

# City of Morro Bay

## City Council Agenda

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### *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.*

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**REGULAR MEETING  
TUESDAY, SEPTEMBER 8, 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 –

Community Choice Aggregation Presentation by California Clean Power

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.

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 SPECIAL CITY COUNCIL MEETING HELD ON AUGUST 17, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

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

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF MINUTES FOR THE CITY COUNCIL MEETING HELD ON AUGUST 25, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-4 PROCLAMATION DECLARING SEPTEMBER 2015 AS “CHILDHOOD CANCER AWARENESS MONTH”; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-5 STATUS REPORT OF A MAJOR MAINTENANCE & REPAIR PLAN (MMRP) FOR THE EXISTING WASTEWATER TREATMENT PLANT; (PUBLIC WORKS)

**RECOMMENDATION: Receive and file.**

A-6 MONTHLY WATER RECLAMATION FACILITY (WRF) PROGRAM UPDATE; (PUBLIC WORKS)

**RECOMMENDATION: Receive and file.**

A-7 APPROVAL OF A LICENSE AGREEMENT WITH MMBS, LLC/BOB FOWLER FOR TEMPORARY USE OF A PORTION OF HARBOR DEPARTMENT STORAGE/WORK YARD SPACE FOR CONSTRUCTION OF DOCKS FOR LEASE SITE 113W IMPROVEMENTS: (HARBOR)

**RECOMMENDATION: Approve the Temporary License Agreement for Use of Public Property with MMBS, LLC.**

A-8 RESOLUTION NO. 61-15 AUTHORIZING STAFF TO APPLY FOR A RECYCLED WATER FEASIBILITY GRANT FROM STATE WATER RESOURCES CONTROL BOARD; (PUBLIC WORKS)

**RECOMMENDATION: Adopt Resolution No. 61-15.**

B. PUBLIC HEARINGS - NONE

C. UNFINISHED BUSINESS / SECOND READING AND ADOPTION OF ORDINANCES

C-1 ADOPTION OF ORDINANCE NO. 595 AMENDING VARIOUS PROVISIONS OF TITLE 5 OF THE MORRO BAY MUNICIPAL CODE RELATING TO BUSINESS TAXES: (ADMINISTRATIVE SERVICES)

**RECOMMENDATION: Adopt Ordinance 595 after reading the title only and waiving further reading.**

C-2 ONE YEAR REVIEW OF PUBLIC OFF-THE-BOAT COMMERCIAL FISH SALES POLICY FOR PUBLIC DOCKS AND PIERS; (HARBOR)

**RECOMMENDATION: Review staff recommendation and approve the permanent allowance of off-the-boat commercial fish sales on the City's public docks and piers.**

D. NEW BUSINESS

D-1 APPROVAL OF ABSENCE OF COUNCIL MEMBER MATT MAKOWETSKI FROM ATTENDANCE AT COUNCIL MEETINGS FOR A 90-DAY PERIOD; (ADMINISTRATION)

**RECOMMENDATION: Review staff recommendation and decide whether to grant Council Member Makowetski's request for a leave of absence.**

D-2 CONSIDERATION OF AN ORDINANCE REGULATING EXPANDED POLYSTYRENE (EPS) FOOD CONTAINERS AND PRODUCTS; (PUBLIC WORKS)

**RECOMMENDATION: Discuss and direct staff accordingly.**

E. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

F. ADJOURNMENT

The next Regular Meeting will be held on Tuesday, **September 22, 2015 at 6:00 pm** at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

**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.**



MINUTES - MORRO BAY CITY COUNCIL  
SPECIAL MEETING – AUGUST 17, 2015  
COMMUNITY CENTER MULTI-PURPOSE ROOM  
1001 KENNEDY WAY – 5:00 P.M.

PRESENT:	Jamie Irons	Mayor
	Christine Johnson	Councilmember
	John Headding	Councilmember
	Matt Makowetski	Councilmember
	Noah Smukler	Councilmember
STAFF:	David Buckingham	City Manager
	Dana Swanson	City Clerk
	Rob Livick	Public Works Director
	Rick Sauerwein	Capital Projects Manager
	Bruce Keogh	WWTP/Collections Division Manager
	Mike Nunley	WRF Program Manager
	John Rickenbach	WRF Deputy Program Manager

ESTABLISH QUORUM AND CALL TO ORDER

A quorum was established with Mayor Irons, Councilmembers Headding and Johnson present. The meeting was called to order at 5:05pm.

A brief recess was called at 5:06pm and the meeting reconvened at 5:15pm.

Councilmember Smukler joined the meeting at 5:16pm.

PUBLIC COMMENT RE: ITEMS ON THE AGENDA

Marla Jo Bruton-Sadowski, Morro Bay, asked staff to clarify the timeline for the project and to discuss availability of Proposition 1 funding.

Richard Sadowski, Morro Bay, expressed concern about the project timeline and encouraged the City to look at top technology with a goal of having the plant operational in 5 years. Also, the latest data for climate change, sea level rise and surcharging events needs to be incorporated into the plan.

Lynda Merrill, Morro Bay, asked staff to provide a location where copies of documents related to the project can be reviewed by the public.

The public comment period was closed.

SPECIAL MEETING AGENDA ITEM:

- I. CITY COUNCIL WORK SESSION – WATER RECLAMATION FACILITY (WRF) PROGRAM OVERVIEW  
<HTTPS://YOUTU.BE/V32X8OPZE5G?T=1S>

City Manager Buckingham introduced Mike Nunley, WRF Program Manager and John Rickenbach, Deputy Program Manager, who presented the WRF Program Overview.

Councilmember Makowetski joined the meeting at 5:29pm

The powerpoint presentation from this meeting is available by clicking this link:

<http://ca-morrobay.civicplus.com/DocumentCenter/View/8790>

Following the presentation, the public comment period was reopened.

Ginny Garelick, Morro Bay, suggested putting a docket at the library for those who do not have access to computers. She is glad to see Phase 1 includes a master reclamation plan and also confirmed staff is following the State's progress on potable water regulations.

Lynda Merrill, Morro Bay, thanked staff for the presentation, asked for Mr. Nunley's email address, and confirmed the information provided will be available on the City website.

Marla Jo Bruton-Sadowski, Morro Bay, asked to clarify the level of treatment the plant would reach in five years. Based on her experience with Sacramento, Morro Bay is in a good position to receive Proposition 1 funding, possibly including money for recharge of aquifers.

Bill Martony, Morro Bay, asked if water will be discharged to the ocean during Phase 1; and, if it is two years before we can purchase the site, is there anything binding that the City can do to lock up the property.

Betty Winholtz, Morro Bay, asked staff to clarify whether the first phase is tertiary-ready or tertiary, and if so, at what level. She appreciates comments regarding finance and suggests this project should be referred to the Citizens Finance Committee. She also noted you can't define the project until you know what technology you're using.

Barbara Spagnola, Morro Bay resident and member of newly created Citizens Finance Committee, welcomes the Council's solicitation of the Committee's input and comments.

The public comment period was closed.

No formal action was taken by the City Council.

#### ADJOURNMENT

The meeting adjourned at 7:52p.m.

Recorded by:

Dana Swanson  
City Clerk

MINUTES – MORRO BAY CITY COUNCIL  
SPECIAL CLOSED SESSION MEETING –  
AUGUST 24, 2015  
CITY HALL CONFERENCE ROOM – 4:00 P.M.

AGENDA NO: A-2

MEETING DATE: September 8, 2015

PRESENT:	Jamie Irons	Mayor
	John Headding	Councilmember
	Christine Johnson	Councilmember
	Matt Makowetski	Councilmember
	Noah Smukler	Councilmember
STAFF:	David Buckingham	City Manager
	Shannon Chaffin	Assistant City Attorney
	Scot Graham	Community Development Director

ESTABLISH QUORUM AND CALL TO ORDER

SUMMARY OF CLOSED SESSION ITEMS - The Mayor read a summary of Closed Session items.

CLOSED SESSION PUBLIC COMMENTS - Mayor Irons opened the meeting for public comments for items only on the agenda.

Ken MacMillan, owner of DiStasio's Restaurant, introduced his wife Judy and son Mark who also participate in the restaurant. He thanked Council for making special arrangements to hear Item CS-1 as time is of the essence. He is attempting to purchase 781 Market Street, but has not been able to close escrow because the City has a lien on the property, which puts them in first position. His loan is a SBA loan and therefore, cannot be in a subordinate position. The original escrow expired on Friday, but he was able to get a two week extension. He recommended that the Council take one of two options: 1) eliminate the lien for the elevator by coming to a separate agreement with City; or 2) agree to subordinate the City's loan.

Seeing no further comment, the public comment period was closed.

The City Council moved to Closed Session and heard the following items:

**CS-1 CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION**  
**PURSUANT TO GOVERNMENT CODE 54956.9(d)(1)**

United States Bankruptcy Court Case No. 15-10705-B-11F  
re: Charlotte Ellen Salwasser, Debtor.

**CS-2 GOVERNMENT CODE SECTION 54956.8 – CONFERENCE WITH REAL**  
**PROPERTY NEGOTIATOR:**

Property: Outfall Facilities Previously Used by Dynegy, located adjacent to the easterly side of Morro Rock.

Negotiating Parties: Eric Markell

Agency Negotiators: David Buckingham, City Manager and Joseph Pannone, City Attorney

Negotiations: Price and Terms of Payment

The City Council reconvened to Open Session.

The Council did not take any reportable action pursuant to the Brown Act.

ADJOURNMENT

The meeting adjourned at 5:45 p.m.

Recorded by:

Brooke Austin  
Deputy City Clerk

MINUTES - MORRO BAY CITY COUNCIL  
REGULAR MEETING – AUGUST 25, 2015  
VETERAN’S MEMORIAL HALL – 6:00P.M.

PRESENT:	Jamie Irons	Mayor
	Noah Smukler	Councilmember
	John Heading	Councilmember
	Christine Johnson	Councilmember
ABSENT:	Matt Makowetski	Councilmember
STAFF:	Susan Slayton	Administrative Services Director/ Acting City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Rob Livick	Public Works Director
	Scot Graham	Community Development Manager
	Cindy Jacinth	Associate Planner
	Eric Endersby	Harbor Director
	Amy Christey	Police Chief
	Steve Knuckles	Fire Chief

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 6:05pm

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

CLOSED SESSION REPORT - No Closed Session Meeting was held.

MAYOR AND COUNCILMEMBERS’ REPORTS, ANNOUNCEMENTS &  
PRESENTATIONS

<https://youtu.be/9e28p5-O5JM?t=2m7s>

Mayor Irons read a letter into the record from Councilmember Makowetski requesting up to a 90-day leave of absence due to medical reasons.

PUBLIC PRESENTATIONS

<https://youtu.be/9e28p5-O5JM?t=6m56s>

SLO Rideshare Presentation

Peter Williamson, Employer Outreach Coordinator from SLO Rideshare presented information about events planned during Rideshare Week October 5 - 9, 2015.

The California Clean Power Presentation will be heard at the September 8, 2015 Council Meeting.

PUBLIC COMMENT

<https://youtu.be/9e28p5-O5JM?t=12m50s>

Hilary Hopkins of Placer Title provided the business spot. Placer Title is a full service title and escrow company with offices in San Luis Obispo, Paso Robles, Cambria and new location at 545 Main Street, Morro Bay. The company was founded in 1973 on a culture of taking care of their employees so their employees can take care of the customers.

Ivana Yeung, SLO County Planning Department, Housing and Economic Development Division, announced they are hosting a Needs/Fair Housing Workshop on September 8th at the Atascadero Library from 5-6pm, and September 15<sup>th</sup> at the Nipomo Library 5-6pm. This workshop is open to all to provide input and get information about projects coming to your area. More information is available at [www.sloplanning.org](http://www.sloplanning.org).

Walter Heath, Morro Bay, announced a Citizens Beautification and Heritage Commission has been formed and will hold their first meeting on August 27<sup>th</sup> from 10-11:30am in the Studio Room at the Morro Bay Community Center. Topics include fall street tree planting, report on hidden history project, Highway 41 overpass mural project, BMX bike park update and design review, Adopt-a-Park recognition, and discussion of future projects. The public is welcome to attend.

Robert Davis, Morro Bay resident and Morro Bay in Bloom volunteer commented that while picking up litter in Centennial Parkway this past week, the amount of cigarette butts were extraordinary. He suggested signage informing the public that smoking is prohibited might alleviate the problem.

Rick Morse of Medmar Clinic located at 334 E. Olive Ave., Fresno, CA, provided information and sample ordinances regarding medical marijuana collectives and dispensaries.

Dawn Beattie, Morro Bay, asked Councilmember Headding to clarify his announcement regarding proper disposal of unused medications. Councilmember Headding indicated there are two safe ways to dispose of unused medications: 1) purchase a medication disposal system (charcoal packet) to safely dispose of unused medications in the trash, or 2) take unused medications to an authorized drop-off station (police station or one of the newly licensed pharmacies).

The public comment period was closed.

