

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**May 8, 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 7:05 P.M. by **Mayor Dave Trotter**.

ROLL CALL

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

Councilmembers absent: Vice Mayor Ken Chew and Councilmember Phil Arth

II. PLEDGE OF ALLEGIANCE

Mayor Trotter led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

There were no special announcements.

IV. PROCLAMATIONS AND PRESENTATIONS

There were no proclamations or presentations.

V. PUBLIC COMMENTS AND SUGGESTIONS

There were no public comments or suggestions.

VI. ADOPTION OF THE CONSENT AGENDA

A. Approval of the Consent Items

Consent Agenda Items Nos. 2 and 4 were removed from the agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Metcalf) to approve Consent Agenda Items 1, 3, and 5. Vote: 3-0-2. Absent: Chew, Arth.

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|----|---|----------------|
| 1) | Accounts Payable Claims for 4/19/2013 (\$197,112.82) | Approved |
| 2) | <i>Approve Minutes for Town Council Regular Meeting on March 13, 2013</i> | <i>Removed</i> |
| 3) | Approve Minutes for Town Council Special Meeting on March 27, 2013 | Approved |
| 4) | <i>Adopt Resolution 24-2013 Authorizing the Town Manager to Grant and Record an Emergency Vehicle Access Easement and a Drainage and Drainage Facilities Easement Crossing Town-owned Moraga Country Club Property to the Moraga Country Club Expansion Development (Subdivisions 7351 and 7747) Located at the End of Augusta Drive (Property Owner: Moraga CC Holdings LLC)</i> | <i>Removed</i> |
| 5) | Accept Off-Street Parking Improvements Installed by Bruce Carone Grading and Paving, Inc. (Crockett) for the Moraga Commons Off-Street Parking Project (CIP 10-301) and Authorize the Town Manager to File the Certificate of Completion with the County | Approved |

B. Consideration of Consent Items Removed for Discussion

1. Approve Minutes for Town Council Regular Meeting on March 13, 2013

Councilmember Metcalf requested an amendment to the fifth paragraph on Page 11 of the March 13, 2013 minutes, as follows:

George Fisher, representing himself, 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.

Mayor Trotter requested an amendment to the first sentence of the third paragraph on Page 11; and the same correction to the first sentence of the third paragraph of Page 13, as follows:

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 the digital conversion.

Mr. Pirkle suggested the waiver of Town fees was a good first step.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Metcalf/Wykle) to approve the Minutes for Town Council Regular Meeting on March 13, 2013, as amended. Vote: 3-0-2. Absent: Chew, Arth

2. Adopt Resolution 24-2013 Authorizing the Town Manager to Grant and Record an Emergency Vehicle Access Easement and a Drainage and Drainage Facilities Easement Crossing Town-owned Moraga Country Club Property to the Moraga Country Club Expansion Development (Subdivisions 7351 and 7747) Located at the End of Augusta Drive (Property Owner: Moraga CC Holdings LLC)

Public Works Director/Town Engineer Edric Kwan explained that Attachment A to the staff report had shown the proposed Emergency Vehicle Access (EVA) easement throughout the property. One section near the top of the area had initially been presented as an easement crossing over the boundary line, but was not granted by the adjacent property owner. Engineers for the Bruzzone family proposed to realign the easement so that it would all be within the subdivision. As reflected in Exhibit D, the proposed easement and the 12-foot wide actual cart path improvements were identified, showing a sliver of land from the cart path crossing over the property line. In review of the original conditions of approval for the subdivision, the 12-foot paved cart path must be relocated in its entirety within the proposed EVA easement prior to recording the EVA easement. Said condition had been outlined in the staff report and included in the draft resolution of approval. The property owner was amenable to the changes and staff had discussed the condition with the project engineers.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Metcalf) to adopt Resolution 24-2013 Authorizing the Town Manager to Grant and Record an Emergency Vehicle Access Easement and a Drainage and Drainage Facilities Easement Crossing Town-owned Moraga Country Club Property to the Moraga Country Club Expansion Development (Subdivisions 7351 and 7747) Located at the End of Augusta Drive (Property Owner: Moraga CC Holdings LLC). Vote: 3-0-2. Absent: Chew, Arth

VII. ADOPTION OF MEETING AGENDA

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Metcalf/Wykle) to adopt the Meeting Agenda, as shown. Vote: 3-0-2. Absent: Chew, Arth.

