

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**June 24, 2015
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 7:00 P.M. by **Mayor Roger Wykle**.

ROLL CALL

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

Councilmembers absent: Councilmember Phil Arth

II. PLEDGE OF ALLEGIANCE

Vice Mayor Metcalf led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

There were no special announcements.

IV. PROCLAMATIONS AND PRESENTATIONS

A. Proclamation Declaring "Parks Make Life Better" Month

Mayor Wykle read into the record a proclamation declaring the month of July 2015 as "Parks Make Life Better" Month and presented the proclamation to the Parks and Recreation Director.

Parks and Recreation Director Jay Ingram reported that the Town's Parks and Recreation Department staff had attended a conference in March in Sacramento. He thanked the Town Council for providing the funds that allowed the Parks and Recreation Department to do its work for the community; the Park and Recreation Commission; and Parks and Recreation Department staff for all their work. He commented that the Nation celebrated the month of July as Parks and Recreation month, and this year through the California Park and Recreation Society (CPRS), the month of July had been designated "Parks Make Life Better" month. He presented the Town Council with calendars to identify the recreational activities scheduled in the community during July, and updated the Town Council on the Fourth of July Fireworks Fund where \$14,300 had been raised to date for the \$25,000 needed for the event.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

V. PUBLIC COMMENTS AND SUGGESTIONS

David Gow, Moraga, referenced prior discussions with the Town Council related to the Saint Mary's College (SMC) Intramural Field Lights, and the concerns about the lights and noise. He identified some interest from residents to purchase their own sound meters, and suggested residents wait until the Town had made a decision on the sound meter it preferred to use. He urged the purchase of the least expensive meter or calibration setup that would still work effectively. He also recommended that the Town make the calibrator available to anyone who had purchased a suitable meter of their own.

VI. ADOPTION OF CONSENT AGENDA

A. Approval of Consent Items

Consent Item 3 was removed from the Consent Agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Trotter/Metcalf) to adopt Consent Agenda Items 1, 2, 4, 5, and 6.
Vote: 4-0-1. Absent: Arth.**

- | | | |
|----|--|----------------|
| 1) | Accounts Payable Claims for: 6/12/15 (\$306,458.62); 6/12/15 (\$90.75) | Approved |
| 2) | Approve Minutes for the Special Joint Meeting/Study Session for the Town Council, Commissions, Committees, and Boards on April 28, 2015 | Approved |
| 3) | <i>Approve Minutes for the Special and Regular Town Council Meetings on May 13, 2015</i> | <i>Removed</i> |
| 4) | Approve by Motion Authorization for the Town Manager to Deem Identified Town-Owned Traffic Radar Trailers as Surplus | Approved |
| 5) | Consider Resolution 68-2015 Authorizing the Town Manager to Amend the On-Call Consulting Services Agreement with Kennedy and Associates (Walnut Creek) for Land Development Reviews, Engineering Services, and Stormwater Program Assistance in an Amount of \$50,000 for a Total Amount Not to Exceed \$158,000 | Approved |
| 6) | Consider Resolution 69-2015 Authorizing the Town Manager to Execute a 36-Month Lease Agreement with Caltronics Business Systems for a Multi-Function Plotter-Scanner for the Public Works and Planning Departments | Approved |

B. Consideration of Consent Items Removed for Discussion

1. Approve Minutes for the Special and Regular Town Council Meetings on May 13, 2015

Councilmember Trotter requested an amendment to the first sentence of the second paragraph on Page 18 of the Regular May 13, 2015 Minutes, as follows:

Councilmember Trotter suggested that staff consider a new Subsection C in Section 8.52.110, Conditional uses, of the Moraga Municipal Code (MMC) to read:

ACTION: It was M/S (Trotter/Onoda) to approve the Minutes for the Town Council Regular Meeting on May 13, 2015, as amended, and the Special Meeting for May 13, 2015, as submitted. Vote: 4-0-1. Absent: Arth.

VII. ADOPTION OF MEETING AGENDA

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Onoda) to adopt the meeting agenda, as shown. Vote: 4-0-1. Absent: Arth.

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Wykle – Reported that he had attended the Liaison Meeting on June 12.

Vice Mayor Metcalf – Reported that he had attended the Hillside and Ridgeline Steering Committee meeting on June 16; and the Moraga Chamber of Commerce Mixer on June 23.

Councilmember Arth – No report.

