

**CITY MANAGER'S REPORT
FEBRUARY 11, 2019 CITY COUNCIL REGULAR MEETING****ITEM: REVISED WASTEWATER TREATMENT CAPACITY
(ISU) TRANSFER POLICY****RECOMMENDATION: Adopt Resolution Approving a Revised Wastewater
Treatment Capacity (ISU) Transfer Policy for
Capacity Allocated by the City of Lathrop in the
Manteca Water Quality Control Facility (MWQCF)**

SUMMARY:

The City of Lathrop has an adopted Wastewater Treatment Capacity Transfer Policy (ISU Transfer Policy) for the prioritization, allocation, reallocation and/or transfer of wastewater treatment capacity at its wastewater treatment facilities. Wastewater treatment capacity under this policy is allocated as Interceptor Sewer Units (ISUs) which is the estimated amount of wastewater generated by a typical single family home each day.

The Transfer Policy has been revised over the years to reflect the City's changing infrastructure, wastewater demand factors and economic conditions. Staff recommends that the Transfer Policy be revised to account for the Lathrop Consolidated Treatment Facility (LCTF) Design & Construction Funding Agreement, approved by council on November 21, 2016, and to be consistent with information gathered during the Wastewater Master Plan Update.

BACKGROUND:

On January 19, 1993, due to the limited availability of unallocated wastewater treatment capacity at the MWQCF, the Council adopted Wastewater Treatment Allocation Criteria to prioritize commercial projects to receive unallocated ISUs. A Wastewater Treatment Capacity Transfer Policy (ISU Transfer Policy) was adopted by City Council on January 16, 1996 and Council has approved revisions to the policy on October 21, 1997; August 15, 2000; May 2, 2006; January 9, 2007; April 17, 2007; May 29, 2007; January 9, 2012, and May 4, 2015. The ISU Transfer Policy is used to prioritize, manage and track the allocation, reallocation and/or transfer of wastewater treatment capacity at the wastewater treatment facilities.

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FOR THE MWQCF

The revised ISU Transfer Policy has been included as Attachment B with significant proposed revisions listed below:

1. Manteca Water Quality Control Facility (MWQCF)

The ISU Transfer Policy to be revised so that it applies only to capacity allocated to the MWQCF. The expansion of the LCTF included a Design & Construction Funding Agreement that was approved by Council on November 21, 2016. The Design & Construction Funding Agreement provides specific guidelines for the allocation of reserve capacity in the LCTF and capacity in LCTF should therefore be exempt from the ISU Transfer Policy.

2. Lower Wastewater Demand Factor

Staff recommends that the ISU Transfer Policy be revised by lowering the wastewater treatment capacity per ISU from 260 gpd to 240 gpd. Lowering the demand factor is based on a recently completed flow monitoring study within the MWQCF Sewer area as part of the Wastewater Master Plan Update. This revision increases the amount of unallocated capacity in the MWQCF from 156 ISUs to 438 ISUs. The additional treatment capacity, 282 ISUs, would be assigned to the City's reserve capacity and then allocated to new users based on the ISU Transfer Policy.

3. Eliminate Foundational and Land Use Criteria

Staff recommends that the ISU Transfer Policy be revised to eliminate the "Foundational Criteria" and the "Land Use Criteria." These criteria were originally developed to prioritize remaining unallocated capacity in the MWQCF for commercial projects and are no longer needed because of the increased number of ISUs made available by lowering the residential wastewater demand factor and capacity per ISU. Recent data gathered while updating the Wastewater Master Plan anticipates that sufficient wastewater treatment capacity exists at the MWQCF to support planned development through 2040.

4. ISU Transfer Approval Process

The current ISU Transfer Policy requires that all transfers be approved by Council. New development projects, including the sewer capacity allocations would be approved by Council during the normal planning approval process under the revised policy. Therefore, Staff recommends that the ISU Transfer Policy be revised to authorize the City Manager to approve ISU transfers for all approved projects. Allowing ISU Transfers to be approved at staff level will make the Transfer Policy easier to implement and more efficient.

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REVISED WASTEWATER TREATMENT CAPACITY (ISU) TRANSFER POLICY
FOR THE MWQCF

REASON FOR RECOMMENDATION:

The ISU Transfer Policy needs to be revised to more accurately reflect the City's current infrastructure and information gathered during the Wastewater Master Plan Update.

