

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**April 25, 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 7:04 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 Mendonca led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

There were no special announcements.

IV. PROCLAMATIONS AND PRESENTATIONS

There were no proclamations and presentations.

V. PUBLIC COMMENTS AND SUGGESTIONS

Graig Crossley, Moraga, President of the Hacienda Foundation, reported that the annual Cinco de Mayo Celebration would be held on May 6, 2012 at the Hacienda. He invited everyone to enjoy the festivities.

VI. ADOPTION OF THE CONSENT AGENDA

A. Approval of the Consent Items

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

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Chew/Mendonca) to approve Consent Agenda Items 1, 4, and 5.
Vote: 5-0.**

- | | | |
|----|--|----------|
| 1) | Accounts Payable Claims for 4/16/12 (\$142,884.66);
4/12/12 (\$540.05) | Approved |
| 2) | Approve Minutes for Town Council Regular Meeting on
December 14, 2011 | Removed |
| 3) | Approve Minutes for Town Council Special Meeting on
March 14, 2012 and the Regular Meeting on March 14, 2012 | Removed |
| 4) | Adopt Resolution 30-2012 Awarding Contract To
Springbrook to Migrate the Town of Moraga's Financial
Payroll and Human Resource System from Version 6.05 to
Version 7 for an Amount Not to Exceed Thirty-Four
Thousand One Hundred Twenty-Five Dollars (\$34,125)
Over a Three Year Payment Schedule | Approved |
| 5) | Review and Accept Fiscal Year 2011/12 Third Quarter
Revenue and Expenditure Report | Approved |

B. Consideration of Consent Items Removed for Discussion

1. Approve Minutes for Town Council Regular Meeting on December 14, 2011

Councilmember Mendonca requested that the last sentence of the third paragraph on Page 12 be stricken.

Councilmember Trotter requested an amendment to the third sentence of the second paragraph on Page 14, as follows:

He [Councilmember Trotter] acknowledged comments from the Mayor and Vice Mayor that the design concept outlined in Attachment B was their second choice, but appeared to be acceptable to them in principle. He opposed the motion as discriminatory, vindictive, and not meeting the needs of the community, and as unnecessary given there was a close second proposal that would not be discriminatory.

Town Attorney Karen Murphy advised that the Town Council could approve the minutes of the December 14, 2011 meeting, as revised, or the Council could direct staff to review the audiotapes of the meeting and bring back the minutes at the next meeting. She acknowledged that the subject matter [Rancho Laguna Park] had been subject to litigation and if the Council had questions on the complexity of the changes, the minutes could be brought back at the next Council meeting to incorporate the Council's requested changes.

Councilmember Trotter offered his corrections in writing to staff.

Councilmember Mendonca stated that after staff review of the audiotapes for the meeting if it was found that she had made the statement attributed to her on Page 12, the comments could remain as shown.

The Town Council asked that the minutes of the December 14, 2011 meeting be returned at its next meeting in the redline strikeout format.

2. Approve Minutes for Town Council Special Meeting on March 14, 2012 and the Regular Meeting on March 14, 2012

Councilmember Trotter requested the following amendments to the minutes of the regular meeting on March 14, 2012:

To the last paragraph on Page 10:

He [Councilmember Trotter] spoke to Option 3 and stated that it would not maximize the use of Rancho Laguna Park since it would eliminate off-leash dog hours completely and it was unknown when those hours would be restored.

To the first sentence of the last paragraph on Page 12:

Councilmember Trotter understood that if Option 3 was approved, even with a change from 1.5 to 3 acres for the dog park, in the intervening time it would outlaw off-leash dogs at Rancho Laguna Park. He said that the suggestion that adoption of this ordinance would incentivize people to prepare a plan for the park was overly harsh.

To the second to last sentence of the same paragraph:

He [Councilmember Trotter] recommended that a subcommittee be appointed in which he and the Vice Mayor could serve.

And to the eleventh paragraph on Page 14:

He [Councilmember Trotter] suggested that 1.5 acres was not sufficient and that a judgment on this could be made this evening.

ACTION: It was M/S (Trotter/Metcalf) to Approve Minutes for Town Council Special Meeting on March 14, 2012, as shown and the Regular Meeting on March 14, 2012, as amended. 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 (Mendonca/Chew) to adopt the Meeting Agenda, as shown. Vote: 5-0.

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Metcalf – Reported in response to community concerns regarding delays in placing finalized Town Council meeting minutes on the Town's website, that it was appropriate to hold over the December 14, 2011 minutes given that the discussion of a dog park at Rancho Laguna Park was the subject of litigation. He also noted it was appropriate for Town Councilmembers who wished to make corrections to meeting minutes to provide any changes to the Town Clerk on the Monday prior to

the Wednesday Council meeting date to allow the minutes to be modified, if necessary, and presented in redline format at the scheduled Council meeting.

Town Manager Jill Keimach added that providing the information to staff prior to Town Council meetings allowed staff the opportunity to review the audiotapes of a Council meeting if needed for clarification purposes.

Vice Mayor Harpham - Reported that he had met with Jon and Tina Chambers on April 23 at Terzetto Cuisine to discuss the dog park at Rancho Laguna Park with all written information he had received to be shared with the entire Town Council. He also indicated his willingness to participate in the dunk tank at the Community Faire.

Councilmember Chew - No report.