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Trotter - Reported that he had attended a Board of Directors meeting for the Central Contra Costa Solid Waste Authority on March 25; the entire Town Council participated in a Special Meeting with the Orinda City Council regarding the Moraga-Orinda Fire District (MOFD) on April 29; attended the Mayors' Conference in the City of Orinda on May 2; a dinner at the Soda Center at Saint Mary's College (SMC) honoring Dick Olsen as the Moraga Citizen of the Year 2013 on May 3;

volunteered during the Cinco De Mayo festivities at the Hacienda on May 5; and reported that the California Supreme Court on May 6 had upheld the right of local jurisdictions to ban medical marijuana dispensaries, and he had been interviewed by the media on that court case.

Vice Mayor Chew - No report.

Councilmember Arth - No report.

Councilmember Metcalf - Reported that he and Planning Director Shawna Brekke-Read had attended the Lamorinda Fee and Finance Authority and the Lamorinda Program Management Committee meeting in the City of Lafayette to discuss a transit study for a Lamorinda transportation program on April 29.

Councilmember Wykle - No report.

- B.** Town Manager Update – Town Manager Jill Keimach reminded the public and the Council of the Community Faire to be held on May 11 sponsored by the Moraga Chamber of Commerce, and the California Independent Film Festival (CAIFF) Classic Film Festival and Hall of Fame Ceremony at The New Rheem Theatre the weekend of May 10 to 12.

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 25-2013 Authorizing the Town Manager to Award a Contract to Silicon Connections, LLC for Managed Information Technology Services for a Three-Year Period with the Option to Extend Services for Two Subsequent Years

Administrative Services Director Stephanie Hom presented the request to authorize the Town Manager to award a contract to Silicon Connections, LLC for Managed Information Technology Services for a three-year period with the option to extend services for two subsequent years and to have Silicon Connections serve as the Town's IT Department. In speaking with the Town Attorney, she advised that the resolution of approval would have to be modified to add language to clarify that the contract amounts would be consistent with the information as presented in the staff report and pursuant to the fiscal impacts, particularly Table 1, Working Compensation and Table 2, Hourly Rate Schedule.

Ms. Hom advised that Silicon Connections had been providing IT services to the Town since 1995, but as part of an open process to ensure the Town was receiving quality IT services at reasonable rates, a Request for Qualifications (RFQ) had been prepared and distributed with five different firms responding. She identified the numerous IT services used by the Town, noting that many of the firms that had responded had not provided all of the services.

Based on the evaluation process, Silicon Connections had been unanimously recommended as the provider for Managed Information Technology Services for the Town. Silicon Connections had provided excellent service since 1995, had the knowledge and expertise of the Town's

needs, offered a wide range of services, and operated with a philosophy of meeting the Town's needs with a primary focus on cost savings.

Ms. Hom identified the budget for the Town's IT services; with services from Comcast for business internet, AT&T; and website services with Happy Pixel for website maintenance. She also identified the fiscal impact with the services of Silicon Connections, and recommended the Town Council adopt the resolution, as amended. Responding to the Council, Ms. Hom commented that Silicon Connections had offered excellent IT services to the Town as part of its 24/7 service, which was not offered by all firms, and that Silicon Connections had been responsive to all of the Town's needs, with the Town having a specific contact person and emergency help available.

PUBLIC COMMENTS OPENED

Mark Dahlen, Silicon Connections, LLC, affirmed he had been with the business since its inception; personally spent time on the Town of Moraga account; and Silicon Connections had worked with other public entities as well as other Bay Area companies.

PUBLIC COMMENTS CLOSED

The Town Council discussed the draft resolution and made the following modifications in the form of the recommendation as outlined in the May 8, 2013 staff report:

Approve resolution authorizing the Town Manager to award a contract with Silicon Connections, LLC for Managed Information Technology Services for a three-year period with the option to extend services for two subsequent years, at the not-to-exceed annual cost set forth in Table 1 and the special project services hourly rate set forth in Table 2 of the staff report.

ACTION: It was M/S (Trotter/Metcalf) to adopt Resolution 25-2013 Authorizing the Town Manager to Award a Contract to Silicon Connections, LLC for Managed Information Technology Services for a Three-Year Period with the Option to Extend Services for Two Subsequent Years, as modified. Vote 3-0-2. Absent: Chew, Arth.