COUNCIL GOALS ADVANCED BY THIS AGENDA ITEM:

This agenda item promotes Economic Growth by improving the ISU Transfer Policy which facilitates land development projects.

FISCAL IMPACT:


None at this time.

ATTACHMENTS:

- A. Resolution Approving a Revised Wastewater Treatment Capacity (ISU) Transfer Policy for Capacity allocated by the City Of Lathrop in the Manteca Water Quality Control Facility (MWQCF)
- B. Revised City of Lathrop Wastewater Treatment Capacity (ISU) Transfer Policy for the Manteca Water Quality Control Facility dated, February 11, 2019

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REVISED WASTEWATER TREATMENT CAPACITY (ISU) TRANSFER POLICY
FOR THE MWQCF

APPROVALS:



Greg Gibson
Senior Civil Engineer

2/4/19

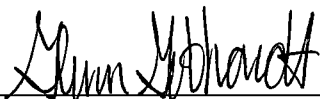
Date



Michael King
Assistant Public Works Director

2-4-19

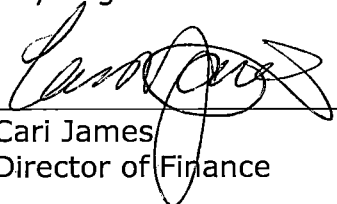
Date



Glenn Gebhardt
City Engineer

2/4/19

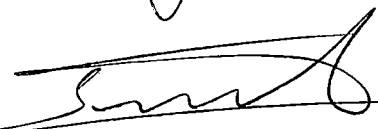
Date



Cari James
Director of Finance

2/4/19

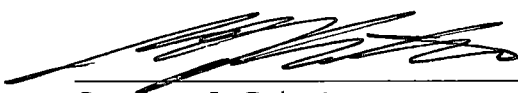
Date



Salvador V. Navarrete
City Attorney

2-5-19

Date



Stephen J. Salvatore
City Manager

2.6.19

Date

RESOLUTION NO. 19 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP APPROVING A REVISED WASTEWATER TREATMENT CAPACITY (ISU) TRANSFER POLICY FOR CAPACITY ALLOCATED BY THE CITY OF LATHROP IN THE MANTECA WATER QUALITY CONTROL FACILITY (MWQCF)

WHEREAS, the City has a Wastewater Treatment Capacity Transfer Policy (ISU Transfer Policy) for the allocation, reallocation and/or transfer of wastewater treatment capacity that has been revised numerous times over time to reflect changes in available reserve capacity, wastewater demand factors, and economic conditions; and

WHEREAS, staff recommends the ISU Transfer Policy should be revised so that it only applies for ISU transfers of capacity in the Manteca Water Quality Control Facility (MWQCF) since terms and conditions contained in the Design & Construction Funding Agreement for the Lathrop Consolidated Treatment Facility (LCTF) Phase 2 Expansion Project (CIP# WW 14-14) which govern the transfer of sewer allocations in the LCTF to developers or third parties; and

WHEREAS, the ISU Transfer Policy should be revised to lower the amount of wastewater treatment capacity per ISU from 260 to 240 gpd/ISU to be consistent with the recently completed draft wastewater master plan update that indicates the wastewater demand from an average single family home wastewater demand factor should be revised from 260 to 240 gpd/home for the MWQCF service area; and

WHEREAS, the revised ISU Transfer Policy increases the amount of unallocated capacity in the MWQCF from 156 to 438 ISUs for a total of 282 additional ISUs that would be made available to support new development and generate revenue to support the MWQCF operations and capital replacement funds and offset the need for future increases to the wastewater rates and connection fees; and

WHEREAS, the ISU Transfer Policy should be revised to eliminate the foundational and land use criteria contained in the current policy because the draft wastewater master plan demonstrates that sufficient wastewater treatment capacity exists at the MWQCF to support planned development through 2040; and

WHEREAS, the revised ISU Transfer Policy will be much easier to administer using the new criteria, and authorizes the City Manager to approve ISU transfers for all approved project as the sewer capacity allocations for new development projects will be approved by Council during the normal planning approval process under the revised policy.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Lathrop approves the revised Wastewater Treatment Capacity Transfer Policy (ISU Transfer Policy) for the allocation, reallocation and/or transfer of wastewater treatment capacity in the Manteca Water Quality Control Facility, and assigns the additional reserve capacity created by the revised policy to the City's reserve capacity so that it can be made available to new users and generate revenue to support the MWQCF operations and capital replacement funds and reduce the need to increase wastewater rates and connection fees.

