

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**March 13, 2013
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 7:01 P.M. by **Mayor Dave Trotter**.

ROLL CALL

Councilmembers present: Mayor Dave Trotter, and Councilmembers Phil Arth, Michael Metcalf, and Roger Wykle

Councilmembers absent: Vice Mayor Ken Chew

II. PLEDGE OF ALLEGIANCE

Mayor Trotter led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

There were no special announcements.

IV. PROCLAMATIONS AND PRESENTATIONS

A. Proclamation Declaring March 2013 as American Red Cross Month

Mayor Trotter read into the record a proclamation declaring March 2013 as American Red Cross Month and encouraged all residents to be cognizant of the compassion, courage, character, and civic duty that was inherent in the Red Cross mission to prevent and relieve human suffering.

Ruth Rosenberg, representing the American Red Cross, thanked the Council for the proclamation and reported that the Red Cross had been working with local staff on drills for emergency preparedness; the American Red Cross had purchased a new building in the City of San Francisco; and the Red Cross response to Superstorm Sandy on the East Coast had involved almost 17,000 disaster workers deployed to the region to provide assistance.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Councilmember Metcalf reported the American Red Cross had been providing required safety training for swim coaches, cardio-pulmonary resuscitation (CPR), and first aid. He commended the efforts of the American Red Cross.

B. Update on Climate Action Plan Task Force by Chair Graig Crossley

Graig Crossley, Climate Action Plan (CAP) Task Force Chair, provided an update on the efforts of the CAP Task Force. He noted in July 2012 the CAP Task Force deviated from the staff-prepared work plan changing focus to receive information and to also look at different areas in the CAP including land use, transportation, green building, energy efficiency, water, wastewater, solid waste, waste reduction, recycling, and green purchasing. The CAP Task Force had also reviewed other jurisdictions to consider what was available and what could work for Moraga. He anticipated the CAP Task Force would present a report to the Town Council by September 2013 on a range of mitigating measures, advisory directives, and include the votes by each CAP Task Force member indicating the level of support for each of the items being recommended. He added that as part of the original directive, the CAP Task Force would vet mitigation items through the Planning Commission, Park and Recreation Commission, and the Traffic Safety Advisory Committee (TSAC) for public comment prior to submission to the Town Council. He asked the Town Council to affirm that had been the intent of the Council's direction.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Councilmember Metcalf stated for the record that when the CAP Task Force had been created there had been discussion as to whether to include Town Council representation, which ultimately had not been done, although Councilmember Wykle had been appointed prior to his election to the Town Council. He questioned whether that should be addressed by the Council.

In response to the Council, Mr. Crossley clarified his comments regarding the directive sought by the CAP Task Force. He sought a range of options the Council could select from, with identification of the range of support for each recommendation to be presented to the Town Council in a future report. If the direction was that the CAP Task Force not seek input from the advisory groups prior to a presentation to the Town Council, a report could be made to the Town Council prior to September.

Town Manager Jill Keimach stated that the feedback from the advisory groups had been intended only to provide more information for the Council to consider when viewing the recommendations from the CAP Task Force. This directive was not in the CAP Charter and any direction was up to the Town Council.

By consensus, the Town Council decided that the CAP Task Force provide a report to the Town Council prior to input from any of the advisory groups with a report anticipated after budget discussions in June.

Mr. Crossley added that he was unable to stay for the remainder of the meeting agenda specifically to discuss agenda Item XI.B., "Consideration of Process to Interview and Appoint Volunteers to Fill the Remaining Vacancies on the Design Review Board, ADA Advisory Committee, Traffic Safety Advisory Committee and CCC Advisory Council on Aging and Provide Direction to Staff." As a member of the Americans with Disabilities Act (ADA) Advisory Committee, he acknowledged that committee had not met in the past two years and should be sunsetted. In his opinion, the Town Engineer was capable of handling any ADA issues. He asked the Town Council to consider a functional sidewalk on Moraga Road from Rheem Boulevard to the trail at Corliss Drive.

Town Clerk Marty McInturf advised there were no current members of the ADA Advisory Committee including Mr. Crossley; there were three vacancies on the committee and the two members most recently appointed had been termed out as of March, 2013.

V. PUBLIC COMMENTS AND SUGGESTIONS

Dave Bruzzone, Moraga, submitted written comments presented to the Town Council on March 13, 2013. After his presentation, **Councilmember Metcalf** asked that Mr. Bruzzone's comments be placed into the record verbatim.