Councilmember Mendonca - Reported that she had attended the Moraga Youth Involvement Committee (MYIC) meeting on April 12; a Gala-bration meeting at Saint Mary's College (SMC) on April 13 and a Sesquicentennial Committee meeting at SMC on April 16; and along with the Mayor she had attended the Audit and Finance Committee (AFC) meeting on April 17. In addition, she represented the Town of Moraga at an Association of Bay Area Governments (ABAG) Spring General Assembly meeting in Oakland on April 19; served as a judge for the Lions Club Regional Speech Contest in Rossmoor on April 22; attended the District 2 Supervisorial Debate on April 23; and attended the Moraga Chamber of Commerce Mixer on April 24.

Councilmember Trotter - Reported that he would be working at the Cinco de Mayo festivities at the Hacienda on May 6. He also reported that he would be unable to attend the May 12 Community Faire since he would be celebrating his father's 90th birthday with family in southern California on that date.

B. Town Manager Update

1. Town Council and Community Goals Quarterly Update

Ms. Keimach reported that Town Council packets included the Town Council and Community Goals Quarterly Update with staff to provide an update every quarter on the progression of each goal and with the information to be posted on the Town's website. She also reported that staff would be reopening the recruitment efforts for one vacancy for the Traffic Safety Advisory Committee (TSAC); the first Climate Action Plan (CAP) meeting which had been well attended had been held on April 23; and Town Clerk Marty McInturf had been recognized with an Award of Distinction by the City Clerks Association of California in recognition of her service as the elected City Clerk for the City of Pleasant Hill and as the appointed Town Clerk for the Town of Moraga.

The Town Council congratulated Town Clerk McInturf for her service and also thanked the Town Manager for the quarterly update report on the Town Council and Community goals.

Mayor Metcalf reported that there had been an error in the Lamorinda Weekly which had been posted the morning of April 25 regarding the AFC meeting and had included a quote regarding the presence of citizen members. He reported that Phil Arth was the citizen member who had attended the meeting.

IX. DISCUSSION ITEMS

There were no discussion items.

X. PUBLIC HEARINGS

There were no public hearings.

XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

A. Revenue Enhancement and Community Outreach to Neighborhoods (RECON) Update and Council Authorization to Enter into Consultant Contracts Necessary to Prepare Background Reports to Consider Placing a Community Facilities District for Pavement and Drainage Rehabilitation on the November 6, 2012 General Election Ballot by Adopting:

1. Resolution 31-2012 Authorizing the Town Manager to Amend the Contract with Leptien, Cronin, Cooper, Morris & Poore, Inc. Extending the Time Period to November 6, 2012 (or March 5, 2013 if the Later Election Date is Selected) and Increasing the Amount by \$30,800 for a Not-to-Exceed Contract Amount of \$45,800
2. Resolution 32-2012 Authorizing the Town Manager to Enter Into a Professional Services Contract with Jones Hall for Bond Counsel and Assistance in the Possible Formation of a Community Facilities District for a Not-to-Exceed Contract Amount of \$15,000
3. Resolution 33-2012 Authorizing the Town Manager to Enter Into a Professional Services Contract with Stone & Youngberg for a Not-to-Exceed Contract Amount of \$10,000 for Financial Services for a Potential Infrastructure Financing Program
3. Resolution 34-2012 Appropriating \$55,800 from Fund 210 - Measure J Transportation Available Fund Balance to Support Revenue Enhancement Community Outreach to Neighborhoods (RECON), the Efforts to Secure a Financing Mechanism for the Town of Moraga's Streets and Roads

Jerry Bradshaw, City of El Cerrito City Engineer and Consultant to the Town of Moraga, reported that on February 22, 2012 the Town Council had directed staff to focus on three funding measures to be tested to address the Town's neighborhood streets which had been in a state of decline for years. He presented a chart showing five different 20-year scenarios assuming the initial repair of the Town's roads with various levels of follow-up maintenance, with all of the scenarios reflecting a capital investment of \$22.1 million plus contingencies for storm drain and ground water, for a total investment in infrastructure of \$25 million. He noted that after discussing the five scenarios, the Town Council had provided direction to staff and the RECON to consider an alternative that most closely reflected Scenario 2 that would bring and maintain the Town's roads to the Bay Area Average Pavement Condition Index (PCI) of 65. He commented that the Council had further questioned whether a constant PCI of 65 could be achieved over the long term without overshooting and requiring the higher initial investment. He explained that since the February Town Council meeting, the RECON had met with consultants and in accordance with the Town Council direction the group had targeted a scenario that would bring the PCI up to 65 rapidly and then maintain that level for future years.

Mr. Bradshaw stated that analysis had concluded that this would require a bonded program of \$14 million rather than the \$25 million program shown in Scenario 2, and an annual requirement of approximately \$1 million to maintain that condition. He outlined in detail the funding options for the Community Facilities District (Mello Roos Act) with a target amount of \$100 per year per single-family household on a public residential street, a Sales Tax measure where an estimated sales tax of one percent would produce \$900,000 annually, and an ad valorem tax. Due to issues related to fairness and maintenance, the RECON recommended dropping the ad valorem tax option from consideration and Combinations (comparison of the Council preferred Scenario 2 with the pay-as-you-go sales tax and CFD generated \$8 million bond), as detailed in the April 25, 2012 staff report.