Councilmember Onoda – Reported that she had attended the last Moraga Youth Involvement Committee (MYIC) meeting for the calendar year; the Planning Commission meeting on June 15; the Hillside and Ridgeline Steering Committee meeting on June 16; an informational meeting on the proposed formation of the Moraga Community Foundation on June 23; and patronized Graze, a new restaurant in the Rheem Shopping Center.

Councilmember Trotter – Reported that he had attended the Hillside and Ridgeline Steering Committee meeting on June 16; and the meeting on the proposed formation of the Moraga Community Foundation on June 23.

B. Town Manager Update – Town Manager Jill Keimach updated the Town Council on the Fourth of July Buy-a-Rocket effort. Councilmembers were encouraged to volunteer to collect funds on the night of July 4 to close the gap in needed funds.

Assistant Town Attorney Karen Murphy clarified that she was not aware of any legal concerns with Councilmembers collecting funds for the Fourth of July fireworks display, understanding there had been a long history of Councilmembers' participation in this way.

Ms. Keimach added that the Chief of Police had been working with the Chiefs of Police for the cities of Lafayette and Orinda for the “Slow Down Lamorinda” program, which should roll out shortly for the summer.

IX. DISCUSSION ITEMS

There were no discussion items.

X. PUBLIC HEARINGS

There were no public hearings.

XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

A. Order Re-Issuing the Municipal Regional Stormwater Permit

Consider a Letter of Opposition to the Tentative Order Re-Issuing the Municipal Regional Stormwater Permit (MRP 2.0).

Public Works Director/Town Engineer Edric Kwan introduced Frank Kennedy, the Town’s Consultant.

Frank Kennedy, Kennedy & Associates, Civil Engineer and Town Consultant, presented a PowerPoint presentation on the Contra Costa Clean Water Program, Municipal Regional Permit (MRP) 2.0 Tentative Order for the Town of Moraga. He outlined the negotiations and background; identified the participants and preliminary process; negotiations and results to date with success on several key issues; major new and expanded programs, with critical changes identified, and with a large number of medium-priority fixes to be done; the project schedule; requests for change; and recommended actions, including a model comment letter as responses were due by July 10, 2015. An adoption hearing before the California Regional Water Quality Control Board (RWQCB) had been scheduled for October 14, 2015. He acknowledged that Contra Costa County had been very involved in this situation and urged elected officials to attend the RWQCB hearings on the program.

Ms. Keimach added that the topic would be the main focus of the July 9 Mayors’ Conference to be held in the City of Clayton.

Mr. Kennedy added that he had participated in a conference call this date with 14 participating jurisdictions to review the opposition letter to the Bay Area Stormwater Management Agencies Association (BASMAA), although he was not certain all 14 jurisdictions were sending letters in opposition. He again referred to the model letter, included as Attachment A to the staff report, which had been customized by staff.

Mr. Kwan explained that the RWQBC provided late criteria in the process for calculating trash load reduction. Initially, jurisdictions were using volumetric calculations with certain percentage credits for various tasks, such as public outreach, but had to switch to a visual assessment calculation resulting in the Town achieving 11% trash capture versus the required 40% trash capture goals.

Mr. Kennedy noted the Town had no mapped industrial sites, which sites were primarily along the Bay and unique to other cities. He clarified they were speaking of 6.6 pounds of PCB’s Bay Area wide, commented on the difficulty of coming up with an accounting system to receive credit for doing anything, and stated that would involve a price tag, potentially in the seven digit range.

Mr. Kennedy advised he had not been asked by the press for his opinion of the program, but would answer any questions put forth. He acknowledged the Town Council's concerns with this unfunded mandate.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Councilmember Trotter recognized the letter had been tailored by staff, but suggested the letter was missing any context of the Town's budget and limited staff to address the unfunded mandate. He urged the inclusion of language as to how the program would impact the second smallest community in the County. He clarified with Mr. Kwan that he and his staff would be required to administer the program. Having attended sessions in the past on other State unfunded mandates, concerns with the impacts to local communities had never been addressed. He urged the Mayor to be in attendance for the RWQCB hearings. He requested the following amendments to Attachment A; amend the second sentence of the last paragraph to read:

Therefore, the Town of Moraga opposes MRP 2.0 as it is currently drafted, and ask that your Board consider the following comments and direct Water Board staff to work with permittees to revise the Tentative Order.

Councilmember Trotter clarified with staff there was an inventory of concrete construction buildings in the Town that had been zoned industrial in the timeframe referenced on Page 2 of the letter; and the Town had a map from the RWQCB for such sites, which number of sites was unknown.

While likely not a problem in Moraga, Mr. Kennedy explained that the Town must investigate it and prove it as part of the criteria for the unfunded mandate.

