

MINUTES - MORRO BAY CITY COUNCIL
CLOSED SESSION – SEPTEMBER 14, 2009
CITY HALL CONFERENCE ROOM - 5:00 P.M.

Mayor Peters called the meeting to order at 5:15 p.m.

PRESENT:	Janice Peters	Mayor
	Carla Borchard	Councilmember
	Rick Grantham	Councilmember
	Noah Smukler	Councilmember
	Betty Winholtz	Councilmember

STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney

CLOSED SESSION

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

Mayor Peters read the Closed Session Statement.

CS-1 GOVERNMENT CODE SECTION 54956.8; REAL PROPERTY TRANSACTIONS: Instructing City's real property negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property.

Negotiating Parties: City Tidelands Trust Leaseholders and the City of Morro Bay.
Negotiations: Lease Terms and Conditions.

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

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

The meeting adjourned at 5:50 p.m.

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REGULAR MEETING – SEPTEMBER 14, 2009
VETERANS MEMORIAL HALL - 6:00 P.M.

Mayor Peters called the meeting to order at 6:00 p.m.

PRESENT:	Janice Peters	Mayor
	Carla Borchard	Councilmember
	Rick Grantham	Councilmember
	Noah Smukler	Councilmember
	Betty Winholtz	Councilmember
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney
	Jamie Boucher	Deputy City Clerk
	Rick Algert	Harbor Director
	Bruce Ambo	Public Services Director
	Janeen Burlingame	Management Analyst
	John DeRohan	Police Chief
	Mike Pond	Fire Chief
	Susan Slayton	Administrative Services Director
	Joe Woods	Recreation & Parks Director

ESTABLISH QUORUM AND CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

MAYOR AND COUNCIL MEMBERS REPORTS, ANNOUNCEMENTS &
PRESENTATIONS

CLOSED SESSION REPORT - City Attorney Robert Schultz reported the City Council met in Closed Session, and no reportable action under the Brown Act was taken.

PUBLIC COMMENT

Jane Wilzbach encouraged the adoption of pets locally through Adopt-a-Pet, which is held at Spencers Market on Thursdays and Lemos Ranch every second week on Fridays.

Keith Taylor gave an update on Phase II of the Fire Department.

Claire Grantham announced on September 23rd the County Health Department and the City of Morro Bay Fire Department would be holding a drill to simulate an influenza outbreak and assess its ability to respond to a pandemic or other public health emergency. There will also be a free flu immunization clinic from 7:00 a.m. – 10:00 a.m. and 3:00 p.m. - 7:00 p.m. at the Morro Bay Fire Department.

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Melody DeMeritt addressed Item D-2 (Consideration of Placing a Measure on the Ballot to Change the Mayoral Term from Two Years to Four Years) and Item D-3 (Discussion on Placing the Primary Election Process on the Ballot) in terms of access to government and democracy. She said she supports placing the primary election process on the General Election ballot in November, which will give the citizens a second primary election process to experience and see what the pulse of the people is after this second election process. Ms. DeMeritt stated she supports the mayoral term be changed to a four year term and be shared by all council members annually as it is in other cities.

Holly Sletland, Environmental Center of San Luis Obispo, encouraged volunteers come out for Coastal Clean-Up Day on Saturday, September 19th where clean-up will take place at Morro Rock, Morro Strand and the dog beach north of the strand.

Joan Peterson announced the San Luis Obispo Bicycle Club would host its 38th Annual Lighthouse Bike Ride for Charities on September 26th, which route would be between Highway One between Cuesta College and Piedras Blancas. She said this is one of two annual fundraisers of the Bike Club that raises money for scholarships for local high schools and colleges throughout the County and to support local charities.