- B. Approve by Motion a Non-Exclusive Agreement for Services with Hacienda home/made kitchen café & bakery, LLC for Weekday Morning and Afternoon Use of the Hacienda Kitchen and Grounds for the Purpose of Offering for Sale Breakfast and Lunch Foods and Beverages at the Hacienda

Parks and Recreation Director Jay Ingram reported that staff had met with a group of Moraga Movers to discuss additional programming at the Hacienda to give people a reason to regularly visit the Hacienda.

Mr. Ingram provided an outline of the process to open a temporary café at the Hacienda de las Flores. An agreement for services was proposed for a temporary high end café and bakery, serving breakfast, lunch, and beverages. Current activities during this time frame would continue to exist if the café were allowed to move forward. Pursuant to the agreement, the temporary café would operate from 8:00 a.m. to 3:00 p.m., Monday through Thursday and 8:00 a.m. to 11:30 a.m. on Fridays; the agreement would run through August 9, 2013; 7 percent of the net sales would go to the Town; and upon completion of the three-month period staff would meet with the operator to evaluate the success of the business.

In response to the Council, Mr. Ingram commented that the intent was for the café to start in the patio area during the summer season and possibly have some seating inside. No tenant improvements or construction were planned.

Gayle Somers, home/made kitchen café & bakery, explained that she had purchased tables and chairs to be placed on the terrace with the Hacienda to provide tables and chairs for larger events. She expressed her hope the business would thrive once it was open to the entire community. She clarified the name of her business, as home/made kitchen café & bakery, and explained that the business was a limited liability company.

Assistant Town Attorney Karen Murphy commented that in the event something happened to prevent Ms. Somers from performing pursuant to the contract, the contract contained a termination provision and a section related to the cancellation of services.

Mr. Ingram clarified there was an Americans with Disabilities Act (ADA) accessible path to the patio; the three-month agreement period could be extended in writing similar to the process for Contract Instructors for the Parks and Recreation Department; the County Health Department conducted regular inspections and the Hacienda was in good standing; and if the Council approved the agreement, staff would contact the County Health Department to confirm its permit prior to the opening of the business. He further clarified that in speaking with the Hacienda Foundation, Boardmembers had not opposed the project in concept, but they felt they were not fully aware of this activity. He emphasized that this use and other uses had been discussed as part of the strategic planning for the Hacienda.

PUBLIC COMMENTS OPENED

George Fisher, Moraga, referenced the history of the Hacienda in the 1970's when the facility had been in full use and parking had been an issue, and the Hacienda had been a true community center. There was now a unique opportunity to have the Hacienda back in a position to be a community center. He asked that the Town Council consider the proposal carefully, allow it to move forward, and encouraged marketing through local media, with Moraga Movers to market it through monthly bulletins and regular e-mails.

Mayor Trotter encouraged regular advertising of the proposed café in the Town's e-newsletter and on the Town's marquee.

Ellen Beans, Moraga, suggested the café proposal offered an opportunity for many in the community; understood that the kitchen in the Hacienda was largely unused during the weekdays; agreed with the need to appropriately market the café to the community; and recommended consideration of potential signage on Donald Drive.

Ms. Somers added that she had signed a lease for the former Mondello's space for home/made kitchen cafe & bakery as her primary business. The café proposal at the Hacienda offered an opportunity to do something with the community and she expressed her hope it would be successful while also bringing revenues to the Hacienda.

PUBLIC COMMENTS CLOSED

The Town Council discussed the proposed home/made kitchen café & bakery, and made the following recommendations and/or direction to staff:

- Discussed the cost of operating the Hacienda each year and encouraged all efforts for as much revenue generation from the facility as possible while increasing the utilization of the space;

- Agreed that the service fee of 7 percent of net sales that was being charged to the contractor was a reasonable way to charge rent and was a fair price given the operation;
- Clarified with the Parks and Recreation Director that Wi-Fi had been installed at the Hacienda with improved strength inside the building and encouraged a stronger Wi-Fi signal outside of the building;
- Clarified with the Parks and Recreation Director and the Town Attorney that alcohol sales were not part of the contract; and there were no provisions regarding Alcoholic Beverage Control (ABC) licenses although that issue could be discussed after the initial three month agreement period;
- Clarified with staff that the proposed café was not the primary business for the operator;
- Opposed temporary signage at the entrance of Donald Drive but encouraged the operator to discuss sharing costs for signage with the Town potentially along the fence frontage on Moraga Road which would require a Town permit; and
- A motion for approval to reflect the accuracy of the independent name of the operator to read: home/made kitchen café & bakery, LLC.