Vice Mayor Metcalf characterized the letter as too polite, and preferred to see the letter be direct with respect to the unfunded mandate being placed on the Town of Moraga and other communities. He found it to be unconscionable and preferred that the Town fight back. If the Town did not have a PCB problem, that should be so stated in the letter.

Councilmember Trotter agreed that the letter could be more aggressive, while still being polite. He also recommended a revision to the third and fourth sentences of the carryover bullet point from Page 2 to Page 3, to read:

However, this fails to acknowledge that the Town of Moraga has no control over the timing of when properties redevelop. We ask that the Water Board develop a program to control PCBs during building demolitions, rather than applying controls to a specified number of buildings demolished, should represent compliance with this requirement.

And a revision to the second sentence of the second bullet on Page 3:

Looking for hidden PCB sources is a good idea, but the Town doesn't have the expertise or resources to find them nor would we be able to guarantee that we would be able to abate them.

In response to Vice Mayor Metcalf, Mr. Kennedy affirmed this was the Federal Clean Water Act, and the Environmental Protection Agency (EPA) was responsible for the enforcement and

implementation of the Clean Water Act. The State of California, through the RWQCB, had taken over that responsibility and had obligated itself to implement on behalf of the EPA. He was unaware of the sentiment of the State Legislature on this matter, and supposed if enough constituencies complained about the burden that was being placed on them, it could encourage the Governor, or his staff, to do something different.

Vice Mayor Metcalf encouraged the Town Engineer and the Town Manager to consider engaging Moraga's State Assemblymember on this matter, provide a copy of the letter, and inquire whether the field representative was aware of this situation.

Councilmember Trotter volunteered to invite Columnist Tom Barnidge to attend the July 9 Mayors' Conference.

B. Noise Ordinance and Unruly Parties Ordinance

Discuss Potential Amendments to Moraga Municipal Code Section 9.08 – Liability for Police Response to Loud or Unruly Parties and Chapter 7.12 – Noise Control, and Provide Direction to Staff

Chief of Police Robert Priebe presented the staff report for potential amendments to Moraga Municipal Code (MMC) Section 9.08 – Liability for Police Response to Loud or Unruly Parties and Chapter 7.12 – Noise Control. He asked that the Town Council consider the proposed amendments and provide direction to staff.

PUBLIC COMMENTS OPENED

Fanny Wilson, Moraga, stated she had attended the March 25 Town Council meeting at which time she had raised concerns about a property on Wandel Drive, and had requested that the Council strengthen its Loud and Unruly Party Ordinance. Although a resident of the Wandel Drive property had also spoken at the meeting to apologize for his fellow residents' loud and unruly behavior, shortly thereafter residents of the property had a party and had thrown beer bottles off the roof. In that case, no citations had been issued by the Moraga Police Department.

Ms. Wilson stated she had later met with representatives from Saint Mary's College (SMC), the landlord, members of the Police Department, and residents of the Wandel Drive property. She detailed the discussions and expressed concern that although the landlord had been provided with photographic proof of the unruly behavior at the property, she had continued to lease the property to the same tenants. While she agreed with the recommendations from the Police Chief, she asked that the ordinance be further strengthened by expanding the enforcement period from 180 days to 12 months, since students were abusing the system and landlords had no idea who resided at their properties. She asked that landlords be required to register their tenants.

Jennifer Burke, Moraga, stated she too had previously requested that the ordinance be strengthened; referenced the same incident as Ms. Wilson had identified, and the lack of results related to that incident. She stated the property owner claimed to be unaware of the unruly behavior. She urged the Town Council to impose the recommendations from the Police Chief to strengthen the ordinance.

David Gow, Moraga, advised that he had presented material to the Town Council on the topic of noise levels in the Town, which were typically below 60 dBA, were quieter during the evening, and 60 dBA was a standard adopted by many communities. If there was a higher dBA, he asked that it be proof tested with a sound meter. He urged the Town Council to solicit public input given that any proposal to address noise levels would elicit controversy.

Barry Behr, Moraga, described the conditions at the Wandel Drive property as unacceptable, and asked who should be contacted on the weekends in the event of noise complaints since he did not want to see the 911 system used. He questioned how noise levels would be measured by the Police Department; the scope of the noise ordinance; and thanked SMC for their resident notification of upcoming events. He urged the continuation of SMC communications to those who could be impacted by such activities.