Mr. Bradshaw commented that with the combined program it would appear that the CFD portion may need to be larger than the \$100 level but it would allow the Town to use the majority of the remaining sales tax revenue to maintain roads over time, while also having some additional funds to pay for other general town services. He explained that additional information was needed to make a more informed decision and recommendation although the RECON committee conceptually agreed to test both revenue sources and if supported by Moraga residents propose both to the Town Council as revenue measures that could potentially be placed on either one or two general election(s) or special election(s). He added that the polling information was scheduled to be available in late May when the Council would further consider the funding options.

Randy Leptien, Leptien, Cronin, Cooper, Morris & Poore Inc. (LLC) outlined the schedule for procedural options for the CFD which would require three meetings to allow the Council to place a measure on a General Election ballot either in November 2012 or March 2013. Alternatively, a special ballot could be considered but would involve a more expensive process.

Ms. Keimach reiterated that the next steps would be to test the receptiveness of the measures from the community to be brought back to the Town Council. The current item before the Town Council was the approval of resolutions to allow the identified consultant contracts with staff to return with that data to allow an informed decision to be made.

In response to the Council, Mr. Leptien explained that the Town could decide to place the CFD and sales tax measure on the same General Election ballot or one could be done in November 2012 and the other on the following General Election in March 2013.

Ms. Keimach advised that the CFD could be considered during either election. A sales tax measure must be on a General Election ballot where Councilmembers were running for office and would have to be placed on the ballot for either the November 2012 or November 2014 General Election.

Sam Sperry, a member of the RECON Committee and a Public Finance Attorney, explained that a majority protest at a public hearing was measured first by landowners and based upon written objections submitted no later than the close of the public hearing by those land owners, with a majority protest created if there were written objections from the owners of more than one half in area of the property to be subjected to a special tax and concurrently must be measured by registered voters.

PUBLIC COMMENTS OPENED

Barbara Simpson, Moraga, questioned whether registered voters would be counted in addition to property owners and cited the number of apartment occupants who may also be considered as part of a majority protest. She also spoke to the CFD (Mello Roos option) and recommended that the same fee should be imposed whether for a public or private street.

Mr. Sperry stated that the majority protest was measured separately; first for a set of registered voters and then for property owners, however, some may be both.

Mr. Leptien commented that legally the CFD was a tax subject to a two-thirds vote and the matter of prescribing the formula must meet the fairness test although the Council would ultimately decide the fairness test as a political not a legal judgment.

Mr. Sperry explained that the legal standard was reasonableness and if an unhappy private street property owner were to file suit and suggest it was unreasonable they would be advocating for and against whether or not that formula was reasonable. He added that if the Town Council were to decide to move forward on June 13 with the initiation of the CFD proceedings, the Council would have to have a hearing within 30 to 60 days, with July 25 a potential hearing date. Assuming the actions the Council took were as shown in the staff report, and assuming there was no majority protest, adoption of that resolution would set in motion a six-month limitation of the election date. The election must be called on a date not sooner than 90 nor more than 180 days from the date of the adopted resolution and March 2013 would be beyond the six-month deadline.

As to the last resolution regarding appropriating funds from Fund 210, Measure J Transportation Available Fund Balance, Administrative Services Director Stephanie Hom reported that staff had gone through the eligibility requirements documentation for the use of the funds with no reason to believe the project was not eligible. She added that staff had not contacted the Contra Costa Transportation Authority (CCTA) regarding the use of the funds, but could do so if desired by the Town Council.

Councilmember Chew reported that he had e-mailed the Executive Director of the CCTA who had disagreed with the use of the transportation funds. He sought clarification from staff. By consensus, the Town Council directed staff to contact the CCTA to clarify whether or not the use of Measure J funds in this case was a legitimate use of funds.

Ms. Hom advised that the Town Council could move forward with that resolution regarding the use of Measure J funds, and if not eligible, staff could return with another resolution and a different funding source.

Mayor Metcalf urged staff to contact the CCTA to confirm that information.

Ms. Keimach explained that the first two resolutions were necessary for staff to have the program tested out and bring back information to the Town Council. The contract with LLC would be for time and materials and the only contract that needed to be prorated would be the flat fee contract. Depending on the election method chosen and excluding that expense, staff had spent \$81,000 of the \$122,000 appropriated to date. A total of \$200,000 to \$250,000 was expected, excluding the election costs, in order to fund an approximate \$25 million in road repair.

Councilmember Trotter commended the members of the RECON and staff who had worked on the potential revenue measure options. He wanted to see the backup analysis as shown on Page 4 of the April 25 staff report on how staff had concluded that the project could be done for \$14 million as opposed to the \$25 million figure. He also commented on the amount that would be generated at \$100 per year showing that the bond proceeds would not meet the \$14 million goal to reach a 65 PCI even if combined with the sales tax measure option, leading him to be concerned that the scenarios would not be able to achieve the goal stated by the Town Council. He sought consideration of a scenario with a \$150 fee per parcel to determine if the Town would be able to better reach its overall PCI goal, commented that the models at this time had not

factored in either a senior- or low-income opt-out provision, and asked whether that could be done in a CFD and whether the RECON committee had considered that provision.

Mr. Bradshaw explained that Nichols Consulting had run numerous scenarios and Scenario 2 had shown an investment over three years with \$4 million the first year, \$9.2 million the second year to reach a PCI of 70, and another \$8.9 million for the final step to reach a PCI of 84. Enough scenarios had been run to identify what was needed to reach a 65 or 70 PCI and it had been estimated that \$12 million was needed to reach a PCI of 65, which was within the accuracy of the StreetSaver model for just the roads. He commented that they would be working with the polling consultant to measure the community support of the different ranges needed, which was embedded in the testing process to measure the community's acceptance so that the Town Council would be able to make the ultimate decision.

