

**TOWN OF MORAGA  
TOWN COUNCIL REGULAR MEETING**

**August 27, 2014  
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 Ken Chew**.

**ROLL CALL**

Councilmembers present: Mayor Ken Chew, Vice Mayor Roger Wykle, and Councilmembers Phil Arth and Dave Trotter

Councilmembers absent: Councilmember Michael Metcalf

**II. PLEDGE OF ALLEGIANCE**

**Mayor Chew** 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**

Joan Bruzzone, Lafayette, stated with the advent of the November elections and the chance of a change in Town Council composition, and for the public record, respectfully requested that Councilmember Dave Trotter recuse himself from any matter that would be considered regarding the Bruzzone properties given that the family had occasion to doubt his decision making perception of being non-biased. To provide clarity, she stated a conflict of interest was not necessarily the only definition of bias in that beliefs and desires may lead to biased editing and/or decision making. A person with a conflict of interest may fail to exercise good judgment, and persons with a conflict often failed to realize the extent to which the conflict affected their judgment, also giving the impression to the Council that their judgment was even more reliable than it really was, because others may rely on that person's competency which could bring the reputation of other Councilmembers into disrepute.

Roger Poynts, Moraga, explained that he resided on the lower east side of Donald Drive, and presented a memorandum to the Town Council regarding the 21 homes on that side of Donald Drive between Moraga Road and the cul-de-sac, with the lots a minimum of 100 feet in width allowing a large frontage to park vehicles.

Mr. Poynts stated the residents of the multi-family units located around the corner used that area for overflow parking, which was not a good parking standard.

He asked the Town Council to direct staff to review the issue and propose a parking standard for the area and suggested one and a half parking spaces per unit. He explained that he had also appeared before the Town Council in 2009/2010 having suggested that 20 units to the acre was not a good standard for the community. Given that the Town's semi-rural lifestyle could change in the future, he asked the Town to prevent parking issues in the future.

Karen Pedraza, Contra Costa County Climate Leaders, thanked the Town Council for its continued efforts to create a Climate Action Plan (CAP), which she understood would be considered by the Town Council in October. She invited the Town Council and Town staff to an upcoming Residential and Commercial Energy Finances Workshop and provided copies of a matrix of the Climate Leaders Climate Action Planning efforts as of July 1, 2014.

## VI. ADOPTION OF CONSENT AGENDA

### A. Approval of Consent Items

Item 5 was removed from the Consent Agenda.

#### PUBLIC COMMENTS OPENED

There were no comments from the public.

#### PUBLIC COMMENTS CLOSED

Assistant Town Attorney Karen Murphy stated that although the Mayor and Vice Mayor had not attended the regular Town Council meeting of June 11, 2014, they may vote on the meeting minutes if desired; otherwise the item would have to be continued to a future Council meeting to allow a quorum of the Council present during that meeting to take action.

<b>ACTION: It was M/S (Wykle/Arth) to adopt Consent Agenda Items 1, 2, 3 and 4. Vote: 4-0-1. Absent: Metcalf.</b>
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|---|----------|
| 1) Accounts Payable Claims for: 7/11/14 (\$69,974.63); 7/11/14 (\$51,564.10); 7/23/14 (\$700.00); 7/25/14 (\$246,451.04); 7/25/14 (\$74,443.98); 7/25/14 (\$2,231.25); 7/31/14 (\$6,279.91); 8/8/14 (\$92,636.68); 8/8/14 (\$71,181.75) | Approved |
| 2) Approve Minutes for Town Council Regular Meeting on June 11, 2014  | Approved |
| 3) Approve Minutes for Town Council Regular Meeting on June 25, 2014  | Approved |
| 4) Consider Resolution 67-2014 Authorizing Central Contra Costa Solid Waste Authority (CCCSWA) to Enter into New Waste Collection, Processing and Disposal Service Agreements for the Service Area                                      | Approved |
| 5) <i>Receive Report and Town Response to Grand Jury Report No. 1405, "The Public Records Act in Contra Costa County" by the 2013/2014 Contra Costa Grand Jury</i>  | Removed  |

**B. Consideration of Consent Items Removed for Discussion**

1. Receive Report and Town Response to Grand Jury Report No. 1405, "The Public Records Act in Contra Costa County" by the 2013/2014 Contra Costa Grand Jury

**Councilmember Trotter** stated that the Town Council had been provided with a redline revision to Page 3 of the Town's Response to Grand Jury Report No. 1405, "The Public Records Act in Contra Costa County" by the 2013/2014 Contra Costa Grand Jury, which he asked to be reflected in the record.