Ryan Lolles, Moraga, reported that he had contacted the Moraga Police about unruly behavior at a property located on Whitethorne, which was located directly behind his residence. He supported amendments to the Town's ordinance, advised that the Moraga Police had been extremely responsive to his calls, and encouraged the Police to issue citations when violations occurred. He urged the Council to support a request for extensions to the existing ordinance and a requirement that landlords register their tenants.

Jerome Seibert, Moraga, whose home was located across the street from the Wandel Drive property, commented that his family had been dealing with the issue for 30 years. He questioned the property owner's assessment of being unaware of the conditions of the property since he had sent her two letters and had attempted to contact her by phone. He had presented a petition to the Town Council a number of years ago, although nothing had been done beyond the Police Chief's efforts. He suggested the matter was not an unruly party house but an unregulated SMC dormitory, suggested SMC had been unresponsive as had the property owner, and expressed his hope the matter would be resolved, although he was not confident the property owner would follow through with her promises.

Mike Putnam, SMC, identified SMC's Peer Conduct Council which handled issues with students who had not conformed to SMC's student conduct code. He emphasized that SMC dealt with those types of issues, and that threats of possible citations could be effective, potentially along with discussions with the landlord. Based on his experience, situations were not always the students' fault.

Tim Farley, SMC, Director of Community and Government Relations, stated once the matters came to the attention of SMC, SMC immediately moved them to the Student Affairs Committee. He affirmed Ms. Wilson had e-mailed him and he had forwarded her concerns to that Committee. While he supported strengthening the Town's ordinance, SMC had some apprehension with zero tolerance. SMC supported a warning once a violation had occurred, with a citation thereafter. He noted an upcoming reunion event which would include some performances on the chapel lawn. Neighbors had been notified of the event, which notification had been requested by the Police Chief.

PUBLIC COMMENTS CLOSED

Vice Mayor Metcalf emphasized that a party ordinance had been put into place a couple of years ago over the objections of SMC. While the current ordinance had been strengthened in the past, it was clear it was not working. He supported zero tolerance, elevated fines to the maximum allowed, disagreed the landlord was unaware of what was happening with her property, and suggested a way to ensure landlord notification and responsibility and fines should be imposed. While he appreciated the fact that SMC had a student discipline process, he found that students disciplining other students did not always work. He suggested it was time for the students to be aware that unruly behavior would involve probation while continued unruly behavior would involve suspension. He understood there were sanctions SMC could apply and questioned why that was not being done.

Councilmember Trotter clarified with Chief Priebe that the property owner had been warned and had received written notification and that the Town was free to assess fines against the property owner for repeated conduct. As a member of the Town Council the last time the ordinance had been strengthened, the then Town Council had registered a strong message to the Police Department to enforce the ordinance to the letter, which included written notification, a second warning, and if an offense occurred again, the issuance of a fine. He suggested the property owner had been warned, the ordinance should be enforced as written, and the landlord should be fined along with the rest. He agreed that SMC could consider changing its policies although that was not something the Town could enforce. He also supported the written notification warning in place with respect to other homes involved since the Town could take action against repeat offenders.

Councilmember Trotter acknowledged that fines could be increased along with a longer period of time where one could not offend without being fined, which could be topics of future discussion, although he would not want to impose that modification on a new landlord and tenant. He suggested the initial fine could be increased from \$100 to \$250, and the second fine from \$1,000 to \$2,500 per offense. As to the ability of the Town Council to assess non-criminal fines, he questioned how that would work with the quasi-criminal ordinance in place.

Chief Priebe explained that the criminal fine would go away if the matter was handled administratively, although it was on the books and would have to be reviewed by legal counsel to determine whether language would have to be changed. The current administrative citation ordinance applied to any person violating any provision of the MMC or applicable State codes, who may, at the Town's discretion, be issued an administrative citation by Compliance Officers, as provided by the chapter. The Town would require a special resolution setting fines which had not yet occurred with respect to loud and unruly parties.

Ms. Murphy advised that the administrative citation was a separate remedy that could be used, and the Party Ordinance currently had additional remedies. One way to do that would be to add language to the Unruly Party Ordinance to specifically include administrative citations as a potential remedy. All remedies were cumulative and could be used together. The criminal infraction fines could also be increased.

Chief Priebe asked that clear direction be given to the Police Department on this issue since if a person was given an administrative citation the first time, it would not count as a criminal violation for the second offense. Under the current ordinance, the first offense criminally was an infraction, while the second and third within 180 days would be misdemeanors and require booking, and fines. Based on his experience, the court system would be more inclined to be strict and make guilty verdicts on the criminal violation for the person throwing the party, but may not be keen on placing that on the property owner. Or, if there was flexibility, the persons at the party responsible could be faced with a criminal citation and the property owner could be faced with an administrative citation.

