31s>

Public Works Director Livick presented the staff report, along with the draft MOU provided by the Cayucos Sanitary District (CSD) to City staff on February 23 and forwarded to the City Council on February 24 [click to view: <http://ca-morrobay.civicplus.com/DocumentCenter/View/7968>], and responded to Council inquiries.

The public comment period for Item D-2 was opened.

Barry Branin, Morro Bay, states the MOU the City has developed clearly identifies the lead partner, the customer and the plan. He encourages Council to continue doing what they're doing.

The public comment period for Item D-2 was closed.

Council reviewed the draft MOU prepared by the CSD and compared that document to the City's draft MOU.

City Attorney Pannone noted that, aside from one paragraph he planned to review further, there is nothing in the MOU the CSD has provided that hurts the City, because it allows you to move forward, work on RFP as agreed, then if nothing moves forward bring that for discussion.

Councilmember Smukler expressed concern the CSD MOU does not speak to responsibility for the tasks and expressed frustration they take credit for work so far in site selection. He is further concerned that the costs and amount of effort the City is putting forward, compared to Cayucos, is not equitable. The City desires an equitable relationship and a good value. He feels this is captured in the City MOU.

Councilmember Headding noted the importance of stating which items are non-negotiable and what are the desired outcomes.

Mayor Irons asked the CSD Draft MOU be included in the Meeting Minutes

D-3 DISCUSSION AND APPROVAL OF CITY SUPPORT FOR DAYTIME EVENTS ON JULY 4, 2015; (ADMINISTRATION)  
<http://youtu.be/ZIwtvR83qvw?t=4h38s>

City Manager Buckingham presented the staff report and responded to Council inquiries.

The public comment period for Item D-3 was opened; seeing none, the public comment period was closed.

Councilmember Johnson noted there is \$9,000 left unspent in general fund monies given to Tourism Bureau for 2014/15 events, and encourages staff to follow up with Mr. Haugen.

City Manager Buckingham will reach out to MB 4<sup>th</sup> Committee to encourage them to maintain 501(c)(3) status in hopes this will be a one-year commitment and folks will step up to lead the charge next year.

MOTION: Councilmember Johnson moves the Council direct staff to partner with other persons and organizations for the purpose of conducting a 4<sup>th</sup> of July community celebration where the City will act as lead partner for the event, with other groups assisting; the celebration will be a day-time only event, focused on Morro Bay residents/families; the City will not charge for City-provided equipment and services such as police, fire, park fees, etc.; and City provided financial support for essential equipment and services the City cannot provide will be determined during the fiscal year 2015/2016 budget process. The motion was seconded by Councilmember Smukler and carried unanimously, 5-0.

E. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS  
<http://youtu.be/ZIwtvR83qvw?t=4h15m39s>

Councilmember Headding requested review of policy regarding process for appointing an advisory board member who does not attend interviews. Mayor Irons noted review of the Advisory Board Handbook is on the agenda planning guide for Council review and update.

ADJOURNMENT

The meeting adjourned at 10:48 p.m.

Recorded by:

Dana Swanson  
City Clerk



**AGENDA NO: A-4**

**MEETING DATE: March 10, 2015**

# Staff Report

**TO: Honorable Mayor and City Council      DATE: February 23, 2015**

**FROM: Rob Livick, PE/PLS - Public Works Director/City Engineer**

**SUBJECT: Status Report of a Major Maintenance & Repair Plan (MMRP) for the Existing Wastewater Treatment Plant**

## **RECOMMENDATION**

Staff recommends this report be received and filed.

## **ALTERNATIVES**

As no action is requested, there are no recommended alternatives.

## **FISCAL IMPACT**

No fiscal impact at this time as a result of this report. Fiscal impact is addressed through the budget process.

## **BACKGROUND**

This staff report is intended to provide an update on the development of the MMRP for the WWTP. At the February 14, 2013, JPA meeting the Council and District Board approved the development of an MMRP and made the following motion:

- Direct staff to prepare a time sensitive and prioritized MMRP for the WWTP with an anticipated rolling 2 year budget;
- The JPA solicit proposals from a qualified firm, or firms, to provide technical advice and analysis on an as needed basis as determined by Morro Bay's Public Services Director and Cayucos Sanitary District Manager; and
- The Morro Bay Public Services Director and Cayucos Sanitary District Manager report back to the JPA on a semi-annual basis on the progress and costs associated with the MMRP.

Development of an MMRP will assist the City and District in projecting the budgeting of expenditures required to keep the current plant operating in compliance with regulatory requirements.

Prepared by: RL/BK/RS Dept. Review: RL  
City Manager Review: \_\_\_\_\_  
City Attorney's Review: \_\_\_\_\_

Staff's focus has continued to be on developing and implementing work on the MMRP projects approved for the FY14/15 budget. The adopted FY14/15 budget contains \$1.221M in funding MMRP projects. The funds represent new MMRP projects as well as roll over from the FY13/14 budget for the headworks screening project and chlorine contact tank repairs.

Additionally, in anticipation of the budget preparation process for the 2015/2016 fiscal year, staff is continuing to coordinate with City and District staff as well as Mike Nunley & Associates (MKN) to identify priority projects and develop budgetary numbers for inclusion in the MMRP for the next fiscal year's budget for the WWTP. The goal in developing the budget for the MMRP is to recognize that the City has a goal to have the new WRF operational during the life of the next NPDES operational permit. This goal will insure prudent spending on this facility and still maintain the high quality effluent that is discharged to the Estero Bay.

## **DISCUSSION**

### **Digester #1 Repair**

Staff from Earth Systems conducted non-destructive testing of the digester tank structure on January 9. The results of those tests indicate that the concrete structure is still in satisfactory condition. Staff from MKN is currently developing a bid package for repairing and coating the tank interior and for the sandblasting and coating process. Plant staff is continuing to proceed with the repair and replacement of the valving and piping on digester #1.

### **Chlorine Contact Basin Improvements**

This project has been postponed until after the winter months to ensure a good weather window for the work to be completed. Staff has executed a contract with the contractor, but insurance documents and logistical issues delayed project implementation. In the event the project has to be performed in the next four months, the necessary equipment and supplies are on-site, and the WWTP crew is ready whenever the weather and logistical issues allow. The work will require by-passing the chlorine contact for at most a twenty-four hour period. By-passing of the tank will result in an effluent violation and the associated minimum mandatory penalty of \$3,000. During the time period the tank is off-line, staff will chlorinate and disinfect the effluent, but will not be able to dechlorinate the effluent resulting in the violation. Both staff at the Regional Water Quality Control Board and the California Department of Health Shellfish Division has been notified of our intent to delay the repair plans and the intent to by-pass the chlorine contact tank.

### **Rehabilitation of primary clarifier #2**

Staff has been discussing various strategies for the cost effective repairs of the cat walk on primary clarifier #2. Depending on the choice of strategies, they anticipate beginning repairs in April or May. They have also purchased valving and piping for repairs to the sludge and scum pump piping on the two clarifiers. The anticipated work includes repairs to the metal framework on the flights and skimmer cage assembly; repairs to the catwalk, repair and replacement of piping and valving, and other associated components.

### **Purchase and Installation of New Distributor Arms on Biofilter Improvement Project**

Staff will continue to work with City Public Works Engineering staff and MKN for the purchase and installation of new distributor arms on biofilter #2 and replacement of the main bearing on the

turntable. These units are a critical component of the secondary treatment system. This project was deferred from the FY13/14 budget to cover the costs of the emergency repairs to the auxiliary generator.

Floodwall Installation at the Biofilters and Interstage Pumping Station

Staff will continue to work with City Public Works Engineering staff on the design and installation of flood walls around the periphery of the two biofilters and interstage pumps to prevent inundation during a flooding event in accordance with the requirements of the existing and anticipated NPDES permit.

**CONCLUSION**

Staff will continue to bring a status report on the development of the MMRP at City Council meetings on a monthly basis.



AGENDA NO: A-5

MEETING DATE: March 10, 2015

## Staff Report

**TO: Honorable Mayor and City Council**

**DATE: March 2, 2015**

**FROM: Rob Livick, PE/PLS - Public Works Director/City Engineer**

**SUBJECT: Water Reclamation Facility (WRF) Project Update**

### RECOMMENDATION

Staff recommends the Council review the information regarding the current status and the proposed next steps regarding the development of a WRF project proposal for the Rancho Colina site and for the Council to provide any further direction as necessary.

### ALTERNATIVES

No alternatives are recommended.

### FISCAL IMPACT

The following is a summary of the existing contract with specialty consultants used to assist in the WRF site selection.

<i>JFR Consulting – Site Selection/Project Management Assistance</i>	
Original Contract	\$117,256
Amendment #1	\$76,129
Amendment #2	\$91,336
Amendment #3	\$23,147
Amendment #4	\$44,279
Total Contract	<b>\$352,147</b>
<i>Kestrel Consulting – Assessment Funding</i>	
Contract Amount	<b>\$20,530</b>
<i>Larry Walker and Associates – Permitting Constraints</i>	
Original Contract	\$24,970
Amendment #1	\$5,100
Total Contract	<b>\$30,070</b>
<i>Cleath-Harris Associates – Stream Flow Augmentation</i>	
Contract Amount	\$7,500
Amendment #1	\$6,500
Amendment #2	\$4,000

Prepared By: \_\_\_\_\_

Dept Review: \_\_\_\_\_

City Manager Review: \_\_\_\_\_

City Attorney Review: \_\_\_\_\_

Total Contract	<b>\$18,000</b>
<i>Carollo Engineers – CMC Capacity, Siting Evaluation and Cost Estimate (Proposed to be Reimbursed by RWQCB using SEP Funds)</i>	
Total Contract	<b>\$101,945</b>
<i>Total Consultant Contract Amount</i>	<b>\$522,692</b>

## **DISCUSSION**

Staff provides this report as a monthly update to the progress made to date on the new WRF project. With the denial of the permit for the WWTP project in its current location, the City has embarked on a process for a WRF. This staff report provides a review of what has occurred to date. See Attachment 1 for a brief review of dates, status and accomplishments on the WRF facility project. Note the shaded information has been added since your last review. Also attached is the February 19, 2015 letter from Ken Harris, RWQCB regarding the Considerations for Siting, Technology, and Disposal and Reuse Options for a New Morro Bay/Cayucos Wastewater Treatment Plant. Mr. Harris' letter discusses the desire for a collaborative process, resource protection and the project timeline. The letter stipulates the project needs to be completed by 2021 to avoid minimum mandatory penalties.

## **ATTACHMENTS**

1. Timeline of WRF events January 2013 to present
2. Letter from Ken Harris, Executive Officer, Regional Water Quality Control Board

WRF Project Timeline  
January 2013 - Present

Date	Action
March 11, 2015	cheduled Joint Meeting of Morro Bay City Council and Cayucos Sanitary District Board of Directors in Cayucos
February 25, 2015	JFR Contract Ammendment #4 for \$44,279.00 to assist with fatal flaw analysis
February 25, 2015	Facilities Master Plan RFP Completed for internal staff review
February 23, 2015	CSD Legal Council transmitted CSD DRAFT MOU to City
February 19, 2015	Letter from Ken Harris, RWQCB regarding the New WRF project and deadline for operations.
February 19, 2015	Public Works Advisory Board – Second Water and Sewer Rate Study Workshop
February 11, 2015	WRFAC Meeting to review MOU for Now
February 11, 2015	Scheduled Joint Meeting of Morro Bay City Council and Cayucos Sanitary District Board of Directors in Cayucos was canceled
February 5, 2015	Meeting between Morro Bay Council Subcommittee and Cayucos Sanitary District Board Sub Committee to Discuss the MOU for Now
January 29, 2015	Public Works Advisory Board – Water and Sewer Rate Study Workshop
January 26, 2015	Meeting with between Morro Bay and Cayucos Staff to discuss next steps and "MOU for Now"
January 26, 2015	Meeting with between Morro Bay Staff, JFR/MKN and City Council sub-committeeto discuss next steps and "MOU for Now"
January 13, 2015	City Council to review "Next-Steps" and provide direction to Staff.
January 8, 2015	Staff presentation of the "Next-Steps" to the City Council and CSD Board
December 11, 2014	Staff presented to the City Council and the CSD Board of Directors the Final JFR report, including the CMC evaluation by Carollo Engineers. The csd Board of Directors concured that based on the information presented that the Rancho Colina site appeared the most viable and cost effective.
December 9, 2014	City Council meets to review the Final JFR report, including the CMC evaluation by Carollo Engineers. The City Council expresses their preference for Rancho Colina as their preferred site for the New WRF. The cost estimates indicated that the CMC site was nearly double that of the Rancho Colina site.
December 8, 2014	Corollo Engineers releases their Technical Morandum regarding CMC WWTP capacity and necessary facility expansion to accommodate increase flows from City and CSD.
December 8, 2014	Meeting between MBNEP and City staff to discuss concerns regarding the siting of the WRF at CMC and increased pollutant loads to Chorro Creek.
December 8, 2014	Meeting between City staff and the WRF Technical Committee (Irons/Smukler) to review the project status.
December 1, 2014	Tour of the existing CMC facility with representatives from CDCR, CSD and the City.
November 19, 2014	Conference call between CDCR, CSD and Morro Bay staff regarding the logistics of siting at the CMC location.
November 18, 2014	Meeting between City and California Coastal Coastal Commission staff regarding a variety of projects in Morro Bay including the WRF siting.
November 13, 2014	Staff presented to the City Council and the CSD Board of Directors the status of the CMC Capacity Analysis and also updated the CSD Board on the City Council meeting of November 12, 2014

New items are indicated by shading.

WRF Project Timeline  
January 2013 - Present

Date	Action
November 12, 2014	The City Council reviewed the draft report from John Rickenbach Consulting regarding final site preference. As the result of the report being incomplete, without the Carollo CMC engineering analysis including comparable cost estimates, the City Council choose to delay their decision on final site preference until such time that the report is complete and the WRFAC has had a chance to review and make a recommendation.
November 5, 2014	The WRFAC met and reviewed the draft report from John Rickenbach Consulting regarding final site preference. As the result of the report being incomplete, without the Carollo CMC engineering analysis including comparable cost estimates, the WRFAC moved to recommend to City Council to delay their decision on final site preference until such time that the report is complete and the WRFAC has had a chance to review and make a recommendation to the City Council.
October 28, 2014	Cleath-Harris and Associates presented the Hydrogeological Technical Memoranda regarding the relative benefits of a Creek discharge in the Chorro Valley and In-Lieu recharge in the Morro Valley to the City Council at their regular meeting.
October 22, 2014	Meeting of the WRFAC where they reviewed the Hydrogeological Technical Memoranda by Cleath-Harris and Associates and toured the Rancho Colina site.
October 20, 2014	A conference call between Morro Bay, CSD, CMC, Regional Board and CDCR was held to discuss the viability and timing of a regional facility at CMC. At that meeting CDCR authorized the release of WWTP data to Carollo for their process modeling.
October 10, 2014	A project kick off meeting was held at the City's Public Services offices for the Carollo CMC work, City and CSD staff along with the City's consultants were in attendance.
October 9, 2014	Meeting between the Morro Bay City Council and the Cayucos Sanitary District Board of Directors Meeting in Cayucos. City Council directed, by motion, City staff to work cooperatively with Cayucos Sanitary District staff.
October 8, 2014	Meeting of the WRFAC where they reviewed the LWA report regarding permitting constraints, Kestral Consulting report regarding financing and grants and they formed three technical subcommittees.
October 2, 2014	Meeting of the Morro Bay City Council Technical/Executive Committee and the Cayucos Sanitary District Board of Directors in Morro Bay
September 30, 2014	The Public Services director executed a contract with Carollo Engineers for the study of capacity and expansion capability at the CMC site.
September 26, 2014	Meeting with Bartle Wells (Sewer and Water Rate Consultant) regarding hearing schedule and additional data needs
September 25, 2014	Received final scope and estimated fee (\$101,945) from Carollo Engineers for the evaluation of the CMC option, Carollo requested changes to the standard City contract which are being reviewed by the City Attorney
September 23, 2014	City Council Special Meeting reviewed the Report by Larry Walker and Associates regarding the Water Quality permitting implications at each of the two final proposed sites. Council also discussed the potential of joint City Council/WRFAC meetings and status of the CMC evaluation
September 11, 2014	Joint meeting of the Morro Bay City Council and the Cayucos Sanitary District Board of Directors Meeting in Morro Bay.
September 10, 2014	First Meeting of the WRFAC
August 12, 2014	City Council confirmed Citizen Appointments to the WRFAC
July 16, 2014	Kick off meeting with Larry Walker Associates regarding discharge permit requirements for various disposal/reuse options for the new WRF project.

New items are indicated by shading.

