



**TOWN OF MORAGA
REGULAR MEETING**

**February 26, 2020
MINUTES**

7:00 P.M. Regular Meeting

Council Chambers and Community Meeting Room
335 Rheem Boulevard, Moraga, California 94556

1. CALL TO ORDER

The regular meeting was called to order at 7:00 p.m. by **Mayor Kimberleigh Korpus**.

ROLL CALL

Councilmembers present: Mayor Kimberleigh Korpus, Vice Mayor Mike McCluer, and Councilmembers Renata Sos, Steve Woehleke and Roger Wykle

Councilmembers absent: None

2. PLEDGE OF ALLEGIANCE

Cub Scout Pack No. 505 led the Pledge of Allegiance.

3. SPECIAL ANNOUNCEMENTS

Mayor Korpus reported that since Moraga-Orinda Fire District (MOFD) Fire Chief Dave Winnacker was not yet available to make a presentation, as agendaized, the Town Council would proceed with public comment and consideration of the Consent Agenda.

5. PUBLIC COMMENTS AND SUGGESTIONS

There were no comments from the public.

6. ADOPTION OF CONSENT AGENDA

A. Approval of Consent Items

Consent Agenda Items 6.5 and 6.7 were removed from the Consent Agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Woehleke/Sos) to adopt Consent Agenda Items 6.1, 6.2, 6.3, 6.4, and 6.6. Vote: 5-0.

6.1 Accounts Payable Claims for: 02/14/20 (\$502,051.68) Approved

6.2 Approve Minutes for the Town Council Regular Meeting on Approved

January 8, 2020

6.3 Lighting Assessment District Engineering Agreement Approved
Consider Resolution 9-2020 Awarding a Consultant Services Agreement for Assessment District Engineering Services Related to the Fiscal Year 2020/21 Town of Moraga Street Lighting District No. 1979-1 to LCC Engineering & Surveying, Inc. for an Amount Not to Exceed \$11,900

6.4 Lighting Assessment District Engineering Assistance Approved
Consider Resolution 10-2020 Ordering Engineering Assistance to Prepare and File an Annual Engineer's Report for Fiscal Year 2020/21, Town of Moraga Street Lighting District 1979-1

6.5 Consolidation of the Design Review Board and Planning Commission and Changes to Title 2 and 8 of the MMC Removed
Consider Waiving the Second Reading and Adopting Ordinance 287 Amending Various Sections of Title 2 – Administration and Personnel, and Title 8 – Planning and Zoning, of the Moraga Municipal Code (MMC) to Effectuate the Consolidation of the Design Review Board and Planning Commission, and Making Various Changes to: (A) the Planning Commission Officer Appointment Procedures Set Forth in Chapter 2.12; (B) the Appeal Rights of the Planning Commission Set Forth in Chapter 8.12; (C) the Development Standards Set Forth in Chapter 8.44; and (D) the Design Review Procedures for Additions or Alterations to Single-Family Residential Properties Set Forth in Chapter 8.72 (CEQA Status: Exempt)

6.6 MOU for Shared Engineering Support Services Approved
Consider Resolution 11-2020 Authorizing the Town Manager to Enter into a Memorandum of Understanding (MOU) with the City of Lafayette and the City of Orinda for Engineering Support Services

6.7 Fund 140 Reallocation Removed
Consider Resolution 12-2020 Authorizing the Town Manager to Limit the Future Annual Allocation to Fund 140 – Property Tax - Lighting Special District to Only the Amount Necessary to Adequately Fund Street Lighting Activities; and to Allocate the Fund 140 Balance Exceeding \$100,000 for Capital Asset Replacement and/or Storm Drain Projects

B. Consideration of Consent Items Removed for Discussion
(This item was removed for the Consent Agenda for a roll call vote.)

1. Consolidation of the Design Review Board and Planning Commission and Changes to Title 2 and 8 of the MMC
Consider Waiving the Second Reading and Adopting Ordinance 287 Amending Various Sections of Title 2 – Administration and Personnel, and Title 8 – Planning and Zoning, of the Moraga Municipal Code to Effectuate the Consolidation of the Design Review Board and Planning Commission, and Making Various Changes to: (A) the Planning

Commission Officer Appointment Procedures Set Forth in Chapter 2.12; (B) the Appeal Rights of the Planning Commission Set Forth in Chapter 8.12; (C) the Development Standards Set Forth in Chapter 8.44; and (D) the Design Review Procedures for Additions or Alterations to Single-Family Residential Properties Set Forth in Chapter 8.72 (CEQA Status: Exempt)

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Woehleke/Sos) to waive the Second Reading and Adopt Ordinance 287 Amending Various Sections of Title 2 – Administration and Personnel, and Title 8 – Planning and Zoning, of the Moraga Municipal Code to Effectuate the Consolidation of the Design Review Board and Planning Commission, and Making Various Changes to: (A) the Planning Commission Officer Appointment Procedures Set Forth in Chapter 2.12; (B) the Appeal Rights of the Planning Commission Set Forth in Chapter 8.12; (C) the Development Standards Set Forth in Chapter 8.44; and (D) the Design Review Procedures for Additions or Alterations to Single-Family Residential Properties Set Forth in Chapter 8.72 (CEQA Status: Exempt). Roll Call Vote: 4-1. Noes: Wykle

2. Fund 140 Reallocation

Consider Resolution 12-2020 Authorizing the Town Manager to Limit the Future Annual Allocation to Fund 140 – Property Tax - Lighting Special District to Only the Amount Necessary to Adequately Fund Street Lighting Activities; and to Allocate the Fund 140 Balance Exceeding \$100,000 for Capital Asset Replacement and/or Storm Drain Projects

Vice Mayor McCluer thanked the Town Manager for finding Fund 140 and the balance shown. He liked the reference of the Town Council Goal to use the funds to position the Town for long-term financial sustainability, with an example of how the funds could be used. He recommended the funds be used not only for capital asset replacement and storm drain projects but also include unfunded pensions. He asked that the proposed Resolution be amended accordingly.

