



**TOWN OF MORAGA  
REGULAR MEETING**

**May 13, 2020  
MINUTES**

**7:00 P.M. Regular Meeting**

**TELECONFERENCED MEETING LOCATION ONLY**

**\*COVID-19 NOTICE\***

**THIS MEETING WAS CONDUCTED PURSUANT TO THE PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20, WHICH SUSPENDED CERTAIN REQUIREMENTS OF THE BROWN ACT, AND PURSUANT TO THE MARCH 31, 2020 AND APRIL 29, 2020 ORDER OF THE HEALTH OFFICER OF CONTRA COSTA COUNTY, WHICH PERMITTED THE TOWN TO CONDUCT ESSENTIAL BUSINESS UNDER THE ORDER AS AN ESSENTIAL GOVERNMENTAL FUNCTION**

**Consistent with Executive Orders Nos. N-25-20 and N-29-20 from Governor Gavin Newsom and the Contra Costa County Health Officer dated March 31, 2020 and April 29, 2020 Shelter in Place Orders, the May 13, 2020 meeting was not physically open to the public.**

***All Town Councilmembers and Town staff participated in this meeting via teleconference.***

**1. CALL TO ORDER**

The regular meeting was called to order at 7:05 p.m. by **Mayor Kymberleigh Korpus**.

**ROLL CALL**

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

Councilmembers absent: None

**2. PLEDGE OF ALLEGIANCE**

Assistant Town Attorney Denise Bazzano led the Pledge of Allegiance.

**3. SPECIAL ANNOUNCEMENTS**

There were no special announcements.

**4. PROCLAMATIONS AND PRESENTATIONS**

- A.** Presentation by Pacific Gas and Electric on the St. Mary's Road Gas Pipeline Replacement Project – Phase 2

Marcos Montes, Public Affairs and Tom Guarino, Government Relations, Pacific Gas & Electric (PG&E), provided a PowerPoint presentation of the PG&E St. Mary's Road Gas Pipeline Replacement Project – Phase 2, and introduced the project scope and background to install

approximately 450 feet of new pipe across from the bridge south of S. Lucille Lane on St. Mary's Road and retire the existing pipe in its current location that crossed the bridge so as to increase capacity of the pipeline. Minor vegetation work would also be required to take place at the bridge to complete the work.

An overview of the project location and workspace was provided, the complete road closure from S. Lucille Lane to the driveway at Community Center Park during construction hours was identified along with the required traffic detour during the construction period allowing only local traffic along St. Mary's Road within the work area during construction hours. PG&E would be meeting with first responders in advance of the work to discuss safety precautions and to develop a plan in case of an emergency. An overview of the extensive Community Outreach Plan was presented to ensure residents would be informed of the details of the project.

Additional PG&E electrical work included system hardening and enhanced vegetation management work (on St. Mary's Road, Moraga Road and Rheem Boulevard) which had also been planned in 2020 to increase capacity, safety, and reliability of the electric system. A comprehensive traffic control plan had been prepared to allow PG&E the ability to complete the electrical projects while the Gas Pipeline Project was also under construction.

It was clarified that 70 trees within the Town of Moraga's limits had been identified as having the potential to be hazardous and fall on PG&E transmission lines. PG&E's use of the Tree Assessment Tool (TAT) when evaluating the health of a tree was described along with the authority that allowed PG&E to remove any trees deemed hazardous. PG&E would obtain any necessary ministerial Town permit that could be associated with the work, continue to finalize its schedule for the enhanced vegetation management work, and conduct additional community outreach prior to the beginning of any planned work.

The Gas Pipeline Replacement Project was scheduled to commence on June 1, 2020 with work hours from 7:00 a.m. to 6:00 p.m., Monday through Friday, and last approximately 11 weeks.

Responding to the Council, Mr. Montes clarified that PG&E had met with the Town's Public Works Director/Town Engineer prior to the COVID-19 pandemic to flag Town projects, and PG&E had made contact with the City of Lafayette's Police Department and other first responders. He also clarified that in 2018 when PG&E had replaced most of the pipeline on St. Mary's Road, all agencies had been brought together to create a coordinated plan. PG&E recognized the project would create additional traffic and in the event of an emergency a plan would be in place to notify PG&E to clear the road for first responders. He further clarified that PG&E undergrounding had not been planned for St. Mary's Road, which process was lengthy and complex and took longer to repair than overhead lines.

Mr. Montes reported that PG&E's community outreach team was in the process of distributing notification letters and e-mails to the public, and a virtual open house invitation would be distributed to the community to identify the hours of construction and provide PG&E contact information. He identified the concerns that had been expressed, including those from the Lafayette City Council that had been taken into account to minimize all impacts, particularly with respect to the enhanced vegetation management work intended to prevent wildfire, hoped to be completed by September, and explained the intent was not to do all of that work in the areas identified at the same time to avoid creating a traffic situation. PG&E would work with Town staff on that element of the work.

Mr. Montes emphasized the community outreach planned for the Gas Pipeline Replacement Project that had been conditioned in a permit to be issued by the City of Lafayette. He reiterated the work would be confined to a specific area, and PG&E had a plan to clear the road quickly in the event of an emergency planned with first responders. No power interruptions

were expected as part of the project. In the event the current COVID-19 Shelter-in-Place (SIP) order continued beyond May 31, 2020 that would also be taken into account with the communities to be notified well in advance if that occurred. Additionally, the location of the staging area had yet to be determined but would not be the same location as PG&E had used for past projects at the end of St. Mary's Road and Rheem Boulevard.

#### PUBLIC COMMENTS OPENED

Town Manager Cynthia Battenberg reported no comments from the public had been received.

#### PUBLIC COMMENTS CLOSED

**Mayor Korpus** thanked PG&E for the presentation and update. She looked forward to a successful project which hopefully could be completed earlier than scheduled.

Mr. Montes thanked the Town Council and invited Councilmembers to contact PG&E with any further questions.

### 5. PUBLIC COMMENTS AND SUGGESTIONS

The following comments were received via e-mail and read into the record by **Mayor Korpus**.

Marty Brinkerhoff, Moraga, *The pandemic has terribly impacted our community for those already challenged in securing the basics of shelter, food, and health care, and now for so many previously self-supporting families and individuals have lost their source of income. The Kiwanis Club of the Moraga Valley Foundation is committed to help, and we're asking those who are able, to help too. Hunger must not be a casualty of this pandemic. The Food Bank of Contra Costa and Solano County, Monument Crisis Center in Concord and Meals on Wheels of CC County are three of our local organizations with long successful records of fighting hunger by putting food on the table for children, adults, and the elderly in need. These agencies are experiencing an unprecedented demand for food and support and need help to avoid turning away those in need. Our club will match your tax-deductible donation up to a maximum of \$30,000 and accept non-matching donations beyond this amount during our fundraiser from April 30 to May 21. All donations will be distributed equally to these three outstanding non-profit agencies. Go to moragavalleykiwanis.org to learn more about this campaign and to donate. Thank you in advance for your generosity to help Feed the Need, by partnering with Kiwanis to help feed those in our community who are in peril, as we all step up to fight this pandemic together.*

Thomas Black, Moraga, *When relocating here from Lafayette where I had resided for sixteen years, I was surprised and disappointed to learn that the Town of Moraga has a comparatively lax Ordinance regarding permissible construction hours, and insofar as I am aware, no noise Ordinance per se. My understanding is that noise complaints are referred to the Police Department for investigation. As a Moraga resident keenly interested in quality-of-life matters, I would think it appropriate for the Council, if so disposed convene a task force to explore possibilities and, in a written report to the Council, make recommendations for provisions of a formal noise Ordinance as it applies both to construction and non-construction activity. I would be happy to serve on said committee. For what it is worth, both Orinda and Lafayette have strict noise Ordinances written into their respective municipal codes, as does virtually every other municipality in the Bay Area. Lafayette also has a Noise Control Officer. Thank you for your attention to this matter.*

Town Manager Cynthia Battenberg reported that staff had responded to Mr. Black's concerns.

