

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**April 11, 2012
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 7:00 P.M. by **Mayor Michael Metcalf**.

ROLL CALL

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

Councilmembers absent: None

II. PLEDGE OF ALLEGIANCE

Councilmember Trotter led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

Mayor Metcalf reported that a closed session had been held with reportable action in that the Town Council had voted unanimously to accept a Settlement Agreement between the Town of Moraga and Steven Smith on the subject of Rancho Laguna Park. He advised that the action included legal and staff expenses to the Town at a cost of approximately \$100,000.

IV. PROCLAMATIONS AND PRESENTATIONS

A. Proclamation Honoring Saint Mary's College 2011 Men's Soccer Team

Mayor Metcalf presented a proclamation honoring the Saint Mary's College 2011 Soccer Team and proclaimed April 11, 2012 as Saint Mary's Men's Soccer Day in the Town of Moraga recognizing the players, families, coaches, administrators, and all those associated with the Gaels of Saint Mary's College.

The entire Town Council commended and congratulated the team on its efforts.

PUBLIC COMMENTS OPENED

The Saint Mary's College Men's Soccer Team Captain thanked the Town Council and the community for the recognition and support and reported that a member of the team, Emmanuel Sarabia, had been diagnosed with leukemia. He stated the team would be holding a fundraiser at Mangia Ristorante Pizzeria in the City of Lafayette on April 19, invited everyone to attend and advised that a portion of the proceeds would go towards Mr. Sarabia's medical bills.

Adam Cooper, Head Coach for the Team, also thanked the Town Council, the Town of Moraga, and the community for the recognition and support of the Saint Mary's Men's Soccer Team.

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

Vice Mayor Harpham reported that he would abstain from the approval of Consent Agenda Item 2 since he had been absent from the Special Meeting of March 29, 2012, and he would abstain from Item 3 given the connection he and his wife have with the Park Foundation.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Mendonca/Chew) to approve Consent Agenda Items 1, 4, 5, and 6 by a vote of 5-0 and Consent Agenda Items 2 and 3 by a vote of 4-0-1 with Vice Mayor Harpham abstaining.

- | | | |
|----|--|----------|
| 1) | Accounts Payable Claims for 03/23/12 (\$183,157.37);
3/23/12 (\$300.00) | Approved |
| 2) | Approve Minutes for Town Council Special Meeting on
March 29, 2012 | Approved |
| 3) | Adopt Resolution 25-2012 Awarding a Contract for
Construction Services Not to Exceed \$15,000 to Morgan-
Bonnano Development Inc. for Americans with Disabilities
Act (ADA) Pathway Work in the Moraga Commons Park | Approved |
| 4) | Adopt Resolution 26-2012 Establishing an Equivalent
Runoff Unit Rate for FY 2012/13 as the Annual Assessment
for Drainage Maintenance and the National Pollutant
Discharge Elimination System (NPDES) Program | Approved |
| 5) | Proclamation Declaring April 2012 as Child Abuse
Prevention Month | Approved |
| 6) | Cancellation of August 8 and August 22, 2012 Town
Council Meetings | Approved |

B. Consideration of Consent Items Removed for Discussion

No Consent Items were removed for discussion.

VII. ADOPTION OF MEETING AGENDA

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

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

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Metcalf - Reported that he had attended the Mayors' Conference in the City of Clayton on April 5; a Revenue Enhancement Community Outreach to Neighborhoods (RECON) meeting with the Vice Mayor on April 10 to outline potential tax initiatives to be presented to the Town Council on April 25; and a Southwest Area Transportation Committee (SWAT) meeting where the Town of Moraga was in competition for grant monies.

Vice Mayor Harpham - Reported that he had attended a RECON meeting at the Hacienda on April 10; and had primarily been in the State of Florida since the last Town Council meeting.

Councilmember Chew - Reported that he had attended the State of the County event hosted by the Contra Costa Council on March 29; and hosted a RECON session on April 1 with 30 participants attending with the Mayor and the Town Manager presenting.

Councilmember Mendonca - Reported that she had chaired her final meeting as Chair of the Central Contra Costa Solid Waste Authority Board of Directors on March 29; served on the Audit and Finance Committee (AFC) Interview Team to select an auditor for the Town on March 30; attended the Mayors' Conference in the City of Clayton on April 5; and conducted a book review for Moraga Movers and the Moraga Library on April 11.

