

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**July 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 7:03 P.M. by **Mayor Michael Metcalf**.

ROLL CALL

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

Councilmembers absent: Councilmember Chew

II. PLEDGE OF ALLEGIANCE

Councilmember Trotter 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

Barbara Simpson, Moraga, read into the record written comments she had hand delivered to the Town Council on July 25, 2012, reiterating prior requests for the Council to urge the Moraga School District (MSD) to consider an independent outside investigation of the MSD's actions regarding sexual abuse within the MSD. She also offered copies of a series of articles she had written on the situation.

Bob Reynolds, Moraga, on behalf of the Moraga Park Foundation, spoke to the expansion and remodel of the bandshell at the Moraga Commons Park; expressed his appreciation to Town officials and the cooperation of new volunteers to staff the facility for the remainder of the season; and anticipated that a more formal presentation would be made to the Town Council in the near future.

VI. ADOPTION OF THE CONSENT AGENDA

A. Approval of the Consent Items

No Consent Agenda items were moved from the agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Mendonca) to approve the Consent Agenda, as shown. Vote: 4-0-1. Absent: Chew.

- 1) Approve Accounts Payable Claims for 7/13/12 (\$208,626.94); 7/13/12 (\$30,345.59) Approved

B. Consideration of Consent Items Removed for Discussion

No Consent Items were removed for discussion.

VII. ADOPTION OF MEETING AGENDA

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Mendonca/Harpham) to adopt the Meeting Agenda, as shown. Vote: 4-0-1. Absent: Chew.

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Metcalf - Reported that he had attended the Moraga Chamber of Commerce first Golf Classic at Moraga Country Club; and that the Chief of Police had e-mailed the Town Council to report that the Slow Down Lamorinda Program appeared to be working smoothly.

Vice Mayor Harpham - No report.

Councilmember Mendonca - Reported she had attended an Institutional Review Board meeting at Saint Mary's College (SMC) to review research proposals.

Councilmember Trotter - Reported that he had the opportunity to join the Moraga Chamber of Commerce for its first Golf Classic at Moraga Country Club and expressed his appreciation to the Chamber and the Club for hosting the event.

- B. Town Manager Update** – Town Manager Jill Keimach reported that the Town Council meeting scheduled for September 26 would be on Yom Kippur and would therefore be cancelled. She reminded the public and the Council that the Town Council meetings for the month of August had previously been cancelled for the legislative break. She reported that the Planning Commission had approved the Recreation Center for Saint Mary's College with grading to commence on July 26; the bulk of grading to be completed when students were not on campus. She also took the opportunity to introduce the new Town Public Works Director/Town Engineer Edric Kwan, formerly with the City of Richmond,

and spoke to his background and many accomplishments. In addition, she reported that Roos Pal, owner of Terzetto Cuisine, would be opening a new restaurant, the New Delhi Bistro, in the Rheem Valley Shopping Center.

The Town Council welcomed Mr. Kwan to the Town of Moraga.

IX. DISCUSSION ITEMS

There were no discussion items.

X. PUBLIC HEARINGS

There were no public hearings.

XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

- A. Adopt Resolution 61-2012 Authorizing the Processing of Vacation of Offer of Dedication Between Moraga Way and Country Club Drive Through Development Review Process for Proposed Project (APN 257-180-082; Property Owner: Bruzzone)

Planning Director Shawna Brekke-Read reported that the property was located between 1150 Moraga Way and 1280 Moraga Way, the Moraga Orinda Fire District (MOFD) Station. The parcel fronted both Moraga Way and Country Club Drive and the Moraga Center Specific Plan (MCSP) designated the parcel Mixed Office/Residential. The site was created through a series of parcel maps beginning in 1973 that required an 84-foot wide public right-of-way to the County as part of a regional circulation system. The Town later incorporated and the regional circulation system no longer applied. The 84-foot wide offer of dedication was never accepted by the County or the Town. An applicant would now like to develop the parcel to implement the MCSP and had asked the Town to vacate the offer of dedication. Town staff recommended utilizing the development review process to vacate the right-of-way. The staff report advised that any project meet minimum development standards including a linear park along the creek, a pedestrian/bicycle pathway at least 10-feet wide, a neighborhood improved park, landscaping along Moraga Road, pedestrian and vehicular access through the site, consistency with the MCSP, and approval from the Planning Commission and Design Review Board (DRB).

Ms. Brekke-Read advised that the action in the draft resolution would authorize the processing of the vacation of an offer of dedication between Moraga Way and Country Club Drive through the development review process for the proposed project.

