

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**September 9, 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 7:01 P.M. by **Mayor Roger Wykle**.

ROLL CALL

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

Councilmembers absent: None

II. PLEDGE OF ALLEGIANCE

Councilmember Arth led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

There were no special announcements.

IV. PROCLAMATIONS AND PRESENTATIONS

- A.** Presentation from Rising Sun Energy Center Regarding the 2015 California Youth Energy Services Summer Program

Molly McCobb, Regional Manager, Rising Sun Energy Center, provided a PowerPoint presentation on the 2015 California Youth Energy Services (CYES) Summer Program, copies of which had been provided to the Town Council and to the public. She described the program whose mission was to achieve environmental and economic sustainability through a joint partnership with the Town of Moraga and the cities of Lafayette and Orinda; with the goal of providing opportunities for young adults through direct employment, while simultaneously offering direct resource conservation services and education to community members. Twenty cities in Alameda, Contra Costa, Marin, San Joaquin, Sonoma and Solano Counties participated in the program, with training and employment of 180 youth who delivered Green House Calls to over 5,000 homes each year for no-cost energy efficiency and water conservation installations.

Ms. McCobb described the funding and the Program Model for the CYES, the nature of a Green House Call, and program results from 2000 to 2014. She also provided an overview of the summer 2015 Town of Moraga statistics based on 69 homes; an overview of the 2015 Lamorinda statistics based on 260 homes; and emphasized the benefits of CYES. She detailed some of the feedback received from Moraga residents about the program.

Ms. McCobb added that CYES would be making applications in October and expressed her hope that CYES would be able to continue to participate in the Lamorinda area.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

B. Proclamation Declaring October 2015 as Bullying Prevention Month in Moraga

Mayor Wykle read into the record a proclamation declaring October 2015 as National Bullying Prevention Month in Moraga.

Wendell Baker, Moraga, representing the iKind Project, reported that the Moraga School District (MSD) would be considering a similar resolution, with copies of all resolutions to be provided to students in the classrooms. He expressed his appreciation to the Town Council for its support.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

The Town Council thanked Mr. Baker for his work with the iKind Project.

C. Proclamation Declaring October 2015 as Domestic Violence Awareness Month

Mayor Wykle read into the record a proclamation declaring October 2015 as Domestic Violence Awareness Month.

Kris Jackens, representing STAND! For Families Free of Violence, expressed her appreciation to the Town Council for the proclamation. She reported that STAND! For Families Free of Violence had been working to end the cycle of family violence in Contra Costa County since 1977, which could not be done without the help of local communities. She cited the statistics for domestic violence and thanked the Town Council for its support.

V. PUBLIC COMMENTS

There were no comments from the public.

VI. ADOPTION OF CONSENT AGENDA

A. Approval of Consent Items

Consent Items 3, 4, and 5 were removed from the Consent Agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Trotter) to adopt Consent Agenda Items 1 and 2. Vote: 5-0.

- | | | |
|----|--|----------|
| 1) | Accounts Payable Claims for: 8/21/2015 (\$372,372.16) | Approved |
| 2) | Approve Minutes for the Special and Regular Town Council Meetings on July 8, 2015 | Approved |
| 3) | <u>Loud and Unruly Parties Ordinance</u>
Consider Adopting Ordinance 254 Amending Chapter 9.08 of the Town of Moraga Municipal Code Regarding Liability for Police Response to Loud or Unruly Parties | Removed |
| 4) | <u>Construction and Demolition Debris Recycling Ordinance</u>
Consider Adopting Ordinance 255 Deleting Moraga Municipal Code Chapter 8.156, Construction and Demolition Debris Recycling, Title 8, Planning and Zoning and Adding Chapter 15.08: Construction and Demolition Debris Recycling, Title 15, Buildings and Construction, of the Town of Moraga Municipal Code (CEQA Status: Exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(3) and 15308 of the CEQA Guidelines). | Removed |
| 5) | <u>Final Map for Via Moraga</u>
Consider Resolution 85-2015 Approving the Final Map and Subdivision Improvement Agreement for Subdivision 9317, Via Moraga, a Project Being Developed by Signature at Moraga, LLC; Authorizing the Town Manager to Sign the Subdivision Improvement Agreement on behalf of the Town of Moraga; and Authorizing the Town Manager to Take Other Actions to Effectuate Recordation of the Final Map | Removed |

B. Consideration of Consent Items Removed for Discussion

1. Loud and Unruly Parties Ordinance
Consider Adopting Ordinance 254 Amending Chapter 9.08 of the Town of Moraga Municipal Code Regarding Liability for Police Response to Loud or Unruly Parties

Councilmember Trotter explained that he had removed Consent Agenda Items 3 and 4 since he did not agree they should be considered as consent items given their importance and the potential changes to the Moraga Municipal Code (MMC). He also wanted to allow the opportunity for public comment.

Assistant Town Attorney Karen Murphy stated it was the prerogative of the Town Council as to how it wanted ordinances to be heard.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Councilmember Trotter moved the item, seconded by **Vice Mayor Metcalf**, who acknowledged the exhaustive effort spent on the item by the Chief of Police. He suggested the Town Council had done a thorough job with the amendments to the ordinance, and the Town

Council packets had been distributed well in advance allowing for any public comment. He urged moving forward with the item.

ACTION: It was M/S (Trotter/Metcalf) to adopt Ordinance 254 Amending Chapter 9.08 of the Town of Moraga Municipal Code Regarding Liability for Police Response to Loud or Unruly Parties. Roll Call Vote: 5-0.