**ACTION: It was M/S (Trotter/Wykle) to Receive Report and Town Response to Grand Jury Report No. 1405, "The Public Records Act in Contra Costa County" by the 2013/2014 Contra Costa Grand Jury, subject to the redline revision to Page 3, as provided to the Town Council. Vote: 4-0-1. Absent: Metcalf.**

**VII. ADOPTION OF MEETING AGENDA**

**PUBLIC COMMENTS OPENED**

There were no comments from the public.

**PUBLIC COMMENTS CLOSED**

**ACTION: It was M/S (Trotter/Arth) to adopt the Meeting Agenda, as shown. Vote: 4-0-1. Absent: Metcalf.**

**VIII. REPORTS**

**A. Mayor's and Councilmembers' Reports**

**Mayor Chew** – Reported that he had attended Moraga Night Out on August 5, had met with many Moraga residents throughout the community, and had attended the Mayors' Conference in the City of Lafayette on August 7.

**Vice Mayor Wykle** – Reported that at the request of Signature Homes, he had participated in a short meeting of their proposed development on Moraga Road on July 22; participated in the Moraga Swim Town USA as part of the Orinda - Moraga Pool Association Meet on August 8 to 10; participated in Jury Duty in Contra Costa County on August 12 to 21; and at the request of Director of Community and Government Relations Tim Farley at Saint Mary's College (SMC), had met with SMC to review an engineering report for the Intramural Field Lights on August 22.

**Councilmember Arth** – Reported that he had attended Moraga Night Out on August 5; the Mayors' Conference in the City of Lafayette on August 7; a Moraga Chamber of Commerce meeting on August 13; a meeting with SMC to review the engineering report for the SMC Intramural Field Lights on August 21; and a Moraga Chamber of Commerce barbecue at the Commons Park on August 26.

**Councilmember Metcalf** – Absent.

**Councilmember Trotter** – Reported that he had attended a regular meeting of the Central Contra Costa Solid Waste Authority (CCCSWA) Board of Directors on July 31; three separate meetings of the Ad Hoc Joint Facilities and Fields Subcommittee over the past six weeks, with a tour of the Pleasant Hill Recreation and Park District's new facilities on August 26; the Moraga Chamber of Commerce barbecue at the Commons Park on August 26; and had met with the Moraga Historical Society on August 11 and 25 to discuss the planning for the 40<sup>th</sup> Anniversary Dinner Celebration to be held on October 18, 2014.

B. Town Manager Update – No report.

## IX. DISCUSSION ITEMS

There were no discussion items.

## X. PUBLIC HEARINGS

- A. Consider Resolution \_\_\_ - 2014 Upholding an Appeal filed by Saint Mary's College of the Planning Director's Decision Regarding Saint Mary's College to Reduce the Hours of Operation of Intramural Field Lights, Which Allow the Original Hours of Operation with Lights Turned Off at 10:00 P.M. ***(This item has been removed from the agenda and will be re-noticed.)***
- B. Consider Introducing and Waiving the First Reading of an Ordinance Adding Chapter 8.176 Historic Preservation to Title 8, Planning and Zoning, of the Town of Moraga Municipal Code (Including Consideration of Requiring Owner Consent). ***(This item has been removed from the agenda and will be re-noticed.)***

## XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

- A. Consider Adopting and Waiving Second Reading of Ordinance 248 Amending Moraga Municipal Code (MMC) Title 8, Planning and Zoning:
1. Amend MMC Section 8.04.020 (Definitions), adding Definitions for Supportive and Transitional Housing and Emergency Shelters and Corresponding Amendments to Lists of Permitted Uses in Applicable Districts;
  2. Add MMC Chapter 8.164 allowing Emergency Shelters by Right in the Institutional District;
  3. Add MMC Chapter 8.168 Allowing Reasonable Accommodations from the Zoning Ordinance for Individuals with Disabilities; and
  4. Add MMC Chapter 8.172 allowing Density Bonus for Affordable Units Consistent with State Density Bonus Law

Associate Planner Brian Horn reported that the Town was in the process of updating the Housing Element and the MMC zoning text amendments were necessary for the State Department of Housing and Community Development (HCD) to certify the Town's Housing Element, and in order to implement the 2010 Housing Element policies and goals. The Town Council would review the Draft Housing Element on September 10, 2014.

Responding to the Council, Mr. Horn explained that one of the zoning text amendments would allow for Emergency and Transitional Housing in the Institutional District by right, identified as SMC property. Said housing could not be located within 300 feet of any other Emergency Shelter or Transitional Housing.

