TOWN OF MORAGA
PLANNING COMMISSION MEETING

Moraga Library
1500 St. Mary's Road
Moraga, CA 94556

October 19, 2015

7:00 P.M.

MINUTES

1. CALL TO ORDER

Chairperson Marnane called the Regular Meeting of the Planning Commission to order at 7:00 P.M.

A. ROLL CALL

Present: Commissioners Carr, D'Arcy, Kovac, Kuckuk, Mallela, Chairperson Marnane

Absent: Commissioner Woehleke

Staff: Ellen Clark, Planning Director
Brian Horn, Associate Planner

B. Conflict of Interest

There was no reported conflict of interest.

C. Contact with Applicant(s)

There was no reported contact with applicants.

2. PUBLIC COMMENTS

Lynda Deschambault, a resident of Donald Drive, Moraga, spoke to a water leak found across from the approved project at 1800 Donald Drive that although now repaired by the East Bay Municipal Utility District (EBMUD) had released an estimated 6 million gallons of water down the hillside. She understood the leak had initially been reported to the Town in 2011, although it was not reported to EBMUD until the 1800 Donald Drive project had been approved. She encouraged staff and the Planning Commission to follow up with reports to avoid similar occurrences in the future.

Commissioner Kuckuk asked staff to investigate the matter to determine whether any changes to the soils engineering report for 1800 Donald Drive were necessary given the size of the leak, and that staff also touch base with the Town Attorney.

3. ADOPTION OF CONSENT AGENDA

A. September 8, 2015 Minutes

Commissioner Kuckuk requested an amendment to the second sentence of the fifth paragraph on Page 9:

> *She* [Commissioner Kuckuk] *suggested short term employee parking, and wayfinding would be a huge benefit, specifically to address the 24 Hour Fitness issue, and that patrons could park in the side of the parking lot along Moraga Road and walk to the fitness center.*

And to the first sentence of the sixth paragraph on Page 9:

> *Commissioner Kuckuk supported the evaluation of peak hours and the establishment of the Town's own numbers.*

On motion by Commissioner Kuckuk, seconded by Commissioner D'Arcy to adopt the Consent Agenda, as amended. The motion carried by the following vote:

Ayes:	Commissioners Carr, D'Arcy, Kovac, Kuckuk, Mallela, Marnane
Noes:	None
Abstain:	None
Absent:	Woehleke

4. ADOPTION OF MEETING AGENDA

On motion by Commissioner Kuckuk, seconded by Commissioner Mallela to adopt the Meeting Agenda, as shown. The motion carried by the following vote:

Ayes:	Commissioners Carr, D'Arcy, Kovac, Kuckuk, Mallela, Marnane
Noes:	None
Abstain:	None
Absent:	Woehleke

5. PUBLIC HEARING

A. Amend Municipal Code Chapter 8.92 Regarding Keeping of Small Farm Animals, Including Chickens and Bees, in Residential Zones

Conduct a Public Hearing and Consider Adoption of PC Resolution __-2015 Recommending Town Council Adoption of an Ordinance Amending Chapter 8.92 (Animals) and Section 8.04.020 (Definitions) of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code (MMC)

Associate Planner Brian Horn presented the staff report dated October 19, 2015 for consideration of adopting a resolution recommending Town Council adoption of an ordinance amending Chapter 8.92 (Animals) and Section 8.04.020 (Definitions) of Title 8, Planning and Zoning, of the MMC. He recommended the Planning Commission adopt the resolution as shown in Attachment A to the staff report.

Commissioner D'Arcy clarified with staff that complaints from neighbors regarding any negative impacts from the keeping of small farm animals or beekeeping could be addressed by contacting the Planning Department who would then contact the Contra Costa County Environmental Health Department. Staff estimated a complaint would take two or less days to investigate.

Commissioner Kovac clarified with staff that flyaway barriers were required to be a minimum of six feet in height; anything above six feet in height depending on the location on the property would require Zoning Administrator approval; flyaway barriers could be a permanent structure or dense vegetation; the maximum container size for a honey bee colony; and if a container was located in the setback area it would require a flyaway barrier at a minimum of six feet in height as outlined in the staff report.