Councilmember Woehleke expressed ambivalence to the requested change and did not see Fund 140 would generate enough cash to have an impact on unfunded pensions, although he also did not see a negative to implementing the Vice Mayor's requested change.

Town Manager Cynthia Battenberg advised that the Town Council goal had specifically identified that the funds from Fund 140 could be repurposed for the Town's unfunded infrastructure needs. The item had been split into two actions. One action addressed future funding, indicating that the Town would only transfer as much from the General Fund property tax to the Property Tax - Lighting Special District to cover street light utility expenses. Each year there should be approximately \$120,000 more in the General Fund and that money had not been specifically identified for anything. The limitation was on the fund balance, to be considered for the expenditure and budgeting for the next two years, as reflected in the resolution.

In response to **Councilmember Sos**, Ms. Battenberg clarified that the Resolution had been recommended to allow the funds to be transferred for the purposes outlined. Based on advice

from legal counsel, the Resolution had been recommended to indicate that the funds would be transferred to particular uses.

Assistant Town Attorney Denise Bazzano further explained that the proposed Resolution contained in the staff report would allocate the funds exceeding \$100,000 to capital asset replacement and/or storm drain projects. The action would not approve any project but implement the allocation of the funds from Fund 140 to other funds, as directed by the Town Council. In response to the Mayor as to whether the funds should be transferred to the General Fund to be dealt with later, she explained that would be a question for the Administrative Services Director but legally there was no restriction on the funds in Fund 140 in that they were all General Funds. If the Town Council wanted to put the funds into the larger General Fund account there was no legal prohibition to do so.

Mayor Korpus clarified the staff recommendation had been based on a Town Council recommendation at the time staff had been asked to look into the use of the funds for Fund 140, and Ms. Battenberg reiterated the Town Council goal to *Explore reallocation of Fund 140 to help fund the Town's unfunded infrastructure needs*, and the capital asset replacement and/or storm drains were the Town's unfunded infrastructure needs.

Ms. Battenberg added when asked that there was no nexus between street lighting assessment and an infrastructure project.

Councilmember Wykle commented that the funds from Fund 140 had historically been used to fund underground utilities and there were areas in Town that could still use undergrounding. He was not opposed to transferring the funds to the General Fund and using them for the best use.

Mayor Korpus noted the Town Council had discussed using the funds in Fund 140 for infrastructure needs and she was happy with that recommendation since the Town had serious infrastructure issues. She did not support identifying the use of the funds for pension fund paydown, and would more readily agree to the funds being transferred to the General Fund. She preferred that the Town Council stay on target and demonstrate the dedication and focus to address infrastructure issues.

Vice Mayor McCluer spoke to the overall Town Council goal for long-term fiscal sustainability with the funds from Fund 140 to be considered during the budget process. If the funds were restricted, he suggested the potential discretionary funds could be used for either capital asset replacement, storm drains, or unfunded pensions, and be considered during the budget discussion. He did not want the funds to be placed into the General Fund because they could be used for anything. He again asked the Town Council to consider his request.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Sos/Korpus) to consider Resolution 12-2020 Authorizing the Town Manager to Limit the Future Annual Allocation to Fund 140 – Property Tax - Lighting Special District to Only the Amount Necessary to Adequately Fund Street Lighting Activities; and to Allocate the Fund 140 Balance Exceeding \$100,000 for Capital Asset Replacement and/or Storm Drain Projects. Vote: 3-1-1. Noes: McCluer. Abstain: Woehleke

The Town Council returned to Agenda Item 4. A.

4. PROCLAMATIONS AND PRESENTATIONS

A. Presentation on the Proposed Changes to the Fire Code by Chief Dave Winnacker, Moraga-Orinda Fire District

Moraga-Orinda Fire District (MOFD) Chief Dave Winnacker provided a PowerPoint presentation to outline the proposed changes in the Fire Code, which included the history of significant fire events in the East Bay; background and purpose of the North Orinda Shaded Fuel Break; details of fire science in terms of what fire was normal for the area and how fire spread; and fire spread rates and intensity caused by topography, weather and fuel.

Chief Winnacker summarized the MOFD Wildlife Prevention Strategic Plan, which included seven lines of effort including external fuels mitigation projects, internal fuels mitigation projects, wildfire preplanning, evacuation planning, building code updates, community outreach and education, and early detection and notification systems. The code update process included community input, presentation to elected boards and councils, and meetings with associated staffs on directed changes, after which the MOFD would return to the various bodies for first and second readings and ultimately adoption of an Ordinance. It was hoped the work could be completed before this fire season, although the continued lack of rain could place the community in an early fire season in April through December.