Lynda Merrill expressed support for the City Council's vote at the Morro Bay/Cayucos Sanitary District JPA Meeting to continue with the sewer treatment plant proposal and environmental impact report. She expressed support for the following agenda items: Item A-4 (Proclamation Declaring September 27-October 3, 2009 as Sea Otter Awareness Week); Item D-1 (Discussion on Mayor and Council Term Limits); D-2 (Consideration of Placing a Measure on the Ballot to Change the Mayoral Term from Two Years to Four Years); and D-3 (Discussion on Placing the Primary Election Process on the Ballot). Ms. Merrill addressed the lack of health care in the nation.

Bill Martony addressed Item D-2 and noted the Board of Supervisors rotate the Chair's position. He also addressed Item C-1 (Designation of Preferred Proposal for Lease Site 96/96W Located at 945 Embarcadero - Whale's Tail Restaurant) and said the City Council might consider this lease site to accommodate working boats.

Jack McCurdy stated the State Water Board's Once Through Cooling Regulations are the result of a Second Circuit Federal Appellate Court decision in January 2007, which requires the use of the best technology available for all power plants on the coastline and which in effect means no once-through cooling. He said in reviewing the staff reports as well as the regulations, he found them to be unenforceable without dates certain by which the court decision will be complied with and once through cooling will end. Mr. McCurdy stated the Dynegy contract with Southern California Edison that produces electricity expires in 2011 and "that plant is not needed" after that date for grid reliability.

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John Barta addressed Items D-1, D-2, and D-3 on the agenda. He said under the current system, voters choose from a wide selection of candidates in the primary election, and then vote from the best of the candidates in the general election. Mr. Barta stated what is proposed tonight is taking away the choice of the voters. He also addressed Item C-2 (Consideration to Surplus 1985 Trolley) and requested the Council not sell the trolley.

Dorothy Cutter stated she supports repealing Measure S-06 and placing the primary election on the ballot. She also said she supports rotating the Mayor's seat as they do in Atascadero and Grover Beach. Ms. Cutter supports changing the mayoral term from two years to a four-year term.

Jane Heath stated she understands the chief justification of Measure S-06 was to have more candidates to choose for the elected offices in Morro Bay, which was achieved, but unfortunately at a high cost to the City and the candidates who ran in two elections. She referred to AB1121 sponsored by Assemblyman Davis that got within one vote to becoming law that would have allowed general law cities to do rank choice balloting. Ms. Heath urged the City Council to request staff to look into this pilot program or consider adopting spending limits to allow all to participate.

Hank Roth remembered Molly the Trolley as what was used for Caroling Cop Cars.

Mayor Peters closed the hearing for public comment.

Mayor Peters called for a break at 7:15 p.m.; the meeting resumed at 7:25 p.m.

A. CONSENT CALENDAR

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

A-1 APPROVAL OF MINUTES FOR THE REGULAR CITY COUNCIL MEETING OF AUGUST 24, 2009; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 AUTHORIZATION TO FILE NOTICE OF COMPLETION FOR MORRO BAY BOULEVARD AND QUINTANA ROAD INTERSECTION IMPROVEMENT PROJECT; (PUBLIC SERVICES)

RECOMMENDATION: Authorize staff to file the Notice of Completion for the Morro Bay Boulevard/Quintana Road Intersection Improvement Project.

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A-3 ADOPTION OF ORDINANCE NO. 552 REQUIRING THE FIRE CHIEF TO DESIGNATE VERY HIGH FIRE HAZARD SEVERITY ZONES AND THE BUILDING OFFICIAL TO ENFORCE THE REQUIREMENTS OF CHAPTER 7A AND CHAPTER 47, TITLE 24 CALIFORNIA CODE OF REGULATIONS; (FIRE)

RECOMMENDATION: Adopt Ordinance No. 552.

A-4 PROCLAMATION DECLARING SEPTEMBER 27-OCTOBER 3, 2009 AS SEA OTTER AWARENESS WEEK; (ADMINISTRATION)

RECOMMENDATION: Adopt Proclamation.

Councilmember Winholtz pulled Item A-2 from the Consent Calendar.