WRF Project Timeline  
January 2013 - Present

Date	Action
July 10, 2014	Meeting with Cayucos Sanitary District staff to discuss the scope of work for the proposed Carollo Engineers CMC capacity evaluation study.
July 9, 2014	City Council conducted interviews for positions on the WRF Citizens Advisory Committee (WRFCAC). City Council appointed seven members to the WRFCAC.
June 30, 2014	Staff met internally to gather preliminary information for Bartle Wells Rate Study. Staff will have all info to Bartle Wells by the end of July.
June 27, 2014	Kick off meeting with Kestrel Consulting to discuss funding strategies for the new WRF project.
June 27, 2014	Meeting with Cleath-Harris to review draft Chorro Creek discharge study and effect on City water supply. Authorized Cleath-Harris to perform a similar study for the Morro Valley.
June 25, 2014	Meeting with John Rickenbach and Mike Nunley to discuss project schedule for the WRF project
June 20, 2014	City executed a contract with Larry Walker Associates in the amount of \$24,970 to advise the City regarding discharge permit requirements for various disposal/reuse options for the new WRF project.
June 15, 2014	City executed a contract with Kestrel Consulting in the amount of \$20,530 to develop funding strategies for the new WRF project.
June 14, 2014	Staff has met with a variety of alternative project delivery method firms to explore the requirements for this process, firm include: Corollo, CDMSmith; and Black and Veatch.
May 27, 2014	City Council adopted Resolution 34-14 that provides direction to staff regarding the "Rancho Colina" site, continuing parallel path discussion regarding the CMC site, and forming a Citizen's Advisory Committee.
May 23, 2014	Selected Bartle Wells as Water and Sewer Rate Study consultant. The estimated fee for the study is not to exceed \$67,440.
May 22, 2014	The City Clerk posted the notice of the formation of a new, limited term and scope, i.e. Water Reclamation Facility Citizen's Advisory Committee. Applications are due to the Clerk by Friday, June 13, 2014.
May 13, 2014	Council Approved New Water Reclamation Facility Project Report on Reclamation and Council Selection of a WRF Site and provided direction to staff to return to Council with a resolution that captured the motions made.
May 8, 2014	May JPA Meeting cancelled.
May 1, 2014	Scheduled site visit at Giannini site with WRF Subcommittee, JRF Consulting and Property Owner.
April 23, 2014	Meeting to review the "Rancho Colina" site with the Morro Bay and CSD Sub-Committees along with Water Board staff.
April 21, 2014	"Rancho Colina" site visit with staff and Council persons Leage and N. Johnson.
April 18, 2014	Letter sent to property owners of potential WRF sites, inviting a discussion regarding siting potential
April 11, 2014	"Rancho Colina" site visit with staff and Council person C. Johnson.
April 10, 2014	April JPA Meeting cancelled
March 21, 2014	Meeting between City of Morro Bay (Irons/Smukler) and CSD (Enns/Lloyd) Sub-Committees along with Morro Bay and CSD County and Water Board Staff to discuss overall project status and the CMC option.

New items are indicated by shading.

WRF Project Timeline  
January 2013 - Present

Date	Action
March 20, 2014	WRF Sub-Committee meeting along with staff and property owner at the "Rancho Colina" Morro Valley site to get an overview of the potential for it as a project location.
March 10, 2014	March JPA Meeting cancelled.
March 6, 2014	Scheduled WRF Subcommittee meeting with staff to discuss grant opportunities and schedules.
February 28, 2014	Received a revised scope of work for a contract amendment received from Rickenbach recognizing the accelerated time schedule for the WRF. Estimated fees not to exceed \$76,129.
February 25, 2014	City Council received a status update on the New WRF and adopted Resolution 17-14 prescribing a 5-year time frame for the construction of the New WRF.
February 24, 2014	City Council Discussion of Eater and Sewer Rates at special Workshop and Council discussion and direction regarding City DRAFT MOU and CSD DRAFT MOU.
February 13, 2014	WRF Sub-Committee meeting to discuss the 5 year time schedule and grant opportunities.
February 13, 2014	February JPA Meeting held.
February 11, 2014	Mid-year Budget adjustment to include additional funding for WRF alternative site analyses. \$100,000 was approved.
January 31, 2014	Status report preparation assigned to Public Services Director.
January 29, 2014	Received proposal from Rickenbach for a contract amendment to perform due diligence on alternative WRF sites for final site selection. Estimated fees not to exceed \$63,806.
January 23, 2014	Onsite staff meeting with property owner at Rancho Colina to tour a potential location.
January 23, 2014	Telephone discussion with City's Water Attorney regarding water rights to creek discharge of wastewater.
January 20, 2014	Received proposal from Cleath-Harris to study Chorro Creek discharge and effect on City water supply. Estimated fees not to exceed \$7,500.
January 16, 2014	January JPA Meeting canceled.
December 19, 2013	December JPA Meeting held – Verbal update by both CMB and CSD.
December 10, 2013	Presentation of Options Report to City Council.
November 19, 2013	Meeting with RWCQB Staff regarding project Status and Permit Renewal.
November 14, 2013	November 2013 JPA Meeting Cancelled.
November 12, 2013	Presentation of Options Report to City Council.
November 5, 2013	Second Public Workshop – Presentation of Options Report for Public Feedback.
November 4, 2013	Public Works Advisory Board – Options Report to Board for Public Feedback.
October 29, 2013	Release of Public Draft – Options Report.
October 21, 2013	Quarterly Coastal Commission/City of Morro Bay Meeting.
September 27, 2013	October 2013 JPA Meeting cancelled.
September 16, 2013	Biosolids and Treatment Options Workshop at MB Veteran's Hall.
September 12, 2013	September JPA Meeting held.
August 19, 2013	Week ofmWorkshop Summary posted on City's website. Comments Form available on City's website for additional comments on the workshop and/or project.
August 15, 2013	Community Workshop #1 held at MB Veteran's Hall.
August 8, 2013	August JPA Meeting Cancelled.
July 25, 2013	Stakeholder Interviews conducted by Rickenbach team.

New items are indicated by shading.

WRF Project Timeline  
January 2013 - Present

Date	Action
July 19, 2013	WSC Report entitled <u>Conceptual Wastewater Treatment Alternatives Technical Memorandum</u> commissioned by the Cayucos Sanitary District (CSD) released on the CSD website and delivered to the City. Report located at the following address: <a href="http://www.cayucosd.org/documents/Conceptual%20WW%20Treatment%20AltTM_CSD.pdf">www.cayucosd.org/documents/Conceptual%20WW%20Treatment%20AltTM_CSD.pdf</a>
July 18, 2013	Quarterly Coastal Commission/City of Morro Bay meeting, Rickenbach Team participated in review and discussion of the status of the WRF project.
July 11, 2013	July JPA Meeting Cancelled.
July 3, 2013	Tentative Schedule from Rickenbach for the New WRF posted online and available.
July 3, 2013	Working with Coastal Commission staff to finalize date for quarterly meeting/teleconference.
June 28, 2013	Work with Rickenbach to determine updated schedule pursuant to the scope of work in the RFP. Determination of Stakeholder groups/individuals.
June 24, 2013	Kick-off Meeting with John Rickenbach and team members.
June 13, 2013	JPA Meeting – Cayucos Veteran’s Hall.
May 28, 2013	Closed Session Item scheduled to discuss Righetti appraisal.
May 15, 2013	Public Services staff continues to work with John F. Rickenbach, Consulting to finalize the consultant contract
May 14, 2013	City Council meeting – Approval of John F. Rickenbach, Consulting as the Preliminary Planning Consultant for the WRF project.
May 9, 2013	May JPA meeting held, “Verbal Report by the City and District on the Progress of the future WWTP” was on the agenda and discussed.
May 2, 2013	Interviews to recommend the individual/team for the WRF project manage.
April 29, 2013	WRF Study Session at Veteran’s Hall.
April 25, 2013	Quarterly Meeting with California Coastal Commission staff, WRF discussion and status report on the meeting agenda.
April 25, 2013	Initial meeting with Selection Committee for the RFP for Planning Services for the WRF.
April 23, 2013	City Council meeting for the reaffirmation of 5 members of citizen selection committee.
April 16, 2013	Study Session on WRF facility announced for April 29, 2013.
April 15, 2013	RFP due.
April 11, 2013	April JPA meeting held, “Verbal Report by the City and District on the Progress of the future WWTP” and Discussion and Approval to Terminate the Consultant Services Agreements with Delzeit; Dudek, McCabe and Company; and Montgomery Watson Harza (MWH)” were on the agenda and discussed.
April 10, 2013	Addendum to RFP issued, re: selection committee
April 9, 2013	City Council meeting - appointment of 5 citizens for the RFP selection committee at City Council meeting.
April 5, 2013	Citizen selection committee deadline.

New items are indicated by shading.

EDMUND G. BROWN JR.  
GOVERNORMATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

---

**Central Coast Regional Water Quality Control Board**

February 19, 2015

Mr. David Buckingham, City Manager  
City of Morro Bay  
[dbuckingham@morro-bay.ca.us](mailto:dbuckingham@morro-bay.ca.us)

Mr. Rick Koon, District Manager  
Cayucos Sanitary District  
[rkoon@cayucossd.org](mailto:rkoon@cayucossd.org)

Dear Mr. Buckingham and Mr. Koon:

**CONSIDERATIONS FOR SITING, TECHNOLOGY, AND DISPOSAL AND REUSE OPTIONS  
FOR A NEW MORRO BAY/CAYUCOS WASTEWATER TREATMENT PLANT**

Acknowledging the Morro Bay city council's decision to locate a new wastewater treatment plant at the Las Colinas site, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) is interested in helping the communities of Morro Bay and Cayucos develop a new wastewater treatment and reuse and disposal system that will protect and enhance sustainable water resources in the Estero coast valleys. Starting fresh allows Morro Bay and Cayucos to develop a comprehensive plan to do so.

The communities have commissioned extensive studies to evaluate treatment and disposal alternatives. The alternatives range from full secondary with ocean disposal to tertiary treatment with recycling, agricultural reuse, and groundwater recharge. The Central Coast Water Board's preferred scenario for the new plant includes nitrate removal, tertiary treatment, supplemental treatment, and groundwater recharge through injection or surface spreading. This scenario would also include retaining the ocean outfall for salts disposal.

Groundwater recharge is the most sustainable reuse option available. It helps protect against seawater intrusion, improves groundwater quality, and increases supplies for both agricultural and urban uses. Nitrate removal, either by secondary biological processes or by post-tertiary supplemental treatment, is necessary to protect groundwater quality. Supplemental treatment produces brines that could be disposed of through the ocean outfall.

Permitting for this preferred scenario includes several agencies. The State Water Resources Control Board's Division of Drinking Water (DDW) would be responsible for reviewing and approving the groundwater recharge system in compliance with new regulations adopted in 2014. The Central Coast Water Board would issue waste discharge requirements for groundwater recharge and an NPDES permit for ocean disposal.

The Central Coast Water Board and Morro Bay and Cayucos reached a legal agreement in 2008 that includes a conversion schedule for upgrading the communities' ocean disposal discharge to at least full secondary level. The communities are now significantly out of

DR. JEAN-PIERRE WOLFF, CHAIR | KENNETH A. HARRIS JR., EXECUTIVE OFFICER

895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401 | [www.waterboards.ca.gov/centralcoast](http://www.waterboards.ca.gov/centralcoast)

David Buckingham  
Rick Koon

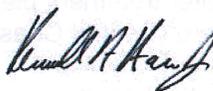
- 2 -

February 19, 2015

compliance with the timelines in that agreement. The Central Coast Water Board has agreed that the force majeure provisions of the agreement are applicable to the noncompliance and has therefore not considered enforcing the agreement. Nevertheless, we are intent on seeing this project completed as soon as possible. According to the agreement, the Central Coast Water Board will not issue another 301(h)-modified NDPES permit. However, the Central Coast Water Board is willing to consider including time schedules and interim limits either in the next NDPES permit (scheduled for 2015 adoption) or in a concurrent 13385(j)(3) order that would protect Morro Bay and Cayucos from mandatory minimum penalties for violations of the permit. However, such protections would not extend past the expiration of the next permit. Therefore, the communities face MMPs if the new plant is not operational by 2021.

The Central Coast Water Board also recommends that Morro Bay, Cayucos, and other local stakeholders form a groundwater sustainability agency to develop and implement a groundwater sustainability plan as required by the 2014 Sustainable Groundwater Management Act. This agency should also develop the salt and nutrient management plan envisioned in the State Water Resources Control Board's 2013 Recycled Water Policy. Developing and implementing these plans will allow all concerned agencies to make informed decisions to protect the groundwater basins.

Sincerely,



Digitally signed by Kenneth A Harris Jr  
DN: cn=Kenneth A Harris Jr, o=Central  
Coast Regional Water Quality Control  
Board, ou=Executive Officer,  
email=Ken.Harris@waterboards.ca.gov,  
c=US  
Date: 2015.02.19 13:34:16 -08'00'

Kenneth A. Harris Jr.  
Executive Officer

cc:

Tim Carmel, Cayucos Sanitary District, [tcarmel@carnaclaw.com](mailto:tcarmel@carnaclaw.com)

Rob Livick, City of Morro Bay, [rlivick@morro-bay.ca.us](mailto:rlivick@morro-bay.ca.us)

Justin Buhr, Coastal Commission, [Justin.Buhr@coastal.ca.gov](mailto:Justin.Buhr@coastal.ca.gov)

Wade Horton, SLO County, [whorton@co.slo.ca.us](mailto:whorton@co.slo.ca.us)

Mark Hutchinson, SLO County, [mhutchinson@co.slo.ca.us](mailto:mhutchinson@co.slo.ca.us)

Katie Disimone, Central Coast Water Board, [Katie.disimone@waterboards.ca.gov](mailto:Katie.disimone@waterboards.ca.gov)

Sheila Soderberg, Central Coast Water Board, [Sheila.soderberg@waterboards.ca.gov](mailto:Sheila.soderberg@waterboards.ca.gov)

Harvey Packard, Central Coast Water Board, [Harvey.packard@waterboards.ca.gov](mailto:Harvey.packard@waterboards.ca.gov)

p:\npdes\facilities\san luis obispo\morro bay-cayucos wwtp\new wwtp considerations.docx  
ECM CW-241479



AGENDA NO: A-6

MEETING DATE: March 10, 2015

## Staff Report

**TO:** Honorable Mayor and City Council **DATE:** March 3, 2015  
**FROM:** Rob Livick, PE/PLS – Public Works Director/City Engineer  
**SUBJECT:** Award of Contract for Lease of a Skid Steer to CAT Financial

### RECOMMENDATION

Staff recommends the City Council authorize the Public Works Director to execute a five year Lease to Purchase Agreement with CAT Financial for a CAT 289D Skid Steer and supplemental equipment.

### ALTERNATIVES

- 1) Deny the request, or
- 2) Purchase the equipment

### FISCAL IMPACT

Purchase of a Skid Steer was approved in the 2014-2015 FY budget as part of the Measure Q Street Improvement strategies. In order to make most effective use of the limited funding available, staff is recommending the City enter into a five year lease to purchase agreement. Lease payments total \$1,868.47 per month for 59 months and a final payment of \$2,272.47 for a total of \$112,512.20, or \$22,502.44 per year. The lease is terminable by the City at no penalty should the Council not allocate future funds.

### BACKGROUND/DISCUSSION

City maintenance staff has determined the need for a small off-road piece of heavy equipment that can load, sweep, auger and grind asphalt. Staff inquired with a member representative from National Joint Powers Alliance (NJPA) as to which commercial equipment manufacturer could meet these needs. Based on that input, proposals were obtained from John Deere and Caterpillar at \$112,574.76 and \$111,798.37, respectively.

In order to make most effective use of the limited funding available, staff has analyzed the needs and is recommending the City enter into a five year lease to purchase agreement based on pavement management needs. Staff solicited for lease terms from both Rabobank and Caterpillar. Caterpillar Financial delivered better terms with a zero damages return clause.

### ATTACHMENT

1. Caterpillar Skid Steer Specifications
2. Lease Agreement

Prepared By: RL/MW Dept Review: RL  
City Manager Review: \_\_\_\_\_  
City Attorney Review: \_\_\_\_\_

# 259D/279D/289D

Compact Track Loaders



<b>Cat® C3.3B DIT (Turbo) Engine</b>	<b>259D</b>		<b>279D</b>		<b>289D</b>	
Gross Power (SAE J1995)	55.4 kW	74.3 hp	55.4 kW	74.3 hp	55.4 kW	74.3 hp
<b>Weights</b>						
Operating Weight	4013 kg	8,846 lb	4487 kg	9,893 lb	4778 kg	10,533 lb
<b>Operating Specifications</b>						
Rated Operating Capacity at 50% Tipping Load	1315 kg	2,900 lb	1331 kg	2,935 lb	1724 kg	3,800 lb

Thank you for selecting Caterpillar products and for allowing Caterpillar Financial Services Corporation to serve your financing needs. Included in this document package are all of the forms that will be needed for standard tax exempt lease purchase transactions. The forms have been designed to be clear, concise and user friendly. We have also provided a brief explanation of the purpose of each form. If you wish to discuss any of the forms or have any questions about any aspect of this transaction, we encourage you to contact your Caterpillar Dealer or Caterpillar Financial Services Corporation at 1-866-263-3791 Option # 5.