Chief Winnacker identified the Wildland Urban Interface (WUI) Declaration References and read into the record the 2019 California Fire Code, which cited sections of the Health and Safety Code as the reference for the WUI. The Office of the State Fire Marshal had published a list of communities at risk which included the Town of Moraga, City of Orinda, and Canyon, and those communities had been designated as WUI for years. The WUI had recommended the adoption of the changes to the Fire Code for the purpose of requiring ember resistant building construction standards for new construction.

Chief Winnacker stated the proposed changes to the Fire Code would not create a threat of dropped home insurance since it would be used to enforce more stringent or restrictive construction standards that would reduce the risk of a community-wide wildfire. He had spoken to several insurance companies, state representatives, and representatives from the Insurance Services Organization (ISO), who had all agreed there was nothing about the proposed changes to the Fire Code that would increase insurance since the change was a local code provision to enforce more restrictive building standards and the communities had been on the WUI list for almost 20 years.

Chief Winnacker identified the requirements for each existing parcel and structures within the MOFD including the compliance date that had been moved from June 15 to May 31; the abatement period extended from 10 to 15 days; a ban on the use of combustible ground cover to include mulch within two feet of structures; require at least a two-foot air gap between the ground and vegetation within two feet of structures; increase the clearance of trees from five to six feet; require the removal of eucalyptus and Monterey pine within six feet of any structures; require an exterior fire hazard inspection for real property transfers; and require the removal of juniper and bamboo within 10 feet of a public or private road by the end of 2023. Photographs of compliant ground cover, appropriately pruned trees, and vegetation and ember exposure were displayed.

For major remodels and additions to existing structures, new Fire Code changes included a decrease in the threshold for residential fire sprinklers to 3,600 square feet or an increase exceeding 100 percent of the existing square feet; and exterior under eave fire sprinklers for residential structures that required new systems.

Chief Winnacker responded to questions from the Council and clarified the new ban on the use of combustible ground cover to include mulch within two feet of structures whereas the industry standard was five feet, and detailed the combustibility of mulch for fire spread and suggested the disruption of the terminal two feet was where the greatest return on investment would be seen in that the new requirements were achievable and manageable. He highlighted the MOFD's creation of a web-based system to address code enforcement, particularly how such a tool could be utilized as part of the real property transfer requirement, and provided additional clarification on the new requirements for major remodels and additions to existing structures and what events triggered those requirements. He added that the cost of fire sprinkler systems depended upon varying factors in that the installation of fire sprinklers oftentimes triggered a reduction in homeowner's insurance and paid for themselves over the years.

Chief Winnacker also detailed the proposed Fire Code requirements for new structures including the declaration of all areas of the WUI for purposes of the Fire Code; requirement of ember resistant construction as defined in Building Code Chapter 7A and Residential Code Chapter 337; bans the use of combustible building material within three feet of new structures; requires exterior under eave sprinklers for residential systems; increases road width from 16 to 18 feet for one to two new units; increases road widths to 28 feet for three or more new units; and allows a waiver of the remoteness requirement for large development road access with a Fire Protection Plan.

Chief Winnacker confirmed there were other communities on the WUI list that could be provided to the Town Council. The City of Lafayette was also on the WUI list but it had not been enforced due to a misunderstanding at the administrative staff level. The WUI Declaration was again detailed along with the concerted abatement effort to bring Moraga Way into full compliance. The MOFD abatement statistics were highlighted and he acknowledged that MOFD liens against properties had decreased over time.

Chief Winnacker also provided an overview of the input from the community meetings in December and January, which had been well attended. If and when the Fire Code changes were adopted, public outreach/education would be provided by any means possible, including 30-second videos on each requirement. He emphasized the importance of the proposed Fire Code changes in order to change the threat assessment, particularly as it related to the cost of home insurance, and suggested the proposed changes constituted minor landscaping/vegetation changes that would reduce the threat of losing insurance on a community-wide scale, a fact that would be communicated to the public.

Chief Winnacker clarified in terms of High Density that it was important that infill construction be constructed in a manner that allowed residents to shelter-in-place to prevent evacuations of those structures thus increasing the strain on an already overburdened road system. The MOFD had been clear in working with the City of Orinda regarding its infill development. The proposed Fire Code changes applied to residential construction, single-family homes, and new construction. He also clarified the MOFD imposed a fine of \$500 per day for unpermitted construction. For uninhabited property with an absentee land owner, if needed, the MOFD could place a lien on the property in order to conduct the required abatement. The MOFD had placed seven liens on properties in 2019.

Chief Winnacker cited the property at 90 Greenfield Drive where the MOFD had done the abatement work and had placed a lien on the property. The MOFD did its best to work cooperatively with a property owner prior to placing a lien on a property. He reiterated that once the changes were adopted, they would become part of the Fire Code. Contra Costa County would continue to enforce the Building Code and the residential code portion. He also clarified the waiver of remoteness requirement for large development road access with a Fire Protection

Plan, and used the Indian Valley property as an example where he had made the determination that a remoteness element was not practical on that property and alternate measures would be considered, specifically a horseshoe pattern through the community. Because of that situation and possibly others in the future, it was the intent to enshrine that regulation in the Fire Code.

Chief Winnacker explained that a Fire Protection Plan would have to be reviewed and approved by the Fire Code Official prior to going into effect and may include components such as modifying fuels to a certain standard, installation of active and passive suppression systems and restriction on the number of homes that could be built.