ACTION: It was M/S (Metcalf/Wykle) to approve by motion a Non-Exclusive Agreement for Services with Hacienda home/made kitchen café & bakery LLC for Weekday Morning and Afternoon Use of the Hacienda Kitchen and Grounds for the Purpose of Offering for Sale Breakfast and Lunch Foods and Beverages at the Hacienda, as discussed. Vote: 3-0-2. Absent: Chew, Arth.

- C. Introduce and Waive the First Reading of an Ordinance Adding Chapter 12.06 "Street Excavation and Pavement Restoration Regulations" to the Moraga Municipal Code to Establish a Pavement Cut Moratorium to Preserve Newly Paved Streets

Mr. Kwan reported that with the influx of Measure K sales tax pavement monies, the Town would be embarking on a very aggressive pavement program; in order to protect the pavement to be laid in the next three years, the proposed ordinance and moratorium would preserve the integrity of newly-paved streets and forestall deterioration by preventing water intrusion, differential settlement, and multiple cuts that were often associated with street patching. He highlighted the proposed Street Excavation and Pavement Restoration Regulations Ordinance; reported that pursuant to the latest StreetSaver Model, the replacement value of the Town's streets had been estimated at \$117.5 million; and explained as part of a Utility Master Trench Permit (UMTP), it was common for agencies to include a new ordinance with additional, more stringent restrictions. He had also worked closely with the Contra Costa County City-County Engineering Advisory Committee (CCEAC) which was also looking at the past agreement and possible updates.

Mr. Kwan commented that an extensive public outreach campaign had been conducted by staff, and notices had been received from PG&E, AT&T, and the East Bay Municipal Utility District (EBMUD). An additional memorandum had been attached to the staff report including a list of responses. He clarified that PG&E had provided comments in a timely manner with comments from AT&T and EBMUD having been received after the distribution of the staff report. He identified the redline strikeout revisions, as reflected in Attachment A, Draft Ordinance Adding Chapter 12.06, "Street Excavation and Pavement Restoration Regulations" to the Moraga Municipal Code (MMC) to Establish a Pavement Cut Moratorium and Newly Paved Streets; and in response to comments received from EBMUD, he described the following revisions:

- Section 12.06.060, Excavation Requirements and Conditions, add the following statement to the end of the first paragraph: *Except for exemptions approved by the engineer that are required to complete emergency work;*
- Section 12.06.060, Excavation Requirements and Conditions, I, add an additional bullet under that section to read *The Town has the right to direct permittee to perform quality assurance on trench backfilling and compaction to ensure the Town that the utility repair will not adversely affect the Town's streets;* and
- Section 12.06.070, Paving, G, adding a statement to the end of the condition to read *Depending on the circumstances, the Town Engineer may allow for temporary repairs within two (2) working days with hot mix or modified polymer co-patch so that the trench plates can be removed, with final repairs to be determined on a case-by-case basis situation.*

As to why parking lots had not been included in Section 12.06.020, Definitions, Q, Public Street, Mr. Kwan explained that utility cuts would likely be initiated by the Town. Private utilities were no longer part of the public utility responsibility within the parking lot.

Ms. Murphy added that typically in a public street there would be a public utility easement where utility companies had the right to install utilities, which would not be present in a parking lot absent a specific easement grant.

As to whether the owner of the facility(ies) must be defined, pursuant to Section 12.06.60, Excavation Requirements and Conditions, A, Ms. Murphy noted that facility had been defined with the owner in that circumstance to mean the property owner, and a new definition could be added for 'owner' to be added to the redline strikeout version.

Mr. Kwan continued to identify further revisions to the ordinance in response to concerns raised by EBMUD:

- Section 12.06.070 Paving, L, revise the first sentence to read: *A permittee that performs three or more street cuts in one block within a one-year period shall grind and overlay the street for the entire length of the block;* and
- Section 12.06.080, Defects, Repair and Completion of work, C, revise the statement to read: *The owner of the facility/utility is responsible for any roadway defects caused by the facility/utility's work in the area over and adjacent to the trench appearing after the permittee restores the trench. The owner is responsible for maintenance, repair, or reconstruction of the excavation site's affected area related to such defects until the Town of Moraga reconstructs, repaves, or resurfaces the street.*

Responding to the Council, Mr. Kwan explained that he had worked closely with CCEAC to gather information from other agencies, and noted that he had developed a similar ordinance in another city, which had been adopted. In order to provide a fair and balanced response to the utility agency's comments, staff had attempted to respond through its recommendations.