The Town Council has, just recently, appointed four new Planning Commission members, all of whom happen to be endorsers of MOSO 2008, the open space voter initiative that failed by about 60 percent. I'm not sure if the Council was aware that these four new appointments were supporters, or, even if it was brought up during the election process. I was unable to attend the Town Council meeting and unfortunately there are no tapes, or minutes of the meeting (except maybe an action agenda). So I'm not sure if these are all just concerned interested and involved citizens. I don't know. The Planning Commission makes many important decisions that directly impact our community and citizens. Many of these decisions have direct ramifications on the viability and economic well being of our community, and one of the first tasks of this new Planning Commission will be to evaluate the Bollinger Valley Draft Environmental Impact Report. An important study that had its genesis back in our original 1979 General Plan. We expect our Town leaders to be sound, reasonable, logical and unbiased so they can make fair and proper choices for our community. It is my hope that you have made your Planning Commission appointments/selections with those considerations in mind. I trust that the new Planning Commission will pursue what is truly in the "public interest" with respect to Bollinger Valley as well. We, the Bruzzones, hope to demonstrate to the Planning Commission, the Town Council and our fellow citizens - that this project will be consistent with our General Plan and high quality standards and meet our Town future economic and housing needs, in an environmentally sensitive manner.

Dave Schnayer, Moraga, a Commercial Realtor, appealed to the Town Council to fast-track the use permit application process for new businesses coming to Moraga, which had been a priority of focus groups and the Moraga Chamber of Commerce, and was necessary to allow new businesses in Moraga to succeed. He currently understood if a use wanted to relocate in the same shopping center, an application process and review was required, and expressed hope that would be an important focus for the Planning Commission. He sought a clear set of standards, and understood the 2009 Town Council directive to waive fees for new businesses was no longer valid and an application deposit for new use permits was required.

Ms. Keimach clarified that the Council policy for the waiver of use permit fees for new businesses had a sunset date of two years during the economic downturn and that policy had expired.

Planning Director Shawna Brekke-Read advised that the Town Council directive had sunsetted in 2012; staff had been working to make changes to the Zoning Ordinance which took time given the limited staff resources; and that the Town also had a cost recovery system to ensure the General Fund was not used for planning purposes.

VI. ADOPTION OF THE CONSENT AGENDA

A. Approval of the Consent Items

Mayor Trotter reported that he had provided staff red-line edits to Consent Agenda Item 3 which had been provided to the Town Council.

Consent Agenda Items 2 and 6 were removed from the Consent Agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Metcalf/Arth) to approve Consent Agenda Items 1, 3 (as amended), 4, 5, and 7. Vote 4-0-1. Absent: Chew.
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| 1) | Accounts Payable Claims for: 2/22/13 (\$63,170.11) | Approved |
| 2) | <i>Approve Minutes for Town Council Special Meetings on February 13, 2013</i> | <i>Removed</i> |
| 3) | Approve Minutes for Town Council Regular Meeting for February 13, 2012 (as amended) | Approved |
| 4) | Adopt Resolution 14-2013 Ordering Engineering Assistance to Prepare and File an Annual Engineer's Report for Fiscal Year 2013/14, Town of Moraga Street Lighting District 1979-1 | Approved |
| 5) | Adopt Resolution 15-2013 Accepting an Emergency Management Performance Grant and Authorizing Allocation of Grant Funds for Emergency Generator Installation at 331 Rheem Boulevard | Approved |
| 6) | <i>Adopt Resolution 16-2013 Authorizing the Town Manager to Purchase Replacement Umbrellas and Bases at an Estimated Cost of \$20,000 for Hacienda de las Flores Events and Rentals without Formal Bidding, as Allowed by the Municipal Code</i> | <i>Removed</i> |
| 7) | Motion to Cancel March 27, 2013 Town Council Meeting | Approved |

B. Consideration of Consent Items Removed for Discussion

1. Approve Minutes for Town Council Special Meetings on February 13, 2013

Councilmember Wykle asked that the final motion as shown on Page 2 of the February 13, 2013 Special Meeting be corrected to reflect a vote of 3-2 for the appointments to the Park and Recreation Commission.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Arth/Trotter) to approve the Minutes for Town Council Special Meetings on February 13, 2013, as amended. Vote: 4-0-1. Absent: Chew.

2. Adopt Resolution 16-2013 Authorizing the Town Manager to Purchase Replacement Umbrellas and Bases at an Estimated Cost of \$20,000 for Hacienda de las Flores Events and Rentals without Formal Bidding, as Allowed by the Municipal Code

Responding to the Council, Parks and Recreation Director Jay Ingram reported there were currently six umbrellas at the Hacienda de las Flores with ten additional umbrellas to be purchased for \$20,000. He commented that customers could be upset with different types of umbrellas. The umbrellas being sought for purchase were long-standing, high-quality, commercial grade; and the existing umbrellas were eight years old. He explained that if the item was placed out to bid it would take more time than if the umbrellas were purchased as proposed and delivered within six weeks.

Councilmember Wykle commented that he was aware of a retail source at Pottery Barn that could provide similar umbrellas at reduced cost as shown in the staff report. He sought consideration of other sources that closely matched the Town's current six umbrellas.

Mr. Ingram affirmed that staff could check with Pottery Barn to determine whether cost savings could be achieved, and clarified that commercial brand umbrellas were better made and sturdier than the typical residential umbrella.