Recognizing concerns raised by Councilmember Trotter with Government Code Section 65583, Subsection (a)(4)(A)(v), that the proposed language may be contrary to State law which suggests that Emergency Shelters and Transitional Housing could not be restricted, Mr. Horn stated that staff had worked with the Housing Element Consultants who had provided sample ordinances in effect in other jurisdictions and that the proposed language was consistent with that used elsewhere.

**Councilmember Trotter** read into the record Government Code Section 65583, Subsection (a)(4)(A)(v), which implied that Emergency Shelters and Transitional Housing could not be more than 300 feet apart, suggesting they must be allowed within 300 feet of one another. He expressed concern that the language was in conflict with the Town's ordinance which could create an issue in the future.

Ms. Murphy acknowledged the language under discussion was not that clear and suggested it could be read to state "...provided that Emergency Shelters are not required to be more than 300 feet apart..." which may be the way that section had been interpreted, with 300 feet the maximum.

Given that the language was vague, **Councilmember Trotter** recommended that the language in the ordinance conform to the text of Government Code Section 65583.

Ms. Murphy suggested citing the Government Code or adding specific language if that was the direction of the Town Council. If so, the item would have to return for a first reading with those changes since the item had been agendaized for a second reading.

Mr. Horn explained that if the Town Council took action on the proposed amendments, the Town would qualify for a streamlined review with the HCD; otherwise, the Town would not qualify since the document was currently on a tight schedule with the Housing Element to be adopted by the end of January 2015. The Town Council would be presented the Housing Element on September 10, 2014 for comment and review, and thereafter the document would be forwarded to the HCD for its review. If the suggested change was made, it may not allow the Town to proceed with the streamlined review.

Planning Director Shawna Brekke-Read commented that if the document was submitted absent Councilmember Trotter's requested change, it may not cause an issue with the HCD, and given the question it might be worth the wait. The Town Council would be presented the Housing Element on September 10 and the suggested change could be introduced at that time, with the Town showing the State it was making a good faith effort with those changes. Given the timelines with the HCD, the Town had until the end of March 2015 to have an adopted Housing Element.

Ms. Murphy suggested staff could incorporate language that was more consistent with the Government Code between now and the next meeting. The item could not be conducted as a first reading with the changes at this time since it had been agendaized as a second reading.

**Councilmember Trotter** suggested proceeding with action on the second reading allowing an expedited review, with the understanding that the Housing Element might be somewhat inconsistent with the ordinance but could be clarified in the future.

Town Manager Jill Keimach acknowledged that the Housing Element could be amended with a better interpretation.

Ms. Brekke-Read clarified that the streamlined review meant the HCD would not be reviewing the entire Housing Element, but a smaller portion pursuant to recent State law mandates.

Ms. Murphy concurred that through the review of the Housing Element the issue raised by Councilmember Trotter could be addressed.

#### PUBLIC COMMENTS OPENED

There were no comments from the public.

#### PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Trotter/Wykle) to adopt and Waive Second Reading of Ordinance 248 Amending Moraga Municipal Code (MMC) Title 8, Planning and Zoning: 1) Amend MMC Section 8.04.020 (Definitions), adding Definitions for Supportive and Transitional Housing and Emergency Shelters and Corresponding Amendments to Lists of Permitted Uses in Applicable Districts; 2) Add MMC Chapter 8.164 allowing Emergency Shelters by Right in the Institutional District; 3) Add MMC Chapter 8.168 Allowing Reasonable Accommodations from the Zoning Ordinance for Individuals with Disabilities; and 4) Add MMC Chapter 8.172 allowing Density Bonus for Affordable Units Consistent with State Density Bonus Law; with staff to spend the time between now and the September 10, 2014 public hearing for the Housing Element to review the questions of compliance with Government Code Section 65583. Roll Call Vote: 4-0-1. Absent: Metcalf.**

- B. Discuss Proposed Senate Bill No. 270 (Padilla) regulating Single Use Plastic Bags; and:
  - 1. Consider Resolution \_-2014 Indicating the Intent of the Town Council to Pass a Local Ordinance Exempting the Town from Potential State Regulations Regarding Single-Use Plastic and Carry-Out Bags; or
  - 2. Consider Taking No Action and Await State Regulations

Ms. Keimach explained that the Town Council had considered the issue of banning plastic bags in spring of 2013. This year Senate Bill 270 had been going through the Legislature to restrict the use of single-use plastic bags statewide. One of the conditions of the Bill had been if a local jurisdiction passed a resolution prior to September 1, 2014 that had the intent to regulate plastic bags or adopt an ordinance restricting the use of single-use plastic bags by January 1, 2015, that jurisdiction would be exempt from SB270. SB270 died in the State Legislature on August 25, 2014, although it had one more opportunity for passage by the current Legislative Session. Consequently many jurisdictions in the Bay Area had brought the issue to their Councils for consideration. The item had been placed on the agenda to solicit feedback from the Council to restrict the use of single-use plastic bags locally. In the spring of 2013, the Town Council had solicited the Chamber of Commerce's position. The Chamber had recommended at that time prior to any action that the Town wait until the outcome of the statewide legislation.