- A. CONSENT AGENDA  
<https://youtu.be/9e28p5-O5JM?t=31m22s>

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 CLOSED SESSION CITY COUNCIL MEETING HELD ON AUGUST 11, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE CITY COUNCIL MEETING HELD ON AUGUST 11, 2015; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF VISITOR CENTER SERVICES CONTRACT & LEASE AGREEMENT FOR CITY-OWNED PROPERTY LOCATED AT 695 HARBOR STREET; (ADMINISTRATION)

**RECOMMENDATION: Review and approve the proposed Visitor Center Agreement and Lease Agreement for 695 Harbor Street.**

A-4 APPROVAL OF RESOLUTION NO. 59-15 URGING THE STATE TO PROVIDE NEW SUSTAINABLE FUNDING FOR STATE AND LOCAL TRANSPORTATION INFRASTRUCTURE; (PUBLIC WORKS)

**RECOMMENDATION: Adopt Resolution No. 59-15.**

A-5 APPROVAL OF RESOLUTION NO. 60-15 SUPPORTING THE CALIFORNIA EMERGENCY DROUGHT RELIEF ACT OF 2015 (S. 1894); (PUBLIC WORKS)

**RECOMMENDATION: Adopt Resolution No. 60-15.**

The public comment period for the Consent Agenda was opened; seeing none the public comment period was closed.

Councilmember Smukler pulled Item A-3 for a brief comment.

**MOTION:** Councilmember Headding moved the Council approve Items A-1, A-2 and A-4 and A-5 of the Consent Agenda. The motion was seconded by Councilmember Johnson and carried unanimously, 4-0.

A-3 APPROVAL OF VISITOR CENTER SERVICES CONTRACT & LEASE AGREEMENT FOR CITY-OWNED PROPERTY LOCATED AT 695 HARBOR STREET; (ADMINISTRATION)  
<https://youtu.be/9e28p5-O5JM?t=32m23s>

Councilmember Smukler suggested modifying Item 8 on page 2 of the Visitor Center agreement to add language requiring the Chamber to include pertinent City and County governmental operations, such as transit information, in Visitor Center free mobile app.

**MOTION:** Councilmember Smukler moved to approve Item A-3 with Item 8 of the Visitor Center Agreement amended to include pertinent City and County governmental operation information on the Visitor Center mobile app. The motion was seconded by Councilmember Headding and carried unanimously, 4-0.

A brief recess was called at 7:14pm and the meeting reconvened at 7:22pm.

B. PUBLIC HEARINGS

- B-1 **CONDITIONAL USE PERMIT UP0-058 – REVISED CONCEPT PLAN/PRECISE PLAN APPROVAL FOR LANDSIDE IMPROVEMENTS (PHASE 2) ASSOCIATED WITH THE PREVIOUSLY APPROVED CONCEPT PLAN FOR HARBOR HUT, GREAT AMERICAN FISH COMPANY (GAFCO) AND MORRO BAY LANDINGS (FORMERLY KNOWN AS VIRG’S) REDEVELOPMENT PROJECT. PHASE 2 IMPROVEMENTS WILL INCLUDE DEMOLITION OF EXISTING MORRO BAY LANDING (VIRG’S) BUILDINGS AND EXISTING DOCKSIDE 3 RESTAURANT BUILDING WITH NEW CONSTRUCTION OF A 2-STORY COMMERCIAL VISITOR-SERVING BUILDING ALONG WITH OBSERVATION DECK, OUTDOOR SEATING AREA, PUBLIC ACCESS IMPROVEMENTS, AS WELL AS PARKING/ DRIVEWAY IMPROVEMENTS, AND 568SF POCKET PARK; (COMMUNITY DEVELOPMENT)**  
<https://youtu.be/9e28p5-O5JM?t=1h8m51s>

Associate Planner Jacinth presented the staff report and, along with Community Development Manager Graham, responded to Council inquiries.

The public hearing was opened.

Bob Fowler, representing the applicant, MMBS, LLC, along with Gene Doughty of Land/Sea Interface presented the project.

Councilmember Johnson disclosed ex parte communications with Mr. Fowler at which time she walked the property. She also spoke with Mr. Tognazzini regarding his concerns about the project.

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

Shirley Fraser, Morro Bay, spoke in opposition to the project as it will wipe out the bay view in front of Morro Rock from her home, as well as those of her neighbors and other residents on Surf and Scott Streets. She suggested the loss of view corridor be mitigated by reducing the height of the single story portion of the building from 17’ to 14’. Alternatively, she asked that City trees be trimmed to restore views on the southeast and northeast sides of the building.

George Leage, Morro Bay resident and owner of GAFCO, expressed concern about the project, including the lack of commercial fishing, proposed dock configuration and likelihood the restaurant use will expand into the public viewing area.

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

Mayor Irons disclosed ex parte communications with Mr. Fowler, at which time they discussed the docks and lateral access. He also spoke with Mr. Tognazzini regarding his letter opposing the project, and acknowledged receipt of Ms. Fraser’s letter. He appreciated Mr. Doughty’s presentation and asked if the trash receptacles would need to be relocated to make room for

public restrooms. He also requested a covered trash receptacle to deter birds. He is supportive of the suggested modification to Planning condition 8, but would like further clarification. He was disappointed the configuration of the docks and lateral access in front of Harbor Hut had been changed, giving the appearance they are tucked in for private use rather than public use as Planning Commission approved in 2010. He noted there will be a gap in front of Harbor Hut when Phase 1A and 1B of the project is complete, as there is currently no requirement in the Harbor Hut lease to complete their portion of the docks. He recommended the item be continued so that MMBS, LLC and Harbor Hut can have further discussions regarding completing the project to ensure continued lateral access is achieved.

Councilmember Smukler understood lateral access would be achieved as part of the overall project, and was confused about the idea of continuing the item and asking Mr. Fowler to take responsibility of trying to make this connection as that seems to be the City's responsibility. He disclosed ex parte communications with Mr. Fowler to discuss the history of the project and the Planning Commission conditions. He also reviewed the record from Planning Commission and Coastal Commission meetings. He was cautious about postponing progress for one component of the project and hold that party responsible for another party.

City Attorney Pannone noted that when a land use entitlement is granted, it's granted in total; the applicant cannot make use of a portion, without completing the whole. One approach the City could take is to ask Mr. Fowler to do his best to convince his fellow lessee to do what he should be doing. City staff could also have that conversation with the lessee explaining he has been taking benefit from CUP, but not completing the obligation. If there was a refusal to do that, it may potentially invalidate the entire CUP, as it has not been properly followed.

Councilmember Heading noted he did not have discussions with the applicant nor any individuals involved; however, he reviewed the Planning Commission record and information provided in detail. This is an extremely complex issue and he wants to see the City move forward and benefit economically, yet maintain integrity of what was meant by design through Measure "D". The City should review the Harbor Hut lease and use whatever leverage we have to get the project completed. He appreciated public input and concerns regarding view shed, yet noted the project allows for more open public space. He is concerned about potential push-out by the restaurant into the public viewing area, and supportive of not holding up process any further but working to mitigate issues as much as we can.

Councilmember Johnson clarified with staff the building height was approved by Coastal Commission, is in line with the Waterfront Master Plan and the project was determined to provide increased public benefit. She also noted the project honors Measure D by supporting commercial fishing with a new commercial fish processing business, protecting eel grass and providing increased public access. She agrees the existing sign doesn't do the architecture of the new business justice and should be removed. She would like more clarity on the Planning condition #8 for tables on the deck and agrees with compromise that staff report presents. Regarding Planning conditions 6 & 7, she supported a global view of the project by ensuring access is available to the public on the floating dock.

Councilmember Smukler supported the staff recommendation to remove the pole sign. He suggested adding a condition that does not allow table service outside of the restaurant area to

ensure the business doesn't sprawl into the public view area. As to lateral access, it's not appropriate and safe based on business activities to provide continuous water access on the south side and the proposed project with staff recommended changes meets the intent.

Mayor Irons confirmed the Council is in agreement on removal of the pole sign and amending Planning condition #8 to specify table service not be allowed outside of the restaurant area. He didn't want to hold the project hostage over conditions #6 and #7, but wanted to bring the history of the project to light. It's disappointing to discover we have a gap in lateral access that we may not have much leverage to resolve.

Mr. Fowler responded to the concerns raised by the Council, noting he has negotiated a license agreement with Dynegy that will provide public access off of the south T-Pier. He also noted it's not unusual for gaps in lateral access to be rectified as projects are approved. He met with the Harbor Hut leaseholder as part of his due diligence, and was not able to get his buy-in based on the original design, which led to the redesign so he had more control over the improvements. He offered to finance the construction of the docks or take over the neighboring water lease, but was unable to make any progress. He also noted the Harbor Hut lease may not have time constraints to complete the project, but he does and he is trying to meet them.

Mayor Irons stated it was helpful to understand Fowler has attempted to work with neighboring leaseholder and is willing to move ahead with conditions as discussed.

**MOTION:** Mayor Irons moved to adopt Resolution No. 57-15 making the necessary findings for approval of Conditional Use Permit (#UP0-058) for Phase 2 with revised Concept/Precise Plan approval with deletion of Planning condition 6 and 7, and modification of Planning condition 8 as presented by staff, with the added condition that no table service allowed in the public viewing area, cover trash receptacles. The motion was seconded by Councilmember Johnson and carried unanimously, 4-0.

C. UNFINISHED BUSINESS / SECOND READING AND ADOPTION OF ORDINANCES

C-1 ADOPTION OF ORDINANCE NO. 594 AMENDING VARIOUS SECTIONS OF CHAPTER 3.08 OF THE MORRO BAY MUNICIPAL CODE, RELATING TO CONTRACT AUTHORITY AND THE PURCHASING PROCESS: (ADMINISTRATIVE SERVICES)  
<https://youtu.be/9e28p5-O5JM?t=34m54s>

Administrative Services Director Slayton presented the staff report.

The public comment period for Item C-1 was opened; seeing none, the public comment period was closed.

The Council thanked staff for reviewing and providing an updated, more relevant policy for Council review. These changes bring increased accountability and responsibility.

MOTION: Mayor Irons moved for adoption of Ordinance No. 594, by number and title only. The motion was seconded by Councilmember Johnson and carried unanimously, 4-0.

D. NEW BUSINESS

D-1 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 595 AMENDING VARIOUS PROVISIONS OF TITLE 5 OF THE MORRO BAY MUNICIPAL CODE RELATING TO BUSINESS TAXES; (ADMINISTRATIVE SERVICES)  
<https://youtu.be/9e28p5-O5JM?t=42m19s>

Administrative Services Director Slayton presented the staff report, along with additional recommended changes to Page 3, subsection E; Page 7, subsection A; and Page 8, section 5.08.030 of the Ordinance as presented at the meeting, and responded to Council inquiries.

Councilmember Heading requested staff provide a list of the types of records a person might need to produce for verification should they be audited. Ms. Slayton agreed to provide that information in the tax collector letter.

The public comment period for Item D-1 was opened; seeing none, the public comment period was closed.

Mr. Pannone noted a code reference error on page 12, section 40, subsection C. The code referenced should be 5.08.030, not 5.08.020. Staff will make the correction.

MOTION: Mayor Irons moved for introduction and first reading of Ordinance No. 595 by number and title only, to include corrections provided by staff. The motion was seconded by Councilmember Heading and carried unanimously, 4-0.

A brief recess was taken at 10:02 and the meeting reconvened at 10:07.

D-2 CONSIDERATION AND ADOPTION OF RESOLUTION NO. 58-15, UPDATING THE CITY COUNCIL POLICIES AND PROCEDURES MANUAL; (ADMINISTRATION)

City Attorney Pannone presented the staff report and responded to Council inquiries.

The public comment period for Item D-2 was opened; seeing none, the public comment period was closed.

MOTION: Mayor Irons moved the Council adopt Resolution No. 58-15 updating the City Council Policies & Procedures Manual, including edits as discussed during deliberation, and the addition of Section 3.12 as presented at the meeting. The motion was seconded by Councilmember Heading and carried unanimously, 4-0.

E. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

Mayor Irons requested discussion of Councilmember Makowetski's request for leave of absence at the next regular City Council meeting. Council concurred.

ADJOURNMENT

The meeting adjourned at 10:39pm to the next regular City Council meeting to be held on **Tuesday, September 8, 2015** at 6:00pm at the Veteran's Memorial Hall, 209 Surf Street, Morro Bay, California.

Recorded by:

Dana Swanson  
City Clerk

**A PROCLAMATION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY  
DECLARING SEPTEMBER 2015 AS  
“CHILDHOOD CANCER AWARENESS MONTH”**

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

**WHEREAS**, the American Cancer Fund for Children and Kids Cancer Connection report cancer is the leading cause of death by disease among U.S. children between infancy and age 15. This tragic disease is detected in more than 15,000 of our country's young people each and every year; and

**WHEREAS**, one in five of our nation's children loses his or her battle with cancer. Many infants, children and teens will suffer from long-term effects of comprehensive treatment, including secondary cancers; and

**WHEREAS**, founded over twenty years ago by Steven Firestein, a member of the philanthropic Max Factor family, the American Cancer Fund for Children, Inc. and Kids Cancer Connection, Inc. are dedicated to helping these children and their families; and

**WHEREAS**, the American Cancer Fund for Children and Kids Cancer Connection provide a variety of vital patient psychosocial services to children undergoing cancer treatment at Santa Barbara Cottage Children's Hospital, Children's Hospital Central California, The City of Hope, as well as participating hospitals throughout the country, thereby enhancing the quality of life for these children and their families; and

**WHEREAS**, the American Cancer Fund for Children and Kids Cancer Connection also sponsor Courageous Kid Recognition Award ceremonies, community Get Well cards and hospital celebrations in honor of a child's determination and bravery to fight the battle against childhood cancer.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Morro Bay does hereby proclaim September 2015 as “Childhood Cancer Awareness Month”, recognizing the courageous children and all involved in the fight against childhood cancer.