2. Construction and Demolition Debris Recycling Ordinance
Consider Adopting Ordinance 255 Deleting Moraga Municipal Code Chapter 8.156, Construction and Demolition Debris Recycling, Title 8, Planning and Zoning and Adding Chapter 15.08: Construction and Demolition Debris Recycling, Title 15, Buildings and Construction, of the Town of Moraga Municipal Code (CEQA Status: Exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(3) and 15308 of the CEQA Guidelines).

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Councilmember Trotter moved the item, seconded by **Councilmember Onoda**.

Vice Mayor Metcalf reiterated the time spent on the item and questioned opening it up to further modification, wasting the time of the Town Council and the public.

ACTION: It was M/S (Trotter/Onoda) to adopt Ordinance 255 Deleting Moraga Municipal Code Chapter 8.156, Construction and Demolition Debris Recycling, Title 8, Planning and Zoning and Adding Chapter 15.08: Construction and Demolition Debris Recycling, Title 15, Buildings and Construction, of the Town of Moraga Municipal Code (CEQA Status: Exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(3) and 15308 of the CEQA Guidelines). Roll Call Vote: 5-0.

3. Final Map for Via Moraga
Consider Resolution 85-2015 Approving the Final Map and Subdivision Improvement Agreement for Subdivision 9317, Via Moraga, a Project Being Developed by Signature at Moraga, LLC; Authorizing the Town Manager to Sign the Subdivision Improvement Agreement on behalf of the Town of Moraga; and Authorizing the Town Manager to Take Other Actions to Effectuate Recordation of the Final Map

Councilmember Trotter commented that he had read the agreements for the Final Map for the Via Moraga Subdivision which appeared to be in order, although there had been no discussion of the public improvements, specifically the crosswalk to the shopping center, in the Subdivision Improvement Agreement pursuant to a condition of approval that had been included in the approval of the subdivision.

Laurie Suggang, Senior Civil Engineer, explained that a condition of approval would require off-site improvements, or improvements in the public right-of-way (ROW) along Moraga Road, to include a crosswalk and some curb ramp and Americans with Disabilities Act (ADA) improvements, which improvements had been shown in the improvement plans reviewed by staff and in the Subdivision Improvement Agreement labeled "Public Improvements." As such, the developer had entered into an agreement with the Town and had provided a bond for those improvements.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Metcalf/Arth) to adopt Resolution 85-2015 Approving the Final Map and Subdivision Improvement Agreement for Subdivision 9317, Via Moraga, a Project Being Developed by Signature at Moraga, LLC; Authorizing the Town Manager to Sign the Subdivision Improvement Agreement on Behalf of the Town of Moraga; and Authorizing the Town Manager to Take Other Actions to Effectuate Recordation of the Final Map. Vote: 5-0.

VII. ADOPTION OF MEETING AGENDA

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Arth/Wykle) to adopt the meeting agenda, as shown. Vote: 5-0.

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Wykle – Reported that he had attended the Swearing in Ceremony for Senator Glazer on August 27; the Town Hall and Community Coffee on August 29; and the Mayors' Conference held in the City of Orinda on September 3.

Vice Mayor Metcalf – No report.

Councilmember Arth – Reported that he had attended the Swearing in Ceremony for Senator Glazer on August 27; a Chamber of Commerce meeting on September 2; and the SIR Branch 171 Luncheon on September 2, at which time an ethics presentation had been made by Saint Mary's College (SMC) President Donahue. He recommended that the Town Council consider inviting President Donahue to speak at the next Town Council / Commissions / Boards retreat.

Councilmember Onoda – Reported that she had attended the Town Hall and Community Coffee which had been attended by many other local officials on August 29; the Moraga Center Specific Plan (MCSP) Implementation Committee meeting on September 3; and reminded everyone of the California Independent Film Festival (CAIFF) which would start on September 10. She added that she had been working with the Parks and Recreation Department on the upcoming Pear and Wine Festival.

Councilmember Trotter – No report.

B. Town Manager Update – Town Manager Jill Keimach reported that there would be no Town Council meeting at the end of September since that meeting had

earlier been cancelled in recognition of Yom Kippur. She also reported that a number of compliments and complaints had been received about the new electronic community sign, which had initially been too bright. That issue had been resolved in that the sign was now at 15 percent brightness during the evening starting at 7:00 pm., and was turned off from midnight to 4:00 am. The number and timing of the messages, background, size and lettering, would continue to be modified as staff improved the display of messages on the sign. While there had been a request to relocate the sign, it was located on Town property and she suggested as the community got used to it the sign would be a benefit providing daily information to the public. She also reported that Associate Planner Ella Samonsky would be leaving the employ of the Town, and she commended her as a great resource to the Town over the past two years.

Ms. Keimach added that the recruitment process for a Town Senior Construction Inspector was ongoing, and two applications had been received to date. With respect to the new Council Chambers, she anticipated the first meeting would occur in those chambers at 335 Rheem Boulevard the second meeting in October.

IX. DISCUSSION ITEMS

There were no discussion items.

X. PUBLIC HEARINGS

A. MOSO and Non-MOSO Open Space Districts

Consider Waiving the First Reading and Introducing an Ordinance Amending Section 8.52.110 – Conditional Uses, in Chapter 8.52 MOSO and Non-MOSO Open Space Districts, of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code and Further Direct Staff to Study Additional Revisions to Clarify the List of Conditionally Permitted Recreational Uses in MOSO and Non-MOSO Open Space Districts as Part of the Hillside and Ridgeline Project. *(CEQA Status: Exempt from CEQA pursuant to Section 15061(b)(3): General Rule Exemption)*

Associate Planner Brian Horn presented the staff report and recommended the Town Council waive the first reading and introduce an ordinance amending Section 8.52.110 – Conditional Uses, in Chapter 8.52 MOSO and Non-MOSO Open Space Districts, of Title 8, Planning and Zoning, of the MMC and direct staff to study additional revisions to clarify the list of conditionally permitted recreational uses in MOSO and Non-MOSO Open Space Districts as part of the Hillside and Ridgeline project.