A Fire Protection Plan had been required for the J&J Ranch property in the City of Orinda, and included modifications to fuels around the roadway and wider road widths, and Chief Winnacker emphasized that a variety of factors would go into the acceptance of a Fire Protection Plan. He also confirmed that he had conversations with some of the major property owners regarding existing undeveloped land which had been non-compliant for years and which he described as the subject of ongoing discussions.

PUBLIC COMMENTS OPENED

Gerald Spielvogel, Moraga, appreciated the MOFD's efforts although he respectfully disagreed that remediation would be simple, particularly the requirement for at least a two-foot air gap between the ground and vegetation within two feet of structures. He suggested it would be better to check with nurseries given that certain plantings with single stems could be easily trimmed to meet the two-foot requirement, but many foundation plantings all over Town would have to be removed and replaced. It was also possible that once the planting had been trimmed back to meet the requirement, it may become unsightly and ultimately require removal. He valued the intent of the effort but suggested that the MOFD had underestimated the cost of implementation. He sought clarification as to whether a wooden deck would be defined as a structure and whether the proposed Fire Code changes would apply.

Ivan Gold, Moraga, did not disagree with the MOFD Fire Chief's aspirations but encouraged the Town Council to review the text of the current Ordinance which had some issues in terms of homeowners' costs and abatement. When the proposal had first been proposed publicly, the Fire Chief had noted Mill Valley had a similar experience and had initially recommended a five foot hardscape, which had ultimately been reduced to three feet. He believed the proposal would mandate a warning track around every home that would be gravel, concrete brick pavers or bare ground. Mill Valley's Ordinance had been limited to the Very High Risk Areas of that city, representing around 75 percent of that community, whereas Moraga's would be the entire Town since the MOFD proposal encompassed the entire district.

Mr. Gold noted that one of the issues in Mill Valley had been the requirements of the California Environmental Quality Act (CEQA). The proposed Fire Code changes would mandate physical changes potentially to every home in the Town, result in direct physical changes to the environment including removal of vegetation and potentially leaving bare ground on hillsides, where the erosion and cumulative effects, in his opinion, were not categorically exempt from CEQA. The actual cost to residents had not been addressed nor had the cost of compliance. He added that during an informational presentation at a community meeting, the MOFD Fire Chief had stated his objectives were inconsistent with the semi-rural character of Moraga.

Mr. Gold urged the Town Council to review the General Plan given that the semi-rural character was one of the foundations of the General Plan. He urged the Town Council to review the definitions in the Ordinance, particularly the definition for combustible materials which he believed meant a homeowner could not have a wooden piece of lawn furniture with a cushion

within two feet of a home. In addition, the inspection process would require a fee that was currently undefined.

William Walker, Moraga, disagreed with the previous speakers on the challenges the proposed Fire Code changes would have on the community. While it would result in some challenges for homeowners, he did not see it would take more than a day's work or people could be hired to do the work. If the proposed Fire Code changes resulted in the prevention of embers potentially starting a large fire, he would be willing to do the work.

Graig Crossley, Moraga, noted the Town Council was the policy-making body for the Town and it behooved the Town Council to consider the ideas offered by the MOFD Fire Chief and consider what needed to be done to protect homes in Moraga.

PUBLIC COMMENTS CLOSED

Chief Winnacker acknowledged the proposed Fire Code changes would require some plant materials to be modified or removed, and decks would be exempt and were not considered a structure for the purpose of the Fire Code. Contrary to the example offered by Mill Valley, he stated that hardscape had not been mandated while pavers, aggregate, stone, green ground cover, ivy, and green grass would be acceptable alternatives since they were non-combustible. He also acknowledged that the MOFD had not yet looked into whether the proposed Fire Code changes would trigger a CEQA lawsuit or review. He had stated the proposed changes would be inconsistent with the Town's semi-rural character as it had been implemented in many parts of the MOFD, which meant overgrown. If the Town wanted fire safety at some point it would have to modify that characterization. As an example, he noted that the wholesale removal of trees, which largely defined a semi-rural character, were not subject to the proposals, although if the Town wanted to adopt the Best Practices that science and practice had shown reduced the community's risk and exposure to wildfire, changes to how landscaping was done, which would affect the appearance of the community, would have to be considered.

Chief Winnacker added that the elected officials and the community might it could be decided that the proposed Fire Code changes were not supported, but he urged everyone to keep in mind the future potential fire risk exposure and loss of insurance, which he believed outweighed the cost and work required. He emphasized his intent had been to bring forward a progressive and far reaching Fire Code and he understood it would be a significant deviation from past practice and would require significant impacts and changes to the community. While the proposed changes could be modified, they were based on his personal recommendations, established science, and Best Practices, with the greatest return at the lowest cost and lowest impacts to the community in terms of the work required and the aesthetic standpoint.

Chief Winnacker reiterated the MOFD Board had made its presentations and provided its input as presented. He would be returning to the City of Orinda to answer some of that jurisdiction's questions and would defer to the Town Manager as to the next step for the Town of Moraga. His intent was to review all of the comments from the various officials and meet with the City/Town Managers of Orinda and Moraga to determine whether there was commonality between what each entity wanted, attempt to reconcile any issues, and then return for a first and second reading of the Ordinance for final adoption. He emphasized the intent was that the proposed Fire Code changes be implemented for this fire season. The existing Ordinance would continue to be enforced in the meantime.