Moraga Chamber of Commerce, Town Council and staff. It is safe to say we are living in a new world. We have spent the last several months social distancing, wearing protective masks and waiting in lines to enter stores. The flow of information and updates redefines warp speed. Daily information comes from the experts, the White House, the Governor, the County, the Internet and our neighbors and NextDoor. In order to give the community an opportunity to receive a firsthand accounting of the current state of Moraga, the Chamber would like to invite Town staff and a representative from the Council to join us in a panel discussion via Zoom (or comparable platform) to reach out to the citizens of our community, much in the format of our monthly Liaison meetings. The agenda could include the Town Manager's update, how the new order impacts current work flow and any current or projected fiscal information. Chief King could offer an update of the current crime statistics and latest scams. Parks and Recreation could give an update as to what parks are open, what camps that will be run and I would recap pertinent information from the business community. We would also encourage the community to pre-submit any questions that, if relevant, could be addressed during the session. The Chamber is offering to develop the agenda, moderate and promote the event. Our Mission Statement includes not only development and advocacy of the business community but to provide support and information to the community at-large. We feel that this informational opportunity supports that tenant. Respectfully submitted, Kathe Nelson, Executive Director.

**6. ADOPTION OF CONSENT AGENDA**

**A. Approval of Consent Items**

Consent Agenda Items 6.2, 6.6, and 6.8 were removed from the Consent Agenda.

**PUBLIC COMMENTS OPENED**

Ms. Battenberg reported no comments from the public had been received.

**PUBLIC COMMENTS CLOSED**

**ACTION: It was M/S (Sos/Wykle) to adopt Consent Agenda Items 6.1, 6.3, 6.4, 6.5, and 6.7. Roll Call Vote: 5-0.**

6.1	<u>Accounts Payable</u> Claims for: 04/15/20 (\$11,453.48); 04/24/20 (\$156,775.00)	Approved
6.2	<u>Approve Minutes</u> for the Town Council Regular Meeting on March 11, 2020	Removed
6.3	<u>Approve Minutes</u> for the Town Council Special Meeting on March 23, 2020	Approved
6.4	<u>Approve Minutes</u> for the Town Council Special Meeting on April 8, 2020	Approved
6.5	<u>Easement Ordinance Amendment</u> Consider Waiving the Second Reading and Adopting Ordinance 288 Amending Ordinance No. 57 Relating to Easements (CEQA Status: Exempt)	Approved
6.6	<u>Local Early Action Planning (LEAP) Grant Funds</u> Consider Resolution 26-2020 Authorizing the Town Manager to Submit an Application to the State of California, Department of	Removed

*Housing and Community Development (HCD), for Receipt of Local Early Action Planning (LEAP) Grant Funds and Authorizing the Town Manager to Execute a Grant Agreement and Other Grant Related Documents*

- 6.7 Continue Local Emergency Due to Coronavirus (COVID-19) Approved  
Consider Resolution 25-2020 Renewing and Continuing the Local Emergency Relating to COVID-19 as Proclaimed by the Director of Emergency Services on March 17, 2020 and Ratified by Town Council on March 23, 2020
- 6.8 Fire Prevention Ad Hoc Committee Removed  
Confirm Appointment of Mayor Korpus and Councilmember Woehleke to the Fire Prevention Ad Hoc Committee

B. Consideration of Consent Items Removed for Discussion

1. Approve Minutes for the Town Council Regular Meeting on March 11, 2020

**Councilmember Woehleke** requested an amendment to the second paragraph of Page 4 of the March 11, 2020 Town Council Regular Minutes, as follows:

***Councilmember Woehleke** commented that the redline edits proposed to his comments, as shown on Page 5, had been inaccurately reported. He disagreed with the Mayor's edits to his comments and asked that his comments stand "as is."*

PUBLIC COMMENTS OPENED

Ms. Battenberg reported no comments from the public had been received.

PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Sos/McCluer) to approve Minutes for the Town Council Regular Meeting on March 11, 2020, as modified by Councilmember Woehleke. Roll Call Vote: 4-0-1. Abstain: Wykle.**

2. Local Early Action Planning (LEAP) Grant Funds  
Consider Resolution 26-2020 Authorizing the Town Manager to Submit an Application to the State of California, Department of Housing and Community Development (HCD), for Receipt of Local Early Action Planning (LEAP) Grant Funds and Authorizing the Town Manager to Execute a Grant Agreement and Other Grant Related Documents

**Councilmember Woehleke** understood the intent for the LEAP funds was to assist cities in preplanning for the upcoming Regional Housing Needs Allocation (RHNA) changes. If the streamlining of the planning and approval processes was inconsistent with the RHNA objective, he asked whether that would be confusing and could possibly end up using all of the available grant funds.

Ms. Battenberg reported the Town had received another grant for the streamlining of the plan review process, had listed multiple initiatives including the Moraga Center Specific Plan (MCSP), and had designated some of that money to the MCSP. She did not see that some of

the funds from the LEAP grant would be required for the streamlining, but in the event of a shortfall, would like flexibility if it was not entirely needed for the RHNA.

**PUBLIC COMMENTS OPENED**

Ms. Battenberg reported no comments from the public had been received.

**PUBLIC COMMENTS CLOSED**

**ACTION: It was M/S (Woehleke/McCluer) to adopt Resolution 26-2020 Authorizing the Town Manager to Submit an Application to the State of California, Department of Housing and Community Development (HCD), for Receipt of Local Early Acton Planning (LEAP) Grant Funds and Authorizing the Town Manager to Execute a Grant Agreement and Other Grant Related Documents. Roll Call Vote: 5-0.**

- 3. Fire Prevention Ad Hoc Committee  
Confirm Appointment of Mayor Korpus and Councilmember Woehleke to the Fire Prevention Ad Hoc Committee

**Vice Mayor McCluer** understood the Fire Prevention Ad Hoc Committee would be meeting with the City of Orinda and the Moraga-Orinda Fire District (MOFD) on a quarterly basis. He requested after the quarterly meeting that both the Mayor and Councilmember Woehleke report out to the Town Council on the discussions or any matters of interest.

**PUBLIC COMMENTS OPENED**

Ms. Battenberg reported no comments from the public had been received.

**PUBLIC COMMENTS CLOSED**

**ACTION: It was M/S (McCluer/Woehleke) to confirm Appointment of Mayor Korpus and Councilmember Woehleke to the Fire Prevention Ad Hoc Committee with the Report Back Schedule to be Revised from “As Needed” to “Quarterly.” Roll Call Vote: 5-0.**

**7. ADOPTION OF MEETING AGENDA**

**Councilmember Wykle** offered a motion, seconded by **Vice Mayor McCluer** to move the adoption of the meeting agenda.

On the motion, **Councilmember Woehleke** asked that Public Hearing Item 10. A. be either removed from the agenda or the description be modified. The item had been placed on the agenda as a result of a vote of the Town Council during its November 13, 2019 meeting, at which time the Town Council had approved a discussion item on the subject, not consideration of an Ordinance. Had an Ordinance been the initial direction, he would have voted no at that time. Since the Mayor had already voted no on the request for a discussion item at that time the motion would have failed. He again sought modification to the description of the agenda item or that it be tabled for consideration at another time.

**Vice Mayor McCluer** recalled the Town Council’s November motion on this topic had been due to recent developments in the City of Orinda and that the Town Council should review its policy and have a discussion. He agreed the Ordinance to be presented to the Town Council had gone further than the Town Council had requested, but suggested a discussion could be had on the item subject to modification prior to consideration of an Ordinance.

**Mayor Korpus** stated if Agenda Item 10. A. remained on the meeting agenda her intention had been to break it up into two phases; the first a discussion of whether anything should be done at all. If the Town Council decided to move forward there could be a second discussion on whether to accept or amend the Ordinance or ask for something different.

**Councilmember Sos** suggested the direction offered by the Mayor was acceptable, although she found the Ordinance had been helpful to understand what it could look like if the Ordinance were to be adopted.

**Councilmember Wykle** suggested the item remain on the meeting agenda, as shown, given that it would be discussed either way since the item had been properly noticed.

In response to the Mayor, Ms. Bazzano commented that Councilmember Woehleke had not offered any modification to the motion.

**Councilmember Woehleke** supported the Mayor's recommended direction.

PUBLIC COMMENTS OPENED

Ms. Battenberg reported no comments from the public had been received.

PUBLIC COMMENTS CLOSED

<b>ACTION: It was M/S (Wykle/McCluer) to adopt the Meeting Agenda as shown. Roll Call Vote: 5-0.</b>
--

## 8. REPORTS

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

**Mayor Korpus** – Reported she had attended various briefings and updates regarding COVID-19 and had spoken many times with the Town Manager since the last meeting of the Town Council.