**A. Governmental Equipment Lease-Purchase Agreement.** The Governmental Lease-Purchase Agreement contains the terms that govern each transaction between us. It is the standard Caterpillar Financial Services Corporation tax exempt lease-purchase agreement, and provides that we will lease to you the equipment described therein pursuant to a full payout amortization schedule. A new Governmental Equipment Lease-Purchase Agreement will have to be signed in connection with each transaction.

**B. Lessee's Authorizing Resolution.** The Authorizing Resolution is evidence you have taken the necessary governing body actions to approve the Governmental Equipment Lease-Purchase Agreement. Although the authorizing instrument is often a resolution, it may also take other forms such as an ordinance. We are agreeable to using your customary or standard form provided it contains specific approval for the lease-purchase agreement, designates persons who are authorized to sign on your behalf and either approves the document forms or delegates this authority to a named official

**C. Verification of Insurance.** The Certificate of Insurance is intended to supply information regarding the insurance coverage for the equipment being lease-purchased. You will need to supply the requested information to us so we can verify coverage.

**D. Opinion of Counsel.** An opinion of counsel is required in connection with each Governmental Equipment Lease-Purchase Agreement. The opinion is intended to confirm that you have complied with all open meeting laws, publication and notice requirements, procedural rules for governing body meetings, and any other relevant state or local government statutes, ordinances, rules or regulations. We would be unable to confirm compliance with these laws and regulations ourselves absent long delays and higher costs so we rely upon the opinion of your attorney since he/she may have been involved in the process to approve our transaction and is an expert in the laws and regulations to which you are subject. The opinion also confirms that you are an entity eligible to issue tax-exempt obligations and that the Governmental Equipment Lease-Purchase Agreement will be treated as tax-exempt as it is your obligation to ensure that you have complied with relevant tax law.

**E. Form of 8038G or GC.** Form 8038 is required by the Internal Revenue Service in order to monitor the amount of tax-exempt obligations issued. You have to execute a Form 8038 for each Governmental Equipment Lease-Purchase Agreement. Whether a Form 8038 G or GC is required depends on the original principal amount of the Governmental Equipment Lease-Purchase Agreement. If the original principal amount is less than \$100,000 Form 8038GC is filed with the IRS. If the original principal amount is \$100,000 or more Form 8038G is filed with the IRS. Choose the appropriate 8038 form and complete according to IRS guidelines. Contact your TM or Sales Support Representative for assistance.

IRS Form 8038G

<http://www.irs.gov/pub/irs-pdf/f8038g.pdf>

IRS Form 8038GC

<http://www.irs.gov/pub/irs-pdf/f8038gc.pdf>

This Explanation of Contents is prepared as an accommodation to the parties named herein. It is intended as an example of some of the documents that Caterpillar Financial Services Corporation, in its reasonable judgment, may require and is not intended to constitute legal advice. Please engage and use your own legal counsel. We understand that the laws of the various states are different so nothing herein shall be construed as a warranty or representation that the documents listed herein are the only documents that may be required in any particular transaction or that any particular transaction, if documented in accordance with this Explanation of Contents, will be a valid, binding and enforceable obligation enforceable against the parties named herein in accordance with the terms of the documents named herein.

**DOCUMENT CHECKLIST (GOVERNMENTAL LEASE)**  
Transaction Number 2433220 Quote Number 4491214



**These documents were prepared especially for:**

595 Harbor St  
Morro Bay, CA 93442

Dealer: QUINN COMPANY, H430  
Date: 01/12/2015 Time: 3:06 PM  
Comments:

**Customer Executed Documents**

**Comments**

- Lease Purchase Document
- Delivery Certification
- Insurance Verification
- 8038G or 8038GC
- Advance Payment (cross out if N/A)
- Customer Information Verification
- Tax Exemption Certificate
- Any necessary Riders/Amendments
- Lessee's Resolution + Minutes of Meeting **OR**
- Opinion of Lessee's Counsel
- Copy of Driver's License (Sole Proprietorships and Individuals)

---

---

---

---

---

---

---

---

---

---

---

**Dealer Executed Documents**

**Comments**

- Purchase Agreement
- Dealer Invoice
- All Credit Conditions Met

---

---

---

*\*If any of these documents are altered, or if the Buyer wishes to add or delete documents, please contact your CFSC Credit Analyst to obtain acceptance of any and all changes.*





Governmental Equipment Lease-Purchase Agreement
Transaction Number 2433220

1. PARTIES

LESSOR ("we", "us", or "our"):
CATERPILLAR FINANCIAL SERVICES CORPORATION
2120 West End Avenue
Nashville, TN 37203

LESSEE ("you" or "your"):
595 Harbor St
Morro Bay, CA 93442

In reliance on your selection of the equipment described on Schedule A (each a "Unit"), we have agreed to acquire and lease the Units to you, subject to the terms of this Lease. Until this Lease has been signed by our duly authorized representative, it will constitute an offer by you to enter into this Lease with us on the terms stated herein.

2. DESCRIPTION OF THE UNITS

Table with 5 columns: DESCRIPTION OF UNITS, SERIAL/VIN, MONTHLY LEASE PAYMENT, FINAL LEASE PAYMENT, DELIVERY DATE. The table body is currently empty.

SEE SCHEDULE A FOR A DESCRIPTION OF THE UNITS.

TERMS AND CONDITIONS

- 3. Lease Payments; Current Expense
4. Late Charges
5. Security Interest
6. Disclaimer of Warranties
7. Non-Appropriation



return to us all of the Units, at your sole expense, in accordance with Section 14, and this Agreement will terminate on the Return Date without penalty or expense to you and you will not be obligated to pay the Lease Payments beyond such fiscal year; provided, that you will pay all Payments for which moneys have been appropriated or are otherwise available; and provided further, that you will pay month-to-month rent at the rate set by us for each month or part of any month that you fail to return the Units.

8. **Tax Warranty** You will, at all times, do and perform all acts and things necessary and within your control to ensure that the interest component of the Lease Payments will, for the purposes of Federal income taxation, be excluded from our gross income. You will not permit or cause your obligations under this Agreement to be guaranteed by the Federal Government or any branch or instrumentality of the Federal Government. You will use the Units for the purpose of performing one or more of your governmental functions consistent with the scope of your authority and not in any trade or business carried on by a person other than you. You will report this Agreement to the Internal Revenue Service by filing Form 8038C, 8038GC or 8038, as applicable. Failure to do so will cause this Agreement to lose its tax exempt status. You agree that if the appropriate form is not filed, the interest rate payable under this Agreement will be raised to the equivalent taxable interest rate. If the use, possession or acquisition of the Units is determined to be subject to taxation, you will pay when due all taxes and governmental charges assessed or levied against or with respect to the Units.
9. **Assignment** You may not, without our prior written consent, by operation of law or otherwise, assign, transfer, pledge, hypothecate or otherwise dispose of your right, title and interest in and to this Agreement and/or the Units and/or grant or assign a security interest in this Agreement and/or the Units, in whole or in part. We may not transfer, sell, assign, pledge, hypothecate, or otherwise dispose of our right, title and interest in and to this Agreement and/or the Units and/or grant or assign a security interest in this Agreement and/or the Units, in whole or in part.
10. **Indemnity** To the extent permitted by law, you assume liability for, agree to and do indemnify, protect and hold harmless us and our employees, officers, directors and agents from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses (including reasonable attorney's fees), of whatsoever kind and nature, arising out of the use, condition (including, but not limited to, latent and other defects and whether or not discoverable by you or us), operation, ownership, selection, delivery, storage, leasing or return of any item of Units, regardless of where, how and by whom operated, or any failure on your part to accept the Units or otherwise to perform or comply with any conditions of this Agreement.
11. **Insurance; Loss and Damage** You bear the entire risk of loss, theft, destruction or damage to the Units from any cause whatsoever. No loss, theft, destruction or damage of the Units will relieve you of the obligation to make Lease Payments or to perform any obligation owing under this Agreement. You agree to keep the Units insured to protect all of our interests, at your expense, for such risks, in such amounts, in such forms and with such companies as we may require, including but not limited to fire and extended coverage insurance, explosion and collision coverage, and personal liability and property damage liability insurance. Any insurance policies relating to loss or damage to the Units will name us as loss payee as our interests may appear and the proceeds may be applied toward the replacement or repair of the Units or the satisfaction of the Payments due under this Agreement. You agree to use, operate and maintain the Units in accordance with all laws, regulations and ordinances and in accordance with the provision of any policies of insurance covering the Units, and will not rent the Units or permit the Units to be used by anyone other than you. You agree to keep the Units in good repair, working order and condition and house the Units in suitable shelter, and to permit us or our assigns to inspect the Units at any time and to otherwise protect our interests in the Units. If any Unit is customarily covered by a maintenance agreement, you will furnish us with a maintenance agreement by a party acceptable to us.
12. **Default; Remedies** An "Event of Default" will occur if (a) you fail to pay any

Payment when due and such failure continues for ten (10) days after the due date for such Payment or (b) you fail to perform or observe any other covenant, condition, or agreement to be performed or observed by you under this Agreement and such failure is not cured within twenty (20) days after written notice of such failure from us. Upon an Event of Default, we will have all rights and remedies available under applicable law. In addition, we may declare all Lease Payments due or to become due during the fiscal year in which the Event of Default occurs to be immediately due and payable by you and/or we may repossess the Units by giving you written notice to deliver the Units to us in the manner provided in Section 14, or in the event you fail to do so within ten (10) days after receipt of such notice, and subject to all applicable laws, we may enter upon your premises and take possession of the Units. Further, if we financed your obligations under any extended warranty agreement such as an Equipment Protection Plan, Extended Service Contract, Extended Warranty, Customer Service Agreement, Total Maintenance and Repair Agreement or similar agreement, we may cancel such extended warranty agreement on your behalf and receive the refund of the extended warranty agreement fees that we financed but had not received from you as of the date of the Event of Default.

13. **Miscellaneous** This Agreement may not be modified, amended, altered or changed except by a written agreement signed by you and us. In the event any provision of this Agreement is found invalid or unenforceable, the remaining provisions will remain in full force and effect. This Agreement, together with exhibits, constitutes the entire agreement between you and us and supersedes all prior and contemporaneous writings, understandings, agreements, solicitations, documents and representations, expressed or implied. Any terms and conditions of any purchase order or other documents submitted by you in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on us and will not apply to this Agreement. You agree that we may correct patent errors in this Agreement and fill in blanks including, for example, correcting or filling in serial numbers, VIN numbers, and dates. Any notices required to be given under this Agreement will be given to the parties in writing and by certified mail at the address provided in this Agreement, or to such other addresses as each party may substitute by notice to the other, which notice will be effective upon its receipt.
14. **Title; Return of Units** Notwithstanding our designation as "Lessor", we do not own the Units. Legal title to the Units will be in you so long as an Event of Default has not occurred and you have not exercised your right of non-appropriation. If an Event of Default occurs or if you non-appropriate, full and unencumbered title to the Units will pass to us without the necessity of further action by the parties, and you will have no further interest in the Units. If we are entitled to obtain possession of any Units or if you are obligated at any time to return any Units, then (a) title to the Units will vest in us immediately, and (b) you will, at your expense, promptly deliver the Unit to us properly protected and in the condition required by Section 11. You will deliver the Unit, at our option, (i) to the nearest Caterpillar dealer selling equipment of the same type as the Unit; or (ii) on board a carrier named by us and shipping the Unit, freight collect, to a destination designated by us. If the Unit is not in the condition required by Section 11, you must pay us, on demand, all costs and expenses incurred by us to bring the Unit into the required condition. Until the Units are returned as required above, all terms of this Agreement will remain in full force and effect including, without limitation, your obligation to pay Lease Payments and to insure the Units.
15. **Other Documents** In connection with the execution of this Agreement, you will cause to be delivered to us (i) either (A) a certified copy of your authorizing resolution substantially in the form attached as Attachment B and a copy of the minutes of the relevant meeting or (B) an opinion of your counsel substantially in the form attached as Attachment C; (ii) a Verification of Insurance substantially in the form attached to this Agreement; (iii) a copy of the signed Form filed with the Internal Revenue Service required in Section 8 above as Attachment D; and (iv) any other documents or items required by us.
16. **Applicable Law** This Agreement will be governed by the laws, excluding the laws relating to the choice of law, of the State in which you are located.

**SIGNATURES**

LESSOR  
**CATERPILLAR FINANCIAL SERVICES CORPORATION**  
 Signature \_\_\_\_\_  
 Name (print) \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_

LESSEE  
 Signature \_\_\_\_\_  
 Name (print) \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_

**Attachment A to Governmental Lease-Purchase Agreement  
Transaction Number 2433220**

**PARTIES**

**LESSOR:**

CATERPILLAR FINANCIAL SERVICES CORPORATION  
2120 West End Avenue  
Nashville, TN 37203

**LESSEE:**

595 Harbor St  
Morro Bay, CA 93442

**DESCRIPTION OF THE UNITS**

DESCRIPTION OF UNITS Whether the Unit is new or used, the model number, the manufacturer, and the model name.	SERIAL/VIN Unique ID number for this Unit.	MONTHLY LEASE PAYMENT This is due per period, as stated below in section 3.	FINAL LEASE PAYMENT	DELIVERY DATE Enter date machine was delivered to you
1 New 289D Caterpillar Compact Track Loader	TAW02776	\$1,359.13	\$1,460.13	_____
1 New A26B Caterpillar Auger	LLS02699	\$67.71	\$168.71	_____
1 New BP118C Caterpillar Broom	FX800293	\$105.18	\$206.18	_____
1 New PC306B Caterpillar Cold Planer	PCT00628	\$336.45	\$437.45	_____

**SIGNATURES**

**LESSOR**

**CATERPILLAR FINANCIAL SERVICES CORPORATION**

Signature \_\_\_\_\_

Name (print) \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**LESSEE**

Signature \_\_\_\_\_

Name (print) \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**CUSTOMER INFORMATION VERIFICATION**  
(Required Document)



In our efforts to continue providing timely customer service, we need your assistance confirming the following information. If any information is incorrect or missing, please note the necessary changes below and return this form with your signed documents. In addition, please review the Data Privacy Notice stated below. Thank you in advance for your cooperation.

Purchase Order # for new contract: \_\_\_\_\_

**Current Information on file** **Please make corrections here**

Customer Name:	_____
Physical Address:	595 Harbor St Morro Bay, CA 93442
Mailing Address:	595 Harbor St Morro Bay, CA 93442
Equipment Location:	595 Harbor St MORRO BAY, CA 93442, SAN LUIS OBISPO
Business Phone:	(805)772-6201
E-mail Address:	sslayton@morro-bay.ca.us
Accounts Payable Contact Name and Phone:	_____
<b>Tax Information</b>	
Sales Tax Rate:	0

(Please note: Sales Tax Rate, includes all applicable State, County, and City sales tax)

City Limits  Asset outside the City Limits? Yes \_\_\_ No \_\_\_

Tax Exemption Status:  Exempt  Non-Exempt  
Please indicate if you are tax exempt. If you are tax exempt - please enclose a current tax exemption certificate to be returned with your documents - Not needed by CFSC if dealer ISC

**The information above has been reviewed and is accurate to the best of my knowledge with exception of any corrections as noted.**

\*Should the above changes apply to ALL of your contracts, OR for this contract ONLY?  
 ALL CONTRACTS  
 THIS CONTRACT ONLY

THE ABOVE INFORMATION HAS BEEN REVIEWED AND IS ACCURATE TO THE BEST OF MY KNOWLEDGE WITH EXCEPTION OF ANY CORRECTIONS AS NOTED.

\_\_\_\_\_  
Customer Initials

Data Privacy Notice: *This notice pertains to personal data supplied in connection with your credit application. By providing your information to Caterpillar Inc. or any of its subsidiaries or affiliates, including Caterpillar Financial Services Corporation (collectively "Caterpillar"), you are agreeing that the information may be shared among Caterpillar and its partners and dealers, and used to process your applications for credit and other orders and to improve or market Caterpillar products and services. If you have any questions pertaining to this notice, please contact the Data Privacy Coordinator at 615-341-8222.*





**GOVERNMENTAL ENTITY RESOLUTION TO LEASE, PURCHASE AND/OR FINANCE**

**WHEREAS**, the laws of the State of California (the "State") authorize (the "Governmental Entity"), a duly organized political subdivision, municipal corporation or similar public entity of the State, to purchase, acquire and lease personal property for the benefit of the Governmental Entity and its inhabitants and to enter into any necessary contracts; and

the Governmental Entity wants to lease, purchase and/or finance equipment ("Equipment") from Caterpillar Financial Services Corporation and/or an authorized Caterpillar dealer ("Caterpillar") by entering into that certain Governmental Equipment Lease-Purchase Agreement (the "Agreement") with Caterpillar; and

the form of the Agreement has been presented to the governing body of the Governmental Entity at this meeting.