Ms. Keimach clarified the intent of the resolution that the Town Manager be authorized to spend up to and not exceed \$20,000; formal bidding would require a Request for Proposal (RFP) process, and in this case staff could be directed to look for the most cost-effective identical umbrellas from other sources.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

The following changes were made to Resolution 16-2013. The resolution description to be amended to read:

Authorizing the Town Manager to Purchase Replacement Umbrellas and Bases at an Estimated Cost Not to Exceed \$20,000 for Hacienda de las Flores Events, and Rentals without Formal Bidding, as Allowed by the Municipal Code.

The THEREFORE BE IT RESOLVED clause amended to read:

NOW, THEREFORE BE IT RESOLVED, that the Town Council of the Town of Moraga hereby authorizes the Town Manager to purchase replacement umbrellas at an estimated cost not to exceed \$20,000 for Hacienda de las Flores Events, and Rentals without Formal Bidding, as Allowed by Section 3.04.070 of the Moraga Municipal Code.

The first WHEREAS clause amended to read:

WHEREAS, as part of the 2012/2013 Fiscal Year budget process the Parks and Recreation Department planned for the replacement of the eight-year-old commercial grade umbrellas used for Hacienda de las Flores events and rentals; and

ACTION: It was M/S (Trotter/Metcalf) to adopt Resolution 16-2013 Authorizing the Town Manager to Purchase Replacement Umbrellas and Bases at an Estimated Cost Not to Exceed \$20,000 for Hacienda de las Flores Events and Rentals without Formal Bidding, as Allowed by the Municipal Code, as discussed and as amended. Vote: 4-0-1. Absent: Chew.

Mayor Trotter reported that Vice Mayor Chew had requested modification to the meeting agenda to consider Item B prior to Item A under XI. Ordinances, Resolutions and Requests for Action to allow the Vice Mayor to be present for the discussion of the Rheem Theatre.

VII. ADOPTION OF MEETING AGENDA

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

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Trotter - Reported that he had attended the East Bay Division of the League of California Cities meeting in Dublin on February 28; a workshop of the Central Contra Costa Solid Waste Authority Board on February 28; the Lamorinda Mayors and City Managers Breakfast on March 1; the Mayors' Conference in the City of Pleasant Hill on March 7; the Moraga Liaison meeting at the Library on March 8; the 50th wedding anniversary for Jeff and Edy Schwartz at the Moraga Country Club on March 9; met with the Town Manager and representatives from the Bay Area Rapid Transit System (BART) on March 13; and attended the Night at the Piazza at Saint Mary's College (SMC) earlier in the evening on that same date.

Vice Mayor Chew - Absent.

Councilmember Arth - Reported that he had attended the Mayors' Conference in the City of Pleasant Hill on March 7; a Liaison Meeting on March 8; and a Moraga Chamber of Commerce Board of Directors meeting on March 13.

Councilmember Metcalf - Reported that he had participated in a field trip to view the potential site of a new park as part of the proposed Camino Ricardo development.

Councilmember Wykle - No report.

- B. Town Manager Update** – Ms. Keimach reminded the Town Council and the public that the Town Council meeting of March 27 had been canceled due to Passover; reported that staff had been working with the Moraga Chamber of Commerce to host the next Chamber Mixer at the Town Offices on Tuesday, May 21 in order to show off the new remodel which would be open to the public; and affirmed, when asked, she was aware of a rumor regarding an incident at Rancho Laguna Park which involved two dogs where one of the dogs had been injured. No claim had been filed and staff had not spoken with either of the involved parties.

IX. DISCUSSION ITEMS

A. Presentation on Fire and Medical Emergency Response Services in Lamorinda by Randall Bradley, Fire Chief, Moraga-Orinda Fire District (MOFD)

Randall Bradley, Fire Chief, MOFD, presented a PowerPoint presentation on the MOFD and the Contra Costa County Consolidated Fire District (ConFire) proposal to consolidate MOFD Fire Station 43 and ConFire Station 16. He identified the proposal and the study that had recommended the merging of the two stations; the location of the proposed station; the closure of Fire Station 16 in January 2013 due to budget shortfalls prompting the MOFD and ConFire to begin discussions and continue to evaluate the process for a joint fire station; and that the MOFD had negotiated an option to purchase property at the corner of El Nido Ranch Road and Lorinda Way on city boundaries which was 0.7 miles from Station 43 and 0.85 miles from Station 16, and which could accommodate a fire station and also meet the zoning requirements. He noted the MOFD had until March 28 to place a deposit and 90 days to close on the property.