**Vice Mayor McCluer** – Reported he had been contacted by a local Boy Scout regarding a community project to interview a Town Councilmember; a Moraga Rotary member had also been contacted by a Boy Scout regarding an Eagle Scout project and he had referred that individual to the Moraga School District (MSD) and the Town Manager. He also continued to participate in a number of COVID-19 phone calls and webinars; and continued dialogue with Samantha Caygill, Regional Public Affairs Manager, East Bay, League of California Cities, on state and federal funding for local cities.

**Councilmember Sos** – Reported she had attended the RecycleSmart Board meeting; Southwest Area Transportation Committee (SWAT) meeting via Zoom and briefed the Council on the discussions; and provided details of a Lamorinda effort to provide free COVID-19 testing to all residents and staff of senior care facilities in Lamorinda in coordination with Contra Costa County's Department of Public Health, which along with the Moraga Community Foundation (MCF) had information on their websites regarding donations for the effort.

**Councilmember Woehleke** – Reported he had continued to SIP, bicycle around Town to check on the Town, and had prepared for the Town Council meeting.

**Councilmember Wykle** – Reported he had attended a RecycleSmart Board meeting and Audit and Finance Committee meeting via Zoom.

- B.** Town Manager Update – Town Manager Battenberg reported construction on the Canyon Road Bridge had commenced on April 20, 2020 as scheduled, with the original construction hours having been extended Monday through Saturday from 7:00 a.m. to 6:00 p.m. to complete time-sensitive issues. She noted the constraints of the site had been more challenging than predicted and there were safety concerns with operating and keeping the bridge open for some of the work. The contractor began closing the bridge on May 4, Monday through Saturday between 9:00 a.m. and 4:00 p.m. given the safety concerns and there was a system in place to allow emergency vehicles to cross the bridge. Starting next week the schedule would revert to Monday through Friday, 8:00 a.m. to 5:00 p.m. with closures from 9:00 a.m. to 4:00 p.m.

Ms. Battenberg acknowledged the constraints due to the bridge closure and advised that staff would continue to monitor the work in an effort to transition to a stage where the bridge would only need to be closed on an as-needed basis. It was also hoped that absent any challenges the temporary bridge would be removed as early as October 2020. She also reported the Town's new website continued to be scheduled to launch in June and, pursuant to the latest Contra Costa County Health Order, the Town had been able to resume opening and planning for its summer camps subject to specific restrictions, with the camps scheduled to open on June 8, 2020. In addition, Contra Costa County had reported that testing for COVID-19 was available to residents with information posted on the County website.

In response to a citizen request for the Canyon Road Bridge to be open at lunchtime for children to access Campolindo High School, Ms. Battenberg reported the high school was not open at this time and more would be known in the fall. The work on the bridge would continue throughout the summer.

**Councilmember Woehleke** understood that Campolindo High School was providing lunches to some children during the summer which should be confirmed.

## 9. DISCUSSION ITEMS

There were no discussion items.

## 10. PUBLIC HEARINGS

### **A. Short-Term Rentals Ordinance**

Consider Waiving the First Reading and Introducing by Title Only an Ordinance Amending Various Sections of Title 8 – Planning and Zoning of the Moraga Municipal Code to Amend Section 8.04.020 – Definitions, to Include Definitions for “Bedroom,” “Hosted Short-Term Rental,” “Non-Hosted Short-Term Rental,” “Operator,” and “Short-Term Rental” and Establishing Chapter 8.114 – Short-Term Rentals in Order to Regulate Short-Term Rental Units Within the Town (*CEQA Determination – Exempt Pursuant to CEQA Guidelines Section 15061(b)(3) – General Rule Exemption*)

Ms. Battenberg provided the background of the reasons why a Short-Term Rental (STR) Ordinance was under consideration as had been detailed in the staff report.

Assistant Planner Mio Mendez provided a PowerPoint presentation of the STR Ordinance which included an overview of the Ordinance and the main topics for consideration including allowing versus banning STRs, Hosted versus Non-Hosted STRs, listing limitations, permit requirements and regulations and enforcement. He asked that the Town Council consider waiving the first reading and introduce by title only an Ordinance amending various Sections of Title 8 – Planning and Zoning of the Moraga Municipal Code to amend Section 8.04.020 – Definitions, as outlined in Attachment A to the staff report.

Ms. Battenberg, Mr. Mendez, Ms. Bazzano and Chief of Police Jon King responded to questions from the Council and clarified the following:

- The City of Orinda adopted an emergency Ordinance to update its STR Ordinance which included some of the regulations proposed in Moraga's Ordinance. The City of Lafayette was considering an outright ban of STRs, although that city had some current STRs.
- Town staff had reviewed other Ordinances and regulations currently in place including the Noise and Party Ordinances which did not address the impacts of STRs. The Home Occupation section of the Moraga Municipal Code (MMC) had been briefly reviewed by Town staff, along with research from other jurisdictions which had also been conducted. Town staff had looked at the issues in terms of preservation of neighborhoods and safety leading to the staff recommendations as outlined in Attachment A.
- The Town of Moraga had few STRs with no reported issues to date.
- Town staff had spoken with planning staff from the City of Clayton (similar in size as Moraga) which had no STR regulations. STRs had not been banned in that community, and it was assumed they were allowed in the City of Clayton.
- In terms of RVs and campers being used as STRs in Moraga, staff had no specific addresses that could be researched and located, but if an RV or camper was parked on the street, it could lead to a code enforcement complaint.
- Town staff had received no complaints from residents regarding negative impacts to neighborhoods, noise, or violence related to STRs in Moraga (other than the fact two Moraga Police Officers had been some of the first officers on scene during the October 2019 incident in Orinda).
- Chief King spoke to his prior experience with the East Bay Regional Park District (EBRPD) when there had been situations where picnic areas had been reserved and gatherings had become too large resulting in a public safety issue, a concern shared with the situation that had occurred in the City of Orinda; and the potential for such an occurrence with a STR or Airbnb in Moraga, particularly when the unit was not owner occupied and the property owner was not present. It was his opinion that there should be some control over STRs. He added that many rentals that involved Saint Mary's College (SMC) students typically involved long-term rentals, deposits, background and reference checks and at times the leases had been co-signed by parents. Oftentimes such rentals had been managed by a property management company. Many of the property management companies had also adopted the Town's Party Ordinance as part of their rental agreements. In the case of STRs, no references were checked.
- Chief King acknowledged there had been some loud and unruly parties which involved some long-term leased properties by SMC students in the past and situations where Campolindo High School students had been involved in their parents' homes. He said

he had not contacted or spoken with Airbnb, but understood they had addressed some of the issues being discussed through policy changes.

- Staff was aware of some regulation of home businesses at the State level, but nothing pertaining to specific regulations for STRs.
- Staff had not spoken to any of the property owners of the three Non-Hosted STRs in Moraga.
- Limiting the total number of days per year for a STR to 90 days had been a common regulation for those Ordinances already adopted in other jurisdictions and was intended to maintain residential neighborhoods and the housing stock.
- Many of the STRs in Moraga had been advertised as a place to stay when visiting San Francisco and were likely attractive given the close proximity of Moraga to the freeway, with more accessibility to the Bay Area Rapid Transit System (BART).
- Requiring a bond for Non-Hosted STRs may potentially help the Town to recover any costs for policing but it would not necessarily prevent bad behavior.
- Moraga did not have any hotels and the closest hotel was located in the City of Lafayette.
- The positive impacts of STRs to the Town of Moraga had not been researched.
- The proposed STR Permit Fee of \$500 would cover the cost of the administration for the program, but not the program. While staff recognized the Town Council may decide not to set any fees to recover costs, staff found the proposed fee to be reasonable.

#### PUBLIC HEARING OPENED

The following comments were received via e-mail and read into the record by Ms. Battenberg and **Mayor Korpus**.