Town Manager Battenberg asked the Town Council to provide feedback to allow staff the opportunity to raise any issues with the MOFD during upcoming meetings with the City/Town Managers for Orinda and Moraga.

Councilmember Sos asked whether a compendium of comments had been compiled based on the input from the Orinda City Council and its residents.

Chief Winnacker reported that Orinda's City Council had questions about how the Ordinance would be equitably enforced and how enforcement would be prioritized. Enforcement efforts would be prioritized along the major evacuation routes, and once that was addressed the MOFD would start working on parcels adjacent to wilderness areas. The second priority to the evacuation routes and the periphery would be the large undeveloped interior parcels which represented the preponderance of available fuel beds inside the MOFD.

There had been questions whether the proposed Fire Code changes would be implemented immediately or later to allow for adoption and outreach. The MOFD intended that the proposed Fire Code changes would become effective by September 2020. There had also been discussions about the inspection process and Chief Winnacker described the inspection process in detail. There were also questions about how violations would be enforced and he stated there would be no fines for violations. Further questions were how many inspections the MOFD had conducted, how many notices and liens, impacts to property sales or transfers, an extensive and detailed discussion of the WUI designation for the purposes of the Fire Code, and the removal of mulch and combustible material within two feet of a structure. During the community meetings, the removal of mulch, trimming or removal of vegetation within two feet and the WUI designation had been the primary topics of discussion.

Councilmember Woehleke had attended the JM community session, suggested the proposed Fire Code changes would be difficult to implement on multiple levels including coordination with the different bodies and reaching a consensus with each jurisdiction. He recognized the complexity of the issue and the challenges the MOFD faced attempting to create regulations that would be acceptable to everyone involved. He emphasized the need to be prepared and consider the reality of the wildfire situation and suggested the proposed Fire Code changes were reasonable, particularly given the consequences of not doing anything.

Vice Mayor McCluer had initially expressed concern with the requirement for a two-foot air gap between the ground and vegetation within two feet of structures and the percentage of homes in Moraga that could lose their foundation plants. He had fewer concerns with the mulch requirement. He would have preferred the regulations be in place earlier than later but recognized there would be costs for many homeowners and requested some flexibility in the enforcement of the regulations, particularly for the elderly.

Councilmember Wykle also expressed concern with the requirement for a two-foot air gap between the ground and vegetation within two feet of structures, which would impact a large percentage of Moraga residents. He suggested the timetable and potential costs to homeowners would be a challenge.

Councilmember Sos expressed concern with the requirement for an exterior fire hazard inspection for real property transfers given the cost, whether the MOFD had the resources to take on that requirement without creating undue delay or cost to the parties involved, and whether it was necessary since if a home had been cited and the property was being sold it was already required to disclose that information. She suggested the requirement for an overlay really had to do with efficiency of enforcement as opposed to promoting fire safety. She was troubled by the waiver of the remoteness requirement for large development road access provided there was a Fire Protection Plan in place, was unsure that would be necessary in that the discretion on the part of the MOFD already existed to make those judgments where it was impractical or impossible to comply with the remoteness requirement, and expressed concern that a waiver being written into the code created a presumption of a waiver that then had to be overcome by the MOFD rather than having the applicant prove the waiver was appropriate

under the facts and circumstances. She sought some guidance on the CEQA/General Plan question, particularly if there was large scale removal of vegetation and whether that would have a CEQA or General Plan implication.

Mayor Korpus agreed that more insight was needed into the CEQA issue. She did not want to inadvertently impose CEQA requirements on residents to get permits to do the work. As to the waiver of the remoteness requirement for large development road access provided there was a Fire Protection Plan in place, she suggested the proposed language implied a very low threshold for getting the waiver. The current law allowed the MOFD the authority to waive with satisfaction in other ways, and if a Fire Protection Plan was in place that could be done. She emphasized that requirement should be clear to avoid the implication of a low threshold for the waiver.

Mayor Korpus noted she liked the requirement for an exterior fire hazard inspection for real property transfers as an opportunity to minimize the pain for all involved by using the equity at the time of the transaction. If there had already been a citation issued that should be disclosed, although the MOFD could not catch and cite everyone as an enforcement tool given its limited resources, having the trigger to automatically have an inspection would be a useful tool. The MOFD could consider a Certification of "Compliance" or "Passage of Inspection" to clarify who would be held financially responsible. She expressed concern with the requirements for exterior sprinklers and emphasized the need to clearly identify the triggers for that requirement. She also believed the exterior maintenance issues would likely result in most of the pushback from residents since it could require out-of-pocket expenses. She sought more clarification on the enforcement.

Chief Winnacker explained that the MOFD had three inspectors and 14,000 parcels and he agreed the MOFD would not be able to inspect all parcels. The prioritization would be those areas outlined in the plan. Receptive fuel beds would not be limited to the perimeter of the Town since embers may travel miles in advance. The requirement for everyone made sense across the board given the potential risk to the entire community, with enforcement as earlier described, prioritized in the evacuation routes and to the perimeter.

Mayor Korpus requested the MOFD craft the Fire Code in a way that allowed residents to creatively address the issues that could enable maintenance of some of the plantings outside. She agreed that compliance with the proposed Fire Code changes may be expensive for some people and she had concerns with the labor, effort and work, but recognized it must be done. She offered her support to the MOFD for the effort.

Mayor Korpus declared a recess at 8:58 p.m. The Town Council meeting reconvened at 9:04 p.m. with all Councilmembers present.