PUBLIC HEARING OPENED

Nina Vora, Moraga, who resided near the former Moraga Tennis and Swim Club (MTSC), asked the Town Council to deny the text amendments to the MMC, and suggested that MOSO had been working fine and did not need to be changed. She stated if the Town Council voted to approve the text amendments to allow Adventure Day Camp, it could set a precedent and serve to weaken MOSO provisions resulting in loopholes and exemptions. She suggested the proposal for Adventure Day Camp would involve an increase in the development footprint through the addition of improvements not currently part of the MTSC. She also suggested a for-profit business was not the same as a non-profit business given that for-profit businesses would attract more customers, traffic, and parking in the neighborhood and could set a precedent. She understood the Planning Commission had asked for a study to clarify the list of conditionally

permitted recreational uses in MOSO and Non-MOSO Open Space Districts, although that study had not been done. She wanted to see that work completed before moving forward.

Clay Serrahn, Moraga, commented that neither the Town Council nor staff reports had demonstrated that the text amendments would be necessary or be a benefit to the Town. The proposed text amendments would set a precedent for similar future actions in other zoned areas including Non-MOSO Open Space Institutional Districts which was most of Moraga's residential areas; the applicant for Adventure Day Camp stated during the June 15, 2015 Planning Commission meeting, that he and his wife were founders of a non-profit business and if the zoning text amendment was denied there remained an opportunity to continue the use permit application; and he questioned leaving the types of acceptable uses to the Hillside and Ridgeline Steering Committee to determine in the future since there was no guarantee the Committee would do it in an appropriate manner. He also questioned approval of the text amendments absent accepted use provisions and suggested the text amendments remained unclear and unprecise.

Mr. Serrahn urged the Town Council to read Section 3 of the proposed ordinance carefully, a new previously unseen clause, which had been added at the last hour, and expressed concern the text amendment could be reduced to merely for-profit recreational facilities. He questioned the rationale used to consider what he characterized as an unjustifiable text amendment for a specific applicant and specific parcel, which would significantly and detrimentally impact one targeted Moraga neighborhood with potential future detrimental impacts to the entire Town of Moraga. He urged the Town Council to consider his comments and deny the proposed text amendment.

Karen Mendonca, Moraga, stated that Kevin Welch, the potential applicant and owner of Adventure Day Camp, had already stated that he and his wife had a non-profit, and would apply for a conditional use permit whether or not the current text was changed to include for-profit recreational enterprises. The Director of Parks and Recreation had also indicated that the Town had limited interest in the application as it had currently been proposed. Given those facts, she questioned why the Town Council would consider changing any part of the MOSO zoning text.

Ms. Mendonca referenced and read a portion of a Lamorinda Weekly article dated May 20, 2015 which had quoted statements made by Councilmember Trotter, which she suggested could shortcut a process designed to protect open space. She added that on August 3, 2015, after careful consideration, the majority of Planning Commissioners had been unwilling to adopt the revised language that had been presented to them by the Town Council. She read into the record many of the comments from Commissioners, and suggested that if the Town Council took no action it would not prohibit the applicant from proceeding with a non-profit application. She recommended that the Town Council deny any changes to the current MOSO zoning text and stop the inappropriate approach to policy development wherein Town policy was actually based on the exception and not the rule.

Carolyn Franck, Moraga, asked that the Town Council not change the MOSO zoning text.

Curt Franck, Moraga, urged the Town Council not to change the MOSO zoning text.

Steve Huxley, Moraga, emphasized his opposition to Adventure Day Camp and pointed out the absence of sidewalks that posed a potential safety hazard.

PUBLIC HEARING CLOSED

Responding to Council, Planning Director Ellen Clark clarified that the proposed zoning text amendment would not amend the voter-approved MOSO ordinance. The zoning text

amendment would amend an implementing regulation of the MOSO ordinance. She also described the background of for-profit versus non-profit designations, which was a legacy provision from the County that had been carried over into the Town's Zoning Ordinance.

Vice Mayor Metcalf noted the item should not be referred to the Hillside and Ridgeline Steering Committee as they already had a full plate; there would be no more improved information than from the Town Council; and he questioned making a land use regulation based on a business model whether for-profit or non-profit. He suggested that distinction be eliminated. He also understood there were two issues under consideration; proper land use policy and a project that had yet to be proposed. He clarified that what was being considered by the Town Council were regulations on what could be done within MOSO. He asked the Town Council to confine the discussion to that issue.

Councilmember Onoda noted that retaining the non-profit language offered a filter, and the discussion should consider appropriate uses, whether for-profit or non-profit uses.

Councilmember Arth requested clarification from the representatives for Adventure Day Camp as to whether the business would be for-profit or non-profit.

Kevin Welch, Adventure Day Camp, explained that he could not recall whether he had stated they would proceed as a non-profit, but recalled that he had said they could proceed. On the record, he stated they would not proceed as a non-profit. Having owned a corporation for 16 years, he explained he had formed a small non-profit, although for this project, a change to the business model would require a reassessment as to how to run a business as a non-profit in this capacity. If he were to apply as a non-profit, he stated the program ideas would not change. He noted the project would be a big one, and if changing the way they did business, it would be difficult moving forward.

Councilmember Arth also questioned the distinction whether for-profit or non-profit given the potential activities that could occur on the land that would be permitted even if the business were a non-profit.