IN WITNESS WHEREOF I have  
hereunto set my hand and caused the  
seal of the City of Morro Bay to be  
affixed this 8<sup>th</sup> day of September, 2015

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JAMIE L. IRONS, Mayor  
City of Morro Bay, California





AGENDA NO: A-5

MEETING DATE: September 8, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** August 27, 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

The City and District approved a FY 15/16 MMRP budget of \$465,000 which includes \$200,000 in funding for new MMRP projects, and carrying over \$265,000 to complete projects funded but not completed in FY 14/15, for a grand total of \$465,000.

This report includes a table that provides the MMRP budget and actual expenditures for each of the fiscal years 13/14, 14/15, and 15/16. Expenditures for MMRP projects to date have totaled \$1.226 million. The difference between fiscal year MMRP project budgets and expenditures is related to projects carrying over multiple fiscal years and budget being carried over from fiscal year to fiscal year, as well as project budgets being reduced (chlorine contact improvement project) and projects being completed for less than estimated costs, in which case the difference stays in the sewer reserve. For example, the MMRP budget for FY 13/14 contained \$500k for the purchase and installation of influent screens; the screening project was not completed until FY14/15, and the budget from FY13/14 was carried over to FY14/15 to cover project expenses.

Prepared By:   BK  

Dept Review:   RL  

City Manager Review:   SS - Acting  

City Attorney Review:

Adopted MMRP Projects by Fiscal Year	Adopted Budget	Actual Cost	Project Status
<u>FY13/14</u>			
Influent Screening Project	500,000	0	
Clean, Coat, and Repair Digester #2	250,000	253,312	Completed July 2014
Chlorine Contact Tank Improvements	200,000	0	Carried Over to FY 14/15
Interstage Pump and Valve Project	50,000	46,759	Completed April 2014
Reconditioning of the Chlorine Building	40,000	28,459	Completed June 2014
Total for FY 13/14	1,040,000	328,530	
<u>FY 14/15</u>			
Influent Screening Project Carryover from FY13/14	550,000	502,106	Completed October 2014
Clean, Coat, and Repair Digester #1	331,000	301,946	Completed July 2015
Primary Clarifier Rehabilitation	50,000	35,551	Completed June 2015
Biofilter Arms and Biofilter Improvements	215,000	0	Carried Over to FY 15/16
Chlorine Contact Tank Improvements			
Carryover from FY13/14 – scope reduced	75,000	57,144	Completed April 2015
Total for FY14/15	1,221,000	896,747	
<u>FY 15/16</u>			
Clean, Coat, and Repair Digester #1 Carryover	50,000	0	
Metering Vault and Valve Replacement	125,000	0	Planning Process
Secondary Clarifier Rehabilitation	75,000	0	Planning process
Biofilter Arms and Biofilter Improvements			
Carryover	215,000	0	Planning process
Total for FY 15/16	465,000	0	
Total MMRP Project Expenses		1,225,277	

## **BACKGROUND**

This staff report is intended to provide an update on the development and implementation of the MMRP for the WWTP since the August 11, 2015 City Council meeting.

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

Staff's focus has been on developing and implementing work plans for the MMRP projects approved for the FY15/16 budget. The FY 15/16 budget for MMRP projects was adopted by the City and District at their regular meetings on June 9 and 18, respectively. The goal in developing the budget for the MMRP

is to recognize the 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**

The following discussion provides an update of the FY 15/16 MMRP projects that are currently on-going or have been recently completed.

### **Digester #1 Repair**

The coating and repair project for Digester #1 was successfully completed in August. Staff filled the digester on August 17 and placed it back on-line as an operational secondary digester.

### **Metering Vault Removal and Blending Valve Replacement Project:**

City staff is working with staff at Mike Nunley Associates (MKN) to develop and public notice a bid package for this project. Staff anticipates public notice of the bid package in September, and review of bids and award of contract in October.

### **Rehabilitation of the Secondary Clarifier #2:**

Staff is in the process of developing a work plan for the needed repairs. The project includes repairs to the catwalk, repairs to the metal framework on the flights and skimmer cage assembly, repair and replacement of piping and valving, and other associated work. Staff will rely on their recent experience performing similar repairs on the primary clarifiers to refine the work schedule and process.

### **Chlorine Contact Basin Improvements**

The repairs to the chlorine contact basin were completed on Wednesday, April 15. A detailed description of the work was included in the May 12, 2015 MMRP Update. To date, staff has not received any feedback from the RWQCB staff concerning the violation of the total chlorine residual limit. During the months of June and July, staff has noted an issue with the chlorine contact tank and an increased accumulation of solids on the floor of the two contact chambers. Staff drained the tank in both June and July to wash down the tank and investigate potential solutions to the issues noted.

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

Staff will be working 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.

### **Flood Control Measures at the Biofilters and Interstage Pumping Station:**

Staff is working with City Public Works Engineering staff on the design and installation of cost effective flood control measures 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.





### **Near-Term Schedule**

The following table identifies major deliverables, activities, or decision points within the next 2-3 months.

<b>Task</b>	<b>Approx. Date</b>
Council Presentation on Outreach Plan	9/22/15
CEQA Consultant Selection / Negotiation	September
Council Award CEQA/NEPA Contract	10/13/15
CEQA/NEPA Notice to Proceed	10/16/15
Project Delivery Workshop	10/17/15
Facility Master Plan (FMP) Workshops	October, November

### **ATTACHMENTS**

1. Timeline of WRF events January 2013 to present
2. Summary of Project Expenses and Estimated Costs

Date	Action
August 24 and 26, 2015	Interviews with CEQA and NEPA Compliance firms - AMEC, ESA, Rincon Consultants, and Dudek
August 21, 2015	FMP Technical Memorandum 2 (Working Draft - Waste Characteristics, Flow Projections, and Effluent Discharge Requirements) submitted for discussion with City prior to finalizing analysis
August 18, 2015	First Biweekly Staff/PM Program Meeting
August 17, 2015	City Council Work Session - WRF Program Overview
August 13, 2015	FMP Technical Memorandum 1 (Summary of Existing Documents Reviewed) submitted
August 11, 2015	City Council Award of PM Contract
August 5, 2015	WRFCAC Meeting - Review of scope of work, fees and schedule for MKN as WRF Program Management/Construction Management Consultant
July 29, 2015	City staff met with representatives from Rancho Colina to discuss the terms of the MOU for the potential property Purchase.
July 28, 2015	Interview with the PM team of MKN/Rickenbach. Committee recommends selection of MKN as PM
July 22, 2015	PM selection Team met to discuss one proposal received for PM and recommend that they interview the one proposer
July 21, 2015	Environmental Review Selection Committee met to review the six SOQs submitted. The Committee Recommends the City Interview four teams: Dudek, ESA, Rincon, AMEC
July 15, 2015	Kick off Meeting with Black and Veatch FMP Consultant
July 14, 2015	Proposals due for Program Management Services
July 14, 2015	SOQ due for Environmental Review Services
July 14, 2015	City Council Meeting - Award of FMP Contract
July 8, 2015	WRFCAC Meeting - Recommend for B&V as FMP consultant
July 1, 2015	New water and Wastewater Rates in effect
June 30, 2015	Staff Review of Black and Veatch Final Scope of Work
June 22, 2015	Discussions with Black and Veatch regarding Scope of Work
June 19, 2015	Pre Proposal Meeting for Project Management RFP
June 19, 2015	Pre SOQ Meeting for Environmental Review SOQ
June 18, 2015	The CSD BOD approved the FY 15/16 WWTP operating budget
June 17, 2015	Presentation to the Realtor group regarding project status
June 16, 2015	Prospective FMP consultant interviews -Carollo Engineers and Black and Veatch. Selection Committee unanimously recommends Black and Veatch
June 11, 2015	Joint Meeting with the Cayucos Sanitary District for Budget Approval and Audit results - Canceled
June 9, 2015	City Council adopted Resolution 31-15, approving the FY 15/16 Budget including wastewater
June 1, 2015	Meeting with WRFCAC subcommittee for initial review of FMP proposals
May 29, 2015	Released RFP for Environmental Review (CEQA/NEPA) for the new WRF
May 26, 2015	Public Hearing for Increases in Water and Sewer Rates held. Received 933/2707 required protests. City Council adopted resolution 30-15 setting new water and sewer rates for the next five years
May 12, 2015	City Council adopted Resolution 25-15 providing direction to staff.
May 12, 2015	Proposal received from Black and Veatch and Carollo responding to Facilities Master Plan RFP
May 7, 2015	Special WRFCAC Meeting to discuss recommendations to the City Council regarding moving forward with the project.
May 4, 2015	Morro Bay Staff issued an addendum to the WRF FMP RFP, eliminating the CSD from the review process and establishing a two party contract.

Date	Action
April 30, 2015	Joint Meeting of the CSD Board of Directors and Morro Bay City Council for continued discussion regarding the MOU for the New WRF. CSD Presented Resolution 2015-1 suspending participation with Morro Bay on a New WRF at the Rancho Colina Site
April 8, 2015	Rate Notices to be Mailed out to all City property owners and residents
April 8, 2015	WRFCAC Meeting to appoint members to WRF FMP review committee
March 24, 2015	City Council Approves Proposition 218 Notice for Water and Sewer Rate Adjustments and Schedules Public Hearing for May 26, 2015
March 19, 2015	Issued Contract to KMA for Preliminary Biological Assessment of Rancho Colina site and pipeline corridor.
March 19, 2015	Release RFP for WRF Facilities Master Planning
March 11, 2015	Joint Meeting of Morro Bay City Council and Cayucos Sanitary District Board of Directors in Cayucos
February 25, 2015	JFR Contract Amendment #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	WRFCAC 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 Subcommittee 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-committee to 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 concurred 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	Carollo Engineers releases their Technical Memorandum 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 Commission staff regarding a variety of projects in Morro Bay including the WRF siting.

Date	Action
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
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 WRFCAC has had a chance to review and make a recommendation.
November 5, 2014	The WRFCAC 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 WRFCAC moved to recommend to City Council to delay their decision on final site preference until such time that the report is complete and the WRFCAC 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 WRFCAC 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 WRFCAC where they reviewed the LWA report regarding permitting constraints, Kestrel 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/WRFCAC 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 WRFCAC
August 12, 2014	City Council confirmed Citizen Appointments to the WRFCAC
July 16, 2014	Kick off meeting with Larry Walker Associates regarding discharge permit requirements for various disposal/reuse options for the new WRF project.
July 10, 2014	Meeting with Cayucos Sanitary District staff to discuss the scope of work for the proposed Carollo Engineers CMC capacity evaluation study.

Date	Action
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: Carollo, 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.
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.

New items are indicated by shading.

WRF Project Timeline  
January 2013 - Present

Date	Action
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.

599-8312-6105 P0234-8312	Contract Amount (1)	Amount Paid (2)	Remaining Contract
<b>SITE ALTERNATIVES ANALYSIS - SITE PREFERENCE SELECTION</b>			
<b>JFR Consulting – Site Selection/Project Management Assistance</b>			
Original Contract	\$ 117,256		
Contingency	\$ 11,726		
Amendment #1	\$ 76,129		
Amendment #2	\$ 91,336		
Amendment #3	\$ 23,147		
Amendment #4	\$ 44,279		
<b>Total Contract - Final</b>	<b>\$ 363,873</b>	<b>\$ 363,817</b>	<b>\$ 56</b>
<b>Kestrel Consulting – Assessment Funding</b>			
<b>Total Contract</b>	<b>\$ 20,530</b>	<b>\$ 8,380</b>	<b>\$ 12,150</b>
<b>Larry Walker and Associates – Permitting Constraints</b>			
Original Contract	\$ 24,970		
Amendment #1	\$ 5,100		
<b>Total Contract + Direct Costs - Final</b>	<b>\$ 30,070</b>	<b>\$ 30,151</b>	<b>\$ (81)</b>
<b>Cleath-Harris Associates – Stream Flow Augmentation</b>			
Contract Amount	\$ 7,500		
Amendment #1	\$ 6,500		
Amendment #2	\$ 4,000		
<b>Total Contract - Final</b>	<b>\$ 18,000</b>	<b>\$ 18,348</b>	<b>\$ (348)</b>
<b>Carollo Engineers – CMC Capacity, Siting Evaluation and Cost Estimate</b>			
Total Contract + Direct Costs	\$ 101,945	\$ 87,361	
(Proposed to be Reimbursed by RWQCB using SEP Funds)		\$ (87,361)	
<b>Net Amount - Final</b>	<b>\$ 101,945</b>	<b>\$ -</b>	<b>\$ 14,584</b>
Outside Legal - Water Rights		\$ 7,880	
Appraisal - Righetti Site		\$ 5,500	
<b>Total Site Selection - Final</b>	<b>\$ 534,418</b>	<b>\$ 420,696</b>	<b>\$ 26,361</b>
<b>FATAL FLAWS</b>			
<b>Kevin Merk Associates – Preliminary Bio Assessment</b>			
Total Contract + Direct Costs	\$ 12,835	\$ 3,245	\$ 9,590
<b>Fugro - Hydrogeological</b>			
Total Contract + Direct Costs	\$ 38,600	\$ 7,093	\$ 31,508
<b>Farwestern Archeological</b>			
Total Contract + Direct Costs	\$ 12,000		
<b>Larry Walker Associates - Pretreatment (Salt) Assessment</b>			
Total Contract + Direct Costs	\$ 23,640	\$ 10,135	\$ 13,505
<b>Total Fatal Flaws</b>	<b>\$ 87,075</b>	<b>\$ 20,473</b>	<b>\$ 54,603</b>
<b>FACILITIES MASTER PLAN</b>			
<b>Black and Veatch</b>			
Total Contract + Direct Costs	\$ 710,123	\$ -	\$ 710,123
<b>JoAnn Head Surveying</b>			
Total Contract + Direct Costs	\$ 45,050	\$ -	\$ 45,050
<b>ENVIRONMENTAL REVIEW (CEQA/NEPA Compliance)</b>			
Consultant to be Determined			
<b>PROGRAM MANAGEMENT</b>			
<b>MKN &amp; Associates, Inc.</b>			
Total Contract Year One +	\$ 920,808	\$ -	\$ 920,808
Estimated Amount for Eight +/- Years - Including Construction Management	\$9 - \$14 Million		
Kestrel Consulting - SRF and Prop 1 Support/Applications	\$ 65,752	\$ -	\$ 65,752
<b>Total Consultant Contract Amount (to date)</b>	<b>\$ 2,318,176</b>	<b>\$ 441,169</b>	<b>\$ 1,711,894</b>

## Notes:

1. Does not include reimbursable costs, i.e. copies, travel and other direct expenses
2. Includes reimbursable costs, i.e. copies, travel and other direct expenses



AGENDA NO: A-7

MEETING DATE: September 8, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** August 27, 2015

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Approval of a License Agreement with MMBS, LLC/Bob Fowler for Temporary Use of a Portion of Harbor Department Storage/Work Yard Space for Construction of Docks for Lease Site 113W Improvements

### RECOMMENDATION

Staff recommends the City Council approve the attached Temporary License Agreement for Use of Public Property with MMBS, LLC/Bob Fowler for temporary use of available Harbor Department yard space for construction of docks for required lease site improvements.

