

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**June 22, 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 7:03 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 Harpham led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

There were no special announcements.

IV. PROCLAMATIONS AND PRESENTATIONS

- A. Proclamation Honoring James W. Rueb for 29 Years of Leadership of the Moraga Valley Presbyterian Church

Mayor Mendonca read into the record a proclamation honoring James W. Rueb for his 29 years of leadership of the Moraga Valley Presbyterian Church, declaring June 22, 2011 as *James W. Rueb Day* in recognition of his accomplishments and contributions to the community and wishing him well on his retirement. The entire Town Council expressed its appreciation for his many contributions to improve the lives of those within the Moraga community. Pastor James Rueb thanked the Council for its recognition of the programs and contributions he had made to the community, commended the Town for working with the congregation, and expressed his hope that the momentum would continue in the future.

PUBLIC COMMENTS OPENED

Bob Holt, Moraga, Clerk of Session, Moraga Valley Presbyterian Church, thanked the Town Council for its partnership and the families and youth in the community for their service. He also thanked Pastor Rueb for all of his accomplishments and emphasized how fortunate the church was to be in the community of Moraga.

Corban Ricketts, Moraga, Boy Scout Troop 212, thanked Pastor Rueb for his support of Troop 212 and creating a sense of community at the church.

Karen Slocum, Moraga, stated she was glad that her family attended a church in a community where she lived and shopped and which was part of a fellowship in the Moraga community.

John Haffner, Moraga, President, Kiwanis Club of Moraga Valley, commended the church for accepting the Kiwanis Club organization and expressed his appreciation to Pastor Rueb for having presided over so many Kiwanis Club members who had passed away over the years.

PUBLIC COMMENTS CLOSED

B. Proclamation Declaring July 2011 as Parks and Recreation Month

Mayor Mendonca presented a proclamation declaring July 2011 as Parks and Recreation Month. The proclamation was presented to Director of Parks and Recreation Jay Ingram.

The Town Council expressed its appreciation to the Parks and Recreation Department staff for its hard work and for the activities and programs offered to the community. The Council acknowledged Parks and Recreation Department staff and Park and Recreation Commissioners Crouch, Haffner, Khanna, and Lucacher who were present in the audience.

Parks and Recreation Director Ingram thanked the Council for the recognition and expressed his appreciation to the Parks and Recreation Department staff present in the audience.

Mayor Mendonca took the opportunity to present Certificates of Appreciation to Parks and Recreation Assistant Kim Burrowes and Recreation and Facilities Coordinator Kimberly Nelson for their commitment to the Town of Moraga and in recognition of their many accomplishments on behalf of the community.

Town Manager Jill Keimach expressed her appreciation to Mr. Ingram, Ms. Burrowes and Ms. Nelson for their team work and for their contributions to the Town of Moraga.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

V. PUBLIC COMMENTS AND SUGGESTIONS

There were no public comments or suggestions.

VI. ADOPTION OF THE CONSENT AGENDA

A. Approval of the Consent Items

Consent Agenda Items 1, 4, and 6 were removed from the Consent Agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Chew/Harpham) to approve Consent Agenda Items 2, 3, 5 and 7.
Vote: 5-0.**

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| 1) Accounts Payable Claims for 6/03/11 (\$143,123.42);
6/03/11 (\$6,732.60) | Removed |
| 2) Revised Minutes for Town Council Regular Meeting
April 27, 2011 | Approved |
| 3) Revised Minutes for Town Council Regular Meeting
May 11, 2011 | Approved |
| 4) Minutes for Town Council Regular Meeting June 8, 2011 | Removed |
| 5) Adopt Resolution 23-2011 Accepting the Annual Gann
Appropriations Limit for the FY 2011-12 Operating Budget | Approved |
| 6) Accept New Traffic Signal by Richard A. Heaps, Electrical
Contractor Inc., of Sacramento for the Ascot/Moraga Road
Intersection Improvements Project, CIP No. 08-102; Adopt
Resolution 25-2011 Transferring \$11,875 of Unallocated
Measure J Funds to the Project; and Authorize the Town
Manager to file the Certificate of Completion with the County | Removed |
| 7) Adopt Resolution 24-2011 Classifying the Various Components
of Fund Balance as Defined in Governmental Accounting
Standards Board Statement No. 54, Fund Balance Reports and
Governmental Fund Type Definitions | Approved |

B. Consideration of Consent Items Removed for Discussion

1. Accounts Payable Claims for 6/03/11 (\$143,123.42); 6/03/11 (\$6,732.60)

Referring to invoices from Burke, Williams & Sorensen (BWS), **Councilmember Trotter** commented on BWS's legal expenses which were to be capped, specifically for the Beachem Appeal, and asked staff to update the Council on their billings. Ms. Keimach advised that staff had discussions with BWS and there was an agreement for a \$10,000 credit which would be reflected in future monthly billings.