MOTION: Mayor Peters moved the City Council approve Items A-1, A-3 and A-4 of the Consent Calendar. The motion was seconded by Councilmember Winholtz and carried unanimously. (5-0)

A-2 AUTHORIZATION TO FILE NOTICE OF COMPLETION FOR MORRO BAY BOULEVARD AND QUINTANA ROAD INTERSECTION IMPROVEMENT PROJECT; (PUBLIC SERVICES)

Councilmember Winholtz requested to make two separate motions on this item : 1) the Notice of Completion for Morro Bay Boulevard and Quintana Road Intersection Improvement Project; and 2) authorization for the transfer of funds from the various accounts listed in the staff report to the subject Capital Project. She said she supports the Notice of Completion; however, she expressed her concern with the transfer of funds.

MOTION: Councilmember Winholtz moved the City Council approve the Notice of Completion for Morro Bay Boulevard and Quintana Road Intersection Improvement Project. The motion was seconded by Councilmember Borchard and carried unanimously. (5-0)

MOTION: Councilmember Borchard moved the City Council authorize the transfer of funds from the various accounts listed in the staff report to the subject Capital Project. The motion was seconded by Mayor Peters and carried with Councilmember Winholtz voting no. (4-1)

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B. PUBLIC HEARINGS, REPORTS & APPEARANCES

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

Harbor Director Rick Algert stated the City manages approximately 40 commercial ground leases on the Embarcadero subject to the Tidelands trust granting legislation. Some of these are water only leases in front of the privately owned properties south of Tidelands Park. This year the City has received a lot of input from tenants and sub-tenants in the mid-Embarcadero area that vacancies in the City's properties are spiraling out of control and the City master lease rents were a part of the problem. The City Master Lease format has sophisticated language regarding rental terms as is appropriate with such long term leases. There is a minimum annual rent which is set at 8% of the value of the underlying City property vs. a percentage of gross sales rent. Minimum annual rentals are adjusted each year based on Consumer Price Index (CPI) changes, and the City anticipates this year's CPI will be the first significant downward adjustment seen in recent history. Minimum rents are also adjusted every five years based on reappraisal or 75% of the total rent paid over the previous five years, whichever is higher. Mid-Embarcadero City Lease Site businesses and tenants are suffering through a major recession and down business cycle with current significant vacancies and the potential of increasing vacancies. Prolonged vacancies on City properties would harm the overall City business environment and further reduce City Tidelands lease rents. Mr. Algert recommended the City Council adopt Resolution No. 47-09 authorizing strategies for reducing vacancies on City Tidelands properties.

Mayor Peters opened the hearing for public comment.

Israel Dominguez, Director of Business and Economic Development at Cuesta College, stated he favored concepts 1 and 2 in the staff report and encouraged the City Council also pay close attention to concept 7. He said if the City follows these strategies it would mitigate any further business closures and any negative impact on tourism.

Stan Trapp, Owner of Marina Square, agreed he also favored concepts 1, 2 and 7 in the staff report. He noted that without the approval of these concepts, there would be an impact to approximately 50 employees employed throughout the businesses at Marina Square.

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Bill Martony stated by reducing rents now would help more businesses to remain open and help generate money into the General Fund from tax revenues, as opposed to having empty storefronts. He said instead of taking six months to study these strategies to stimulate business, he recommended the City implement something sooner rather than later.

Mayor Peters closed the public comment hearing.

Councilmember Smukler stated he supports concept 1 and prefers a monthly adjustment to give the City flexibility and minimal impact and return some support to the businesses. He said he has questions with concept 2 with the visitor serving opportunities. Councilmember Smukler referred to concept 3 and said he supports a retroactive adjustment of the CPI and removing that increase. He said concept 4 is the most intriguing to him and would like to be aggressive with this program and give some flexibility to some of the master leaseholders. Councilmember Smukler stated being that concept 7 would reduce the appraised value from 8% to 6% he would have to consider this as a phase 2 approach.