7. ADOPTION OF MEETING AGENDA

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

<p>ACTION: It was M/S (McCluer/Sos) to modify the meeting agenda, with Reports, Items 8. A. and 8. B., to be considered after Ordinances, Resolutions and Requests for Action Item 11. B. Vote: 5-0.</p>

9. DISCUSSION ITEMS

There were no discussion items.

10. PUBLIC HEARINGS

There were no public hearings.

11. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

A. Canyon Road Bridge Replacement Project Agreements

Consider Resolution 13-2020 Authorizing the Town Manager to Increase the Design Professional Services Agreement for Civil Engineering Services for the Canyon Road Bridge Replacement Project No. 14-101 with NV5, Inc., (Walnut Creek) in an Amount of \$202,793 for a Total Amount Not to Exceed \$1,710,797 Contingent on Caltrans Approval (*CEQA Status: Previously Adopted Initial Study/Negative Declaration*)

Consider Resolution 14-2020 Authorizing the Town Manager to Increase the Construction Management Services, Including Construction Engineering, Inspection, and Material(s) Testing for the Construction of the Canyon Road Bridge Replacement Project No. 14-101 with Harris and Associates, Inc. (Concord) in an Amount of \$22,100 for a Total Amount Not to Exceed \$1,021,838 Contingent on Caltrans Approval (*CEQA Status: Previously Adopted Initial Study/Negative Declaration*)

Public Works Director/Town Engineer Shawn Knapp and Assistant Engineer Sharon Chan provided a PowerPoint presentation to highlight the background and tentative construction schedule for the Canyon Road Bridge Replacement Project, consultant services amendments, Caltrans allocation and Engineer's Estimate, bid process and the details of the construction contract. The Town Council was asked to adopt the resolutions contained in the staff report, as shown in Attachments A and C.

Responding to the Council, Mr. Knapp reported that staff had applied for a grant reimbursement with Caltrans for the amended agreements and anticipated the Town would receive reimbursement. If approved, the net to the Town for the Consultant Services Contract Amendments would be \$25,795, with the remainder to be paid by the Federal Highway Bridge Program (HBP) funds.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Councilmember Wykle supported both agenda items.

Councilmember Woehleke reported he had met with the Public Works Director/Town Engineer and had a productive discussion to answer questions. He supported the agenda items.

Vice Mayor McCluer had also met with the Public Works Director/Town Engineer and the Town Manager to discuss a number of items. He too supported the item.

ACTION: It was M/S (Wykle/McCluer) to adopt Resolution 13-2020 Approving and Authorizing an Amendment to Increase the Design Professional Services Agreement for

Civil Engineering Services for the Canyon Road Bridge Replacement Project No. 14-101 with NV5, Inc. (Walnut Creek) in an Amount of \$202,793 for a Total Amount Not to Exceed \$1,710,797 Contingent on Caltrans Approval. (CEQA Status: Previously Adopted Initial Study/Mitigated Negative Declaration.) Vote: 5-0.

ACTION: It was M/S (Wykle/McCluer) to adopt Resolution 14-2020 Approving and Authorizing an Amendment to Increase the Construction Management Services, Including Construction Engineering, Inspection, and Material(s) Testing for the Canyon Road Bridge Replacement Project No. 14-101 with Harris and Associates, Inc. (Concord) in an Amount of \$22,100 for a Total Amount Not to Exceed \$1,021,838, Contingent on Caltrans Approval. (CEQA Status: Previously Adopted Initial Study/Mitigated Negative Declaration.) Vote: 5-0.

B. Canyon Road Bridge Replacement Project Construction Contract

Consider Resolution 15-2020 Awarding a Construction Contract to Bridgeway Civil Constructors, Inc., (Vacaville, CA) in the Amount of \$7,111,020 and Authorizing the Town Manager to Execute the Construction Contract and Contract Change Orders for up to 15% for a Total Amount Not to Exceed \$8,177,673 (CEQA Status: *Previously Adopted Initial Study/Mitigated Negative Declaration*)

Mr. Knapp explained that some of the details for the agenda item had been part of the PowerPoint presentation for the prior agenda item. He highlighted the Caltrans budget allocations, Engineer's Estimate, and analysis of the eight bids that had been received. He also detailed the background, projects completed, and award of construction contract to Bridgeway Civil Constructors, Inc., and highlighted the construction budget and increases. He recommended the Town Council adopt the resolution of approval as attached to the staff report.

Responding to Council, Mr. Knapp clarified the Caltrans budget allocations and reasons for the construction increases. He clarified that the January 2020 budget only included the added costs for the bridge lease and had not reflected any of the current bid prices. Caltrans would review the information submitted by the Town and upgrade the budget to meet the construction award. He confirmed the award of the construction contract to Bridgeway Civil Constructors Inc. had been competitively bid and advertised in accordance with all state requirements. He also confirmed research had shown that projects completed by Bridgeway Civil Constructors Inc. had been completed on time and on budget.

Mr. Knapp acknowledged a request for a reconciliation of the costs. He clarified the allocation request had not been shown to Caltrans and had not been identified in the PowerPoint presentation. He again clarified the Caltrans budget allocations, reasons for the increase in costs which included the bridge lease, with the temporary bridge being leased for two years or more at \$12,000 per month, and with the Caltrans approved budget associated with that number identified at \$8,118,750 times 115 percent. The actual construction estimate would increase, although the bid had come in a bit lower given the added amendments as part of the action previously taken by the Town Council on the two prior agenda items. The Caltrans approved budget would be \$9,916,750, plus the difference between the cost of the amendments, minus the monies saved on the bid times 115 percent.