2. Minutes for Town Council Regular Meeting June 8, 2011

The following revisions were made to the minutes of the June 8, 2011 meeting.

To the first sentence of the last paragraph on Page 11:

*Parks and Recreation Director Jay Ingram took the opportunity to publicly thank **Vice Mayor Metcalf** and Sharon Metcalf for their work and donation of a beautiful white seating bench in the La Sala building.*

To a portion of the last sentence of the paragraph under Mayor's and Councilmembers' Reports from Mayor Mendonca on Page 4:

... and the first Town Manager's/Mayor's Open Meeting with Moraga citizens had been held at Terzetto's Restaurant and would be held the third Friday of each month from 9:30

to 11:00 a.m., advertised in the About Town newsletter and the Moraga Citizens' Network.

- C. Accept New Traffic Signal by Richard A. Heaps, Electrical Contractor Inc., of Sacramento for the Ascot/Moraga Road Intersection Improvements Project, CIP No. 08-102; Adopt Resolution 25-2011 Transferring \$11,875 of Unallocated Measure J Funds to the Project; and Authorize the Town Manager to file the Certificate of Completion with the County

Public Works Director/Town Engineer Jill Mercurio reported that the contract had been awarded in September 2008 calling for 25 working days for the roadway work and 90 working days for the signal. While staff had expedited the contract, the contractor had experienced delays and the work had ultimately stalled. On October 10, staff issued a Notice to Proceed with October 15 as the first working day. The contractor provided a schedule on November 4 showing that the roadway work would not be done in the allocated working days and the schedule had been modified to meet the requirements. The work was not completed until January 19 (26 days late).

Ms. Mercurio explained that the contract called for \$1,000 a day in liquidated damages. The contractor had suggested the delay was caused by various reasons with discussion between staff and the contractor as to the responsibility of some of the items. While the signal was operational by March 2009, the Town continued with discussions with the contractor and completed payment to the contractor with the exception of the liquidated damages amount of \$26,000 plus a 50 percent expense allowed by Public Contract Code 7107. Working throughout 2009 and into 2010, staff continued to attempt to resolve the situation but an agreement could not be reached. Based on advice from Town legal counsel, in August 2010 staff offered an agreement to reduce the liquidated damages from \$26,000 to \$15,000. The contractor formally rejected that agreement on September 21. In February and May 2011, staff received correspondence from the contractor's legal counsel reiterating the process thus far. Upon direction from Town legal counsel, it was agreed to reduce the liquidated damages to \$10,000 which the contractor had accepted. Based on the staff time spent on the matter thus far, all parties had agreed this was the best course of action to avoid litigation. Ms. Mercurio added that she could not recall whether or not the contract had included an arbitration clause. The contract was based on Caltrans' standards.

In response to a Council question about whether the Town could limit contractors who bid on future Town projects, Town Attorney Ben Winig explained the process for any Public Works project which would include an analysis as to whether or not the contractor was responsible and responsive to a bid. The subject situation could be included in any analysis where the contractor may bid on a Town project in the future. If and when the next project came up, and if the same contractor bid on a future project, staff would have an institutional knowledge of the history of this situation.

Ms. Keimach added that it was typical at the conclusion of some construction projects for both sides to negotiate liquidated damages. She understood the Council's desire to shorten that process and acknowledged that the Council would be informed early in the process in the future. Ms. Mercurio added that it was not unusual for a contractor to consider liquidated damages as part of the business model.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Harpham/Chew) to approve Accounts Payable Claims for 6/3/11 (\$143,123.42); 6/3/11 (\$6,732.60); approve the Regular Town Council meeting minutes of June 8, 2011, as amended; and Accept New Traffic Signal by Richard A. Heaps, Electrical Contractor Inc., of Sacramento for the Ascot/Moraga Road Intersection Improvements Project, CIP No. 08-102; Adopt Resolution 25-2011 Transferring \$11,875 of Unallocated Measure J Funds to the Project; and Authorize the Town Manager to file the Certificate of Completion with the County. Vote: 5-0.

