

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**April 13, 2011
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 7:01 P.M. by **Mayor Karen Mendonca**.

ROLL CALL

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

Councilmembers absent: None

II. PLEDGE OF ALLEGIANCE

Councilmember Trotter led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

There were no special announcements.

IV. PROCLAMATIONS AND PRESENTATIONS

- A.** Certificate of Appreciation for Officer Russell Douthit and Recognition from Mothers Against Drunk Driving (MADD) for his DUI Enforcement Efforts in 2010

Chief of Police Robert Priebe recognized Officer Russell Douthit for his DUI Enforcement Efforts in 2010, reported that during the March 26 MADD Recognition Dinner Officer Douthit had been presented with a Personal Heroes Award, and noted that the Moraga Police Department had also received an award from MADD. He commended Officer Douthit for all his efforts for the Town of Moraga.

Mayor Mendonca read into the record and presented the Certificate of Appreciation for Officer Douthit and, on behalf of the Council, expressed her appreciation to Officer Douthit.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

- B.** Proclamation Honoring the Hacienda Foundation of Moraga

Mayor Mendonca read into the record a proclamation honoring the Hacienda Foundation of Moraga and declared April 13, 2011 as Hacienda Foundation of Moraga Day. The proclamation “urged all citizens to support the Foundation by attending one of the community-wide events and by donating to their continued efforts to enhance the Town of Moraga.” The proclamation was presented to several members of the Hacienda Foundation present in the audience.

The Town Council commended and thanked the Hacienda Foundation for its numerous contributions to the community.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

V. PUBLIC COMMENTS AND SUGGESTIONS

Frank Comprelli, Moraga, expressed his appreciation to Vice Mayor Metcalf and Councilmember Chew for their representation of the Town on the Tri-Agency Committee.

Scott Bowhay, Moraga, spoke to Consent Agenda Item 5; the proposed pedestrian activated crosswalks at Moraga Road, and asked that the issue be vetted through the public and by the Traffic and Safety Advisory Committee (TSAC) given that the improvements would be considered Level 2 traffic calming devices.

Ellen Beans, Moraga, presented the Council with a sample of the banners advertising the Community Faire to be held on Saturday, May 14, at the Rheem Valley Shopping Center, which would be displayed for a three-week period as approved by the Town Council. She encouraged the Town Council to participate in sponsoring a booth at the event as done in the past.

Town Manager Jill Keimach reported that there had been some discussion about the Town Council sharing their booth with the Economic Development Team or the Parks and Recreation Department to ensure a place for Councilmembers to be able to greet the public either at the booth or through participation at the Community Faire.

By consensus, the Town Council directed staff to register a Council booth for the Community Faire to be shared with the Economic Development Team.

VI. ADOPTION OF THE CONSENT AGENDA

A. Approval of the Consent Items

Consent Agenda Items 2, 4, and 5 were removed from the agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Harpham/Chew) to approve Consent Agenda Items 1, 3, 6, 7, 8, and 9. Vote: 5-0.

- | | | |
|----|--|----------------|
| 1) | Accounts Payable Claims for 3/25/11 (\$25,201.30) | Approved |
| 2) | <i>Approve Minutes for Town Council Regular Meeting March 9, 2011</i> | <i>Removed</i> |
| 3) | Approve Minutes for Town Council Regular Meeting March 23, 2011 | Approved |
| 4) | <i>Adopt Resolution 9-2011 Amending Moraga's Conflict of Interest Code and Rescind Resolution 8-97</i> | <i>Removed</i> |
| 5) | <i>Adopt Resolution 10-2011 Awarding a Professional Services Contract not to exceed \$20,000 to Harrison Engineering, Inc., Pleasant Hill, California for the design of the Moraga Road Crosswalk Improvements Project, CIP Project No. 09-103</i> | <i>Removed</i> |
| 6) | Accept Building Insulation Improvements Installed by Alcal-Arcade Contracting, Inc., of Fremont, CIP No. 10-304c | Approved |
| 7) | Approve Resolution 8-2011 Authorizing Staff to Enter into an Agreement with MCK Services., Inc. of Concord in an Amount not to Exceed \$80,000 for Patch Paving Repairs Throughout Town | Approved |
| 8) | Cancellation of July 27 and August 10, 2011 Town Council Meetings | Approved |
| 9) | Proclamation Honoring Citizen of the Year 2011 Gordon Nathan | Approved |