Lynda Deschambault, *This is Lynda Deschambault, 30-year Moraga resident. Former Mayor and Councilmember I would prefer to be participating and offering these comments, expressed in my own words, with my own 3-minute timing. Please open the Zoom conference you are now all using this evening --so your constituents may comment directly in that way as well. I have practiced this and it is closer to 4 minutes than 3. I usually modify as I am reading, and I thank you in advance for your full consideration. It is possible I am the only Airbnb host at the meeting this evening, and I believe my input is essential. I will also offer and I am happy to answer questions. Re: staff report Item 10A.: "Staff recommends establishing regulations and a new permitting system, including enforcement mechanisms, on short-term rental owners/operators"*

*I support your efforts and agree that we need to be sure we are not vulnerable to having a tragedy similar to the one in Orinda. I believe the two critical elements to increase our safety, are not fully discussed in tonight's staff report; and would have prevented what happened in Orinda. 1. Crack down on Absent Landlords. The home in Orinda, had received multiple complaints and multiple reports over time. Unlike Orinda, Moraga is a college town and has dealt with absent landlords and these types of parties for a long time. While I was on the Council in around 2005 we spent hours of staff time putting an Ordinance in place to address this. Making sure landlords are not absent, and they are held legally liable for activities in their homes. We have a system put in place already. (reference to the MMC here). I believe a staff analysis will show that we are fortunate to have this type of Ordinance in place in Moraga, and*

prevents the problem as it occurred in Orinda. 2. Support our Police. Are we sufficiently staffed and funding our Moraga police force? The call to come to the home in Orinda was received at 9:25 pm, but officers were tied up with other important enforcement activities and did not arrive on scene until 10:50 pm—an hour and a half later, and moments after the shooting. Could we please include a staff discussion on ways we can better support our police. Perhaps with an on-call back up FTE, or other way we can prevent the problem as it occurred in Orinda. These two important discussions are currently absent from the staff report this evening and I request it be reviewed and analyzed fully ---before any other action or policy. It is quite likely, that you will find that these two items will prevent what happened in Orinda, and no further action is necessary. However, if your goal is to start a new Business Permitting system. I have two main concerns: Outreach: The Moraga Chamber of Commerce, and the owners of the 19 Moraga small business listings that staff is proposing to legislate, were NOT notified. Yesterday, I sent the link to tonight's staff report to most of them, but we can assume with Shelter in Place, those Airbnb managers may not have time to review and engage this evening. It would be irresponsible of the Council to vote on requiring Moraga Airbnb rentals to be licensed without more input from the community. Please consider postponing the vote until after the shelter in place is lifted and the community has the opportunity to respond. Business Registry, permits and fees: I have always suggested in Revenue Enhancement recommendations that the Town of Moraga shall require all businesses to register and to pay a business fee. This should be applied across the board to all businesses of all types. It is critical that we not just single out 19 small property management businesses. When this item comes back for review, please include opportunities to expand any new Permitting system in a non-discriminatory way to hundreds of businesses in our Town. We can begin with the more than 50 businesses registered on Dunn and Bradstreet. (link provided here). Business Registration and fees should be applied to everyone, and a tiered approach based on reported income would make the most sense. Under \$20K/year a business will pay \$50 a year fee...

Note: Ms. Deschambault's comments were not read entirely into the record due to the three-minute time limit. Hard copies of the email had been provided to the Town Council and were part of the public record.

Greg Jizmagian, To whom it may concern. I would like to register my comment that I'm strongly opposed to the Short-Term Rental Ordinance as proposed. This is an overly restrictive reduction of property rights when smaller restrictions could be in place to achieve the desired outcomes. The proposed ban on Non-Hosted Short-Term Rentals would make life worse for Moraga residents by 1) restricting our ability to rent our homes as additional income when we are on vacation or traveling 2) restricting our ability to have family members rent nearby homes for extended visits such as for the birth of a new grandchild. It is clear based on the data provided in the recommendation that with only three existing Non-Hosted Short-Term Rentals this is not a current problem. Furthermore, the stated benefit of reducing the likelihood of large disruptive gatherings occurring in Short-Term Rentals could be achieved by less restrictive means such as prohibiting exactly that with owner liability for infractions. Despite citing safety as the reason for the Ordinance the recommendation also includes a ninety (90) days in a calendar year limit. The recommendation states that "given the current Bay Area housing crisis staff believes that it is in the Town's best interests to minimize the impacts of Short-Term Rentals on the availability of housing stock in the community." Given the existence of only three existing Non-Hosted Short-Term Rentals there is no evidence that Non-Hosted Short-Term Rentals are a cause of the Bay Area housing crisis. Without evidence that this part of the Ordinance will solve any problem we should not restrict private property rights. Best, Greg Jizmagian, Moraga resident.

PUBLIC HEARING CLOSED

**Mayor Korpus** declared a recess at 9:07 p.m. The Town Council meeting reconvened at 9:16 p.m. with all Councilmembers and members of Town staff present via teleconference locations.

Ms. Battenberg reported no additional public comment had been received during the recess period for Item 10. A.

**Councilmember Sos** recognized the Orinda situation was a terrible tragedy and Moraga was fortunate that nothing similar had happened in the Town, but it had shone a light on the fact that Moraga had no established regulations regarding STRs in the community. She suggested it was the job of the Town Council not to overreact and respond in a way that was overly intrusive and prescriptive, and completely out of proportion with the risks the Town was trying to address, but at the same time not to underreact by doing nothing.

**Councilmember Sos** acknowledged the risk of the Orinda tragedy happening in Moraga was low but it was not zero and the Chief had opined that regulation and control were needed. She found that anything that could be done to further reduce the risk and protect residents and residential neighborhoods should be done. She suggested the timing was right now given the current limit of STRs in Moraga and doing it while the numbers were low would minimize the impacts and maximize the predictability and certainty for the future. She urged the Town Council to act in a way that was simple, straightforward, and which harmonized the rights of the property owners with the overarching interests of the health, safety, well-being of the residents, and the preservation of the residential neighborhoods.

**Councilmember Woehleke** agreed with Councilmember Sos and emphasized that adequate safety precautions were not negotiable. Having read the Planning Commission staff report on this item and having watched the Planning Commission meeting via Livestream, he had also spoken with multiple STR hosts and those who had reached out to him, and had briefly visited an Airbnb site as well as actively read an extended NextDoor thread leading up to the Lafayette City Council meeting on Monday, May 11, regarding STRs.

**Councilmember Woehleke** commented that the owner of a Hosted STR property at the corner of Devin and Draeger Drives, had reached out to him. He [Councilmember Woehleke] had listened to him, had not offered any opinion, and had suggested he contact other Councilmembers to communicate. The STR property owner had his STR in operation for 129 nights in 2019, 69 percent of his clientele were people visiting families in Moraga, two were related to SMC, four related to weddings at the Hacienda, and the STR involved 35 separate visits. Another person Councilmember Woehleke had spoken with had a Hosted STR for 109 days in 2019, 80 percent of the clientele were SMC professors and parents visiting scholars and the like. The majority were separated fathers interacting with their children.

**Councilmember Woehleke** reported he had contacted a neighbor near the Devin and Draeger Drives STR and asked whether there had been any issues and learned the neighbor had been unaware of the existence of the STR in the neighborhood. He spoke to the lack of statistics that STRs in Moraga had caused an issue. He had also been told that Airbnb had established strict requirements including evaluations of hosts and renters. He expressed concern the Town Council may consider the adoption of an Ordinance that involved far more detail than what was needed. Also, given the limited stakeholder engagement and the fact that Moraga did not have any hotels/motels, he wanted assurance there would be an STR option and that the Town would not overreach. Further, if the STRs were limited to 90 days a year, at \$50 per night, as an example, totaling \$4,500 a year for the first year, the property owner would pay 10 percent of that in the permit fee.

**Councilmember Woehleke** supported a regulation of some sort but was not ready to specify regulations given the inadequate stakeholder engagement. The information he had provided

should be incorporated into anything the Town Council did, safety precautions were non-negotiable, and he suggested more work needed to be done on the Ordinance.

**Councilmember Wykle** agreed with Councilmember Sos with the exception that Moraga was at a lower risk than Orinda. He believed Moraga was in the same position as the City of Orinda had been on the night of the tragedy which had involved a STR in that community, since Moraga had no regulations in place and anyone could rent a party house, as had occurred in the past with SMC students.

**Vice Mayor McCluer** found that STRs had increased in popularity and served an important need given the lack of hotels in the Town; however, STRs had experienced an increase in violence and could potentially change the character of a neighborhood. The Orinda incident had resulted in five deaths in 2019, which had not been an isolated incident since six months prior to that date there had been 42 shootings across the country from STRs resulting in 17 deaths. He noted that safety was one of the most important values in the community and a top priority of the General Plan.