Councilmember Borchard stated she supports concept 1 and prefers the quarterly rent payment over a monthly payment. She said she would support concept 2 only if the non-retail business is located in a second floor retail space, without a time limit. Councilmember Borchard stated she agrees with concept 3 in deferring the CPI for one year. She said she supports concept 4 requesting staff provide more detailed information on a program on how it would be implemented and how it would support the master tenants and be passed down to the tenants that are in the buildings. Councilmember Borchard stated she would like to phase in the other programs as they come along.

Councilmember Winholtz stated she is hearing a consensus on concepts 1, 3 and 4, which are the quarterly rent, the freeze of the CPI just for this year, and allowing tenants to work with staff on a vacancy reduction plan. She said she is not supportive of concept 2 because it is counterproductive to get someone in for a short period of time, but more importantly because it is a Visitor-Serving zoned area and would not be applicable with the Coastal Commission or the City's zoning ordinance.

Councilmember Grantham stated he agrees with Councilmember Borchard's comments, the only difference is on concept 1, he would agree with monthly rent only if there is an amount equal to one month's rent in an impound account; otherwise, he would go with quarterly rent. He said he met with the Administrative Services Director Susan Slayton on concepts 4, 5, 6, and 7 who expressed concern about the consequences to the City, which he agreed. Councilmember Grantham referred to concept 7 and said the City should consider more remedies down the road, and also should consider the 6% at the duration of the year.

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Mayor Peters referred to concept 1, and noted it appears there is a consensus on quarterly rent. She said due to the economy, she supports allowing non-retail business within the City's zoning restrictions in a second floor retail space. Mayor Peters stated there is a consensus on concept 3 suspending the CPI for this fiscal year. She said she agrees on concept 4 in that the City is open to suggestions and it should be a community effort to increase the City's business viability. Mayor Peters stated she agrees on concept 7, to give the Harbor Department an additional \$100,000 per year cut would stifle them.

MOTION: Councilmember Winholtz moved the City Council direct staff to return to the City Council with a Resolution as amended by Council. The motion was seconded by Councilmember Grantham and carried unanimously. (5-0)

B-2 DISCUSSION ON STATE WATER RESOURCES CONTROL BOARD ONCE-THROUGH COOLING STATEWIDE POLICY; (CITY ATTORNEY)

City Attorney Robert Schultz stated the State Water Board has issued a notice of public hearing to receive comments on the proposed Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling. The hearing has been scheduled for September 16, 2009 in Sacramento, and final comments must be submitted by September 30, 2009. The proposed Policy establishes technology-based standards to implement the Federal Clean Water Act Section 316(b) and reduce the harmful effects associated with cooling water intake structures on marine and estuarine life. The proposed policy would apply to the 19 existing power plants (including Morro Bay) that currently have the ability to withdraw over 15 billion gallons per day from the State's coastal and estuarine waters using a single-pass system, also known as once-through cooling. According to the State Water Board staff, the intent of the proposed Policy is to protect marine and estuarine life from the impacts of once-through cooling without disrupting the critical needs of the State's electrical generation and transmission system. This latest Board draft continues to require the phase-out of once-through cooling systems in existing plants, despite a recent U.S. Supreme Court decision permitting regulators to compare the costs of replacing the systems against the environmental and other benefits resulting from such replacements. Mr. Schultz stated he is looking for direction on whether he should attend the September 16th meeting in Sacramento, noting that being present would allow for a better understanding of the Policy.

Mayor Peters opened the hearing for public comment; there was no comment, and Mayor Peters closed the public comment hearing.

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Councilmember Winholtz stated she prefer the City Attorney not attend the September 16th hearing because this is Dynegy's issue at this point, and the City can still make its comments in its letter. She said she is sensitive to the City Attorney's time and does not see that it is in the City's best interest that he attends this hearing.

Councilmember Grantham stated this is too important of an issue for this community to not have representation at this hearing. He said there is money in the budget and he supports his attendance.

Councilmember Smukler stated there are a lot of details that will be coming out of this hearing, and he is supportive of the City Attorney attending this hearing.

