

**TOWN OF MORAGA  
TOWN COUNCIL REGULAR MEETING**

**June 9, 2010  
MINUTES**

**7:00 P.M. Regular Meeting**

Joaquin Moraga Intermediate School Auditorium  
1010 Camino Pablo, Moraga, California 94556

**I. CALL TO ORDER**

The regular meeting was called to order at 7:02 P.M. by **Mayor Ken Chew**.

**ROLL CALL**

Councilmembers present: Mayor Ken Chew, Vice Mayor Karen Mendonca, and Councilmembers Howard Harpham, Michael Metcalf and Dave Trotter

Councilmembers absent: None

**II. PLEDGE OF ALLEGIANCE**

**Vice Mayor Mendonca** led the Pledge of Allegiance.

**III. ANNOUNCEMENTS AND PRESENTATIONS**

**Mayor Chew** commended the community for its efforts in achieving an 84 percent census form response rate, as reported in the Contra Costa Times on June 7, 2010.

**IV. ADOPTION OF THE CONSENT AGENDA**

**A. Approval of the Consent Items**

Consent Agenda Items 2 and 3 were removed from the Consent Agenda.

**PUBLIC COMMENTS OPENED**

There were no comments from the public.

**PUBLIC COMMENTS CLOSED**

<b>ACTION: It was M/S (Harpham/Trotter) to approve Consent Agenda item 1. Vote: 5-0.</b>
--

- |   |          |
|---|----------|
| 1) Accounts Payable Claims for 5/21/10 (\$95,012.84);<br>5/25/10 (\$38,275.52)  | Approved |
| 2) <i>Adopt Resolution No. 47-2010, Requesting and Consenting to Consolidation of Elections; and Setting Specifications of the Election Order</i> | Removed  |

3) *Motion to Approve Cancellation of two Regular Town Council Meetings dated August 11, 2010 and August 25, 2010*

*Removed*

**B. Consideration of Consent Items Removed for Discussion**

1. Adopt Resolution No. 47-2010, Requesting and Consenting to Consolidation of Elections; and Setting Specifications of the Election Order

Town Clerk Marty McInturf clarified that the cost for printing the candidate statements was the same whether it was for 200 or 300 words, although the cost would increase beyond that. She added that the candidate statements had been limited to 200 words in the last General Election.

**PUBLIC COMMENTS OPENED**

Phillip Arth, Moraga, supported a 300-word limit, given that the cost to the Town would be the same, and which would allow more information to go out to the voters.

Jeff Schwartz, Moraga, also supported a 300-word limit, as there would be no increased cost to the Town, and to ensure that candidates had an opportunity to convey their message.

**PUBLIC COMMENTS CLOSED**

**ACTION: It was M/S (Metcalf/Mendonca) to adopt Resolution 47-2010, Requesting and Consenting to Consolidation of Elections; and Setting Specifications of the Election Order. Vote: 5-0.**

**ACTION: It was M/S (Metcalf/Harpham) to adopt Resolution 48-2010, Adopting a Policy for Candidates' Statements Printed in Voter's Information Pamphlets, not to exceed 200 words. Vote: 5-0.**

2. Motion to Approve Cancellation of two Regular Town Council Meetings dated August 11, 2010 and August 25, 2010

The Town Council discussed the possibility of holding a meeting in August due to the number of items scheduled for the July Council agendas, and the commitment to have the Revenue Enhancement Outreach Subcommittee report to the Council in July.

Town Manager Michael Segrest advised that staff had not anticipated any items to be scheduled for the month of August, although if the Town Council needed to conduct business, a Special Meeting could be scheduled. He noted that some business could not be conducted during a Special meeting, and if such business was needed, a regular meeting during the month of August might be necessary. He anticipated that the Revenue Enhancement Outreach Subcommittee report would be scheduled for July 28.

The Town Council decided to table the item until the July 14 meeting at which time the Town Council would decide whether or not to cancel the two regularly scheduled meetings in August.