In response to the Council, Ms. Brekke-Read explained that the resolution had described the process for how the property would be vacated. No property would be vacated at the time until the submittal of a project. She acknowledged that the site did not abut the creek.

PUBLIC COMMENTS OPENED

Phil Kerr, City Ventures, San Francisco, thanked the Town for the preparation of the MCSP which had been reviewed by the developer and used as a guide for development. A CDP had been prepared for the site with the intent to conform to the goals of the MCSP and to work closely with staff to ensure that anything done on the site conformed to the MCSP goals. Given the offer of dedication for the purpose of a road, which was no longer needed and had not been accepted by the Town, he asked the Town Council to consider the action to clean up that item to ensure that any proposal for the site would be consistent with the MCSP as they moved forward.

As to the potential for a pocket neighborhood park, Mr. Kerr responded that the goal was to work with Town staff on the specifics of the MCSP. The plan at the time was conceptual, and while it would make sense for a park to be near the creek, that issue would have to be worked out with staff for any development plan for the site.

Richard Olsen, Moraga, former MOFD Fire Commissioner and Director, commented that he had first learned of the proposal during a recent MOFD Board meeting and had been concerned a fire training center would be incompatible with an adjoining high density property due to the potential noise impacts. He referenced a letter in his correspondence from Steve Meyers, with Meyers, Nave Riback Silver & Wilson dated July 31, 2008, which had expressed concern with the new land use regulations affecting the status of the existing use and which appeared to constrain the ability of the MOFD to expand its Station 41 facilities. He explained that the Moraga Fire Protection District, which had later become the MOFD, had intended to use the property for the expansion of its facilities for the past forty years and had offered to purchase the property from the Bruzzone family on more than one occasion but had been rebuffed. He acknowledged that the MOFD had chosen not to pursue a right of eminent domain in this case.

PUBLIC COMMENTS CLOSED

Ms. Keimach reiterated that the staff recommendation was to authorize the processing of the vacation of offer of dedication through the development review process for a proposed project, with the alternatives identified in the July 25 staff report. The land use issue would have to be discussed in more detail at the Planning Commission level. She reported that the MOFD Fire Chief had informed her that the MOFD was working on a mutually agreeable solution with the applicant on a design or compromise to mitigate the noise impacts.

The Town Council discussed the item and offered the following comments and/or direction to staff:

- If the MOFD really wanted the land for its training facilities it had the power of eminent domain;
- If the Town Council were to take action to vacate the property that could be a signal to the MOFD if it was serious to protect its ability to expand its training facility;
- The Town Council did not want to be placed in the middle of a dispute between the property owner and the MOFD;
- The following revisions were made to Attachment A, the draft resolution:

To the first WHEREAS clause on Page 1, to be revised to read:

WHEREAS, the Town of Moraga (as successor to the County of Contra Costa by incorporation) was granted an Irrevocable Offer of Dedication for an approximately 84-foot wide right-of-way, known as a "Connector Road" for street and highway and incidental purposes between Moraga Way and Country Club Drive, as shown on Exhibit A, attached hereto and incorporated herein by this reference (the "Right-of-Way"); and

And revise Item (3) of the last WHEREAS clause to read:

- (3) ***landscaping along Moraga Way consistent with the nearby Sonsara Residential development; and***

ACTION: It was M/S (Trotter/Harpham) to adopt Resolution 61-2012 Authorizing the Processing of Vacation of Offer of Dedication Between Moraga Way and Country Club Drive Through Development Review Process for Proposed Project (APN 257-180-082; Property Owner: Bruzzone), as amended. Vote: 4-0-1. Absent: Chew.

- B. Adopt and Waive Second Reading of Ordinance No. 237, Repealing and Rescinding in its Entirety Ordinance No. 236 which Amended 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*

Town Attorney Karen Murphy reported that on July 11, 2012, the Town Council had accepted the Contra Costa County Certification of the referendum petition against Ordinance No. 236 and voted 3-2 to introduce an ordinance to repeal and rescind Ordinance No. 236, citing various reasons including the desire to respond to a large number of petitioners requesting the referendum, focusing on a Town Council top priority goal of fixing the Town roads/infrastructure and healing the community. The ordinance was before the Town Council for a waiver of the second reading and adoption.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Councilmember Mendonca stated for the record that she would be voting no on the item as she had previously voted. She understood that the consultants had suggested it was not a good idea to have the item on the same ballot as the sales tax measure, and while she respected the consultants' opinion, she disagreed and had faith with the people of Moraga to have this item on the ballot along with the sales tax measure. In the spirit of the democratic process, she stated that the matter should be on the November ballot.