### ALTERNATIVES

1. Approve the agreement with Council-directed amendments.
2. Deny the agreement.

### FISCAL IMPACT

Positive fiscal impact of \$500/month to the Harbor Fund. Duration of use is anticipated to be three to four months.

### BACKGROUND

The leaseholder for Lease Site 124-128/124W-128W & 113W, MMBS, LLC/Bob Fowler, operating as Morro Bay Landing, is undertaking Phase 1B of his lease-required dock improvements, and is in need of space near the harbor for staging and construction of the docks in sections for subsequent launching in the harbor.

During the building of his Phase 1A docks in fall of 2013, Mr. Fowler utilized a portion of the Harbor Department's yard next to the Fisherman's Gear Storage area by way of an administratively-executed agreement. While that agreement did include payment of \$500/month and insurance requirements, staff believes it is necessary for the City Council to approve uses of this nature by way of a new License Agreement.

Prepared By: EE

Dept Review: EE

City Manager Review: SS - Acting

City Attorney Review: JWP

## **DISCUSSION**

Attached for consideration is a License Agreement on the City's standard agreement template. Highlights of this agreement include:

1. Term expiration of December 31, 2015, with option for Harbor Director to renew should dock construction take longer than anticipated.
2. \$500 per month fee.
3. Adequate insurance requirements to cover the anticipated risks with the City named as additional insured.

Should Council approve this agreement, it will enable Mr. Fowler to build his lease-required dock improvements in a location convenient to his lease site and launching the dock sections for towing into place for construction, while providing a moderate amount of income to the City for use of this property.

## **CONCLUSION**

Use of City property or City-controlled property for quasi-private activities such as this is not without precedent, such as Associated Pacific Constructor's recent use of the Triangle Lot for North T-Pier maintenance materials and equipment staging, Cal Portland's recent use of the Triangle Lot for the Morro Creek bridge and bike path materials and equipment staging and the CHABLIS's use of the public launch ramp for her biennial Coast Guard-required haul-out and inspection.

In order to assist Mr. Fowler in building his Phase 1B dock improvements, staff recommends the Council approve a new License Agreement for use of a portion of the Harbor Department's storage/work yard for materials staging and construction of the docks for subsequent launching and installation at Lease Site 113W.

## **ATTACHMENT**

1. Temporary License Agreement for Use of Public Property with MMBS, LLC/Bob Fowler

TEMPORARY LICENSE AGREEMENT  
FOR USE OF PUBLIC PROPERTY

The City of Morro Bay, a municipal corporation, (“Licensor”) hereby grants to MMBS, LLC (“Licensee”) a license (“this License”) for use of the real property located at 1620 Embarcadero, Morro Bay, CA, pursuant to an Easement Agreement between the Licensor and Dynegy, illustrated on the attached Exhibit A (the “Premises”), subject to all the following terms and conditions:

1. USE: Subject to all the provisions of this License and only in recognition of the purpose set forth in this Paragraph, Licensee shall have permission to use of the Premises solely for assembly of docks associated with City of Morro Bay building permit number B00-030-270 for lease site 113W.

No storage of hazardous materials of any sort will be allowed, including, but not limited to, such materials as fuels, chemicals, paints and oils.

The foregoing shall be defined as the “Permitted Uses.”

The parties agree Licensee’s use of the Premises for the Permitted Uses shall be exclusive of any other use or user, except that of Licensor, subject to Paragraph 19, below.

2. LICENSOR REQUIREMENTS: In connection with the Permitted Uses, Licensee shall comply with all applicable Federal, State and local laws rules and regulations, including payment of local business taxes, if applicable.
3. EFFECTIVE DATE OF LICENSE: This License shall be effective on the later of September 1, 2015, or upon the date it is signed on behalf of Licensor, as long as it has also been signed on behalf of Licensee (the “Effective Date”).
4. TERM: The term of this License shall be for the period from the Effective Date, through the earlier of December 31, 2015, or until the dock project is complete (the “Term”), or termination pursuant to Paragraph 16, below.
5. RENEWAL: Upon expiration of this License Licensor’s Harbor Director may administratively execute a month to month renewal of this License (the “Extended Term”). The Extended Term shall be effective only if an amendment to this License is signed by Licensor’s Harbor Director, or designee and Licensee. If the Extended Term becomes effective, then the Extended Term shall expire on June 30, 2016 or termination pursuant to Paragraph 16, below.

6. FEES: Licensee shall pay to Licensor Five Hundred Dollars and Zero Cents (\$500.00) per month payable on the first of each month starting September 1, 2015 for this License (the "License Fee").
7. OPERATION COSTS: Licensee may use the existing water and electrical services on the Premise at no additional charge. Licensor shall not be liable for the failure of utilities or services on the Premise.
8. MAINTENANCE: Licensee shall be responsible to maintain the Premises in a clean and presentable manner and keep the area abutting the Premises free from waste, debris, trash and other rubbish. Upon termination this License for any reason, Licensee shall leave the Premises free from waste, debris, trash, pollution/spills and other rubbish and in a good condition, subject to normal wear and tear.
9. SIGNS: Any and all signs installed or used by Licensee that are visible to the public from outside the Premises shall not be installed or used without the prior written approval of Licensor's Harbor Director, and subject to all applicable Licensor zoning laws, rules and regulations and all required land use Licensor approvals and permits shall be obtained.
10. IMPROVEMENTS: Licensee shall not make any improvements to the Premises without prior approval from Licensor's Harbor Director. Upon termination of this License for any reason, any improvements of any kind installed by or on behalf of Licensee and left on Premises shall become the property of Licensor at no cost whatsoever, including any damages for condemnation, inverse condemnation or relocation benefits or loss of goodwill, however, Licensee and Licensor further agree that Licensor has the option and right to require Licensee to remove any improvements of any kind installed by or on behalf of Licensee upon the Premises at the termination of this License, however occurring, providing Licensor gives Licensee notice, in writing, no later than thirty days prior to termination of License. If Licensor exercises such option and Licensee fails to remove such improvements within sixty days after termination of License, Licensor shall have the right to have such improvements removed at expense of Licensee.
11. LICENSEE OBLIGATIONS: Termination of this License shall not terminate Licensee's obligations pursuant to Paragraphs 12, 13, 14, 15, 16, 17 and 18.
12. TAXABLE INTEREST: This License is not intended to create any interest in real property. If it is determined, by a governmental agency dually authorized to make such decision, this License creates any taxable interest, including, but not limited to, a possessory interest, then Licensee shall be solely responsible to pay such taxes to the extent such taxes are required by law to be paid.
13. HOLD HARMLESS: Licensee agrees to and hereby does hold harmless, indemnify and defend Licensor and its officers, agents and employees ("Indemnitees") from any claim, judgment, liability, award, damages, loss or expense, including reasonable attorney's fees and court costs, arising out of or related to the use of the Premises by Licensee, including,

but not limited to, any hazardous materials releases; provided, that Licensee's obligation to indemnify and hold harmless shall apply only to the extent Licensee, its officers, employees or agents caused the claim, loss or expense. For purposes of this License, hazardous materials shall mean any materials as defined by State or Federal laws.

14. INSURANCE: Without limiting the obligation set forth in the immediately preceding sentence, during the term of this License Licensee shall provide evidence of insurance as provided in Exhibit B.
15. NO LIENS ON PREMISES: Licensee shall not permit or suffer any mechanic's or materialman's or other lien of any kind or nature to be recorded or enforced against the Premises for any work done or materials furnished thereon at the instance of requirement of or on behalf of Licensee; and Licensee agrees to indemnify and hold harmless Licensor and the Premises against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with such work done, labor performed or material furnished in connection with Licensee's use of the Premises.
16. RIGHT TO TERMINATE/NO DISPLACEMENT LIABILITY: Either party shall have the right to terminate this License, with or without cause, upon thirty-days' (30-days') written notice to the non-terminating party. Licensor shall not be liable (i) for any displacement or relocation benefits or expenses experienced by Licensee, (ii) for reimbursement for any improvements installed by Licensee or (iii) for any damages in condemnation, inverse condemnation, loss of goodwill or other legal or equitable bases resulting, directly or indirectly, from any action or inaction of or on behalf of Licensor that may be in any way connected with any termination of this License for any reason or any relocation of Licensee from the Premises for any reason. Upon termination of this License, Licensee shall no longer be responsible for any fees under this License, as specified in Paragraph 5 of this License.
17. GOVERNING LAW: The terms of this License shall be interpreted according to the laws of the State of California. If arises out of this License, then venue shall be in the Superior Court of San Luis Obispo County.
18. LITIGATION FEES: If either party commences action against the other party arising out of or in connection with this License, then the prevailing party shall be entitled to have and recover from the other party reasonable attorneys' fees and costs of suit.
19. LICENSOR USE OF PREMISES: Licensor may use the Premises for dockage; provided, that such use shall not unreasonably interference with or prevent in any substantial way Licensee's ability to utilize the Premises for the purposed set forth herein; and provided, further, that Licensor shall be responsible for all operation costs and maintenance for the portion of the Premises it or Licensor uses or occupies. In addition, without any implied or expressed limitation on Licensor's authority and right to access and inspect the Premises in its governmental capacity, Licensor shall have the right to access at any time to the Premises for inspections.

20. TRANSFERABILITY AND ASSIGNABILITY: The License is neither transferable nor assignable by Licensee without the written consent of Licensor.

21. NOTICES: All notices given or required to be given pursuant to this License shall be in writing and may be given by personal delivery or by mail. Notice sent by mail shall be addressed as follows:

To Licensor:

City of Morro Bay  
Attn: Harbor Director  
1275 Embarcadero  
Morro Bay, CA 93442

With Copy to:

Joseph W. Pannone  
Aleshire & Wynder, LLP  
2361 Rosecrans Avenue, Suite 475  
El Segundo, CA 90245

To Licensee:

MMBS, LLC  
Robert Fowler  
PO Box 1008  
Santa Margarita, CA 93453

22. ENTIRE AGREEMENT: This License (i) constitutes the entire agreement of the parties hereto relating to the use, operation and maintenance of the Premises and (ii) shall supersede prospectively from the date it is entered into any and all prior written or oral negotiations or agreements of the parties relating to the Premises. This License shall not be modified in any particular except by a written amendment duly executed by the parties.

LICENSEE

Dated: \_\_\_\_\_

LICENSOR

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
David Buckingham, City Manager

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Joseph W. Pannone, City Attorney

EXHIBIT A  
AERIAL OF PREMISES

(Immediately behind this page)



**EXHIBIT A**  
**1620 Embarcadero – MMBS, LLC License Agreement**

**CITY OF MORRO BAY  
EXHIBIT B**

**INSURANCE REQUIREMENTS**

*Prior to the beginning of and throughout the duration of the Agreement, Licensee will maintain insurance in conformance with the requirements set forth below. Licensee will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Licensee agrees to amend, supplement or endorse the existing coverage to do so. Licensee acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Licensor in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to Licensor.*

*Licensee shall provide the following types and amounts of insurance:*

Commercial General Liability Insurance using Insurance Services Office “Commercial General Liability” policy from CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Licensee owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Licensee or Licensee’s employees will use personal autos in any way on this project, then Licensee shall provide evidence of personal auto liability coverage for each such person.