**Vice Mayor McCluer** suggested the issue was not what had happened but what could happen in Moraga. He wanted to be proactive and not reactive and do something now as a preventative measure to be balanced with property owners' rights. He believed that having no policy placed the Town at risk and he favored doing something to be discussed further by the Town Council.

**Mayor Korpus** suggested prior to the passage of any Ordinance the Town should ensure that certain criteria had been met including that an Ordinance was necessary to address a known problem, the Ordinance could be and would be enforced, the proposed Ordinance, if enforced, would positively affect the Town in a measureable and meaningful way, and the cost of passing the Ordinance would not outweigh the benefits of doing so. In this circumstance, the Town had no evidence there was a problem, no complaints about neighborhood degradation, there had been no noise issues addressed by the Police Department under the Noise Ordinance related to STRs, and no violence issues. In terms of the potentiality, there was no evidence before the Town Council the Town had a current problem and there were some laws on the books that applied to STRs.

**Mayor Korpus** cited the Town's Home Occupation Ordinance which provided that people could operate businesses out of their homes and which she had interpreted as meaning they could rent a room out even on a nightly basis, and operate that small business out of the home subject to the requirements. If there was too much traffic, or degradation of the neighborhood, that could be addressed through the Home Occupation Ordinance already on the books.

**Mayor Korpus** added in terms of noise and parties, the Town had a Noise Ordinance and a Party Ordinance which could be applied to party situations. The Town had laws on the books to address some of the concerns raised and there were downsides to regulating STRs. She noted she operated a business out of her residence, paid no taxes, fines or fees and was not regulated by the Town, and if someone determined the best and highest use of their real physical property assets was to rent it out as an Airbnb or rooms as an Airbnb, to the extent the Town regulated that, the Town could be taking the food out of children's mouths.

If the intent was to discourage STRs by going the regulation route then that was the route to go, although **Mayor Korpus** suggested there were benefits to having STRs for all of the reasons already stated. She did not see a justification for the Town to do anything. While she was concerned about the potential risk of the type of situation that occurred in Orinda in 2019, she suggested if the Town were to do something it could be done with a few changes to the Town's Ordinance.

**Mayor Korpus** referenced the staff report and the references to the values of maintaining the feel of single-family neighborhoods and again suggested that had already been addressed by the Home Occupation Ordinance. She emphasized it was the private property owner's property and not the Town's right to decide that STRs should maintain the availability of housing, which involved a much larger problem and that it was unfair to expect individual property owners that wanted to operate STRs to bear a disproportionate burden in trying to solve that problem. She recommended the Town Council do nothing unless a good argument was made for doing something, and that only carefully worded regulations that were narrowly targeted to address the safety issue should be considered.

**Councilmember Sos** presented redline edits to Attachment A, Ordinance for Short Term Rentals Amendment for Town Council consideration. In her opinion, STRs must be Hosted, could not be for a duration less than two nights, Non-Hosted STRs should be prohibited, and there should be no permitting process given the small nature of the Town which was fiscally constrained, and since the Town did not have a Transient Occupancy Tax (TOT) process to allow staff to take the time to process any permits or conduct enforcement. The cost would be borne by the applicant, which could potentially drive people away or underground, or borne by the Town which made no sense. She found the permitting process to be unnecessary and the Town would not lose some of the benefits of having it given that some of the health, safety, and neighborhood considerations would be taken care of by other things.

**Councilmember Sos** reported she had also spoken with the property owner of a Hosted STR at Devin and Draeger Drives, who lived in his residence which had an Accessory Dwelling Unit (ADU) which only allowed two people. The property owner did not allow children and noted that guests were required to park in certain areas to avoid disturbing the neighbors.

**Councilmember Woehleke** suggested that Councilmember Sos' proposal was close to what he would like to see, but he would also like some focus on whether regulations could be considered to permit Non-Hosted STRs in Moraga which could provide a valuable service. He again cited the Devin and Draeger Drives property and noted in that case the property was constrained in terms of the number of people who could be housed, which would often be the case for Hosted STRs absent an ADU. He emphasized the need for housing for families in Moraga and pointed out if Non-Hosted STRs were prohibited there was a good chance they would go underground.

**Vice Mayor McCluer** suggested there should be more discussion on whether or not permitting should be included in the regulations.

On the topic of Non-Hosted STRs, **Mayor Korpus** noted that Hosted STRs would have someone on site that cared and would be affected by what was happening. It was possible the Town could ban STRs that were owned by Limited Liability entities so that whoever was putting it out there was responsible for whatever happened, and it would encourage and motivate the property owner to pay attention to who they were renting to and watch what was happening on the property. If Non-Hosted STRs were allowed, it must be owned by an individual or trust, where the individual owners would be responsible to provide the Town additional assurance the property would be monitored.

**Vice Mayor McCluer** commented that Non-Hosted STRs were a big issue to him on the safety front and should be prohibited.

**Councilmember Wykle** understood there were only three Non-Hosted STRs in Moraga currently although that could change in the future. He understood prior to Airbnb there were hotels that were typically hosted and he agreed with the Vice Mayor and Councilmember Sos that Non-Hosted STRs should be prohibited. He liked Councilmember Sos' approach, pointed out the Ordinance could be modified over time, and suggested that something should be done.

**Councilmember Sos** continued to advocate for Hosted STRs only given that having a host on-site would ensure that someone cared about what was occurring on the property and there would be a health and safety benefit that would not be realized with a Non-Hosted STR situation even if the property owner were not a LLC, and they would not have the vetting and extra care, have people staying in the STR that were not supposed to be there or be a nuisance or problem.

**Councilmember Woehleke** noted that no one had yet spoken to the property owners of the three Non-Hosted STRs in Moraga. While he agreed with the comments, the Town Council had incomplete information and before Non-Hosted STRs were banned in Moraga the Town owed it to those property owners to have a discussion and more research.

**Mayor Korpus** agreed that input from the three Non-Hosted STRs in Moraga should be obtained and that the Town should not ban Non-Hosted STRs in Moraga out of hand, although three Councilmembers were supportive of banning Non-Hosted STRs in Moraga. She would like to give the current Non-Hosted STRs owners the opportunity to be part of the process.

On the topic of requiring a two-night minimum for STRs, **Mayor Korpus** understood that would address concerns with one-night parties. She did not see that requirement would really deter the concern but would absolutely make it much harder on the property owner. She did not support the recommendation.

**Councilmember Sos** could support a requirement for all STRs to have a host and if the downside outweighed the public safety benefits, she could see the points raised by the Mayor related to requiring a two-night minimum.

**Councilmember Woehleke** reported that he had been informed explicitly that Airbnb now required a two-night minimum and again suggested more extensive research.

**Vice Mayor McCluer** reported in speaking with the Devin and Draeger Drives' owner that virtually all of his rentals were for two to three nights. He added that community input from an Orinda City Council meeting included requests that the city not outright ban STRs due to the extra income. **Vice Mayor McCluer** liked the idea of a two-night rental and suggested it would not be a detriment to a hosted owner. At this time, he highly preferred a two-night minimum but it did not have to be a requirement.

**Councilmember Wykle** agreed with the Vice Mayor that a two-night minimum was preferred but not a requirement.

**Mayor Korpus** recognized that at least three Councilmembers preferred a two-night minimum for STRs.

On the topic of the permitting process, **Vice Mayor McCluer** clarified with the Town Manager that if STRs did not include the permitting process, as staff had recommended, they could see how it worked. He suggested it would be helpful to know the name and address of the Hosted STR and suggested there should be a limit on the number of guests that could be hosted. While he would support a simple and flexible process, he preferred the inclusion of those two provisions.

**Councilmember Woehleke** understood that Airbnb limited the number of people per room. He suggested that foregoing the permitting process could be one mitigation, but if Non-Hosted STRs were allowed, that would require more research. He agreed with not requiring the permit, particularly when renting a room could be cost prohibitive.

**Councilmember Wykle** pointed out the permit process would allow the Town to know where the STRs were located, and whether they had been vetted, but questioned whether it was worth the cost for so few units. At this time, he could forego the permitting process which could be considered in the future and possibly made more restrictive.

**Mayor Korpus** agreed to eliminate the process at this time for all of the reasons stated and more. She summarized the Town Council's direction to consider two provisions: a Hosted STR requirement and some ambiguity on a two-night minimum and no permitting process, with a majority of the Town Council preferring a prohibition on Non-Hosted STRs. She did not support the Ordinance even though it had been refined since she believed it had gone too far banning Non-Hosted STRs. As such, she would vote no on the item. For those Councilmembers in support of the Ordinance, she encouraged them not to support the two-night minimum since it would likely resolve itself anyway with the Airbnb requirements and she did not want to make it more difficult for property owners to make money on their property.