ACTION: It was M/S (Trotter/Metcalf) to adopt and Waive Second Reading of Ordinance No. 237, Repealing and Rescinding in its Entirety Ordinance No. 236 which Amended 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: 3-1-1. Noes: Mendonca. Absent: Chew.

- C. Revenue Enhancement Community Outreach to Neighborhoods (RECON) Committee Recommendation to Town Council to Consider:
- a) Consideration of Resolution 62-2012 Calling an Election to Ask the Voters of the Town of Moraga to Approve a 20-Year General Transactions and Use Tax of One Cent: Requesting that the Board of Supervisors of the County of Contra Costa Consolidate the Election with the Established Election to be Held on November 6, 2012; and Directing the County Elections Department to Conduct the Election on the Town's Behalf

Ms. Keimach updated the Town Council on the background and history of the Revenue Enhancement Committee (REC) which had identified three items of critical importance for the Town, including the General Fund, economic development, and infrastructure improving the Town's roads. She also reported on the RECON efforts over the past few years to work on

ways to reduce costs for the repair of the Town's roads, maintaining what it could while keeping costs low, with a number of focus group meetings in the community, neighborhood meetings, mailers to solicit input from the community, and surveys, with the background of those efforts outlined in the July 25 staff report. Based on the surveys that had been conducted, a sales tax measure had been determined to be the best measure for the Town to pursue based on the residents' views.

Jennifer Rindahl, Lew Edwards Group, thanked everyone who had been involved in the effort for the Town to take the opportunity to repair its streets and roads and to maintain the fiscal health of the community. She identified the background and history of all survey results and the consideration of a parcel tax or bond measure, leading to community support within the margin of error for consideration of a sales tax measure. She emphasized that the more deteriorated Town roads became the more expensive they would be to repair.

Ms. Rindahl advised that a one-percent sales tax measure would be a way to protect the General Fund from the burden of poor roads in the future, protect Town services and public safety, and provide additional resources that could be used to repair and fix roads in the future. In regards to a one-half percent versus one percent increase, she noted that the half percent would not help the Town in what it needed to have at this time and would be negligible. The recommendation was to move forward with the one-percent sales tax for 20 years allowing the Town monies in the general purpose funds, allowing the Council to determine how to best spend the funds, with the opportunity to take action should it be successful to bond against the revenue to receive the money earlier. She identified the survey priorities of the community with the repair of potholes and cracks being the most urgent priority.

Ms. Rindahl commented that in terms of the measure itself, there were fiscal accountability mechanisms, independent financial audits, and creation of an oversight committee to monitor how the funds were spent after the election with the measure to allow the Town local control of local funds. The Town would be able to incur debt against the proceeds of the sales tax, the measure would sunset in 20 years, and the total sales tax rate would be 9.25 percent, the same as the Statewide sales tax in effect since 2009 and eliminated on July 1, 2011. She noted that the items that would not be impacted by the increase in the sales tax included prescription drugs, professional services, and rents. In terms of the actual tax, studies had been conducted to ensure that local businesses would not be impacted by the local sales tax increase.

Ms. Keimach added that Page 5 of the staff report included a table to illustrate the effect of local sales tax increases on taxable sales, with four different cities evaluated that had sales tax increases in comparison to those that did not have sales tax increases.

In response to the Council, Ms. Rindahl explained that the language contained in the draft resolution described the measure and reference to "one cent" had been written similarly in other communities, and it made sense as a one-cent per dollar increase, but could be better clarified in the ballot measure which was limited to 75 words. She suggested that was the best way to make the measure understandable to the average voter. She also explained the reasoning for the towns/cities data as shown in the table on Page 5 of the staff report, which had been chosen as comparable cities to the Town of Moraga.

PUBLIC COMMENTS OPENED

Edy Schwartz, Moraga, stated that she had initially been concerned with the potential impacts on local businesses from a one-cent sales tax measure and acknowledged the data that Town staff had collected to illustrate that would not be the case. She suggested that failure to repair the Town's roads would be detrimental to the economy and local businesses; and suggested it would benefit the Town to include an all-encompassing Shop Moraga First campaign and

educate the public on the importance of the passage of the one-cent sales tax measure. She emphasized that education would offer the best chance to successfully pass the measure.

Dale Walwark, Moraga, disliked the wording for the proposed one-cent sales tax measure even with the argument that this was the way it had been done for years. He favored the sales tax measure and suggested it was important for the Town to educate the public to know what they were voting on as the streets and storm drains were in desperate need of ongoing revenues to address infrastructure projects which was important for the Town's future.

Bob Reynolds, Moraga, spoke to the poor condition of some of the roads in the neighboring community of Orinda as a clear example of a community in a crisis situation with its roads. He supported a funding mechanism to ensure that Moraga did not find itself in the same situation.