PUBLIC COMMENTS OPENED

David A. Schatzki, Paving Superintendent, EBMUD, stated that EBMUD understood the issues in depth which would lead to significant costs to the utility district and the Town had adopted other standards many years ago. Moraga streets contained generally three to six inches of base rock underneath four to six inches of asphalt, and when EBMUD needed to conduct new repairs and pipelines, EBMUD put in 10 times the amount of base rock as the adjacent streets

with 36 inches of compacted rock, 95 percent compacted, and the actual utility trench, which became the strongest part of the street. Given the mandate to saw cut, there would now be a vertical plane allowing water to migrate through to the adjacent streets resulting in premature failures next to the patches. He spoke to a technique used by EBMUD for a cold mill grinder and, as a result of the new technology, EBMUD was no longer seeing the cracks and adjacent asphalt deterioration and the work was fully supported by a wall of compacted rock. This new technology was now used in all cities/communities within the EBMUD service area.

Mr. Schatzki explained that some of the concerns EBMUD had with the Town's ordinance related to the use of old technology and history. He suggested the Town needed to re-evaluate and realize the technology that had been used for the past 50 years with trench cuts was now being surpassed with the newer technology. He asked that the Town Council direct staff to conduct continued meetings with EBMUD on these issues in further depth. When asked, he commented that he had not seen the staff recommended revisions to the redline strikeout version of the ordinance in response to correspondence from EBMUD prior to the meeting.

PUBLIC COMMENTS CLOSED

Mr. Kwan reiterated that he had spoken with other agencies and jurisdictions recently about the proposed revisions to the ordinance and had received positive comments. As to the newer referenced technology used by EBMUD, he had not seen the effects of that technology, would like to see how that patch performed given that the technology was very new. There had been discussions in the CCEAC regarding non-standard types of patch work, but with a warranty requirement. He emphasized he was open to any method that improved the pavement.

Mr. Schatzki explained why EBMUD had moved away from the saw-cutting method for its mainline trenches since there was now a better product, and over the last ten years the latest technology had outperformed the T-cut method and was more cost effective. He offered to send photographs of the product to the Town Council for review.

Mr. Kwan also described the outreach process and that EBMUD had provided staff with a list of the streets indicating where they planned to replace the laterals but which would be deferred to a future construction season. He was not opposed to continued outreach with EBMUD, affirmed he had received e-mails from EBMUD he had reviewed carefully, but still needed to see how the product performed. He would like to see the ordinance move forward and allow him, as the Town Engineer, to make exceptions on a case-by-case basis.

Ms. Keimach understood that staff had gone out to bid on Monday, May 6, 2013, for the various street sections and clarified with Mr. Kwan that staff planned to submit the approval of construction contracts at the Town Council's first meeting in June, and that coordination had already occurred with the utility companies and staff had already excluded those streets from the bid. The proposed ordinance would ensure the utility companies understood after this large project the moratorium would go into place, adding requirements to ensure the best product.

Mayor Trotter suggested the Town Council was not ready to proceed with the first reading of the ordinance given the public comment which had not been reflected in the original staff report; the supplemental memorandum had just been received and the utility companies did not have the opportunity to provide input; and the full Council was not present to provide input. He recommended the item be deferred to allow the full Council to be present. In response to the staff recommendation regarding no more than three street cuts in one block in one year, he found that to be too lenient since under that standard a utility company may organize the cuts and could, by timing, have impacts on the strength of the utility of the street. He recommended a three-year standard as opposed to one, and agreed that five years was too long. He sought the highest integrity in the Town's road repairs.

Councilmembers Metcalf and Wykle agreed that a three-year standard as opposed to one year would be more appropriate.

In response to a recommendation for staff to redistribute the proposed ordinance to obtain comments from the utility companies on the staff responses to the utility company comments, Ms. Keimach advised that could not be achieved before the next meeting of the Town Council given the limited time for the utility companies to respond. The item could return for consideration during the June 12 Town Council meeting. She acknowledged the Public Works Director/Town Engineer's concerns delaying action on the proposed ordinance given the bid for remediation work on existing streets and the intent of the ordinance to protect the completed work, and clarified the question of when the pavement would be done and completed related to when the ordinance would become effective to protect the new pavement.