Ms. Keimach advised that the RECON had reviewed a senior opt-out provision, had discussed with the Moraga School District (MSD) its senior citizen low-income exemptions, and would continue to discuss that issue with RECON which would be tested in the same survey.

Mr. Sperry commented that such an opt-out provision had been utilized by the Elk Grove School District in the now incorporated City of Elk Grove, which provision had ultimately passed after some effort. He was not aware of any application of that concept outside of school finance but acknowledged that there was some sensitivity on that issue which was why he had recommended that the Town Council retain bond counsel sooner rather than later.

Councilmember Trotter expressed concern that the Town Council may not have enough time to prepare and be ready for the November 2012 election. He also expressed concern that the Town Council may be aiming too low with a PCI of 55 and sought a clear standard from the Council and the RECON to repair the neighborhood roads with a PCI of 65, which would leave the Town with good, but not perfect, roads which was the right solution for Moraga. He did not want to aim too low.

Vice Mayor Harpham shared the concern, agreed that there was a reason to be concerned given the test results, also had concerns with the reliability and potential complications of the testing process, with additional concern as to how the community would respond to the different scenarios as outlined in the staff report. He emphasized that everyone on the RECON was committed to making an all-out effort to educate the public about the issue and proposed solution.

Mayor Metcalf explained that the analysis included in the staff report was an approximation and another revenue source was needed to reach the PCI goal. The Town Council had expressed a desire to reach the Bay Area PCI average, which the Council had determined was appropriate for Moraga, and one way to reach that goal could be to move forward with a CFD at \$8 million in addition to the sales tax although the community survey would need to determine its acceptability. He acknowledged that the sale tax measure had a fairness issue although sales taxes could be a way to tax non-Moraga residents and registered voters who used Moraga streets. He was not particularly worried that the Town may not be ready but he emphasized the need to obtain community acceptance of the potential CFD and sales tax measure under consideration.

Ms. Keimach commented that the Town Council had discussed aiming neither too low nor too high and the intent was that the Council not over-invest but attempt to get all neighborhood roads to a PCI level of 65, which was the reason for the combination plan which could be maintained in the long term.

Ms. Keimach noted that in terms of the data, all of the five scenarios had been based on street-by-street analysis and the StreetSaver model which was very Moraga specific. She added that the issue of opting-out for seniors/low income was a RECON recommendation although the final decision would be up to the Town Council. She suggested that the percentage of Moraga residents who would qualify for a senior/low income opt-out would be small and advised that once more detailed information was available on that issue it would be brought back to the Town Council for discussion. As to when the Council would better know if it had a chance of succeeding in placing a measure on the November 2012 ballot, she suggested that the Council should be able to make that determination at its June 13 meeting since the polling survey results would be available in late May. If the Council decided to place the measure on a ballot after November 2012, there was the assumption that the outreach and analysis efforts would continue although that would involve additional costs.

Councilmember Chew emphasized the importance of the Council working together to succeed in reaching the goal of placing a measure on the November 2012 ballot.

Councilmember Mendonca thanked staff and the consultants for the preparation of the staff report and commented that as a homeowner and resident of Moraga, she found it a powerful impact that the Town Council was not considering \$25 million but \$14 million for a bonded program that would bring the PCI index up to 65 rapidly and maintain that level in future years creating a sustainable situation.

Ms. Simpson asked whether or not the number of senior/low income persons who may be able to opt-out would be subtracted from the total number of registered voters in terms of those who may or may not object during a public hearing. If those people were not covered, their votes should not count. She opposed such an opt-out provision and suggested that the number of new tax measures to be placed on the November 2012 ballot should also be identified to inform the public during this process.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Chew/Trotter) to adopt Resolution 31-2012 Authorizing the Town Manager to Amend the Contract with Leptien, Cronin, Cooper, Morris & Poore, Inc. Extending the Time Period to November 6, 2012 (or March 5, 2013 if the Later Election Date was Selected) and Increasing the Amount by \$30,800 for a Not-to-Exceed Contract Amount of \$45,800. Vote: 5-0.

ACTION: It was M/S (Chew/Harpham) to adopt Resolution 32-2012 Authorizing the Town Manager to Enter Into a Professional Services Contract with Jones Hall for Bond Counsel and Assistance in the Possible Formation of a Community Facilities District for a Not-to-Exceed Contract Amount of \$15,000. Vote: 5-0.

ACTION: It was M/S (Chew/Mendonca) to adopt Resolution 33-2012 Authorizing the Town Manager to Enter Into a Professional Services Contract with Stone & Youngberg for a Not-to-Exceed Contract Amount of \$10,000 for Financial Services for a Potential Infrastructure Financing Program. Vote: 5-0.

ACTION: It was M/S (Chew/Harpham) to adopt Resolution 34-2012 Appropriating \$55,800 from Fund 210 - Measure J Transportation Available Fund Balance to Support RECON (Revenue Enhancement Community Outreach to Neighborhoods), the Efforts to Secure a Financing Mechanism for the Town of Moraga's Streets and Roads. Vote: 5-0.

Councilmember Trotter reiterated the direction to staff to not aim too low and, if necessary, to analyze the different political options and scenarios with that in mind while also analyzing the timing issues.

