TOWN OF MORAGA
PLANNING COMMISSION MEETING

Council Chambers & Community Meeting Room
335 Rheem Boulevard
Moraga, CA 94556

May 16, 2016

7:00 P.M.

MINUTES

1. CALL TO ORDER

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

A. ROLL CALL

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

Absent: None

Staff: Ellen Clark, Planning Director
Holly Pearson, Senior Planner
Ben Noble, Contract 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

Teresa Onoda, 24 Merrill Circle South, Moraga, complimented the Planning Commission for its action at the last meeting to adhere to the spirt of the Town's Design Guidelines to keep Moraga in a strong and defensible position as the Town received inevitable pressure from all types of development.

3. ADOPTION OF CONSENT AGENDA

There was no Consent Agenda.

4. ADOPTION OF MEETING AGENDA

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

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

5. PUBLIC HEARING

A. Amend Municipal Code Chapter 8.112 Regarding Home-Based Commercial Wineries and Vineyards

Consider Resolution __-2016 Recommending Adoption of Amendments to Section 8.112 of the Moraga Municipal Code: Home Occupations, Establishing Regulations for Commercial Home-Based Wineries and Vineyards

Planning Director Ellen Clark advised that the item had been under discussion since 2012, although this was the first time the project had been presented to the Planning Commission for consideration. The intent of the draft amendments was that wineries and vineyards would be allowable businesses that functioned appropriately within the context of the residential neighborhoods in which they were located. Staff had worked closely with neighbors and the Lamorinda Winegrowers Association (LWGA) since 2012 to prepare the draft regulations for consideration.

Ben Noble, Contract Planner, presented the staff report dated May 16, 2016, and walked through each of the proposed amendments to Section 8.112 (Home Occupations) of the Moraga Municipal Code (MMC), and asked that the Planning Commission conduct a hearing on the draft amendments to add provisions that applied to Commercial Home-Based Wineries and Vineyards, and consider adoption of a resolution recommending Town Council adoption, adoption with modification of the amendments, or no action on the proposed amendments. The Town Council would consider the Planning Commission's recommendations at a future noticed public hearing before taking action on the amendments. He emphasized that the proposed draft amendments to the MMC applied only to Home-Based Wineries and Vineyards, not wine making activities and grape growing that occurred as a hobby, and not as a Commercial activity.

Commissioner Mallela clarified with Mr. Noble the use of the term *home-based commercial wineries and vineyards* on the agenda, while the staff report referred to the use of *commercial home-based wineries and vineyards,* with the term of art having been used in the ordinance, and reading *home-based winery* as defined, as well as *Commercial Vineyard*. He noted that any inconsistencies in the ordinance's terminology would have to be corrected. He acknowledged that the use of the terms *home-based commercial wineries and vineyards* and *commercial home-based wineries and vineyards* had been used interchangeably in the staff report and in the presentation to the Planning Commission.

Commissioner Marnane identified 18 areas in the documentation where there had been an indiscriminate use of "vineyards" versus "wineries", and "home" versus "commercial".

He also found inconsistencies between the use of terms "bonded wineries" and "vineyards".

Mr. Noble clarified the intent of the proposed draft amendments to the MMC which would regulate home-based wineries and commercial vineyards, as those terms were defined in the ordinance. He defined a home-based winery as a wine making business accessory to a residential use licensed by the State of California and the federal government to allow the commercial production and/or sale of wine. A wine making business that produced 100 bottles or less of wine a year, as an example, had not been defined since it fell out of the scope under discussion. He added that if a resident was producing jellies, as an example, as part of a home-based business, the home-based business would have to comply with existing standards for home occupations more generally, as defined in the Municipal Code. The same issue had been raised during a Town Council study session, with comments from neighbors and grape growers asking why the Town would single out wine makers or grape growers to be included in the new regulations.

Commissioner Korpus spoke to Section 8.112.060 – Home Occupations Involving Home-Based Wineries, B. Definitions, 6(b), and clarified with Mr. Noble that section was not intended to cover the production of jellies, as an example.

Commissioner Mallela again noted the inconsistent use of the terms *home-based commercial wineries and vineyards* and *commercial home-based wineries and vineyards*, particularly as to Section 8.112.060 6(a) and (b), and asked whether there was any intention to define a home vineyard. He asked how it would be applied to the proposed draft amendments for a home-based winery.

Mr. Noble acknowledged that the definition of terms had been a point of considerable discussion in previous meetings of the Town Council and the winegrowers. In terms of the definition for a *vineyard*, he noted the importance to distinguish between a *winery*; an operation producing wine, and a *vineyard*; limited just to the growing of grapes. For the activity of vineyard, two subcategories had been created. A home vineyard was the growing of grapes for non-commercial personal purposes, and a commercial vineyard was the growing of grapes for the ultimate commercial production and sale of wine. The draft amendments were intended to address commercial vineyards. The growing of grapes for purely personal reasons would not be regulated by the proposed draft amendments.

Commissioner Kovac again clarified with Mr. Noble that jelly production, as an example, was not intended to be regulated by the ordinance. Citing Section 8.112.060 6(b), he recommended a modification to the Commercial Vineyard definition by striking the words "or other product derived from grapes" from the definition. He also requested clarification of the existing production of home-based wineries and vineyards in the Town, as identified in the staff report.

Mr. Noble noted his understanding that those wineries produced in the range of 600 bottles each.

Commissioner Kovac sought more accurate information on the existing home-based wineries and vineyards produced in the Town of Moraga, particularly as related to the nature and size of the operations and the potential impacts. He also requested clarification on the relative commercial traffic and noise impacts of such businesses in a residential neighborhood.

Commissioner Kovac clarified with Ms. Clark that Section 8.112.030 - Performance and Development Standards of Exhibit 1 to the proposed resolution were part of the Town's existing Zoning Ordinance that applied to home occupations. He questioned how Development Standard 7 would apply to home-based commercial wineries and vineyards.