The foregoing resolution was passed and adopted this 11th day of February, 2019, by the following vote of the City Council, to wit:

AYES:

NOES:

ABSTAIN:

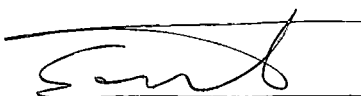
ABSENT:

Sonny Dhaliwal, Mayor

ATTEST:

Teresa Vargas, City Clerk

APPROVED AS TO FORM:



Salvador Navarrete, City Attorney

CITY OF LATHROP
WASTEWATER TREATMENT CAPACITY (ISU) TRANSFER POLICY FOR THE
MANTECA WATER QUALITY CONTROL FACILITY

APPROVED BY CITY COUNCIL RESOLUTION 19-

FEBRUARY 11, 2019

PURPOSE: To Allocate, Reallocate, and/or Transfer Wastewater Treatment Capacity in the Manteca Water Quality Control Facility (MWQCF).

Introduction:

This policy covers the allocation, reallocation, and/or transfer of wastewater treatment capacity for users utilizing capacity in the Manteca Wastewater Quality Control Facility (MWQCF). The wastewater treatment capacity is allocated as an "Interceptor Sewer Unit" (ISU) that is equivalent to 240 gallons per day of treatment capacity. The allocation, reallocation, or transfer of existing ISUs between customers or between properties shall be considered a "transfer".

General Guidelines:

1. All transfer requests shall be in the form of a written request to the Public Works Director and subject to approval by the City Manager.
2. Transfers of available ISUs may be made to or from a property located within the service area of the MWQCF affected by the transfer, or to or from the reserve capacity owned by the City. Undeveloped and underdeveloped private property must retain a minimum number of ISUs, generally one (1) per parcel, to permit future development unless the application is accompanied by an offer to dedicate all development rights with respect to a parcel in a form acceptable to the City Attorney.
3. The cost of purchasing ISUs from the City or obtaining City approval of a "parcel to parcel" transfer shall depend on the original funding source of the capacity but, shall generally conform to the following guidelines:
 - a. If the capacity is located in the existing MWQCF collection area, the cost shall be the Sewer Capital Facilities Fee (CFF) adopted by the City Council at the time the transfer or purchase is approved by the City or when the payment is made to the City, whichever is greater.

- b. If the capacity is located in the existing MWQCF collection area, AND, within an Assessment District (AD) or Community Facilities District (CFD) which paid for the original capacity, the cost shall be the higher of the Sewer Capital Facilities Fee (CFF) or the AD/CFD payoff amount at the next bond redemption period, whichever is greater.
 - c. The fee shall be paid to the City by the applicant upon approval of the transfer by the City. Upon receipt and verification of funds of final payment by the applicant, the original owner of the ISU will be reimbursed the purchase price less the City's administrative fee.
4. The City's purchase of capacity shall be effective upon mailing of a letter from the Public Works Director or designee to the address on file for the applicant. ISUs may not be purchased for or transferred to undeveloped land unless a proposed project exists for that land. If ISUs are purchased for a proposed project and a building permit, parcel map or final map is not approved within one (1) year from the City's approval of the transfer, the City may, at its sole discretion, repurchase the capacity from the applicant. The repurchase price shall be the same as the cost paid by the transferee at the time the transfer originally took place, less the City's administrative fee. Original owner or recipient may request a Form 1099 to document income received from the City for the purchase of sewer capacity.
5. For the purposes of this Wastewater Transfer Policy, a "proposed project" shall include, at a minimum, a formal planning application submitted to the Community Development Department. The application number assigned to the project by that Department shall be clearly indicated on Exhibit "A" and on all other forms and communications with respect to a transfer application. A planning pre-application submittal or verbal project description does not constitute a "proposed project" and is not sufficient to initiate a transfer per this Policy.
6. An applicant may apply to the City to transfer ISUs either before or after the City has taken action on a proposed project. The transfer must be obtained before recordation of a parcel map or final map. At the discretion of the Public Works Director, the transfer may be required before final approval of a proposed project.
7. Applicant, upon approval of the transfer by the City Manager, may become responsible for ongoing operations and maintenance associated with the capacity being transferred, regardless of whether the proposed projects builds or not. This responsibility will end upon repurchase of the capacity by the City. The responsibility to pay for operations and maintenance cost incurred prior to any repurchase of capacity by the City will not end upon that repurchase at the City's discretion, the repurchase cost may be reduced by the value of any operations and maintenance unpaid by the applicant.