Chief Bradley explained the intent for a jointly-built fire station to serve the Lamorinda area, to accommodate the operation of a single paramedic staffed engine company; with land acquisition, construction costs and annual personnel and operating costs to be equally shared between the two; resulting in improved efficiency and unit-hour utilization. He identified the proposed governance of the agreement, with the MOFD to staff the station and ConFire to provide additional staffing; identified the capital costs for the apparatus replacement through a contributing vehicle replacement fund; and noted the new station would ensure existing fire district boundaries and the Sphere of Influence (SOI) would remain intact during the life of the agreement. The Districts would develop an exit agreement that would ensure the remaining agency would remain in a position to cover their area of responsibility.

Chief Bradley explained that the financial impacts for the new station would eliminate overlap, creating greater efficiencies with limited service level impacts, save each District \$1 million annually and the length of the agreement would be 30 years for a total savings that may exceed \$60 million; community outreach was needed; and an aggressive timeline would be pursued. He acknowledged concerns from citizens and reported that residents who would be impacted by the proposal had been notified and community outreach had commenced. He emphasized that both stations needed to be replaced, and there was support for the proposal from labor, fire chiefs, and legislative bodies.

Responding to the Council, Chief Bradley commented that the City of Lafayette could, if desired, join the MOFD. As to mutual aid calls to the western portion of Lafayette, he noted that the MOFD was not currently reimbursed for responding to calls to that area, and acknowledged that issue would be need to be discussed further. He also affirmed that the Contra Costa County Board of Supervisors must also sign off on the proposal and currently there was no consensus from that Board for support. He also did not see 100 percent support from the MOFD Board of Directors but suggested the proposal was worth pursuing. As to whether the MOFD could own property outside its service area, he noted that was a possibility through a Joint Powers Agreement (JPA) with the County and discussions with the Local Agency Formation Commission (LAFCO), and there should be no tax implications since the MOFD was not a taxing agency. As to whether there were any contingency plans to the acquisition of property for the consolidated stations, he stated there were no contingency plans, which needed discussion by the MOFD Board. He emphasized the proposal would have no impacts on service levels for the Town of Moraga, and reiterated that many residents, particularly in Orinda, would benefit from this proposal given the reduced response times.

PUBLIC COMMENTS OPENED

Frank Sperling, Moraga, president of the MOFD Board of Directors and a former member of the Moraga Town Council, acknowledged the concerns with the proposal, emphasized the need to respond to a fire as quickly as possible, commented that the majority of calls were emergency medical calls, and explained that any increase in response time could be a matter of life and death and should be considered while analyzing the financial savings. He also spoke to the genesis of the MOFD and why it had ceded from ConFire, suggested that this was not an ideal situation, but hoped that the community would be made aware of the over-arching issues. He stated the MOFD Board intent to leave the Contra Costa County Employees' Retirement Association (CCCERA) for the California Public Employees' Retirement System (CalPERS), was no longer being considered given the decline in the stock market.

Richard Olsen, Moraga, a former member of the MOFD Board of Directors, referenced the MOFD Board Facilities Committee which had recently prepared a detailed report which had been accepted by the MOFD Board absent comment to rebuild Station 43 on-site. He expressed concerns with the current proposal, impacts to northeast Orinda and to the Town of Moraga, and a different report made to the Contra Costa County Board of Supervisors regarding the potential impacts to the Town of Moraga. He understood that as a result of the closure of Station 16 service to northeast Orinda, an extremely high hazard area, would be severely degraded; the station would no longer be owned and operated by the MOFD; and there would be a significant delay. He urged that any analysis consider that point and commented that there had been a great deal of discussion with the Board of Supervisors as to where the \$1 million would come from given the recent closure of four stations within ConFire and the fact that two more stations may have to be closed, potentially including the closure of Station 17 adjacent to the Lafayette Community Center or conversion of that station to an EMS station, which would impact the Town of Moraga.

Chief Bradley advised that a public meeting would be held on March 20 with a MOFD Board of Directors meeting to be held after that date in order to make a decision on the proposal. The MOFD Board of Directors would meet again on March 27 and decide whether to expend \$15,000 to move forward at that point, and if it made that decision there would be a 90-day acquisition period with an agreement prepared by both the MOFD Board and the Contra Costa County Board of Supervisors. He added that a three-board meeting of the Lamorinda jurisdictions was anticipated following clarification of the intent of the participants.

Mayor Trotter thanked Chief Bradley for the presentation and everyone for their comments.

PUBLIC COMMENTS CLOSED

B. Report Regarding Funds Available to Schools for Safe Routes to School Projects

Planning Director Shawna Brekke-Read reported that the Lamorinda Planning Management Committee (LPMC) had been awarded \$18,000 in one-time only demonstration funds for Safe Routes to School (SRTS) programs and projects through the Southwest Area Transportation (SWAT) Committee Transportation Demand Management (TDM) Program to reduce congestion and improve air quality around schools. The City of Lafayette had already reached out to its schools and she had reached out to the Moraga School District (MSD) Superintendent about where the funds could be best spent. Staff would be working with the schools collaboratively on how to spend the Town's share of the funds in the amount of \$6,000 while also preparing for the upcoming \$3 million call for proposals for countywide SRTS projects.