Tom Westhoff, Moraga, supported the proposed sales tax measure although he too found the description in the draft resolution for a "one-cent" increase in sales taxes rather than reference to "one percent" to be confusing and misleading to the public.

Barry Behr, Moraga, supported the education of Moraga citizens on the importance of shopping in Moraga. He supported the measure and local government promotion of Shop Moraga First, and sought consideration of public signage posted in the community identifying the costs for the repair of many of the Town's streets and roads.

Bill Snider, Moraga, supported the sales tax measure but expressed concern that few businesses in the Town were actually owned by local residents. He expressed concern with buyers' ability to purchase products out of State to avoid paying taxes, recognized that the roads would become worse if nothing was done, agreed that educating the public on the ballot measure was important, and emphasized the importance of Shop Moraga First.

Richard Olsen, Moraga, a member of the REC, emphasized the identification of the infrastructure as a top priority given the disrepair of Town roads. He agreed that something needed to be done before the Town's roads became like Orinda's roads which would have a strong negative effect on Moraga property values. He suggested that the ballot measure was the only viable alternative and must be pursued now.

Barbara Simpson, Moraga, agreed that the description of the ballot measure should be revised from "one-cent" to "one percent" given that the public may think that the measure represented an increase of only one cent.

Ellen Beans, Moraga, reported that she had spoken to several people who were unable to attend the meeting but who had expressed support for the resolution. She was glad to have been part of the RECON team which was dedicated and supportive, and she expressed her appreciation to the Town Manager for summarizing the work which had been done over the past few years. She emphasized the importance of the outreach efforts with one-on-one neighborhood presentations crucial to get the vote over the needed 50th percentile.

Public Works Director/Town Engineer Edric Kwan expressed his appreciation to RECON, the Town Council, and the Town Manager for all the efforts in addressing the Town's infrastructure needs. He supported the staff recommendations.

PUBLIC COMMENTS CLOSED

Mayor Metcalf spoke to the great deal of effort over the years with the REC and RECON, and with a conclusion to find ways to fund the Town's infrastructure, primarily its roads. He complimented the press for the number of articles in the Lamorinda Weekly, the Lamorinda

Patch and Moraga Movers, emphasizing the importance of the issue. He noted that the polling had suggested that there would be support for a one-cent sales tax measure and the Town should move forward to do that.

Councilmember Trotter endorsed the Mayor's comments and as a member of the REC in 2009, he agreed that the matter should be put to the vote of the people, which he endorsed for all of the reasons expressed. Elected in 2006, he had been working on two projects important to the future of the Town; the Moraga Center Specific Plan (MCSP), and revenue enhancement measures. He cited the repair of the storm drains which had collapsed into the Rheem Valley Shopping Center in 2005/2006 as a result of a major storm event and although repaired with Federal Emergency Management Agency (FEMA) funds, if the damage had occurred in the summer the Town would not have had the funds for repairs and would not have been able to rely on the federal government or the State to provide assistance.

Councilmember Trotter suggested that the Council should discuss the proposed alternative wording of the measure as a "one-percent one-cent" or "one-percent" sales tax measure although he was inclined to support the consultant's recommendation. He also commented that the resolution and ordinance, as provided, specified that two Councilmembers would write a statement in support of the measure. He recommended that all five Councilmembers should sign off on the argument statement, and reported that he had a conversation with Sam Sperry that all five Councilmembers should be on record supporting such a measure on the ballot statements, which he suggested should be done and that each Councilmember work with his/her own constituencies to get that support.

Councilmember Mendonca concurred and suggested that the proposal was a united effort of all five Councilmembers and anything the Council could do for the community to address the Town's infrastructure should be a united front.

Vice Mayor Harpham was gratified to see that there would be support from Mr. Snider, a local business owner, who had suggested that the Town should be turned into a Homeowner's Association (HOA) to allow a rational system to approach the repair of the Town's roads. He acknowledged all of the work that had gone into the effort and the rational testing that had been done, which had shown some positive support for a sales tax measure. He suggested that the process was democratic, allowed a vote, was fundamental, and now was the time to do it. He was grateful for the great leadership and was hopeful that the ballot measure would work. He otherwise did not like the language in the resolution of "one-cent" and suggested it would work against the argument.

When asked, Ms. Murphy advised that the Town Attorney's office had worked on the resolution language and that the ordinance itself had come from the Board of Equalization which had a form which had been followed and which had been confirmed by the Board as acceptable. She stated that changes to the language in the WHEREAS clauses would be acceptable.