**RESOLVED**, that: (i) the Agreement, including all schedules and exhibits attached to the Agreement, is approved in substantially the form presented at the meeting, with any Approved Changes (as defined below), (ii) the Governmental Entity enter into the Agreement with Caterpillar and (iii) the Agreement is adopted as a binding obligation of the Governmental Entity; and

that changes may later be made to the Agreement if the changes are approved by the Governmental Entity's counsel or members of the governing body of the Governmental Entity signing the Agreement (the "Approved Changes") and that the signing of the Agreement and any related documents is conclusive evidence of the approval of the changes; and

that the persons listed below, who are the incumbent officers of the Governmental Entity (the "Authorized Persons"):

Name (Print or Type)	Title (Print or Type)
_____	_____
_____	_____
_____	_____

be, and each is, authorized, directed and empowered, on behalf of the Governmental Entity, to (i) sign and deliver to Caterpillar, and its successors and assigns, the Agreement and any related documents, and (ii) take or cause to be taken all actions he/she deems necessary or advisable to acquire the Equipment, including the signing and delivery of the Agreement and related documents; and

that the Secretary/Clerk of the Governmental Entity is authorized to attest to these resolutions and affix the seal of the Governmental Entity to the Agreement, these resolutions, and any related documents; and

that nothing in these resolutions, the Agreement or any other document imposes a pecuniary liability or charge upon the general credit of the Governmental Entity or against its taxing power, except to the extent that the payments payable under the Agreement are special limited obligations of the Governmental Entity as provided in the Agreement; and

that a breach of these resolutions, the Agreement or any related document will not impose any pecuniary liability upon the Governmental Entity or any charge upon its general credit or against its taxing power, except to the extent that the payments payable under the Agreement are special limited obligations of the Governmental Entity as provided in the Agreement; and

that the authority granted by these resolutions will apply equally and with the same effect to the successors in office of the Authorized Persons.

I, \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, certify that the resolutions above are a full, true and correct copy of resolutions of the governing body of the Governmental Entity. I also certify that the resolutions were duly and regularly passed and adopted at a meeting of the governing body of the Governmental Entity. I also certify that such meeting was duly and regularly called and held in all respects as required by law, at the Governmental Entity's office. I also certify that at such meeting, a majority of the governing body of the Governmental Entity was present and voted in favor of these resolutions.

I also certify that these resolutions are still in full force and effect and have not been amended or revoked.

IN WITNESS of these resolutions, the officer named below executes this document on behalf of the Governmental Entity.

Signature: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_





Verification of Insurance

**Lessee:**

LESSOR (we):

LESSEE (you):

CATERPILLAR FINANCIAL SERVICES CORPORATION  
2120 West End Avenue  
Nashville, TN 37203-0001

595 Harbor St  
Morro Bay, CA 93442

**Subject: Insurance Coverage Requirements**

1. The above-named Lessor and Lessee have entered into Governmental Equipment Lease-Purchase Agreement Transaction Number 2433220 (the "Agreement"). In accordance with the Agreement, Lessee has instructed the insurance agent named below:

Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Agent's Name: \_\_\_\_\_

to issue:

a. All Risk Physical Damage Insurance on the Equipment (as defined in the Agreement) evidenced by a Certificate of Insurance and Long Form Loss Payable Clause naming the Lessor and/or its Assignee, as loss payee.

The Coverage Required: the aggregate purchase price for the Equipment.

b. Public Liability Insurance evidenced by a Certificate of Insurance, naming the Lessor and/or its Assignee as Additional Insured, with a minimum of \$1,000,000 per occurrence is required.

2. Proof of insurance coverage will be provided to Lessor or its Assignee prior to the time the Equipment is delivered to Lessee.

Model #	Equipment Description	Serial #	VIN #	Value Including Tax
1. 289D	Caterpillar Compact Track Loader	TAW02776		\$75,052.00
2. A26B	Caterpillar Auger	LLS02699		\$3,836.00
3. BP118C	Caterpillar Broom	FX800293		\$5,911.00

**SIGNATURES**

LESSEE

Signature \_\_\_\_\_

Name (print) \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_



**Attachment for Verification of Insurance**

---

**Additional Equipment Description**

Model #	Equipment Description	Serial #	VIN #	Value Including Tax
4. PC306B	Caterpillar Cold Planer	PCT00628		\$18,718.00

## Opinion of Counsel

Re: Governmental Equipment Lease-Purchase Agreement  
Transaction Number 2433220 (the "Lease")  
Between ("Lessee")  
And Caterpillar Financial Services Corporation ("Lessor")

Sir/Madam:

I am an attorney for Lessee, and in that capacity I am familiar with the above-referenced transaction, the Lease, and all other documents pertaining to the Lease.

Based on my examination of these and such other documents, records and papers and matters of fact and laws as I deemed to be relevant and necessary as the basis for my opinion set forth below, upon which opinion Lessee and any subsequent assignee of Lessee's interest may rely, it is my opinion that:

1. Lessee is a fully constituted political subdivision or agency duly organized and existing under the Constitution and laws of the State of California (the "State"), and is authorized by such Constitution and laws (i) to enter into the transaction contemplated by the Lease and (ii) to carry out its obligations thereunder.

2. The Lease and all other documents contemplated by the Lease (i) have been duly authorized, executed and delivered by Lessee and (ii) constitute valid, legal and binding obligations and agreements of Lessee, enforceable against Lessee in accordance with their terms, assuming due authorization and execution thereof by Lessor.

3. No further approval, license, consent, authorization or withholding of objections is required from any federal, state or local governmental authority with respect to the entering into or performance by Lessee of the Lease or the Schedule(s) and the transactions contemplated thereby.

4. Lessee has sufficient appropriations or other funds available to pay all amounts due under the Lease for the current fiscal year.

5. The interest payable to Lessor by Lessee under the Lease is exempt from federal income taxation pursuant to Section 103 of the Internal Revenue Code of 1986, as amended.

6. The entering into and performance of the Lease and all other documents contemplated by the Lease will not (i) conflict with, or constitute a breach or violation of, any judgment, consent decree, order, law, regulation, bond, indenture or Lease applicable to Lessee or (ii) result in any breach of, or constitute a default under, or result in the creation of, any lien, charge, security interest or other encumbrance upon any assets of Lessee or the units purchased under the Lease pursuant to any indenture, mortgage, deed of trust, bank loan, credit agreement or other instrument to which Lessee is a party, or by which it or its assets may be bound.

7. No litigation or proceeding is pending or, to the best of my knowledge, threatened to, or which may, (a) restrain or enjoin the execution, delivery or performance by Lessee of the Lease, (b) in any way to contest the validity of the Lease, (c) contest or question (i) the creation or existence of Lessee or its governing body or (ii) the authority or ability of Lessee to execute or deliver the Lease or to comply with or perform its obligations thereunder. There is no litigation or proceeding pending or, to the best of my knowledge, threatened that seeks to or could restrain or enjoin Lessee from annually appropriating sufficient funds to pay the Lease Payments (as defined in the Lease) or other amounts contemplated by the Lease. In addition, I am not aware of any facts or circumstances which would give rise to any litigation or proceeding described in this paragraph.

8. The units purchased under the Lease are personal property and, when subjected to use by Lessee, will not be or become fixtures under the laws of the State.

9. The authorization, approval and execution of the Lease, the Schedule(s) and all other documents contemplated by the Lease, and all other proceedings of the Lease related to the transactions therein and contemplated thereby, have been performed in accordance with all applicable open meeting, public records, public bidding and all other applicable laws, rules and regulations of the State.

10. The appropriation of moneys to pay the Lease Payments coming due under the Lease does not and will not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.

11. The Lessor will have a perfected security interest in the Units upon the filing of an executed UCC-1 or other financing statement at the time of acceptance of the Units with (i) the Secretary of State for the State and/or (ii) the COUNTY BOARD OF COMMISSIONS of San Luis Obispo.



Yours sincerely,

Signature: \_\_\_\_\_

Name (PRINT): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_



**Meeting Minutes**

---

QUINN COMPANY  
10006 ROSE HILLS ROAD  
P.O. BOX 6789  
LOS ANGELES CA 90022-0489

**Reference:**

We are requesting a copy of the minutes of the appropriation meeting during which the funds for this deal were allocated.

A copy of this information is necessary to complete the documentation package and to fund the deal. Your ability to return a complete package will ensure timely payment to you.

Thank you for your assistance.

CATERPILLAR FINANCIAL SERVICES CORPORATION  
DOCUMENTATION DEPARTMENT



# Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)  
 ► See separate instructions.  
 Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name		2 Issuer's employer identification number (EIN)	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a	
4 Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	5 Report number (For IRS Use Only)	
6 City, town, or post office, state, and ZIP code		7 Date of issue	
8 Name of issue		9 CUSIP number	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions)		10b Telephone number of officer or other employee shown on 10a	

**Part II Type of Issue (enter the issue price).** See the instructions and attach schedule.

11 Education . . . . .	11		
12 Health and hospital . . . . .	12		
13 Transportation . . . . .	13		
14 Public safety . . . . .	14		
15 Environment (including sewage bonds) . . . . .	15		
16 Housing . . . . .	16		
17 Utilities . . . . .	17		
18 Other. Describe ►	18		
19 If obligations are TANs or RANs, check only box 19a . . . . .		<input type="checkbox"/>	
If obligations are BANs, check only box 19b . . . . .		<input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box . . . . .		<input type="checkbox"/>	

**Part III Description of Obligations.** Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21		\$	\$	years	%

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

22 Proceeds used for accrued interest . . . . .	22		
23 Issue price of entire issue (enter amount from line 21, column (b)) . . . . .	23		
24 Proceeds used for bond issuance costs (including underwriters' discount) . . . . .	24		
25 Proceeds used for credit enhancement . . . . .	25		
26 Proceeds allocated to reasonably required reserve or replacement fund . . . . .	26		
27 Proceeds used to currently refund prior issues . . . . .	27		
28 Proceeds used to advance refund prior issues . . . . .	28		
29 Total (add lines 24 through 28) . . . . .	29		
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) . . . . .	30		

**Part V Description of Refunded Bonds.** Complete this part only for refunding bonds.

31 Enter the remaining weighted average maturity of the bonds to be currently refunded . . . . . ► \_\_\_\_\_ years

32 Enter the remaining weighted average maturity of the bonds to be advance refunded . . . . . ► \_\_\_\_\_ years

33 Enter the last date on which the refunded bonds will be called (MM/DD/YYYY) . . . . . ► \_\_\_\_\_

34 Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)

**Part VI Miscellaneous**

<b>35</b>	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . .	<b>35</b>	
<b>36a</b>	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . . . .	<b>36a</b>	
<b>b</b>	Enter the final maturity date of the GIC ▶ _____		
<b>c</b>	Enter the name of the GIC provider ▶ _____		
<b>37</b>	Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . .	<b>37</b>	
<b>38a</b>	If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the following information:		
<b>b</b>	Enter the date of the master pool obligation ▶ _____		
<b>c</b>	Enter the EIN of the issuer of the master pool obligation ▶ _____		
<b>d</b>	Enter the name of the issuer of the master pool obligation ▶ _____		
<b>39</b>	If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . .		<input type="checkbox"/>
<b>40</b>	If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . .		<input type="checkbox"/>
<b>41a</b>	If the issuer has identified a hedge, check here <input type="checkbox"/> and enter the following information:		
<b>b</b>	Name of hedge provider ▶ _____		
<b>c</b>	Type of hedge ▶ _____		
<b>d</b>	Term of hedge ▶ _____		
<b>42</b>	If the issuer has superintegrated the hedge, check box . . . . .		<input type="checkbox"/>
<b>43</b>	If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . .		<input type="checkbox"/>
<b>44</b>	If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . .		<input type="checkbox"/>
<b>45a</b>	If some portion of the proceeds was used to reimburse expenditures, check here <input type="checkbox"/> and enter the amount of reimbursement . . . . . ▶ _____		
<b>b</b>	Enter the date the official intent was adopted ▶ _____		

<b>Signature and Consent</b>	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.			
	Signature of issuer's authorized representative _____		Date _____	
			Type or print name and title _____	
<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed
	Firm's name ▶	Firm's EIN ▶		PTIN
	Firm's address ▶	Phone no. _____		



AGENDA NO: A-7

MEETING DATE: March 10, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** March 2, 2015

**FROM:** Rob Livick, PE/PLS – Public Works Director/City Engineer

**SUBJECT:** Dedication of Right-of-Way Extension for Ironwood Avenue and Acceptance of Ironwood Avenue Right-of-Way and a Public Storm Drain Easement

### **RECOMMENDATION**

Staff recommends the City Council approve Resolution 11-15 making and accepting a Right-of-Way dedication, accepting a storm drain easement, authorizing the Mayor or Mayor Pro Tempore to sign necessary documents related thereto and directing staff to record those documents and that Resolution, as needed.

### **ALTERNATIVE**

Do not authorize the offer and acceptance and provide direction to staff for continued discussions with CHEVRON U.S.A. INC., a Pennsylvania corporation, (Chevron”).

### **FISCAL IMPACT**

There is no financial impact as a result of this action.

### **DISCUSSION**

Beginning in late 2013, Chevron began the process of formalizing and relocating their access to their property located northeasterly of Del Mar Park. During the process of the research regarding property ownership, it was discovered, along with Chevron no having access to their property, the City of Morro Bay has an existing public storm drain line that crosses Chevron property without the benefit of an easement.

To resolve those two issues it is recommended the City extend the Ironwood Avenue Right-of-Way by approximately 90 feet northwest into the entrance to the park to facilitate a new driveway approach and park entrance to be constructed, and accept the storm drain easement from Chevron.

While the storm drain easement agreement has been finalized, it has not been executed by Chevron. Staff recommends the Mayor sign the offer after the storm drain easement has been executed by Chevron.

01181.0001/244565.1

Prepared By: \_\_\_RL\_\_\_

Dept Review: \_\_\_RL\_\_\_

City Manager Review: \_\_\_\_\_

City Attorney Review: JWP\_\_\_\_\_

## **CONCLUSION**

Staff recommends the easements satisfy the access needs of both parties, the City and Chevron.

## **ATTACHMENTS**

1. Right-of-Way Dedication
2. Easement Agreement
3. Resolution 11-15
4. Improvement Plans

RECORDING REQUESTED BY:

City of Morro Bay

AND WHEN RECORDED MAIL TO:

Morro Bay City Clerk

City of Morro Bay

Morro Bay, CA 93442

---

**IRREVOCABLE AND PERPETUAL OFFER TO DEDICATE  
STREET EASEMENT**

THIS OFFER TO DEDICATE is made this 10th day of March 2015, by the City of Morro Bay, A Municipal Corporation, hereinafter referred to as Offeror.

WITNESSETH:

WHEREAS, said Offeror desires to make an offer to dedicate, irrevocably, to the public, of an easement for public road right-of-way purposes, which offer may be accepted at any time by any governmental entity which has the power to establish, construct, and maintain streets and roads.

NOW, THEREFORE, said Offeror covenants and promises as follows:

1. That said Offeror is the owner of a fee interest of that certain real property described as follows:

A portion of Lot 29 of the Rancho Morro y Cayucos in the County of San Luis Obispo, State of California as said Lot is designated according to the map of the subdivision of said Rancho filed in Book A, at Page 160 of Maps in the office of the Recorder for said County, being a portion of that parcel of land conveyed to the City of Morro Bay by Corporation Grant Deed recorded August 28th, 1978 as filed in Volume 2096, at Page 140 of Official Records in the office of the Recorder for said County.

2. The real property described below is hereby offered for dedication irrevocably and in perpetuity to such governmental entity as an easement for public road right-of-way purposes and other incidental uses:

Described in attached Exhibit A and Shown on attached Exhibit B

3. That until such time as the above offer of dedication is accepted by such a governmental entity, all owners of property contiguous to the above described road parcel shall have the right to the use of said road parcel as a private road.

4. That said Offeror agrees that said offer of dedication shall be irrevocable and that such a governmental entity may, at any time in the future, accept said offer of dedication of the public right-of-way.

5. That said Offeror agrees that this irrevocable and perpetual Offer to Dedicate is and shall be binding on the Offeror's heirs, legatees, successors and assignees.

IN WITNESS WHEREOF, this Offer to Dedicate is hereby executed by the said Offeror on the day and year first above written.

OFFEROR

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Jamie Irons, Mayor

[NOTE: This Offer to Dedicate will be recorded. All signatures to this document must be acknowledged by a notary.]