In response to a request to register tenants, Ms. Murphy explained that other cities that had registered tenants had adopted a business license or rental registration ordinance, which would apply to any rental in the Town.

Ms. Keimach suggested if such a process were pursued through a business license fee, which the Town currently did not have, the Town could recover its administrative costs. She believed the Town should be regulating the behavior and not the type of tenant. She expressed concern labeling SMC students as unable to live in Moraga. If the situation did not improve, that type of option could be considered in the future. She added that a future discussion before the Town Council would include the business license fee, at which time the Town Council could discuss what it wanted to be covered.

Councilmember Onoda questioned the timing in the ordinance given that students were working the system. She suggested a year would be a better timeframe and would make it clear that parties could not be moved around. She also suggested the fines were too low; recommended that fines start at \$300 and be increased from there; the landlord should be charged the same amount; and questioned whether that could be done legally.

Ms. Murphy commented that would depend on the process used and had been done as part of the administrative citation ordinance where fines had already been adopted. \$100 was the fine for the first offense, with the fine increased cumulatively after that. The fines could be evaluated to see whether they could be increased.

Councilmember Onoda stated the Wandel Drive property owner had already been given notice. She suggested the process should be administrative and not a criminal citation.

Chief Priebe identified one of the benefits of using the administrative citation was that whatever fines were generated would go to the Town. He referenced a situation that had occurred years ago which had resulted in a conviction on a first offense with a \$100 fine. In that case, the violator had ultimately paid close to \$500 since the criminal system had add-ons, and the Town had received \$82 of the fine paid. He added that the Town had to pay for an officer to appear in court and the Town was losing money, even with a conviction. The same applied to a traffic ticket offense.

Mayor Wykle was disheartened to learn that a resident of the Wandel Drive property had appeared before the Council, apologized for past unruly behavior of the tenants, and yet the same behavior had occurred shortly thereafter. He clarified with the Chief that a citation had not been issued as a result of the latest incident because by the time the officers arrived they had been unable to verify the behavior. If a camera was in place, the Police Department would have that evidence available and could take enforcement action as a result. He verified that no citation had been issued at the Wandel Drive location after the latest incident. He affirmed that the Police Department had been called to the property on several occasions over a long period of time.

Mr. Farley emphasized that SMC had a vigorous code of conduct and took such situations seriously. He was pleased that students and staff took care of these issues when made aware of the violations and where internal steps could be taken at SMC. He too was surprised there had been a re-offense at the property at Wandel Drive after learning that a student had previously addressed the Town Council, and that the Police Department had responded to the property several times. He emphasized that SMC had no problem with the Town tightening its standards, issuing a warning, and with second violation penalties, with SMC made aware to allow its tribunals to become involved, and with fines issued and the landlord warned. He commented that if the residents of the Wandel Drive property were 21 years of age and lived in Moraga, they had certain rights. He expected for any violation that the Town would take action. He was unaware whether SMC had expelled students for unruly behavior and would be willing to provide that information to the Town.

Vice Mayor Metcalf recognized the Moraga Police Department did not have the resources to respond immediately, which was why he supported zero tolerance for anyone in the Town. He never liked the policy related to the number of violations within 180 days and suggested that zero tolerance after one incident would go a long way for neighbors to respect neighbors. He sought amendments to the ordinance which would address zero tolerance, increase fines, with possible fines to the landlord, and clarifying SMC's responsibilities vis-a-vis the Town. He was not opposed to registering the tenants and would like to see that step taken as part of a future discussion of business license requirements.

Councilmember Trotter suggested that tenant registration was not necessary and sought input from the Council on that topic. He also wanted to know of the Council consensus with respect to a zero tolerance policy given Mr. Farley's comments and the fact that oftentimes only one warning was necessary. He suggested there was a reason to give one stern warning and advise that another warning would not be given.

Responding to **Councilmember Onoda**, Chief Priebe stated that the Police Department could not issue a citation to any resident of the property based on a prior violation and expect it would carry weight in court. Pursuant to the ordinance, "the person responsible" would be the party the Town determines responsible. It was possible that multiple citations could be issued.

Ms. Murphy explained there was a difference in definition for "responsible party" in the Unruly Party Ordinance versus the Administrative Citation Ordinance. Through the Administrative Citation Ordinance, the "responsible party" could be any person responsible for the event or incident and shall include any of the following...."and shall include the persons or person using the property where the violation exists...", and they may be able to use that definition more broadly through that process.