In response to the Council, Ms. Brekke-Read advised that she had received positive response from the MSD which was excited about the possibilities, with Town staff considering creative

ideas including how to reduce through and school traffic at Joaquin Moraga Intermediate and Los Perales Elementary Schools, with students walking and bicycling to school.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

X. PUBLIC HEARINGS

There were no public hearings.

XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

- B. Consideration of Process to Interview and Appoint Volunteers to Fill the Remaining Vacancies on the Design Review Board, ADA Advisory Committee, Traffic Safety Advisory Committee and CCC Advisory Council on Aging and Provide Direction to Staff

Ms. Keimach reported that the Town Council had recently selected members for the Design Review Board (DRB) and Planning Commission; however, a member of the DRB resigned, raising a number of questions for the Council. To fill that position, she asked whether the Council desired to direct staff to open recruitment or appoint the candidate not previously selected. She commented on the difficulties in getting volunteers for the ADA Advisory Committee and asked the Town Council to consider sunsetting the committee or directing staff to continue recruitment efforts. The same problems had occurred with the recruitment efforts for TSAC with open recruitment for over a year. There had also been a resignation on the CCC Advisory Council on Aging and she recommended that staff continue to recruit for that position. She asked the Town Council to consider appointing a Council subcommittee or that the full Council conduct the committee appointments.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

The Town Council made the following comments and/or direction to staff:

- Staff to continue to conduct recruitment for the vacancy on the CCC Advisory Council on Aging;
- Staff to conduct recruitment for the vacancies on TSAC;
- Concerns expressed as to the potential dissolution of the ADA Advisory Committee, with anyone with ADA complaints or concerns encouraged to communicate with Town staff, with the appropriate message on why the committee was sunsetting in the About Town newsletter; and
- The full Town Council to conduct interviews for any applicants to committee/commission vacancies at a special meeting.

ACTION: It was M/S (Metcalf/Wykle) to appoint John Glover to the Design Review Board for a two-year term. Vote: 4-0-1. Absent: Chew.

**ACTION: It was M/S (Arth/Trotter) to sunset the ADA Advisory Committee. Vote: 4-0-1.
Absent: Chew.**

A. Discuss Issues and Potential Options for the Rheem Theatre and Provide Direction to Staff

Parks and Recreation Director Ingram sought input from the Town Council and the community on potential options regarding the preservation of the Rheem Theatre as a building and as a theatre operation pursuant to the 2013 Town Council Goals. He highlighted the issues and options that must be addressed including ADA accessibility, digitization, small profit margins, and the challenge with a different owner and operator. All of the issues combined threatened the Rheem Theatre's economic viability in both the short and long term.

Mr. Ingram identified Attachment B, an Overview of Community Supported Historic Theatres and noted that the City of El Cerrito had used redevelopment funds to purchase and restore the Cerrito Theatre; the City of Berkeley provided a loan through a local foundation to purchase and renovate the Elmwood Theatre; a single business manager ran the Parkway Theatre in the City of Oakland and the City of Alameda acquired its old theater property through eminent domain and invested over \$30 million in municipal funds to build the theatre and parking structure. Moraga's options were limited since redevelopment was not an option and there were limited financial resources.

Mr. Ingram also identified options the Town Council may consider regarding preservation of the Rheem Theatre building; a waiver of fees associated with the DRB application; consideration of options that would provide a source of funding towards the cost of the wheelchair lift and other ADA improvements, such as making a no- or low-interest loan to the theatre property owner in exchange for certain public benefits such as the use of the Theatre for various activities subject to specific criteria; subletting all or a portion of the Theatre from the operator during non-movie showing hours for Parks and Recreation Department enrichment programs or community events which could be based on revenue from enrollment in Parks and Recreation programs, or a flat monthly rate regardless of program enrollment or an amount paid upfront to help offset the capital costs required for the Town use; working with the property owner to designate the Theatre a historic landmark; and working with the property owner to purchase the Theatre, which would be the most expensive option for the Town for both the long and short term.

Mr. Ingram explained that the Theatre business owner and property owner were two different parties, each with potentially different interests including its preservation. He added that digitization of the theatre was necessary in order for the Theatre to continue to survive.

Mr. Ingram identified additional options the Town Council may consider including exploring the formation of a Moraga Community Foundation or other similar organization; exploring the formation of a Community Benefit District (CBD) for the Rheem Theatre area; or exploring the provision of funding similar to options previously mentioned for the preservation of the Rheem Theatre building, which funding could be used to purchase the remaining digital projectors for the Theatre. Any of the approaches involving the use of public funds would require further study and definition to ensure the expenditures were appropriate and provided public benefit. He also detailed the fiscal impacts of the options proposed for consideration.

Mr. Ingram outlined the staff recommendations for the Town Council to consider waiving or reducing the DRB fees and associated staff costs for the approval process; to work with the property owner to designate the Theatre as a historical landmark; and to analyze a type of agreement to sublease the Theatre from the property managers for the community benefit of increased park and recreation programming and community events while potentially using revenues to contribute to ADA and other capital improvements.