**EXHIBIT A**

**Right-of-Way Extension  
Legal Description**

A portion of Lot 29 of the Rancho Morro y Cayucos in the County of San Luis Obispo, State of California as said Lot is designated according to the map of the subdivision of said Rancho filed in Book A, at Page 160 of Maps in the office of the Recorder for said County, being a portion of that parcel of land conveyed to the City of Morro Bay by Corporation Grant Deed recorded August 28<sup>th</sup>, 1978 as filed in Volume 2096, at Page 140 of Official Records in the office of the Recorder for said County, more particularly described as follows:

**Beginning** at a  $\frac{3}{4}$  inch iron pipe marking the most Northerly corner of Tract 2602 as shown of the map thereof filed in Book 29, and Pages 59-61 inclusive of Maps in the office of the Recorder for said County, being the most Easterly corner of said parcel of land conveyed to the City of Morro Bay as shown on that map filed in Book 36, at Page 10 of Record of Surveys in the office of the Recorder for said County, and being the Northeast corner of that parcel of land dedicated as a right-of-way by irrevocable and perpetual offer of dedication filed in Volume 1672, at Page 790 of Official Records in the office of the Recorder for said County;

Thence, along the Easterly line of said parcel of land conveyed to the City of Morro Bay, North  $13^{\circ} 05' 34''$  West (record South  $17^{\circ} 25'$  East) 63.83 feet;

Thence, leaving the Easterly line of said parcel of land conveyed to the City of Morro Bay at a right angle therefrom, South  $76^{\circ} 54' 26''$  West, 50.00 feet;

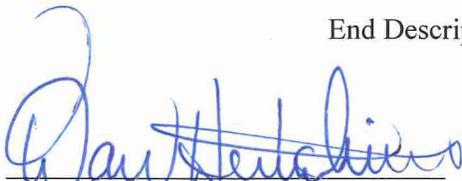
Thence, parallel with said Easterly line, South  $13^{\circ} 05' 34''$  East, 92.68 feet to the Southerly line of said parcel of land conveyed to the City of Morro Bay;

Thence, along the Southerly line of said parcel of land conveyed to the City of Morro Bay, North  $46^{\circ} 19' 43''$  East (record South  $44^{\circ} 35'$  West) 56.71 feet to the point of beginning;

The area contains: 3,875 square feet.

End Description

Prepared by:

  
Daniel S. Hutchinson, LS 5139

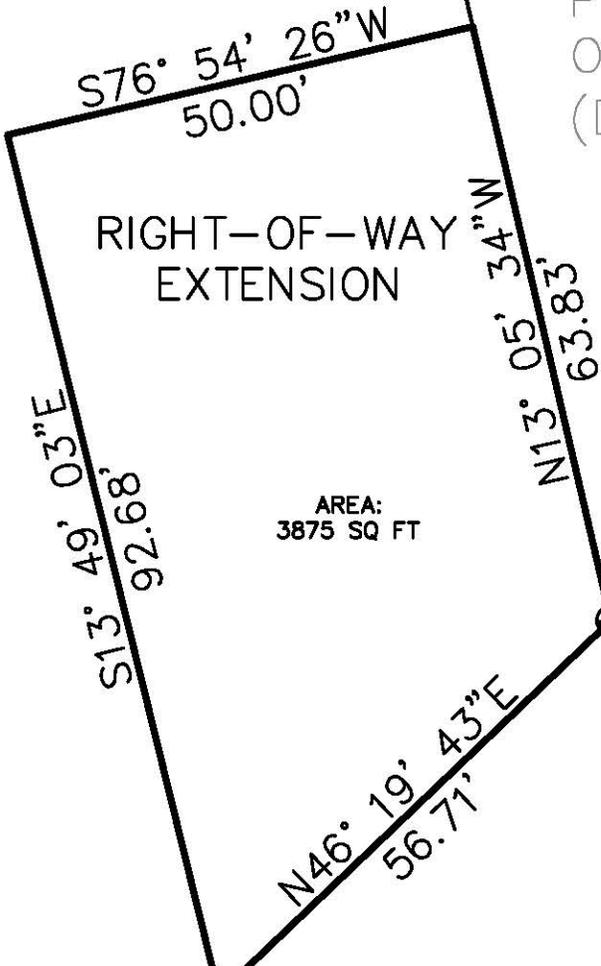
Date:

JAN. 26<sup>TH</sup> 2015



DEL MAR PARK  
(2096/OR/140)

PORTION OF LOT 29  
OF A-MAPS-160  
(DOC# 2011-031199)



RIGHT-OF-WAY  
EXTENSION

AREA:  
3875 SQ FT

PARCEL 1  
10-PM-31

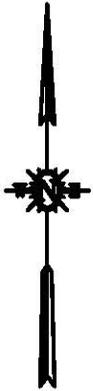
POINT OF BEGINNING:

3/4" IRON PIPE  
NW COR TRACT 2602

N46° 19' 43"E  
56.71'

IRONWOOD STREET  
50' WIDE  
(1672/OR/790)

TRACT 2602  
(BK 29 MAPS PG 59-61)



1 INCH = 20 FEET

**EXHIBIT "B"**  
**RIGHT-OF-WAY EXTENSION**  
**MORRO BAY, CALIFORNIA**

DRAWN BY <b>DW</b>	CHECKED BY <b>DSH</b>	SCALE <b>1" = 20'</b>	DATE <b>01/07/2015</b>
-----------------------	--------------------------	--------------------------	---------------------------

RECORDING REQUESTED BY,  
AND WHEN RECORDED RETURN TO:

Chevron Land and Development Company  
P.O. Box 1332  
San Luis Obispo, California 93406  
Attn: William Almas

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

STORM DRAIN EASEMENT AGREEMENT

THIS STORM DRAIN EASEMENT AGREEMENT (“this Agreement”) is made and entered into as of \_\_\_\_\_, 2014, by and between CHEVRON U.S.A. INC., a Pennsylvania corporation (“Chevron”) and the CITY OF MORRO BAY, a municipal corporation of the State of California (the “City”) (hereinafter collectively referred to as “Parties”).

RECITALS

A. Chevron is the owner of that certain real property located in the City of Morro Bay, County of San Luis Obispo, State of California, more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “Chevron Property”). The Chevron Property is part of a larger area comprised of several adjacent parcels that are also currently owned by Chevron and other entities affiliated with Chevron.

B. The City is the owner of certain real property located in the City of Morro Bay, County of San Luis Obispo, State of California, more particularly described on Exhibit B attached hereto and incorporated herein by reference (the “City Property”). The City Property consists of a public parking lot for visitors of the adjacent City park. As used in this Agreement, the term “Properties” means both the Chevron Property and the City Property collectively, and the term “Property” means one of those properties, as applicable.

C. The Properties share a common boundary line, being the western boundary of the Chevron Property and the eastern boundary of the City Property.

D. The Church of Jesus Christ of Latter Day Saints (the “Church”) currently owns a parcel located immediately to the south of and adjacent to the Chevron Property (the “Church Property”). Chevron acknowledges that the City accepted a dedication of a storm drainage system from the Church into the City’s maintenance system pursuant to that certain Resolution No. 6-88 recorded as Document No. 7672 in the Official Records of San Luis Obispo County (“Resolution”). As part of that dedication and acceptance, the City was granted easements from the Church, including a twenty-three (23) foot wide easement along the entire northerly property line of the Church Property for the placement of surface and underground water discharge and storm drain systems as more particularly described in the easement agreement recorded as part of the Resolution (the “Church Easement”).

E. The drainage system dedicated to and accepted by the City under the Resolution extends over a portion of the southwest corner of the Chevron Property and empties into an existing concrete drainage channel located at the Properties' common boundary line on the City Property. Consistent with the Resolution, Chevron desires to grant the City a perpetual, non-exclusive storm drain easement (the "Storm Drain Easement") under a portion of the Chevron Property on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of good and valuable consideration, the Parties hereby covenant and agree that the Chevron Property and all present and future owners occupants of the Chevron Property shall be and hereby are subject to the Storm Drain Easement hereinafter set forth in this Agreement, so that said Chevron Property shall be maintained, kept, sold and used in full compliance with and subject to this Agreement and, in connection therewith, the Parties hereto on behalf of themselves and their respective successors and assigns covenant and agree as follows:

### AGREEMENTS

1. Agreement. Chevron hereby agrees that a certain portion of the Chevron Property, as set forth below, and all improvements and appurtenances thereon, are subject to this Agreement. The Chevron Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the provisions of this Agreement. All the provisions hereof are declared to be in furtherance of a plan for the use and occupation of the Chevron Property, and shall run with the land, and shall inure to the benefit of and be binding on the owner of the Chevron Property and all other parties having or acquiring any right, title or interest in any part of the Chevron Property.

2. Grant of Easement.

(a) Chevron, as the owner of the Chevron Property, grants to the City a perpetual, non-exclusive easement under the area described in Exhibit C-1 and as depicted on Exhibit C-2 attached hereto (the "Storm Drain Easement Area"), as reasonably necessary to install, access, maintain, repair, replace and operate underground storm water collection, retention, detention and distribution lines, conduits, pipes and other apparatus.

(b) All lines, conduits, pipes and other apparatus for water drainage associated with the Storm Drain Easement shall be hereinafter called the "Storm Drain." The Storm Drain Easement shall include the right of reasonable ingress and egress as may be required by the City to install, access, maintain, repair, replace and operate the Storm Drain. The Storm Drain shall not be substantially altered or relocated, without the written consent of Chevron, which consent shall not be unreasonably withheld.

(c) To the extent modifications to the Storm Drain are required by Chevron to ensure its use and enjoyment of the Chevron Property, Chevron may, but shall not be obligated to, modify the Storm Drain, so long as the function and use of the drainage is preserved. Modifications to the Storm Drain under this Section 2(c) shall be subject to reasonable approval by the City and any costs of construction of any modifications shall be solely incurred by Chevron. Notwithstanding Chevron's obligations for any modifications pursuant to this

subsection, all maintenance of the Storm Drain shall be the City's responsibility pursuant to Section 4, below; provided, that maintenance of each modification shall only be the responsibility of the City after all governmental final inspections for each modification have been approved, as required.

3. Owner. The term "Owner" shall mean any person, firm, corporation or other legal entity which holds fee simple title to a Property; provided, however, that such term Owner as used herein shall not include a mortgagee or beneficiary under a deed of trust holding a security interest in a Property unless such mortgagee or beneficiary is in actual physical possession of the Property, either by way of it being a mortgagee in possession or by way of foreclosure, deed in lieu of foreclosure or otherwise taking title or possession to a Property.

4. Maintenance.

The City agrees it shall be responsible for the maintenance, repair and replacement of the Storm Drain. The City shall, at the City's sole cost and expense, keep the Storm Drain in a good state of maintenance and repair and shall be responsible for any claims, loss, expenses, or damage to any person or property directly or indirectly caused by the Storm Drain or by the City in connection with its use of the Storm Drain Easement. If the City fails to perform and comply with the covenants set forth in this Section, then Chevron may, but shall not be obligated to, perform such replacement, repair or maintenance, as applicable.

5. No Public Easement. The Storm Drain Easement granted herein is for the benefit of the City, and nothing contained herein shall be construed as a grant of any rights of access to the Chevron Property to private parties or members of the public.

6. Term. Unless this Agreement is modified, amended, canceled or terminated by the written consent of all then record Owners of the Properties in accordance with Section 7, the Storm Drain Easement, covenants and obligations set forth in this Agreement shall continue in full force and effect in perpetuity from the date of execution, even if any breach of this Agreement occurs as a result of any action or inaction by or on behalf of any Owner. The Chevron Property shall hereafter be held, transferred, sold, leased, conveyed and occupied subject to terms and conditions set forth herein.

7. Amendment. The Parties agree the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the Properties, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the Official Records of San Luis Obispo County, California.

8. Consents. Wherever in this Agreement the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner under this Agreement, to be effective, must be given, denied or conditioned expressly and in writing.

9. Severability. Each provision of this Agreement and the application thereof to the Properties are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared.

10. Notices. All notices called for pursuant to this Agreement shall be given in writing by personal delivery, or by United States mail, and it shall be deemed to have been received five (5) business days following deposit in the mail, the next succeeding business day following deposit with a national recognized overnight courier, or upon personal delivery. Mailed notices shall be addressed as set forth below. Any change of address of an Owner of the Properties must be given to the other Owner by written notice in accordance with the provisions of this article.

Chevron Land and  
Development Company

Chevron Land and Development Company  
6001 Bollinger Canyon Drive  
San Ramon, CA 94583  
Attn: Manager

City of Morro Bay

City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442  
Attn: City Manager  
Facsimile: (805) 772-7329

with a copy to

City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442  
Attn: City Attorney  
Facsimile: (805) 772-6572

11. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the matters covered hereby. All prior negotiations, representations, and agreements with respect hereto, whether written or oral communications, are hereby cancelled.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

13. Successors. Except as specifically set forth herein to the contrary, this Agreement shall run with the land which is benefitted and burdened hereby, and shall automatically and without further action by the Parties, bind and inure to the benefit of the heirs, assigns, personal representatives, transferees and successors of Owners concurrently with the sale, transfer lease or other conveyance of any portion of the Properties or any interest therein. Each owner who hereafter owns, occupies or acquires any right, title or interest in or to any portion of the

Properties shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in said property. By its acceptance of a deed to the property, the Owner of a Property is and shall be conclusively deemed to have examined and accepted this Agreement and any amendments thereto.

14. Mortgagee Protection. The breach of any restriction or other provision of this Agreement shall not defeat or render invalid or unenforceable the lien of any bona-fide mortgage or deed of trust made in good faith and for value on the any portion of the Properties from a bona-fide third party lender, but all other restrictions and other provisions of this Agreement shall, except as otherwise set forth herein, be binding and effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

**[Signature Page Follows)**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

Chevron:

CHEVRON U.S.A. INC., a Pennsylvania corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

City:

CITY OF MORRO BAY, a municipal corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF CALIFORNIA )  
 )  
COUNTY OF SAN LUIS OBISPO )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

---

Notary Public

STATE OF CALIFORNIA )  
 )  
COUNTY OF SAN LUIS OBISPO )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

---

Notary Public

**EXHIBIT A**

[Attached]

# EXHIBIT A

## Chevron U.S.A, Inc. Parcel "7" Legal Description

All that portion of Lot 29 of the Rancho Morro y Cayucos in the County of San Luis Obispo, State of California as said Lot is designated according to the map of the subdivision of said Rancho filed in Book A, at Page 160 of Maps in the office of the Recorder for said County, being all that portion of said Lot 29 designated Parcel 7 of SUB2010-00027 according to that Certificate of Compliance filed as Document No. 2011-031199 of Official Records in the office of the Recorder for said County.

End Description

Prepared by:   
Daniel S. Hutchinson, LS 5139

Date: APRIL 25<sup>TH</sup>, 2014



**EXHIBIT B**

[Attached]

**EXHIBIT B**

**City of Morro Bay Parcel  
Legal Description**

All that portion of Lot 29 of the Rancho Morro y Cayucos in the County of San Luis Obispo, State of California as said Lot is designated according to the map of the subdivision of said Rancho filed in Book A, at Page 160 of Maps in the office of the Recorder for said County, being all that portion of said Lot 29 conveyed to the City of Morro Bay by Corporation Grand Deed, recorded August 28<sup>th</sup>, 1978 as filed in Volume 2096, at Page 140 of Official Records in the office of the Recorder for said County.

End Description

Prepared by: *Daniel S. Hutchinson*  
Daniel S. Hutchinson, LS 5139



Date: *APRIL 25<sup>TH</sup>, 2014*

**EXHIBIT C-1**

[Attached]

**EXHIBIT C-1**

**Storm Drain Easement  
Legal Description**

A 20.00 foot wide strip of land across a portion of Lot 29 of the Rancho Morro y Cayucos in the County of San Luis Obispo, State of California as said Lot is designated according to the map of the subdivision of said Rancho filed in Book A, at Page 160 of Maps in the office of the Recorder for said County, being all that portion of said Lot 29 designated Parcel 7 of SUB2010-00027 according to that Certificate of Compliance filed as Document No. 2011-031199 of Official Records in the office of the Recorder for said County, said strip of land lies 10.00 feet on each side of the following described centerline:

Commencing at the corner common with Lots 19, 28 and 29 of said Rancho;

Thence, leaving the southerly line of said Lot 29, and along the southerly line of said Parcel 7 of SUB2010-00027, North 81° 06' 42" West (record North 83° 00' 00" West) 1947.88 feet;

Thence, continue along the southerly line of said Parcel 7 of SUB2010-00027, South 46° 18' 10" West (record South 44° 25' West) 50.14 feet to the easterly line of that parcel of land conveyed to the City of Morro Bay by Corporation Grant Deed recorded August 28<sup>th</sup>, 1978 as filed in Volume 2096, at Page 140 of Official Records in the office of the Recorder for said County;

Thence, leaving the southerly line of said Parcel 7 of SUB2010-00027, along the easterly line of said parcel of land conveyed to the City of Morro Bay, North 15° 45' 50" West (record South 17° 25' East) 28.92 feet to the **True Point of Beginning**;

Thence, leaving the easterly line of said parcel of land conveyed to the City of Morro Bay, South 82° 24' 27" East, 31.90 feet to the southerly line of said Parcel 7 of SUB2010-00027;

The sidelines of the herein above described 20.00 foot wide strip of land shall be lengthened and/or shortened to intersect property boundaries.

End Description

Prepared by:

  
Daniel S. Hutchinson, LS 5139



Date: APRIL 25<sup>TH</sup>, 2014

**EXHIBIT C-2**

[Attached]

# EXHIBIT C-2

PARCEL 7  
DOC# 2011-031199

634 OR 7

2096 OR 140

POINT OF COMENCMENT

634 OR 7

LOT 19

LOT 28

LOT 29

N81°08'42"W 1947.88'  
(N83°00'W PER 634 OR 7)

(S44°25'W PER 634 OR 7)  
S46°18'10"W 50.14'

10' S82°24'27"E  
51.90'

T.P.O.B.

