

**TOWN OF MORAGA  
TOWN COUNCIL SPECIAL MEETING**

**May 30, 2012  
MINUTES**

**7:00 P.M.**

Hacienda de las Flores, La Sala Room  
2100 Donald Drive,  
Moraga, California 94556

Teleconference Location (Harpham)  
Desert Willow Golf Resort  
38-995 Desert Willow Drive, Z310  
Palm Desert, CA 92260

**I. CALL TO ORDER**

The special meeting was called to order at 7:03 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 Chew** led the Pledge of Allegiance.

**III. SPECIAL ANNOUNCEMENTS**

There were no special announcements.

**IV. PUBLIC COMMENTS AND SUGGESTIONS**

**A. Public Comment from Teleconference Location at Desert Willow Golf Resort**

There was no public comment from Teleconference Location at Desert Willow Golf Resort.

**B. Public Comment from Meeting Location at Hacienda de los Flores, La Sala Room**

Dale Walwark, Moraga, spoke to the potential development of the former bowling alley site on Moraga Road and stated the project could become controversial since it would require a traffic stop or traffic signal to connect the project site to the shopping center located across the street. He suggested that any traffic stop would affect the entire Town and should be considered by the public early in the development process.

**V. ADOPTION OF MEETING AGENDA**

**PUBLIC COMMENTS OPENED**

There were no comments from the public.

PUBLIC COMMENTS CLOSED

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

## VI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

### A. Revenue Enhancement and Community Outreach to Neighborhoods (RECON) Update of Community Testing and Polling of One Percent Sales Tax and Community Facility District (CFD) Potential Revenue Measures

Town Manager Jill Keimach reported that the Town Council would be presented with the polling results from the telephone survey from two consultants the Town had hired to determine the receptiveness of a one percent sales tax and Community Facilities District (CFD) as potential revenue measures.

Brian Godbe, Godbe Research, reported on the survey of local voters to assess the potential voter support for potential local funding measures including a local one percent sale tax and CFD options that could help with the funding for streets and roads, prioritize projects and programs to be funded with the proceeds, test the influence of various statements on potential voter support, identify the optimum tax amount at which voters would support potential measures, and identify any differences in voter support due to demographic and/or voter behavioral characteristics. The average telephone survey, at 18 minutes in length, had been conducted May 15 through May 24, 2012 of voters who would pass ballots in November (approximately 9,000 voters), with a total of 302 completed surveys and with an error rate of plus or minus 5.5 percent.

Jennifer Rindahl, Senior Manager, Lew Edwards Group, reported that based on the results of the survey, a one percent sales measure to help repair Town streets and roads was potentially viable for the November 2012 ballot. After all information had been shared, the support was at 54 percent with a margin of error rate of 5.5 percent. A \$14 million CFD received only 40 percent support and was not viable in the foreseeable future. As such, it was recommended that the CFD be eliminated as a viable option.

Mr. Godbe stated that the November 2012 ballot would be full of State measures including the Governor's plans for a sales and income tax increase as well as the federal elections, and as a result a question had been asked of the public showing that 46 percent of the voters in November would be generally supportive of the Governor's plan, 31 percent opposed, and 18 percent with mixed opinions. He presented in detail the various questions and results of the public survey as identified in the Town of Moraga, 2012 Revenue Measure Feasibility Survey conducted by Godbe Research.

Ms. Rindahl identified the community priorities for a Town of Moraga tax measure including the repair of potholes and cracks, keeping streets from falling into disrepair, rebuilding and repaving Town streets, fixing streets in every neighborhood, and preventing potholes from occurring.

Ms. Rindahl noted that in terms of fiscal accountability, a priority of Moraga constituents was that any Moraga sales tax measure proposed by the Council include the following provisions: give Moraga local control over local funds for local needs so that no funds could be taken by the State; require independent financial audits and citizen oversight; ensure that all out-of-towners who visited Moraga paid their fair share to maintain local roads; and guaranteed that food

purchased as groceries, prescription drugs, professional services, and rent would not be subject to additional tax. She added that in terms of automobile dealerships, anyone who purchased a new vehicle would pay the sales tax based on the resident's personal address which was a standard operating procedure that had been followed for many years. This information had not been included in the polling survey but would be included as part of any information the Town provided to the public as part of a potential sales tax measure. She added that the vast majority of items (such as food, pharmaceuticals, and the like, would not be subject to sales taxes).

Ms. Rindahl identified the next steps including updating outreach materials to inform/solicit additional input and perspectives from more stakeholders including the business community, continue outreach efforts and presentations to local neighborhoods and organizations, begin to engage these additional constituencies about their views, accept the community's preferences, and eliminate those options that the Town's constituencies currently rejected.