Mr. Noble suggested that part of Development Standard 7 would be problematic for winemakers given the visibility of the equipment, but recommended that the wine and grape growers present could clarify their operations.

Ms. Clark spoke to the intent of Development Standard 7, which was not to imply that wine making created the impacts listed in the standard since the standard had only been included because it was part of the existing home occupation standards.

Commissioner Korpus suggested that home-based commercial wineries and vineyards should comply with Section 8.112.030 - Performance and Development Standards, with an additional clause to read "to the fullest extent, except as set forth in b."

Mr. Noble affirmed that would be an acceptable way to structure the concerns with respect to Development Standard 7.

Commissioner Kovac referenced Section 8.112.040 - Approvals required, and questioned the use of the term "prior" in Section B, to which Mr. Noble suggested it would be worthwhile to make it abundantly clear that existing home occupations that did not have an agreement form on file must provide that form.

In response to Commissioner Kovac as to the intent of Section 8.112.060 B.4, Promotional Event, Mr. Noble explained an event that only involved the promotion of grapes grown on-site as opposed to wine would still qualify as a promotional event.

Commissioner Kovac again referenced Section 8.112.060 and identified a typographical numbering error on Development Standard 8; cited section 8(c) and questioned whether notification within 5 days was appropriate and recommended "5 working days;" stated the time period listed in 8(g) conflicted with MMC Section 12.030, and suggested the two sections be consistent; and clarified with staff for 8(i) that the 60 dba noise level was a standard that had been used elsewhere in the Town and was within the realm of what was normal for residential neighborhoods, and that the LWGA had requested a 70 dba noise limit as being more acceptable.

Commissioner Kovac questioned why odor impacts were not being considered as part of the effort as it had been for the City of Orinda's ordinance, to which Mr. Noble understood that issue had not risen to a level of concern.

Commissioner Korpus spoke to the use of the term "accessory use only" throughout the regulations and clarified with Mr. Noble an accessory use had not been defined other than being a use incidental and subordinate to a primary use, in that there needed to be a residential use on site which would be the primary use, and a wine making operation or commercial vineyard would be incidental and subordinate to that as a home occupation.

Mr. Noble explained that the definition of an accessory use only had been addressed through the maximum production, whereby more than 1,000 cases per year could not be produced, a number that would keep the scale appropriate to a home occupation.

Ms. Clark identified Chapter 8.04 of the MMC which defined an accessory use as *a use incidental, and accessory to the principal use of a lot, or use accessory to the principal use of a building*, which definition had worked over time to define a principal or an accessory use by virtue of scale and various other characteristics. Staff would make that determination and potentially refer it to the Planning Commission.

In response to Commissioner Korpus as to whether Section 8.112.040 B had been at the direction of the Town Council, Ms. Clark explained the intent to clarify the existing regulations in a process that had already been applied to all home occupations, and the Town Council had made that direction on scope. Per the Town's existing procedures, to operate a home occupation the party would have to sign a Home Occupation Agreement, which was an existing requirement made more explicit by being added to Section 8.112 of the MMC.

Commissioner Korpus referenced Section 8.112.060 B.3, Private Tours and Tasting, and asked whether wineries would be allowed to advertise since that section would not allow advertising.

Mr. Noble understood that the Town and wine makers did not want a sign in front of a home advertising wine tasting and that commercial transactions would occur only through invited guests or customers making arrangements with the wine growers. That language had been acceptable to the wine growers. Websites for wineries, as an example, would be allowed.

Commissioner Korpus referred to Section 8.112.060 D.1 Maximum Production, and noted the limitations were only directed to the wineries that produced wine, with no limit on the vineyards that produced grapes to be turned into wine in or outside of the Town. She sought limitations on the maximum amount of grape production to ensure an appropriateness of scale in a residential neighborhood.

Mr. Noble acknowledged that in previous versions of the draft there had been limitations on the size of the vineyard relative to the size of the parcel, which could be discussed further.

Commissioner Korpus referred to Section 8.112.060 D.5, Employees and Volunteers, and questioned whether the number of volunteers would be limited or limitless given her understanding that numerous volunteers were involved seasonally during harvest, to which Mr. Noble acknowledged that was a gray area that would have to be discussed.

Commissioner Korpus referred to Section 8.112.060 D.11, Spraying, and asked whether the notification to neighbors of any spraying would include content requirements; such as a list of specific chemicals to be sprayed, frequency of spraying, and a recommendation for a time period in which a neighbor should remain out of their rear yards.

Mr. Noble suggested if the Planning Commission desired to impose the optional language in that section, as outlined, that level of detail in the notification could be considered.

Commissioner Korpus asked whether any neighbors had come forward during this process to express concern with noise or chemicals, to which Mr. Noble acknowledged that one neighbor had expressed concern with the spraying and pesticides that could drift onto neighboring properties.

Ms. Clark also acknowledged there had been some noise complaints in past years although primarily in conjunction with large social events.

Commissioner Korpus asked whether it made sense to limit the home-based commercial wineries and vineyards to a single operation or property to minimize potential impacts.

Mr. Noble commented that he had seen regulations which stated that only one winery would be permitted per site. While it was unlikely there would be more than one family member operating such a business on one site, to be thorough it could be an issue that needed further discussion.

In response to Commissioner Korpus, Mr. Noble explained the agreements the operators would have to sign; a statement from the resident acknowledging the standards which applied to the home occupation, and agreement to comply with those standards.

Commissioner Marnane asked how such a business would differ from a bottling plant, particularly when there were no limitations on the number of grapes coming from outside the Town of Moraga. He understood the City of Napa had such limitations on its wineries, and questioned when such a business ceased being a winery and became a bottling plant. He also asked how the consultant had arrived at the regulations for noise levels at either 60 or 70 dba given that an Environmental Protection Agency (EPA) notice had established a level of safety of 55 dba outside, and 45 dba inside, as adequate to prevent activity interference in a commercial setting.