**Councilmember Woehleke** sought more research on Non-Hosted STRs, which may provide the data needed to make an informed decision on that topic.

Ms. Battenberg clarified Orinda's Urgency Ordinance required the STR to take place on the property owned by the host and containing the host's primary residence. The host must personally live on the property, and must be physically present to monitor and regulate activity during the STR including meeting guests at arrival, and the duration of the STR would be for two nights. Orinda's Ordinance did not allow Non-Hosted STRs.

**Councilmember Sos** could not support the Mayor's recommendation allowing Non-Hosted STRs. She continued to support a two-night minimum. As to limiting the number of people who could reside in a single home with a penalty for any violations, it was the type of regulation that was arbitrary and it was inevitable there would be some people affected by the Ordinance. She noted by prohibiting Non-Hosted STRs, the Town could avoid a lot of regulatory complexity and create predictability and consistency. She pointed out the properties could still be rented and the property owner was not being deprived of that potential benefit.

**Councilmember Woehleke** stated he would abide by the vote of the majority but noted that Non-Hosted STRs were common in locations throughout the state. He would be happy to require a four-night minimum to achieve the goals under discussion.

**Vice Mayor McCluer** again preferred a two-night minimum, and reiterated many people who attended the Orinda City Council meeting were STR hosts, many of whom had no issue with that requirement.

**Councilmember Wykle** suggested Moraga would be in good company following Orinda's lead and he would like to keep that provision in the Ordinance, which could be modified in the future as needed.

Ms. Battenberg reported no additional public comment had been received for this item.

Ms. Bazzano clarified that any public comment received that had not been read or read in its entirety would still be part of the administrative record.

**Councilmember Sos** understood the Planning Commission had recommended STRs be limited to one rental listing per property at any given time and forbid STRs in vehicles, trailers or tents. She asked the Town Council to opine on those recommendations.

The Town Council discussed both items with the consensus to forbid STRs in vehicles, trailers or tents and leave the issue of STRs being limited to one rental listing per property at any given time to the market, to be addressed in the future if there was an issue.

**Mayor Korpus** suggested the STRs Ordinance not be adopted at this time with staff to be directed to go back and limit the Ordinance to the points raised.

Ms. Battenberg confirmed staff had received redline edits from Councilmember Sos. She suggested that eliminating the sections Councilmember Sos had recommended would be easy and the Town Council could still take action at this time with the Ordinance brought back to the Town Council for a second reading.

Ms. Bazzano advised if the Town Council was inclined to move forward with the first reading of the Short-Term Rentals Ordinance that the Town Council review the redline edits and if a motion was made to introduce the Ordinance, it would be with the edits discussed in the redline provided by Councilmember Sos.

**Mayor Korpus** preferred that staff be directed to revise the Ordinance along the lines that Councilmember Sos had stated and make sure the issue of forbidding STRs in vehicles, trailers or tents was addressed to allow the item to come back for further refinement if needed.

**Councilmember Sos** commented the only thing to be removed from her redline edits was the restriction on the number of STRs that could be allowed in Town.

**Vice Mayor McCluer** had not seen the redline edits but if they matched what had been discussed he was comfortable moving forward; **Councilmember Wykle** wanted to see the redline edits; and **Councilmember Woehleke** wanted staff to be given direction to contact the three Non-Hosted STRs in Town and inform them of the coming regulations.

At this time the Town Council reviewed the redline edits proposed by Councilmember Sos to Attachment A, Ordinance for Short Term Rentals Amendment, when the following revisions had been proposed:

- Page 1, "Bedroom" to be removed from the title description of the Ordinance.
- Page 3, "Bedroom" to be removed from Section 8.04.020 – Definitions.
- Page 3, Section 8.114.010. Purpose, revised to read:

*The purpose of this chapter is to regulate the use and operation of all Short-Term Rentals within the Town. Establishing regulations governing Short-Term Rental of residential property within the Town of Moraga is necessary in order both to ensure the health, safety, and welfare of the residents of the Town of Moraga and to allow for the Short-Term Rental of single-family and multi-family dwelling units for less than thirty (30) consecutive days, while still preventing Short-Term Rental activities from becoming a nuisance or a threat to public health, safety or welfare.*

- Pages 3 and 4, Section 8.114.020, Permit Process revised to read:

*Restrictions*

- A. All Short-Term Rentals must be Hosted. Non-Hosted Short-Term Rentals are prohibited within the Town of Moraga;*

- B. *A Short-Term Rental shall not be rented for a duration of less than two (2) consecutive nights; and*
- C. *The Short-Term Rental shall not be in a vehicle, trailer, or tent.*
- Page 5, Sections 8.114.030, Permit Issuance and Term of Renewal, 8.114.040, Permit Fees and Proof of Permit to be eliminated.
- Page 5, Section 8.114.050, Enforcement and Violations, revised to read:
  - A. *The Town may enforce this Chapter by any means permitted by law, including, but not limited to, those penalty provisions set forth in Chapter 1.24 and/or Chapter 1.28 of Title 1 of this Code.*

**Vice Mayor McCluer** questioned whether or not the public had been adequately noticed of the redline revisions.

Ms. Bazzano agreed with Mayor Korpus there had been more than adequate notice to the public for the agenda item, including the redline changes. The item had also been heard by the Planning Commission so that anyone who may have been interested in the topic would have had two opportunities to provide input on the Ordinance. Public comments would also be permitted at the second reading and any substantive edits made by the Town Council at the second reading would require another first reading.

**ACTION: It was M/S (Sos/McCluer) to waive the First Reading and Introduce by Title Only an Ordinance Amending Various Sections of Title 2 – Administration and Personnel, and Title 8 – Planning and Zoning, of the Moraga Municipal Code to Amend Section 8.04.020 – Definitions, of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code to Include a Definition of “Hosted Short-Term Rental,” “Non-Hosted Short-Term Rental,” “Operator,” “Owner,” and “Short-Term Rental,” and Establishing Chapter 8.114 - Short-Term Rentals, in Order to Regulate Short-Term Rental Units within the Town (CEQA Determination: Exempt Pursuant to CEQA Guidelines Section 15061(b)(3) General Rule Exemption), as amended by the Town Council on the redline edits that had been presented on the Livestream, and with the deletion of the owner or operator of the Short-Term Rental being limited to one rental listing per property at any given time. Roll Call Vote: 3-2. Noes: Woehleke, Korpus.**

**Vice Mayor McCluer** reported he would recuse himself from the next agenda item since he resided within 500 feet of the Hetfield Estates Project. He signed off from teleconference participation at this time.

- B. **Hetfield Estates Project One-Year Extension**  
Consider Resolution 27-2020 Granting a One-Year Extension of an Approved Vesting Tentative Map, General Development Plan, Conditional Use Permit and Hillside Development Permit for the Hetfield Estates Project (Subdivision 9051), a Seven-Lot Single-Family Residential Development on a 58.2-Acre Property (*An Environmental Impact Report for the project was certified on July 16, 2012 and a CEQA Addendum was approved by the Town Council on May 21, 2014 for the Project’s Emergency Vehicle Access Easement*)

Senior Planner Steve Kowalski presented the staff report and reported that a hard copy of the PowerPoint presentation for the item had also been provided to the Town Council. He asked that the Town Council adopt the resolution contained in Attachment A to the staff report granting

a one-year extension of the approval of the Hetfield Estates development project's Vesting Tentative Map and associated Planning entitlements.

Responding to the Council, Mr. Kowalski advised that the Geotechnical Report for the project had been published in 2015, and the Town's Geotechnical Peer Review Consultant had reviewed the Report and concluded the slide hazards mentioned in correspondence sent to the Council from various third parties had been abated to acceptable levels in accordance with standard engineering best practices.

Public Works Director/Town Engineer Shawn Knapp added there were a number of requirements related to the project's geotechnical conditions. The development would be required to address those issues and create a Geologic Hazard and Abatement District (GHAD) pursuant to the requirements of the conditions of approval, a self-funded mechanism to take care of any potential geographic issues that may occur in the future from the development and ongoing presence of the subdivision. He recognized the project was a long-standing project which had gone through multiple reviews over the years, with at least four different geotechnical studies conducted for the site. As those studies had been completed, more issues had been identified and addressed through the engineering of the plans. All of the identified/known geotechnical issues must be satisfied prior to the approval of the Final Map.