**PUBLIC COMMENTS OPENED**

There were no comments from the public.

**PUBLIC COMMENTS CLOSED**

**ACTION: It was M/S (Trotter/Metcalf) to table the request to cancel the regular Town Council meetings of August 11, 2010 and August 25, 2010, to be considered as a Consent Item during the regular Town Council meeting on July 14. Vote: 5-0.**

**V. ADOPTION OF MEETING AGENDA**

**PUBLIC COMMENTS OPENED**

There were no comments from the public.

**PUBLIC COMMENTS CLOSED**

**ACTION: It was M/S (Trotter/Harpham) to adopt the Meeting Agenda, as shown. Vote: 5-0.**

**VI. PUBLIC COMMENTS AND SUGGESTIONS**

Edy Schwartz, Moraga, President of the Moraga Chamber of Commerce, invited the Town Council to attend the Business Person of the Year Dinner, scheduled for June 28 at 6:00 P.M. at Terzetto's Restaurant, to be sponsored by Mechanics Bank, honoring Mike Lawrence, Manager of CVS/pharmacy. She also reported that the Rheem Theater had new management and she invited the Town Council to a reception at the theater scheduled for June 25 at 6:30 P.M., at which time the theater programs would be introduced. She asked the Town Council to consider how the Town could support the theater, as the new management was a nonprofit organization and there were a number of opportunities for the Town to help the facility succeed.

Bob Reynolds, Moraga, commented on the professionalism of CVS/pharmacy and its Manager Mike Lawrence. He reported that Concerts in the Park would begin on Thursday, June 17, and invited the Town Council to attend.

**VII. SPECIAL ORDERS - PUBLIC HEARINGS - None**

**VIII. UNFINISHED BUSINESS**

- A. Adopt Resolution 49-2010, Certifying Street Lighting and Assessment District 1979-1 Ballot and Adopt Resolution 50-2010, Confirming Diagram and an Increase Levy in Assessments beginning in Fiscal Year 2010/11 within the Town of Moraga Street Lighting Assessment District 1979-1

Public Works Director/Town Engineer Jill Mercurio reported that in March 2010 the Town Council had adopted a resolution declaring its intention to authorize an increase in assessments for Street Lighting Assessment District (LAD) 1979-1, and put the assessment to the members of the LAD for a ballot approval. Ballots had been mailed on April 9, 2010 and were due at the end of the public hearing held on May 26, 2010. A total of 2,426 valid ballots had been received from those members of the LAD, with staff having received 100 more ballots that were not valid through a number of errors. Based on the results, 57 percent of the weighted ballots were in support of the increase in assessment and 43 percent were in opposition. Given the majority protest did not exist, the increased assessment could be levied. The ballot tabulation and process was also identified. Ms. Mercurio added that a number of the ballots had included written comments which she relayed to the Town Council.

Susanne Brown, Town Attorney, explained that the type of ballot that had been mailed to those members in the LAD was typical of a mail-in-ballot process consistent with the Government Code. She stated that secret ballots could be an option although additional research would have

to be done since Proposition 218 required that voters of the property be identified. She affirmed that she had spoken with staff and the proper procedures had been followed consistent with the regulations of Proposition 218.

Ms. Mercurio also clarified that a staff person had opened and numbered the ballots, handed them to the representative from an independent consultant, who had then scanned them into a database to ensure there were no duplications. The entire process had been done during work hours and had been open to the public. The count itself had been conducted by an independent consultant. She affirmed that the ballots were a part of the public record.

Randy Leptien, Leptien, Cronin, Cooper, Morris & Poore, Inc., affirmed that the comments made by the Town Attorney and staff were accurate regarding the ballot process. He confirmed the total amount that had been assessed, as contained in the staff report, noting that said information had been included as part of the process to clarify that all ballots had been accounted for. The diagram in the staff report which had confirmed the assessments in the district had been part of the Engineer's Report approved as part of the preliminary proceedings, and which had been included with terminology coming straight from the Assessment District.