Councilmember Onoda stated she supported a one warning policy after being informed by the Chief of Police that singling out a particular property was not possible.

Chief Priebe emphasized that SMC's Public Safety Department had been responsive, diligent, and had been provided, when asked, the face sheet report from the Police Department. If there was anything student related, SMC's Public Safety Department contacted him to have a conversation. He suggested the Police Department should have been documenting every response to a party in written reports.

Mayor Wykle agreed that the Wandel Drive property was out of warnings. He understood there were other homes in the Town that had experienced similar problems.

Chief Priebe referenced a property on Thune Avenue which had led to the adoption of the subject ordinance in 2008, which involved similar problems to those at the Wandel Drive property. In that case, the Moraga Police Department had worked with the neighbors and the students and he understood the situation had improved. He emphasized the Police Department would work with any neighborhood where unruly parties had become an issue. The Police Department issued warnings, and when possible citations, although he acknowledged that had not occurred, and should have, on the Wandel Drive property. He also spoke to the turnover in the Police Department which was also an issue facing his Department. If the Town Council were to consider an increase in fines, he asked that the Town Council take into consideration how that might impact residents who have a single event, such as a family event, as opposed to a party house.

Mayor Wykle supported one warning Town-wide, although he reiterated that the Wandel Drive property had already been warned. He suggested that 12 months was a reasonable time period for the second violation, increasing the fines would be acceptable, and he was open to more discussion on registering tenants along with a business license fee. He sought more information on the criminal versus administrative citations and fines, and the potential ramifications to be detailed in a subsequent staff report.

Councilmember Trotter agreed that increasing the fines made sense for the Party Ordinance and for the possible creation of an Administrative Fine Ordinance, which could return for future consideration, including a discussion on business licenses, criminal versus administrative citations and fines, and the potential ramifications to be detailed in a subsequent staff report.

The Town Council could also discuss whether the standard Noise Ordinance should be modified in any way.

Vice Mayor Metcalf did not want staff to dwell on the administrative issue of the Town keeping the money from the fines from a criminal citation since the intention was not for the Town to make money but resolve the situation. He expressed concern the Town Council could be discussing the same subject in a year, and he urged stricter rules to ensure violations did not occur, which could be addressed through a zero tolerance policy. He also did not want to see this topic co-mingled with another issue like noise control, which was a different issue.

Councilmember Trotter emphasized the need for the Moraga Police Department to enforce the current ordinance.

Speaking to Chapter 7.12 – Noise Control of the MMC, **Councilmember Trotter** referenced the history in the Town, and suggested no changes needed to be made to the existing Noise Ordinance. He cited an unsuccessful attempt to make changes to the ordinance in the past and suggested the Town did not need a specific noise level standard identified in the ordinance in that the current subjective language was sufficient. He cited the SMC Intramural Field and noted the Town Council had adequately addressed, for the time being, the noise for that use through conditions of approval. To the extent noise from SMC was an issue in the future, it could be addressed through conditions of approval as part of the future facilities for SMC. He otherwise suggested the Town Council discuss Mr. Gow's request as to whether it was appropriate for the Town to help calibrate noise measurement equipment for those neighbors who had concerns about noise in their neighborhoods.

Councilmember Onoda agreed that residents of the Town needed to be able to address the noise and there should be a certain number and place appropriate for that measurement; however, the Town Council did not have that information at this time and was unable to regulate what had not been measured, and the Town Council had to agree on a measurement.

Councilmember Trotter noted the Town had its own concert series, and suggested a decibel level standard could be problematic in that case. He also cited local football games and swim meets which could be impacted by a set decibel level, and which could result in a host of exceptions. He suggested the issue had been raised as a result of the SMC Intramural field, which was being addressed through conditions of approval. He strongly opposed a Town-wide noise regulation with a quantitative number.

Vice Mayor Metcalf also commented that the Town had minimum government, by design, with limited staff resources. He questioned the imposition of a regulation that could not be enforced or a policy that could not be implemented.

In response to the Mayor, Recreation Coordinator Kimberly Nelson advised that the Parks and Recreation Department had a decibel reader that was used by staff to walk the perimeter of the Hacienda grounds. While there had not been excessive noise complaints at the Hacienda, there had been some complaints about a disc jockey, as an example, playing beyond the permitted time. She commented that typically excessive sound, which was rare, arose from spoken announcements as opposed to ongoing music.

Mayor Wykle agreed with Councilmember Trotter that the issues with the SMC Intramural Field had been addressed through conditions of approval, but suggested this situation should be addressed subjectively rather than objectively.

