

**TOWN OF MORAGA  
TOWN COUNCIL REGULAR MEETING**

**July 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 7:04 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**

**Vice Mayor Harpham** led the Pledge of Allegiance.

**III. SPECIAL ANNOUNCEMENTS**

**Mayor Metcalf** reported that the Town Council had met in Closed Session and there was nothing to report.

**IV. PROCLAMATIONS AND PRESENTATIONS**

There were no proclamations or presentations.

**V. PUBLIC COMMENTS AND SUGGESTIONS**

Barbara Simpson, Moraga, asked for a set procedure for notifying the news media of information from the Town and consideration of a communications staff person who could communicate with the news media on items of interest.

Barry Behr, Moraga, requested that the Town Council not label those speaking for off-leash dogs at Rancho Laguna Park as "dog people." He also referenced and summarized information from the League of California Cities regarding ballot measures and the law, noted that during the prior Town Council meeting that a Councilmember had intimated there was a question of the signatures gathered for the referendum, and emphasized the effort to ensure that signature takers had followed the law.

**VI. ADOPTION OF CONSENT AGENDA**

**A. Approval of Consent Items**

No items were removed from the Consent Agenda.

**PUBLIC COMMENTS OPENED**

There were no comments from the public.

**PUBLIC COMMENTS CLOSED**

**ACTION: It was M/S (Trotter/Harpham) to approve the Consent Agenda, as shown. Vote: 5-0.**

- |    |   |          |
|----|---|----------|
| 1) | Approve Accounts Payable Claims for: 6/29/12 (\$84,929.25);<br>7/02/12 (\$95,550.89)  | Approved |
| 2) | Approve Minutes for Town Council Special and Regular<br>Meetings on June 13, 2012   | Approved |
| 3) | Adopt Resolution 57-2012 Authorizing Town Manager to Amend<br>the Existing Consultant Services Agreement with Mills Associates<br>for the Preparation of an Environmental Impact Report (EIR)<br>for the Proposed Six-Lot Hetfield Estates Subdivision in an<br>Amount Not-to-Exceed \$20,000               | Approved |
| 4) | Adopt Resolution 58-2012 Authorizing Submission of the<br>Compliance Checklist for Measure J Calendar Years 2010<br>and 2011 Growth Management Program for Allocation of Fiscal<br>Years 2011/12 and 2012/13 Local Street Maintenance and<br>Improvement Funds to the Contra Costa Transportation Authority | Approved |
| 5) | Adopt Resolution 59-2012 Authorizing the Town Manager to<br>Purchase a Police Vehicle Pursuant to the Town of Moraga's<br>Purchasing Policy Regarding Sole Source Purchases   | Approved |
| 5) | Adopt Resolution 60-2012, Authorizing the Continued Payment<br>of Annual Maintenance for Springbrook, the Town of Moraga's<br>Financial, Payroll, and Human Resource System in the Amount<br>of \$16,756 for Fiscal Year 2012/13 with a Maximum Annual<br>Increase of Five Percent for a Five-Year Period   | 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 (Chew/Mendonca) 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 two Revenue Enhancement Community Outreach to Neighborhoods (RECON) meetings, and a potential sales tax ballot measure would be presented to the Town Council at its next meeting.

**Vice Mayor Harpham** - Reported that he had attended a RECON meeting on July 10, the Fourth of July festivities and was involved in the donation of the tent from the Moraga Park Foundation for use by the Moraga Youth Involvement Committee (MYIC).

**Councilmember Chew** - Reported that he had attended the Moraga Chamber of Commerce Mixer on June 26; and the Fourth of July festivities.

**Councilmember Mendonca** - Reported that she had attended the Central Contra Costa Solid Waste Authority Board meeting on June 28; and assisted the MYIC on its Annual Fourth of July Pancake Breakfast, collected funds and donations for the fireworks display, and encouraged more collectors in the future.