B. Consideration of Consent Items Removed for Discussion

1. Approve Minutes for Town Council Regular Meeting March 9, 2011

The following changes were made to the minutes of March 9, 2011:

To Page 3, under Item VIII. Reports, revise Councilmember Chew's report to read:

Councilmember Chew - No report.

To Page 13, eliminate the sentence reading:

Vice Mayor Metcalf and Councilmember Chew returned to the dais.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Harpham) to approve the March 9, 2011 Town Council Regular Meeting Minutes, as amended. Vote: 5-0.

2. Adopt Resolution 9-2011 Amending Moraga's Conflict of Interest Code and Rescind Resolution 8-97

Town Manager Keimach requested that the list of designated positions for the disclosure category Exhibit B, Designated Employees, add the position of Town Engineer/Public Works Director. The resolution itself would not have to be changed.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Chew) to adopt Resolution 9-2011 Amending Moraga's Conflict of Interest Code and Rescind Resolution 8-97, as amended. Vote: 5-0.

3. Adopt Resolution 10-2011 Awarding a Professional Services Contract not to exceed \$20,000 to Harrison Engineering, Inc., Pleasant Hill, California for the design of the Moraga Road Crosswalk Improvements Project, CIP Project No. 09-103

In response to the Town Council request that the project go through the TSAC process, Public Works Director/Town Engineer Jill Mercurio reported that the item had been approved in 2009 and may have already gone through the TSAC process, although she would have to verify that information and would report back to the Council. She clarified that the crosswalks already existed and the pedestrian activated warnings were the only item being added. Most of the funding for the project would be through Transportation Development Act (TDA) monies to be used by June 30, 2012. She added that Professional Services contracts were not a low bid opportunity. She explained that costs for professional services were not provided until after the best firm, based on ability, had been determined. Harrison Engineering had been used in the past, was familiar with Moraga roads, and the Town was satisfied it would provide the best product.

Chief Priebe outlined incidents involving serious collisions with pedestrians off of Corliss Drive. He explained the design of the road was a hazardous crossing for anyone. He supported the approval of the project and added that additional lighting at both crosswalks would be a benefit and suggested that the pedestrian activated warnings would be a great first step for safety.

Ms. Mercurio commented that both crosswalks would include overhead beacons that would be either side mounted or with a single mast arm to sit over the street to flash when a pedestrian activated the button, and which would notify drivers of someone in the crosswalk. She noted that the costs for the project were typical and when the Town received its grant from the County the project had been determined to be worthy of being fully funded. She clarified that the design phase had not yet been completed and the alternatives to address the drainage remained to be determined, the selection of which would impact the costs.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Harpham) to adopt Resolution 10-2011 Awarding a Professional Services Contract not to Exceed \$20,000 to Harrison Engineering, Inc., Pleasant Hill, California, for the design of the Moraga Road Crosswalk Improvements Project, CIP Project No. 09-103. Vote: 5-0.

VII. ADOPTION OF MEETING AGENDA

Mayor Mendonca modified, with Council consensus, the meeting agenda for Item XI, Ordinances, Resolutions and Requests for Action to reorder consideration of Items A through C, as B, C, and A.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

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

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Mendonca – Reported that she had served as the Keynote Speaker for the Fulbright Scholarship Ceremony at Saint Mary's College; the MYIC was involved in the Backpack Drive and the Tri-City Dance scheduled for April 22; the Citizen of the Year Dinner scheduled for April 14 would honor Gordon Nathan; and she had been elected to serve as the Chair of the Central Contra Costa Solid Waste Authority Board for the period March 2011 through March 2012.