Ms. Brown affirmed that the Engineer's Report had previously been approved.

#### PUBLIC COMMENTS OPENED

There were no comments from the public.

#### PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Metcalf/Trotter) to adopt Resolution 49-2010, Certifying Street Lighting and Assessment District 1979-1 Ballot. Vote: 5-0.**

**ACTION: It was M/S (Metcalf/Mendonca) to adopt Resolution 50-2010, Confirming Diagram and an Increase Levy in Assessments beginning in Fiscal Year 2010/11 within the Town of Moraga Street Lighting Assessment District 1979-1. Vote: 5-0.**

- B. Adopt Resolution 51-2010, Revising Resolution 20-2008 Establishing Rules for Election of Council Officers and Rules of Proceedings for Conduct of Council Meetings

Mr. Segrest explained that the Town Council had previously discussed the item and had made revisions to the Rules of Proceedings for the Conduct of Council meetings, including a change in the meeting start time to 7:00 P.M., which had commenced with the June 9 Town Council meeting. Staff had also made additional recommended revisions consistent with Town Council past practices which had been reflected in the resolution for consideration. Mr. Segrest recommended that the Town Council approve the recommended revisions, including any additional revisions the Council would like to make.

#### PUBLIC COMMENTS OPENED

There were no comments from the public.

#### PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Trotter/Mendonca) to adopt Resolution 51-2010, Establishing Rules for Election of Council Officers and Rules of Proceedings for Conduct of Council Meetings and Rescinding and Replacing Resolution 20-2008. Vote: 5-0.**

### C. Status Report on Rubber Cape Seal Paving Project on Moraga Road

Ms. Mercurio reported that portions of the resurfacing of the Moraga Road Rubber Cape Seal Paving Project had failed after completion. Due to the imminent rainy season and cooler temperatures, nothing could have been done at that time. She stated that she had discussions with the contractor's Vice President via e-mail and had met with the contractor's representative to discuss the project. The President, Vice President, and Project Superintendent would like to meet with staff again to review the issues with the project. She described the reasons for the failure of the resurfacing project where the final surface product had not turned out as the Town had expected. The contractor had agreed that the job was poor, was not pleased with the product and was agreeable to return and conduct repairs. She understood that the contractor had experienced similar issues with other projects and she understood from other jurisdictions that the contractor had in some cases commenced with repairs and had been cooperative.

Ms. Mercurio explained that she had asked the contractor to identify the areas of failure, to repair them to the condition expected, and to also conduct a micro-surface on the entire length of the project, although the contractor had not yet responded to that request. She added that although the contractor firm had been unable to send a representative to the Town Council meeting, they had expressed a willingness to possibly attend the next meeting. She emphasized that the product itself had been warranted, the Council had never accepted the project as complete, and the warranty would not commence until the work had been completed and deemed acceptable. She confirmed that much of the e-mail and telephone communications with the contractor had been documented.

As to when the repairs would be made, Ms. Mercurio anticipated a schedule would be identified once the President and Vice President of the company had visited the site. She expected that the repairs would be done during the summer prior to the start of school, which had been communicated to the contractor. She clarified that the contractor had received 95 percent of their payments and the Town no longer held retentions for federally funded projects for a number of reasons. She also clarified the lifespan of the product.

#### PUBLIC COMMENTS OPENED

There were no comments from the public.

#### PUBLIC COMMENTS CLOSED

The Town Council asked to be informed of discussions with the contractor and the schedule for repairs once known so that the public could be informed.