In response to Council comments, Mr. Godbe reiterated the features of the measure, and explained that based on the chart, numeric values had been assigned to each of the responses from the surveys which created a mean score of the average voter. Those who had responded with a "don't know" response had been dropped from the analysis given that there was no way to assign a value. He clarified, as an example, that .87 as shown on the chart for the repair of potholes and cracks did not mean "87 percent."

#### PUBLIC COMMENTS OPENED

Dale Walwark, Moraga, commented that the focus of RECON had been to create much needed steady revenue for the Town through the creation of an ongoing program to maintain the Town's streets. He suggested that the project should be more than repairing potholes and streets but should include the creation of a revenue stream for ongoing maintenance and street repair, which the Town should have had in place in the past. He suggested that the citizens of Moraga were intelligent enough to grasp that concept and he would like to see the project presented in that manner.

Barbara Simpson, Moraga, questioned how the consultants had chosen the residents who had been surveyed, inquired of the number of people present in the audience who had been contacted about the telephone survey, and asked whether or not there were any figures showing how sales tax revenues to the Town had decreased as a result of the State budget and the overall economy. She added the increase in sales tax may not have that much of an impact if the Town's sales taxes remained depressed because of the economy.

Mr. Godbe noted that all 9,000 potential voters had been placed in an algorithm program and based on variables of voting potentials, a stream of characteristics had been created which meant that of the 300 completed interviews they needed the same proportion of demographic characteristics such as male, female, Republican, Democrat, and the like, with a random sampling of the strata. He affirmed that a short "do not call" list had been utilized.

Ms. Keimach, in response to Ms. Simpson's inquiry, explained that during the May 23 Town Council meeting, the Five-Year Budget had been presented by staff including a history of sales tax in Moraga which had decreased with the decline in the economy although over the last two years had increased and the Town was almost at the 2006 level, which was the highest in the 10-year timeframe that had been evaluated.

Mr. Godbe stated that the projected voter turnouts for November 2012 based on the algorithm was expected to be 40 percent. An all mail-in ballot in 2013 had been projected at 42 percent for a "yes" vote with a higher turnout as a result of the characteristics of the community and the decrease in the percentage of permanent absentee voters. He also explained that the survey

work that had been done for a bond measure last year had polled 18 percent "definitely no," and an uninformed test for the sales tax was 29 percent. He suggested that they had correctly adjusted for the political environment for November 2012. He was encouraged that there was support in the RECON survey second test for the bond measure at 54 percent and the sales tax at 54 percent and, despite the margin of error in the survey, there was a majority of people over a three-year period who consistently supported some sort of tax. He was confident that meant that a sales tax measure would succeed. While the results might have been better without statewide measures on the ballot, he suggested that the outreach efforts had negated that potential drop in support.

Mr. Godbe explained that Proposition 218 allowed cities to put general sales taxes on the ballot with a simple majority when councils were up for re-election. He also described the differences in partisanship, age, and gender which had shown that women were more supportive of tax measures than men. He referenced the differences in demographics for a countywide measure, which was more diverse as compared to a community the size of Moraga which was more homogenous and affluent.

Sam Sperry spoke to the difference between a special sales tax and a general sales tax and commented that the permitted use of proceeds from a special sales tax would require the proceeds to be used for a committed/special purpose, and in the current context all of the money would be used for streets. A general sales tax would widen the permitted uses including the list that had been tested as part of the presentation. A special sales tax required a two thirds majority while a general sales tax measure required only a simple majority. He added that a general sales tax must be tied to Council election data while a special sales tax would not. He asked Mr. Godbe for clarification on the outcome and takeaway with respect to a general sales tax at one percent and one half percent since he understood from the presentation that uninformed support had shown 53.7 percent of the two categories in support, a simple majority but within the margin of error. The half cent sales tax for the two categories had shown 58.3 percent in support, a full four percent difference, which was above and outside the margin of error which he characterized as a significant piece of information from the survey.

Mr. Godbe referenced the half cent sales tax measure with the numbers as shown which did exceed the simple majority even with the error rate although based on the methodology and comparison of the numbers, the uninformed or informed could be as high as 60 percent or as low as 48 percent. If the same was done for the half cent measure, it could be as low as 52 percent. He stated that there was no statistical difference between the percentage 'yes' for one cent and the percentage 'yes' for the half cent.

Ms. Rindahl explained that the survey results had clarified the community's priorities for services which messages were important to share with the community. The survey had identified the Town services the community desired to be prioritized as the top five items to be improved, among them streets and roads. The Town Council had the right to spend the funds on what it chose but it had already identified streets and roads as a priority on multiple occasions and it was unlikely the Town Council would act in a different direction, although it was legally possible to do so. She stated that the Town Council today could not bind a Town Council in the future and the measure allowed the Town Council the ability to enact a one cent sales tax measure for 20 years, with the authority to incur debt to accelerate infrastructure projects as clearly indicated in the ballot language of the question. She also clarified that the Council seated after the 2012 November election would have that authority.