Mayor Trotter pointed out the utility companies were on notice that the Town was considering a pavement repair ordinance to protect work which would be occurring in the next two months, given notification from the Town previously and given the utility companies would be apprised of the current discussion. He otherwise identified an error on Page 11, Section 12.06.060, Excavation Requirements and Conditions, A (4) and asked that the word "Scheduled" be corrected to read *Schedule*.

Mayor Trotter recommended a redline version with the proposed changes be sent out to the utility companies to solicit comment and advise of a public hearing for a first reading before the Town Council meeting on June 12, 2013.

- D. Adopt Resolution 26-2013 Authorizing the Town Manager to Draft and Sign an Agreement Accepting Saint Mary's College (SMC) Proposed Terms As Modified Regarding Continued Community Use of Saint Mary's College Facilities to Satisfy Mitigation REC-1 for the Student Recreation Facility Approved in PC Resolution No. 7-12 for a Period of 5 Years, or Less, if Superseded by a New Campus Master Plan or New Development Entitlement

Planning Director Shawna Brekke-Read described the background of the land use regulations for SMC as established through a Master Plan process, which was periodically reviewed and updated by the Planning Commission. The First SMC Master Plan had been approved on August 19, 1991, and upheld on appeal to the Town Council. One of the conditions of approval of that plan was that SMC pay park dedication fees or participate in some agreement with the Town allowing for mutual use of the Town and SMC's recreational facilities. On July 2, 2012, the Planning Commission adopted a Mitigated Negative Declaration (MND) which allowed a Student Recreation Facility on the SMC campus. The approved project replaced open field areas with buildings and parking spaces. One of the mitigation measures addressed the decrease in open space that could be used by the Town and SMC, with Mitigation Measure 1 requiring that prior to the first building permit issued for the project, or a grading permit for the parking lot, the Town of Moraga and SMC shall each sign an agreement allowing for mutual use of park and recreation facilities to both parties. Staff had been working with SMC on the building permit plan check period for the Recreation Center and was close to the point where SMC may receive the building permit and start construction, subject to conditions. SMC had proposed terms in the agreement to address the mitigation measure as outlined in the May 8, 2013 staff report.

Ms. Brekke-Read noted that SMC was in the process of updating its Master Plan and any agreement may be required to be amended in the future. She advised there would be a fiscal impact to the Town since SMC was recommending the Town rent the fields. Staff had prepared a resolution of approval should the Council choose to accept SMC's proposal. If the Council

desired something different than what had been shown in the resolution, she asked that staff be provided with precise direction and language to be incorporated into a resolution of approval.

Responding to the Council, Ms. Brekke-Read clarified the mitigation measure related to the playing fields would not preclude the use of other SMC facilities; the rent for the use of the playing fields had been proposed by SMC and the Town was not bound to accept that proposal; and there was a nexus between the impacts in the MND for the new Recreation Center and the condition to be able to specify that the Town's Parks and Recreation Department use of the fields would be without a rental payment to the Town.

Ms. Murphy stated that the mitigation measure specifically provided that the Town and SMC sign an agreement indicating there would be mutual agreement between both parties; specifically, it would be equivalent to the historic peak usage of college recreational use by Town residents, intended to deal with the field use. She noted it would depend on the historic use of the fields and whether there were any costs associated with the Town's use of the fields.

Ms Brekke-Read clarified that SMC had complied with PC Resolution 15-91, Condition of Approval No. 1, with an agreement entered into with a term of 20 years, which expired in 2011. As to Mitigation Measure REC-1 and the types of facilities and recreational activities used by Town residents, a list of those activities had been part of the original 1991 agreement.

Mr. Ingram advised that as part of the original 1991 agreement, the Town had the ability to use 21 buildings, recreational facilities and playing fields on the SMC campus, as identified in Exhibit A. Some of those facilities still existed and some did not. As to the historic and recent use of the facilities, the current facility used by the Town was a small unused portion of the front rugby field where the tot soccer program had been held. The Town paid a rental fee for the use of that space based on costs he had negotiated with SMC.