Councilmember Onoda sought a way to address the concerns raised by those residing in the Bluffs, as an example. She suggested residents would not act without reason, and would like to

give them a voice to address their concerns with a measured decibel level that could be recorded.

Councilmember Trotter reiterated that residents of the Bluffs had been given a contact number for noise complaints after 9:00 p.m. with respect to the SMC Intramural Field. He reiterated his suggestion for the Town to help calibrate noise measurement equipment for those neighbors who had concerns about noise in their neighborhoods. He asked the Assistant Town Attorney whether such direction could be given under the subject agenda item.

Ms. Murphy affirmed that could be done since it was related to noise control and it would be an amendment to the Town policy as to how it addressed noise issues.

Ms. Nelson explained what the decibel readers did to calibrate and how they were used by part-time staff to identify a good read on whether there were spikes during different times. The device looked like a microphone and could be calibrated based on settings within the device.

Ms. Keimach understood there was not a separate device that someone could bring in to test with the Town's decibel reader, which was incorporated into the device itself, and which could not be shared with another decibel reader.

Councilmember Trotter understood the direction to staff was to work on a calibration of noise meters.

Mayor Wykle understood the direction was the instrumentation of sound measurement.

Chief Priebe advised the direction he had received from the SMC appeal was that SMC would provide the Town with two decibel meters. He understood it was a non-issue unless the Council, as part of its discussion, was to establish decibel limits and readings throughout the Town.

Councilmember Trotter understood the issue was that some neighbors would like to purchase their own noise meter and ensure it was properly calibrated with the Town's meter.

Chief Priebe suggested details on the brand and model equipment to be used by the Town could be publicized.

C. Conformance of the Moraga Municipal Code to the California Public Contract Code

Consider Waiving the First Reading and Introducing an Ordinance Amending by Deletion and Replacement, Chapter 3.06 Uniform Construction Cost Accounting Act Procedures of the Town of Moraga Municipal Code to Conform to the California Public Contract Code

Public Works Director/Town Engineer Edric Kwan presented the staff report to consider waiving the first reading and introducing an ordinance amending by deletion and replacement, Chapter 3.06 Uniform Construction Cost Accounting Act Procedures of the Town of Moraga Municipal Code to conform to the California Public Contract Code. He asked that the Town Council waive the first reading, and introduce the ordinance.

In response to the Council, Mr. Kwan defined "force account," and explained that the ordinance would enable the Town to negotiate with contractors to do work through an accounting method to track time, materials and costs, with percentages added for subcontractors, overhead, and profit.

Ms. Murphy clarified Section 3.06.070, Adjustment of dollar amounts to conform to Public Contract Code of Attachment A, and stated the intent of that section was to be automatic without amendment, with those dollar amounts able to increase so that every time there was an amendment from the State Legislature, staff would not have to return to the Town Council. The Town could then take advantage of the informal bidding procedures. She agreed with a recommendation by Councilmember Trotter to amend that section, to read:

If the legislature amends the dollar amounts in Section 22032 of Section 22034(f) of the Public Contract Code regarding projects eligible to use informal bid procedures and projects that may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order, the dollar amounts in Sections 3.06.010 and 3.06.040 shall be automatically adjusted without amendment of this ordinance to reflect the revisions to State law.

Ms. Keimach advised that this was an administrative issue and not necessarily a policy issue. She clarified that State law identified certain thresholds which were higher than the threshold of local ordinances, with the more stringent threshold to apply. The local ordinance was also outdated. She asked the Town Council to trust that staff would check State law to identify the threshold levels. She was otherwise comfortable with the proposed language change.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Metcalf) to waive the First Reading and Introduce an Ordinance Amending by Deletion and Replacement, Chapter 3.06 Uniform Construction Cost Accounting Act Procedures of the Town of Moraga Municipal Code to Conform to the California Public Contract Code, in the form of the ordinance provided by staff as Attachment A to the staff report, and with the additional language change to Section 3.06.070, as discussed. Roll Call Vote: 4-0-1. Absent: Arth.

D. Saint Mary's College Campus Master Plan EIR

Consider Resolution 70-2015 Authorizing the Town Manager to Execute a Professional Services Contract with Amy Skewes-Cox in an Amount Not to Exceed \$275,000 to Complete the Saint Mary's College Campus Master Plan Environmental Impact Report (EIR)

Associate Planner Ella Samonsky presented the staff report and requested that the Town Council adopt a resolution to authorize the Town Manager to execute a Professional Services Contract with Amy Skewes-Cox in an amount not to exceed \$275,000 to complete the SMC Campus Master Plan EIR and affirmed SMC had a representative on the interview panel for the selection of the consultant to prepare the EIR.