20' WIDE DRAINAGE EASEMENT

10' S13°05'34"E  
28.92'

IRONWOOD AVE.



1 INCH = 30 FEET

## STORM DRAIN EASEMENT

PTN. LOT 29 OF THE RANCHO MORRO Y CAYUCAS  
CITY OF MORRO BAY, CALIFORNIA

STATE OF CALIFORNIA )  
 )  
COUNTY OF SAN LUIS OBISPO )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA )  
 )  
COUNTY OF SAN LUIS OBISPO )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

**RESOLUTION NO. 11-15**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
MAKING AND ACCEPTING AN OFFER OF DEDICATION FOR RIGHT-OF-  
WAY, ACCEPTING A  
PUBLIC STORM DRAIN EASEMENT AND AUTHORIZING THE MAYOR  
AND MAYOR PRO TEMPORE TO SIGN AND DIRECTING STAFF TO  
RECORD DOCUMENTS RELATING THERETO AS NEEDED**

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

**WHEREAS**, CHEVRON U.S.A. INC., a Pennsylvania corporation, (“Chevron”) desires to formalize and relocate its access to its property identified in the document filed as Document Number 2011-031199 in the Office of the San Luis Obispo County Recorder and located Northeasterly of Del Mar Park; and

**WHEREAS**, a public storm drain exists crossing a portion of the abovementioned property; and

**WHEREAS**, staff became aware of a public storm drain on private property; and

**WHEREAS**, the owner Chevron desires to enter into an easement agreement with the City; and

**WHEREAS**, the storm drain easement will allow City maintenance staff to have legal access to an existing storm drain and has been signed and recorded as Document Number 2015- [to be added after recordation] in the Office of the San Luis Obispo County Recorder and located Northeasterly of Del Mar Park (the “Storm Drain Easement”); and

**WHEREAS**, an irrevocable offer of dedication for the extension of the Ironwood Right-of-Way has been signed and recorded as Document Number 2015- [to be added after recordation] in the Office of the San Luis Obispo County Recorder (the “Ironwood Extension”);

**WHEREAS**, the Ironwood Extension will allow the public, including Chevron, to access the proposed private driveway access to the Chevron property; and

**WHEREAS**, it is in the public interest for the easements to provide access rights to both parties, the City and Chevron.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay does hereby:

1. Make an irrevocable offer of dedication of the Ironwood Extension,
2. Accept, on behalf of the public, the irrevocable offer the Ironwood Extension,
3. Accept the Storm Drain Easement,
4. Authorize the Mayor or Mayor Pro Tempore to sign all the documents necessary for the above actions, and
5. Direct staff to have those documents recorded.

**PASSED AND ADOPTED** by the Morro Bay City Council at a regular meeting thereof held on the 10<sup>th</sup> day of March, 2015 by the following vote:

AYES:

NOES:

ABSTAIN:

---

Noah Smukler, Mayor Pro Tempore

ATTEST:

---

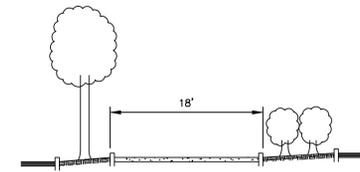
Jamie Boucher, Deputy City Clerk

F:\proj\1997\970212\Civil\Construction Drawings\Exhibits\C3D\Del Mar Park Access.dwg 1-19-15 01:10:36 PM BrendanC

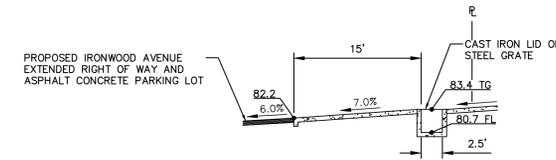
DEL MAR  
PARK  
2096/OR/140

PORTION OF LOT 29  
OF A-MAPS-160  
(DOC#  
2011-031199)

PARCEL 1  
10-PM-31



SECTION A



SECTION B

**LEGEND**

PROPERTY LINE	---
CURB	====
STEEL GRATE	▒▒▒▒
FENCE	-X-
EASEMENT	----
FLOWLINE	---
CONCRETE	▒▒▒▒
STORM DRAIN	SD
CONTOURS	~
WATER VALVE	⊠
WATER METER	⊠
STREET LAMP	⊙
ASPHALT CONCRETE	AC
CENTERLINE	CL
FINISHED GRADE	FG
FINISHED SURFACE	FS
FINISH FLOOR	FF
FLOW LINE	FL
GRADE BREAK	GB
HIGH POINT	HP
INVERT	INV
OUTSIDE GRADE	OG
PROPERTY LINE	PL
PUBLIC UTILITY EASEMENT	PUE
RIGHT-OF-WAY	ROW
TOP OF CURB	TC
TOP OF FOOTING	TF
TOP OF GRADE	TG
TOP OF WALL	TW

**CONSTRUCTION NOTES**

- ① 3" PVC THRU-CURB PIPE. DRAIN ISLAND TO PIPE.
- ② 6" CURB PER CITY OF MORRO BAY DETAIL B-2.
- ③ SAWCUT ASPHALT CONCRETE, REMOVE AND REPLACE IN KIND.
- ④ FINISH WITH COLORED AND STAMPED CONCRETE PER CITY DIRECTION.
- ⑤ PROVIDE AND PLANT FOUR TREES AS DIRECTED BY THE CITY ENGINEER.

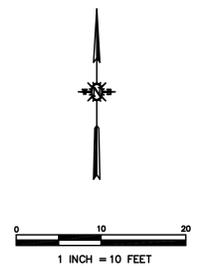
**BENCHMARK**

THE BENCHMARK FOR THIS SURVEY IS A BRASS DISK ATOP THE SOUTHWEST CURB OF THE NORTH-BOUND BRIDGE OF STATE HIGHWAY 1 OVER TORO CREEK, DESIGNATION M693 (PIDFV0699), SAN LUIS OBISPO COUNTY, CALIFORNIA. NGVD29 ELEVATION=20.49 FEET.

**WHALE ROCK APPROVAL**

EASEMENT ENCROACHMENT APPROVED BY WHALE ROCK COMMISSION

X \_\_\_\_\_  
NAME, TITLE DATE



REV. NO.	DATE	REVISED	DESTROY ALL PRINTS BEARING EARLIER DATE	REV. BY	CHK. BY	APRD BY

THESE DRAWINGS ARE INSTRUMENTS OF SERVICE AND ARE THE PROPERTY OF CANNON. ALL DESIGNS AND INFORMATION ON THESE DRAWINGS ARE FOR USE OF THE SPECIFIED PROJECT AND SHALL NOT BE USED OTHERWISE OR REPRODUCED WITHOUT THE EXPRESSED WRITTEN PERMISSION OF CANNON.

**PROPOSED DRIVEWAY APPROACH  
DEL MAR PARK / IRONWOOD AVE  
MORRO BAY, CALIFORNIA**

DRAWN BY <b>JW</b>	DATE <b>1/19/2015</b>	CA JOB NO. <b>970212</b>
CHECKED BY <b>JE</b>	SCALE <b>1" = 10'</b>	SHEET <b>1 OF 1</b>

**A PROCLAMATION  
OF THE CITY OF MORRO BAY COMMENDING AND HONORING  
POLICE SERGEANT DAVID BERGANTZEL ON HIS RETIREMENT**

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

**WHEREAS**, Police Sergeant David Bergantzel began his public safety career with the City of Morro Bay as a Level 1 Reserve Police Officer on January 4, 1984, becoming a Full-Time Police Officer on February 24, 1984; and

**WHEREAS**, Sergeant Bergantzel progressed in his career with the City of Morro Bay and served as School Resource Officer in 1989, was appointed to Police Corporal on January 28, 1995, served as a Detective Supervisor, and ultimately promoted to Police Sergeant on May 5, 2007; and

**WHEREAS**, Sergeant Bergantzel has helped raise thousands of dollars as a department representative to the Law Enforcement Torch Run for Special Olympics, and the Bowlathon on behalf of Transitions Mental Health; and

**WHEREAS**, Sergeant Bergantzel has received multiple awards from California's Mothers Against Drunk Driving for his excellent service in removing intoxicated drivers from the roadways, and has served as a department representative to the San Luis Obispo County DUI task force; and

**WHEREAS**, Sergeant Bergantzel has served as a department Rangemaster, Armorer, Firearms Instructor, Driver Awareness Instructor, and Traffic Radar Instructor; and

**WHEREAS**, Sergeant Bergantzel has served as a Field Training Officer, Field Training Coordinator, and Training Manager to promote, oversee, and advance department training of new and existing officers; and

**WHEREAS**, Sergeant Bergantzel was instrumental in the formation of the department's DARE program outreach to promote drug and alcohol resistance education for youth; and

**WHEREAS**, Sergeant Bergantzel has always worked in a "Community Oriented Policing" mode and has promoted this style of policing to both adults and children in the community through his participation in a number of events and activities; and

**WHEREAS**, Sergeant Bergantzel has participated in numerous community service activities including Caroling Cops, Thanksgiving Dinner, Special Olympics Tip-A-Cop Dinners, and Neighborhood Watch.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Morro Bay honors and recognizes Sergeant Bergantzel for his service and leadership in the Morro Bay Police Department over the last thirty-one years.

**BE IT FURTHER RESOLVED** that the Morro Bay City Council extends its appreciation for Sergeant Bergantzel's many years of professional service to the City of Morro Bay and offers its best wishes for many warm sunsets.

**IN WITNESS WHEREOF** I have  
hereunto set my hand and caused the  
seal of the City of Morro Bay to be  
affixed this 10th day of March, 2015

---

Jamie L. Irons, Mayor  
City of Morro Bay, California



AGENDA NO: B-1

MEETING DATE: March 10, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** February 23, 2015

**FROM:** Cindy Jacinth, Associate Planner

**SUBJECT:** Review and adopt final funding recommendations for the 2015 Community Development Block Grant (CDBG) funds

### **RECOMMENDATION**

Council review and adopt final funding recommendations for the 2015 Community Development Block Grant (CDBG) funds and forward recommendations to the San Luis Obispo County Board of Supervisors for inclusion with other funding requests from the Urban County Consortium. Staff recommends the City Council forward two items from the City of Morro Bay, the Pedestrian Accessibility Sidewalk Phase 3 (ADA) project estimated at \$57,924 and program administration at \$14,482 for a total funding allocation of \$72,405. Additionally, authorize the City Manager to make pro rata adjustments to the allocation based on any U.S. Department of Housing and Urban Development (HUD) federal budgetary changes to the approved final 2015 CDBG funding amount from San Luis Obispo County.

### **ALTERNATIVES**

Alternative 1. The City Council may move to change the draft funding recommendation decision made at its December 9, 2014, meeting to fund the Pedestrian Accessibility Sidewalk Phase 3 (ADA) project and make a final funding recommendation to forward to the Urban County Consortium to fund CAPSLO's Maxine Lewis Memorial Shelter application for the amount of \$8,600 and fund the City's Pedestrian Accessibility Project for \$49,324 and Program Administration amount of \$14,482.

Alternative 2. The City Council may move to adopt final funding recommendations to forward to the Urban County Consortium which funds CAPSLO's Prado Day Center application for the amount of \$8,000 and fund the City's Pedestrian Accessibility Project for \$49,924 and Program Administration amount of \$14,482.

Alternative 3. The City Council may move to adopt final funding recommendations to forward to the Urban County Consortium which funds Senior Nutrition Program of SLO County's application for the amount of \$10,000 and fund the City's Pedestrian Accessibility Project for \$47,924 and Program Administration amount of \$14,482.

01181.0001/244353.1

Prepared By:    CJ    Dept Review:    SG   

City Manager Review:                   

City Attorney Review:    JWP

## **FISCAL IMPACT**

Approving staff recommendations would allow for \$57,924 in accessibility improvements (sidewalk and curb ramps) along with \$14,482 for the offset of administrative costs, including planning and engineering. Projects that receive over \$2,000 in CDBG funds are subject to prevailing wage requirements under Davis-Bacon and Related Acts (DBRA).

## **BACKGROUND**

The City has been a member of the Urban County Consortium since 2011. The Urban County is a consortium of participating jurisdictions that includes San Luis Obispo County and the Cities of Paso Robles, Atascadero, San Luis Obispo, Arroyo Grande, Pismo Beach and Morro Bay for the purpose of receiving and allocating federal CDBG funds. The City's current participation agreement for 2015-2018 was approved by the City Council on September 9, 2014.

The 2015 CDBG funding cycle began in the fall of 2014. Public workshops were held throughout the County to solicit public comment on community needs. A needs workshop was held in Atascadero with the Cities of Morro Bay, Atascadero and Paso Robles participating on September 11, 2014, at the Atascadero City Hall. The County published a request for CDBG proposals (RFP) and the City received four applications.

The total 2015 funding amount of \$72,405 was released by HUD on February 26, 2015, which was conveyed to the City via County staff. This annual funding allocation reflects a small increase from the 2014 program year and is slightly more than the amount anticipated when the City Council considered and adopted draft funding recommendations at its December 9, 2014 meeting. At that meeting, the Council voted to forward draft funding recommendations to the County Board of Supervisors to fund the Pedestrian Accessibility Sidewalk Phase 3 (ADA) project and administration costs which at that time were estimated to be \$62,467. The increase in funding of approximately \$10,000 has been correspondingly adjusted in the formula calculations.

## **DISCUSSION**

As presented in the CDBG staff report for the Council's December 9, 2014, meeting, CDBG funds are available for community development activities, which meet at least one of the three federal objectives, benefit to low and moderate-income persons; aid in the prevention or elimination of blight; or address urgent needs that pose a serious and immediate threat to the health or welfare of the community. In order for a program to qualify under the low and moderate income objective, at least 51% of the persons benefiting from the project or program must earn no more than 80% of the area median. Additionally, at least 70% of the CDBG funds must be spent toward this objective.

Applications received significantly exceed anticipated funding. As part of the Federal CDBG process, Council must adopt a funding recommendation for the 2015-grant year that meets federal requirements for funding criteria. Staff prepared its recommendations considering criteria set forth by the County in regards to consistency with Federal regulations and laws as well as consistency with City Council adopted goals.

Specifically, the County RFP for CDBG applications requires that criteria that will be used to evaluate the proposals prior to funding decisions by the cities and the County will include:

1. Consistency with Federal regulations and laws
2. Community support (for example, approval of project by a city council)
3. Seriousness of community development need proposed to be addressed by project
4. Degree to which project benefits low-income and very low-income families or persons
5. Feasibility of the project to be completed as budgeted or by May 31, 2016 for public service activities, planning and capacity building and administrative costs, or by December 31, 2016 for projects involving acquisition, construction or rehabilitation.
6. Cost effectiveness of funds requested and leveraging of other funds
7. Organization's experience or knowledge regarding CDBG or HOME requirements

A copy of all applications and funding regulations was provided with the December 9, 2014, staff report and is available online at <http://morro-bay.ca.us/ArchiveCenter/ViewFile/Item/2278> . Copies are also available at the Community Development Department for public review.

Based on this, and cognizant of City Council adopted goal #2 to improve City streets, staff is recommending the City Council adopt final funding recommendations for the 2015 CDBG year that are the two requests from the City of Morro Bay in order to achieve maximum public benefit for this small funding program while also effectively utilizing staff administrative resources. This recommendation is presented in the table below, along with the 2014 allocation for comparison:

**Recommended 2015 CDBG Allocation**

<i><b>Public Facilities</b></i>	2014 Allocation Award	2015 Requested	2015 Amount Recommended
City of Morro Bay – <i>Handicapped Accessibility - Barrier Removal Projects</i>	\$36,796	\$100,000	\$57,924
<i><b>Public Services – Limited to 15% of 2015 Allocation (or a maximum of \$10,860)</b></i>			
CAPSLO – <i>Maxine Lewis Memorial Shelter Operation expenses</i>		\$8,600	0
CAPSLO – <i>Prado Day Center Operation expenses</i>		8,000	0
Senior Nutrition Program of SLO County – <i>Senior Nutrition Program</i>	\$8,491	10,000	0
<i><b>Administration – Limited to 20% of 2015 Allocation (includes County share)</b></i>			
City Program Administration Costs (Required County Administration Costs)	\$11,321	\$5,069 (9,413)	\$5,069 (9,413)
<b>Total Funds Requested</b>		<b>\$141,082</b>	

<b>Estimated Total Funding Available</b>	<b>\$56,608</b>	<b>\$72,405</b>
--	-----------------	-----------------

### **CONCLUSION**

Due to the high administrative burden associated with the CDBG program, past direction from the HUD-Los Angeles office has been to recommend funding projects that provide maximum public benefit for minimum staff administration time. The requests by CAPSLO and the Senior Nutrition Program fall under the category of public service activity which is capped by federal regulations at a maximum funding availability of 15% of the City's annual allocation.