VII. ADOPTION OF MEETING AGENDA

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 shown. Vote: 5-0.

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Mendonca - Reported that she had attended the second in a series of Jan Wahl presentations at the Orinda Theatre on June 12; she and the Town Manager had met with a representative from the Recyclebank on June 13 which was planning more outreach and education in the Lamorinda communities; she had welcomed the first concert of the year on June 16; she had attended the Mayor's and Chairs meeting and directly afterward had hosted the Mayor's and Town Manager's open meeting on June 17 with five Moraga citizens; and she had attended the Dollar Tree Grand Opening on June 18. She also reported that on June 25 she would be attending the first anniversary of the Rheem Theatre with a children's movie in the afternoon followed by a reception and movie in the evening.

Vice Mayor Metcalf - Reported that he had attended a Revenue Enhancement Committee Outreach to Neighborhoods (RECON) meeting with discussion on different configurations of Benefit Assessment Districts to determine what made sense and the level of assessment necessary. He also reported that Sam Sperry was working with the RECON Committee pro bono with assistance from the Town's Lighting and Landscape Assessment District Engineer, Randy Leptin, and the RECON had completed its survey work and determined that a great deal of effort must be put into educating the public beginning with focus sessions Saturday, June 25 and Thursday, June 30. RECON meetings would continue to be held every two weeks throughout the summer.

Councilmember Chew - Reported that he had attended a Transportation Communication and Public Works policy meeting in Sacramento with a presentation on the High Speed Rail project. He noted that it had been rumored that the High Speed Rail Department would be administered by Caltrans. He also commented on the increase of Caltrans workers' deaths while on the job.

Councilmember Harpham - Reported that he had attended Economic Development Action Committee (EDAC) and RECON meetings; and participated with the Parks Foundation on its first concert.

Councilmember Dave Trotter - No report.

- B. Town Manager Update – Town Manager Jill Keimach reported that the 4th of July fundraising effort to "Buy a Rocket" was up to \$9,900, with a goal of \$23,000.

Councilmember Chew recommended that donation cans be set up to allow additional donations to be received at the event.

Ms. Keimach encouraged interested persons to contribute to the fundraising efforts. In addition, she reminded the Council that Town Council meetings scheduled for July 27 and August 10 had been canceled for a summer legislative break. The next meetings of the Town Council would be July 13 and August 24.

IX. DISCUSSION ITEMS

There were no Discussion Items.

X. PUBLIC HEARINGS

- A. Adopt Resolution 26-2011 Accepting the General Plan Amendment Regarding Growth Management Element to Conform to Measure J

Planning Director Lori Salamack reported that Contra Costa County Measure J required participation in a Growth Management Program as a prerequisite to receiving Local Street and Road Maintenance Funds. When the General Plan had been adopted in 2002, it had referred to Contra Costa Measure C. The proposed revisions changed that reference in the General Plan to Measure J. In addition, the draft element included a reference to the voter adopter Urban Limit Line (ULL) as required by Measure J. The ULL was at the Town boundary with the Town Council having full authority and jurisdiction over all land use matters within the Town of Moraga. Outside of the Town of Moraga the ULL did not apply and urbanized development was not permitted in that area.

Ms. Salamack advised that a policy had been added to the Growth Management Element to address the ULL and that the Town would implement the Contra Costa County ULL through the development review process, as established in Moraga and would oppose development not within the ULL. This matter had been considered by the Planning Commission at its June 6 meeting and the Commission had recommended approval of the General Plan Amendments in accordance with the proposed resolution. Copies of the meeting minutes from the Citizens' Advisory Committee (CAC) meeting dated February 23, 2011 had been included in the Council packet to outline the background of its discussions.

In response to the Council, Ms. Salamack acknowledged that Russell Driver, a current member of the Planning Commission, was a very good member of the CAC in terms of representing the Town of Moraga. His CAC term was due to expire and she would inform him of the Council's desire for him to continue in that capacity.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Harpham) to adopt Resolution 26-2011 Accepting the General Plan Amendment Regarding Growth Management Element to Conform to Measure J. Vote: 5-0.

XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

A. Adopt Resolution 27-2011 Approving the FY 2011-12 Operating and Capital Budget

Interim Administrative Services Director Emily Boyd presented the Town Council with a handout which had identified changes that had been made to Pages 5, 13, 15, 17, 23, and 67 of the Operating and Capital Budget consisting of minor changes and corrections to typographical errors. She noted that the Operating and Capital Budget had been presented to the Audit and Finance Committee (AFC) on May 26, 2011 when the AFC had made some recommendations to staff. Staff had implemented those recommendations prior to presentation to the Town Council on June 8, at which time the Town Council had offered further direction to staff which had been implemented into the budget documents. She recommended that the Town Council adopt the FY 2011-12 Operating and Capital Improvement Budgets, as amended.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

The Town Council discussed the Operating and Capital Improvement Budgets and offered the following comments and/or direction to staff:

Councilmember Chew - Provided the Town Council with new detailed information on the Lamorinda Spirit Van Program with a recommendation for future dialogue between Lafayette, Orinda, and Moraga at the City/Town Manager level to better improve the program; recommended that the program be modified to be nonprofit; and requested that the program's financial statements be provided before a contribution was made by the Town of Moraga, to be considered during the mid-year budget review.

Ms. Keimach recommended that the requested direction not occur at the time of mid-year budget review but after the mid-year budget since the \$9,000 that had been budgeted by the Town Council for the Lamorinda Spirit Van Program for this fiscal year was for a full year.

Councilmember Trotter - Agreed with the Town Manager that the Lamorinda Spirit Van Program be considered at the next budget cycle for the next fiscal year. Speaking to corrected Page 15, he noted that the discussion on Measure J should be further modified to show that Measure J had been enacted in 1988, not in the year 2000.

Ms. Boyd recommended that Page 15 be further amended to show that Measure J had been adopted in 2004 and extended Measure C, which had been adopted in 1988.

Ms. Keimach added that since the Town Council last met she had discussed with staff that when projects closed the cost savings would be returned to source. She agreed it would be helpful to have either a contingency or emerging projects account so that when the Council wanted to initiate a new project there would be some funds available for that project. This concept could be discussed when the books close for the 2010-11 fiscal year.

The Town Council commended staff on the preparation of the budget and affirmed that copies of the amended budget would be provided to all Councilmembers.

In response to the Council as to whether or not a WHEREAS clause should be added to the resolution to reflect a citation referring to the fact that the Gann Appropriations Limit had been approved and it was clear the budget was under that limit, Mr. Winig suggested that was not legally necessary although an additional WHEREAS clause could be added to the draft resolution and the resolution could be adopted as amended.

Mr. Winig recommended a new WHEREAS clause to be added to Resolution No. 27-2011 as follows:

WHEREAS, the Town Council has adopted a budget that is below the annual Gann Appropriations Limit in accordance with Article 13 (b) of the California Constitution with a general budget of \$6,316,519, which is well below the Gann limitations of \$11,316,095.

ACTION: It was M/S (Trotter/Chew) to adopt Resolution 27-2011 Approving the FY 2011-12 Operating and Capital Budget, subject to the handout of amendments presented to the Town Council on June 22, 2011 and subject to the additional WHEREAS clause as shown. Vote 5-0.

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

Ms. Keimach reported that every city in Contra Costa County had received a letter asking each Council to review its Vehicle Take Home Policy in response to a Grand Jury report. Staff planned to bring the item to the Town Council for consideration during its July 13 meeting.

XIII. COMMUNICATIONS

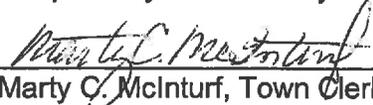
- A. Letter from the Contra Costa Mayors' Conference to Assemblymember Susan Bonilla dated June 8, 2011
- B. Letter from Contra Costa Mayors' Conference to Assemblymember Nancy Skinner dated June 8, 2011

Councilmember Trotter reported that the Mayors' Conference had prepared letters to be sent to Assemblymembers Bonilla and Skinner in response to the legislators having voted to approve Assembly Bill (AB) 506, Municipal Bankruptcy Bill, and AB 438, a bill preventing cities from contracting out for library services.

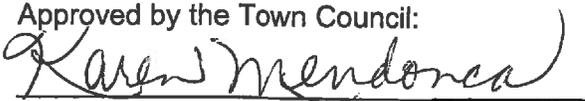
XIV. ADJOURNMENT

ACTION: It was M/S (Harpham/Metcalf) to adjourn the meeting at 8:52 P.M. Vote: 5-0.

Respectfully submitted by:


Marty C. McInturf, Town Clerk

Approved by the Town Council:


Karen Mendonca, Mayor