Responding to the Council, Ms. Keimach clarified the use of public funds only for municipal benefit; the Town did not have a Redevelopment Agency and did not have the authority over the public benefit; as an option the Town Council may consider subleasing the Theatre that did not include the showing of movies, capitalizing on the best part of the Rheem Theatre as a community gathering place and a way to have a community benefit outside of showing movies; and the Parks and Recreation Director had identified a series of events that could be provided in the Rheem Theatre that complied with a public benefit.

Mr. Ingram identified the types of recreational activities and programs that could be offered in the theatre if the space was subleased; and affirmed when asked that the rebate for digital projection was reimbursed at a rate equal to the quantity of movie rentals by the operator; clarified that digital projectors did not have the life span of the 35 millimeter projectors and would have to be replaced more often.

PUBLIC COMMENTS OPENED

Leonard Pirkle, representing the California Independent Film Festival (CAIFF), acknowledged that the same concerns were occurring with theaters around the country as a result of digital conversion. He characterized the Rheem Valley Shopping Center as not a profit center but recognized the value of the Theatre in the community and would hate to see it close.

Edy Schwartz, Moraga, thanked the Town Council for its continual support of the Rheem Theatre, emphasized the need for: more Shop Moraga First in the community; the Moraga Chamber of Commerce support of small businesses and the Rheem Theatre; and the formation of a foundation for the business community which needed support as an important piece in the community. She noted that once the issues with the elevator became public the community had raised \$30,000; CAIFF had a 23 percent increase between Orinda and Moraga Theatres and a 7 percent increase in sales for the two theatres. She commented on the senior population which had patronized the showing of classic films and children who had purchased tickets this year, all illustrating the community's support for the Theatre. She also spoke to the community benefits of CAIFF; and suggested the way to keep the Theatre open was through the Town, the community, and the nonprofits.

George Fisher, Moraga, echoed the comments, agreed the Rheem Theatre was a tremendous asset to the community, and explained that Moraga Movers patronized the Theatre's showing of classic films.

Councilmember Metcalf commented that the continual issue was the use of public funds that may not be for the public benefit. He recognized the many things the Town could do if it were not for that issue, suggesting the Town Council think creatively to make the necessary findings to demonstrate whatever it wanted to do was in the public's best interest. He liked and enjoyed the Rheem Theatre and the Oscar Night festivities, pointed out the Town had waived regulations/fees in the public interest in the past, and suggested the same argument could be made in this instance, pointing out the Town had monies that could be loaned, although he recognized that public interest findings must be made with the use of those fees. He suggested that was a possible approach for the digital projectors and some of the ADA issues. He was uncertain of the property owner's plans for the building, and emphasized the need to protect the public's interest if public funds were used for a private property. He sought some assurance the Town would have some equity position if public funds were used, sought more information on the benefits of designating the Rheem Theatre as a historic building, and asked whether it would improve the Town's position as to what could be done with the building.

Ms. Keimach explained that technically the Rheem Theatre was already historic since it was over 50 years old. Pursuant to state law, it must be considered under the California Environmental Quality Act (CEQA) Guidelines as a historic building which would allow the Building Official to provide for accessibility at the most reasonable measure without impacting the historic integrity of the building, saving money for the property owner but adding one more level of review. As to the restrooms, ADA access must be provided; as in the case of the Orinda Theatre and for the Pavilion, rather than meeting the letter of the Uniform Building Code (UBC), a unisex restroom could be considered rather than two full restrooms.

Councilmember Arth wanted to see the Rheem Theatre continue to operate; suggested the waiver of fees would be appropriate; and supported leasing space in the Theatre as a viable option whether monthly, per event, or yearly. In the event the Town purchased the digital projectors and leased them to the operator, if the Theatre were to close the Town would still own the projectors and there was some security in that event. He was uncertain of the viability to change the qualification of the Theatre as a historic structure and asked the opinion of the property owner, who (speaking from the audience) stated he had not researched that option.

As to whether the Town may designate the building as a historic structure, Ms. Brekke-Read advised it was common to change such a designation through the Zoning Ordinance and through an Overlay District, which would designate the building as a landmark. The Town Council had the full authority to make that decision which did not require the approval of the property owner. She acknowledged such designation would preserve the building but not the use, and the use could be changed. However, as part of the historic designation, a Department of Park and Recreation form would be required, and would require a research project on the building's historic provenance and its features both interior and exterior, to be preserved as part of any future project or analysis through the CEQA process and through an Environmental Impact Report (EIR).