Application Process:

The applicant should contact the Public Works Department to determine if there are unallocated ISUs available for purchase, or if it is possible to transfer ISUs from undeveloped or underdeveloped property. If the applicant wishes to purchase unallocated ISUs, or to transfer ISUs from undeveloped or underdeveloped property to the property of a proposed project, the following process shall be followed:

1. The applicant shall make a written request to the Public Works Director to transfer ISUs to a proposed project. The request shall include:
 - a. An executed copy of Exhibit "A", *Application for Wastewater Treatment Capacity Transfer*, which shall include the requisite information and be submitted with the \$500 application fee.
 - b. An executed copy of Exhibit "B", *Purchase of ISU Agreement*. The Agreement establishes the ISU transfer is under review but not yet finalized. The Applicant must agree to pay the City the final cost of the ISUs, as established by City ordinance, when that cost is determined
 - c. A commitment signed by a person authorized to bind the applicant to obtain a building permit, parcel map or final map within one (1) year from City Council's approval of the transfer. At the City's sole discretion, the ISUs shall revert back to the City at the end of one (1) year unless the City Council approves an extension of time. Any request for an extension of time must be provided in writing and addressed to the Director of Public Works. The repurchase price shall be the cost paid by the transferee, less the City's administrative fee.
 - d. A commitment signed by one authorized to bind the applicant to construct any sewer line extensions and other facilities necessary to utilize the ISUs
2. Upon an applicant's completion of an application pursuant to paragraph 1 immediately above, and after determination that the minimum eligibility criteria for a transfer have been met, the Public Works Director shall consider the following factors in approving or denying a transfer request:
 - a. Is the request consistent with the City's General Plan?
 - b. Is the request consistent with the City's Wastewater Master Plan?
 - c. Is the request consistent with any other applicable local, state or federal laws, regulations or ordinances?
3. For projects that meet the criteria described above, the Public Works Director will request payment from the applicant for the final costs of the ISUs, and recommend approval for the City Manager and City Attorney to execute the agreement.

4. If City approves a transfer of ISUs between parcels, the applicant shall pay all costs to prepare and record an agreement(s) for the transfer. The agreement(s) shall run with the land and be recorded to give notice to future property owners of the transfer and limitations on future development arising from the transfer.
5. The fully executed agreement(s), and payment in the amount of 100% of the cost of the units, shall be submitted to the Public Works Director. The Public Works Director will cause the funds to be paid to the transferee or deposited with the City and will record any agreement(s). The applicant may then obtain a building permit, parcel map or final map if all other necessary permits and approvals for their proposed development/project have been issued.

EXHIBIT A

**APPLICATION FOR WASTEWATER TREATMENT CAPACITY
TRANSFER**

This is a request to allocate, reallocate or transfer wastewater treatment capacity defined as Interceptor Sewer Units (ISUs) for service to the following real property:

Applicant Name: _____

Address: _____

APN(s): _____

Project Planning Application No.: _____

Number of ISUs requested: _____ ISUs

Project Description:(Attach additional sheets if needed)

For parcel-to-parcel transfers, if this request is approved by the City Council, then the City shall record in the County of San Joaquin Recorder / Clerk's Office, a Notice of Transfer of Interceptor Sewer Units Affecting Certain Real Property (Exhibit "C"). The form of this Notice will be provided by the City; however, before the Notice is executed, acknowledged by a notary public or recorded, the applicant shall provide the City an accurate legal description of the subject property.