Ms. Brekke-Read reiterated the agreement may have to be updated in the future if SMC updated its Master Plan, although modification could be handled through mitigation measures establishing standards or conditions of approval.

PUBLIC COMMENTS OPENED

Michael Beseda, SMC Vice President for College Communications, explained that SMC had discussions with the Town Manager and the Planning Director eleven months ago when working on the mitigation measure, with the language imagining the current state of affairs where SMC had a modest rental fee for facilities historically used by the Moraga Parks and Recreation Department. He had assumed the agreement would be agreeable to all parties as part of the current practice. He commented that the Memorandum of Understanding (MOU) from 1991 was conflicting in that it spoke to access to both the Town and Town residents, but not specifically the Parks and Recreation Department, although SMC had worked through that over the years. He affirmed the 20-year agreement had expired in 2011, with Town staff working with SMC to carry the agreement over. He noted the 20-year agreement came out of the last Master Plan process, a result of a comprehensive conversation as to the relationship of the SMC and the Town.

Ms. Keimach understood that under the MOU agreement there was more sharing of the facilities at the Hacienda and SMC; staff had been meeting weekly with SMC for many months on the MOU and during discussions of the Town/Gown activities; staff had tried to prepare language in the MOU, and short of that had come up with the language in the agreement; and Town staff had been working on the approvals for the SMC Recreation Center. Her intention had been that the Town had minimal cost for shared facilities, as discussed in meetings with SMC eleven months ago, such as the cost of having the grass mowed, a facilities person available or a

person closing up, as examples, and not a permit fee for rental recovery. Also, the Town would only use the SMC facilities when they were not being used by SMC. She noted the focus was on a building that used to be available for use as it related to REC-1.

Mr. Beseda affirmed that SMC was not rushing to work on the cooperative facility use agreement given the upcoming updates to the SMC Master Plan.

Tim Farley, SMC Director of Community and Government Relations, stated that SMC was close to obtaining its building permit for the Recreation Center and asked that the Town Council accept the language in the agreement, as recommended by staff.

Responding to the Mayor's recommendation for an amendment to the agreement to read: *The Town's Parks and Recreation Department will be able to use these fields for its recreational programs on a cost recovery only basis when other regularly scheduled college activities are not in progress*, Mr. Beseda was not opposed to the use of that language but noted the language proposed by SMC had been mutually agreed to months ago; he understood it to be something related to cost recovery and SMC had never charged the Town rent for any of its facilities. He was uncertain how the term of cost recovery would be defined and suggested the charge to the Town was cheap by any measure, and that staff had been provided with a cost recovery schedule. He added that this agreement, and all agreements, imagined use beyond formal Town use since SMC facilities were used daily by Moraga residents for all purposes and the agreement made note of that.

Mr. Ingram clarified that staff had not received a cost recovery schedule from SMC.

Ms. Brekke-Read added there remained several issues outstanding prior to the issuance of a building permit for the SMC Recreation Center, with staff in communication with SMC on a regular basis and through correspondence.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Wykle) to adopt Resolution 26-2013 Authorizing the Town Manager to Draft and Sign an Agreement Accepting Saint Mary's College Proposed Terms, as Modified, Regarding Continued Community Use of Saint Mary's College Facilities to Satisfy Mitigation REC-1 for the Student Recreation Facility Approved in PC Resolution No. 7-12 for a Period of 5 Years, or Less, if Superseded by a New Campus Master Plan or New Development Entitlement, subject to modification reading: *The Town Parks and Recreation Department will be able to use these fields for its recreational programs on a cost recovery only basis when other regularly scheduled college activities are not in progress.* Vote: 3-0-2. Absent: Chew, Arth.

- E. Review and Accept Annual Planning and General Plan Implementation Report and Provide Input on Town Work Program Priorities Related to Implementation of the General Plan for the 2013/2014 Fiscal Year

Ms. Brekke-Read explained that the Annual Planning and General Plan Implementation Report had been prepared pursuant to the requirements of state law reporting on the Town's progress in implementing the General Plan and fulfilling the Housing Element objectives. Since the General Plan included an implementation program calling for a revisit of all 104 Action Programs as contained in the General Plan with a progress report status, staff was required to inform the Town Council as part of its budget process. The Town was also required to provide bi-annual reports to the Contra Costa Transportation Authority (CCTA) in order to receive the Town's share of Measure J funds with a compliance checklist to be presented to the Town Council at a future meeting.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