Vice Mayor Metcalf - Reported that he and Councilmember Chew had attended the last of the Tri-Agency meetings; he had attended a number of Moraga-Orinda Fire District (MOFD) Board meetings; and the RECON field survey work had been completed and would be analyzed. He expected a meeting would be scheduled soon between the RECON and the Town Council on the results of the survey.

Councilmember Chew – Reported on numerous Tri Agency meetings that he had attended. He reported on discussions regarding the formation of a task force to present a report to the Orinda City Council on the possibility of disbanding the MOFD via a petition or through LAFCO which was discussed during the last Tri-Agency ad hoc subcommittee meeting. He also reported that the 1% property tax paid by each homeowner was split several different ways with a significant amount leaving Moraga.

Councilmember Harpham - Reported that he had met with representatives for the off-leash dog park and understood that some of the issues had been resolved. He anticipated that the Town Council would take action on that issue in the near future.

Councilmember Trotter - Reported on the Mayors' Conference in the City of San Ramon on April 7; the Contra Costa Solid Waste Authority meetings; and noted that recommendations would be made to the Board on which bills the Solid Waste Authority should support, watch or oppose. He added that a Finance Committee meeting would be held on Thursday, April 14.

- B. Town Manager Update – Ms. Keimach announced that April was Distracted Drivers Month with zero tolerance by the Moraga Police Department. She commended the Department which had pulled over 60 individuals in the last 13 days as part of those efforts.

IX. DISCUSSION ITEMS

There were no discussion items.

X. PUBLIC HEARINGS

- A. Public Hearing, First Reading and Introduction of an Ordinance Amending Town Municipal Code Section 7.16.090 Regarding Amending the Record of Expenses to Include Recovery of Attorneys' Fees

Planning Director Lori Salamack explained that the item was an outgrowth of the recent nuisance abatement action taken for property on Calle la Montana. State law allowed the Town to recover attorneys' fees in association with nuisance abatement proceedings provided the ordinance establishing the procedures for nuisance abatement specified the recovery of attorneys' fees. State law also required the attorney fees to be recovered by the prevailing party which would be reflected in the ordinance. In consultation with the Town Attorney a draft ordinance had been prepared. She asked that the Town Council conduct a first reading noting that the actual reading could be waived, and introduce the draft ordinance identified as Attachment A to the staff report dated April 13, 2011.

In response to the Council, Town Attorney Michelle Kenyon explained that the introduction of the ordinance could not be applied retroactively to the Calle la Montana property given that the ordinance would become effective 30 days after adoption. However, any attorneys' fees incurred in association with the Calle la Montana property after the adoption of the ordinance could be recovered. She stated that the Government Code providing for attorney fees remedy had been adopted several years ago but had not been adopted when the Town had adopted its nuisance abatement procedures.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Metcalf) to conduct a first reading, waive the actual reading, and Introduce an Ordinance Amending Town Municipal Code Section 7.16.090 Regarding Amending the Record of Expenses to Include Recovery of Attorneys' Fees, as shown in Attachment A to the staff report dated April 13, 2011. Roll Call Vote: 5-0.

XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

- A. Review 2011 General Plan Implementation Program Status Report and Request for Direction on the Bollinger Canyon Special Study IP-K7

Ms. Salamack reported that the review of the General Plan Implementation Program Status Report was presented to the Town Council on an annual basis, as required by General Plan Implementation Program A4, requiring review prior to the Town budget process. Page 4 of the Implementation Status Report included a table specifying target dates for certain implementation programs. The only programs included in the table were programs that had a

specified target date in the original General Plan adopted in 2002. Other programs had been identified as ongoing or annual.