In response to Councilmember Trotter, Mr. Welch explained that the footprint of the use would be no different whether for-profit or non-profit, and suggested the business model would not change that. He affirmed that financing would be required to develop the project and it would be easier for a for-profit entity to obtain financing.

Councilmember Trotter clarified with Ms. Clark that the language revisions, as shown on Page 5 of the staff report, reflected a combination of language initially proposed by staff and subsequently revised by the majority of the Planning Commission.

Mayor Wykle stated he had struggled with the for-profit and non-profit distinction and agreed with the comments that it would be nice to have a list of conditional uses. He too agreed that the Hillside and Ridgeline Steering Committee had a lot on its plate, and if the Committee did not review conditional uses he questioned how a list of conditional uses would be prepared.

Ms. Clark advised that staff would have to prepare draft language for the Planning Commission to discuss and then bring it back to the Town Council. She agreed the for-profit and non-profit distinctions did not provide a meaningful way to regulate land use, and the Planning Commission had agreed. She commented that land uses were matters of degrees and recreation could cover an array of vast and different uses. She suggested it would be possible to prepare a reasonable list. Based on MOSO and the intent that the uses be generally low impact small footprint uses, it was clear there would be no projects that involved expansive earth moving and land disturbances.

Vice Mayor Metcalf questioned how the lots that had been identified in MOSO had been so designated given that the property under discussion was surrounded by residential and not MOSO. He noted the former MTSC facility had been vacant for almost ten years, and if not allowed to operate as a recreational facility in some scale, could require removal since it could become a nuisance. He suggested the area should be residential and not MOSO but recognized there was no way to change the MOSO designation without voter approval. He liked the idea from the Planning Commission to allow a recreational facility as long as it was consistent with what had previously existed without increasing the intensity, environmental impacts, or footprint.

Councilmember Trotter commended the Planning Commission for some thoughtful additions, suggested the definition of development footprint was clear in that it was the area of previous disturbance, and given the proposed use would not exceed the pre-existing MOSO footprint and would go a long way to preserve the remaining open space lands on the parcel. While he did not recommend any changes to the language the Planning Commission had proposed to add, he suggested the first word of the first sentence reading "For-profit" could be stricken and the remaining language could be broad enough to encompass for-profit or non-profit uses.

Ms. Murphy cited Page 3 of the staff report, which referenced existing conditional use, public or private park, or non-profit recreational facility, playground, trail, and related facilities addressed non-profit. If there was a change as Councilmember Trotter had recommended, further revisions to Attachment A, Redline Ordinance, __-2015, Sections 1 (B) and Section 2 (E) would be required.

Councilmember Trotter noted that directing Town staff and the Planning Commission to take a broader look at the question of recreational facilities and open space was a task force looking for a problem that did not exist. He did not want to put Town resources into such an effort.

Mayor Wykle read into the record the language shown in Section 2, Subsection E, and Page 3 of the resolution, which he understood was the same as the language proposed by the Planning Commission as outlined on Page 5 of the staff report.

Ms. Clark acknowledged there were some differences between the resolution and the statement shown on the staff report. While changes had been made during the editing process, she recommended the use of the staff report version as opposed to the ordinance redline version.

Councilmember Trotter suggested there was no difference in context between what had been shown in the staff report and what had been shown in the redline version of the ordinance.

Vice Mayor Metcalf explained that his comments supported the language as shown on Page 5 of the staff report. The redline version of the ordinance did not include the term "previous." He clarified with staff that it was unclear why that change had been made and suggested it was likely an editing error.

After review of both versions of the language, **Councilmember Trotter** characterized the language in the redline version of the ordinance as a cleaned-up version.

Ms. Murphy affirmed that the use of the term "legally-established" in the context of the language in the redline version of the ordinance was important and indicated an existing legal conforming use at the time of MOSO, and should remain.

Councilmember Trotter also clarified with Ms. Murphy that Section 3, the severability clause, had been included in all Town ordinances the past ten years, and was standard language, although it had not been included in the Planning Commission resolution.

Councilmember Arth described the zoning text amendment as narrow, applying to operations in place within the April 8, 1986 date. He wanted to see Adventure Day Camp operate as opposed to seeing a closed facility that would become a neighborhood blight.

Ms. Murphy clarified that the action being asked of the Town Council at this time was an amendment to the MMC to allow the specific for-profit recreational facilities to apply. Any application for Adventure Day Camp would be a separate process.

Mayor Wykle recognized the Council was considering a text amendment and not the Adventure Day Camp proposal. He clarified with Ms. Clark that staff would determine whether the use was a legally established recreational facility prior to MOSO, which was the criteria, and noted the use would have to have a valid use permit or otherwise be deemed to have been an approved land use by virtue of the issuance of building permits. Determination of whether the modifications proposed would be consistent with the use allowed would be considered as part of a Conditional Use Permit application.

Mayor Wykle suggested allowing for limited modifications and improvements would open the door, suggested they were not speaking of a blight situation given the property had been vacant for ten years, and disagreed a list of conditionally permitted recreational uses should not be considered.

Councilmember Arth clarified he was not an advocate for Adventure Day Camp but had referred to the business since it was on the horizon. He would be happy for anyone to consider the improved use of the site.

In response to the Vice Mayor, Ms. Clark described the process for an Initial Study and the CEQA criteria and thresholds to determine whether or not there was a reasonable basis to believe that any environmental impacts of a project would be significant and unavoidable, which would lead to the requirement for an Environmental Impact Report (EIR). If all of the environmental impacts of a project could be mitigated to a less than significant level, the required document would be a Mitigated Negative Declaration (MND).