**Councilmember Trotter** - Reported that he had attended the Central Contra Costa Solid Waste Authority Board on June 28; the Authority's New Garbage Franchise Contract Subcommittee meeting on July 2; and had spent some time as a traffic warden at the corner of School Street and Moraga Way for the Fun Run event on the Fourth of July.

- B. Town Manager Update** – Town Manager Jill Keimach reported that RECON had made a recommendation for a one-cent sales tax measure for the November ballot which would be presented to the Town Council on July 25. She reported on the Fourth of July festivities commending all Town staff, volunteer, and Council efforts for the event. It was hoped that funds would still be able to be collected to cover the hard costs for the fireworks display; the Town was \$1,735 short of its goal to break even.

**IX. DISCUSSION ITEMS**

There were no discussion items.

**X. PUBLIC HEARINGS**

There were no public hearings.

**XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION**

- A.**
- (1) Accept the County Certification that the Referendum Petition Against Ordinance 236 Regarding Off-Leash Hours at Rancho Laguna Park Contains the Requisite Number of Valid Signatures; and
  - (2) Reconsider Ordinance 236; and
    - (a) Introduce and Waive the First Reading of an Ordinance to Repeal and Rescind in its Entirety Ordinance 236, Amending Section 12.080.180 of the Town of Moraga Municipal Code to Modify the Exception for Off-Leash Animals at Rancho Laguna Park to Only

Allow Off-Leash Animals in a Town Council Designated Fenced and Signed Dog Park of No More than 3 Acres; or

- (b) Adopt Resolution \_\_\_-2012 Calling for a Municipal Election to Submit to the Voters a Ballot Measure Regarding an Ordinance to Modify the Exception for Off-Leash Animals at Rancho Laguna Park to Only Allow Off-Leash Animals in a Town Council Designated Fenced and Signed Dog Park of No More Than 3 Acres and Request the Board of Supervisors of Contra Costa County to Consolidate the Municipal Election with Other Elections to be Held on the November 6, 2012 Regular Election Date; or
- (c) Direct Staff to Prepare Resolutions to Submit the Ordinance to Voters at a Special Election

Ms. Keimach presented the staff report and stated that after acknowledging the County certification that the Referendum Petition against Ordinance 236 Regarding Off-leash Hours at Rancho Laguna Park Contained the Requisite Number of Valid Signatures, the Council had the following options for consideration: introduce an ordinance repealing and rescinding Ordinance 236; adopt a resolution submitting Ordinance 236 to the voters at the next general election in November 2012; direct staff to prepare documents to submit Ordinance 236 to the voters at a special election after November 2012; or direct staff to return to the Town Council at its next regularly scheduled meeting with a proposed alternative Town ballot measure for the same election as outlined by the Council. She noted that pursuant to State law, the Town Council must either rescind Ordinance 236 in its entirety or submit Ordinance 236 to the voters. Alternative 3 and the Council prerogative to pursue an alternative ballot measure did not require a decision at the current time unless desired by the Town Council. From an administrative point of view, she agreed with many of the comments that had been solicited from a survey of Town residents in that the Town had limited resources, funds, and staffing and should focus on the stated objectives of the community to repair the Town's roads and should not include a ballot measure about off-leash dogs at Rancho Laguna Park at the current time.

#### PUBLIC COMMENTS OPENED

Dick Ayres, Moraga, summarized the history of the off-leash dog issue at Rancho Laguna Park, and the establishment of a community committee to create an off-leash dog park at Rancho Laguna Park which had led to the recommendation of a Plan C concept. The community committee had made a recommendation that the Town Council support Plan C and maintain a temporal separation arrangement until such time as Plan C could be implemented, although the Town Council rejected that recommendation, passed Ordinance 236, and recommended that Town staff evaluate Option D2. This action led to Moraga citizens collecting signatures for a referendum petition against Ordinance 236 with the signatures having been verified by the County. Mr. Ayres commented that the Town Council had requested that staff seek further input from the residents through a variety of media outlets to determine whether or not the community would support a year-long effort to work on a mutually agreeable plan to separate use areas of the park, which survey results had shown that the majority favored leaving the park as it was. He asked that the Town Council either rescind Ordinance 236 or submit the referendum to the electorate for a decision.