Mr. Noble commented on the challenges to define the point at which such activities were appropriate in a residential setting. In this case, the draft amendments limited the activities to 1,000 cases of wine each year by right, and 1,000 to 2,000 cases of wine with a Conditional Use Permit (CUP). As to whether there should be a limitation as to the quantity of grapes brought to a site, he understood the desire for limitations on wine grown from grapes outside or off of the property.

Ms. Clark noted that 60 dba was a fairly common daytime noise standard, with a substantial difference between periodic and constant noise. 60 dba had also been the level selected by the Town Council to address the Saint Mary's College (SMC) Intramural Playing Fields noise which had been determined to be a reasonable standard to address occasional noise. She acknowledged the Commission could chose a different standard.

Commissioner Marnane sought a rationale for the noise levels that had been selected. He also questioned how, with certainty, the activity would have no effect on the environment, as stated in the staff report as related to California Environmental Quality Act (CEQA) compliance. He also asked for a definition of a boutique winery.

Ms. Clark commented that as the analysis had stated, the draft amendments had attempted to provide additional regulations for home-based wineries so as to avoid and mitigate their environmental impacts, and the action to be taken would further codify and solidify those requirements. In terms of CEQA, the draft amendments would make the parameters clearer and limit the environmental effect of the activities. In addition, the reference to a boutique winery in the resolution had been taken from the actual wording of a 2014 Town Council, although she acknowledged a different term could be used.

Commissioner Marnane referred to Section 8.112.060 D.1, Maximum Production, suggested that Option 2 made no sense, and questioned its intent.

Mr. Noble noted the language contained in Option 2 for Maximum Production had been language requested by the LWGA and had been included as an option as a courtesy to the LWGA.

Ms. Clark verified, when asked by Commissioner Marnane, that the Town has had a Residential Home Occupation Agreement in place for a number of years, although none had been filed for Home-Based Commercial Wineries and Vineyards. In further response to Commissioner Marnane as to whether the regulations related to spraying had been deemed to be safe, she advised that spraying was heavily regulated by those agencies that had been identified in the staff presentation, with much debate more generally on the use of pesticides, whether appropriate or safe. To the extent the entities were using chemicals that were safe for food and crops, and were subject to existing regulation, staff's operating assumption was that the spraying would be safe.

Commissioner Marnane questioned how the setbacks from such activities from residences had been derived as compared to other jurisdictions, to which Ms. Clark understood the setbacks had been based on size and scale. The setback would be from an adjacent property with the goal of minimizing exposure to equipment noise. The setback standard could be revised if the Commission so desired.

Commissioner Marnane also clarified with staff the differences between ministerial, CUP, and discretionary permits.

Commissioner D'Arcy referenced Section 8.112.060 D.6. Tours and Tastings, and asked whether there would be any limitations on tours and tastings given the increase in

residential traffic in residential neighborhoods, to which Mr. Noble explained that no limitation had been proposed for tours and tastings.

Commissioner D'Arcy referenced Section 8.112.060 D.8 (e) Promotional Events, and asked of the criteria to meet that standard, and Ms. Clark explained that language had been added at the request of the LWGA, and expected that staff would require a traffic plan to show that guests would not park all over the neighborhood, whether a shuttle service would be provided, whether live or amplified music would be included, and the like.

Commissioner D'Arcy also referenced Section 8.112.060 D.1 Maximum Production, and inquired of the policing leverage in determining the number of wine cases, and how the Town would be aware of any violations in the production level.

Ms. Clark understood that the wineries would be subject to specific criteria for licensing and bonding and the State also had oversight of the number of bottles sold given that it generated taxes. A disclosure was also required on the number of bottles produced. In speaking to the LWGA, she understood there was considerable fluctuation in production levels from year to year based on a harvest that depended on the environmental conditions. The intent of the language in that section was in response to the LWGA for reasonable flexibility in the standards.

Commissioner D'Arcy also clarified with Ms. Clark the criteria for any grievances with a home-based commercial winery or vineyard, where through code enforcement the Town had the ability to issue citations for violations of the MMC. Any violations of the MMC could involve an administrative citation and a monetary fine, subject to staff verification of the complaint.

Commissioner Kuckuk struggled with the intent of the process and the information included in the staff report that for some properties, 90 percent of cases produced were from grapes grown off-site. She wanted to be permissive to allow wineries to blend grapes and buy what they needed for production, although she questioned whether the intent was to allow people to process grapes grown on-site which were allowed for an agricultural purpose, or whether the Town would be allowing industry into Moraga.

Mr. Noble stated that based on his perspective and the work done with the LWGA as well as the study sessions with the Town Council, supporting local wine making included both the growing of grapes and the production of wine from grapes grown within Moraga or elsewhere. Staff had hesitated to establish rules on the origin of grapes used to produce wine due to the enforcement challenges that would represent and had chosen instead to focus more simply and directly on the amount of wine produced as part of the winery. He acknowledged that other communities had established limitations on the origins of grapes that were used to produce wine, which could be further discussed.

In response to Commissioner Marnane as to whether a hillside permit was required for growing grapes, Ms. Clark advised there were no hillside permits required for the planting of grapes. If there was any terracing or retaining walls required, potentially a grading or Hillside Development Permit would be required, which had not been

identified in the draft amendments to avoid duplication with other Town requirements. The assumption was that all other Town regulations would apply.

Chairperson Woehleke also questioned how it would be self-evident that spraying would have no impact on the environment. He spoke to the information in the staff report from the California Department of Pesticide Regulation, which suggested the Town had no regulatory control over the Department. Absent the confidence of safety, and given concerns with CEQA compliance, he expressed concern moving forward with the proposal. He asked whether the Department of Pesticide Regulation had specifically reviewed the pesticides used for wine growing and their application in residential areas.