Councilmember Trotter - Reported that he had attended the Mayors' Conference on April 5, the beginning of the meeting of the Central Contra Costa County Solid Waste Authority Board on March 29; and the Solid Waste Authority Finance Committee meeting on April 9. He reported that during the meeting of March 29, he had been appointed a member of the subcommittee of the Board which would be considering a new franchise agreement as the current agreement would expire in a couple of years. He also reported that he had attended a portion of the initial organizational meeting of the citizens' group considering alternatives at Rancho Laguna Park on April 7.

- B. Town Manager Update** – Town Manager Jill Keimach reported that the Parks and Recreation Department had been audited on its use of Proposition 40 funds for the playground at the Upper Moraga Commons Park and the Town received a 100 percent clean bill of financial accounting. She thanked both the Administrative Services and the Parks and Recreation Department staff for working with the auditor.

IX. DISCUSSION ITEMS

There were no discussion items.

X. PUBLIC HEARINGS

There were no public hearings.

XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

- A. Adopt Resolution 27-2012 Authorizing the Town Manager to Sign an Amended and Restated Settlement Agreement for 1960 Joseph Drive and Directing the Town Staff to Record Amended and Restated Settlement Agreement**

Planning Director Shawna Brekke-Read reported that the item related to a settlement agreement as the residence at 1960 Joseph Drive had not been built in conformance with approved plans. The settlement agreement did not allow alterations to the house and required a great deal of landscaping and berming. The current property owner had asked to be released from a portion of the settlement agreement to allow landscaping changes and presented plans to the Design Review Board (DRB) which approved landscaping changes. The Town Council had agreed to change the settlement agreement, although that agreement had never been recorded. The property owner now wished to memorialize the changes to the landscaping by removing the landscaping provision altogether. The Town Attorney prepared the revised agreement and the property owner concurred with the new language. Ms. Brekke-Read asked the Town Council to adopt the resolution authorizing the Town Manager to sign an amended and restated settlement agreement for 1960 Joseph Drive and directing Town staff to record the amended and restated settlement agreement.

Responding to Council, Ms. Brekke-Read stated she understood that the changes to the settlement agreement had not been recorded since the property owner, who was present, had concerns with the previous agreement and had only learned of the original settlement and release agreement after purchasing the property. It had not been identified as part of the purchase and in the title report for the property.

PUBLIC COMMENTS OPENED

Phil Arth, Moraga, explained that he had read the staff report and concurred with the staff recommendation to adopt the resolution authorizing the Town Manager to sign an amended and restated settlement agreement for 1960 Joseph Drive and directing Town staff to record amended and restated settlement agreement.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Chew/Mendonca) to adopt Resolution 27-2012 Approving an Amendment to the Settlement and Release Relating to 1960 Joseph Drive. Vote: 5-0.

- B. Adopt Resolution 28-2012 Authorizing the Town Manager to Sign a Contract with Steve Mazaika of Moraga for On-Call Tree Service in an Amount Not to Exceed \$60,000, Contingent on Available Annual Budget Appropriations, for a Total Contract Period of Three Years**

Parks and Recreation Director Jay Ingram reported that the Town had worked with a number of tree contractors and since the contract could be upwards of \$15,000 it required the Town to conduct a formal bid process and a Request for Proposal (RFP) made available to as many contractors as possible. The RFP had been published on March 14 and closed on March 28. The Town received one bid but intended to initiate a similar RFP since it would be beneficial to enter into a contract with more than one tree contractor given the range of needs in Town. The

expense had been budgeted annually in the Public Works Department for a total contract amount of \$60,000 for a three-year period, although that did not mean that the Town would spend that amount. If through the annual budget process the Town Council found the costs for tree services should be reduced, the contract with Mr. Mazaika would be reduced accordingly.

In response to the Council, Mr. Ingram commented that the Town had spent approximately \$30,000 and upwards of \$55,000 to \$60,000 in the past for a higher volume of tree service work. He reiterated that staff would prepare another RFP, as discussed, and the intent was not to exceed \$60,000. He commented that tree service providers in the Town had been contacted by e-mail or by telephone by Public Works Department staff and some of those companies were aware that they had missed the deadline. During the next RFP process it was hoped that the Town would receive a greater response. The contract had been written to address emergency or natural disasters.