Councilmember Trotter pointed out the language in the redline version of the ordinance for Section E was clear "*for-profit recreational facilities that utilize existing facilities established prior to adoption of the Moraga Open Space Ordinance (Measure A) on April 8, 1986, with no increase in the development footprint,*" with the limited modifications required to be within the pre-existing development footprint or they would not be permitted.

Mayor Wykle suggested there were differences between development footprint and modifications to facilities within that footprint, and **Councilmember Trotter** disagreed with the Mayor's assessment.

Mayor Wykle expressed concern that someone may define "limited improvements and modifications to such facilities" in different ways, although **Councilmember Trotter** suggested that could be a judgment call for future Planning Commissions to weigh and come back to the Town Council for clarification.

Mayor Wykle preferred to define the use and tighten up the ordinance.

As to whether or not the Town Council could vote to allow either for-profit or non-profit uses and direct staff to consider different conditions for recreation in MOSO in response to Councilmember Onoda, Ms. Clark understood that was what the Town Council had been discussing; whether to have staff go back and potentially look at the issue separately to possibly further amend the ordinance. She suggested it would be difficult to separate for-profit from non-profit given the discussion related to all MOSO land in general, although such a provision could be folded into a potential list of uses.

Councilmember Trotter made a motion seconded by **Councilmember Arth**, to waive the first reading and introduce an ordinance amending Section 8.52.110 – Conditional Uses, in Chapter 8.52 MOSO and Non-MOSO Open Space Districts, of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code; in the form provided by staff in the redline ordinance, as part of the Town Council staff report (Attachment A).

Mayor Wykle explained that he would be voting no on the motion for the reasons earlier stated, and since he would prefer the ordinance be tightened further. He was not quite ready to support the item and understood there had been some thought of eliminating the for-profit distinction from the ordinance.

ACTION: It was M/S (Trotter/Arth) to waive the First Reading and Introduce an Ordinance Amending Section 8.52.110 – Conditional Uses, in Chapter 8.52 MOSO and Non-MOSO Open Space Districts, of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code; in the form provided by staff in the redline ordinance, as part of the Town Council staff report dated September 9, 2015 (Attachment A). Roll Call Vote: 3-2. Noes: Onoda, Wykle.

XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

A. Public Art Policy

Consider Potential Amendments to the 2008 Town Council Adopted Public Art Policy, Including Funding Options for a Public Art Ordinance, and Provide Direction to the Park and Recreation Commission and Staff

Parks and Recreation Director Jay Ingram presented the staff report and asked the Town Council to consider potential amendments to the 2008 Town Council adopted Public Art Policy, including funding options for Public Art, and provide direction to the Park and Recreation Commission and staff.

PUBLIC COMMENTS OPENED

Ted Urban, Orinda, explained he had created the Orinda Art Program nine years ago, which had initially not involved the City of Orinda, but was intended to place art pieces in the Orinda Library Plaza. Given that the property was owned by the City of Orinda, the City wanted control of the process and had later created Orinda's Art in Public Places Committee (APPC), which was currently comprised of four primary members and three at-large members. The other purpose of the program was to loan art to the City of Orinda, with assistance through volunteer efforts to show and display the art. He described in detail how Orinda handled its public art policy, which had worked well at no cost to the City. He offered the Town Council an outline of the program in the City of Orinda.

Responding to the Council, Mr. Urban commented that the art had been displayed at the Orinda Library, Community Center, and park areas which had been expanded to include public crosswalks within Orinda's ROW. Art had also been installed in Wilder Park, with ways to spread out art in the community continuing to be explored. In terms of the policy for art pieces

loaned to the community, the artist was able to renew them every year, the artist was responsible for annually conducting potential maintenance, and the City of Orinda had no obligation to maintain the art piece although the City of Orinda would protect the art piece since it had a liability policy that covered most art. The City of Orinda had not experienced any liability in nine years. Based on his experience, artists were excited to have their pieces shown in public places and agreeable with the cost to install and maintain their art.

Mr. Urban also noted that the City of Orinda did not sell or negotiate on the artist's behalf unless the City wanted to acquire a piece. He explained that artists from the Bay Area and out-of-state participated in the program, which was advertised through a City of Orinda webpage, word of mouth, and the APPC was active through educational and other pursuits.

Shweta Srivastava, Moraga, a local artist and software engineer, commented that she had created a mural in the City of Lafayette, with the mural used as the cover page for Lafayette's Activity Guide. She had also created two painted murals for Camino Pablo School, both of which were public art pieces. She would like to see the Town Council adopt a Public Art Policy which would allow artists like herself to bring art to the community. She was more than willing to maintain her artwork to ensure continued community enjoyment.

Lisa Mullins, Moraga, a former resident of Kensington, created an art piece displayed in that community which had received positive attention, and which she personally maintained. She suggested many were intimidated by galleries, and characterized public art as a discovery. She offered artwork ideas that could benefit Moraga, was interested in participating in such a program, and suggested that other artists would be interested as well.

Cindy Raleigh, Moraga, explained that reference to the artwork displaying hearts throughout the City of San Francisco had benefitted a local charity. She suggested something similar could be done for the Town of Moraga.

The following individual did not speak but offered the following written comments:

Lawrence Kohl, Moraga, *"As President of the Lamorinda Art Council and the conductor of the Pacific Chambers Symphony I know a thing or two about public art. Indeed as a resident of Moraga I have often wondered why there isn't such here in Moraga, as there is in Orinda and Lafayette. I have heard it said we have such a beautiful natural skyline. Very true. As I was driving here I thought how much prettier it would be if there were no traffic lights to disturb my sights. Even better if there was no shopping center. And while we are at it let's get rid of all of the homes, so much prettier then we wouldn't need this school or a Council as there would be no people. Perfect Indeed. Well, we are here and what we are talking about is art amongst us. Art that gives us a smile, art that makes us think, art that says we care, art that gives meaning to the business centers, the streets and to our lives. Art brings the community together. I know you care art says it all. Bring it amongst us. Thank you"*.