Property Damage Insurance in an amount of not less than \$1,000,000 for damage to the property of each person on account of any one occurrence.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer’s liability limits, if required.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to Licensor for injury to employees of Licensee, subcontractors or others involved in the Work. The scope of coverage provided is

subject to approval of Licensor following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

*Insurance procured pursuant to these requirements shall be written by insurer that are admitted carriers in the state California and with an A.M. Bests rating of A- or better and a minimum financial size VII.*

General conditions pertaining to provision of insurance coverage by Licensee. Licensee and Licensor agree to the following with respect to insurance provided by Licensee:

1. Licensee agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds Licensor, and its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Licensee also agrees to require all Licensees, and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Licensee, or Licensee's employees, or agents, from waiving the right of subrogation prior to a loss. Licensee agrees to waive subrogation rights against Licensor regardless of the applicability of any insurance proceeds, and to require all Licensees and subcontractors to do likewise.
3. All insurance coverage and limits provided by Licensee and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to Licensor or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Licensor and approved of in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any Licensee or subcontractor.
6. All coverage types and limits required are subject to approval, modification and additional requirements by Licensor, as the need arises. Licensee shall not make any reductions in scope of coverage (e.g., elimination of contractual liability or reduction of discovery period) that may affect Licensor's protection without Licensor's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Licensee's general liability policy, shall be delivered to Licensor at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, Licensor has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by Licensor shall be charged to and promptly paid by Licensee or deducted from sums due Licensee, at Licensor's option.
8. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Licensee or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self insurance available to Licensor.
9. Licensee agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Licensee, provide the same minimum insurance coverage required of Licensee. Licensee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Licensee agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to Licensor for review.
10. Licensee agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any Licensee, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to Licensor. If Licensee's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to Licensor. At the time Licensor shall review options with the Licensee, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
11. Licensor reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Licensee ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Licensee, Licensor will negotiate additional compensation proportional to the increase benefit to Licensor.
12. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
13. Licensee acknowledges and agrees that any actual or alleged failure on the part of Licensor to inform Licensee of non-compliance with any insurance requirements in no way

imposes any additional obligations on Licensor nor does it waive any rights hereunder in this or any other regard.

14. Licensee will renew the required coverage annually as long as Licensor, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until Licensor executes a written statement to that effect.
15. Licensee shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Licensee's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to Licensor within five days of the expiration of the coverages.
16. The provisions of any workers' compensation or similar act will not limit the obligations of Licensee under this agreement. Licensee expressly agrees not to use any statutory immunity defenses under such laws with respect to Licensor, its employees, officials and agents.
17. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
18. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
19. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
20. Licensee agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge Licensor or Licensee for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to Licensor. It is not the intent of Licensor to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Licensor for payment of premiums or other amounts with respect thereto.

21. Licensee agrees to provide immediate notice to Licensor of any claim or loss against Licensee arising out of the work performed under this agreement. Licensor assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve Licensor.



**RESOLUTION NO. 61-15**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
AUTHORIZING THE DIRECTOR OF PUBLIC WORKS TO APPLY FOR A  
RECYCLED WATER PLANNING GRANT FOR THE MASTER RECLAMATION PLAN  
FROM THE STATE WATER QUALITY CONTROL BOARD**

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

**WHEREAS**, the City of Morro Bay (“City”) is actively pursuing development of a Master Reclamation Plan that will include the use of recycled water to supplement the City’s water portfolio; and

**WHEREAS**, the State of California State Water Resources Control Board (SWRCB) has grant funding available for the planning, design and construction of water reclamation facilities (the “Project”); and

**WHEREAS**, it is in the public interest to pursue grant funding for the Project; and

**WHEREAS**, the SWRCB requires the City authorize a designated representative to sign and file on behalf of the City a Financial Assistance Application for a grant agreement for up to \$75,000, with the City providing an equal amount in matching funds, to complete a Master Reclamation Plan; and

**WHEREAS**, the authorized representative is designated to provide the assurances, certifications and commitments required for the financial assistance application, including executing a financial assistance agreement from the SWRCB and any amendment or changes thereto; and

**WHEREAS**, the authorized representative is designated to represent the City in carrying out the City’s responsibilities under the grant agreement, including certifying disbursement requests on behalf of the City and compliance with applicable state and federal laws;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay that the Public Works Director/City Engineer is hereby authorized and directed to sign and file, for and on behalf of the City, a Financial Assistance Application with the State Water Resources Control Board for the development of the Master Water Reclamation Plan.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8th day of September, 2015 by the following vote:

AYES:  
NOES:  
ABSENT:

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JAMIE L. IRONS, Mayor

ATTEST:

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DANA SWANSON, City Clerk



AGENDA NO: C-1

MEETING DATE: September 8, 2015

## Staff Report

**TO:** Honorable Mayor and City Council                      **DATE:** August 26, 2015

**FROM:** Susan Slayton, Administrative Services Director

**SUBJECT:** Adoption of Ordinance No. 595 of the City Council of the City of Morro Bay, California, Amending Various Provisions of Title 5 of the Morro Bay Municipal Code Relating to Business Taxes

### SUMMARY

Ordinance No. 595 was introduced at the regular Council meeting held on August 25, 2015. This is the legally required second reading for non-urgency ordinances. After the second reading, by title only with further reading waived, it is recommended the Council adopt the ordinance, which will then become effective on the 31<sup>st</sup> day after its adoption.

Prepared By: SS

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

City Manager Review: SS - Acting

City Attorney Review: JWP

**ORDINANCE NO. 595**

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
AMENDING VARIOUS PROVISIONS OF TITLE 5 OF THE MORRO BAY  
MUNICIPAL CODE RELATING TO BUSINESS TAXES**

THE CITY COUNCIL  
City of Morro Bay, California

**WHEREAS**, Title 5 of the Morro Bay Municipal Code (MBMC) establishes the tax regulations for businesses operating within the City;

**WHEREAS**, the City recently audited the business taxes being paid to the City;

**WHEREAS**, as a result of that audit and the passage of time, Title 5 was found to be in need of various amendments; and

**WHEREAS**, with input for all stakeholders the City Council has determined it is in the best interest of the community to adopt amendments to Title 5.

**NOW, THEREFORE, the City Council of the City of Morro Bay does ordain as follows:**

**SECTION 1:** The title of Title 5 of the Morro Bay Municipal Code (MBMC) is hereby amended to read as follows:

Title 5 – BUSINESS TAX CERTIFICATES AND REGULATIONS

**SECTION 2:** The title of Chapter 5.04 of the Morro Bay Municipal Code (MBMC) is hereby amended to read as follows:

Chapter 5.04 – GENERAL PROVISIONS.

**SECTION 3:** Chapters 5.04, 5.08, 5.24 of the MBMC are hereby amended by changing the words (i) “license fee” and “license tax” to “business tax,” (ii) “license fees” and “license taxes” to “business taxes” and (iii) “Business License Rate Schedule” to “Business Tax Rate Schedule,” whenever they appear in those chapters.

**SECTION 4:** Section 5.04.010 of the MBMC is hereby amended by adding a three new subsections in the correct alphabetical order and to re-letter all the subsequent subsections accordingly:

“Business tax certificate” shall mean the document issued by the city to evidence a business is current on the payment of all business taxes, any penalties and fines, applicable to that business.

“Flea market” shall mean a vending location with several vendors, usually held outdoors, where used goods and antiques are sold.

“Independent contractor” shall mean any individual, who is not a full-time or part-time employee of the person for which that individual provides services. A valid W-2 form, issued by that person to that individual, would be *prima facie* evidence that individual is an employee.

**SECTION 5:** Section 5.04.010 of the MBMC is hereby amended by deleting the words “licensed and” from the definition of “Employee.”

**SECTION 6:** Section 5.04.030 of the MBMC is hereby amended in its entirety to read as follows:

5.04.030 - Substitute for other revenue ordinances.

Persons required to pay a business tax for transacting and carrying on any business, as defined in this chapter, shall not be relieved from payment of any other fee or tax for the privilege of doing such business required under any other title of this code and shall remain subject to the other regulatory provisions of this code.

**SECTION 7:** Section 5.04.050 of the MBMC is hereby amended in its entirety to read as follows:

5.04.050 - Business tax payment required.

A. There are hereby imposed, upon the businesses, trades, professions, callings, and occupations specified in this title, business taxes, as established annually in the Business Tax Rate Schedule.

B. Each year by June 30th the Business Tax Rate Schedule will be adjusted by the change in the Consumer Price Index (CPI), from March of the previous year to March of the current year. The percentage adjustment for any given year shall be based upon the average monthly index for twelve months ending March 31st. The Consumer Price Index referred to in this paragraph is the Consumer Price Index (all items indexes, all urban consumers) for Los Angeles-Riverside-Orange County, compiled and published by the United States Department of Labor, Bureau of Labor Statistics, 1968 Base Year = 100 (hereafter called Index). If the United States Department of Labor, Bureau of Labor Statistics, ceases to compile and make public the Index as now constituted and issued, but substitutes another index in its place, then the substituted index shall be used in place of the Consumer Price Index referenced in this paragraph.

C. This section shall not be construed to require any person to pay a business tax or obtain a license prior to doing business within the city if such requirement conflicts with applicable statutes of the United States or of the state.

**SECTION 8:** Section 5.04.055 is hereby added to the MBMC to read as follows:

5.04.055 - Business tax certificate required.

The businesses, trades, professions, callings, and occupations required to pay a business tax pursuant to this chapter must also obtain a current and valid business tax certificate. This section shall not be construed to require any person to obtain a business tax certificate prior to doing business within the city if such requirement conflicts with applicable statutes of the United States or of the state.

**SECTION 9:** Section 5.04.060 of the MBMC is hereby amended in its entirety to read as follows:

5.04.060 - Separate business tax certificates.

A. A separate business tax certificate must be obtained for each branch establishment or location of the business transacted and carried on and for each category of business at the same location.

B. Each business tax certificate shall be evidence that business tax certificate holder has paid the taxes due for only the business for which that business tax certificate was issued at the location or in the manner designated in that business tax certificate.

C. If two or more businesses are conducted on the same premises by one person, as defined in Section 5.04.010, and the employees are employed by and serve all businesses so located, then only one business tax shall be levied based upon the number of employees employed and each other business shall be subject to the business tax assigned herein to the appropriate business category.

D. Notwithstanding the foregoing, warehouses and distributing plants used in connection with and incidental to a business for which a business tax certificate has been issued under the provisions of this title shall not be deemed to be separate places of business or branch establishments.

E. Notwithstanding the foregoing, a low income business, as defined in section 5.08.220, shall only require one business tax certificate; provided, that if more than one low income businesses is operated at the same address by the same business tax certificate holder, then all those businesses shall be listed on that one business tax certificate.

**SECTION 10:** Section 5.04.065 is hereby added to the MBMC to read as follows:

5.04.065 Exception to tax based on employees

A business without a fixed location in the city shall not be required to pay a business tax calculated on the number of employees serving that business.

**SECTION 11:** Section 5.04.080 of the MBMC is hereby amended in its entirety to read as follows:

5.04.080 - Constitutional apportionment.

A. None of the business taxes provided for by this title shall be so applied as to occasion an undue burden upon interstate commerce or violate the equal protection and due process clause of the Constitution of the United States and the state.

B. In any case where a business tax is believed by a business taxpayer or applicant for a business tax certificate to place an undue burden upon interstate commerce or violate such Constitutional clauses, he/she may apply to the collector for an adjustment of the business tax. The application may be made before, at, or within six months after payment of the prescribed business tax. The applicant shall, by sworn statement and supporting testimony, show his method of business and such other information as the collector may deem necessary in order to determine the extent, if any, of such undue burden or violation. The collector shall then conduct an investigation, and, after having first obtained the written approval of the city attorney, shall fix as the business tax for the applicant an amount that is reasonable and nondiscriminatory, or, if the business tax has already been paid, shall order a refund of that amount over and above the business tax so fixed.

**SECTION 12:** Sections 5.04.090, 5.4.100 and 5.04.110 of the MBMC are hereby amended by changing the words “license fee” and “license tax” to “business tax” and the words “license fees” to “business taxes.”

**SECTION 13:** Section 5.04.120 of the MBMC is hereby amended in its entirety to read as follows:

5.04.120 - Exemption claim.

Any person claiming an exemption pursuant to Sections 5.04.090 through 5.04.110 shall file a verified statement with the collector stating the facts upon which exemption is claimed. The collector, upon a proper showing contained in a verified statement, shall issue a business tax certificate to such person claiming exemption under Sections 5.04.090 through 5.04.110 without payment to the city of the business tax required by this title. The collector, after giving notice and a reasonable opportunity for hearing to a holder of such a business tax certificate, may revoke any business tax certificate granted pursuant to the provisions of Sections 5.04.090 through 5.04.110 upon information that business tax certificate holder is not entitled to the exemption as provided herein.

**SECTION 14:** Section 5.04.130 of the MBMC is hereby amended in its entirety to read as follows:

5.04.130 - Contents of business tax certificate.

Every person required to have a business tax certificate under the provisions of this title shall make application for the same to the collector, and upon the payment of the prescribed business tax, the collector shall issue to such person a business tax certificate which shall contain the name of the person to whom the business tax certificate is issued, the business for which the business tax certificate was issued, the place where such business is to be transacted and carried on, the date of expiration of the business tax certificate, and such other information as may be necessary for the enforcement of the provisions of this title.

**SECTION 15:** Section 5.04.140 of the MBMC is hereby amended by changing the word “license” to “business tax certificate” in the title to and the first four times it appears in that section and changing the words “license tax” to business tax” each time they appear in that section.

**SECTION 16:** Sections 5.04.150 of the MBMC is hereby amended by changing the words “two thousand” to “two thousand eighty.”

**SECTION 17:** Sections 5.04.160 and 5.04.170 of the MBMC are hereby amended by changing the word “license” in the titles to those sections to “business tax certificate,” the word “licenses” to “business tax certificates,” the word “license” to “business tax certificate” the first time it appears in Section 5.04.170.

**SECTION 18:** Section 5.04.180 of the MBMC is hereby amended in its entirety to read as follows:

5.04.180 - Statements not conclusive.