Ms. Keimach reported that she had recently met with the Chamber Board to discuss some of the issues with respect to SB270. The Chamber had spoken with local business owners who were of the opinion a restriction on single-use plastic bags was something to consider but which should not place a burden on local businesses. The restriction would currently apply to the larger stores in the Town; local business owners suggested the operation would have to be

unique locally and had decided it would be better not to have a local restriction on single-use plastic bags, particularly given the State effort.

Ms. Keimach reported that seven of the nine members of the Moraga Chamber of Commerce Executive Board had voted not to have a local ban on single-use plastic bags. Concerns had also been expressed that the Town did not have the staff resources to enforce either a local or statewide ban on single-use plastic bags, with a desire to treat everyone the same. There was acknowledgement that a reduction in the refuse stream had been improving over time, with business owners and residents able to restrict the use of single-use plastic bags on a voluntary basis. Based on the discussions with the Chamber Board, the recommendation was not to enact a local ban/ordinance on the use of single-use plastic bags and await the outcome of statewide regulations.

#### PUBLIC COMMENTS OPENED

Karen Pedraza, Contra Costa County Climate Leaders, expressed concern that if the Town Council chose to leave the ban of single-use plastic bags to business owners on a voluntary basis it may result in a longer process to reduce the amount of trash into local landfills. She asked the Town Council to consider the ordinance given the time involved in any State legislation; suggested it would be embraced by the community; local organizations had already vouched for the benefits of such an ordinance to reduce Greenhouse Gas (GHGs) emissions; and the Town could serve as an example for smaller communities and future generations.

Barbara Simpson, Moraga, a member of the Moraga Climate Action Committee (CAC), stated that the topic of banning single-use plastic bags had been discussed by the CAC. She suggested that most people were not aware of the discussions with the Chamber of Commerce; noted most people already used their own bags; suggested that Moraga was very good at recycling and did not have a lot of problems with the use of plastic bags; disliked the fact that when a business charged consumers for paper bags the profits went to the store instead of for an environmental purpose; and suggested the Town wait for the outcome of State deliberations. She also suggested that the Town was very clean with few plastic bag problems, found the reporting of plastic bag volumes in the ocean to have been overblown, and was pleased the Chamber was not in support of a local ban.

Ms. Keimach added that the importance of education had also been emphasized by the Chamber; clarified the City of Lafayette had passed a resolution with an intent to adopt a local ban; the City of Orinda had not; and the City of Walnut Creek had a ban on the use of single-use plastic bags.

The Town Council discussed SB270 and a local ban on single-use plastic bags and offered the following comments and/or direction to staff:

- Although there was support for a local ban that would make it easier and less restrictive for local businesses to comply, in light of the lack of support by the Chamber of Commerce, and the inability of the Town to enforce such a ban, by consensus the Town Council did not want to pursue an ordinance and would return in the future pending the outcome of statewide policy. The Town Council asked that an item be placed in the About Town newsletter reminding residents that some businesses, such as Safeway, would accept plastic bags from home, and that outreach education to the public on the use of single-use plastic bags should be increased.

- C. Consider Resolution 68-2014 Authorizing the Town Manager to Award a Design Professional Services Contract to BKF Engineers (Walnut Creek) in an Amount Not to Exceed \$95,617 for Civil Engineering Design Services for the Moraga Road Resurfacing and Pedestrian Improvements Projects (CIP 15-102 and 15-103)

Public Works Director/Town Engineer Edric Kwan presented the staff report and asked the Town Council to adopt a resolution authorizing the Town Manager to Award a Design Professional Services Contract to BKF Engineers (Walnut Creek) in an Amount Not to Exceed \$95,617 for Civil Engineering Design Services for the Moraga Road Resurfacing and Pedestrian Improvements Projects (CIP 15-102 and 15-103), with the project's details outlined in the staff report. Both projects would be funded through grants and local Measure J return to source funds.

In response to the Council, Mr. Kwan clarified that the Moraga Road Resurfacing Project (CIP 15-102) would not result in the narrowing of the travel lanes.

#### PUBLIC COMMENTS OPENED

There were no comments from the public.

#### PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Trotter/Arth) to adopt Resolution 68-2014 Authorizing the Town Manager to Award a Design Professional Services Contract to BKF Engineers (Walnut Creek) in an Amount Not to Exceed \$95,617 for Civil Engineering Design Services for the Moraga Road Resurfacing and Pedestrian Improvements Projects (CIP 15-102 and 15-103). Vote: 4-0-1. Absent: Metcalf.**

- D. Provide Direction to Voting Delegate and Alternate Regarding a Resolution at the League of California Cities Annual Meeting on September 3 to 5, 2014 in Los Angeles, California

Sergeant South outlined a resolution that would be considered at the League of California Cities Annual meeting on September 3 to 5, 2014, identified as Resolution 1: Environmental Quality and Public Safety Policy Committee, as related to the impacts of illegal medical marijuana grown on both private and public lands throughout the State and the increasing problems to public safety, as outlined in the August 27, 2014 staff report. He suggested that the resolution warranted Council support.

Sergeant South referenced a public safety concern that had been raised in 2011 behind Rancho Laguna Park at which time an East Bay Regional Parks District (EBRPD) Officer came under fire at what was believed to be an outdoor grow and that the Moraga Police Department responded to assist.

Ms. Keimach advised of scheduling conflicts and stated no one from the Town Council was able to attend the League of California Cities Conference unless a Councilmember volunteered. She stated the Town Council may decide to cancel its representation at the conference, or could send a response in writing to the League of California Cities.

#### PUBLIC COMMENTS OPENED

There were no comments from the public.

**ACTION: It was M/S (Chew/Trotter) to send a Written Statement to the League of California Cities in support of Resolution 1 to be considered at the League of California Cities Annual Meeting on September 3 to 5, 2014 in Los Angeles, California. Vote: 4-0-1. Absent: Metcalf.**

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

There were no Council requests for Future Agenda Items.

## **XIII. COMMUNICATIONS**

- A. Letter from Mayor Ken Chew Honoring Division Chief Darrell Lee, Moraga-Orinda Fire District on his Retirement, dated August 2, 2014
- B. Letter from William J. Dick regarding the PG&E Reconductor Project, dated August 5, 2014

**Mayor Chew** allowed for public comment at this time.

William Dick, Moraga, stated he had brought the PG&E Reconductor Project to the attention of the Town Council in October 2013. He referenced a recent article in the local newspaper about the project, which had included a URL link to an online internal report sponsored by PG&E, which report included no information on electromagnetic field (EMF) impacts on school children or on property values. He had received a subsequent report, which he had provided to the Town Manager, and he cited interesting comparisons between the project descriptions in the original interim report versus the final report's description for the same project. He suggested PG&E had not been open about the project, and that many in the community may have concerns regarding the safety aspect of the project.

As to the appropriateness of Town Council discussion, Ms. Murphy stated for the record that given the item had been agendized, the Town Council may have a discussion on this topic.

Responding to the Council, Mr. Dick stated he had not contacted PG&E regarding his concerns since he felt he had no standing. He wanted the Town Council to be aware of the situation since the Town had never been contacted by PG&E about the project.

Ms. Keimach explained that PG&E had come to the Town approximately a year ago to discuss the project but had been silent after that time. She had submitted the information Mr. Dick had provided to PG&E with a request to respond, and was aware that the information had been forwarded internally since she had been copied. She had also invited PG&E to appear before the Council to discuss a number of PG&E projects and understood that PG&E planned to do so in January/February 2015, and Mr. Dick would be informed of any such meetings. She also acknowledged that PG&E was to have provided the Town with details regarding its underground pipeline project in July although that information had not yet been received. She understood PG&E planned to provide that data in the next few months.

Mr. Dick also suggested that PG&E had not done a good job pruning trees in the Town and he had provided the Town Manager with photographs.

**Councilmember Trotter** asked that PG&E be asked to provide scientific studies on the potential impacts of EMF radiation, particularly if the power through the transmission lines was doubled.

Ms. Keimach expressed her appreciation to Planning Director Shawna Brekke-Read for her extensive efforts and contributions to the Town over the past three years, recognizing the economic turnaround and increase in Planning Department projects. She wished her well on her future endeavors.

The Town Council expressed its appreciation to Ms. Brekke-Read for her contributions to the Town of Moraga.

**XIV. ADJOURNMENT**

**ACTION: it was M/S (Trotter/Wykle) to adjourn the meeting at 8:20 P.M. Vote: 4-0-1.  
Absent: Metcalf.**

Respectfully submitted by:

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

Approved by the Town Council:

  
\_\_\_\_\_  
Ken Chew, Mayor