Jerry Bradshaw, City Engineer for the City of El Cerrito and Consultant to the Town of Moraga, provided information on the City of El Cerrito's special purpose sales tax that had been approved in 2008 (specifically for streets) and a second sales tax measure (a general purpose

tax) approved in November 2010. The City of El Cerrito had bonded against the revenue stream from the special purpose sales tax.

Ms. Keimach advised that the specific issues of bonding against a general sales tax measure would have to be worked out after direction from the Council after the current meeting. Staff would work with the bonding experts and return to the Town Council in July with details on where the Council's direction could lead.

Mayor Metcalf reported that a recent presentation of the sales tax concept with the Moraga Chamber of Commerce included a discussion on the lack of data but that add-on sales taxes did not appear to have an adverse effect on overall commercial activity.

Mr. Godbe stated that he was not a sale tax consultant but the technical term was leakage; the loss of sales because of an add-on sales tax. He had worked with cities on sales tax measures and based on the data related to the falling economy, several valley towns had added sales taxes while the neighboring communities had not and the sales tax for both cities went down at the same rate. He questioned whether or not someone would actually drive to another city to save a dollar. Since this would be a use in transaction tax, people would likely not have a choice on where to buy items and they would pay Moraga sales taxes. Based on the data he had seen and from other campaigns, he characterized it as more of a philosophical argument.

Ms. Rindah agreed and suggested that a survey could be done when people noticed when they stopped paying the one percent which had dropped last year. She commented that the State of Oregon did not have sales taxes and neighboring communities on the California border may realize those savings in sales taxes.

Ms. Keimach affirmed that she and the Mayor had met with the Chamber of Commerce to discuss the potential sales tax measure. After that meeting, she had spoken to representatives from a major grocery chain which had stores in cities both with sales taxes and those that did not, and the representative had suggested that people shopped in their neighborhood stores and they had not seen a change in sales whether there was a tax or not. She had asked that any hard data be provided to the Town if available.

Mr. Godbe further commented that Godbe Research had been the pollster for the City of El Cerrito, and while Moraga was more affluent than El Cerrito, El Cerrito was philosophically less opposed to sales taxes.

Mr. Bradshaw added that people were not always aware of the city limit lines for the City of El Cerrito and he suggested that El Cerrito had benefitted from that.

As to the status of the Moraga School District bond, Mr. Godbe commented that based on his experience with multiple measures from different jurisdictions on the same ballots at the same time, people tended to make up their minds on city, county, and school measures independently.

Ms. Simpson spoke to recent news regarding the State's siphoning of monies from the license plate funds which may reinforce the public's concerns with a general sales tax measure where a future Town Council might decide to use the money for a different purpose, although the community may have voted to have the funds used to repair roads. She suggested that was an impetus for consideration of a special tax where the funds would be used simply for roads.

Mr. Godbe acknowledged that was a discussion the Town Council needed to have and it was important that the money not be taken by the State for some other purpose, which was a larger issue separate from trust in the Council and the reason for a citizen's oversight committee.

Ms. Rindahl emphasized that if the Town Council decided to place a measure on the November ballot, and if it were to pass, the Council would then have to best decide how to implement the request of Moraga residents.

Mr. Sperry explained that he had no experience with, and knew of no legal authority for, borrowing against General Fund monies in the form of a bond. A Certificate of Participation (COP) was a type of mechanism whereby a shortfall of a COP would be based upon a leased transaction and questioned what assets would be pledged for the lease. He was skeptical of the legitimacy of using streets as a leased asset and when that issue had arisen earlier, he had recommended that bond counsel be present to provide legal counsel. He added in the event the Town decided to borrow against the proceeds of a general sales tax or any other element of General Fund resources, it must be structured as a leased transaction and identify some asset that would be the subject of the lease. He strongly discouraged the Town Council from considering using streets as the leased asset.

Ms. Keimach concurred, noting a similar conversation with bond counsel and stated the Town should identify facilities in the Town and use other buildings in the Town for collateral with this revenue stream.

Mr. Godbe added that if the language in the ballot was changed to reflect a special tax that could only be used for roads, the 75 word ballot statement limit might not be sufficient to increase the support for a special tax.

Mr. Walwark suggested that many people did not relate to Town government but used the streets and must be convinced that the public owned the streets and they must be repaired. He acknowledged it would be a difficult sell.