Councilmember Borchard stated she is supportive of the City Attorney's attendance at this hearing and would appreciate the opportunity of receiving the information. She said attending these meetings gives the City the resources of knowing who the stakeholders are and the connections the City can make and can prove to be an opportunity the City does not want to miss.

Mayor Peters stated she also supports the City Attorney attend this hearing.

Councilmember Winholtz stated she would like to ensure that if asked at this hearing what the City's position is on this Policy, that the City Attorney should put a date on that opinion, because it is a vote of a past City Council. Since that date, there has been new technology and she does not know that this Council would make that same decision today.

MOTION: Mayor Peters moved the City Council direct the City Attorney to attend the September 16, 2009 hearing on the proposed Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling. The motion was seconded by Councilmember Grantham and carried with Councilmember Winholtz voting no. (4-1)

C. UNFINISHED BUSINESS

C-1 DESIGNATION OF PREFERRED PROPOSAL FOR LEASE SITE 96/96W
LOCATED AT 945 EMBARCADERO - WHALE'S TAIL RESTAURANT;
(HARBOR)

Harbor Director Rick Algert stated on April 27, 2009 the City Council authorized release of a Request for Proposals (RFP) for Redevelopment of Lease Site 96/96W located at 945 Embarcadero. The RFP was released May 22, 2009 with a submittal deadline of July 21, 2009. On August 20, 2009, a Selection Panel interviewed the proposers and rated their

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proposals based on maximization of public benefits in the proposed project; the proposing party's potential to bring the project to completion; proposed operations for the interim period as permits are obtained, to successfully operate on the lease sites; and, experience and ability to operate on the lease site and on financial capability. The Van Beurden Proposal was rated number 1 of 3. Mr. Van Beurden plans to open a new restaurant in the Whale's Tail space for the interim period while he is obtaining permits and approval for remodeling of the building. Mr. Algert recommended the City Council adopt Resolution No. 48-09 authorizing Stan Van Beurden to apply for development permits on City Lease Site 96/96W located at 945 Embarcadero.

MOTION: Councilmember Borchard moved the City Council adopt Resolution No. 48-09 authorizing Stan Van Beurden to apply for development permits on City Lease Site 96/96W located at 945 Embarcadero. The motion was seconded by Councilmember Grantham and carried unanimously. (5-0)

C-2 CONSIDERATION TO SURPLUS 1985 TROLLEY; (PUBLIC SERVICES)

Management Analyst Janeen Burlingame stated the City's Parking Management Plan was adopted in October 2007 and included a recommendation to add a third route dedicated to the Waterfront. The Council adopted the Parking Management Plan and directed staff to purchase a new trolley for the third route while using the 1985 trolley for the 2008 season until the new trolley procurement was completed at which time the new trolley would replace the 1985 trolley to operate the third route. The City received a Proposition 1B State grant to purchase a new trolley as directed by Council. The City piggy-backed on a San Luis Obispo City trolley purchase contract to acquire the new trolley. In April 2009, the new trolley was delivered to the City and placed into service for the 2009 season. The 1985 trolley has over 238,423 miles, is not ADA compliant and is beyond the FTA's criteria for useful life. The vehicle was intended to become surplus property and be sold when the replacement trolley went into service; however, the City Council in May 2009 requested staff bring back an item at a later date to discuss disposition. Ms. Burlingame recommended the City Council authorize the surplus and sale of the 1985 trolley.

Council discussed and asked questions of staff about the sale of the trolley. Councilmember Borchard, Councilmember Smukler and Councilmember Winholtz were supportive of selling it; and, Councilmember Grantham and Mayor Peters were in favor of keeping it.

MOTION: Councilmember Winholtz moved the City Council direct staff to sell the 1985 trolley and place the money in the General Fund. The motion was seconded by Councilmember Smukler.

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Councilmember Smukler stated he supports the concept of continued use of the trolleys for special events and community-based events. He requested the review of the FTA requirements on an interim basis to continue some sort of charter. Councilmember Smukler also requested staff offer the 1985 trolley to the local company and advise them that the price is negotiable, in order to keep it in the community and available to the City for a couple of uses per year.