### IX. NEW BUSINESS

#### A. Proposed FY 2010-11 Operating and Capital Improvement Program Budgets

Mr. Segrest introduced Interim Administrative Services Director Emily Boyd who together presented a PowerPoint presentation on the FY 2010-11 Operating and Capital Improvement Budgets as outlined in the June 9, 2010 staff report. An overview of the 2009-10 Budget in terms of how the Town was doing was presented, with staff noting that the 2010-11 Budgets were in balance with projected annual revenues sufficient to cover proposed annual expenditures. The General Fund was projected to have a surplus of \$255,439 at the end of the 2010-11 Fiscal Year, which would bring the General Fund to \$2,686,610. It was noted that the goal of the Council was to have the fund balance to 50 percent of the annual budget and to allocate half of any year-end surplus to increase the fund balance and one half to capital

projects the following year. Staff had not proposed allocating any of the year-end surplus from the 2009-10 budget for capital projects pending the final audit which could be done as part of the mid-year update. Operating funds, capital funds, and revenues were identified for the 2010-11 fiscal year as were the General Fund and Town Department expenditures along with supplemental requests.

Ms. Mercurio presented the Capital Improvement and Preservation Projects for 2010-11, which included carry forward and new project requests.

Mr. Segrest explained that adoption of the proposed 2010-11 Budget would allow the Town to continue to provide basic services in FY 2010-11 with essentially the same level of service as the current year, and to continue implementing a few capital improvement projects. The General Fund balance had been projected to increase slightly during the coming year and all other funds would continue to have positive fund balances. Mr. Segrest asked the Town Council to accept or deny the supplemental funding requests, approve or modify the proposed budget, and provide direction to staff on the preparation of the FY 2010-11 Operating and Capital Improvements Budgets.

Mr. Segrest and Ms. Mercurio responded to questions from the Council on the budget presentation. Parks and Recreation Director Jay Ingram also identified revenue increases from user fees for Town facilities. Chief of Police Robert Priebe also responded to questions from the Council on the proposed supplemental item request to fund two police vehicles to ensure a functional fleet that would be reliable throughout the year and involve fewer maintenance costs.

#### PUBLIC COMMENTS OPENED

Phillip Arth, Moraga, President, Moraga Movers, requested the Town Council consider increasing the Parks and Recreation Assistant position beyond the 10 percent, ideally to a full-time employee, benefitting not just Moraga Movers, but the entire Town.

David Kruegel, Moraga, Friends of the Moraga Library, expressed his support for the proposal to fund off-street parking at Moraga Commons which would assist in avoiding the degradation of facilities and would have a safety payoff for children in the area. He advised that the Friends Board had also discussed the proposal and urged consideration of a shovel-ready project where federal stimulus or transportation funds could be sought.

Marty Ofhauser, Moraga, read into the record a letter from Moraga resident George Fisher who expressed concern with the budget recommendations for the Parks and Recreation Department.

#### PUBLIC COMMENTS CLOSED

The Town Council discussed the 2010-11 Operating and Capital Improvement Budgets and offered the following direction and recommendations to staff:

- Provide a tally of the number of Town employees for the current Fiscal Year, as opposed to prior years;
- Provide a revenue breakdown sheet for the Parks and Recreation Department, particularly the costs for the Hacienda facility;
- Provide more information on the actual expenditures under Travel, Conference and Meetings for the Town Council budget;
- Provide additional information on the proposal for off-street parking at Moraga Commons with input from the Traffic Safety Advisory Committee (TSAC);
- Provide information for potential parking on the creek side of Moraga Commons;
- Reach out to local service clubs to assist in the Parks and Recreation Department;

- Provide information on the potential use of 2009-10 Budget surplus, Quimby funds or other funding sources, rather than the use of Palos Colorados funds for the proposed off-street parking at the Commons;
- The Town to fund \$9,000 for the Spirit Van;
- Bring back more detail; i.e., expenditure and cost revenues in response to a request from Moraga Movers to increase the hours for the Recreation Assistant position;
- Bring back specifics on revenues for the use of Town facilities, specifically the use of the Hacienda, including projected revenues based on the proposed increase for non-resident fees;
- Reach out to local service clubs/organizations on the potential for fundraising opportunities to fund the \$10,000 for the CaliforniaFIRST Energy Program with staff to continue identifying the funding expenditure from the Comcast PEG Unrestricted Fund as part of the budget; and
- The Asset Replacement Funding Budget acceptable as proposed by staff.