Mr. Noble advised that he had contacted the Deputy Commissioner of the Department of Pesticide Regulation to discuss concerns with the use of pesticides, who had responded that the one application of potential concern would be the use of sulfur to combat powdery mildew. In terms of toxicity, the Deputy Commissioner stated that application would not be any more toxic than other products used for a home-based garden.

Chairperson Woehleke sought a written statement from the Department of Pesticide Regulation stating it regulated the use of pesticides, had evaluated the approved pesticides for application in residential areas. He also wanted to see in writing, whether those applying the chemicals had to be certified or licensed. In addition, he remained concerned with the proposed setback standards which would allow winery equipment to be located on the property line.

Ms. Clark clarified that the setback standards would apply to portable winemaking equipment. She suggested that 15 feet from the nearest residence was an appropriate standard. Section 8.112.060 D.4. Setbacks could be modified to clarify that it pertained "to portable winemaking equipment."

Susan Captain, 1969 Joseph Drive, Moraga, founding member and ex-President of the LWGA, and grower at Captain Vineyards, clarified the intent of the draft amendments to be good neighbors, preserve the quality and integrity of life in the neighborhood, and develop guidelines to ensure no misunderstanding between neighbors. The guidelines were intended to be introduced to the cities of Lafayette and Orinda regardless of the outcome of the efforts with the Town of Moraga. The intent was not to impose more permits, regulations or fees.

Kathe Nelson, Executive Director, Moraga Chamber of Commerce, read into the record the Chamber of Commerce Mission Statement, with local wineries bringing another dimension of vitality to the small Moraga community. She spoke to the new AVA designation which brought great recognition to the Town and the surrounding area. She understood the winegrowers had to meet specific criteria to obtain that designation, and rather than overburden the local winemakers and local businesses, the Chamber of Commerce requested that the Town limit the number of regulations placed on the wineries.

Tony Inzerrillo, Moraga, Owner/Winemaker Vincenza Ranch and Vineyard, referenced his history and study of viticulture and technology; described a boutique winery as

defined by the City of Napa; clarified that his vineyard produced 200 cases of wine each year; and that the endeavor was not intended to make money but was a labor of love. He identified his costs at $50 per vine and stated that one acre could accommodate 1,000 vines at a cost of $50,000. His intent was to serve the community, such as the Chamber of Commerce and local festivals. He identified four bonded wineries in the Town of Moraga, although there could be up to 100 residents who grew vines on their property. He described grape vines as a friendly residential crop to grow which was the reason it was grown near residential areas since chemicals were less intrusive and the agricultural process was less stringently regulated.

Mr. Inzerrillo described the role of the winemaker to keep the grape local, disperse some to growers, sell some to local restaurants and stores, and create a buzz in the Town of Moraga about the wine business. No money was being made on his venture and his wine growing business was already highly regulated.

Sal Captain, 1969 Joseph Drive, Moraga, Captain Vineyards, thanked planning staff for the efforts over the past three years to establish regulations for commercial vineyard businesses. Based on his 35-year personal experience working in California, he suggested when rules and regulations became onerous, complicated, and difficult to understand, businesses move out of the state. The current production of the four bonded wineries in the Town of Moraga was barely 1,000 cases, as opposed to the State of California at 217 million cases based on 4,000 wineries; 100,000 cases on average per winery. His winery had produced 250 cases in 2015 with 100 cases produced by Vincenza Ranch and Vineyard. He questioned the time and effort to establish regulations that would make no difference based on the total 21 wineries in Moraga, with less than 16,000 vines, and a total acreage of less than six acres.

Mr. Captain noted that Captain Vineyards helped to educate local 4H children on sustainable practices; his vineyard taught the science of viticulture technology to adults in the Parks and Recreation Department; and 30 percent of his wine was donated to charities. Captain Vineyards also donated to environmental causes and was the first certified green winery in Contra Costa County. He urged the Planning Commission to visit his winery, and check Yelp! to learn more about the business.

Christian Brockman, Lafayette, a long-time intern for Captain Vineyards, spoke to his experience in the wine industry. He suggested there were few areas like the Lamorinda region which offered an opportunity to continue the heritage and generation of growing grapes and viticulture. While he recognized the concerns being discussed, he noted that home occupations occurred everywhere. He suggested that such activity had a higher and better impact on the local community. He pointed out that the Lamorinda area was not like the Napa Valley, which was highly congested. The Lamorinda wineries produced from the heart and made a small amount of money. If too many restrictions were placed on the businesses they could be lost. He suggested the potential impacts from such businesses were more positive than negative. He urged the Planning Commission to consider the impacts to the community as a positive.

Ethar Ramatala, 3786 Via Granada, Moraga, commented on her experience creating wines which brought the community together. She described the harvesting period as one large family; the wineries in Moraga were small boutique wineries as compared to

those in the Napa Valley; the local wineries gave back to the community and had been doing good things for the community; harvesting occurred once a year; and there had only been one complaint. She questioned basing the restrictions on one complaint as opposed to all of the good the wineries had done for the community.

Ali Ramatala, 3786 Via Granada, Moraga, emphasized his family enjoyed their wine; traveled around the world to taste good wines; the wines created in Moraga were incredible; and limiting and restricting production would not serve anyone. He did not oppose keeping the wineries and vineyards small since it was a clean industry bringing good people to the Town.

Jan Blumer, 1963 Joseph Drive, Moraga, who lived between Captain Vineyard and another vineyard, shared many of the Planning Commission's concerns with spraying of the vineyards from a neighbor standpoint. He understood those doing the spraying used special hazmat material clothing, and machinery was as loud as a leaf blower.

Mr. Blumer expressed concern for families with small children in the immediate area of the two properties with vineyards, and again shared the concerns expressed with the potential impacts from spraying. In addition to the optional provisions for spraying, he asked that neighbors be notified of any spraying, disclosure of the products being used, and that the spraying be done during business hours Monday through Friday from 9:00 A.M. to 5:00 P.M., and not be allowed on weekends.