Commissioner Kuckuk identified a typographical error in the staff presentation regarding beekeeping, and recommended that the second sentence of Section 8.92.080 Beekeeping (4) Water, be revised to read:

> *Adequate sources of water provide both an amount of fresh water necessary for the amount of honey bees or honey bee colonies and a method for the honey bees to be able to gain a good footing to obtain the water;*

Commissioner Mallela clarified with staff the definition of small farm animals pursuant to Section 8.92.020 Definitions was not an exhaustive list. He wanted assurance the definitions would not be interpreted as being exhaustive.

Planning Director Ellen Clark suggested Section 8.92.020 Definitions (e) could be modified to read:

> *"Small Farm Animals" means small un-hooved animals including but not limited to, chickens, turkeys, doves, pigeons, quail, birds, rabbits, and honey bees (Apis mellifera).*

Commissioner Mallela also clarified with staff the intent of Section 8.92.020 Small Farm Animals Permitted (c)(5), with some parcels greater than 40,000 square feet in size located along Rheem Boulevard, and a few large properties scattered around the Town.

PUBLIC COMMENTS OPENED

Andy Scheck, 338 Birchwood Drive, Moraga, thanked staff for the time spent on the preparation of the ordinance amendment and for meeting with volunteers to address the beekeeping issues. The amendments to the ordinance would allow small backyard beekeeping in the Town of Moraga. He otherwise commented that he had registered his apiary with the County, which was a benefit when the County conducted any spraying. He was pleased registration had been included as a requirement in the ordinance.

Dale Walwark, Moraga, clarified with staff the background of using 6,000 square foot lots as the cut-off threshold, and that the City of Lafayette's ordinance had been used as a model.

John Kiefer, 3441 Blackhawk Road, Lafayette, explained the intent of the regulations had been an effort to allow chicken coops in most residential yards, with 6,000 square foot lots used as the minimum lot size.
Mr. Horn noted that the majority of lots in Moraga were 10,000 square feet or larger in size.

Mr. Walwark commented that most lots located on Camino Ricardo and Corliss Drive were larger than 6,000 square feet. Based on the ordinance, his adjacent neighbor could have six turkeys, which he opposed. He would have liked to have seen candid reporting in the local newspaper about this issue given that residents of a standard lot could keep six turkeys and slaughter them on the property. He suggested many residents were unaware of the regulations. Other than beekeeping which could be handled reasonably well, he did not want to encourage owners of residential lots to keep the kind of small farm animals that could be allowed by the ordinance.

An unidentified individual did not find the size of the small farm animals to be significant, citing the value of small farm animals, their nutritional value, connection to the life cycle, and the fact that many children would like to raise small farm animals. As long as residents were following the rules, he found the keeping of small farm animals to be acceptable.

Lynda Deschambault, Moraga, asked for clarification why beekeeping would not be allowed in front yards since many properties in the Town could meet the 25-foot requirement from the road.

Mr. Horn explained the intent had been to ensure bee boxes were not stored in front yards and had been a recommendation in terms of aesthetics.

Ms. Deschambault expressed her appreciation to Mr. Horn for working with the volunteers on the amendments to the ordinance, which she found to be one of the friendliest and well thought out processes. She pointed out that hundreds of other communities allowed the keeping of small farm animals. She otherwise questioned why multiplex landlords would have to submit a letter of authorization pursuant to the regulations under Section 8.92.030, and suggested the regulation would place a burden on the property owner to know what the tenant had in the building, which she suggested was between the property owner and the tenant. It would also place a burden on staff to regulate given the Town's minimal government.

Mr. Horn clarified with respect to multifamily properties that staff had been concerned with multiple families residing on a property and potential conflicts with small farm animals. Staff had sought a mechanism to require a discussion with the landlord whether such animals were permitted on the property, allowing that to be officially recorded. That specific regulation would only apply to a multifamily property. For

beekeeping, the State required a filing with the Agricultural Commission subject to a permit and applicable fee.

Ms. Clark further explained that noise complaints with small farm animals would be handled by the Police Department similar to complaints about a barking dog, as an example. In response to the concerns with landlord notification, she noted the previous draft of the ordinance had included a permit requirement with which the landlord notification requirement made more sense. Therefore it might be appropriate to delete it.