PUBLIC COMMENTS CLOSED

Councilmember Onoda stated she had sought for some time the creation of Lamorinda for the arts like Napa had done for the wine industry. She suggested public art could benefit Moraga, the home of SMC, and many other local events could benefit from the display of public artwork. She cited how the arts would benefit the Town to deliver a value to a large population of the Town which cared about the arts, and which could create vibrancy in the community. She suggested a hybrid of the program utilized by the cities of Orinda and Lafayette; suggested one percent of development should be dedicated to public art, anything over 10,000 square feet whether a new building or a remodel; the rotation of the artwork would offer a period of time for the community to determine if it liked the artwork; and a developer would be allowed the option

to display artwork on their premises, to be displayed on Town land, or able to make a monetary donation. In terms of the formation of a potential Public Art Policy Committee, she suggested it should be comprised of members of the Town Council, Park and Recreation Commission, and the community, with a two-year term for Committee members who would be appointed by the Town Council.

Vice Mayor Metcalf thanked Mr. Urban for his information on the APPC; he liked the policy for lending artwork and suggested a similar policy could be considered for Moraga. He disagreed with a tax on development beyond what was currently done given the potential lack of nexus, and suggested that once funds had accumulated there could be a slush fund which carried a negative public perception. He cited the Lamorinda Fee and Finance Authority (LFFA), as an example. He liked the approach taken by the City of Orinda. He suggested the Park and Recreation Commission carefully review the City of Orinda model to determine how it really worked, with that model to return to the Town Council for consideration. He did not want to see the formation of a committee that would have to comply with Brown Act requirements.

Mayor Wykle understood the Orinda model called for the use of city funds to purchase the artwork, which option he liked, and could be considered without the creation of a slush fund. He liked the Orinda model and agreed that no new taxes should be imposed on developers.

Councilmember Arth also opposed the imposition of additional development fees to fund public art but could see the use of park dedication fees. He liked the program used by the City of Orinda and thanked Mr. Urban for his information.

Councilmember Trotter spoke to the option of imposing a development impact fee dedicated to acquiring and installing public art and questioned whether there was any nexus and justification for such an impact fee, to which Ms. Keimach explained that she and the Assistant Town Attorney would look into that option more carefully. She shared the concerns with the nexus of new development and noted that park dedication fees were used for the expansion of parkland and not art. Staff could return with options for consideration but did not recommend the funding of an art program through either park dedication fees or development impact fees due to the nexus.

Ms. Murphy commented that she could not speak to the nexus for the City of Lafayette's Public Art Ordinance but was aware that some public art ordinances had a requirement on development to build a percentage of art into a project, and include an in-lieu of option. She understood there had been some legal challenges to ordinances that included such a clause.

Councilmember Onoda highlighted a current case in Oakland and suggested if a developer did not want to include artwork, an in-lieu donation could be allowed.

Ms. Murphy affirmed a number of communities had public art ordinances with a one percent requirement.

Councilmember Trotter suggested the Orinda model was lighter on the land, and he was encouraged by the fact Orinda's artists wanted to maintain their artwork. He noted the Town of Moraga had two art donations in 2007, which had triggered the policy in question, both bronze pieces that would likely be good for a period of time.

Vice Mayor Metcalf recalled that the donor of the two bronze artwork pieces had indicated a willingness to maintain the artwork but to the extent she had followed through on that willingness was currently unknown.

Councilmember Trotter thanked Councilmember Onoda for raising this issue. He suggested there was the potential for the Town to do great things, and suggested staff reach out to Orinda to see what could be done for art on public property, and possibly integrate that into the MCSP. If the Orinda model did not work in Moraga, the Lafayette approach to assess a fee could be considered although he would limit that fee to commercial or subdivision developments and not to single-family homeowners.

Ms. Keimach commented that the 10,000 square foot threshold had been intended to exempt single-family homes.

Councilmember Onoda suggested that most artists installing large public artwork had a way to do it but suggested some flexibility where the Town could be part of the donation process to help with installation.

Mayor Wykle suggested some type of funding option should be considered whether it was needed or not.

Mr. Ingram advised he would bring the issue to the Park and Recreation Commission to discuss and bring it back to the Town Council in a few months.

B. Public On-Street Parking on Rheem Boulevard

Consider Rheem Boulevard (from 335 Rheem Boulevard to Center Street) Conceptual Plans for Re-Striping the Roadway to Provide Public On-Street Parking, and Provide Direction to Staff to Proceed with the Design and Construction Phases of the Project

Councilmember Trotter reported that his law firm had represented Gayle Somers, home/made kitchen café, and Henry Chao, Chef Chao, in the last twelve months, and clarified with Ms. Murphy that he would recuse himself and not participate in the discussion.

Councilmember Trotter stepped down from the dais at this time.