Currently, and as presented, the applicant had requested a one-year extension of the approved Vesting Tentative Map (VTM), General Development Plan (GDP), Conditional Use Permit (CUP), and Hillside Development Permit (HDP) for the project in order to work through those identified issues and satisfy all of the requirements of the vesting tentative map for the project. Until that occurred, a Final Map would not be approved by the Town.

Mr. Knapp commented the applicant had a number of milestones to get through which would require Town Council approval prior to the approval of the Final Map. The applicant would have to submit plans for the engineering work, to be peer-reviewed prior to the construction phase, and anything done on-site would be reviewed prior to commencing and the Town would peer-review those processes.

Ms. Bazzano confirmed, in response to the Mayor, that failure to meet any of the conditions was not grounds to deny the request for the extension of the VTM. The timeframe in which the VTM was allowed to be extended was six years and the Subdivision Map Act provided there was some discretion in granting an extension but that discretion was limited based on Government Code 66498.1(c). The Code stated that the extension could be approved, denied, or conditioned if failure to do so would place the residents of the subdivision or the immediate community (or both) in a condition dangerous to health or safety, or the condition of denial was required in order to comply with State or federal law. Not having satisfied certain conditions of approval did not meet those criteria in the Subdivision Map Act.

**ACTION: It was M/S (Sos/Korpus) to extend the Town Council meeting to 11:30 P.M. Roll Call Vote: 5-0.**

Mr. Kowalski advised that no facts had come to light that failure to extend the VTM would place the residents of the subdivision or the immediate community or both in a condition dangerous to health or safety, nor had any facts come to light that condition of denial was required in order to comply with State or federal law since the Town Council had considered an extension request. Staff had received emails on the item which had discussed the condition of the property which was currently unkempt and a potential fire hazard to the neighborhood.

Mr. Kowalski reported he had spoken with the Moraga-Orinda Fire District (MOFD) Fire Marshal regarding this situation prior to the Council hearing, and the applicant would be required to

create defensible space on the property to the satisfaction of the Fire District, particularly where it abutted existing homes.

## PUBLIC HEARING OPENED

John Wyro, the applicant representing the property owners, who participated via Zoom, found that staff had done a good job addressing the history and status of the application, with recognition of the long and arduous process and numerous conditions of approval, many of which involved outside agencies. He also referenced the Town staff and property ownership turnover had contributed to the project's delay, but concurred with staff that significant progress had been made in spite of the challenges of COVID-19 in that almost all of the conditions required to complete the outstanding issues required for the Final Map had been addressed or were currently under review by the Town and various jurisdictional agencies. He appreciated everyone's efforts to bring the matter to a conclusion.

In response to recent correspondence, Mr. Wyro advised the project had a Certified Environmental Impact Report (EIR) and VTM, along with a new and committed property owner. He reported that he had been working with the MOFD for some time and recognized their standards pertaining to fire safety had recently changed. He added that every year since the original project approval a new fire break had been completed to MOFD's satisfaction, and he had recently spoken with the person doing weed abatement to make arrangements for addressing MOFD's latest requirements. He recognized that may not be sufficient and he would be speaking with the MOFD Fire Marshal to see what else may need to be done to improve that situation. Also, there had been efforts made to work with the Sanders Ranch Homeowner's Association (HOA) to make sure the HOA was aware of the opportunity for an Emergency Vehicle Access Easement (EVAE) which would be very beneficial to the developer, the Town and the residents of Sanders Ranch.

**Mayor Korpus** read into the record the following email that had been received:

*Timothy Meltzer, To Mayor Korpus and Town Council members, the Council has limited ability to deny the extension request, but there remained things you can do to help minimize further controversy and errors in the management of this project. The Hetfield Estates project has been ill-conceived from the outset. The property was designated High Risk long before the project was submitted to the Town in 2006. The High Risk designation was required because of the pervasive instability of the hillside including where the houses are to be built. This project would not be approved today if presented in its current form. The approved density is one house per five acres. MOSO limits High Risk property to one house per 20 acres. This was clarified and confirmed by implementing statutes following the work of the Hillside and Ridgeline Committee. These statutes do not allow geotechnical remediation as a means to reclassify High Risk land and increase housing density as was done for Hetfield. I realize the Council cannot reverse any approvals obtained thus far, rather I am asking whether or not there are sufficient safeguards in place to guarantee that the developer fulfills all obligations associated with the approvals already obtained including each of the 180 conditions of approval for this project. When the project was submitted 14 years ago, this applicant represented that each house would sell for at least two million dollars. What would the sales price need to be to make the development economically viable now? Is it realistic given the substantial available and planned new housing in Moraga? If not, will this project repeat the same 15 plus year saga of Vista Encinos in which after extensive excavation and grading, the developer experienced financial problems and left a carved out hillside sitting vacant for over 12 years, blocked by a chain link fence with numerous required mitigation measures ignored. The current team promoting the Hetfield Project also pushed through the Vista Encinos Subdivision. Their geotechnical firm represented to the Town that grading and remediation would stabilize the Los Encinos site yet more landslides occurred and the project stalled for more than a decade. How*

*do we prevent the same thing from happening at Hetfield? Major flaws in the applicant's geotechnical presentations to the Town regarding Hetfield predate the Mitigated Negative Declaration in 2008. One glaring omission was the failure to identify an earthquake fault that runs directly through the center of the proposed Hetfield site. It took the combined effort of more than 40 neighbors devoting substantial time, effort and funds to organize themselves and retain an expert hydrologist geologist to review the site and the applicable materials to discover the significant flaw among many others in the developer's submissions. The Hetfield project needs to be meticulously scrutinized on a continuing basis to avoid a potential cascade ...does the Town have adequate safeguards in place to do so given the long periods of inactivity when significant issues lose some of their urgency exacerbated by the lost institutional memory resulting from staffing turnover at the Planning Department and change over the years in the makeup of the Planning Commission and Town Council. Sincerely, Timothy Meltzer.*

Ms. Battenberg reported no additional comments from the public had been received.

Mr. Wyro recognized that the soils were an absolutely critical issue and, as staff had pointed out earlier, Conditions of Approval Nos. 30 and 31 provided the safeguards that had been mentioned in the correspondence. The project would adhere to all of the conditions of approval and provide a good project for the Town in the end. He looked forward to seeing it under construction and becoming a new neighbor in the Sanders Drive neighborhood.

#### PUBLIC HEARING CLOSED

**Councilmember Wykle** acknowledged the challenges of the project, the number of conditions of approval that it had to satisfy, and the need for the continual extensions. He clarified with staff that it was possible to complete the required work in the extended timeframe, while Mr. Kowalski acknowledged the past staff turnover had undoubtedly impacted the time it had taken for the project to move forward. He understood the applicant's team had addressed most of the conditions of approval to this point, and the Town's Associate Engineer had been working closely on the project. He was confident they could accomplish what needed to be accomplished in another year.

**Councilmember Wykle** understood the action before the Town Council was an administrative matter under the provisions of the Subdivision Map Act. He clarified with Ms. Bazzano that the Town Council had the limited discretion of extending the VTM based on the provisions of the Subdivision Map Act, which purpose was to get subdivisions built and allowing extensions was a part of that process. He understood there was no new information that would change what had been approved and he reluctantly supported the extension.

**Councilmember Sos** also understood the Town Council had no choice but to approve the extension but she was willing to grant a two-year extension this time in order to avoid having to revisit the situation in another year should the project still not be completed in May 2021.

**Mayor Korpus** commented that a two-year extension had been recommended during one of the prior extension request hearings due to the cost involved in processing each extension, and at that time the perspective was that something could change and a one-year extension had been preferred.

Mr. Kowalski pointed out that the State Legislature often granted additional extensions to the lives of approved Tentative and Vesting Tentative Maps during significant economic downturns in order to protect developers, such as during the great recession in 2008/2009 and the dot.com bust in the early 2000s. Given the current COVID-19 pandemic, it was possible another law could be passed by the State to grant additional extensions for maps such as Hetfield's that had not yet expired.

**Mayor Korpus** supported a one-year extension at this time although she acknowledged that it seemed more practical to consider a two-year extension in order to avoid having to revisit the matter again the following year in the event the project had still not been completed.