Town Attorney Karen Murphy advised that Attachment B (Exhibit A) to the July 11, 2012 staff report, Ordinance 236, had been omitted as Exhibit A and should be incorporated into Attachment B. Copies were provided to the Town Council and members of the public.

Larry Tessler, Moraga, spoke to the results of the Rancho Laguna Park survey noting that the majority preferred that the park be left in its present state. He spoke to concerns that had been raised in the past, that children and the elderly must be protected from the dogs, that dog waste was an issue, that those who feared dogs were being excluded from the park, and suggested that removing one hazard would not prevent another from taking its place and there had been no evidence to support the safety concerns.

Barry Behr stated that he had been involved in the process for the past three years and spoke to the history of the issue. He urged better posting of off-leash dog hours at Rancho Laguna Park, improved communication, and suggested that the park be left as it was.

Dale Walwark, Moraga, commented that the vast majority of Moraga residents were not involved in the off-leash dogs issue and it was unfortunate that the issue had become so negative. He emphasized the importance of the infrastructure issue on the November ballot and recognized that it would be difficult to pass a ballot measure particularly if there was a competing measure on the November ballot.

Donna Ward, Moraga, asked the Town Council to consider placing the referendum on the November ballot, recognized that the Town had other important issues, but wanted to see the matter put to rest by a vote of the entire community not just a small group that had collected the 1,800 signatures.

Larry Beans, Moraga, suggested that both sides of the issue had not listened to each other, and urged that Ordinance 236 be rescinded and not be allowed to compete with the road measure on the November ballot. He urged consideration of a fenced-in dog park with its size remaining to be resolved. He suggested that the most recent idea proposed by the Town Manager would provide something for everyone and while many felt that the park should be left as it was that was not something he could support.

Tina Brier, Moraga, urged the Town Council to rescind Ordinance 236 and allow a compromise solution.

Patti Liberman, Moraga, questioned whether the funds the Town Council had set aside in the budget for Rancho Laguna Park for future use should be spent on the park given the other priorities in the Town. She also questioned the lack of cost estimates and analyses for the proposed concepts, pursuing a project that was not supported by the community, and questioned the Town Council's actions.

Lee Lawrence, Moraga, spoke to the dangers of off-leash dogs as compared to sports such as soccer and presented the Town Council with written information on the statistics of injuries from soccer. She expressed her hope that Rancho Laguna Park would be left as it was with the Town Council to rescind Ordinance 236.

#### PUBLIC COMMENTS CLOSED

Ms. Murphy reiterated the actions under consideration by the Town Council, with the first action for the Council to accept the County Certification (Attachment A) in the July 11 staff report that the referendum contained the requisite number of signatures. There was no resolution for that action and the Town Council needed only to make a motion. The second action was to reconsider Ordinance 236 and consider items (a), (b), or (c), as shown in the staff report.

Responding to Council, Ms. Murphy confirmed that the Town Council had no choice but to accept the County Certification of the referendum.

**ACTION: It was M/S (Trotter/Mendonca) to accept the County Certification that the Referendum Petition Against Ordinance 236 Regarding Off-Leash Hours at Rancho Laguna Park Contains the Requisite Number of Valid Signatures. Vote: 5-0.**

**Mayor Metcalf** stated that there were important issues before the Town and emphasized the work of RECON and suggested if a dog park was placed on the November ballot it could have a negative impact on the revenue measure for roads. He emphasized the poor condition of the Town's roads which needed to be addressed and suggested that the matter should be taken off the table to allow a focus on the sales tax measure. He supported a motion to rescind Ordinance 236.

Based on a verbal poll, **Councilmember Trotter** and **Vice Mayor Harpham** supported the Mayor's sentiments.