Responding to Council, Chief of Police Robert Priebe explained that in the event of an emergency, Department Heads would reach out to necessary vendors, a process that had been outlined in recent training.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Chew/Mendonca) to adopt Resolution 28-2012 Authorizing the Town Manager to Sign a Contract with Steve Mazaika of Moraga for On-Call Tree Service in an Amount Not to Exceed \$60,000, Contingent upon Available Annual Budget Appropriations for a Total Contract Period of Three Years. Vote 5-0.

- C. Adopt Resolution 29-2012 Authorizing the Town Manager to Sign Contracts with Bay Area Drainage, Dunn Construction and Siteworks Construction for On-Call Excavation Services in an Amount Not to Exceed \$45,000 Each, Contingent upon Available Annual Budget Appropriations, for a Total Contract Period of Three Years

Mr. Ingram reported that the Town had worked with all three contractors for a variety of different excavation types of services including slide work, storm drain repair, irrigation repairs, maintenance ditches, grading, and trenching. Because the contracts were over \$15,000, the Town had conducted a formal bidding process through the issuance of an RFP from March 14 through March 28. Three bids had been received from the companies as identified in the agenda item. Town staff would contact one of the contractors to conduct the repair work and in the event they were unavailable, the next contractor would be contacted in rotation. This work had been budgeted as part of the Operating Budget each year and it would be for a three-year contract not to exceed \$45,000 for each contractor. He asked the Town Council to adopt a resolution authorizing the Town Manager to sign contracts with Bay Area Drainage, Dunn Construction, and Siteworks Construction for on-call excavation services in an amount not to exceed \$45,000 each, contingent upon available annual budget appropriations for a total contract period of three years.

Mr. Ingram corrected, when asked, that the sinkhole repair on Rheem Boulevard had been done in 2006, not 2007 as shown in the last paragraph of Page 1 of the April 11 staff report. He also noted that Bay Area Drainage was located in Moraga, although Siteworks was not, and they had increased mobilization costs and typically were a more expensive company than Bay Area Drainage. The figures shown in the chart were the charges per day.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Chew/Mendonca) to adopt Resolution 29-2012 Authorizing the Town Manager to Sign Contracts with Bay Area Drainage, Dunn Construction, and Siteworks Construction for On-Call Excavation Services in an Amount Not to Exceed \$45,000 Each, Contingent upon Available Annual Budget Appropriations for a Total Contract Period of Three Years. Vote: 5-0.

- D. Receive Report and Provide Direction to Staff Regarding Selection of Mayor and Vice Mayor as Outlined in Resolution 81-2010

Ms. Keimach reported that, during the Town Council's January 2012 Goal Setting Session, community members had requested a public discussion on the selection process for Mayor and Vice Mayor. Staff had conducted an analysis of other cities and its own regulations as outlined in the April 11 staff report. She commended Town Clerk Marty McInturf and Administrative Assistant Kelly Clancy for conducting outreach to every city in the State of California to ask a number of different questions on their policies, with 38 cities responding as to how their community selected its Mayor and Vice Mayor. The staff report included Resolution 81-2010, the current Town policy for the selection of Mayor and Vice Mayor. She advised that copies of minutes from Town Council meetings where reorganization had taken place since 1997 had been attached to the staff report and reflected that the Town Council had broken from its tradition in 1997, 1999, and 2011. The intent of the agenda item was to address the community request for transparency.

Ms. Keimach asked the Town Council to consider the following:

1. Retain the existing election process including retaining Council discretion;
2. Revise the existing process and select a new process (based on input from other cities), retaining Council discretion; or
3. Mandate by ordinance a selection process (based on other city examples) that could not be changed unless certain pre-established criteria were met.

Ms. Keimach asked the Town Council to receive the report, discuss publicly, and direct staff based on the Council discussion.

PUBLIC COMMENTS OPENED

Edy Schwartz, Moraga, commented that in order to address the importance of transparency and due to the selection process for the Mayor and Vice Mayor in 2011; she recommended that the selection of Mayor and Vice Mayor be done by the people and not by the Town Council. She also supported all Councilmembers having the opportunity to serve as Mayor based on the order of most votes received within each election cycle unless defined by a category written into a policy that a Councilmember was unable to serve.