PUBLIC HEARING CLOSED

Commissioner Carr clarified that the noticing requirement for landlords had been to ensure that tenants communicated with the landlords prior to allowing small farm animals on the property. She suggested it would be simple enough to have something in writing to reflect that had been discussed and found to be acceptable by the property owner. She was uncertain whether small farm animals should be considered the same as a dog.

Commissioner Mallela suggested the amendments were well thought out in an attempt to bring a lot of specific activities occurring in the Town into the code. He found that the amendments provided structure which he suggested was good for the Town and addressed activities that were already occurring. He was not concerned with the language regarding multifamily residences since tenant agreements covered all types of activities.

Commissioner Kuckuk was pleased to see the changes, particularly those made since the last draft had been discussed during the Planning Commission study session on August 17. She was pleased with the inclusion of best practices which would ensure healthy animals and healthy colonies of bees while remaining a reasonably safe activity. In response to the concerns with multifamily notification, she was generally not in favor of adding a step since that could be handled by a tenant agreement. She found the concern to be more for non-occupant rather than occupant owners given the potential for disagreement amongst tenants of a multifamily development. She supported the removal of that requirement.

Commissioner Kuckuk reiterated her recommended revision to Section 8.92.080 and suggested another revision to Section 8.92.020, Definitions, recommending that Section (e) be revised to Section (b), and everything after that to be re-lettered. Referencing Section 8.92.030 Small Farm Animals Permitted (a) and (b), she clarified with staff that the square footage of lots in the Via Moraga subdivision were in the 7,000 to 8,000 square foot range, with none smaller than 6,000 square feet, and suggested that small lot single-family homes that were not a multiunit over 6,000 square feet in size should be as eligible as any other lot in the Town.

Mr. Horn understood the homes in the Via Moraga Subdivision were 3,000 square feet on 4,000 square foot lots, and Ms. Clark advised that those homes would fall under the 6,000 square foot minimum requirement. Since the lots were too small, it would also be

difficult to meet the required setbacks for the keeping of chicken coops, although beekeeping could be considered.

Ms. Clark suggested if it was the desire of the Commission, Section 8.92.030 could be amended to allow 10 to 12 dwelling units per acre (DUA) Planned Development Zones, although in general the lots would be either attached or very small and therefore fall under the threshold size.

Commissioner Kuckuk suggested even if they fell under the 6,000 square foot parameter, 10 to 12 DUA PDs should be added to the ordinance.

Ms. Clark advised that 10 to 12 DUA could be added to Section 8.92.030, (a) and (b).

Commissioner Kovac suggested the landlord notification would protect the landlord since most tenant agreements specify dogs and cats but not chicken coops; and the requirement would provide a level of control. He also identified typographical errors on Page 7 of Attachment A, Section 8.92.080 Beekeeping, (d) (v) and recommended the elimination of 080 from the end of that sentence; and in the first sentence of Section 8.92.130 – Livestock and other animal structures, C. While he initially had strong concerns about noise, odor, and enforcement, he suggested the ordinance had addressed those concerns. He was assured by staff that the use of the Latin term for honey bees in the ordinance was correct, which was also affirmed by the beekeepers in the audience.

Commissioner D'Arcy was pleased with how beekeeping had been structured and cooperatively handled, the involvement of the Department of Agriculture and citizens experienced with beekeeping, found that the ordinance filled a need for families, and suggested the ordinance had been well crafted to address local food sources. She was also pleased that those keeping chicken coops would not be criminalized.

Chairperson Marnane allowed Ms. Deschambault and Mr. Walwark to again address the Planning Commission.

Ms. Deschambault spoke to her background as the Executive Director of the Contra Costa Climate Leaders, and based on her experience she had not seen any other jurisdiction include a regulation for landlord noticing requirements, which she found to be onerous and which did not add value. She also noted that many cities had not gone through the process to add beekeeping, but had defined chickens as pets and had limited the number of pets in a home. While she liked the Town's approach, given that landlords could change and based on her own personal experience as a landlord, she found that requirement to be very onerous and did not support the requirement for a permit.

Mr. Walwark pointed out that Sanders Ranch and Moraga Country Club had Homeowner's Associations (HOAs) and Covenants, Conditions and Restrictions (CC&Rs), which could be more restrictive with respect to such activities.