Mayor Trotter suggested the Rheem Theatre was worth preserving, helped to define Moraga as much as SMC, was part of the local landscape, had been in existence for some time, and the Town had a track record of saving the Rheem Theatre on two separate occasions in the past thanks to the efforts of dedicated community volunteers and CAIFF. He pointed out the Council had the discretion on a case-by-case basis to waive application fees and that fees could be waived for CAIFF, the operator of the Theatre, in order to start some of the ADA improvements. In this case, he suggested the fees be waived and that the deposit be reimbursed to the applicant immediately. He suggested the Town should also work to dedicate the Rheem Theatre as a historic landmark as the City of Orinda had done for the Orinda Theatre. He referenced an application in the past to use the Theatre building as a church although that application had ultimately been denied by the Planning Commission and later affirmed by the Town Council. He was confident the community would continue to support the theatre, and that level of protection for the building and what occurred inside was part and parcel of that support.

Mayor Trotter supported the creation of a Moraga Community Foundation although that was not a Town function and could be done in the broader community with Town support. In the meantime, he questioned whether there was any basis for the Town to advance funds for other ADA related improvements or for the purchase of the digital projectors, with the Community Foundation to work on repayment to the Town over time, which he supported as a stop-gap measure showing CAIFF and the owner of the building the Town was very serious about its desire to see the Rheem Theatre continue to exist as a movie theatre. As to the option for the Town to sublease the building during off-movie hours, that option was also a viable consideration which he would like to see staff work out. He otherwise understood the CAIFF lease only had another year to operate and in order for the Town to make these investments and take on the financial burden, he questioned where CAIFF would be in a year requiring dialogue between the existing tenant and the owner of the building as to the willingness for a

long-term lease. He sought assurances from the property owner and CAIFF that there was a long-term relationship or it would be more difficult to make the case in the community for the Town to continue to make the investment to preserve the historic structure.

Councilmember Arth suggested nothing could be done until financial statements had been provided showing a budget for the future to determine the viability of the New Rheem Theatre even with the Town's investment. He recognized that information could not be provided until the lease situation had been resolved.

Mr. Pirkle suggested the waiver of Town fees was a good first step. He acknowledged that the property owner had been very fair with the operator in negotiating the lease, reporting that after the first six months the property owner had lowered the base rent. He understood the Town Council could not solve that issue, was aware that renegotiation of the lease was an important next step, and advised that the property owner was aware of the desire for a longer term lease.

Derek Zemrak, CAIFF, thanked the Town Council and the community for the continued support. He reported that he had received the staff report on March 8 and understood the property owner had just received the report as well with inadequate time to respond since he had been out of the country. He emphasized the desire to reach an agreement on a lease and suggested the Theatre would not have worked absent his and Mr. Pirkle's efforts and the efforts of the community, emphasizing again that the property owner had lowered the rent. He commented that the Rheem Theatre had not been profitable and in the case of the City of Orinda, CAIFF had signed a long-term lease for tenant improvements for the Orinda Theatre. In response to the request for financial statements, he noted there were many variables involved; he had been more than conservative in the numbers; and reported the digital equipment for the Orinda Theatre had already failed with the loss of a weekend making it difficult financially. He added that two years ago the Rheem Theatre operators had invested in two used projectors to replace the original projectors, unaware that digital conversion was on the horizon and that the Theatre had also experienced problems with its air conditioning.

Mayor Trotter recommended the Town Council provide direction to staff to bring the matter back with more details on the options available. He asked what time period in the short term would be appropriate for the Theatre operators.

Mr. Zemrak spoke to the requirements of the theatre to have 50 percent digital conversion before receiving fees, described the studio system's payment of receipts based on the number of theatres, the uncertainty of the fees the theatre would realize, and detailed the digital projector conversion criteria and the lead time to supply theatre equipment once ordered.

Ms. Keimach commented on the Council policy for the Town Council and the public to receive staff reports at the same time, noted the number of meetings over the past several months with the Theatre operators, and explained there were no new ideas in the staff report that had not been previously discussed or advertised.

Maureen Freeman, Moraga, understood the purpose of the discussion was to take action on the waiver of fees, and suggested there had been inadequate time to review the staff report prior to the meeting to gather information and receive public input. She loved the Rheem Theatre and her family had benefitted from the job opportunities. She suggested it was in the public interest to have the Theatre venue in the Town. She stated the matter was a landlord/tenant matter, and questioned the Town's possible involvement through any subsidies which she found to be premature at this time. She asked the Town Council to consider what could be done for the Theatre but more importantly what should be done for the Town, whether it was a good investment, a good gesture for the Town to support the Theatre versus the use of funds for other Town operations given the Town's limited funds.

ACTION: It was M/S (Arth/Metcalf) to waive the \$3,000 in Town fees paid by the Rheem Theatre operator and reimburse those fees to the applicant. Vote: 4-0-1. Absent: Chew.

On the question of working with the property owner to designate the Theatre as a historic landmark, **Councilmember Wykle** supported that direction and suggested the landowner be involved in those conversations. He sought more information on the pros and cons for making that designation.

Councilmember Arth agreed and was reluctant to start a process that did not have the interest of the property owner.