VOTE: The motion carried with Councilmember Grantham and Mayor Peters voting no. (3-2)

D. NEW BUSINESS

D-1 DISCUSSION ON MAYOR AND COUNCIL TERM LIMITS; (COUNCIL)

Councilmember Winholtz proposed the following Ordinance be placed as an initiative on the November 2010 General Election ballot:

“Limitation of Terms. Neither the Mayor nor any member of the Council shall serve in the same office for more than two (2) consecutive terms in succession; provided, however, that any time in office resulting from a partial term which is less than one-half (1/2) the length of a full term for that office, shall not be considered.”

Councilmember Winholtz stated the language for this Ordinance is modified from the Charter of the City of San Luis Obispo. It is clear, concise, and flexible. It allows the possibility of an elected official to hold non-consecutive terms, and also addresses partial terms.

MOTION: Councilmember Winholtz moved the City Council direct staff to return to the City Council with ballot language to place Mayor and Council Term Limits on the November 2010 General Election ballot.

The motion failed for lack of a second.

No further action was taken on this item.

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D-2 CONSIDERATION OF PLACING A MEASURE ON THE BALLOT TO
CHANGE THE MAYORAL TERM FROM TWO YEARS TO FOUR YEARS;
(CITY ATTORNEY)

City Attorney Robert Schultz stated on November 5, 1974, the required number of qualified voters in the City of Morro Bay voted in favor of Measure “Q”, codified as Morro Bay Municipal Code Section 2.06.020, which states: The term of office of the Mayor shall be for two years. He recommended the City Council discuss this issue and direct staff accordingly.

No action was taken on this item.

D-3 DISCUSSION ON PLACING THE PRIMARY ELECTION PROCESS ON THE
BALLOT; (COUNCIL)

Councilmember Winholtz stated in November 2006, Measure S-06 was placed on the General Election ballot and won with 58.8% of the votes. This caused the City of Morro Bay to have a Primary Election for Mayor and Council seats. Measure S-06 can only be repealed by a vote of the people. The previous City Council discussed whether to put an initiative on the ballot to ask the voters whether or not they want to rescind the use of a primary election in selecting council members and mayor. It was concluded that voters should experience the impact of having a full cycle election with both primary and general elections before voting on whether to continue with utilizing a primary or return to the original method of having only a general election. Placing an initiative on the November 2010 General Election ballot would allow people to express if they wish for the primary process to continue. Councilmember Winholtz recommended the City Council place an initiative on the General Election ballot in November 2010 that calls for a repeal of Measure S-06.

MOTION: Councilmember Winholtz moved the City Council direct the City Attorney to prepare language to place an initiative on the General Election ballot in November 2010 that calls for a repeal of Measure S-06. The motion was seconded by Councilmember Smukler and failed with Councilmember Borchard, Councilmember Grantham and Mayor Peters voting no. (2-3)

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E. DECLARATION OF FUTURE AGENDA ITEMS

Councilmember Smukler requested to agendize a discussion on election policies and procedures to include spending limits; Council concurred.

Councilmember Borchard requested to agendize a discussion on enacting a land use ordinance regulating big box stores; Councilmember Winholtz and Councilmember Smukler concurred.

Councilmember Grantham requested to agendize a discussion on guidelines for concerts in parks near residential areas; Councilmember Borchard and Councilmember Winholtz concurred.

Councilmember Winholtz requested to agendize a workshop on CEQA implementation guidelines within the next 6 months perhaps at the next joint meeting with the Planning Commission, and she would like to invite the Cayucos Sanitary District; Councilmember Borchard concurred.

Councilmember Winholtz requested to agendize a discussion on the definition of what a heritage tree is. Councilmember Smukler stated his Committee has plans to address this, but their focus is on the Arbor Day celebration.

ADJOURNMENT

The meeting adjourned at 10:12 p.m.

Recorded by:

Jamie Boucher
Deputy City Clerk