Mr. Blumer also spoke to the 15-foot setback regulation, and requested clarification where the setback had been measured. He spoke to his experience with winemaking, which could be a smelly and noisy process; sought greater setbacks from the property line; and given the challenges with the regulations urged great thought as to whether there should be regulations to oversee winemaking and vineyards in the Town of Moraga.

Mrs. Captain noted the four bonded winemakers in the Town of Moraga were located in agricultural allowed areas, part of Open Space or Study Areas. She defined agricultural areas as allowing viticulture, including the production and bottling of wine and the growing, harvesting, and production of grape crops. The regulations under discussion would have to include the properties in the agricultural area, although there were some protections for growers. The winegrowers referenced lived on their properties, and wanted to comply with the rules of the Town, and wanted to ensure that if anyone sold a home the new homebuyers would be made aware of the growers and be notified of the process. There were disclosures in place when a property was resold that would notify a property owner, or occupant that they were close to an agricultural industry. Also, harvesting and the process of winemaking occurred once a year, at the end of the year, with spraying occurring four to five times a year dependent upon the weather.

Although the PUBLIC HEARING was not opened, it was CLOSED.

Chairperson Woehleke declared a recess at 9:07 P.M. The Planning Commission meeting reconvened at 9:12 P.M. with Commissioners D'Arcy, Korpus, Mallela, Marnane, and Chairperson Woehleke present.

Commissioners Kovac and Kuckuk returned at 9:13 P.M.

Given the voluminous material and discussion, Chairperson Woehleke recommended that the Planning Commission review the resolution page by page and provide comment, or appoint a Planning Commission Subcommittee to work with staff on the proposed Home-Based Commercial Wineries and Vineyards regulations.

By consensus, the Planning Commission appointed a Subcommittee to address the items of concern based on all of the questions that had been received at this time in order to find an answer to all questions and to make the amendments clear and less onerous.

Commissioners Korpus, Mallela, and Kuckuk expressed the willingness to serve on a Planning Commission Subcommittee.

Commissioner Kuckuk recommended that the Subcommittee also have representation from the LWGA and potentially the Chamber of Commerce.

Ms. Clark expressed her hope that such an effort could be accomplished in no more than one or two meetings. She recommended a motion to establish the Subcommittee.

Commissioner Kuckuk offered a motion to assign a Planning Commission Subcommittee comprised of Commissioners Korpus and Mallela.

On the motion, Commissioner Marnane suggested if a Planning Commission Subcommittee could handle the issue in one to two meetings that would be acceptable, although he doubted that would be the case.

On motion by Commissioner Kuckuk, seconded by Commissioner Marnane to assign a Planning Commission Subcommittee comprised of Commissioners Korpus and Mallela. The motion carried by the following vote:

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

B. 1545 School Street

Consider Adoption of Resolution __-2016 Approving a Conditional Use Permit (UP 3-16) to Establish an Administrative Office and Merchandise Storage Facility within an Existing Vacant Building

Senior Planner Holly Pearson presented the staff report dated May 16, 2016, for consideration of a Conditional Use Permit (CUP 3-16) to establish an administrative office and merchandise storage facility within an existing vacant building, located at 1545 School Street. Due to the project's consistency with the Zoning Ordinance, General Plan, and Moraga Center Specific Plan (MCSP) Area, and due to its minimal impact on surrounding properties, she recommended the Planning Commission adopt a

resolution approving Conditional Use Permit UP3-16 pursuant to MMC Section 8.44.030 subject to Conditions of Approval, as contained in Attachment A.

Commissioner Korpus inquired how the business would operate given that the floor plan had shown a large open area with storage space, two offices, and a lobby. Since she understood customers would not come to the site and purchase products, she found the space to be more of a warehouse. She also inquired of the number of van deliveries to the site, where the deliveries would occur on-site, and whether the business would be a regional, national, or small outlet for the main business.

Ms. Pearson understood that based on the communications she had with the applicant, as depicted on the floor plan, the open office area would be for administrative uses for the operation of the business. An area marked for stocking would be for the filling of orders and pulling of merchandise to be delivered to retail stores. Deliveries of the beauty products would be made to retail stores in the Bay Area, although the applicant could clarify that information.

Commissioner Kovac questioned how the business would meet Policy LU2.2 of the General Plan, which required a business to provide for the needs for Moraga residents. He also asked whether there would be any toxic chemicals stored on-site, and whether as part of the remodel and repurpose of the building there were any requirements to bring the property current with building codes.

Ms. Pearson explained that the business provided consumer products to households, including to households in Moraga and beyond, although they may not exclusively serve the needs of Moraga residents. There would be no retail component at the subject location. In speaking with the applicant, she understood the operation sold beauty products for personal use such as shampoos, and skin care products that were not toxic. No testing or laboratory work would occur on-site. As to interior remodeling, she noted when there was no change of use or expansion of the building there would be nothing to trigger general upgrades of building codes. Upgrades would be made to ensure compliance with the Americans with Disabilities Act (ADA). There was nothing in the application that would require an across-the-board energy or seismic upgrade.

Commissioner Korpus inquired whether there would be an income stream opportunity for the Town as a result of the business, to which Ms. Pearson commented there would be jobs available, but she was uncertain whether employees had already been designated to work at the business or whether the applicant would hire locally. The Town did not have a business tax, although the business would provide an opportunity for retail sales and employment.

Ms. Clark clarified that the revenue stream to the Town would be through property taxes and potential sales taxes and employment.

Hayoung Lee, 6601 Owens Drive #145, Pleasanton, explained that the building had been vacant for three years; the property owner had several stores in the cites of Emeryville, San Ramon, and Oakland; the applicant had desired a retail store at the subject location, although the Town's zoning regulations did not allow that to occur; and rather than have the building sit empty it would become the applicant's main office.