A. No statement shall be conclusive as to the matters set forth therein, nor shall the filing of the same preclude the city from collecting by appropriate action such sum as is actually due and payable hereunder. Such statement and each of the several items therein contained shall be subject to audit and verification by the collector, his/her deputies, or authorized employees of the city, who are hereby authorized to examine, audit, and inspect such books and records of any business tax certificate holder or applicant for a business tax certificate, as may be necessary in their judgment to verify or ascertain the amount of business tax due.

B. All business tax certificate holders, applicants for business tax certificates and persons engaged in business in the city are required to permit any examinations of such books and records for the purposes aforesaid.

**SECTION 19:** Section 5.04.190 of the MBMC is hereby amended by changing the word “license” to “business tax certificate” the first time it appears in that section and when it appears in Subsection E. of that section.

**SECTION 20:** Section 5.04.210 of the MBMC is hereby amended by changing the word “license” to “business tax certificate.”

**SECTION 21:** Section 5.04.220 of the MBMC is hereby amended in its entirety to read as follows:

5.04.220 - Transfer of business tax certificates.

Any business tax certificate under this chapter may be transferred to another person or location upon application and the payment of the fee of Two Dollars to the collector to have the business tax certificate amended; provided, that an application and payment of the applicable fee is made within fifteen days after such transfer, or a new business tax will be due and payable for the remainder of the business tax certificate period.

**SECTION 22:** Section 5.04.230 of the MBMC is hereby amended in its entirety to read as follows:

5.04.230 - Duplicate business tax certificate.

A duplicate business tax certificate may be issued by the collector to replace any business tax certificate previously issued hereunder, which has been lost or destroyed, if the person, to whom the business tax certificate was issued, files a statement of such fact with the collector, and at the time of filing such statement pays to the collector a duplicate business tax certificate fee of Two Dollars.

**SECTION 23:** Section 5.04.250 of the MBMC is hereby amended by changing the word (i) “licenses” to “business tax certificates” in the title and when it appears in that section, (ii) the word “license” to “business tax certificate” when it appear in that section and (iii) the word “licensee” to “business tax holder” when it appears in that section.

**SECTION 24:** Section 5.04.260 of the MBMC is hereby amended by changing the word “license” to “business tax certificate” the second time it appears in that section.

**SECTION 25:** Section 5.04.275 of the MBMC is hereby repealed.

**SECTION 26:** Sections 5.04.280 and 5.04.310 are amended by changing the word “license” to “business tax certificate” the first time it appears in both sections.

**SECTION 27:** Section 5.04.320 is hereby amended in its entirety to read as follows:

5.04.320 – Independent contractors.

Every independent contractor, who operates any business within the city, (i) whether upon a cost, rental, commission, flat fee, hourly rate or other basis, and (ii) whether such business is conducted on the premises of a single other business within the city, or the premises

of several businesses within the city, shall be required to obtain a separate and independent business tax certificate, and pay a business tax as established by the Business Tax Rate Schedule.

**SECTION 28:** Section 5.04.330 of the MBMC is hereby amended in its entirety to read as follows:

5.04.330 - Application for permit to chief of police for certain businesses.

A. The filing of an application for a business tax certificate shall also be considered an application for a permit from the chief of police when the business to be operated is any of the following: (i) carnival, (ii) circus or menagerie, (iii) money lender or pawnbroker, (iv) masseuse, (v) tent show, (vi) amusement parlor, (vii) penny arcade, or playland or (viii) private patrol service.

B. No permit shall be issued to carry on any business at any location where such would be in violation of Title 17, zoning.

C. Where an application for a new permit or renewal has been submitted for any of the businesses enumerated in subsection A, the chief of police may cause to have taken, fingerprints of all business supervisors and employees of the business, and may conduct a confidential background investigation to determine whether to issue a business license, and if issued, the conditions to assign to the business license. Failure to submit to fingerprinting or identification of a criminal involvement shall be grounds for denial of the permit.

D. Consideration of a permit described by this section shall be approved by the chief of police. The denial or issuance of a permit pursuant to this section may be appealed to the city council within ten days after the chief of police action. In the review of the permit pursuant to this section, the chief of police and city council may assign such conditions as it deems necessary for the conduct of the business operation to protect the public health, safety and welfare.

**SECTION 29:** The title of Chapter 5.08 of the MBMC is hereby amended to read as follows:

Chapter 5.08 – BUSINESS TAXES.

**SECTION 30:** Section 5.08.030 of the MBMC is hereby amended in its entirety to read as follow:

5.08.030 – Single- and Multi-family dwellings, motels, hotels, rest homes, rooming-houses, hospitals, and sanitariums.

Each (i) single- and multi-family dwellings of four or more units, (ii) hotel, motel and rooming-house with four or more rooms and (iii) rest home, hospital and sanitarium with the capacity for four or more persons shall pay a business tax in accordance with the Business Tax Rate Schedule; provided, that the each business will pay the base tax, plus the per unit/room/person tax, which will be assessed on the fourth and more units, rooms or persons.

**SECTION 31:** Section 5.08.040 of the MBMC is hereby amended in its entirety to read as follow:

5.08.040 - Art, hobby or handicraft shows, farmers markets, special events and exhibitions (“Event”).

A. Each person sponsoring or organizing an Event, wherein goods, artifacts or articles are offered for sale to the general public (provided, that such goods, artifacts or articles offered for sale are the products of each individual exhibitor's own skill or talent) shall obtain a business tax certificate from the city for the conduct of the Event and shall collect a business tax from each individual offering such goods, artifacts or articles for sale to the general public at the Event. Organizers of a flea market are not included in this category and vendors at a flea market are covered by Section 5.08.110.

B. Each person sponsoring or organizing the Event shall assure the payment of such business taxes to the city and payment shall be made for each and every day of the Event and such payments shall be made by no later than the first day following the Event when the city business tax office is open for business.

C. See Business Tax Rate Schedule. With respect to nonprofit organizations, the council can, by resolution, modify the taxes provided for in this section.

**SECTION 32:** Section 5.08.060 of the MBMC is hereby amended in its entirety to read as follow:

5.08.060 – Carnivals, circuses or menageries.

For the business of conducting a carnival, circus or menagerie, a license issued pursuant to this section and Section 5.04.330 shall cover all shows, exhibitions, and entertainments, and all sales, food vendors or places, and the peddling of all novelties or notions and other activity for profit growing out of and as a part of such circus or carnival; provided, that such activity is conducted within the carnival or circus grounds only. Application for any such license under this section must be made to the city council, which, under its police powers, reserves the right to deny any application for such license. The chief of police shall direct what shows, exhibitions entertainments or activities are proper under such license and her/his decisions shall be final and conclusive. See the Business Tax Rate Schedule.

**SECTION 33:** Section 5.08.070 of the MBMC shall be amended by changing (i) the word “license” to “business tax certificate” the third, fourth, fifth and sixth time it appears in that section and (ii) the word “licensee” to “business tax certificate holder,” whenever it appears in that section.

**SECTION 34:** Section 5.08.080 of the MBMC is hereby amended in its entirety to read as follows:

5.08.080 - Contractor.

A. A contractor, within the meaning of this section, is a person who for either a fixed sum, price, fee, percentage, or other compensation, other than wages, undertakes or offers to undertake with another, or purports to have the capacity to undertake with another to construct, alter, repair, add to, or improve any building, highway, road, railroad, excavation, or other structure, project, development, or improvement, other than personally, or to do any part thereof; provided, that the term "contractor" as used in this chapter includes subcontractor, but does not include anyone who merely furnishes materials or supplies without fabricating the same into, or consuming the same in the performance of the work of the contractor hereby defined; and does not include any owner-builder who is exempt under the provisions of the State Contractors' License Law.

B. A general building contractor is a contractor whose principal contracting business is in connection with any structure built, being built, or to be built for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind, requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereof. Persons issued a business tax certificate under this provision shall pay an annual business tax in accordance with the Business Tax Rate Schedule.

C. A specialty contractor is a contractor whose operations as such are the performance of work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts. Included within but not limited to this category are electrical, plumbing, pipeline, sewer, grading, street, paving, house moving, trenching or excavating contractors. Persons issued a business tax certificate under this provision shall pay an annual business tax in accordance with the Business Tax Rate Schedule.

D. It shall be the responsibility of the prime contractor or the owner-builder at the time of the application for a building or construction permit, to provide the collector with a certified list of those specialty contractors who have been engaged or are intended to be engaged in the completion of the job for which the building or construction permit is issued. Each specialty contractor shall obtain a current and valid business tax certificate.

E. The inspecting city department will not issue the certificate of occupancy, final inspection or certificate of completion on any job until each specialty contractor who worked on the job has been properly issued a business tax certificate.

F. Every person engaged in the business of contracting shall show evidence he/she holds a valid state contractor's license before a city business tax certificate will be issued under the provisions of this title.

**SECTION 35:** Section 5.08.090 of the MBMC is hereby amended in its entirety to read as follow:

5.08.090 - Delivery by vehicle.

A. Each person who conducts a business of wholesale or retail deliveries for business services within the city shall obtain a business tax certificate and pay the applicable business tax, as provided in the Business Tax Rate Schedule.

B. This section shall not apply to a business for which a city business tax is paid pursuant to another provision of this chapter or if the business is exempt from paying the city's business taxes, pursuant to the interstate commerce or highway carrier exemption.

**SECTION 36:** Section 5.08.110 of the MBMC is hereby amended in its entirety to read as follows:

5.08.110 - Flea market vendors

A. Each person who participates as a vendor at a flea market within the city shall obtain a business tax certificate and pay the applicable business tax, as provided in the Business Tax Rate Schedule.

B. Payment of the business tax shall be made to the city for each and every day that vendor operates at a flea market within the city and that vendor shall pay the business tax no later than the first day following the sale upon which the business tax office is open for business.

C. With respect to nonprofit organizations, the council can, by resolution, modify the taxes provided for in this section.

**SECTION 37:** Section 5.08.120 of the MBMC is hereby amended in its entirety to read as follows:

5.08.120 - Garage sales.

Each person conducting more than two garage sales per year from their private residence wherein goods or merchandise, which were not originally purchased for resale and which are being offered for sale to the general public, shall pay an annual business tax in accordance with the Business Tax Rate Schedule. Such business may not operate if the garage sale, as conducted, is contrary to the provisions of Title 17, Zoning.

**SECTION 38:** Section 5.08.130 of the MBMC shall be amended by (i) amending, in its entirety the second sentence of the first paragraph of that section to read: "Such business may not operate contrary to the provisions of Title 17, Zoning." and (ii) changing the words "business license" to "business tax certificate" when it appears in subsection A. of that section.

**SECTION 39:** Section 5.08.150 of the MBMC is hereby amended in its entirety to read as follows:

5.08.150 - Vendors, solicitors, or itinerant merchants.

A. For the purpose of this section:

1. "Vendor" means and includes every person not having a fixed place of business in the city, and not an agent of a principal having a fixed place of business in the city, who travels from place to place, or has a stand upon any doorway of any building or unenclosed or vacant private lot or parcel of land, who sells or offers for sale and retail any goods in his/her possession.

2. "Solicitor" means and includes every person who engages in the business of going from house to house, place to place, selling or taking orders for or offering to sell or take orders for goods, wares, merchandise or other things of value that are not to be used for resale or become a part of any stock to be offered for sale.

3. "Itinerant merchant" means and includes every person who engages in temporary business in the city for one hundred eighty days or less, for the sale of merchandise or services and who, for such purpose, hires or occupies any building, vacant lot, or other private facilities, or a portion thereof.

B. Every person carrying on the business of vendor, solicitor or itinerant merchant shall pay a business tax in accordance with the Business Tax Rate Schedule.

C. No person shall be required to pay a business tax for vending any of his/her own agricultural, pastoral, or dairy products raised by himself/herself in the state, where the products sold are exclusively his/her own. This exemption shall not apply to nurseries or other commercial establishments who buy goods for resale as well as selling their own products.

D. This section shall not apply to any person covered by Section 5.08.040

**SECTION 40:** Section 5.08.170 of the MBMC is hereby amended in its entirety to read as follows:

5.08.170 – Realtors and Property Managers.

A. Every person who, with a fixed place of business within the city, (i) assists another with the sale or with offers to sell any real estate or assists another with the purchase or with offers to purchase any real estate, (ii) assists another with the rental or leasing or with offers to rent or lease any real estate, or (iii) collects for another or offers to collect for another rents for any real estate and who is subject to regulation by the State of California Real Estate Board shall pay an annual business tax in accordance with the Business Tax Rate Schedule.

B. Every person who, without a fixed place of business within the city, (i) assists another to sell or offer to sell real estate within the city, (ii) assists another with the purchase of real estate within the city for which the sale is completed, or (iii) assists another with the rental or leasing of real estate within the city or (iv) collects rents for any real estate within the city and who is subject to regulation by the State of California Real Estate Board and who operates within the city, shall pay an annual business tax in accordance with the Business Tax Rate Schedule.

C. Any person who owns and rents property within the city and is not subject to this section shall be subject to Section 5.08.030, as applicable.