Ms. Keimach stated although not a part of the motion for the approval of Resolution 34-2012, staff had been directed to affirm the use of Measure J Transportation Funds, as shown in the approved resolution.

B. Adopt Resolution 35-2012 Rescinding and Replacing Resolution No. 81-2010 and Establishing Rules for Election of Council Officers and Rules of Proceedings for Conduct of Council Meetings

Ms. Keimach reported that the item had been discussed by the Town Council during its April 11 meeting and had been initiated during the Town Council Goal Setting Session in January with the goal of having a public conversation about the process of electing the Mayor and Vice Mayor. As outlined in the April 25 staff report, the Council currently had discretion with historical procedures that had been followed and which had been discussed at length during the April 11 meeting. Staff had been directed to look at a similar process used by the City of Lafayette which rotated its Councilmembers so that all five Councilmembers had the opportunity to serve as Mayor and Vice Mayor. The Town Council had directed staff to place that policy in writing and bring it back to the Council for further discussion.

Ms. Keimach commented that in addition to that process, there had been a discussion to improve the meeting procedures and ensure that the public kept the aisles clear, in response to Americans with Disabilities Act (ADA) concerns, to ensure that equipment did not block the views of members of the public, with those draft changes included in Attachment A to the April 25 staff report. She asked the Town Council to provide direction to staff.

PUBLIC COMMENTS OPENED

Ellen Beans, Moraga, asked the Town Council to support the resolution, as revised, to address the issues the public had and which the Town Council had raised, allowing for discretion, rotation, honoring the election results, and keeping the policy clean of politics in the selection of the Mayor and Vice Mayor. She also supported the proposed revisions regarding the proceedings for the conduct of Council meetings.

Barbara Simpson, Moraga, referenced Page 2 of Resolution 35-2012, paragraph II. Election of Officers, C (3) and asked of the intent of that section and how a Councilmember would be removed from office. She also questioned what would happen in the event the current Vice Mayor, as an example, was not re-elected to the Council in terms of the rotation process. She expressed her preference that Moraga residents be allowed to vote for the Mayoral position.

PUBLIC COMMENTS CLOSED

Councilmember Chew liked the redline version changes that had been made to the draft resolution in terms of public participation and conduct of Council meetings. He suggested that the redline changes for the process for the election of Mayor and Vice Mayor appeared to contradict the intent of preserving discretion in that it set an expectation of rotation, opening possible future debate when it was in writing that everyone should have the opportunity to serve in a leadership position. He was uncertain that the changes would prevent future disagreement over a Council decision or action on leadership, spoke to Page 1 of Resolution 35-2012 in the third WHEREAS clause which he found to contradict the intent, and Page 2 of the resolution paragraph II. Election of Officers, D, which had been stricken. He asked whether or not that statement had been shown elsewhere in the draft resolution. He also spoke to Page 1, Section

II. Election of Council Officers, B, which as shown was a Town Council discretion action. He liked the guidelines although he expressed concern that placing them in writing created an expectation.

Ms. Keimach explained that Page 2, paragraph II. Election of Officers, D had been reflected in the same section under paragraph C (1).

Mayor Metcalf considered the resolution, as revised, to be guidelines, not law, but an expression of how things should and were intended to be. He recommended that the third WHEREAS clause shown on Page 1 of Resolution 35-2012 be amended to read:

WHEREAS, the Town wishes to fairly rotate the offices of Mayor and Vice Mayor of the Town Council among the five members of the Council; and

Mayor Metcalf sought a rotation that was fair allowing all five Councilmembers the opportunity to serve as Mayor and Vice Mayor. He also wanted a guideline, in writing, to provide a framework on the selection of Mayor and Vice Mayor suggesting that the guidelines would do so. He commended the Town Manager on the revised resolution which had done a good job of addressing the issue, and which he supported. He saw no harm to including Section II. Election of Officers D, which had been stricken in the redline format on Page 2, liked the changes proposed for the rules of conduct of meetings and public participation, but recommended that Section III. Rules for Conduct of Meetings, E. Public Participation (1) on Page 5 be revised in the second paragraph to show that the meeting would be called to order by the "*Presiding Officer*," not the Mayor. He also recommended for the same section, Record of Meetings, as shown on Page 6 related to the tape recorder be revised to read "*electronic audio recording device*" and that Section I. Failure to Observe Rules of Order on Page 9 include a period at the end of the first paragraph.

In response to the Council as to the number of cities that had written policies on the election of Mayor and Vice Mayor, Ms. Keimach explained that she had reviewed the language used by three different cities which had outlined their process in writing. Some jurisdictions had not reflected the order of highest vote getter in the event of a tie and other changes. Specific language used by the City of Lafayette had been outlined in the April 25 staff report and although it contained different language it had a similar outline as Moraga's guidelines but did not address its rotation process, which was done by tradition, as Moraga's had been by the highest vote getter. Given the Council's desire to include language that was clear to the public as discussed during the April 11 Council meeting, staff had drafted language reflecting the conversation at that time.

Councilmember Mendonca commented that Lafayette's policy was similar to Moraga's existing policy and with the Mayor's recommended revision to the third WHEREAS clause on Page 1 of the revised resolution, it allowed flexibility although the additional language not found in the City of Lafayette's policy was not helpful in terms of Council discretion. She was comfortable with the Town's existing policy which was transparent and which she suggested had worked.

Mayor Metcalf emphasized that because of the concerns that had been expressed by some members of the community he preferred that the Town's policy for the election of Mayor and Vice Mayor be placed in writing.