Councilmember Woehleke and Vice Mayor McCluer noted they would have liked to have seen the information outlined by staff in writing.

Ms. Battenberg stated the Town Council could award the construction contract and that information could be provided at the next Town Council meeting consistent with the Town's application with Caltrans.

Mr. Knapp clarified that whatever was provided to the Town Council might differ slightly from the final budget allocation request presented to Caltrans.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Mayor Korpus did not find it necessary for staff to provide something in writing since there was enough general understanding of the costs that had been discussed, the construction contract pricing was clear and available, and a component of the actual number. She did not need to see the last dollar on the final number to be able to render a decision.

Councilmember Woehleke understood the request was to approve and award a construction contract that would bring a long protracted and highly involved project to an end. The award would likely make the local newspaper and the number for the contract should have the entire story. He believed the information being provided to the Town Council at this time was not the whole story.

Councilmember Sos understood Councilmember Woehleke's concerns although the focus was on what was being asked, whether the project was sound, had been bid properly, and had the right contingencies. She stated that had been accomplished and supported the award of contract with staff to return with a better methodology on the Caltrans request and how staff had arrived at that number. She recommended that process be followed.

Vice Mayor McCluer recommended a recess to allow staff to prepare that information to ensure it was on the public record. He clarified with Mr. Knapp it would be reasonable for him to return with a revised Caltrans budget, and with a new table with that number to be sent to Caltrans to allow the Town Council a better understanding of the financing. Upon further discussion, **Vice Mayor McCluer** was comfortable moving forward with staff possibly directed to bring it back as a future agenda item.

Responding to Councilmember Wykle, Mr. Knapp reiterated the cost of the temporary lease for the bridge was \$12,000 per month. Ms. Battenberg added the cost of the leased bridge in the Caltrans request was approximately \$288,000.

Councilmember Wykle explained that the Town Council was being asked to award a construction contract for \$7,111,020 including a 15 percent contingency which would be \$8,177,673, with the Town Manager noting that the NV5 contract was now \$1,545,810 due to the fact that Amendments 1 and 2 had been paid by the temporary bridge. The Harris and Associates contract was now \$1,021,838 per the staff report, with the approximate temporary leased bridge cost at \$288,000. As such, those were the major elements included in the Caltrans budget for a total of approximately \$11,033,021.

Councilmember Wykle stated that staff had done a great job to get the bid right, as evidenced by the bid results and the number of bids received.

Councilmember Woehleke remained concerned the project had been ongoing for a number of years and they were now up to a total cost over \$11 million, with the costs continuing to increase with some explanations, although there remained an integrity issue.

Councilmember Wykle had no problem with the integrity of what the current and former Town Councils had done. He pointed out when a landslide hit the bridge, the cost increased and with another landslide the bridge had to be lengthened and moved, with the cost having further increased as outlined in the information provided. He stated there was not an integrity issue but a landslide issue which had caused additional damage resulting in increased costs.

Mayor Korpus agreed with Councilmember Wykle that the increases in cost for the construction of the bridge had been clearly laid out multiple times and were related to the cost of materials, widening and lengthening of the bridge, and various problems that had happened including adding more environmental requirements. She had no concern whether the decision before the Town Council would impact anyone's integrity, the reliability of the decision to be made, or whether the decision was well founded. She stated the Town Council was now dealing with the isolated issue of whether to approve the construction contract for the subject contractor, with the process having been followed to obtain the contractor and bid. She found that staff had done an admirable job pulling the bid together and under the estimates. She also commended staff for having the cost of the temporary bridge included in the Caltrans budget. She fully supported the approval of the agenda item.

Councilmember Sos also had no concerns about the integrity of the process or the decision before the Town Council with staff having provided detailed recitation of the cost on numerous occasions and the reasons why the cost had increased. She found the process had been incredibly transparent and objective. She suggested there was sufficient information before the Town Council to award the construction contract.

Councilmember Woehleke suggested the comments provided some credibility and he commended the Town Council for doing its job.

Vice Mayor McCluer commended staff for providing the detail on the bid strategy. He supported the item and suggested there was an opportunity to communicate to residents why the original cost had increased from \$3 million now close to \$12 million. He suggested a table with more information on the estimates would help to communicate that to the Town Council and the community. He stated there was no credibility issue.

ACTION: It was M/S (McCluer/Woehleke) to adopt Resolution 15-2020 Awarding a Construction Contract to Bridgeway Civil Constructors, Inc. (Vacaville, CA) in the Amount of \$7,111,020 and Authorizing the Town Manager to Execute the Construction Contract and Future Contract Change Orders for up to 15% of the Contract Amount in the Amount of \$8,177,673. (CEQA Status: Previously Adopted Initial Study/ Mitigated Negative Declaration.) Vote: 5-0.

The Town Council returned to Item 8 at this time.

8. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Korpus – Reported she had attended the Moraga Liaison meeting and listed numerous upcoming community events of interest; Town Staff Appreciation luncheon at the Hacienda de las Flores hosted by Moraga Citizens Network (MCN); Chamber of Commerce Business and Non-Profit of the Year Award Dinner recognizing Mechanic's Bank as the Business of the Year and Lamorinda Community Emergency Response Team (CERT) as the Non-Profit of the Year and had presented Certificates of Appreciation on behalf of the Town; and a

Special Town Council meeting to interview applicants for the Town's Committees/Commissions.