Most of the products would be delivered to retail stores via UPS, with some Internet business. Since there had been no defined use for the building, it had been proposed as a storage area. In response to concerns with the potential storage of toxic chemicals, none would be stored at the site but delivered directly to the stores from the manufacturer. The products to be delivered by UPS were described as "rotating" out of the site and would not be stored at the site for a long period but remain only temporarily. Since the items were valuable they would be stored in an enclosed area at the rear.

Responding to the Commission, Mr. Lee stated the upgrades to the building only required additional doors, a restroom, and an entrance. When asked, he clarified that there would be three restrooms; a men's restroom, a new unisex handicap restroom, and a women's handicap restroom. He also clarified that the beauty products were not regulated as hazardous material pursuant to the Building Code, and any hazardous materials would have to be stored in a secondary contained area, which was not the case in this situation. He reiterated that the property owner did plan to conduct some Internet business.

Ms. Clark commented that if the scope of the business was warehousing and receiving and distributing of goods, as long as Internet operation was in compliance with those parameters, it would be covered under the CUP.

Mr. Lee affirmed that there would be only one delivery every two weeks, with the products rotated from store to store. The property owner was the owner of six stores. The products would be stored temporarily at the space and delivered to the other six stores. The property owner did not need much space for a warehouse, although they had identified the application as a warehouse. Deliveries would be sent out from the property twice a week, and would serve stores in Emeryville, San Ramon, Danville and Oakland. He reiterated that the property owner desired to open a retail store in Moraga, but it was not allowed in the Zoning District where the building was located. He disagreed that deliveries to the other stores would occur more frequently than he had stated.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Commissioner Korpus did not want to limit the property owner on the use of the property if it could be justified. She could find that the use was comparable to the way the former post office had been used in the past, and for an administrative function with warehouse or an office attached to another business. She clarified the findings to approve the CUP as shown on Page 2 of the resolution and supported the application given the productive use of the property.

Commissioner Kovac recommended a revision to Condition 14 to read:

> *Construction and noise-producing activity shall be limited to between the hours of 8:00 A.M. and 5:00 P.M. Monday through Friday, excluding holidays.*

The following revisions were also made to the Resolution, Attachment A.

- Revise the first WHEREAS clause on Page 1 to read:

  WHEREAS, on March 31, 2016 Mr. Hayoung Lee (Architect/Applicant) submitted a Conditional Use Permit application to allow the interior renovation and conversion of a vacant office building at 1545 School Street to a new administrative office, merchandising storage use and Internet sales distribution use; and

- The NOW,THEREFORE, BE IT RESOLVED, clause on Page 1 revised to read:

  NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the Town of Moraga hereby approves a Conditional Use Permit for the interior renovation and conversion of an existing building at 1545 School Street to a new administrative office, merchandising storage use and Internet sales distribution use, based on the findings listed below and subject to the conditions listed herein:

- Condition 14 was further revised to read:

  Construction and noise-producing activity shall be limited to between the hours of 8:00 A.M. and 5:00 P.M. Monday through Friday, and excluding holidays. Deliveries to occur 8:00 A.M. to 5:00 P.M. seven days a week.

On motion by Commissioner Marnane, seconded by Commissioner Kuckuk to adopt Resolution next in number for Approval of a Conditional Use Permit for Interior Renovation and Conversion of Existing Space to a New Office and Merchandise Storage Use within a Vacant Building Located at 1545 School Street, with the modifications as shown. The motion carried by the following vote:

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

Chairperson Woehleke identified the 10-day appeal period of a decision of the Planning Commission in writing to the Town Clerk.

At this time the Planning Commission proceeded with Agenda Item 6.C, the discussion of the Brown Act, given the presence of the Assistant Town Attorney.

6. ROUTINE AND OTHER MATTERS

C. Planning Commission Application of Brown Act

Review and discuss Planning Commission application of the Ralph M. Brown Act (California Open Meeting Law)

Chairperson Woehleke walked through a one-page memorandum he had prepared on the Brown Act, which had been included in the Planning Commission packet, and noted that staff had prepared a copy of the League of California Cities Open & Public IV: A Guide to the Ralph M. Brown Act, for each Commissioner.

Assistant Town Attorney Karen Murphy emphasized that the two most important components to ensure compliance with the Brown Act was that Planning Commissioners not conduct a meeting outside of an agendized meeting, and that the public be allowed to speak and participate in any action taken by the Planning Commission, with public comment allowed at the beginning of a meeting and during each agenda item. She stressed the importance that when the Planning Commission had contact with the public to watch what was said to ensure the people they were speaking to were not talking to others and inadvertently creating a meeting of which the Planning Commission was unaware, with caution to the sending of e-mails.

Responding to the Commission, Ms. Murphy commented on a scenario whereby if two Commissioners attended the same conference for the same topic that would not be a violation of the Brown Act since it would not constitute a quorum, nor would there be a crossover violation if a Commissioner from another jurisdiction was also present.

Ms. Murphy clarified the Brown Act requirements for a Planning Commission Subcommittee. An Ad Hoc Subcommittee composed solely of less than a quorum of the body (two Planning Commissioners) would not be subject to the Brown Act, although the Planning Commission members of the Ad Hoc Subcommittee should report out on the meetings it held. A Standing Committee, a committee considering a long-term item to be addressed in perpetuity with monthly meetings and no end in sight, would require compliance with the Brown Act.

Ms. Clark advised that if Planning Commissioners had any questions they could contact staff or Ms. Murphy directly.

Ms. Murphy welcomed Planning Commissioners to contact her with any concerns, particularly as related to the potential for conflict.

A. Review Annual General Plan Implementation Report for 2015 and Provide Input on Planning Department 2016-17 Work Program Priorities

Senior Planner Pearson presented the staff report dated May 16, 2016, and asked that the Planning Commission review and comment on the Annual General Plan Implementation Report prior to its submittal to the Town Council, the Governor's Office of Planning and Research (OPR), and the State Department of Housing and Community Development (HCD); and Town work program priorities related to implementation of the General Plan and the needs of the Moraga community for the 2016-2017 Fiscal Year.