As to the oversight committee clause as contained in the ordinance, Interim City Engineer Jerry Bradshaw reported that the City of El Cerrito also had an oversight committee which reviewed and reported to its City Council and citizens on an annual basis. The City of El Cerrito also had a manual with reporting procedures akin to an audit because of the debt service it had incurred on its funding source. In that case, its Oversight Committee met two to three times a year as necessary.

The following changes were made to Resolution 62-2012 and Exhibit A, Ordinance Imposing a Transaction and Use Tax:

- The second WHEREAS clause on Page 1 of the resolution and the second WHEREAS clause on Page 1 of the ordinance revised to read:

WHEREAS, the Town has seen flat revenues with consistently increasing operational costs due to the overall downturn in the economy, rising health care costs, and continued takeaways by the State amounting to nearly \$5 million over the past 20 years; and

- The seventh WHEREAS clause on Page 1 of the resolution and the seventh WHEREAS clause on Page 1 of the ordinance revised to read:

WHEREAS, the Town must start making these essential repairs immediately, because waiting will make Town roads more dangerous and significantly more expensive to repair; and

- Clarified with staff that the Oversight Committee would review and report how the funds would be spent in terms of transparency to the Audit and Finance Committee (AFC) and to the Town Council and recommended revision to the second to last sentence on Page 7 of Section 3.20.140 of the Ordinance, Oversight, Annual Audit and Public Report:

There shall also be a Citizens' Oversight Committee to review and report annually on the receipt of revenue and expenditure of funds from the tax authorized by this chapter.

- By consensus, the Town Council decided that Mayor Metcalf and Councilmember Trotter work together to prepare a written argument in favor of the proposed measure with Section 14 of Exhibit A, the Ordinance to be amended accordingly. (It was noted that Vice Mayor Harpham could not be involved in the discussions of the ballot argument as a member of the Town Council due to potential conflicts with the Brown Act.)
- By consensus, the Town Council decided that a discussion of who would sign the argument once prepared [five signatures were allowed], whether all five Councilmembers of the Town Council, or citizens, or individual voters, would be the signers would be brought to RECON at its next meeting on July 26 for a determination.

Ms. Murphy reported that the ballot argument was due on August 10 and any rebuttal arguments would be due on August 17. As to the use of the language "one-cent" in the description as shown on Page 1 of Attachment A, Resolution 62-2012, she reiterated that the language was appropriate and a change to "one-percent" could be more confusing.

- By consensus, the Town Council decided that the description of the resolution as shown on Page 1 of Attachment A, Resolution 62-2012, and the reference to "one-cent" was appropriate and acceptable as the consultant had recommended.

ACTION: It was M/S (Trotter/Mendonca) to adopt Resolution 62-2012 Calling an Election to Ask the Voters of the Town of Moraga to Approve a 20-Year General Transactions and Use Tax of One-Cent; Requesting the Board of Supervisors of the County of Contra Costa to Consolidate the Election with the Established Election to be Held on November 6, 2012; and Directing the County Elections Department to Conduct the Election on the Town's Behalf, as amended. Vote: 4-0-1. Absent: Chew.

D. Direction to Voting Delegate and Alternate(s) Regarding Resolutions at the League of California Cities Annual Meeting on September 5 to 7, 2012 in San Diego, California

The Town Council discussed the League of California Cities resolutions and offered the following direction to the Voting Delegate and Alternate(s) regarding resolutions at the League of California Cities Annual Meeting on September 5 to 7, 2012 in San Diego, California:

- **Environmental Quality Policy Committee:**

Resolution 3: Council recommended a vote of NO

Resolution 4: Council voted 2-2 with the Voting Delegate to decide and report back to the Town Council (AYES: Metcalf/Harpham, NOES: Mendonca/Trotter)

- **Public Safety Policy Committee:**

Resolution 1: Council recommended a vote of YES

Resolution 2: Council recommended a vote of YES

Resolution 5: Council recommended a vote of YES

Staff was also asked to clarify the Council appointed Alternate(s) to the League of California Cities, which action had taken place on June 27, 2012.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

There were no Council requests for future agenda items.

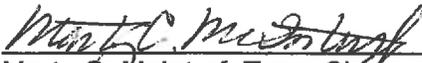
XIII. COMMUNICATIONS

There were no communications.

XIV. ADJOURNMENT

**ACTION: It was M/S (Trotter/Mendonca) to adjourn the meeting at 9:30 P.M. Vote: 4-0-1.
Absent: Chew.**

Respectfully submitted by:


Marty C. McInturf, Town Clerk

Approved by the Town Council:


Michael Metcalf, Mayor