I, the undersigned, owner and / or agent declare under penalty of perjury under the laws of the State of California that:

1. The information provided by the undersigned to the City in support of this request is true and correct.
2. The applicant will make best efforts to obtain a building permit, parcel map or final map within one (1) year from City Council's approval of the transfer and recognizes that the ISUs will revert to the City if the applicant does not obtain a building permit, parcel map or final map in that time unless the City Council grants an extension of time.
3. The applicant will construct any sewer line extensions and other facilities necessary to utilize the ISUs to the satisfaction of the Public Works Director and in compliance with applicable City standards prior to obtaining a building permit, parcel map or final map.
4. The applicant agrees to accept responsibility for paying any ongoing maintenance cost associated with the ISU's being purchased/transferred/reassigned, beginning from the date the transferred is approved by the City Council.

SIGNATURES

Signature

Date

Print Name

As agent for:

Applicant (*if the Applicant is an entity, print its legal name here*)

Recommended for Approval By:

Signature

Date

Title

EXHIBIT B

**CITY OF LATHROP PURCHASE
OR TRANSFER OF ISU
AGREEMENT**

This PURCHASE OF ISU AGREEMENT ("Agreement") is entered into as of this _____ day of _____, 20____, by and between The City of Lathrop ("City") and _____ ("Builder").

RECITALS

WHEREAS, City has certain reserved capacity for sewage disposal in the Manteca Water Quality Control Facility ("MWQCF").

WHEREAS, that reserved, but unused, capacity is expressed, for purposes of this Agreement, as a certain number of Interceptor Service Units ("ISU") of 240 gallons per day of sewer treatment capacity in the MWQCF.

WHEREAS, Builder desires to purchase, and City desires to sell, _____ ISUs.

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, Builder and City hereby agrees as follows:

1. City hereby sells to Builder _____ ISUs for use on the property identified as (street address or APN) ("the Land").
2. Builder understands and agrees that the price of an ISU that is serviced by the MWQCF includes two (2) components: a Capacity Cost and a Collection System Cost. The current Capacity Cost for sewer service in the MWQCF is \$_____ per ISU for a total cost of: _____ dollars (\$_____); The Capacity Cost is due within thirty (30) days of Council approval of the ISU purchase. The current Collection System Cost is project-specific and is based upon the size of the water meter(s) utilized for the project. Collection System costs can be found on the City Website under utility rates. The Collection System Cost is collected during the Building Permit process and is due from Builder prior to the issuance of Building Permits and Builder agrees City will not issue building permits for structures to be served the ISUs sold under this agreement until Builder pays that Collection System Cost to City.

3. Builder acknowledges that the transfer of _____ ISU's from the MWQCF requires the new owner to pay operations and maintenance costs from the date the capacity is approved by the City until the date the proposed project is occupied and payment of wastewater monthly fees begin. The City estimates the annual operations and maintenance costs for this transfer to be \$_____/year.

4. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings or agreements. This Agreement may be modified only by a writing signed by both parties. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. If any term, covenant, condition or provision of this Agreement, or the application thereto to any person or circumstance, shall to any extent be held by a court of competent jurisdiction or rendered by the adoption of a statute by the State of California or the United States invalid, void or unenforceable, the remainder of the terms, covenant, conditions or provisions of this Agreement, or the application thereto to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

5. A copy of this Agreement shall be filed with the City of Lathrop's Director of Public Works and shall run with the land, and City shall record a notice of this Agreement against the Land in the form attached hereto as Exhibit C.

6. This Agreement may be terminated only in accordance with the City's then-current policy regarding the transfer of ISUs between persons or properties. If the City agrees to terminate this Agreement pursuant to that policy, City shall record a release of this Agreement as to the Land.

EXHIBIT C

**NOTICE OF TRANSFER OF
INTERCEPTOR SEWER UNITS (ISUs)
AFFECTING CERTAIN REAL PROPERTY**

Notice is hereby given that _____ (owner / grantor) hereby transfers to _____ (buyer / grantee) _____ Interceptor Sewer Units (ISUs) pursuant to an Agreement with the City of Lathrop dated _____, 20____, which Agreement affects the real property commonly known as

_____, City of Lathrop, County of San Joaquin, State of California, and the legal description of the real property from which the ISUs are transferred is attached as Exhibit "1" and incorporated by reference herein.

Notice is given further that the real property to which the ISUs are transferred is commonly known as _____, City of Lathrop, County of San Joaquin, State of California, and the legal description of said real property is attached as Exhibit "2" and incorporated by reference herein.

This notice shall be duly recorded in the records of the County of San Joaquin Clerk / Recorder's Office.

Dated: _____, 20____

Owner/Grantor Signature

Print Name