Chairperson Marnane spoke to his family's experience raising chickens, ducks, goats, and keeping bee hives, and acknowledged that the hardest part about keeping small farm animals was keeping things clean and odor free. He suggested the ordinance had been well done.

Commissioner Kuckuk offered a motion to adopt PC Resolution __-2015 Recommending Town Council Adoption of an Ordinance Amending Chapter 8.92 (Animals) and Section 8.04.020 (Definitions) of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code, subject to the following modifications:

- Revise Section 8.92.020 Definitions, (e) to read:
  "*Small Farm Animals" means small un-hooved animals including but not limited to, chickens, turkeys, doves, pigeons, quail, birds, rabbits, and honey bees (Apis mellifera).*

- Revise Section 8.92.030, Small Farm Animals Permitted, (a) and (b) to allow 10 to 12 DUA parcels;

- Retain the order of Definitions as shown in Attachment A and not revised as previously requested;

- Revise the second sentence of Section 8.92.080 Beekeeping (4) Water, to read:

  Adequate sources of water provide both an amount of fresh water necessary for the amount of honey bees or honey bee colonies and a method for the honey bees to be able to gain a good footing to obtain the water; and

- Eliminate the requirement for multifamily notification to the Town as shown in Section 8.92.030 Small Farm Animals Permitted (b), and allow landlords to deal with that issue through lease agreements.

Mr. Horn suggested if Section 8.92.030 Small Farm Animals Permitted (b) was modified, as proposed, that section should be modified further to eliminate (b) altogether, and combine (a) and (b). In addition, Section 8.92.080 Beekeeping (a) and (b) would be further revised to add 10 to 12 DUA parcels, with the removal of the multifamily notification. All of the language in (b) would then be moved into (a), with the remainder of that section to be re-lettered.

Commissioner Kuckuk accepted the staff modification to her motion.

On motion by Commissioner Kuckuk, seconded by Commissioner D'Arcy to adopt PC Resolution __-2015 Recommending Town Council Adoption of an Ordinance Amending Chapter 8.92 (Animals) and Section 8.04.020 (Definitions) of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code, subject to the following modifications:

- Revise Section 8.92.020 Definitions, (e) to read:

"Small Farm Animals" means small un-hooved animals including but not limited to, chickens, turkeys, doves, pigeons, quail, birds, rabbits, and honey bees (Apis mellifera).

- Revise Section 8.92.030, Small Farm Animals Permitted, (a) and (b) to allow 10 to 12 DUA parcels;

- Retain the order of Definitions as shown in Attachment A and not revised as previously requested;

- Revise the second sentence of Section 8.92.080 Beekeeping (4) Water, to read:

  Adequate sources of water provide both an amount of fresh water necessary for the amount of honey bees or honey bee colonies and a method for the honey bees to be able to gain a good footing to obtain the water; and

- Eliminate the requirement for multifamily notification to the Town as shown in Section 8.92.030 Small Farm Animals Permitted (b), and allow landlords to deal with that issue through lease agreements.

- Modify Section 8.92.030 Small Farm Animals Permitted (b) to eliminate (b) altogether, and to combine (a) and (b); and

- Revise Section 8.92.080 Beekeeping (a) and (b) to add 10 to 12 DUA parcels, with the removal of the multifamily notification; and all of the language in (b) to be moved into (a) with the remainder of that section to be re-lettered.

. The motion carried by the following vote:

Ayes:	Commissioners Carr, D'Arcy, Kovac, Kuckuk, Mallela, Marnane
Noes:	None
Abstain:	None
Absent:	Woehleke

Chairperson Marnane identified the 10-day appeal process of a decision of the Planning Commission in writing to the Planning Department.

6. ROUTINE AND OTHER MATTERS

A. Amend Planning Commission Rules and Procedures Regarding Planning Commission Meeting Location

Consider Adoption of Resolution __-2015, Amending Section 2.1 of the Planning Commission Rules and Procedures to Identify the Town Council Chambers, 335 Rheem Boulevard as the Location for Planning Commission Meetings

Ms. Clark presented the staff report dated October 19, 2015, to consider a resolution amending Section 2.1 of the Planning Commission Rules and Procedures to identify the Town Council Chambers, 335 Rheem Boulevard as the location for Planning Commission meetings. She asked that the Planning Commission approve the resolution as shown in Attachment A to the staff report, and reported that the change would occur for the next meeting of the Planning Commission scheduled for November 2, 2015.