Ellen Beans, Moraga, thanked the Council and the Mayor for following through on the topic and thanked the Town Manager, Town Clerk, and Town staff for collecting all of the data. She sought consideration of a more dependable process for the selection of Mayor and Vice Mayor, that would allow an agreed upon process between the public and the Council and which would allow everyone to have a turn as Mayor and Vice Mayor.

Larry Beans, Moraga, favored transparency and a system that reduced surprises with the highest vote getter being first in line. Based on the alternatives presented, he supported Alternative 3(b) as shown on Page 3 of the April 11 staff report. He sought a set system which could be left open with stated criteria, similar to what had been done in the late 1990's.

PUBLIC COMMENTS CLOSED

Vice Mayor Harpham reported that he had discussed with the Town Attorney whether or not to recuse himself on the issue and was satisfied that would not be required.

Councilmember Mendonca reflected on the copies of past Town Council meeting minutes from 2008 related to the topic and discussions she recently had with former Interim Town Manager Jay Tashiro who had stated that the Council should be able to have the flexibility and discretion to elect its own leadership.

Councilmember Chew suggested that the current Council by-laws were appropriate with the Council retaining discretion to elect its own leadership. He appreciated the comments from the public although he emphasized that the Town Council was elected by the people and had the charge to make such decisions.

Mayor Metcalf commented that he had no problem breaking with tradition when it was the right thing to do and affirmed he had the same discussions with former Interim Town Manager Tashiro that the public elected the Council and the Council elected its own leadership. He suggested that the Town's current policy was workable, pointed out that as part of a previous Town Council he had made a motion to codify the Town Council's tradition of the highest vote getters being selected as Mayor and Vice Mayor but that there had not been a second to his motion and he saw no will to change that policy. He preferred flexibility and noted he liked the City of Lafayette policy which allowed every Councilmember the opportunity to serve as Mayor.

Councilmember Chew pointed out that the City of Lafayette was comprised of Councilmembers who had been Mayor or Vice Mayor multiple times given their tenure with the city and in that case they had voluntarily reverted to the rotation system they currently used.

Vice Mayor Harpham suggested that each Councilmember used his/her discretion after a careful balancing of competing interests, and a thoughtful analysis of what was best for the Town. He chose to adopt discretion and preferred to retain the existing system in the selection of Mayor and Vice Mayor. If the majority of the Town Council sought an ordinance based on the highest vote getter it would also be acceptable if the Town Council had discretion and it was incumbent on them to use it and use it well.

Councilmember Trotter commented that the unwritten tradition of the Town Council dated back over 30 years and had generally served the public interest well by selecting the Mayor and Vice Mayor by the top two vote getters in each of the election cycles. That process had a number of virtues: it was apolitical, objective and predictable, and it carried into effect as much as possible the expressed will of the people based on the election count. He noted that he had been the top vote getter in the most recent election but had been passed over as the Vice Mayor in 2011. Each of the current Councilmembers who had served as Mayor in the past benefitted from that unwritten tradition with the current Mayor serving in accordance with that long-standing tradition. He suggested that not following the tradition would lead to lobbying of Councilmembers, emphasized his support for the Town's long-term tradition, and stated that following that tradition had led to good results, minimizing divisiveness.

Mayor Metcalf suggested that staff be directed to contact the City of Lafayette for further information on how well their process worked for the Lafayette community and to see if there

was a way to make it work in Moraga to ensure that everything was fair. He sought a way to allow each Councilmember a chance to serve as Mayor and Vice Mayor.

Councilmember Mendonca agreed that there was a benefit to see how the process had worked in the City of Lafayette. In terms of the discretionary process, the current by-laws allowed the Council to make discretionary decisions and allowed the Council to select leaders who would move agendas and help the Council get the work done. Until such time as the Council had more information as to how Lafayette's process worked in that community she was comfortable with Moraga's current by-laws.

Ms. Keimach reported that she had spoken with the Lafayette City Manager about the Mayor and Vice Mayor selection process and at that time Lafayette's City Manager and Councilmembers' opinion was that their process worked well. She commented that the written process in Lafayette was similar to Moraga's.

Administrative Assistant Kelly Clancy explained that the City of Lafayette nominated its Mayor and Vice Mayor by Council vote, traditionally allowing every Councilmember a chance to serve.

With that knowledge, **Councilmember Chew** did not see what additional information staff could return for discussion.