In response to Commissioner D'Arcy as to the status of the Town's existing medical marijuana regulations, Ms. Clark explained that the existing regulations prohibited marijuana dispensaries and the sale of marijuana. Given the likelihood marijuana may be legalized or liberalized in the state, the Town wanted to ensure its regulations were

as tight as appropriate. The regulations were also in the Public Health and Safety chapter of the MMC as opposed to Planning and Zoning, and would have to be modified since it was more of a land use issue.

As to the status of policies on recycled water, Ms. Clark stated the Town had discussed the issue years ago and when it was apparent there was no recycled water infrastructure the idea had been shelved; however, the use of recycled/non-potable water was a condition that was being imposed on projects for dust control during construction.

In response to Commissioner Korpus, Ms. Pearson clarified the Regional Housing Needs Allocation (RHNA) numbers imposed by the Association of Bay Area Governments (ABAG) throughout the state based on projections of population and job growth, with a determination of the number of future housing units identified to accommodate that growth. The numbers were distributed amongst the jurisdictions to ensure that each jurisdiction provided its fair share of housing. She described ABAG's mandate, explained that the RHNA numbers were not regulatory but a target, with jurisdictions to report on its progress. The Town was not legally required under the authority of ABAG to build the housing units but was required to identify adequate sites to accommodate its fair share of housing.

Ms. Clark further defined the purpose of ABAG and the statewide mandate to address population growth through fair share of housing.

In response to Commissioner Kovac who asked about Appendix 1, General Plan Implementation Program Status Table, Ms. Clark explained the section referenced was verbatim from the General Plan, and clarified the amended definition of "Family" in that the Town had an antiquated definition of family which had to be consistent with state law.
There were also occupancy requirements as part of the Building Code, although the Town could not dictate the size of a family.

In further response to Commissioner Kovac as to the first bullet under I. Circulation Specific Programs, Ms. Clark clarified how vehicle miles traveled (VMT) related to the traffic flow, and explained that the State Legislature had recently directed amendments to CEQA that would change the metric by which traffic impacts were evaluated with the Level of Service (LOS) evaluation to be replaced by a VMT methodology model.

Commissioner Kovac also referenced L. Intergovernmental Coordination, L7, Lamorinda Transportation Planning, and asked of the "trip rights" as found in bullet four under that section, although staff was unable to provide a clarification on that point.

With respect to M. Public Information and Education, M3, Traffic Safety Education Program, Commissioner Kovac suggested that since the Moraga Police Department had mobile radar displays, they should be referenced in that section. Speaking to Attachment B, 2016 Town Council Goals, he clarified with staff that the Town Council goal to install five cameras in strategic locations in Town would be discussed as part of the upcoming budget discussions.

Commissioner D'Arcy inquired of the entitlements for the Bollinger Canyon development, to which Ms. Pearson advised that the application on file and under review to date included a General Plan Amendment (GPA) and Conceptual Development Plan (CDP) for 126 homes.

Ms. Clark added that no entitlements had been issued for the project.

Commissioner D'Arcy also clarified with staff that the Hetfield Estates project was a 7-lot subdivision and the text of the General Plan Implementation Report needed to be corrected accordingly.

Chairperson Woehleke commented that the text continued to refer to the Rancho Laguna II Subdivision, although the subdivision had been renamed *Bella Vista*, and Ms. Clark stated the subdivision was typically referenced by subdivision number although the name would be corrected.

Commissioner Marnane referenced Page 3 of the staff report and suggested the removal of Item 13, the preservation of the Rheem Theatre, as a losing cause since it was not compliant with Capital Improvement Project (CIP) No. 47, Community Center.

Ms. Clark stated the preservation of the Rheem Theatre was a 2016 Town Council adopted goal.

Commissioner Marnane also referenced Page 6 of the General Plan Implementation Report and asked that the issue of fixing the property tax revenues at the rate of 5.3% be revisited in some way. With respect to Page 19, and a new park for the Camino Ricardo Development project, he suggested the Town firm up what would be done, who would pay, and who would be responsible for the park, with the item to be revisited.

Ms. Clark explained that the Development Agreement (DA) with SummerHill Homes had defined the park; the Town was to own and maintain the park as part of the DA. The developer would make all of the improvements and after a warranty period would turn the park over to the Town for the long term.

Commissioner Marnane cited Page 21 of the General Plan Implementation Report and the discussion of Property Assessed Clean Energy (PACE). He questioned whether it was appropriate for the Town to advertise the program and suggested that item be revisited.

Ms. Pearson reported that the PACE Program had been adopted by the Town Council in March 2016, at which time the Town Council had also authorized two PACE financing providers to offer financing for commercial and residential properties.

Commissioner Marnane spoke to Page 29 of the report and the discussion of the RHNA numbers. He suggested that issue should also be revisited since the Town had no possible way to implement the plan. In terms of coordination with SMC, he would like to see that occur sooner rather than later. As to the 2016 Town Council Goals, he questioned Town Council Goal 2, and preferred that it be modified to read *How to accomplish obtaining funds to determine revenue measure(s) for a future ballot to fund*

the community's top priorities, and questioned the assumption that a revenue measure was needed. He wanted to see the Town stay within its budget. Speaking to Town Council Goals 12 and 13, he saw no justification for those goals and he characterized Town Council Goal 13 as a losing cause.

Commissioner Marnane suggested that all projects related to the Hacienda de las Flores were a hodgepodge, and should be cleaned up as to what the Town's objectives were for the project. He suggested that the document be forwarded to the Town Council with those comments.