The Town Council discussed the General Plan Implementation Report and made the following comments and/or direction to staff:

- Page 15 of 28, Transit, revise to include the Town's active participation in the Lamorinda School Bus Program; aimed at congestion relief as the primary objective, and transporting children to schools a secondary objective; participation in the Spirit Van Program with the City of Lafayette (the City of Orinda did not pay into the program); Implementation Program Appendix, Implementation Measure H4, Affordable Housing Subsidies, staff to clarify the statement and reference to LFFA waivers to ensure accuracy;
- Implementation Program Appendix Implementation Measure J1, Open Space Specific Programs, identified a typographical error to the second bullet point;
- Implementation Program Appendix Implementation Measure K3, Town Center Project, clarify when the Multi-Use Community Room at 331 Rheem Boulevard currently under design would be completed; clarified with staff there had been discussions with the project engineer to enlarge the room for a better dais area which would require interior modifications; with staff to consider whether it would be more cost effective to move the building out 10 feet or pull the wall in 10 feet;
- Implementation Program Appendix Implementation Measure K5, Annexation Review, noted the Growth Management Program of Measure J stated that the Town may not initiate annexation of anything outside the Urban Limit Line (ULL) or risk return to source funds with a Sphere of Influence (SOI) outside the ULL; with staff to clarify the accuracy of the statement shown in the implementation measure;
- Implementation Program Appendix Implementation Measure L7, Lamorinda Transportation Planning, revise the 2013 Goals/Accomplishments to reflect that the LFFA Nexus Study would be done to support a potentially revised fee schedule; and
- Implementation Program Appendix Implementation Measure M10, Public Safety Information, include the initiation of the Nixel Alert service under the 2012 Accomplishments.

ACTION: It was M/S (Metcalf/Wykle) to accept Annual Planning and General Plan Implementation Report and Provide Input on Town Work Program Priorities Related to Implementation of the General Plan for the 2013/2014 Fiscal Year, as modified. Vote: 3-0-2. Absent: Chew, Arth.

- F. Review and Accept First Quarter Update of Town Council Adopted Goals for 2013

Ms. Keimach reported that the Town Council had held its annual Goal Setting Workshop on January 12, 2013, and was now presenting a quarterly review of the Town Council Goals to update the entire Council on the goals that had been organized into seven categories. She clarified that negotiations with the Rheem Theatre were currently on hold related to issues regarding ADA improvements outside of the theatre on the sidewalk, which involved private property; both sides continued to negotiate with no resolution to date; and staff had spoken with the property owner as to a designation of the theatre as a historic landmark to be considered by the Town Council on a future agenda. She also clarified the details of the Laguna Creek Storm Damage Repairs Project at the Hacienda.

Ms. Keimach agreed to provide a copy of the Moraga Country Club lease to Mayor Trotter and Vice Mayor Chew (the Moraga Country Club Subcommittee) as requested in order to begin implementation in a month or so.

Speaking to the goal to initiate/complete targeted General Plan Amendments and Rezoning During 2013, **Councilmember Wykle** asked that the item be considered in late summer/early fall rather than wait six months.

Mayor Trotter welcomed a discussion on the options in August or September. He also clarified his understanding that Moraga Country Club was aware of the Town Council's intent to begin the process regarding its land use with the Town.

By consensus, the Town Council requested that the second quarter report update be placed on the Consent Agenda with the understanding it could be removed for discussion.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Metcalf) to accept First Quarter Update of Town Council Adopted Goals for 2013. Vote: 3-0-2. Absent: Chew, Arth.

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

Mayor Trotter reported that former Mayor/Councilmember Frank Sperling would be publicly announcing his resignation from the MOFD since he would be moving out of the area; given his status as a former Councilmember, he asked for a proclamation at the next meeting of the Town Council on May 22.

XIII. COMMUNICATIONS

There were no communications.

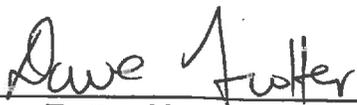
XIV. ADJOURNMENT

ACTION: It was M/S (Metcalf/Wykle) to adjourn the meeting at 10:20 P.M. Vote: 3-0-2. Absent: Chew, Arth.

Respectfully submitted by:


Marty C. McInturf, Town Clerk

Approved by the Town Council:


Dave Trotter, Mayor