Mayor Metcalf clarified that while he did not necessarily want the issue to return to the Council, he wanted resolution for the community. He emphasized that the Council had more important issues to address including repair of the Town's roads. He sought a simple and clean approach and he was comfortable with staff returning with more information.

Ms. Keimach explained if Town Council direction was to follow Lafayette's policy, it would mean the existing Town regulations would not be changed. She expressed the willingness to prepare the staff report for the next Council reorganization which could reflect the Council's direction similar to the City of Lafayette's practice.

Mayor Metcalf pointed out the possibility that after the next election there could be three new Councilmembers who would consider the topic as freshmen which was the right thing to do. If the policy in Lafayette had worked well he suggested that could be evaluated as to whether or not it also made sense for Moraga.

Ms. Keimach commented that she could bring back an outline of what the City of Lafayette had done and their process prior to December 2012.

Councilmember Mendonca wanted that information returned before December and requested that information as soon as possible on a future agenda.

Councilmember Chew asked the purpose of the additional information. He did not support placing the Town Council's selection process for Mayor and Vice Mayor in writing since it was discretionary and already established by the Council's unwritten rules. The Town Council may follow Lafayette's process allowing everyone the chance to serve although he did not want to see that policy in writing since it would not allow Council discretion. He questioned staff spending more time on the topic he found to be a pointless exercise.

Vice Mayor Harpham had no problem with the establishment of a reasonable system if the Council adopted a system similar to what had been discussed; incorporating some parts of Lafayette's process to allow everyone a chance to serve was reasonable. He had no problem with staff returning with additional information regarding the policy used by Lafayette although he disagreed that the policy Moraga followed should not be written down. He sought a

formalized, written process, and whether or not it was a tradition or ordinance could be discussed further. He agreed that the Town Council should not spend a great of time on the matter given the other important issues facing the Town, he wanted the information requested returned sooner rather than later, and he wanted the City of Lafayette's process to be incorporated. At that time, the Council could decide whether the policy should be in writing or not, a tradition or discretionary.

Councilmember Mendonca agreed that the additional information should be brought back as soon as possible, emphasized a statement made by former Interim Town Manager Tashiro that the Town Council should never give up its flexibility or discretion as a Council to choose its own leadership, and stated that as long as Lafayette's process included that discretion, she could support it.

Councilmember Chew emphasized that it had already been established that Lafayette's process operated under discretion although it had not been written down.

Ms. Clancy advised that Lafayette did have established rules and procedures which were discretionary, which had been written down, and which had been clarified through e-mail to Moraga staff.

Mayor Metcalf asked staff to review Lafayette's process, determine whether or not it included the requested flexibility, determine if the rules were written down and include the element of fairness as discussed, to be returned to the Town Council as soon as possible. He reiterated the volume of work before the Town including consideration of the RECON tax initiatives which would involve a great deal of work on the part of Town staff and the Town Council.

Ms. Keimach commented that assuming Lafayette's process was similar to Moraga's, she asked if the Town Council would like staff to draft language that would keep the discretion but add to it a process with the intention of allowing every Councilmember to serve as Mayor and Vice Mayor. She stated the item would be returned for discussion on a future agenda.

Mayor Metcalf sought governing principles of what the Town Council was trying to achieve.

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

Ms. Keimach explained that if she were to draft a revision of Resolution 81-2010, she would also need to consider adding meeting expectations for the Council meetings which included such things as where the video area was located, and procedures and expectations of the community. She asked that she be allowed to use similar expectations that other cities had used and which could be considered as a separate agenda item or in addition to Resolution 81-2010 which was part of the normal procedures.

Councilmember Chew asked that the agenda item return at the next Council meeting if possible.

Ms. Keimach advised that the item could be returned at the next meeting of the Council although the next meeting on April 25 would include contract requests for the completion of work on the three potential revenue measures the Council had approved when it had last considered a report from the RECON Committee formulating a Community Facilities District (CFD) and a sales tax measure, with legal expertise needed on formulating the CFD.

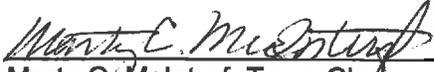
XIII. COMMUNICATIONS

There were no communications.

XIV. ADJOURNMENT

ACTION: It was M/S (Trotter/Chew) to adjourn the meeting at 8:50 P.M. Vote: 5-0.

Respectfully submitted by:



Marty C. McInturf, Town Clerk

Approved by the Town Council



Michael Metcalf, Mayor