Commissioner Kuckuk referred to Page 5 of the staff report related to the Livable Moraga Road project, understood the Town Council had recently approved a restriping project for the roadway, and cautioned when striping there were differences between pavement width and minimum right of way (ROW). As to Attachment A, Page 8, she clarified with staff that most of the work for the Palos Colorados project referenced had been done in calendar year 2016, not 2015. She also spoke to Page 22 of Attachment A, and received an update from staff on the agreement reached with SMC to address noise complaints related to the intramural playing fields. Staff was unaware of any noise or lighting complaints since the improvements had been implemented.

Commissioner Kuckuk also cited Page 31 of Attachment A, governmental constraints to affordable housing, and clarified with staff that no changes had been planned for the Town's existing three-part development approval process.

Ms. Clark explained that the effort had been part of the staff work program and a study session had been held by the Town Council in late 2015 to discuss ideas. Staff intended to bring that issue back to the Planning Commission for a study session to clarify what occurred at each step to make the approval process easier to understand.

Commissioner Kovac again referenced Appendix 1, M. Public Information and Education, M10, Public Safety Information, and suggested there should be some acknowledgement of the Moraga Police Department's efforts to be more involved in the community through multiple means.

Chairperson Woehleke spoke to the Planning Department work program priorities, which in 2015 included an objective to update the project application three-part development process, and Ms. Clark reiterated that the planned development process project remained on the Planning Department work program in an effort to clarify that process step by step and improve the findings and submittal requirements, which had been shown as the fourth bullet on Page 4 of the staff report.

Commissioner Marnane asked for an update from SMC on its parking, to which Ms. Clark affirmed that an annual report was required from SMC and the item would be brought to the Planning Commission in June.

On motion by Commissioner Marnane, seconded by Commissioner Mallela to forward the Annual General Plan Implementation Report for 2015 to the Town Council prior to its submittal to the Governor's Office of Planning and Research (OPR), and the State

Department of Housing and Community Development (HCD), subject to the comments from the Planning Commission. The motion carried by the following vote:

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

B. Review Proposed 2016-17 Capital Improvement Program (CIP) for Consistency with General Plan

Senior Planner Pearson presented the staff report dated May 16, 2016 for the review of the proposed 2016-17 Capital Improvement Program (CIP) for consistency with the General Plan. She recommended that the Planning Commission:

1. Find the proposed Five-Year CIP is consistent with the General Plan provided that:

   a. Future CIPs continue to consolidate related projects to ensure projects are comprehensively planned and designed, consistent with General Plan policies;
   b. New development projects may be required to construct, repair, or install improvements identified in the CIP as part of the development review process; and

2. Recommend the Town Council approve the proposed Five-Year CIP with the above-mentioned notes.

Commissioner Korpus referenced Pages 71 and 74 of Attachment B, the Five Year CIP, related to the Bollinger Canyon Road Hillside Stabilization Project and the Central Video Surveillance System project, which were high priority items. She clarified with Ms. Clark that projects which had funding allocated in the 2016/17 budget were projects that would be initiated this fiscal year.

Commissioner Marnane referred to the CIP Project Summary and recommended that the projects for the Hacienda be better consolidated since it was currently almost impossible to review properly. He suggested the Storm Drain Master Plan as it tied in with another CIP project was a disaster waiting to happen and should be a priority, as was the Bollinger Canyon Road Hillside Stabilization Project. He suggested the Storm Drain Improvement Program should be done immediately and tie into the Camino Ricardo Park project. Neighborhood Parks as shown on Page 62 of the CIP were unfunded and to be determined, and he recommended that project be deleted. He also recommended the deletion of the Central Video Surveillance System Project. He supported forwarding the document to the Town Council subject to the Commission's comments.

Commissioner Kovac emphasized the importance of providing a sound budget for a project. While the Town had a history of being fiscally conservative, he did not find that

was the case, particularly as related to Commons Park Sand Volleyball Court Renovation CIP 16-302 since the courts had been built fairly recently and there were plans to improve them again. He recommended more competitive bids be sought for the Town's CIP projects. He wanted the perception that the Town was not being fiscally responsible to be addressed at the Town Council level.

On motion by Commissioner Marnane, seconded by Commissioner Korpus that the Planning Commission finds that the proposed Five-Year Capital Improvement Program is consistent with the General Plan provided that future CIPs continue to consolidate related projects to ensure projects are comprehensively planned and designed, consistent with General Plan policies; new development projects may be required to construct, repair, or install improvements identified in the CIP as part of the development review process; and
Recommended that the Town Council approve the proposed Five-Year CIP with the above-mentioned notes and in consideration of comments made by the Planning Commission. The motion carried by the following vote:

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

7. REPORTS

A. Planning Commission

Commissioner Kovac reported that he had received e-mails from representatives from the Metropolitan Transportation Commission (MTC) and ABAG regarding a Bay Area 2040 meeting; he planned to attend the meeting not as a representative of the Town but to obtain information.

Commissioner Kuckuk reported that she had been scheduled to attend the upcoming Liaison Meeting, although after consideration staff would handle that meeting.

Chairperson Woehleke reported that the next Planning Commission meeting would be chaired by the Vice-Chairperson since he would be out of town. He had also traded his scheduled date to attend the next Design Review Board (DRB) meeting on June 13 as the Planning Commission Liaison with Commissioner Marnane, and would verify that change in schedule via e-mail.

B. Staff

Ms. Clark reported that Mayor Metcalf had stepped down from the Hillsides and Ridgelines Steering Committee, would not run for re-election to the Town Council, and Councilmember Wykle had been appointed as his replacement. The Livable Moraga Road Project would be presented in its entirety to the Town Council on May 25. Upcoming Planning Commission projects included clean-ups of the Town's accessory

building and structure regulations, and an application from City Ventures for General Development Plan (GDP) and Vesting Tentative Map approvals.

8. ADJOURNMENT

On motion by Commissioner Marnane, seconded by Commissioner D'Arcy and carried unanimously to adjourn the Planning Commission meeting at approximately 11:15 P.M.

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Secretary of the Planning Commission