Ms. Salamack stated that given the Town's limited resources, all of the programs that had been identified for completion had not been able to be completed in accordance with the original schedule. Staff continued to work on the implementation of the General Plan with Council priorities identified at the beginning of the calendar year. As an example, the Emergency Preparedness Disaster Plan was an ongoing program but had been established as a Council priority during its 2011 goal setting session.

Ms. Salamack noted that Implementation Program IP-K7 called for the preparation of a Special Study for the Bollinger Canyon area. The study had been underway for several years and additional study was required. She reported that in December 2010, the Town received a mitigated development proposal for the Bollinger Canyon area from the Bruzzone family, although the Bollinger Canyon Study area was not under single ownership. The Bruzzone family was one of many owners in the area designated as Study on the General Plan Land Use Map. The Town was actively processing only a study for a portion of the entire area. All property owners had been invited to participate in a study in 2003 when the Implementation Program had been initiated, but only the Bruzzone family had elected to participate.

Town staff was processing the Bruzzone Bollinger Canyon Study and development proposal consistent with the direction in the General Plan, including a General Plan Amendment, project description, and potential for Development Agreement if such a project was approved by the Town. Ms. Salamack stated that staff was in the process of developing an Environmental Impact Report (EIR) for the project. In order for the Town to take action on the proposal, it would need to have complete review under the California Environmental Quality Act (CEQA). The environmental review process had commenced in June 2006, suspended during the initiative process in 2008, recommenced following the 2008 election, with the Town having completed an Administrative Draft EIR in early 2010. That document had been reviewed by staff and sent back to the consultant for further clarification and corrections.

Following the release of the Administrative Draft, the property owner submitted a revised project description to the Town in December 2010. In January 2011, staff received a proposal from the consultants to expand the environmental review, with the contracts for amendment to be presented to the Town Council at a future meeting. Staff had been in communication with more than one member of the applicant's family and as a result there had been some conflicting information. That conflict had been resolved and the Bruzzone family intended to proceed with the environmental review of the project submitted to the Town in 2003, as evidenced by a recent letter submitted to Town staff from David Bruzzone.

Ms. Salamack explained that the alternatives that had been presented to the Town Council in the first staff report would not be the alternatives recommended today since any property owner had the right to apply for a General Plan Amendment with respect to their property.

Ms. Salamack emphasized that the Town had a duty to process the application submitted by the Bruzzone family, with other alternatives identified in the staff report with respect to understandings that staff had with other members of the Bruzzone family. She asked that the Town Council review the General Plan Action Plan, provide clarification as necessary, and provide direction regarding IP-K7, the Bollinger Canyon Special Study.

In response to the Council, Ms. Salamack identified the Study Area on the Zoning Map, 186 acres owned by the Bruzzone family and almost 500 acres owned by approximately 20 other property owners. She commented that the Town would have to address the other properties not owned by the Bruzzone family through either a General Plan Amendment or a Comprehensive

Update to the General Plan. She clarified that the Bruzzone family would be paying for the EIR as required by the General Plan when adopted in 2002. A staff report would be brought to the Town Council at a future meeting but additional monies for various review services would be necessary to complete the Draft EIR. The applicant had been advised of the full costs of processing the Rancho Laguna II proposal, which costs were in the neighborhood of \$1.5 million, (on the Town's side not including the applicant's consultants and experts), which costs were only through the EIR Conceptual Development Plan stage.

Ms. Salamack explained that the revised project, which had been submitted in December 2010, had not yet gone through a scoping session by the Planning Commission given that staff was working on the budget for the consultant to do that work. Given the period of time since the last scoping session had occurred, it would be important to have that review by the Planning Commission and input from the public. She also clarified that a no project alternative would evaluate the development potential for the site as if there were no General Plan Amendment.