Ms. Sucgang presented the staff report for consideration of Rheem Boulevard (from 335 Rheem Boulevard to Center Street) conceptual plans for re-striping the roadway to provide public on-street parking, and sought direction from the Town Council. She identified Interim Options 1 and 2, as detailed on Page 3 of the staff report, and recommended that the Town Council, by motion, direct staff to immediately begin to improve the corridor to provide ADA compliant curb, ramps, and sidewalk, and a striped crosswalk across Rheem Boulevard to complete the path of travel from the Council Chambers and Community Meeting Room at 335 Rheem Boulevard to the Theatre. Those improvements would connect the shops, restaurants, and businesses across from the roadway, subject to Concept Plan – Ultimate Improvements (Existing and Ultimate Improvements), as contained in Attachment A to the staff report. She requested that the Council further authorize the Town Manager to begin discussions with the private property owners and tenant of the Orion Academy to allow for the design and construction of the ultimate improvements, which included the high visibility crosswalk, and in the interim to provide public on-street parking. She recommended proceeding with the design and construction of Option 2 – Interim Improvements.

Responding to the Vice Mayor, Ms. Sucgang reiterated the details for Interim Options 1 and 2, and clarified the ultimate improvements crosswalk location in front of 335 Rheem Boulevard would direct pedestrians to a private parking lot. It was anticipated the use of the Council Chambers would be during hours when the businesses and private school would be closed, and pedestrians using the crosswalk would likely go to the private parking lot. The crosswalks on private property had been proposed in Interim Options 1 and 2 since pedestrian traffic had been

observed crossing the street to reach one business center to another, and the crosswalks, as proposed, would provide access across Rheem Boulevard to both shopping centers. Staff did not suggest the removal of a crosswalk if one was installed across Rheem Boulevard since the analysis had not yet been done, and staff had shown locations for the crosswalks that best fit the existing conditions.

Ms. Sucgang added that staff had not yet pulled the title to identify the ownership of the referenced properties and the Rheem Boulevard ROW ended at the southern curb line of Rheem Boulevard with everything else located on private property. Staff would have to coordinate with the respective property owner for any work on the private property. In the event the private property owner did not wish to cooperate with the Town, staff would recommend nothing be done on private property and remain within the ROW. The intent was to provide a safe crosswalk with a landing on both sides of the crosswalk.

Ms. Keimach stated that if the Town Engineers recommended the crosswalk not be installed for safety reasons she would recommend the crosswalk not be installed. Staff would have to go back to the property owner, in this case Orion Academy, to determine whether cooperation could be achieved. She suggested the improvement was in the interest of the Theatre owner/operator given the ADA lawsuit. The crosswalk would address the path of travel and would go to further the ADA pathway. She acknowledged that Orion Academy was concerned it was not a public/commercial area and it was not trying to attract the public like the Theatre, restaurants, or 24 Hour Fitness. She affirmed that while Orion Academy did not own the land where it was located, the Town should recognize its concerns given that there could be some clause in the lease agreement with the property owner.

Ms. Sucgang affirmed the title had been pulled for the properties located across the street from 335 Rheem Boulevard and staff would have to speak with the property owner and tenant given that they would have to honor the lease agreement. She also clarified in response to the Mayor that the cross hatch areas on the plans would be striping, and with respect to Option 2, there was an opportunity to design a bulb-out inside the ROW and not on the private property side although some modifications would be likely on the private property side.

Mayor Wykle suggested Option 2 was the better option and he would like to see something done in the public ROW.

Councilmember Onoda wanted to see safe travel for bicyclists should the New Rheem Theatre become a community center in the future. She recommended 11 feet in width on both sides of the street.

Ms. Sucgang explained that the existing pavement curb-to-curb width had been measured and could accommodate two travel lanes, one in each direction, two standard bicycle lanes, and two standard parking lanes. It would be possible to provide bicycle lanes from approximately 335 Rheem Boulevard to Center Street. She described the proposed configuration and did not foresee any issues with that configuration.

PUBLIC COMMENTS OPENED

Dave Schnayer, Moraga, speaking as a private citizen and Real Estate Broker, expressed concern with the process in terms of traffic calming, restriping, reconfiguration of Moraga Road for safe travel, and other issues which had been discussed for years. He questioned the fact the Town had improved a building with inadequate parking and was now considering adding parking on the street, with much of the parking under discussion privately held. Unless there was an agreement in place, it could be considered a taking of private property. He was uncertain the private property owners had been noticed of the potential improvements and

urged that be done prior to any changes in configuration. He also found that reducing the number of existing lanes to one lane into the shopping center could result in safety concerns with people exiting vehicles given the lack of sidewalks in the area. He questioned why the Town Council was rushing the improvements through other than the need for parking when the Council Chambers became operational.

PUBLIC COMMENTS CLOSED

Mayor Wykle emphasized the need for a crosswalk in the area although he agreed parking could be an issue.

Ms. Succang affirmed there was no sidewalk on the private Park Street on the south side of Rheem Boulevard other than concrete curb and gutter. The north side had a sidewalk from Center Street to 335 Rheem Boulevard and beyond. She acknowledged there were some areas along Moraga Road which had on-street parking and no sidewalk and suggested that was not uncommon.

Ms. Keimach explained that staff was trying to narrow down the proposed options so that staff did not have to contact three separate property owners. Once the Town Council decided what option to consider, staff would contact the property owners.

By consensus, the Town Council directed staff to pursue Option 2 in the interim.

Mayor Wykle declared a recess at 9:45 p.m. The Town Council meeting reconvened at 9:50 p.m. with all Councilmembers present.

C. Tree Preservation Enforcement of Violations

Consider Waiving the First Reading and Introducing an Ordinance Amending Portions of Moraga Municipal Code Chapter 12.12 Tree Preservation to Correct References to Responsible Town Personnel, Update the Costs of an Appeal, and to Update Provisions for Enforcement of Code Violations

Ms. Clark presented the staff report and asked the Town Council to consider waiving the first reading and introduce an ordinance amending portions of MMC Chapter 12.12 Tree Preservation to correct references to responsible Town personnel, update the costs of an appeal, and to update provisions for enforcement of code violations.