**SECTION 41:** Subsections 5.08.220 C. and D. of the MBMC shall be amended in their entirety to read as follows:

C. Except as provided herein and pursuant to Section 5.04.060, each low revenue business shall obtain a current business tax certificate in accordance with this title and pay a processing fee in accordance with the City's Master Fee Schedule; provided, that (i) the business tax certificate processing fee for each low revenue business shall not be greater than the amount necessary for the city to recover some or all of the costs incurred by the city in processing and issuing that business tax certificate and (ii) if the aggregate annual gross receipts from all the low revenue businesses operated at one location or by the same operator are less than four thousand dollars, then a business tax certificate is not required for any of those businesses; provided, that this subsection shall not apply to any business that would otherwise be required to pay a business tax only pursuant to Section 5.08.020 nor shall it waive any other requirements of this code, including, but not limited to, a requirement for a home occupation permit.

D. Any person who paid a business tax for a low revenue business on or after July 8, 2014, shall be entitled to receive a refund of the amount paid in excess of the business tax certificate processing fee described in subsection C., above; provided, that if the aggregate annual gross receipts for a low revenue business operated at one location or by the same operator are less than four thousand dollars and that business paid a processing fee before the effective date of this section, then the processing fee shall not be refunded.

**SECTION 42:** Chapter 5.12 of the MBMC shall be amended by adding (i) "or certificated" after "licensed" when the latter appears in Section 5.12.010, (ii) "and business tax" after license in the last line of Section 5.12.010, (iii) ", as applicable" to the end of the last paragraph of Section 5.12.010 and (iv) ", business tax certificate" after "license" when the latter appears in Section 5.12.030.

**SECTION 43:** Section 5.36.030 of the MBMC is amended by changing "license" to "tax certificate."

**SECTION 44:** Chapter 5.40 of the MBMC is amended by (i) amending Section 5.40.020 to change "Peddler" to "Vendor" and reordering the definition of "Vendor and solicitor" into correct alphabetical order within that section and (ii) deleting Section 3.40.030.

**SECTION 45:** This Ordinance shall take effect 30 days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be published and posted in the manner required by law.

**INTRODUCED** at a regular meeting the of the City Council of Morro Bay, held on the 25<sup>th</sup> day of August, 2015, by motion of Mayor Irons, seconded by Councilmember Headding.

**PASSED AND ADOPTED** on the 8<sup>th</sup> day of September, 2015.

\_\_\_\_\_  
JAMIE L. IRONS, Mayor

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
JOSEPH W. PANNONE, City Attorney

I, Dana Swanson, City Clerk for the City of Morro Bay, hereby certify that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on the 25<sup>th</sup> day of August, 2015, and that hereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by the following vote, to wit:

Ayes:

Noes:

Abstain:

Absent:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
City Clerk of the City of Morro Bay



AGENDA NO: C-2

MEETING DATE: September 8, 2015

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** August 26, 2015

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** One Year Review of Public Off-the-Boat Commercial Fish Sales Policy for Public Docks and Piers

### **RECOMMENDATION**

Staff recommends the City Council approve the permanent allowance of off-the-boat commercial fish sales on the City's various public docks and piers.

### **ALTERNATIVES**

Do not allow for off-the-boat commercial fish sales on public docks and piers.

### **FISCAL IMPACT**

No direct fiscal impact is expected; however, indirect positive fiscal impact expected with continued support of the commercial fishing industry.

### **BACKGROUND**

At the August 26, 2014 City Council meeting, the Council considered and supported a Harbor Advisory Board recommendation to allow public off-the-boat commercial fish sales at the City's various public docks and piers. This allowance was with the caveat the Harbor Advisory Board would revisit the issue in one year for review and recommendations to Council.

The Harbor Advisory Board revisited the issue at their August 6, 2015 meeting, and unanimously voted to recommend the City Council support a permanent allowance of the use.

### **DISCUSSION**

While the City's public docks and piers were not widely used by commercial fishermen over the past year for off-the-boat sales, several fishermen did take advantage of the opportunity. The Harbor Department is unaware of any issues or concerns that arose out of the use.

Prepared By: EE

Dept Review: EE

City Manager Review: SS - Acting

City Attorney Review: JWP

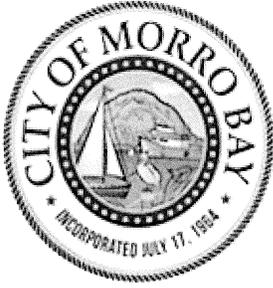
Staff believes the use is valuable and relevant, and supports its continued and permanent allowance via approval at this meeting and inclusion in the Harbor Department Rules and Regulations update currently underway. That document will be brought to the Council for approval in the coming months.

**CONCLUSION**

With the update of the Harbor Department Rules and Regulations currently underway, if approved tonight, staff will include policy language related to permanent allowance for commercial off-the-boat fish sales on the City's various public docks and piers in the document update. This would include conditions deemed necessary such as said sales do not interfere with the public's normal enjoyment of those facilities, there are no public health or safety issues and that fishermen participating in such sales are in compliance with all applicable Local, State and Federal regulations and laws.

**ATTACHMENT**

Staff Report and pertinent draft (unapproved) Minutes from August 6, 2015 Harbor Advisory Board meeting (note: the Minutes from this meeting will be approved at the September 6, 2015 Harbor Advisory Board meeting).



AGENDA NO: D-3

MEETING DATE: August 6, 2015

## Staff Report

**TO:** Harbor Advisory Board

**DATE:** July 31, 2015

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** 1-Year Review of Public Dock Off-the-Boat Fish Sales and Harbor Advisory Board Recommendations to City Council

### RECOMMENDATION

Staff recommend the Harbor Advisory Board support a permanent allowance of off-the-boat commercial fish sales on the City's various public docks and piers.

### BACKGROUND

Last year several commercial fishermen advanced the idea of allowing off-the-boat fish sales at various public docks in Morro Bay. On May 1, 2014 the Harbor Advisory Board considered the issue, and unanimously voted to recommend the City Council allow such sales on a minimum one-year trial basis.

On August 26, 2014 the City Council considered the Harbor Advisory Board's recommendation and voted unanimously to allow the use, with the caveat the Harbor Advisory Board would revisit the issue in one year for review and recommendations to Council.

### DISCUSSION

One year has passed and the Harbor Department is unaware of any commercial fishermen to have taken advantage of the public dock off-the-boat fish sales allowance. Staff believe, however, the allowance is still relevant and has potential value, and continues to support it under the conditions originally envisioned, and believe it should be made permanent via inclusion in the Harbor Department Rules and Regulations document update currently underway.

### CONCLUSION

If recommended for support by the Harbor Advisory Board, it would be staff's intention to carry that recommendation forward to the City Council, and to additionally work with the commercial fishing fleet and associated organizations to better establish and market off-the-boat sales in Morro Bay.

Prepared By: EE

Dept. Review: EE

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**D-2 Water Lease Site Improvements Including Dock Configurations**

Mr. Endersby presented a slideshow to the Board of the 30 Master Lease Sites on the land and water, which includes approximately 90 businesses, showing the slips and docks at each site.

Discussion by the Board.

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**D-3 1-Year Review of Public Dock Off-the-Boat Fish Sales and Harbor Advisory Board Recommendations to City Council**

Mr. Endersby reviewed the item, saying he would recommend support by the Board to recommend that City Council approve a permanent allowance of off-the-boat commercial fish sales on the City's public docks and piers.

Discussion by the Board. Mr. Conchelos said this is potentially a great program, and there would be more sales if there is a set dock location as well as advertising to show where and when fish are available. He said certain fish are more marketable to the public such as salmon but this season was horrible, and the albacore stayed up north.

Mr. Maloney thought the Harbor office could use a whiteboard to show which slips the boats are selling fish from and when those boats are at the slips or dock. He suggested a flag showing the off-the-boat sales could be raised above each boat currently selling.

Mr. Endersby said there is an online application called Fishline that shows daily sales off the boats for different locations up and down the coast.

**MOTION:** Mr. Conchelos moved that the Harbor Advisory Board recommend to City Council to support a permanent allowance of off-the-boat commercial fish sales by commercial fishermen on various public docks and piers in Morro Bay. The Motion was seconded by Ms. Meissen and carried unanimously.

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**E. DECLARATION OF FUTURE AGENDA ITEMS**

**Future:**

- Management Partners Study
- Friends of the Harbor Department Activities
- Best Management Practices, HAB Review
- Sublease Slip Rate Discount for Qualified Commercial Fishermen on List
- Eelgrass Mitigation Co-op by City
- Status of Bayside Cafe
- Coast Guard Building Location Plans
- Morro Bay Fish Quota Share and Trawl Permits
- Inspecting Marine Sanitation Devices on All Vessels in Morro Bay Harbor
- Planning for Power Plant Property

**F. ADJOURNMENT**

This meeting was adjourned at 8:00 PM.

Submitted by,

Polly Curtis  
Harbor Department

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AGENDA NO: D-1

MEETING DATE: September 8, 2015

# Staff Report

**TO:** Honorable Mayor and City Council                      **DATE:** August 26, 2015  
**FROM:** Susan Slayton, Administrative Services Director  
**SUBJECT:** Approval of Absence of Council Member Matt Makowetski from Attendance at Council Meetings for a 90-day Period

## RECOMMENDATION

Staff recommends the City Council decide whether to grant Council Member Makowetski's request to be absent from Council meetings for a 90-day period due to health reasons.

## ALTERNATIVES

1. Decide not to consider the request.
2. Grant a greater or lesser period of time for that absence.

## BACKGROUND/DISCUSSION

Government Code section 36513 provides if a Council Member is absent from all regular Council meetings scheduled within a consecutive 60-day period, then that Council Member's seat is considered vacated. The vacation of that seat would not occur if the Council has granted permission for those absences to occur.

Council Member Makowetski, by the attached letter, has indicated, for health reasons, he will be absent from Council meetings, and unable to fulfill other Council duties for up to 90 days. He has also requested the Council consider permitting his absence from all Council meetings that will be scheduled for a 90-day period. If the Council grants that permission, then Council Member Makowetski's seat would not be vacated due to his absence. Whether or not to grant that permission is in the sole discretion of the City Council. That 90-day period would commence from the date of granting the approval, unless otherwise determined by the City Council.

The Council also needs to decide what effect that absence would have on Council Member Makowetski's receipt of compensation as a Council Member. Section 2.1 of the Council's Policies and Procedures states:

Compensation for services rendered by the Mayor and Council Member, in an official capacity, shall be provided in accordance with State law and the MBMC.

Prepared By: SS                                      Dept Review: \_\_\_\_\_  
City Manager Review: SS - Acting  
City Attorney Review: JWP

If the Council decides the requested absence from Council meetings results in Council Member Makowetski no longer providing services in an official capacity, then no compensation would be provided. If the Council decides Council Member Makowetski is still providing services in an official capacity by remaining a seated Council Member, during his permitted absence, then he would still be eligible for receiving compensation for those services.

**CONCLUSION**

Staff recommends the City Council consider, and decide, whether to grant Council Member Makowetski's request, and whether his compensation as a Council Member should continue. Such decisions can take the form of one or two motions.

**ATTACHMENT**

Letter from Council Member Makowetski

RECEIVED  
City of Morro Bay

AUG 25 2015

Administration

Matt Makowetski  
Morro Bay City Council Member

Morro Bay City Council  
Attn: Mayor Irons

8/22/15

Mayor Irons,

As many of you may know, I have been battling a very persistent eye infection, one that makes it incredibly difficult to do many daily tasks, let alone give due diligence to City Council responsibilities. It has been ongoing for approximately 6 weeks and it has become clear that it is affecting my ability to serve on council. The prognosis is positive and yet, even with continued treatment, it could continue for some time.

Please accept this brief letter requesting that City Council grant me a leave of absence from serving on City Council. I would like to ask for up to 90 days of leave and return to city council when I am physically able. In addition, if I am unable to return, I will let council know as soon as possible.

Thank you for your consideration.

Sincerely,

Matt Makowetski





*BE IT FURTHER RESOLVED that, except when required to maintain effectiveness of personnel and reduce the effects of heat stress and dehydration during highly physical exercises, extreme temperatures, and during emergency situations (e.g. fire, police, harbor, EOC, volunteers etc.), no city funds will be used by any department or agency of the City of Morro Bay to purchase single-serving bottles of water or styrofoam products; and*

*... no selling of nor distribution of plastic water bottles and styrofoam containers will occur at City-sponsored events at City-owned facilities; and*

*.... discourage the use of single-serving water bottles and styrofoam by private parties who use City facilities*

The City has been a leader in the County in limiting its own use of EPS products. The question before the Council is: should that limitation extend to the community at-large as an ordinance banning the EPS products?

**ATTACHMENT**

1. Informational Memo Re: Possible Ban On Styrofoam (EPS)

# **INFORMATIONAL MEMO** **RE POSSIBLE BAN ON STYROFOAM (EPS)**

## **I. INTRODUCTION**

This memo provides an overview of the options available for passing an ordinance to ban expanded polystyrene (EPS), more commonly known as Styrofoam, within the City of Morro Bay (City). The following memo will summarize the various options and give examples of types of regulations passed in other cities. Before getting into the various options, the memo will briefly explain why cities have adopted such regulations. Input regarding those options is being sought before returning this matter to the Council for review and direction.

## **II. WHAT IS EPS? AND WHY DO CITIES WANT TO BAN IT?**

EPS was invented in 1941 by Dow Chemical scientist Otis Ray McIntire . To make it, small beads of the polymer polystyrene are steamed with chemicals until they expanded to 50 times their original volume. After cooling and settling, the pre-expanded beads are then blown into a mold - such as that of a drink cup or cooler - and steamed again, expanding further, until the mold is completely filled and all of the beads have fused together. The finished product is a lightweight, inexpensive material that is about 95% air. The insulating properties and cheap manufacturing costs of EPS have made it a popular choice for businesses.