Ms. Salamack detailed the fees as shown on Page 9 of the General Plan Action Plan applicable to Saint Mary's College total enrollment, which data was reviewed regularly with the Saint Mary's College Government Relations Director. She affirmed that information of the historical fees paid by Saint Mary's College could be obtained for the Council's edification. As to the status of the Saint Mary's College Nexus Study, she noted the determination that it would not be a Council priority this year but on the calendar for the next year.

Ms. Salamack also clarified the development impact fees as related to Saint Mary's College which only applied to new development on the campus or if some improvements were made that resulted in more students on campus, such as an expansion to the dorm rooms or housing. She noted that the fees collected over the past few years from Saint Mary's College were nothing at this time given the high benchmark.

PUBLIC COMMENTS OPENED

Frank Comprelli, Moraga, asked when a full review of the General Plan was anticipated. He spoke to the Bollinger Canyon Study Area and noted that there had been a Draft EIR review in 2006 which had involved Planning Commission hearings in which he had participated. He understood that those hearings would be repeated since a new plan had been submitted in December 2010. Speaking to Dave Bruzzone's most recent letter to the Town, he asked for a non-lawyer response to that correspondence. He asked that the Town Council consider that the Bollinger Canyon Area was in Moraga Open Space Ordinance (MOSO) area and he suggested that the property should be a Town-designated MOSO area.

Eric Kolhede, Moraga, highlighted a letter from his wife dated December 11, 2010, which had been submitted to Dave Bruzzone, the Town Manager, the Town Council and the Planning Commission. He expressed concern that it had been reported that residents of Valley Hill Drive were in support of the Bollinger Canyon Area proposal, which was not the case. He noted that residents were not interested in discussing future proposals unless proposed plans accommodated the density for any development at no more than one dwelling or residence per five plus acres, and that the entrance not be at Valley Hill Drive but be one of the other three alternatives indicated by the Bruzzone Group, which had been considered but dismissed.

Susan Johnson-Sperry, Moraga, asked the Town Council to consider that the proposed Bollinger Canyon Area development entrance would be through a property not owned by the Bruzzone family.

Dave Bruzzone, Moraga, stated that the Bruzzone family's plans had been consistent with the 2002 General Plan and that the application had been timely submitted in 2003. The plan was

currently going through the application process with input from Town staff. He suggested that there had been misinformation about the proposal. He wanted the study to be done correctly, suggested that the submitted project revision was not a new project application but a refinement, and explained that many of the concerns raised at this time had been discussed during the scoping sessions and would be studied as part of the CEQA documents. He suggested that the project was viable, worked within the footprint and constraints of the submitted project application which had been submitted in 2003, and he encouraged staff to follow an efficient and effective continuation of the EIR process. He acknowledged that if additional work was required by the consultants, it was appropriate that the Bruzzone family pay for those costs. He otherwise had no plan to discuss or present any testimony on the plans at this time but would like the opportunity to respond to any of the comments received.

PUBLIC COMMENTS CLOSED

The Town Council discussed the General Plan Implementation Program Status Report and Request for Direction on the Bollinger Canyon Special Study IP-K7, and offered the following comments and/or direction to staff:

- No change to the land use designation of the study area; and
- Staff to consider starting the process for a General Plan Amendment to the study area in the fourth quarter of the next fiscal year, if it made sense.

By consensus, the Town Council accepted the 2011 General Plan Implementation Program Report.

- B.** Adopt Resolution 11-2011 Awarding a Construction Contract to MCK Services, Inc., of Concord for the Construction of the Rheem Boulevard Pavement Rehabilitation Project, CIP Project No. 10-101

Ms. Mercurio reported that plans and specifications had been prepared to bid a project to repair portions of Rheem Boulevard, from Moraga Road up through Fayhill Reservoir, skipping over those portions impacted by the landslide in the Rancho Laguna frontage area and resuming repairs from the residential area down to St. Mary's Road. The project would not address the area affected by the landslides. The project had been approved last year as part of the second round of economic stimulus monies when the Council had approved a design contract for the work. Recently, the Town had determined that it had money to be used for this fiscal year and this project was shovel ready and could be put out to bid and constructed quickly. There were six bidders on the project. The Engineer's Estimate was \$688,000, but the range of bids was \$497,999 to \$524,000.85. All bids were approximately 25 percent below the Engineer's Estimate because the Engineer's Estimate accounted for high asphalt costs given the current increasing costs of oil. The project must be substantially complete by the end of June.