Vice Mayor McCluer – Reported he had attended the Town Staff Appreciation luncheon at the Hacienda de las Flores; Special Town Council meeting to interview applicants for the Town's Committees/Commissions; and had spoken to the owner of Bay Area Ballplayers Association to listen to concerns, referring the owner to the Town Manager. He had received comments about the pedestrian situation at the Corliss Drive crosswalk and relayed the concerns to the Town Manager and Police Chief; had met briefly with the major property owner in Moraga regarding the proposed MOFD Fire Code changes; followed up with resident Ian Crew on the Federal Aviation Administration's (FAA) plans to reroute flights over the Town; and spent time knocking on doors for the Measure M Campaign.

Councilmember Sos – Reported she had attended an orientation for new Boardmembers for RecycleSmart and attended the Personnel Committee meeting and briefed the Council on the discussions; Town Staff Appreciation luncheon at the Hacienda de las Flores; Lamorinda School Bus Transportation Agency (LSBTA) meeting and briefed the Council on the discussions; and a Special Town Council meeting to interview applicants for the Town's Committees/Commissions.

Councilmember Woehleke – Reported he had attended a meeting of the MOFD Board of Directors and briefed the Council on the discussions; and the Special Town Council meeting to interview applicants for the Town's Committees/Commissions.

Councilmember Wykle – Reported he had attended the Chamber of Commerce Business and Non-Profit of the Year Award Dinner; and a Special Town Council meeting to interview applicants for the Town's Committees/Commissions.

- B.** **Town Manager Update** – Town Manager Battenberg thanked the MCN, Moraga Garden Club, Moraga Education Foundation (MEF), Kiwanis and Rotary Clubs and all service groups for the Staff Appreciation luncheon at the Hacienda de las Flores expressing appreciation for a photograph and piece of art that had been created as a thank you to Town staff. A Joint Lamorinda Council meeting had been scheduled for March 19 at 7:00 p.m. at Saint Mary's College (SMC) to be hosted by the Town of Moraga. She re-introduced Shawn Knapp as the new Public Works Director/Town Engineer and asked the Police Chief to provide an update on the status of a Community Oriented Policing Service (COPS) Grant.

Chief of Police Jon King reported the latest About Town Newsletter would include Part 1. Crime Statistics for 2019, with 2018 the lowest year in the Town's history, although in 2019 there had been a 39.6 percent increase in property crimes, thefts and assaults. The Moraga Police Department had closed about 20 cases as a result of recent arrests. In connection with that, the Town had been noticed by alarm.org, a nationwide group which rates the safety of cities based upon crime statistics, that Moraga had been ranked as the 6th safest city in California. He reported that no other East Bay city ranked in the top 10 and the Town had the smallest police force per capita of the cities rated.

Chief King reported he had contemplated applying for a Federal Department of Justice COPS Hiring Grant which would provide \$125,000 for a police officer

position over three years, but the grant required the Town to come up with a match of over \$80,000 each year, which was a challenge since the Town did not have the budget capacity to make that happen. He would continue to consider other grant opportunities.

Chief King also reported he had personally monitored the pedestrian crosswalk situation in front of Campolindo High School and had officers at Corliss Drive. Special enforcement details had been scheduled for Friday, February 27 for general traffic issues and specifically crosswalks.

Chief King added that while some crimes had increased, the Town remained one of the safest cities in the state. The largest increase had been in simple thefts including retail thefts and thefts from unlocked vehicles. The Police Department was working with the business community and most recently TJ Maxx on an organized retail theft ring/stolen vehicle case which had been reported in the Lamorinda Weekly, and the suspects, associated with other retail thefts in the Bay Area, had been apprehended. He noted that most thefts were preventable and the Police Department had responded to all calls and reports of activity.

Chief King acknowledged other jurisdictions had also experienced an increase in similar crimes due to changes in the limit of felony theft cases and a reduction in the penalty levels for narcotics cases.

12. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

Vice Mayor McCluer requested a future agenda item include a discussion of moving Reports to the end of the meeting agenda, and Requests for Future Agenda Items after Public Comment on non-agendized items. **Councilmember Woehleke** seconded the request.

Councilmember Wykle stated the agenda had been previously re-organized and improved and he would not support a modification to the format of the meeting agenda; **Mayor Korpus** did not support the motion; and **Councilmember Sos** suggested the issue had previously been addressed, the request had not been supported at that time, and her position had not changed.

Vice Mayor McCluer withdrew his motion.

13. COMMUNICATIONS

There were no communications.

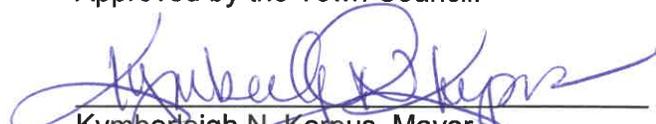
14. ADJOURNMENT

ACTION: It was M/S (McCluer/Wykle) to adjourn the meeting at 10:25 P.M. Vote: 5-0.

Respectfully submitted by:


Marty C. McInturf, Town Clerk

Approved by the Town Council:


Kimberleigh N. Korpus, Mayor