Mahesh Puri, the property owner of the Rheem Theatre, explained that he had been working with his tenants for a long time, had realized nothing from his investment for some time, and since he had not yet researched the benefits of the historic designation, could not agree to that designation prior to thorough research.

By consensus, the Town Council directed staff to work with the property owner to designate the Rheem Theatre as a historic landmark.

Councilmember Wykle sought more information from staff on the potential revenue that could be generated by the Town's sublease of the Rheem Theatre during off-movie periods, to which Mr. Ingram advised that the Town could potentially realize \$6,000 annually from various recreational programs and activities through the sublease of the building. As to whether that would apply to the summer 2013 season, the summer Park and Recreation Program had already been distributed to the public although a supplement could be prepared to identify the activities that could be provided in the Rheem Theatre during off-movie times.

By consensus, the Town Council directed the Parks and Recreation Director to explore a one-year program sublease of the Rheem Theatre, with said lease or negotiation to be brought back to the Town Council for approval.

Mr. Zemrak advised that he had already worked with the Parks and Recreation Director about a sublease opportunity for a tot basketball program during the month of January and they were open to the sublease of the property for recreational programs and activities.

As to the legalities or desirability to advance Palos Colorados monies for ADA improvements and the digital projectors with the expectation the monies be repaid, Assistant Town Attorney Karen Murphy explained that such an arrangement would involve a loan agreement, with a loan provided pursuant to certain loan terms, with a need for negotiation on the terms of payment and benefits to the public outlined in exchange for the loan. A secondary issue would be the security of the loan, whether the loan would be secured by a deed of trust or recorded against the property versus a personal guarantee that would not be secured by the underlying real property, all yet to be determined.

On the question, **Councilmember Arth** did not want to discuss an advance of monies until minimally a long-term lease was in place, a threshold document he would require prior to consideration of a loan.

Ms. Murphy acknowledged Councilmember Metcalf's recommendation for the Town Council to consider findings and benefits of what the Theatre could provide in a loan term with a dollar amount, whether secured by the real property or a personal interest loan or guarantee, and the structure that could be put into place.

Mayor Trotter suggested the matter required dialogue between staff and representatives of CAIFF as well as community input to identify the proper structure, mechanism, the amount that would be the appropriate advance, and what would be funded although the Town Council did not have all the information to make that decision at this time. He wanted to see CAIFF representatives and staff continue the dialogue to reach a structure that did not involve a gift of public funds.

Councilmember Wykle emphasized the need to define the community benefit to justify an advance.

Mayor Trotter thanked everyone for their participation in the discussion and hoped the dialogue would continue in a positive direction.

Jeff Schwartz, Moraga, thanked the Council for its attitude on the discussion and effort which he found admirable.

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

Responding to the Council as to the efforts to fast-track use permits, Ms. Brekke-Read affirmed that was a priority for Planning staff, it had been discussed by the Planning Commission on March 4 with more feedback desired from staff, with that research to be presented to the Planning Commission on March 18.

Referring to the sunsetted Town Council policy waiving new use permit fees for new businesses, and consideration of a possible extension, Ms. Keimach recommended the Town Council hold that discussion during the budget deliberations given that the Town's revenues were flat and any waiver of fees would require staff to find other ways to meet the budget. She did not recommend reinstating that policy since there were few vacancies in the Rheem Valley Shopping Center, although if the Council wished, staff could prepare an analysis on whether or not to waive the fees.

In response to the concerns raised by Mr. Schnayer during public comment, Ms. Brekke-Read understood Mr. Schnayer's concerns related to a conditional use located in one section of the Rheem Valley Shopping Center, a potential tenant desirous to move into three spaces, the relocation of existing tenants in the center, and the fact the Moraga Municipal Code (MMC) required a Conditional Use Permit.

By consensus, the Town Council directed that the issue be discussed during the budget discussions.

Mayor Trotter spoke to the recent discussions during the Mayors' Conference on the Contra Costa Volunteers Organization for Disaster Assistance (CCVODA), of which he had provided literature to staff, and suggested it would be a benefit for the Town Council to have a presentation from the organization on disaster relief.

Chief of Police Robert Priebe acknowledged a presentation from CCVODA may be something beneficial to explore.

Mayor Trotter expressed the willingness to discuss the matter further with the Chief of Police in order to make a decision as to whether to bring the matter back as a future agenda item.

XIII. COMMUNICATIONS

There were no communications.

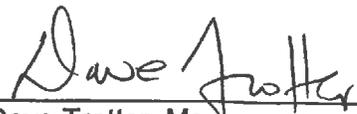
XIV. ADJOURNMENT

**ACTION: It was M/S (Wykle/Arth) to adjourn the meeting at 10:42 P.M. Vote: 4-0-1.
Absent: Chew.**

Respectfully submitted by:


Marty C. McInturf, Town Clerk

Approved by the Town Council:


Dave Trotter, Mayor