Mr. Segrest advised that staff would return at the next meeting of the Council with a finalized budget for Council consideration.

#### X. ORDINANCES - None

#### XI. REPORTS

##### A. Council Requests for Future Agenda Items

**Councilmember Metcalf** reiterated a prior request that a future agenda item include a potential ballot measure regarding off-leash dog regulations for the November ballot. He understood that discussions would have to be held during the next meeting of the Council in order to meet the deadline for items to be placed on the November 2010 ballot.

Mr. Segrest reported that an agenda item for a potential ballot measure could be scheduled for the next meeting of the Council or the meeting of July 14. He expressed concern with the process and procedure for an advisory ballot measure, which discussion would likely dominate an entire meeting and would have to be done in a short period of time given the deadline to meet the November ballot.

By consensus from **Councilmembers Harpham, Trotter and Mayor Chew**, it was agreed to resolve the issue of Rancho Laguna Park off-leash dog regulations on their merits and not consider an advisory ballot measure to meet the November ballot deadline.

Mr. Segrest explained that staff could still agendize a discussion on Rancho Laguna Park for the June 23 meeting agenda with suggestions on how to improve the spatial separation between uses without having to create a separate dog park.

**Councilmember Harpham** requested that a future agenda item include a discussion on the dangerous condition at the intersection of Alta Mesa and Moraga Road with the Public Works Director/Town Engineer to schedule when appropriate.

**Mayor Chew** expressed concern with the method of using oversized election signage which had been cut in half for one candidate in particular, being installed in the Town and which should be discussed on a future agenda.

By consensus, the Town Council determined that in this instance the Town's Sign Ordinance shall not be revised to address oversized election signage.

**B. Mayor's and Councilmembers' Reports**

**Mayor Chew** – Reported that he had attended the latest Mayors' Conference.

**Vice Mayor Mendonca** – Reported that the Moraga Youth Involvement Committee (MYIC) would be meeting this week which would be its last meeting until the July 4 pancake breakfast. She commended the efforts of the MYIC and expressed her appreciation for working with the group.

**Councilmember Harpham** – Reported that he had attended a session on how to operate a community theater, and expressed his hope for the success of the Rheem Theater and his willingness to work to make that happen.

**Councilmember Metcalf** – Reported that he had attended a recent Contra Costa Transportation Authority (CCTA) meeting with a discussion on legislation where local Congestion Management Agencies (CMAs) would be entitled to place on the ballot a Vehicle Registration Fee (VRF) up to \$10 for the purpose of funding local streets and roads maintenance, improvements and transit related items, and which may have a positive effect on the Town's budget if passed. The CCTA would take action on the proposal in July. He added that there was another ballot initiative that was underway receiving signatures for a hidden tax initiative which was under review by CCTA's legal counsel.

**Councilmember Trotter** - Reported that he had attended the Mayors' Conference when there had been a great deal of public comment on two appointments to the Local Agency Formation Commission (LAFCO) as it related to those members having signed a letter of support of the City of Brentwood's Measure F. An upcoming meeting of the Mayors' Conference Executive Committee would discuss either taking action on the matter or discussing the authority of LAFCO members. He stated he had also attended the Solid Waste Authority Meeting where there had been a discussion on the adoption of the Agency's budget for the next fiscal year.

- C. Town Manager Update – Mr. Segrest reported that staff was working on the recruitment process for the Town Manager position with information to be presented to the Council at its next meeting.

**XII. COMMUNICATIONS - None**

**XIII. ADJOURNMENT**

**ACTION: It was M/S (Trotter/Harpham) to adjourn the meeting at 10:59 P.M. Vote: 5-0.**

Respectfully submitted by:

  
\_\_\_\_\_  
Marty C. McInturf, Town Clerk

Approved by the Town Council:

  
\_\_\_\_\_  
Ken Chew, Mayor