**Councilmember Woehleke** also supported a one-year extension given the potential changes on the surface such as slides that may have to be addressed.

**ACTION: It was M/S (Sos/Woehleke) to adopt Resolution 27-2020 Granting a One-Year Extension of an Approved Vesting Tentative Map, General Development Plan, Conditional Use Permit and Hillside Development Permit for Hetfield Estates Project (Subdivision 9051), a Seven-Lot Single-Family Residential Development on a 58.2-Acre Property (An Environmental Impact Report for the project was certified on July 16, 2012 and a CEQA Addendum was approved by the Town Council on May 21, 2014 for the Project's Emergency Vehicle Access Easement). Roll Call Vote: 4-0-1. Recused: McCluer.**

**Vice Mayor McCluer** returned to the Town Council meeting via teleconference location.

**C. Updated Master Fee Schedule**

Consider Resolution 28-2020 Adopting the Town of Moraga's Updated Master Fee Schedule, Effective July 13, 2020

Administrative Services Director Norm Veloso provided a PowerPoint presentation of the Fiscal Year 2020/21 Master Fee Schedule. As to the fees proposed for the Planning Department identified for Short-Term Rentals (STRs), he noted the proposed fees would be eliminated pursuant to Town Council direction as part of Agenda Item 10. A.

Mr. Veloso recommended the Town Council adopt the resolution contained in Attachment A to the May 13, 2020 staff report, as amended with the elimination of the STR fees.

**ACTION: It was M/S (Wykle/McCluer) to extend the Town Council meeting to 11:45 P.M. Roll Call Vote: 2-3. Noes: Korpus, Sos, Woehleke**

**Mayor Korpus** offered a motion, seconded by **Councilmember Woehleke** to extend the Town Council meeting to 12:00 a.m. On the motion, **Councilmember Wykle** added the remaining agenda items would likely need more time to complete.

**ACTION: It was M/S (Korpus/Woehleke) to extend the Town Council meeting to 12:00 A.M. Roll Call Vote: 4-1. Noes: McCluer**

**Vice Mayor McCluer** recommended the Town Council meeting be extended to 11:45 p.m. only and that the Town Council move forward with Agenda Item 11. C. (COVID-19's Projected Impact to the General Fund Budgets).

Ms. Battenberg agreed that Town Council input on Item 11. C was needed.

**ACTION: It was M/S (Sos/McCluer) to extend the Town Council meeting to 11:45 P.M. Roll Call Vote: 5-0.**

PUBLIC HEARING OPENED

Ms. Battenberg reported no comments from the public had been received for Item 10. B.

PUBLIC HEARING CLOSED

**ACTION: It was M/S (McCluer/Korpus) to adopt Resolution 28-2020 Adopting the Town of Moraga's Updated Master Fee Schedule, Effective July 13, 2020, as amended, with the exclusion of the Short-Term Rental fees. Roll Call Vote: 5-0.**

**ACTION: It was M/S (McCluer/Woehleke) to modify the meeting agenda and move Item 11. C. as the next agenda item. Roll Call Vote: 5-0.**

**11. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION**

**A. Local Sales Tax Oversight Committee's Independent Report**

Review and Accept the Local Sales Tax Oversight Committee's Independent Report to the Town Council for Fiscal Year 2018/19 Regarding the Revenue and Expenditures of the Transactions and Use Tax

The item was continued to a future date.

**B. Update on Public Facilities and Community Events**

Receive a Status Update on Public Facilities and Community Events

The item was informational only and no action was required.

**C. COVID-19's Projected Impact to the General Fund Budgets**

Receive an Update on COVID-19's Projected Impact to the Town's Fiscal Year (FY) 2019/20 and FY 2020/21 General Fund Budgets; Discuss Strategies to Address Budget Impacts of COVID-19 and Priorities for the Projected FY 2020/21 Budget; and Provide Direction to Staff

Ms. Battenberg advised the Town Council had been provided the PowerPoint presentation for the item. The Town of Moraga was fortunate during this downturn in the economy since Moraga did not have the benefits of tax revenues that other jurisdictions had enjoyed. Moraga was looking at a projected \$257,000 negative impact to the 2019/20 budget, and an \$188,000 shortfall in the next year's budget assuming the recommendations staff had included in the May 13 staff report moved forward. She sought input from the Town Council on the staff recommendations.

**PUBLIC COMMENTS OPENED**

Ms. Battenberg reported no comments from the public had been received.

**PUBLIC COMMENTS CLOSED**

Of the eight recommendations outlined in the staff report, the Town Council offered consensus (while not always unanimous) for the following:

- Release the \$50,000 budgeted in the 2019/20 Addendum to the Storm Drain Master Plan and \$195,000 additional funds in the Storm Drain Operations and Maintenance Program to cover the projected \$257,000 2019/20 budget impact due to COVID-19.
- Delay Bollinger Valley Study Area and hold the \$325,000 in General Funds budgeted for the project in case it was needed to address the unanticipated impacts of COVID-19 in Fiscal Year 2020/21 budget.
- Increase funding of the enhanced Storm Drain O&M Program.

- Allocate General Fund Revenue to backfill the projected loss of Gas Tax revenue to pay for pothole repair, median maintenance, traffic signal maintenance, traffic signage and other routine street maintenance expense.
- The Town to spend \$135,000 in Palos Colorados funds for the projected litigation costs related to the Hillside and Ridgeline Ordinance, Bollinger Valley and East Bay Municipal Utility District (EBMUD).
- The Town to spend \$190,000 in Palos Colorados funds for the replacement of the Commons Park irrigation system.
- The Town to spend 55 percent of the \$408,000 projected surplus in Fund 140 for Capital Asset Replacement and Storm Drain O&M consistent with Resolution 12-2020.
- The Town to spend \$376,000 for Asset Replacement as part of the Fiscal Year 2020/21 Capital Improvement Program for:

Technology Replacement	\$ 31,000
Commons Park Bandshell Roof	\$ 14,000
Vehicle Replacement	\$ 82,000
Commons Park Irrigation	\$190,000
329 Rheem Boulevard and Hacienda Flat Roofs	\$ 29,000
Minor Capital Improvement Program	\$ 30,000

Ms. Battenberg clarified that staff had provided an analysis in the staff report on the projected fund balance and she encouraged anyone in the public who was watching the Livestream to read the staff report. She also clarified an increase in the California Public Employees' Retirement System (CalPERS) had been anticipated in the range of \$135,000, which had been included in the budget, and that the impact of the COVID-19 on CalPERS rates would be phased in over two years starting in FY 2022/23.

**Vice Mayor McCluer** provided his comments on the budget revenue assumptions: process is good; could be an additional \$500,000 shortfall; requested a "what if" contingency plan; offset revenue items with expense actions; maintain reserve at 50 percent; address unfunded needs through efficiencies; and make choices not new projects.

**Councilmember Woehleke** agreed with the Vice Mayor and recommended the suggestions be incorporated as appropriate.

**Vice Mayor McCluer** expressed the willingness to offer additional comments to the Town Manager offline.

**Councilmember Wykle** understood that the additional items would be discussed as part of the broader budget discussion.

**ACTION: It was M/S (Sos/Woehleke) to continue Agenda Items 11. A. and 11. D. Roll Call Vote: 5-0.**

**D. Voluntary Temporary Furlough Program**  
Consider the Following Resolutions:

Resolution \_\_-2020 Authorizing the Town Manager to Enter Into the Town of Moraga and the Moraga Employee Association Side Letter Agreement Establishing a Voluntary Temporary Furlough Program

Resolution \_\_-2020 Adding a Provision Establishing a Voluntary Temporary Furlough Program to Resolution No. 32-2019 Regarding the Compensation Package for Mid-Management/Professional Employees

Resolution \_\_-2020 Adding a Provision Establishing a Voluntary Temporary Furlough Program to Resolution No. 31-2019 Regarding the Compensation Package for Department Directors

The item was continued to a future date.

## 12. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

There were no Council requests for future agenda items.

## 13. COMMUNICATIONS

There were no communications.

## 14. ADJOURNMENT

**ACTION: It was M/S (McCluer/Korpus) to adjourn the meeting at 11:45 P.M. Roll Call Vote: 5-0.**

Respectfully submitted by:

  
Marty C. McInturf, Town Clerk

Approved by the Town Council:

  
Kimberleigh N. Korpus, Mayor