PUBLIC COMMENTS OPENED

Lynda Deschambault, Moraga, referenced the Town's Comcast grant which had been used for part of the build out of the new Council Chambers. While she looked forward to the new facility, she understood the room would be set up to record meetings, although the staff report had indicated eventual cable access would be provided. She asked staff to clarify that information and that the public be informed when meetings would be broadcast.
Ms. Clark explained that a number of cities broadcast public meetings on cable television. The Town of Moraga was required to go through a process to ensure its meetings did not conflict with those from other jurisdictions. While the Town had the technology required to broadcast, there was a need to resolve the timing of the meetings on the public access channel. She also advised that an Open House would be held prior to the Town Council meeting scheduled for October 28, 2015 at 335 Rheem Boulevard.

PUBLIC COMMENTS CLOSED

In response to Commissioner Kovac, Ms. Clark clarified that Attachment B, PC Rules and Procedures, could be brought back for consideration to revise the reference to Commissioners in a more gender neutral way if that was the preference of the Planning Commission.

Commissioners supported the staff recommendation as proposed.

On motion by Commissioner Kuckuk, seconded by Commissioner D'Arcy to adopt PC Resolution __-2015 Amending Section 2.1 of the Planning Commission Rules and Procedures to Identify the Town Council Chambers, 335 Rheem Boulevard as the Location for Planning Commission Meetings. The motion carried by the following vote:

Ayes:	Commissioners Carr, D'Arcy, Kovac, Kuckuk, Mallela, Marnane
Noes:	None
Abstain:	None
Absent:	Woehleke

Chairperson Marnane identified the 10-day appeal process of a decision of the Planning Commission in writing to the Planning Department.

7. REPORTS

A. Planning Commission

Commissioners D'Arcy reported on a meeting with Elder Care Services to learn more about senior housing as part of the Moraga Center Specific Plan (MCSP) Implementation Project Steering Committee discussions.

Commissioner Kovac reported that he had attended the American Planning Association (APA) Conference; updated the Commission on the Moraga Pedestrian and Bicycle Master Plan Update and Wayfinding Plan Citizens Advisory Committee (CAC) with an additional workshop to be scheduled in the fall to discuss the recommendations of the plan; attended the September 28 Design Review Board (DRB) meeting at which time the DRB had discussed and continued an application for a remodel and addition to a single-family residence; and attended an Aging in America John Muir Conference as part of the MCSP Implementation Project Steering Committee discussion.

Commissioner Kuckuk reported that she had attended the October 14 Town Council meeting at which time the Town Council had discussed and approved, by a vote of 4-1, a change to the Moraga Open Space Ordinance (MOSO) and Non-MOSO Districts to add for-profit, following the Hillsides and Ridgelines Steering Committee action, with staff directed to evaluate and look at those policies and procedures to change from a form of business ownership to land use based decision for recreational uses on open space lands.

Chairperson Marnane understood the Town Council had also directed staff to define recreational uses, with the issue to come back to the Planning Commission in the future. In addition, the Town Council had received an update on modifications to the Intramural Field Lights at Saint Mary's College (SMC) to reduce glare.

Ms. Clark added that the Town Council had previously approved conditions to address noise on the field and to improve the enforcement of excess noise from the field, with a report back to the Town Council in a year to determine the effectiveness of the measures that had been imposed.

B. Staff

Ms. Clark further detailed the Town Council's actions on amendments to MOSO and Non-MOSO Districts; approval of amendments to the Tree Preservation Ordinance to impose bigger fines for non-approved tree removal; approval of rooftop solar streamlining pursuant to State law; received an update on the SMC Intramural Field Lights; reminded Commissioners of a joint Planning Commission and DRB meeting scheduled for November 9 to receive a presentation on the draft vision concept from the MCSP Implementation Project Steering Committee; that the Planning Commissioners Conference at Sonoma State had been scheduled for December 5; and reported that staff continued the recruitment and interview process for Senior Planner candidates.

8. ADJOURNMENT

On motion by Commissioner Kuckuk, seconded by Commissioner Carr and carried unanimously to adjourn the Planning Commission meeting at approximately 8:30 P.M.

A Certified Correct Minutes Copy

Secretary of the Planning Commission