Councilmember Mendonca found the revised resolution to be unnecessary although she supported the proposed change to the third WHEREAS clause since it offered fairness. She pointed out that the third person in a three-person election would be left out and that was not the letter of the law but may be an unwritten tradition. She reiterated her opinion that the existing

policy worked, was transparent, and the Council had the discretion to choose leadership to get the work done for the Town of Moraga.

Councilmember Chew pointed out that even with the revised language there was no guarantee there would not be concerns in the future with the Town's policy. He suggested that the revision to the third WHEREAS clause allowed intent but no guarantee.

Vice Mayor Harpham advised for the record that the Town Council had been provided copies of correspondence from Edy Schwartz, dated April 25, 2012. He suggested that the Council had three choices; to accept the tradition and make it a statute, retain the tradition, or accept the statute proposed by staff. He supported the resolution as revised by staff, particularly the changes related to the rules of conduct of meetings and public participation, but the changes shown for the election of officers allowed too much ambiguity, and had not resolved the problem of disputes. In this case, the Council had not benefitted from the staff revisions to the resolution since the operative verbs in the resolution were too ambiguous. He recommended that the existing policy for the election of Mayor and Vice Mayor remain as it was or that staff return with a more stringent statute. He also suggested that the third WHEREAS clause, as written, had no compulsive power and did not compel anyone to do anything. Given that the existing Council policy contained discretion he suggested that the existing policy should remain as it was.

Mayor Metcalf commented that he had been under the impression the resolution only memorialized the Town Council's action, wishes, and intentions and was not creating law. He asked what legal weight the resolution would have for operative law.

Ms. Murphy described two main types of legislative action the Council could take; ordinances codified in the Moraga Municipal Code (MMC) operative law of the Town, and resolutions adopted by the Town Council. In this case, the resolution sets forth the rules and procedures to be followed by the Town Council and from that perspective it would set forth provisions and regulations for the Town to follow. There were items where the language contained the use of "may" versus "shall" which had different interpretations. As to the language in the recitals, they set forth the background and story and the operative provisions of the resolution contained the NOW THEREFORE BE IT RESOLVED clauses which were operative regulations and laws.

Councilmember Trotter thanked staff for the preparation of the revised resolution and commented that it appeared as if the Mayor was of the opinion the changes should be made, that the third WHEREAS clause shown on Page 1 was a desirable goal and had the virtue of being apolitical, and III. Election of Officers, as revised, did not have the support of the majority of the Council and possibly should be stricken entirely. He would revise that language further, and could suggest the factors that should be considered and had not been included, such as who had spent the longest time not serving as Mayor and Vice Mayor. He suggested that was an appropriate factor to consider and commented that the majority of the Council was of the opinion it did not need to consider a fair rotation of the leadership positions based on these factors, raising the concerns he had brought up during the April 11 Council meeting. He suggested it was likely that a resolution would be proposed to change what staff had proposed in the recital, and if so he would not support it.

Mayor Metcalf made a motion to adopt Resolution 35-2012, as drafted, subject to:

- Amend the third WHEREAS clause on Page 1 to read:
WHEREAS, the Town desires to fairly rotate the offices of Mayor and Vice Mayor of the Town Council among the five members of the Council; and
- Retain Section II. Election of Officers, D which had been stricken in the redline revised version of the resolution;

- Revise Section III. Rules for Conduct of Meetings, E. Public Participation (1) on Page 5, to read "*Presiding Officer*,"
- Revise Section III. Rules for Conduct of Meetings, G. Record of Meetings on Page 6 to read "*electronic audio recording device*;" and
- Add a period to the end of the first paragraph of I. Failure to Observe Rules of Order on Page 9.

ACTION: It was M/S (Metcalf/Trotter) to adopt Resolution 35-2012 Rescinding and Replacing Resolution 81-2010 and Establishing Rules for Election of Council Officers and Rules of Proceedings for Conduct of Council Meetings, subject to the revisions, as shown above. The motion FAILED. Vote 2-3. Noes: Chew, Harpham, Mendonca

Vice Mayor Harpham made a motion to adopt Resolution 35-2012, as provided by staff, subject to:

- Omit the redline revisions as shown on Page 1 for the third WHEREAS clause and all of the redline revisions proposed to Section II. Election of Council Officers, C as shown on Page 2, but preserving D as it had been shown previously; and
- Include all of the redline revisions proposed for Section III. Rules of Conduct of Meetings as shown on Pages 2 through 9, including the minor revisions proposed by the Mayor.

Councilmember Chew seconded the motion.

On the motion **Mayor Metcalf** asked if Vice Mayor Harpham's intent was to preserve the old policy.

Vice Mayor Harpham explained that if his choice was between tradition or the redline revisions as shown on Page 2 of Resolution 35-2012, he would choose tradition.

Mayor Metcalf stated that he would not support the motion as proposed. He asked if the maker of the motion would consider an amendment to the motion to retain the third redline WHEREAS clause as shown on Page 1 of the resolution. He would like to retain a fairness element and suggested that the concept of the third highest vote getter not having the opportunity to be Mayor was wrong. If that recital was retained it would open the door to establish a fair rotation.

Vice Mayor Harpham accepted an amendment to his motion to include the third redline WHEREAS clause as shown on Page 1 of Resolution 35-2012.

Ms. Murphy explained that the second to the motion would have to accept that change as well.