**Councilmember Mendonca** stated that the Council was united that infrastructure was critically important to the Town. She emphasized that other citizens had expressed a desire to have the option to use Rancho Laguna Park at the same time as the posted off-leash dog hours but had not because of the off-leash dogs; noted that the current ordinance allowed for off-leash dogs and their owners to use Rancho Laguna Park on a daily basis, 365 days a year, approximately six hours each day, prime time hours for any citizen who worked during the day; emphasized that over the years residents had opined that a shared use of Rancho Laguna Park's resources was essential. She stated there was a serious problem of access and safety; emphasized that her decisions had been made on sound public policy to maximize access for all Town citizens and the safety of all park patrons and there was a need for a fence to separate off-leash dogs from other park users and allow all citizens the opportunity to use the park at all times of the day. She referenced the Town Council's actions on this matter which had led to a lawsuit and opposition in the form of a referendum and the Town Manager's untiring efforts to find a compromise.

**Councilmember Mendonca** took the opportunity to express her appreciation to the Town Manager, the Parks and Recreation Director, Town staff, the Park and Recreation Commission, and citizens who had worked to find a compromise. As a strong believer in the merits of well designed and thoughtful public policy, she stated it was never her first choice to make public policy through a public referendum although after all the time on the public process thwarted by those who had no desire to maximize shared access for all, she believed it was time for the people of Moraga to have the opportunity to provide their input and for those reasons, she supported placing the matter on the ballot.

**Councilmember Chew** echoed the comments made by Councilmember Mendonca and he too placed the Town's infrastructure as a top priority. As to whether or not the referendum would negatively impact the potential sales tax measure, the Town Council had yet to make a decision on what would be placed on the November ballot but he was confident it would move forward. In his opinion, it would be better for the voters to have a say and place the dog park issue on the ballot for a decision. If the decision was then to rescind the ordinance, he would accept that as the will of the people.

**Councilmember Chew** questioned the plans for the future, particularly if the sales tax measure did not pass in November. He reiterated that if the referendum was placed on the ballot, he was confident that the voters would know the difference between the two measures. He did not want to alienate voters who would like a say on the matter, urged the Town Council to consider placing the referendum on the ballot, and reiterated his position that there must be a fenced-in dog park at Rancho Laguna Park because of the potential safety risks and liability to the Town.

**Vice Mayor Harpham** acknowledged the concern that the sales tax measure may not succeed, acknowledged the verbal and written statements that the two issues could not be separated, and suggested that if a physical separation for a dog park at Rancho Laguna Park was on the same ballot as the sales tax measure there could be a psychological connection and the sales tax measure may fail. In this matter he reluctantly supported Attachment C to the staff report, repealing and rescinding in its entirety Ordinance 236. He emphasized the importance of repairing the Town's roads and for the citizenry to consider a sales tax measure to improve the Town's infrastructure as what was best for the Town. He stressed the work of the Mayor and the Town Manager in their efforts to improve the Town's infrastructure and reiterated his support for the action recommended in Attachment C.

**Mayor Metcalf** made a motion, seconded by **Councilmember Trotter** to Introduce and Waive the First Reading of an Ordinance to Repeal and Rescind in its Entirety Ordinance 236, Amending Section 12.08.180 of the Town of Moraga Municipal Code to Modify the Exception for Off-Leash Animals at Rancho Laguna Park to Only Allow Off-Leash Animals in a Town Council Designated Fenced and Signed Dog Park of No More than 3 Acres.

On the motion, **Councilmember Chew** questioned the plan that would be considered by the Council to address the issue after the November election. He questioned the motion as stated absent any direction.

**Councilmember Trotter** pointed out that if the motion was adopted the Town Council would be prevented from adopting a similar or same ordinance for a year's period. Assuming the motion was adopted, he asked the Town Attorney to clarify when the ordinance would become effective.

Ms. Murphy advised that if the motion to introduce and waive the first reading of an ordinance to repeal and rescind in its entirety Ordinance 236, amending Section 12.08.180 of the Town of Moraga Municipal Code to modify the exception for off-leash animals at Rancho Laguna Park to only allow off-leash animals in a Town Council designated fenced and signed dog park of no more than three acres was adopted at this time, it would come back at the next meeting of the Town Council as a Consent Agenda item for a second reading which did not require a roll call vote and which would take effect 30 days thereafter. She noted that Ordinance 236 had been suspended by the referendum. The prohibition on adopting the same or similar ordinance for a year's period would go into effect 30 days after the adoption of the second reading although the Town Council may have general discussions about the dog park issue after the November election.