Larry Beans, Moraga, commented that he had received and responded to the 18-minute telephone survey and found himself becoming negative about the process and questions regarding the speed bumps issue. The questions that had been asked had almost encouraged him to think negatively.

Ms. Rindahl affirmed that such questions had been asked, not to portray something negative but when surveys had been submitted to Town residents, one of the negatives had been the issue of the speed bumps, which the polling had used as information and a question as to whether or not the public would support a measure for road repair. With the way the survey had been crafted, the intent was to be 100 percent accurate with any questions and information on the status of the Town's streets and roads to ensure a statistically valid sample. She emphasized that several topics had been discussed as part of the telephone survey.

Ms. Keimach affirmed that questions had been asked as part of the telephone survey to make the survey statistically valid, to show both the positive and negative, and to see whether or not there were differences in how people voted. She asked the Town Council to consider that prior to the survey polling results the Town Council had been considering a CFD, a one cent, and a half cent sales tax measure. Based on the polling results, she asked the Council to consider whether or not to discard the option for a CFD, and direct staff to work with the community, Chamber of Commerce, and community services to gather bond information, sales tax information, and additional studies that could address sales tax leakage. She added that the special meeting had been scheduled since the Town had three contracts with consultants who had been asked to wait for the survey results. If the Town Council decided not to pursue a CFD, for which \$55,000 had been allocated, the consultants involved in that effort would be informed to stop those efforts.

**Councilmember Trotter** noted that the polling data had persuaded him that a CFD in Moraga would have to be deferred. He could support a one cent general sales tax measure, agreed that there must be a sunset since it was something the public expected, suggested that some of the analogies that were positive included the recent East Bay Regional Park District (EBRPD) passage of Measure WW which continued a 20-year measure that had been about to expire and involved the same basic tax amount in a different program and which passed comfortably, suggested that if the Town pursued the process with a one cent sales tax measure, if adopted and if the Town Council demonstrated that the monies could be handled in an appropriate way, a future Council may be able to make the case to continue that process. He understood that the cost of placing a one cent sales tax measure on the November ballot would not be that expensive but asked if the potential costs were known. He was pleased with the polling results of a majority in favor, but it would be up to the Council and the RECON to prepare the measure and to make the case which he stated could be done.

Ms. Keimach advised that the information could be returned to the Town Council although she noted that the Town would likely still use bond counsel to determine the amount of bond capacity.

**Councilmember Mendonca** suggested that the polling questions were valid and she would rather have that information now. She agreed with Councilmember Trotter's comments.

**Councilmember Chew** understood that a CFD was not viable. Assuming that a one cent sales tax was adopted, he asked what the impact would be to the street management program.

Mr. Bradshaw suggested it would allow the Town to grow the figure upward and would allow the Town to structure a debt and determine how much could be done up front as opposed to a pay-as-you-go, which details remained to be determined over the next month.

**Councilmember Chew** supported moving forward with a one cent sales tax measure on the November 2012 ballot, identified as Alternative 2 in the May 30, 2012, staff report.

**Vice Mayor Harpham** recommended that the CFD contracts be suspended and that the Town Council consider the one cent sales tax measure.

**Mayor Metcalf** commented that he was not surprised, but he was not happy with the polling results. He suggested there could be potential success for a one cent or half cent sales tax measure, he had concerns with the blank check syndrome that many in the community had expressed and sought more focus on how to get the message out to the public that the funds would be spent on the Town's infrastructure and not on other items. He recognized the Chamber's concerns with respect to sales tax leakage and suggested that credible data would likely be supported.

**Mayor Metcalf** also wanted to spend more time on the questions regarding the one percent sales tax measure where two thirds would be used for roads through a pay-as-you-go process rather than bonding, and what could be done with those funds. He wanted to demonstrate to the public that something like that could be done, as had been done for the City of El Cerrito, which was why a second sales tax measure had been passed in that community.

**Councilmember Trotter** asked for more information as to whether or not it would be legitimate to leverage the revenue, and he asked for more information on the schedule for a general sales tax measure vetted and approved by the Town Council to reach the November 2012 ballot.

Ms. Keimach advised that direction must be approved and submitted to the County by August 10, 2012 to reach the November 2012 ballot. The RECON would be presented with the details to research the information the Council requested to be brought back to the Council in July. She emphasized that this would be both a RECON and Town Council effort.

**VII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS**

There were no Council requests for future agenda items.

**VIII. ADJOURNMENT**

**ACTION: It was M/S (Trotter/Mendonca) to adjourn the meeting at 8:55 P.M. Vote: 5-0.**

Respectfully submitted by:

  
Marty C. McInturf, Town Clerk

Approved by the Town Council:

  
Michael Metcalf, Mayor