As the second to the motion, **Councilmember Chew** stated that he understood the Mayor's passion for fairness and the concern with the third highest vote getter not having the opportunity to serve in a leadership position, although that had not been outlined in the procedures. He expressed concern that placing that procedure, in writing, would create an expectation that the third highest vote getter would have the opportunity to serve as Mayor and Vice Mayor, which did not help the issue of tradition or fairness. He suggested that the policy that had been followed for the past 30 years had worked well and did not agree with the inclusion of the third redline WHEREAS.

Mayor Metcalf disagreed in that the resolution, as revised, would render the tradition which the Council had operated under for some time mathematically excluded the third highest vote getter. He emphasized that the third redline WHEREAS clause, as amended, would be fair to all Councilmembers.

Ms. Murphy stated that given there was no second to the amendment offered by the Mayor the previous motion as proposed by the Vice Mayor would stand or the maker of the motion could withdraw the motion and a new motion could be made.

Vice Mayor Harpham withdrew his motion and offered a new motion to adopt Resolution 35-2012 as provided by staff subject to:

- Include the third redline recital WHEREAS clause as shown on Page 1 to read: *WHEREAS, the Town desires to fairly rotate the offices of Mayor and Vice Mayor of the Town Council among the five members of the Council; and*
- Omit the redline revisions as shown on Page 2 for Section II. Election of Council Officers, C but preserve the redline strikeout section D; and
- Include all of the redline revisions proposed for Section III. Rules of Conduct of Meetings, as shown on Pages 2 through 9, including the revisions proposed by the Mayor.

Mayor Metcalf seconded the motion.

ACTION: It was M/S (Harpham/Metcalf) to adopt Resolution 35-2012 Rescinding and Replacing Resolution 81-2010 and Establishing Rules for Election of Council Officers and Rules of Proceedings for Conduct of Council Meetings, with the amendments shown above. Vote: 4-1. Noes: Trotter

Mayor Metcalf declared a recess at 9:54 p.m. The Town Council meeting reconvened at 10:00 p.m. with all Councilmembers present.

- C. Adopt Resolution 36-2012 Awarding a Contract to Maze & Associates Accountancy Corporation for Independent Audit Services of Town of Moraga's Financial Statements for a Three-Year Period with the Option to Extend Services for Two Subsequent Years

Administrative Services Director Hom reported that the AFC had met, vetted the report, and made a recommendation that Maze & Associates Accountancy Corporation be awarded a contract to be the Town's independent auditor for a three-year period with the option to extend the services for two subsequent years. During the AFC meeting of May 26, 2011, the AFC had issued a Request for Proposal (RFP) for financial auditing services as part of best practices. Nine proposals were received, all had been reviewed by the committee, and after additional review and oral interviews it was recommended that Maze & Associates be awarded the contract. She described the background and experience of Maze & Associates. In terms of the fiscal impacts, she noted that the top four firms were within a reasonable range. Maze & Associates had been chosen based on its expertise, knowledge, and fit for the Town of Moraga. She identified the summary of all inclusive maximum prices for Maze & Associates as detailed on Page 3 of the April 25 staff report. She recommended that the Town Council approve the resolution to award the contract to Maze & Associates Accountancy Corporation.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Chew/Mendonca) to adopt Resolution 36-2012, Awarding a Contract to Maze & Associates Accountancy Corporation for Independent Audit Services of Town of Moraga's Financial Statements for a Three-Year Period with the Option to Extend Services for Two Subsequent Years. Vote: 5-0.

- D. Adopt Resolution 37-2012 Amending the Salary Schedule to Add the Full Time Equivalent Classifications of Corporal, Corporal Intermediate, Corporal Advanced; Add the Part Time (PT) Equivalent Classifications of Recreation Leader I, Recreation Leader II, Facilities Attendant, and Maintenance Worker; and Amend the Classification of Parks and Recreation Director

Administrative Services Director Hom presented the item to adopt a resolution to amend the Salary Schedule to add the full time (FT) equivalent classifications of Corporal, Corporal Intermediate, Corporal Advanced; add the part time (PT) equivalent classifications of Recreation Leader I, Recreation Leader II, Facilities Attendant, and Maintenance Worker; and amend the classification of Parks and Recreation Director. She explained that the Town Council approved the salary schedule for Town employees and historically staff had brought this to the Town Council through Memorandums of Understanding (MOUs) each year. The Corporal, Corporal Intermediate and Corporal Advanced positions had been discussed during the last budget cycle in terms of having the level of classification series in between the Police Officer and Sergeant classifications and offered advancement from Police Officer to provide supervisory personnel. The PT positions (Recreation Leader I, II, and Facilities Attendant) had all been positions that had been used as well as the Maintenance Worker. The Parks and Recreation Director classification included an amendment to the salary range based on a survey of comparable positions in comparable municipalities in the Bay Area, specifically in Contra Costa County, with a comparison table provided on Page 3 of the April 25 staff report.

Ms. Hom advised that the Corporal classifications would have no fiscal impact on the FY 2011/12 budget, with the future fiscal impacts to be included and considered in the FY 2012/13 budget and beyond. The costs associated with hiring a PT Recreation Leader I, II, Facilities Attendant, and Maintenance Worker classifications had been included in the FY 2011/12 budget. There would be a fiscal impact of \$2,975 in the current FY 2011/12 budget related to the amended schedule for the incumbent Parks and Recreation Director although the amount had been added to the FY 2011/12 budget as part of the Mid-Year Budget Amendment and future fiscal impacts would be included and considered in the FY 2012/13 budget and beyond. She asked the Town Council to approve the amended salary schedule as proposed.