Town Clerk Marty McInturf acknowledged that the Town Council preferred roll call votes for the introduction of ordinances and the Town Council may take a roll call vote for the item when it returned for a second reading.

**Councilmember Trotter** thanked the Vice Mayor for his comments on the matter, acknowledged that the polling for a sales tax measure had shown a possibility for success, and supported the motion to be able to focus on the broader public good for the success of the sales tax measure.

**ACTION: It was M/S (Metcalf/Trotter) to Introduce and Waive the First Reading of an Ordinance to Repeal and Rescind in its Entirety Ordinance 236, Amending Section 12.08.180 of the Town of Moraga Municipal Code to Modify the Exception for Off-Leash Animals at Rancho Laguna Park to Only Allow Off-Leash Animals in a Town Council Designated Fenced and Signed Dog Park of No More than 3 Acres. Roll Call Vote: 3-2. Noes: Chew, Mendonca.**

**B. Adopt Resolution \_\_\_-2012 Accepting the Open for Business Pledge**

Ms. Keimach reported that the item came about from a request during the most recent Mayors' Conference that every community in Contra Costa County adopt the Open for Business Pledge.

Planning Director Shawna Brekke-Read commented on the economic impacts to cities in both Alameda and Contra Costa counties and a decrease in development and that all cities and the two counties adopt the Open for Business Pledge as developed by the East Bay Economic Development Alliance. She added that the intent was that superior services also be provided to Moraga residents as well. As to the reference in the pledge "including green building codes," she emphasized that the Town must comply with Title 24 Energy Standards and the State Green Building Code. If the Town Council determined that the language "including green building codes" was too gratuitous, it could be removed from the pledge.

**Mayor Metcalf** supported the removal of said language since it could lead to more restrictive and costly regulations.

**PUBLIC COMMENTS OPENED**

Barbara Simpson, Moraga, agreed that the reference to "including green building codes" should be eliminated from the Open for Business Pledge.

**PUBLIC COMMENTS CLOSED**

By consensus, the Town Council determined that the language in the Open Business Pledge shall be adopted, as shown, since it would be symbolic and would not require the Town to comply with anything beyond the existing requirements of the State Building Codes related to energy efficiency for new development. There was no resolution in the packet.

**ACTION: It was M/S (Trotter/Mendonca) to accept the Open for Business Pledge as developed by the East Bay Economic Development Alliance. Vote 5-0.**

**C. Review and Accept Response to Grand Jury Report No. 1209, "City Retirement Plans, an Unsustainable Benefit?" by the 2011-2012 Contra Costa Grand Jury**

Administrative Services Director Stephanie Hom presented the staff report and recommended that the Town Council provide feedback and accept the response to Grand Jury Report No. 1209, "City Retirement Plans, An Unsustainable Benefit?" by the 2011-2012 Contra Costa Grand Jury and direct staff to forward a response to the Grand Jury. She advised that California Penal Code Section 933.05 required the Town of Moraga to respond to the findings and recommendations identified in the Grand Jury Report for the Town of Moraga, specifically Findings 1, 3, 4, 5, 7, and 8 and asked to respond to recommendations 1, 2, and 4. All responses must be one of the options provided as outlined in the June 6, 2012 transmittal letter to the Town Manager, with Attachment B the draft response as directed.

Ms. Hom advised that Town staff believed that the Grand Jury Report had made several inaccurate and misleading statements that did not serve the best interests of the Town and the public and staff emphasized the importance of bringing the matter to the Town Council as soon as possible to prepare the Town's response. When asked, she commented that prior to the distribution of the Grand Jury Report, the Town had been provided with a questionnaire which had been used to complete the report.