PUBLIC COMMENTS OPENED

Barry Behr, Moraga, confirmed that the contract for the preparation of an EIR would be reimbursed by SMC.

PUBLIC COMMENTS CLOSED

Councilmember Onoda expressed concern with the fact that Rheem Boulevard would be closed during the time period that the EIR would be prepared, which could affect the peak trip generation calculations into the SMC campus.

Ms. Samonsky advised that SMC had a team preparing the technical studies to be used by the consultant who would develop the EIR. She understood the traffic counts were taken during the period when school was in session and if additional measurements and counts were necessary, it would be done while school was in session. Discussions would be held with SMC on the timing for any additional readings.

Councilmember Trotter suggested the issue should be raised with the Town's Consultant.

Vice Mayor Metcalf pointed out the most impacted intersection; Rheem Boulevard/St. Mary's Road, had been measured multiple times over the last many years and he found it hard to believe that things would have changed appreciably. He recognized the traffic consultant, Fehr & Peers, would have been able to defend the data as adequate.

Ms. Samonsky reported that the EIR Consultant, Ms. Skewes-Cox, had recommended two scoping sessions in addition to sessions with the Town Council and Planning Commission, to daylight any community concerns on the studies, and what had been included in the scope and incorporated into the plan. The scoping sessions were targeted to occur in late summer or in September, and could occur while Rheem Boulevard was still closed.

Mr. Kwan explained that the Rheem Boulevard closure schedule was still unknown; the developer was interested in starting the project as soon as possible; and public notification would be provided at least a month in advance of the work.

Ms. Samonsky understood a permit was still pending from the RWQCB, although other agency permits had been issued.

ACTION: It was M/S (Trotter/Wykle) to adopt Resolution 70-2015 Authorizing the Town Manager to Execute a Professional Services Contract with Amy Skewes-Cox in an Amount Not to Exceed \$275,000 to Complete the Saint Mary's College Campus Master Plan Environmental Impact Report (EIR). Vote: 4-0-1. Absent: Arth.

E. Travel to APWA Congress and Exposition in Phoenix, Arizona

Consider Authorizing the Public Works Director to Attend Out-of-State Conference in Phoenix, Arizona for the 2015 American Public Works Association (APWA) International Public Works Congress and Exposition from August 30 to September 2, 2015 in Conformance with Town Travel Policy

Ms. Keimach presented the staff report and asked that the Town Council consider authorizing the Public Works Director to attend an out-of-state conference in Phoenix, Arizona for the 2015 American Public Works Association (APWA) International Public Works Congress and Exposition from August 30 to September 2, 2015, in conformance with the Town's travel policy. She added that she and the Public Works Director/Town Engineer had discussed the fact the conference would be covered from the Public Works Department budget, but would be taken away from training for other Public Works Department staff. Mr. Kwan affirmed he would pay for his own airfare, meals and transportation to the conference.

Responding to **Councilmember Onoda**, Mr. Kwan expressed his willingness to contribute to the costs since his attendance would help the Town.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Metcalf/Trotter) to Authorize the Public Works Director to Attend Out-of-State Conference in Phoenix, Arizona for the 2015 American Public Works Association (APWA) International Public Works Congress and Exposition from August 30 to September 2, 2015, in Conformance with Town Travel Policy. Vote: 4-0-1. Absent: Arth.

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

Ms. Keimach reported that a future agenda item could include a request to consider a Referendum, with staff to have more information in the next couple of weeks, which may require the Town Council to reinstate its previously cancelled July 22, 2015 Town Council meeting to allow the Council to consider, as part of the Referendum, whether to rescind or put the question to the ballot.

Councilmember Trotter reported that he would be on vacation on July 22 but would be available by phone for a meeting, if required; **Councilmember Onoda** would also not be present for the July 22 meeting since she would be on vacation but could be available via telephone conference.

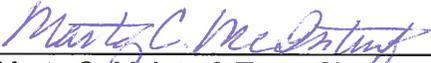
XIII. COMMUNICATIONS

There were no communications.

XIV. ADJOURNMENT

ACTION: It was M/S (Wykle/Metcalf) to adjourn the meeting at 9:50 P.M. Vote: 4-0-1. Absent: Arth.

Respectfully submitted by:



Marty C. McInturf, Town Clerk

Approved by the Town Council:



Roger N. Wykle, Mayor