Therefore, in order to be cost-effective, staff recommends Council approve the final 2015 funding recommendation for the requests from the City of Morro Bay for sidewalk accessibility improvements and program administration. Funding of the requests by the City allows the continuation of accessibility improvements at street locations throughout the City. If Council modifies that recommendation, then awards must meet program requirements, providing a minimum of 70% of funding for benefit to low and moderate-income persons, and no more than 15% can be allocated to the public service category.

### **ATTACHMENTS**

- A. Resolution 10-15

### **LINKS TO PREVIOUS STAFF REPORT AND CDBG APPLICATIONS RECEIVED:**

1. Link to December 9, 2014 City Council meeting packet, Agenda Item #A-7:  
<http://morro-bay.ca.us/ArchiveCenter/ViewFile/Item/2278>
2. Community Development Block Grant Entitlement Fact Sheet (see <http://hud.gov/offices/cpd/communitydevelopment/library/deskguid.cfm> for the complete CDBG guidelines)

**RESOLUTION NO. 10-15**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY,  
CALIFORNIA APPROVING COMMUNITY DEVELOPMENT BLOCK  
GRANT PROJECTS FOR YEAR 2015**

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

**WHEREAS**, via a Cooperation Agreement with County of San Luis Obispo (hereafter referred to as “County”), a political subdivision of the State of California, executed by the City of Morro Bay (hereafter referred to as “City”) a municipal corporation, on September 9, 2014, the City agreed to become a participant for a period of three years with the County and other cities therein as an “Urban County” under the U.S. Department of Housing and Urban Development (HUD); and

**WHEREAS**, under the Cooperation Agreement, the City retains the authority to determine which projects are to be funded with its allotment of CDBG funds; and

**WHEREAS**, said program will promote the public health, safety and welfare by providing grant funds to be used by the City and County to improve housing opportunities for low and moderate-income households, to encourage economic reinvestment, to improve community facilities and public services, and to provide other housing-related facilities, or services; and

**WHEREAS**, the City expects to receive \$72,405 in CDBG funds in 2015; and

**WHEREAS**, in 2014, the County published a “Request for Proposals” for projects to be funded under the 2015 CDBG Programs, which provided that proposals were to be submitted by October 15, 2014; and

**WHEREAS**, on September 11, 2014, the County conducted a public workshop with the City of Morro Bay to ascertain the housing and community development needs to be addressed in the document entitled the “One-Year Action Plan for Program Year 2015; and

**WHEREAS**, at its meeting on December 9, 2014, the City Council gave approval for draft funding recommendations to be forwarded to the County Board of Supervisors for 2015 CDBG projects; and

**WHEREAS**, on February 23, 2015, the County conducted a second public workshop for the City of Morro Bay to receive comments on the proposed 2015 CDBG projects; and

**WHEREAS**, on March 10, 2015, the City Council held a duly noticed public hearing to review and consider and final funding recommendations for the 2015 CDBG projects.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California, to recommend that the Board of Supervisors for the County of San Luis Obispo adopt the 2015 One-Year Action Plan, which shall include the programs listed in Exhibit “A” attached hereto and incorporated herein by this reference, to be funded with the City’s allocation of CDBG funds.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 10th day of March, 2015 on the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
Noah Smukler, Mayor Pro Tempore

ATTEST:

\_\_\_\_\_  
Jamie Boucher, Deputy City Clerk

EXHIBIT "A"  
2015 ONE YEAR ACTION PLAN

MORRO BAY ALLOCATION OF PROGRAM YEAR 2015 COMMUNITY DEVELOPMENT  
BLOCK GRANT FUNDS

<i>Public Facilities</i>	2014 Allocation	2015 Requested	2015 Amount Recommended
City of Morro Bay – <i>Handicapped Accessibility - Barrier Removal Projects</i>	\$36,796	\$100,000	\$57,924
<b><i>Public Services – Limited to 15% of 2015 Allocation (or a maximum of \$9,370)</i></b>			
CAPSLO – <i>Maxine Lewis Memorial Shelter Operation expenses</i>		\$8,600	0
CAPSLO – <i>Prado Day Center Operation expenses</i>		8,000	0
Senior Nutrition Program of SLO County – <i>Senior Nutrition Program</i>	\$8,491	10,000	0
<b><i>Administration – Limited to 20% of 2015 Allocation (includes County share)</i></b>			
City Program Administration Costs (Required County Administration Costs)	\$11,321	\$5,069 (9,413)	\$5,069 (9,413)
<b>Total Funds Requested</b>		<b>\$141,082</b>	
<b>Estimated Total Funding Available</b>	<b>\$56,608</b>		<b>\$72,405</b>



AGENDA NO: C-1

MEETING DATE: March 10, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** March 3, 2015

**FROM:** Amy Christey, Police Chief

**SUBJECT:** Discussion and Direction Regarding Increased Fines for Use of Illegal Fireworks

### RECOMMENDATION

Staff recommends the City Council consider increasing fines for violation of Morro Bay Municipal Code ("MBMC") section 14.08.090, which prohibits the use of dangerous fireworks as defined by California Health and Safety Code 12505, and permits the lawful use of safe and sane fireworks, as defined by California Health and Safety Code 12529, on private property within City limits. Staff also recommends including a provision wherein police officers have the authority to issue administrative citations for the first offense without providing an initial warning. Further, this recommendation includes enhancing proactive staffing and messaging to reduce the unlawful use of fireworks and increase public awareness.

### ALTERNATIVES

Staff suggests the following two alternatives:

1. No change to the current fine structure and provision that provides warnings to first time offenders prior to issuance of an administrative citation. The current fine structure includes a fine not exceeding \$100 for the first violation, a fine not exceeding \$200 for the second violation within one year of the first violation, and a fine not exceeding \$500 for each additional violation within one year of the first violation.
2. Amend the MBMC to prohibit all fireworks, including safe and sane fireworks and public fireworks displays, as well as, increasing the fines associated with the unlawful use of fireworks and including a provision wherein police officers have the authority to issue administrative citations for the first offense without providing an initial warning.

### FISCAL IMPACT

The fiscal impact may include a slight increase in overtime expenditures to assist the Police Department with a proactive approach to decrease the unlawful use of fireworks and fireworks related complaints. However, it is likely increased staffing will have little impact on the unlawful use of fireworks due to the difficulties associated with identifying persons using fireworks in an unlawful manner.

01181.0001/244350.2

Prepared By: AC

Dept Review: \_\_\_\_\_

City Manager Review: \_\_\_\_\_

City Attorney Review: JWP

## **BACKGROUND**

During the 2014 4<sup>th</sup> of July celebration, Morro Bay enjoyed a holiday celebration that included a 4<sup>th</sup> of July festival and a public fireworks display. Throughout the night, residents and visitors alike celebrated and most did so using safe and sane fireworks within the confines of their private property. There were some who possibly used safe and sane fireworks and/or dangerous fireworks on public property.

The Morro Bay Police Department tallied fireworks complaint statistics in 2014 which revealed 85 fireworks complaints during July 4<sup>th</sup>, including the days preceding and following. This is a significant increase over 2013 due to a more detailed search where we considered multiple reporting parties for the same complaint, thus increasing the total calls for service. The search also revealed in 2014 and 2013 there were no arrests or citations issued for the unlawful use of fireworks. That can be attributed to the manner in which resources are allocated on July 4<sup>th</sup> because the Police Department typically deploys a patrol team for public safety responses, extra patrol staff throughout the day to assist with festival activities, and the Police Volunteers were also employed throughout the day to assist with traffic control.

MBMC section 14.08.090 permits the use of “safe and sane” fireworks on private property within the City limits, as well as public fireworks displays approved by the Fire Chief. That may be a contributing factor to the perceived problem associated with the use of fireworks in Morro Bay and the calls for service the Police Department receives. There are some community members who have expressed interest in eliminating all lawful uses of fireworks within City limits.

Last year, in an effort to reduce the unlawful use of fireworks, the Police Department posted signs near public beaches informing the public of the municipal code and the prohibition of illegal fireworks. This year, as in previous years, Council has inquired about options to reduce unpermitted and illegal use of fireworks within the City limits during the 4<sup>th</sup> of July celebration.

## **DISCUSSION**

In an effort to deter the use of illegal dangerous fireworks and the unlawful use of safe and sane fireworks, staff recommends increasing fines, as well as including a provision wherein police officers have the authority to issue administrative citations for the first offense. Further, and to assist with fireworks enforcement, the Police Department’s personnel will increase staffing to enhance proactive fireworks enforcement on July 4<sup>th</sup>. There are two alternatives to consider, do not change MBMC Section 14.08.090, or amend the code to prohibit the use of all fireworks within City limits.

Historically, the City of Morro Bay, especially around the 4<sup>th</sup> of July, has experienced large crowds and the use of unlawful fireworks. The Morro Bay Police Department has dealt with a range of public safety issues from arrests for a variety of offenses, responding to disturbances, traffic related incidents, and numerous calls for service due to the use of fireworks.

Adopting an increased fine structure, including a provision that authorizes issuance of an administrative fine without an initial warning for first time offenses, provides a means for Council to amend the current MBMC to address the unlawful use of fireworks. That would also provide a means for police officers to immediately cite offenders for their first offense with administrative citations and likely discourage the unlawful use of fireworks in the City of Morro Bay.

The City of Santa Cruz and the County of Santa Cruz have enacted similar ordinances, wherein the fines associated with the unlawful use of fireworks are tripled. For example, the City of Santa Cruz triples fines for unlawful firework usage and the County of Santa Cruz enforces fines that are \$1000 for each violation. Other cities that enforce the \$1000 fine for fireworks violations are LaCanada, Flintridge, and Pacifica.

Those ordinances have proven to be successful in discouraging large crowds and unruly behavior, and the unlawful use of fireworks. Staff believes with the assistance of the media and social media, adequate signage, and increased fines and staffing, we will increase our ability to suppress and/or discourage the unlawful use of fireworks and promote a safe environment for those living in Morro Bay and our visitors.

### **CONCLUSION**

The 2014 4th of July holiday included a slight increase in fireworks complaints compared to 2013. However, due to increasing concern over the unlawful use of fireworks in the City of Morro Bay, staff is recommending increasing fines, as well as including a provision wherein police officers have the authority to issue administrative citations for the first offense, without an initial warning, as a method to discourage the unlawful use of fireworks. If Council directs staff to increase fines, then an ordinance doing that will be returned to the Council for introduction and adoption to be effective in time for the 2015 July 4<sup>th</sup> season.



AGENDA NO: D-1

MEETING DATE: March 10, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** March 3, 2015

**FROM:** Amy Christey, Police Chief

**SUBJECT:** Discussion and Consideration of an Ordinance to Ban the Possession and Sale of Synthetic Spices and/or Synthetic Bath Salts

### **RECOMMENDATION**

Staff recommends the City Council review the attached sample ordinance and provide direction to staff regarding whether to return to Council with an ordinance to ban the possession and sale of synthetic spices and/or synthetic bath salts within Morro Bay.

### **ALTERNATIVES**

1. Council may decide not to adopt an ordinance prohibiting the possession and sale of bath salts and spice products in our community.
2. Council may request staff conduct further analysis of an ordinance prohibiting the possession and sale of bath salts and spice products in our community.

### **FISCAL IMPACT**

If the City Council directs staff to return with an ordinance banning the possession of synthetic spices and/or synthetic bath salts, then the fiscal impact of implementation of an approved ordinance would be limited to the time and resources dedicated to investigations of cases addressing possession of these illegal drugs. Existing resources of the Police Department would be utilized to address the investigation of cases related to this proposed ordinance.

### **BACKGROUND**

Staff requests the City Council consider directing staff to prepare an ordinance banning the possession of synthetic bath salts and synthetic marijuana or "spice."

"Bath Salts" is a moniker/name for a substance that contains man-made chemicals related to amphetamines that often consist of methylenedioxypropylamphetamine (MDPV), mephedrone and methylone, also known as substituted cathinones. (The term "bath salts" being used in this report does not have any relation to a type of bath salt that one would use while taking a bath, such as Epsom salt.)

01181.0001/244346.2

Prepared By: AC

Dept Review: \_\_\_\_\_

City Manager Review: \_\_\_\_\_

City Attorney Review: JWP

Synthetic marijuana (often known as “K2” or “Spice”) and “bath salt” products are often sold in legal local retail establishments under such names as “herbal incense” and “plant food,” respectively. They are labeled “not for human consumption” to mask their intended purpose and avoid FDA regulatory oversight of the manufacturing process.

Synthetic marijuana consists of plant material that has been laced with substances (synthetic cannabinoids) that users claim mimics tetrahydrocannabinol (THC), the primary psychoactive ingredient in marijuana, and are marketed toward young people as a legal high. In police officer’s observations, the subjects who are under the influence of these substances are generally intoxicated with symptoms that mimic marijuana influence.

Retailers are selling bath salt and synthetic cannabinoids products to community members. Once purchased, the spice user ingests the substance, usually by smoking. Then the user gets high from the effects of smoking spice, similar to marijuana. Users usually inhale the bath salts and they experience a high similar to cocaine.

It is widely known that the abuse of Spice and Bath Salts have been responsible for a myriad of overdose-type reactions in people. Some of those extreme cases have been highly publicized via the internet and television.

\*A recent fatal traffic collision just north of our city limits involved a driver allegedly under the influence of spice.

\*In this past year, Officers responded to a residence for a male subject screaming who had a stated history of spice use.

The Drug Enforcement Agency (DEA) has been working over the past 24 months with Federal, Congressional, State, local, and non-governmental partners to put policies and legislation in place to combat this threat and to educate people about the tremendous health risk posed by those substances.

## **DISCUSSION**

California Health and Safety Code section 11357.5 states: “Every person who sells, dispenses, distributes, furnishes, administers, or gives, or offers to sell, dispense, distribute, furnish, administer, or give, or possesses for sale any synthetic cannabinoid compound, or any synthetic cannabinoid derivative, to any person, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.”

Health and Safety Code section 11375.5(a) imposes a similar prohibition on the sale, distribution, and possession of certain synthetic stimulant compounds. A violation of section 11375.5(a) is also a misdemeanor. Section 11375.5(b) sets forth the specific synthetic stimulant compounds and derivatives that are prohibited under this section.

However, manufacturers of bath salts and spice products have altered their chemical properties so as not

to include the prohibited chemicals that California State Law prohibits, (Reference Appendix-1, California Health and Safety Code 11357.5) and Appendix-2, California Health and Safety Code section 11375.5).

Since the above sections do not prohibit the possession of synthetic spice or bath salts described above, it is not illegal to possess those substances. Therefore, creating an ordinance to ban possession of those substances would allow law enforcement the ability to confiscate synthetic spice and bath salts, whether or not any sale takes place. The ordinance will also allow police personnel to confiscate these products if retailers choose to sell them to community members.

Synthetic spice and bath salts are readily available; sold over the Internet. Although the frequency of spice and bath salts related calls in the City are few, the proposed ordinance would give the police department the ability to address this growing problem, before it establishes a strong foothold in our community.

### **CONCLUSION**

This draft Ordinance to ban the possession and sale of synthetic spices and/or synthetic bath salts supports our mission of providing the highest level of police services in partnership with our community. Staff recommends Council review the attached sample ordinance and direct staff to bring back an ordinance banning the possession of synthetic spices and/or synthetic bath salts for introduction and first reading at a future meeting.

### **ATTACHMENTS**

Attachment 1 California Health and Safety Code section 11375.5 and 11357.5

Attachment 2 City of Lompoc's Ordinance No. 1598(13) Banning the Possession of Synthetic Spices and/or Synthetic Bath Salts

**CALIFORNIA STATUTES RELATING TO UNLAWFUL DESIGNER DRUGS**

**Health and Safety Code section 11375.5 – Unlawful Sale of Synthetic Stimulants**

**H&S 11375.5.** (a) Every person who sells, dispenses, distributes, furnishes, administers, or gives, or offers to sell, dispense, distribute, furnish, administer, or give, any synthetic stimulant compound specified in subdivision (b), or any synthetic stimulant derivative, to any person, or who possesses that compound or derivative for sale, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

(b) Unless specifically excepted, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, or unless listed in another schedule, subdivision (a) applies to any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers whenever the existence of such salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers is possible within any of the following specific chemical designations:

(1) Naphthylpyrovalerone whether or not further substituted in the naphthyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether or not further substituted in the naphthyl ring by one or more other univalent substituents, or whether or not further substituted in the carbon chain at the 3-, 4-, or 5-position with an alkyl substituent.

(2) 2-amino-1-phenyl-1-propanone (cathinone) or variation in any of the following ways:

(A) By substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents.

(B) By substitution at the 3-position with an alkyl substituent.

(C) By substitution at the nitrogen atom with alkyl, dialkyl, or benzyl groups, or by inclusion of the nitrogen atom in a cyclic structure.

(c) This section shall not prohibit prosecution under any other provision of law.