In response to the Council, Ms. Hom reiterated that the fiscal impact for the amended salary schedule for the Parks and Recreation Director had been reflected in the table in the staff report. If the raise for the position of Parks and Recreation Director was to be retroactive to January 1, 2012, it would be under the Town Manager's purview to make that determination.

Ms. Keimach explained that the resolution before the Town Council was the approval of the salary schedule with the management of that salary schedule under the purview of the Town Manager.

Ms. Hom added that the range was subject to the one percent increase the Town Council had previously approved through the MOUs with all of the figures in the table to increase one percent as of July 1, 2012.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Chew/Harpham) to adopt Resolution 37-2012, Amending the Salary Schedule to Add the Full Time Equivalent Classifications of Corporal, Corporal Intermediate, Corporal Advanced; Add the Part Time (PT) Equivalent Classifications of Recreation Leader I, Recreation Leader II, Facilities Attendant, and Maintenance Worker; and Amend the Classification of Parks and Recreation Director. Vote: 5-0.

E. Provide Direction to Staff Regarding a Comment Letter on the Preferred Scenario and the Ongoing Sustainable Communities Strategy (SCS) Efforts

Planning Director Shawna Brekke-Read reported that the staff report included an attachment for a letter to ABAG. The Town Council had discussed the item at a previous meeting and directed staff to prepare a letter to submit to ABAG. On April 13 ABAG released new numbers and projections and the letter had become moot. She noted that she had attached the letter from the City of Lafayette. Moraga staff prepared a letter addressing many of the issues the Council had discussed in the past including that the numbers were difficult to understand, how Moraga related globally to other cities and agencies throughout the Bay Area, and the uniqueness of all cities including Moraga. She advised that since that time the Mayor offered suggestions to the letter which had been provided to the Town Council in a redline version.

Mayor Metcalf explained that since the letter would be submitted with his signature he wanted to make sure it was better than the first draft. He also expected that there would be further edits.

PUBLIC COMMENTS OPENED

Barbara Simpson, Moraga, liked the changes recommended by the Mayor and noted not every community agreed with what ABAG was doing and that every community would have the opportunity to stand up for itself. She expressed her hope that the Town Council would do what it could to educate the public on what was occurring with respect to the Sustainable Communities Strategy (SCS).

PUBLIC COMMENTS CLOSED

Councilmember Trotter liked the Mayor's edits to the letter. Referencing the letter from the City of Lafayette to ABAG, he commented that Lafayette had mentioned issues that Moraga should also include in its letter. He recommended that the statement by Lafayette that it expected to see its comments incorporated in the next phase of the report should also be included in Moraga's letter and include the assurances that ABAG had given municipalities that it would not ignore what municipalities had to say.

Ms. Brekke-Read clarified that ABAG had responded to Lafayette's comments because Lafayette had a dedicated staff person working on the SCS who had been able to provide precise numbers and feedback, while Moraga did not have the staff to provide that information to ABAG. She affirmed that the Council expected ABAG to respond to the substance of the letter the Town of Moraga provided to ABAG.

Councilmember Trotter noted that ABAG had been given numbers in previous iterations and Moraga's comments on appropriate levels of development should not be ignored. He would like to see the same thought expressed in Moraga's letter to ABAG and offered the following amendments to the redline version of the letter.

- Identified the need for a period at the end of the first paragraph of Page 1 under Item 1. Timing;

- Add the following statement in parenthesis after the first sentence on Page 2, 3. Housing and Jobs Projections: *(7,000 units rather than 5,500 units)*;
- Revise the third sentence of the same paragraph to read: *"Like other cities, Moraga questions whether ABAG's projections reflect the severe economic climate and whether ABAG recognizes the recovery will be slow;"*
- Revise the last sentence of the last paragraph on Page 2 to read: *In particular, the Preferred Scenario should be harmonized with historic development in each city and county against each city and county's adopted general plan and specific plans;*
- Revise the last line of point 3 as shown on Page 3 to read: *In particular, this approach would include a comprehensive description and analysis of the alternatives (one of which would be projected future development in line with adopted general and specific plans) along with the project analysis; and*
- Preserve the redline strikeout language shown in the first sentence of the first paragraph on Page 2 to read: *"contribute to lower greenhouse gas emissions."*

Ms. Simpson identified a grammatical error to the last paragraph on Page 3 and recommended that the use of the word "has" be revised to read "have."

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

There were no Council requests for future agenda items.

XIII. COMMUNICATIONS

A. Letter from Congressman John Garamendi dated April 11, 2012

Councilmember Trotter sought to direct the Town Manager to persuade a case with Congressman Garamendi to amend his list of projects to include a federal grant to repair Rheem Boulevard.

Ms. Keimach reported that Congress was due to enter into a recess although staff could discuss the issue with the Town Council during the next budget cycle. The repair of Rheem Boulevard was a condition of approval for Rancho Laguna II although she agreed it would not hurt to attempt to obtain additional funding given that cost estimates would increase over time. She commented that it would also not hurt to approach Congressman George Miller on the issue.

XIV. ADJOURNMENT

ACTION: It was M/S (Mendonca/Chew) to adjourn the meeting at 10:40 P.M. Vote: 5-0.

Respectfully submitted by:


 Marty C. McInturf, Town Clerk

Approved by the Town Council:


 Michael Metcalf, Mayor