Vice Mayor Metcalf requested a revision to the first paragraph of Attachment A to the staff report under Section 12.12.050, Emergency Tree Removal, as shown on Page 2 of the ordinance, to read:

If on recommendation of the planning director, parks and recreation director and/or public works director the town manager believes that a tree is in such a hazardous, dangerous or diseased condition so as to constitute a present threat to the safety of persons or structures, the town manager may take immediate action to cause removal of the tree, at the owner's expense.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Responding to the Mayor, Ms. Clark explained that the provisions which addressed prohibited acts under the tree ordinance, are included in different locations in the MMC, primarily in the administrative citation procedures where any violation of the code could be subject to administrative or a misdemeanor penalty, nuisance abatement and the like.

ACTION: It was M/S (Metcalf/Trotter) to waive the First Reading and Introduce an Ordinance Amending Portions of Moraga Municipal Code Chapter 12.12 Tree Preservation to Correct References to Responsible Town Personnel, Update the Costs of an Appeal, and to Update Provisions for Enforcement of Code Violations, subject to Attachment A, as modified. Roll Call Vote: 5-0.

D. Permit Streamlining of Residential Rooftop Solar Systems

Consider Waiving the First Reading and Introducing an Ordinance to Adopt by Reference Contra Costa County Ordinance 2015-13 and Adding Section 15:12: Solar Streamlining, to Title 15, Buildings and Construction, of the Town of Moraga Municipal Code, to Create Expedited Permitting Procedures for Small Residential Rooftop Solar Systems

Ms. Clark presented the staff report and asked the Town Council to consider waiving the first reading and introduce an ordinance to adopt by reference Contra Costa County Ordinance 2015-13 and adding Section 15:12: Solar Streamlining, to Title 15, Buildings and Construction, of the Town of Moraga Municipal Code, to create expedited permitting procedures for Small Residential Rooftop Solar Systems

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Arth) to waive the First Reading and Introduce an Ordinance to Adopt by Reference Contra Costa County Ordinance 2015-13 and Adding Section 15:12: Solar Streamlining, to Title 15, Buildings and Construction, of the Town of Moraga Municipal Code, to Create Expedited Permitting Procedures for Small Residential Rooftop Solar Systems. Roll Call Vote: 5-0.

E. League of California Cities Annual Meeting

Provide Direction to Voting Delegate and Alternate Regarding Resolutions at the League of California Cities Annual Meeting from September 30 to October 2, 2015 in San Jose, California

Ms. Keimach presented the staff report and advised of the staff recommendations for the four resolutions to be considered during the League of California Cities Annual Meeting from September 30 to October 2, 2015 in San Jose, California, with direction provided to the Mayor as the Town's delegate to the annual meeting.

Based on a straw poll vote for each resolution, the Town Council supported the staff recommendations to support Resolutions 1, 2, and 3; and abstain or deny on the vote for Resolution 4.

PUBLIC COMMENTS OPENED

There were no comments from the public.

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

Councilmember Onoda requested a future agenda item include soliciting citizen ideas to help in the current Middle East refugee crisis. She sought to determine the willingness of the community to provide assistance to other humans.

Councilmember Trotter noted the Town of Moraga did not have a foreign policy.

Councilmember Arth stated he had responded to the crisis through his personal pocketbook.

Ms. Murphy asked whether there was a consensus from the Town Council to place such a discussion on a future agenda.

Vice Mayor Metcalf did not agree with expending staff resources on such an item. He too responded to such issues through his personal pocketbook. He was also cautious as a Councilmember not to overly sway public opinion. He could not support this discussion as a future agenda item.

Councilmember Trotter suggested that anyone, including an elected official, had the right to conduct private lobbying, although the question was whether to devote Town resources.

Mayor Wykle agreed it was a good cause, as were many causes, suggested private lobbying was the way to go, and affirmed there was no consensus to place the item on a future agenda. He otherwise reported that the Town Council had received an e-mail requesting a discussion of street repairs and concerns with safety issues on Ascot Drive. He asked whether the Town Council agreed it should be considered as a future agenda item.

Vice Mayor Metcalf understood there was a request for consideration of permit parking on Ascot Drive.

Councilmember Trotter affirmed the e-mail regarding Ascot Drive had expressed concern there had been no street repairs on that street, which he agreed should be considered as a future agenda item, or that staff provide an explanation as to why that had not occurred.

Ms. Keimach advised that staff would provide a response as to why there had been no street repairs on Ascot Drive.

Councilmember Trotter sought a future agenda item to discuss the broader issues of on-street parking along Ascot Drive.

By consensus, the Town Council agreed to include a future agenda item to discuss the broader issues of on-street parking along Ascot Drive.

Ms. Keimach requested clarification from the Town Council as to whether second readings of an ordinance should or should not be placed on the Consent Agenda. She asked whether that should be a future agenda item.

After discussion, the majority of the Town Council supported the placement of second readings of an ordinance on the Consent Agenda.

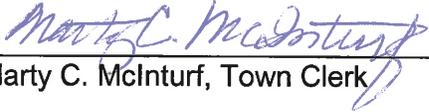
XIII. COMMUNICATIONS

There were no communications.

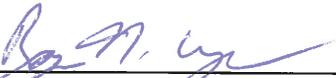
XIV. ADJOURNMENT

ACTION: It was M/S (Metcalf/Arth) to adjourn the meeting at 10:16 P.M. Vote: 5-0.

Respectfully submitted by:


Marty C. McInturf, Town Clerk

Approved by the Town Council:


Roger N. Wykle, Mayor