**Health and Safety Code section 11357.5 – Unlawful Sale of Synthetic Cannabinoid Substances**

**H&S 11357.5.** (a) Every person who sells, dispenses, distributes, furnishes, administers, or gives, or offers to sell, dispense, distribute, furnish, administer, or give, or possesses for sale any synthetic cannabinoid compound, or any synthetic cannabinoid derivative, to any person, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

(b) As used in this section, the term "synthetic cannabinoid compound" refers to any of the following substances:

- (1) 1-pentyl-3-(1-naphthoyl)indole (JWH-018).
- (2) 1-butyl-3-(1-naphthoyl)indole (JWH-073).
- (3) 1- $\acute{Y}$ 2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200).
- (4) 5-(1,1-dimethylheptyl)-2- $\acute{Y}$ (1R,3S)-3-hydroxycyclohexyl]-phenol(CP-47,497).
- (5) 5-(1,1-dimethyloctyl)-2- $\acute{Y}$ (1R,3S)-3-hydroxycyclohexyl]-phenol(cannabicyclohexanol; CP-47, 497 C8 homologue).

**Unlawful Business Practices/Unfair Competition (Business and Professions Code section 17200 et seq.)**

**B&P 17200.** As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and **Professions Code**.

**17201.** As used in this chapter, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

**17201.5.** As used in this chapter:

(a) "Board within the Department of Consumer Affairs" includes any commission, bureau, division, or other similarly constituted agency within the Department of Consumer Affairs.

(b) "Local consumer affairs agency" means and includes any city or county body which primarily provides consumer protection services.

**17202.** Notwithstanding Section 3369 of the Civil **Code**, specific or preventive relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition.

**17203. Injunctive Relief--Court Orders**

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.

**17204. Actions for Injunctions by Attorney General, District Attorney, County Counsel, and City Attorneys**

Actions for relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or a district attorney or by a county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or by a city attorney of a city having a population in excess of 750,000, or by a city attorney in a city and county or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association, or by a person who has suffered injury in fact and has lost money or property as a result of the unfair competition.

**17205.** Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

**17206. Civil Penalty for Violation of Chapter**

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (e), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. The aforementioned funds shall be for the exclusive use by the Attorney General, the district

attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.

(d) The Unfair Competition Law Fund is hereby created as a special account within the General Fund in the State Treasury. The portion of penalties that is payable to the General Fund or to the Treasurer recovered by the Attorney General from an action or settlement of a claim made by the Attorney General pursuant to this chapter or Chapter 1 (commencing with Section 17500) of Part 3 shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support investigations and prosecutions of California's consumer protection laws, including implementation of judgments obtained from such prosecutions or investigations and other activities which are in furtherance of this chapter or Chapter 1 (commencing with Section 17500) of Part 3.

(e) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(f) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for the exclusive use by the city attorney for the enforcement of consumer protection laws. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

**17206.1.** (a) (1) In addition to any liability for a civil penalty pursuant to Section 17206, any person who violates this chapter, and the act or acts of unfair competition are perpetrated against one or more senior citizens or disabled persons, may be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which may be assessed and recovered in a civil action as prescribed in Section 17206.

(2) Subject to subdivision (d), any civil penalty shall be paid as prescribed by subdivisions (b) and (c) of Section 17206.

(b) As used in this section, the following terms have the following meanings:

(1) "Senior citizen" means a person who is 65 years of age or older.

(2) "Disabled person" means any person who has a physical or mental impairment that substantially limits one or more major life activities.

(A) As used in this subdivision, "physical or mental impairment" means any of the following:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, and emotional illness.

(B) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(d) Any court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as may be necessary to restore to any senior citizen or disabled person any money or property, real or personal, which may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of any civil penalty designated by the court as imposed pursuant to subdivision(a), but shall not be given priority over any civil penalty imposed pursuant to subdivision (a) of Section 17206. If the court determines that full restitution cannot be made to those senior citizens or disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a pro rata basis depending on the amount of loss.

**17207.** (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars (\$6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of that conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of that conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney in any court of competent jurisdiction within his or her jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city, except that if the action was brought by a city attorney of a city and county the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment is entered.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of the reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of the reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

**17208.** Any action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this section shall be revived by its enactment.

## **Ordinance No. 1598(13)**

### **An Ordinance of the Council of the City of Lompoc, County of Santa Barbara, State of California, Adding Chapter 9.52 to the Lompoc Municipal Code Relating to Prohibition of the Possession of Certain Intoxicating Chemical Compounds known as Synthetic Drugs**

**WHEREAS**, the City Council is committed to protecting the public health, safety and welfare of the community, and to meet these goals it is necessary for the City Council to adopt measures, from time-to-time, to meet threats to the public health, safety, and welfare; and

**WHEREAS**, recreational use of Psychoactive Bath Salts, Psychoactive Herbal Incense, and similar products commonly known as “Synthetic Drugs” has been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal ideations, cannibalism, and death; and

**WHEREAS**, Synthetic Drugs are extremely dangerous and are gaining popularity at an alarming rate among high school and college-aged individuals, as well as among parolees and probationers; and

**WHEREAS**, those drugs are widely available in stores throughout the City, despite the State of California’s and the federal government’s attempt to ban such drugs; and

**WHEREAS**, California State Law, under Health & Safety Code sections 11375.5 (banning synthetic stimulant compounds and derivatives) and 11401 (banning “analogs” of controlled substances) (collectively “State Synthetic Drug Laws”), and Federal law, under the Controlled Substances Act (the “CSA”) (21 U.S.C. § 801, *et seq.*), prohibit Synthetic Drugs; and

**WHEREAS**, although the State Synthetic Drug Laws and the CSA prohibit certain compounds that are used to create synthetic drugs, they are not comprehensive enough to eliminate the possession of all Synthetic Drugs in the City; and

**WHEREAS**, the makers of Synthetic Drugs continually alter the composition of the compounds in their products so as to not come under the prohibition of the State Synthetic Drugs Laws, the CSA, and other laws and regulations that attempt to prohibit the sale of Synthetic Drugs; and

**WHEREAS**, to avoid the continuing threat to public health, safety and welfare that would occur if Synthetic Drugs were permitted in the City, the City finds it necessary to declare that an individual or business which possesses Synthetic Drugs as defined herein is a threat to public health, safety and welfare and is therefore subject to the City’s administrative, criminal and civil enforcement procedures (set forth in Title 1 of the Lompoc Municipal Code) and in the case of a business, revocation of a business license pursuant to Chapter 5.04 of the Lompoc Municipal Code.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOMPOC DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** Chapter 9.52 is added to the Lompoc Municipal Code to read as follows:

**Chapter 9.52 Psychoactive Bath Salts, Psychoactive Herbal Incense, and other Synthetic Drugs**

Sections:

- 9.52.010 Purpose and Intent
- 9.52.020 Definitions
- 9.52.030 Possession of Synthetic Drugs Prohibited
- 9.52.040 Public Nuisance
- 9.52.050 Confiscation of Synthetic Drugs
- 9.52.060 Suspension or Revocation of Business License
- 9.52.070 Penalties
- 9.52.080 Seizure of Evidence
- 9.52.090 Exclusions

**9.52.010 Purpose and Intent**

- A. The purpose and intent of this Chapter is to provide the City with measures to address the dangers to the community posed by Synthetic Drugs that are not regulated by State or Federal law.
- B. The City Council finds the dangers of Synthetic Drugs, which have been documented to cause hallucinations, agitations, psychosis, aggression, suicidal and homicidal ideations, cannibalism, and death, require regulation.
- C. This Chapter shall not apply to any activity already regulated by State or Federal drug laws, or any other applicable State or Federal law or regulation.

**9.52.020 Definitions**

The definitions and provisions contained in this section shall govern the construction of words and phrases used in this chapter. The definition of each word or phrase shall constitute, to the extent applicable, the definition of each word or phrase which is derived from it, or from which it is a derivative, as the case may be.

- A. "Business" shall have the same meaning as the term is defined in Section 5.04.010 of this Code.
- B. "Distribute," "distributing," and "distribution" shall mean to furnish, give away, exchange, transfer, deliver or supply, whether for monetary gain or not.
- C. "Person" shall include any natural person, business, firm, company, corporation, public corporation, club, trust, partnership, association and/or similar organization.

- D. "Possess," "possessing," and "possession," shall mean to have for consumption, distribution, or sale in one's actual or constructive custody or control, or under one's authority or power, whether such custody, control, authority and/or power be exercised solely or jointly with others.
- E. "Provide," "providing," and "provision" shall mean offering to distribute or sell a product or substance to any person.
- F. "Psychoactive Bath Salts," shall mean any crystalline or powder product that contains a synthetic chemical compound that, when consumed, elicits psychoactive or psychotropic stimulant effects. The term "Psychoactive Bath Salts" includes without limitation:
1. Products that elicit psychoactive or psychotropic stimulant effects and contain any of the following substances:
    - (a) Salvia Divinorum or Salvinorum A; all parts of the plant presently classified botanically as Salvia Divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts derivative, mixture or preparation of such plant, its seeds or extracts;
    - (b) Cathinone (2-amino-1-phenyl-1-propane), 4-methylmethcathinone (2-methylamino-1-(4-methylphenyl)propan-1 one), 4-methoxymethcathinone (1-(4-methoxyphenyl)-2(methylamine) propan-1-one), MDPV (methylenedioxypropylone), methylene (3,4-methylenedioxy-Nmethylcathinone), methcathinone (2-(methylamino)-1-phenyl-propan-1-one), flephedrone (4 fluoromethcathinone), 3-FMC (3-fluoromethcathinone), ethcathinone (2-ethylamino-1 -phenyl-propan-1 -one), butylone  $\beta$ -keto Nmethylbenzodioxolylbutamine), a-PPP (a-pyrrolidinopropiophenone), MPPP(4-methyl--pyrrolidinopropiophenone), MDPPP (3',4' methylenedioxy-apyrrolidinopropiophenone),  $\alpha$ -PVP (1-phenyl-2-(1-pyrrolidinyl)-1-pentanone), naphyrone (1-naphthalen-2-yl-2-pyrrolidin-1-ylpentan-1-one), 6-APDB (6(2aminopropyl)2,3 dihydrobenzo-furan), and analogs of MDA (3,4-methylenedioxy-methamphetamine);
    - (c) any derivative of the above listed compounds;
    - (d) any synthetic substance and its isomers with a chemical structure similar to the above listed compounds;
    - (e) any chemical alteration of the above listed compounds; or
    - (f) any other substantially similar chemical structure or compound; and
  2. Products that elicit psychoactive or psychotropic stimulant effects and are marketed under any of the following trade names: Bliss, Blizzard, Blue Silk, Bonzai Grow, Charge Plus, Charlie, Cloud Nine, Euphoria, Hurricane, Ivory Snow, Ivory Wave, Lunar Wave, Ocean, Ocean Burst, Pixie Dust, Posh, Pure Ivory, Purple Wave, Red

Dove, Scarface, Snow Leopard, Stardust, Vanilla Sky, White Dove, White Night, and White Lightning.

G. "Psychoactive Herbal Incense" shall mean any organic product consisting of plant material that contains a synthetic stimulant compound that, when consumed, elicits psychoactive or psychotropic euphoric effects. The term "Psychoactive Herbal Incense" includes without limitation:

1. Products that elicit psychoactive or psychotropic euphoric effects and contain any of the following substances:

(a) cannabicyclohexanol (2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol), JWH-018 (naphthalen-1-yl-(1-pentylindol-3-yl)methanone), JWH-073 (naphthalen-1-yl-(1-butylindol-3-yl)methanone), JWH-200 (1-(2-morpholin-4-ylethyl)indol-3-yl)naphthalen-1-ylmethanone, HU-210 or 1.1-dimethylheptyl-11-hydroxy-delta8-tetrahydrocannabinol (6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol), CP 47,497 (2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol) and the dimethylhexyl, dimethyloctyl and dimethylnonyl homologues of CP-47,497, AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(naphthalen-1-yl)methanone), 1-Pentyl-3-(2-methoxyphenylacetyl)indole (also known as JWH-250), 1-Hexyl-3-(1-naphthoyl)indole (also known as JWH-019), 1-Pentyl-3-(4-chloro-1-naphthoyl)indole (also known as JWH-398), N-benzylpiperazine (also known as BZP), 1-(3-trifluoromethylphenyl)piperazine (also known as TFMPP);

(b) any derivative of the above listed compounds;

(c) any synthetic substance and its isomers with a chemical structure similar to the above listed compounds;

(d) any chemical alteration of the above listed compounds; or

(e) any other substantially similar chemical structure or compound; or

(f) any other synthetic cannabinoid; and

2. Products that elicit psychoactive psychotropic euphoric effects and are marketed under any of the following trade names: K2, K3, Spice, Genie, Smoke, Potpourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Stinger, Ocean Blue, Stinger, Serenity, Fake Weed, and Black Mamba.

H. "Psychoactive or psychotropic stimulant effects" shall mean affecting the central nervous system or brain function to change perception, mood, consciousness, cognition, and/or behavior in ways that are similar to the effects of cocaine, methylphenidate or amphetamines.

- I. "Psychoactive or psychotropic euphoric effects" shall mean affecting the central nervous system or brain function to change perception, mood, consciousness, cognition, and/or behavior in ways that are similar to the effects of cannabis.
- J. "Sell," "selling," and "sale" shall mean to furnish, exchange, transfer, deliver, or supply for monetary gain.
- K. "Synthetic Drug" shall include Psychoactive Bath Salts and Psychoactive Herbal Incense, as those terms are defined hereinabove.

#### **9.52.030 Possession of Synthetic Drugs Prohibited**

- A. It is unlawful for any person to possess any Synthetic Drug within the City.
- B. The enforcing officer may consider any of the following evidentiary factors to determine if the product is a Synthetic Drug:
  - 1. The product is not suitable for its marketed use (such as crystalline or powder being marketed as "glass cleaner");
  - 2. The product contains a warning label that is not typically present on products that are used for that product's marketed use (such as "not for human consumption," "not for purchase by minors," or "does not contain chemicals banned by section 11357.5");
  - 3. The product resembles an illicit street drug (such as cocaine, methamphetamine or marijuana); or
  - 4. The product's name or packaging uses images or slang referencing an illicit drug.

#### **9.52.040 Public Nuisance**

- A. The storage, provision, sale, or distribution of any Synthetic Drug from any property, structure, or building in the City and any possession of any Synthetic Drug in the City is declared to be a public nuisance.
- B. Civil Remedies Available; Remedies Cumulative. In addition to the penalties provided in Section 9.52.070, any violation of any provision of this Chapter shall constitute a public nuisance and may be abated by the City by civil process by means of a restraining order, a preliminary or permanent injunction, or in any manner provided by law for the abatement of such nuisance. All remedies herein are cumulative and non-exclusive.
- C. Attorney's Fees. Any person, including the City, who prevails in any action or proceeding for the abatement of a public nuisance as provided herein shall be entitled to recover attorney's fees incurred in any such action or proceeding.

**9.52.050 Confiscation of Synthetic Drugs.**

Because the use of Synthetic Drugs has been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal ideations, cannibalism, and death, any violation of this Chapter presents a grave and imminent danger not only to the person consuming the Synthetic Drug, but also to the public at large. Any Police Officer who issues a criminal citation under this Chapter shall confiscate any Synthetic Drugs and store them, pending the conclusion of the criminal case.

**9.52.060 Suspension or Revocation of Business License.**

No person holding a validly issued City business license and owning or operating a business in the City may use that business to provide, distribute, or sell any Synthetic Drug or any substance claimed or represented to be a Synthetic Drug. A violation of this Chapter by the holder of a validly issued City business license shall constitute grounds for suspension or revocation of a business license in accordance with the procedures set forth in Chapter 5.04 of this Code.

**9.52.070 Penalties**

- A. Failure to comply with any of the requirements of this Chapter is a misdemeanor punishable by imprisonment in the City or County jail for a period not exceeding six (6) months, or by fine not exceeding one thousand dollars (\$1,000), or by both, provided that where the City Attorney determines that such action would be in the interest of justice, he/she may specify in the accusatory pleading that the offense shall be an infraction.
- B. Each person committing, causing, or maintaining a violation of this Chapter or failing to comply with the requirements set forth herein shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Chapter is committed, continued, maintained, or permitted by such person and shall be punishable accordingly.

**9.52.080 Seizure of Evidence**

Any products or substances possessed in violation of any provision of this Chapter shall be seized and stored in accordance with law.

**9.52.090 Exclusions**

- A. This Chapter shall not apply to drugs or substances lawfully prescribed or to intoxicating chemical compounds that have been approved by the Federal Food and Drug Administration or are specifically permitted by California law.
- B. This Chapter shall not apply to drugs or substances that are prohibited by State or Federal law, including without limitation, the State Synthetic Drug Laws, and the Federal Controlled Substances Act.

C. This Chapter shall not be deemed to prohibit any act that is permitted, prohibited, or preempted by any State or Federal law or regulation.

**SECTION 2.** This Ordinance shall be effective thirty (30) days after its adoption.

PASSED AND ADOPTED this \_\_\_th day of \_\_\_ 2013, by the following electronic vote:

AYES: Councilmember(s):  
NOES: Councilmember(s):  
ABSENT: Councilmember (s):

---

John H. Linn, Mayor  
City of Lompoc

Attest:

---

Stacey Alvarez, City Clerk  
City of Lompoc