Chief of Police Robert Priebe added that he had been upset when he had been provided a copy of the Grand Jury Report. He suggested that the Grand Jury had a preconceived idea, had

obtained the desired data and had missed a golden opportunity to use the Town of Moraga as an example of how to do things right. He agreed with the need to correct many of the misstatements in the Grand Jury Report and suggested that staff's draft response had accurately and respectfully identified the mistakes made in the Grand Jury Report.

#### PUBLIC COMMENTS OPENED

There were no comments from the public.

#### PUBLIC COMMENTS CLOSED

The Town Council discussed the response to Grand Jury Report No. 1209, "City Retirement Plans, An Unsustainable Benefit?" and offered the following comments and/or direction to staff:

- Complimented staff's draft response letter to the Grand Jury Report as cogent and responsive;
- Directed staff to place the draft response letter to the Grand Jury Report on the Town's website and *About Town* newsletter so that the public could become educated on the Town's current pension and retirement plans and the relationship of the level of the benefits offered in comparison to other jurisdictions which emphasized that the Town of Moraga's benefits were much lower and reflected that the Town had well managed its finances and prided itself on good city management; and
- Amended the draft response letter to reflect that in 2007 the Town of Moraga had made a major payment to eliminate what was then the uncalculated unfunded pension obligation of the Town (\$1.4 million), and as of June 30, 2011 there was no unfunded pension liability.

**ACTION: It was M/S (Trotter/Mendonca) to accept Response to Grand Jury Report No. 1209, "City Retirement Plans, An Unsustainable Benefit?" by the 2011-2012 Contra Costa Grand Jury, as amended. Vote 5-0.**

- D. Review and Consideration of Draft Letter to Moraga School District Governing Board Regarding its Response to Sexual Abuse of a Moraga Student by a Moraga Teacher

Ms. Keimach reported that during the last Town Council meeting there had been a request from the public for the Town Council to write a second letter to the Moraga School District (MSD) with two Councilmembers, (**Mayor Metcalf** and **Councilmember Mendonca**), having been selected to draft a letter, which had not been finalized. The agenda item was to hear from the Council, receive public comments, and discuss the next steps on the matter.

#### PUBLIC COMMENTS OPENED

Barbara Simpson, Moraga, clarified with the Town Council that no completed draft letter had been published for review. She expressed her appreciation to the Town Council for its willingness to consider drafting a letter to the MSD and reported on recent litigation involving current and former school principals and other district officials who had ignored student complaints for years. She spoke to the gravity of the situation as it related to Kristen Cunnane and seven so far unidentified students who had made complaints, with no resolution. She urged that the letter from the Town Council demand transparency, clarification, and require the MSD to have an outside independent person or group investigate the matter.

Trish Bare, Moraga, questioned the Town Council's consideration to send a letter to the MSD and questioned what would be accomplished. She reported that the MSD had addressed the

matter during its June 12 meeting at which time they had agreed to create a committee to review the MSD sexual abuse policies. She was confident that the MSD Board and Superintendent would handle the matter appropriately, suggested that a Town Council letter could undermine the community's confidence in handling the matter, and suggested that the staff report was perpetuating much of the misinformation surrounding the case with misstatements of fact. She did not support a letter to the MSD from the Town Council on the matter.

[End of audio tape]

**PUBLIC COMMENTS CLOSED**

By consensus, the Town Council determined that no letter would be sent to the Moraga School District.

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

There were no requests for future agenda items.

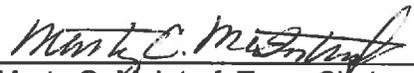
**XIII. COMMUNICATIONS**

There were no communications.

**XIV. ADJOURNMENT**

**ACTION: It was M/S (Trotter/Harpham) to adjourn the meeting at 9:03 P.M. Vote: 5-0.**

Respectfully submitted by:

  
\_\_\_\_\_  
Marty C. McInturf, Town Clerk

Approved by the Town Council:

  
\_\_\_\_\_  
Michael Metcalf, Mayor