Ms. Mercurio stated that staff had checked the references for MCK Services, Inc., and noted that the firm had worked locally for the City of Lafayette. The firm had also been the lowest bidder for the patch paving project in Moraga and was involved with another project located in Lafayette. The firm intended to do the patch paving first in May and the Rheem Boulevard rehabilitation work in late May or early June.

In response to the Council, Ms. Mercurio explained that the patch paving project could be done by smaller contractors. MCK was the only company that had bid on both projects. The patch paving project was located in different areas throughout Town. Staff chose not to bid the two projects together as one project so smaller contractors had an opportunity to bid.

Ms. Mercurio also clarified the details of the Additive Alternate as identified in the staff report and clarified that the project was not being awarded with the Additive Alternate. However, staff has confirmed with the Town Attorney that once the contract was awarded, the Town may negotiate with MCK Services for that work at whatever negotiated rate both parties deemed acceptable. If no mutually acceptable cost could be determined, the work could be rebid, although there would be additional staff costs involved with that approach.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Chew/Trotter) to adopt Resolution 11-2011 Awarding a Construction Contract to MCK Services, Inc., of Concord for the Construction of the Rheem Boulevard Pavement Rehabilitation Project, CIP Project No. 10-101. Vote: 5-0.

- C. Second Reading and Adoption of Ordinance 232 Adding Chapters 7.32 and 8.160 to, and Amending Section 1.24.050 of the Town of Moraga Municipal Code to Prohibit the Establishment and Operation of Medical Marijuana Dispensaries, to Prohibit Outdoor Cultivation of Marijuana, and to Provide for the Recovery of the Town's Costs, Fees, and Other Remedies in Lawsuits to Enforce Town Laws

Ms. Salamack reported that the item was before the Council for a second reading. If approved, the ordinance would become effective in 30 days. The ordinance was in the same form as approved by the Council for its first reading.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Chew/Metcalf) to conduct a Second Reading, Waiving the Actual Reading, and adopt an Ordinance Adding Chapters 7.32 and 8.160 to, and Amending Section 1.24.050 of the Town of Moraga Municipal Code to Prohibit the Establishment and Operation of Medical Marijuana Dispensaries, to Prohibit Outdoor Cultivation of Marijuana, and to Provide for the Recovery of the Town's Costs, Fees, and Other Remedies in Lawsuits to Enforce Town Laws. Roll Call Vote: 5-0.

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

In response to **Councilmember Trotter** as to the status of a presentation on the Moraga Adobe Project, Ms. Keimach reported that the City of Orinda had not yet released the Mitigated Negative Declaration although Town staff was in constant contact with Orinda staff and the Town Council would be advised when the document had been released. The developers had agreed to make a presentation to the Town Council and the item would be scheduled when a date was certain.

Councilmember Harpham reported that a short presentation would be made by the Park Foundation at the Hacienda on Thursday, April 14, on the proposed bandshell extension. He understood that the proposed improvement would be considered by both the Design Review Board (DRB) and the Planning Commission sometime during the summer.

Responding to **Vice Mayor Metcalf**, Ms. Keimach confirmed that the wild turkey issue would be brought to the Town Council at its next meeting.

XIII. COMMUNICATIONS

There were no communications.

XIV. ADJOURNMENT

ACTION: It was M/S (Chew/Harpham) to adjourn the meeting at 9:35 P.M. Vote: 5-0.

Respectfully submitted by:

Marty C. McInturf, Town Clerk

Approved by the Town Council:

Karen Mendonca, Mayor