There are two major reasons why cities and counties are banning EPS: 1) It is harmful to the environment, especially the marine environment, and 2) It is likely unhealthy for human beings who use EPS for food and drink containers.

**A. Harmful to the Environment**

EPS is harmful to the environment because it is a durable material that is not biodegradable. Its foam structure allows it to break down easily into smaller pieces, making it more difficult and expensive to remove from the environment. As EPS litter moves through the environment, fish and wildlife often mistake the pieces as food and ingest the plastic.

According to Douglas McCauley, a marine biology professor at the University of California, Santa Barbara, there are two main issues that polystyrene causes for marine animals - mechanical and chemical.

"The [mechanical root] is very straight-forward," said McCauley, "Oftentimes, we find polystyrene foam lodged in the intestines that causes blockages that can be lethal. If you think about how we worry about a mild blockage from eating the wrong thing, imagine eating a ball of Styrofoam. That's what some of these animals are doing."

Chemically, absorbent properties make EPS even more dangerous. "Polystyrene foams essentially act like little pollutant sponges, picking up and concentrating some of the nastiest contaminants in the ocean," McCauley says. "Then something like a sea turtle comes along and eats this thinking it is a jellyfish." "It is very worrisome to me that some of these plastic-feeding fish may be ending up back on our tables," says McCauley.

**B. Harmful to Humans**

In addition to the above, using food and drink containers made out of EPS is potentially harmful, because EPS is made of non-renewable petroleum products and manufactured with a monomer called Styrene, which may have adverse effects on human health. Styrene, a potentially

carcinogenic chemical, has been shown to leach into food and drinks when heated or when coming into contact with hot foods.<sup>1</sup>

In addition to the potential health effects, EPS is bad for us because it is not recyclable. Recently, New York City studied the feasibility of recycling EPS, and determined it was far too expensive and energy consumptive to be viable. The containers often used for food would need to be cleaned of oil and food debris before they could be transformed into something else. What recyclers are able to produce is not another batch of EPS, but a different plastic that may not have a market for its use. Joe Biernacki, professor of chemical engineering at Tennessee Tech University says, "You couldn't just take recycled Styrofoam cups and make molds again because it's already expanded."

In addition to all the energy needed to clean and melt down the EPS waste, the waste needs to be transported. This transportation is frustrating because this light material has a lot of volume to it, making it a bulky and expensive item to transport.

### **III. OPTIONS FOR BANNING EPS**

The City has several options and choices to make in determining what type of ordinance the Council wants to implement. Below, the options are laid out in question form.

- Does the City want to ban food and drink containers at restaurants?
- Does the City want to prohibit the retail sale of any product that is made with EPS that is not wholly encapsulated or enclosed? That generally includes foam plates,

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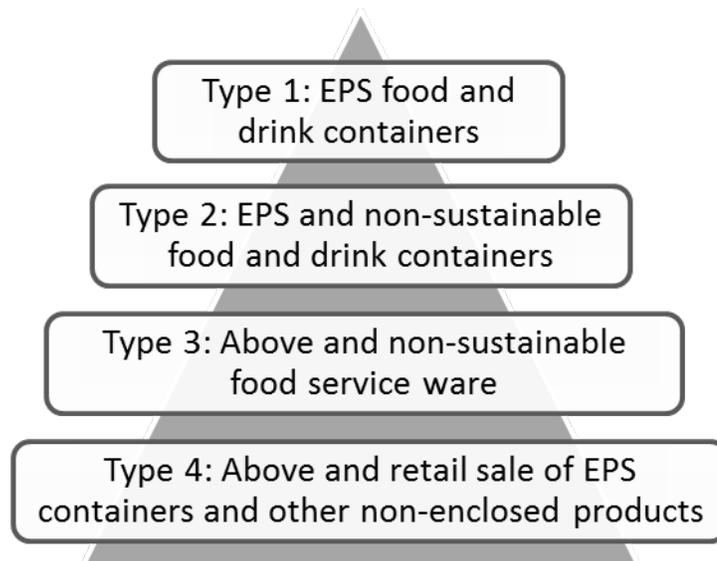
<sup>1</sup> Food and Chemical Toxicology, Volume 33, Issue 6, Pages 475–481 (1995). Available at: [http://ac.els-cdn.com/027869159500009Q/1-s2.0-027869159500009Q-main.pdf?\\_tid=1d125fac-2177-11e4-ad09-00000aacb35d&acdnat=1407775800\\_19aeb4101043c117eb2842c55b96e237](http://ac.els-cdn.com/027869159500009Q/1-s2.0-027869159500009Q-main.pdf?_tid=1d125fac-2177-11e4-ad09-00000aacb35d&acdnat=1407775800_19aeb4101043c117eb2842c55b96e237)

cups, packing “peanuts,” smaller foam ice coolers (those not clad in plastic), pool toys and other products that may not be directly associated with food service.

- Does the City want to ban all non-recyclable containers (not just EPS) in favor of recyclable, compostable, or biodegradable materials?
- Does the City want to favor any type of alternative, like cardboard or paper?
- Who does the City Council to act as the enforcer of whatever regulations are adopted?
- Will there be a fine? How much? (San Luis Obispo has a \$100 fine with an “in lieu of fine” program that allows the violator to buy \$100 of acceptable alternative product instead of paying the fine.)
- Does the City want to give a warning for the first offense and 30 days to resolve the violation?
- Does the City want to give the violator the option of buying acceptable product of the same amount the fine would have been?
- Does the City Council want to provide an exception for “undue hardship” because alternatives are either too costly or their container needs could not be met by alternatives? How is “undue hardship” to be defined?
- Does the City want to include an emergency clause to allow for use of whatever is banned for public health and safety or medical necessity?
- What would the timeframe be to gain compliance? (30 days to 1 year)

#### **IV. WHAT OTHER HAVE CITIES DONE**

The City of San Luis Obispo has provided us with the work their staff prepared when that City Council adopted an ordinance regulating EPS. Before adopting their ordinance, staff looked at several cities and determined there are 4 main types of EPS regulations. Below is a pyramid showing the 4 types, going from least regulation to the most.



- **Type 1:** This type focuses only on EPS containers that hold food or drink. That would not include clear, rigid polystyrene food or drink containers. That would also not include any food-service ware items such as straws, cup lids, or utensils.
- **Type 2:** This second type is a restriction on EPS food and drink containers, as well as all other food containers that are non-recyclable, non-compostable or non-reusable. This would not include clear, rigid polystyrene containers as it recyclable in the County. This would also not include any items such as straws, cup lids, or utensils.
- **Type 3:** This third type is one that prohibits EPS food and drink containers, as well as all other food containers that are non-recyclable, non-compostable or non-reusable. In addition, this type includes restrictions on straws, cup lids, utensils and other similar products.
- **Type 4:** This fourth type includes all of the previously stated restrictions, but also prohibits the retail sale of any product that is made with EPS that is not wholly encapsulated or enclosed. That generally includes foam plates, cups, packing “peanuts,” smaller foam ice coolers (those not clad in plastic), pool toys and other products that may not be directly associated with food service.

The San Luis Obispo staff looked at 11 agencies, selected based on proximity, best practice ordinances or status as a benchmark city. The agencies included: Santa Cruz, Santa Monica, Capitola, Monterey, Carpenteria, Ojai, Salinas, Newport Beach, Cupertino, County of Monterey, and

County of Santa Clara. Below is a summary of the conclusions they determined after looking at those agencies.

Most cities and counties focused on the environmental concerns of EPS food containers, as the basis for an ordinance including:

- EPS is a lightweight material that can be blown out of waste receptacles and into storm drains and waterways.
- EPS breaks down into small pieces, which allow it to spread easily through aquatic environments and is mistaken as food by fish and wildlife.
- EPS, in its broken down form, is difficult and expensive to clean up.
- EPS is generally not economically feasible to be recycled.

Most ordinances have several key elements including:

- Language expressly prohibiting the use of EPS food and drink containers provided by food providers.
- Specific definitions that exclude or include polystyrene food-service ware items such as straws, lids for cups, and utensils from the scope of the ordinance.
- An “undue hardship” clause providing exemptions for cases where alternatives were either too costly or their container needs could not be met by alternatives.
  - 15% often used as the threshold for determining an undue economic hardship. (Please note, such an exemption could swallow the ban because it is not unusual for alternatives to cost 15% more than EPS.)
- An exemption for packaging of uncooked food items, such as raw fish and meat.
- An exclusion of foods prepared or packaged outside the city and sold inside the city limits.
- Inclusion of an emergency clause for public health and safety or medical necessity.
- An implementation time frame after adoption, usually ranging from 30 days to one year.

Some cities and counties have additional elements which further specify the ordinance’s scope including:

- A section stating all non-recyclable containers are to be prohibited in favor of recyclable, compostable, or biodegradable materials.
- The addition of other products made of EPS. That includes items such as small coolers, pool toys, and packing “peanuts” for shipping.

- An “in lieu of fine” program, where the proof of purchase of acceptable products is accepted instead of a fine for the first offense.
- Other considerations addressed by individual agencies include:
  - Capitola and Santa Cruz amended and expanded initial ordinances to include a wider range of items including the retail sale of polystyrene products.
  - Carpinteria has included that each food provider file a signed certification indicating they are aware of the ordinance and will comply with it. That is to be done at the beginning of each year.

The City of San Luis Obispo adopted a robust ordinance with the following provisions: prohibit use of EPS for prepared food; require food providers to use biodegradable, compostable, or recyclable food containers; prohibit vendors and event promoters from selling or otherwise providing EPS which is not wholly encased within a more durable material; definitions for many of the terms used in the added code section; exemptions and a process for the City Manager to go through in determining whether to grant such exemption; violations could result in administrative fines and food providers had the option for their first violation to pay for equivalent amounts of allowable alternatives in lieu of paying the fine; and a violation provision with varying rates depending on the size of the event where the event promoter violated this added code.

V. **CONSIDERATIONS TO BE TAKEN INTO ACCOUNT WHEN CHOOSING THE VARIOUS OPTIONS FOR AN EPS BAN**

A. **Business Perspective**

Food-based businesses are typically the group most affected by EPS ordinances. San Luis Obispo City staff worked with the Chamber of Commerce to contact several local food-based businesses to better understand their perspective on this issue. Initially, a small group of businesses were contacted directly to discuss the issues. Based on those conversations, a survey was developed that was sent to a larger group of businesses in the City. In total, feedback was received by 20 local businesses.

The businesses were grouped into three categories for analysis.

- Group 1: Businesses that no longer use EPS food containers, but had in the past.
- Group 2: Businesses that have not used EPS food containers since the business began.
- Group 3: Businesses that currently use EPS food containers.

Businesses in Group 1 generally cited owner/management preference as the main reason for switching away from EPS food containers. Also, those businesses saw an approximate 15-60% increase in cost associated with switching to another product. Those businesses noted increased customer satisfaction, as well as increased consumer prices as the main effects of switching.

Group 2 businesses chose not to use EPS food containers for a variety of reasons, including owner/management preference, customer preference and environmental and health concerns.

Businesses in Group 3 generally use EPS food containers because it is less expensive than alternatives. Some businesses also indicated concerns with the performance of alternative containers. The concerns involve both the rigidity of the containers with hot foods or liquids and poor insulating properties. Concerns about an EPS ordinance from those businesses included increased costs and additional regulations on private business.

That outreach effort was intended to be illustrative and not exhaustive of the issues and concerns of the business community on this issue. If desired, then additional, in-depth outreach to the business community can be included as a part of the City Council direction on this issue. .

**B. Cost Comparison**

In 2012, the City of San Jose completed a cost comparison of EPS products to alternatives, as part of a county-wide effort to regulate EPS. The results of that analysis are below:

Material	Cups	Plates	Clamshell Container
EPS	\$0.035	\$0.056	\$0.09

Rigid Plastic	\$0.026	\$0.083	\$0.25
Paper	\$0.055	\$0.02	\$0.28
Molded Natural Fiber	n/a	\$0.064	\$0.22
Compostable Plastic	\$0.07	\$0.15	\$0.33

Alternatives to EPS cups ranged from 26% less expensive to 50% more expensive. The range for plates was 35% less expensive to 63% more expensive for EPS alternatives. Alternatives to EPS clamshell containers ranged from 59% to 73% more expensive. Staff compared the results of the City of San Jose analysis to some local prices and found general concurrence with the findings.

**C. Outcomes of Regulation**

Classification of litter can be very time intensive and expensive. As a result, there is relatively little data on the outcomes of EPS ordinances. There are, however, some observational studies that have documented results. Those include:

- The City of Santa Cruz observed a 50% decrease in EPS food and drink containers picked up during annual beach and river cleanups between 2007-2012.
- One year after implementation of the City of San Francisco ordinance that prohibits EPS food and drink containers, the City's litter audit showed a 36% decrease in EPS litter.

**VI. CONCLUSION**

If the City decides to pursue passing an ordinance that bans EPS, then there are several options the City will need to decide. To help with that process, please see the below table with focused questions to facilitate Council direction:

<b>Questions for Council Direction</b>		
	Yes	No
Pursue an ordinance regulating the use of EPS		
Include EPS food containers		
Include all non-recyclable, non-compostable, non-reusable food containers		
Include all non-recyclable, non-compostable, non-reusable food service ware (utensils, cup lids, straws, etc.)		
Include the retail sale of EPS products (coolers, packing “peanuts,” etc.)		
Include exception for undue hardship		
Include an “in lieu of fine” program		
Seek stakeholder input through a written survey		