



**TOWN OF MORAGA
REGULAR MEETING**

**May 27, 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, APRIL 29, 2020 AND MAY 18, 2020 ORDERS 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, April 29, 2020 and May 18, 2020 Shelter in Place Orders, the May 27, 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 7:00 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

Vice Mayor McCluer led the Pledge of Allegiance.

3. SPECIAL ANNOUNCEMENTS

There were no special announcements.

4. PROCLAMATIONS AND PRESENTATIONS

- A.** Update by Chief Winnacker on Moraga-Orinda Fire District's Recent Designation of "High Fire Severity Zones" as a Wildland Urban Interface (WUI) Fire Area

Fire Chief Dave Winnacker, Moraga-Orinda Fire District (MOFD), reported the MOFD Board of Directors had held a first hearing on an Ordinance designating areas that CAL FIRE had identified in its Draft 2007 maps as "High Fire Severity Zones," and designating those areas as a Wildland Urban Interface (WUI) Fire Area. For the purposes of the Fire Code, the designation

meant that enhanced building construction standards were required in the MOFD areas that had been previously identified in the 2009 Ordinance adopting recommended Very High Fire Hazard Severity Zones in local response areas, and would expand upon those to include the areas previously designated as High Fire Hazard Severity Areas.

Fire Chief Winnacker advised that pursuant to the maps contained in the PowerPoint presentation, significant portions of North Orinda and smaller areas of Moraga would be affected by the WUI designation. The maps were currently being redrawn in the next several months and CAL FIRE had been expected to issue a rewrite of the maps. It was the intent of the MOFD to adopt the new maps which were anticipated to show a significant expansion of the areas designated as both High and Very High Hazard Severity Areas in recognition of the changes in fire behavior as observed over the last several years. The areas within the City of Orinda and the Town of Moraga subject to the enhanced building construction standards pursuant to the designation of the WUI were again highlighted.

Responding to the Council, Fire Chief Winnacker explained that the maps were currently available for review and had been available since 2007, and CAL FIRE's website included a Geographic Information System (GIS) file that identified parcel-by-parcel designations. He emphasized the intent was not to create a new and unique product, but stay within the State of California recommendations. The high quality GIS layers existed to avoid being in conflict with the State and to avoid potential mapping errors.

PUBLIC COMMENTS OPENED

Town Clerk Marty McInturf reported no comments from the public had been received.

PUBLIC COMMENTS CLOSED

Mayor Korpus thanked Fire Chief Winnacker for the presentation and reiterated that additional information was available on the MOFD website.

Fire Chief Winnacker reported the second reading and adoption of the Ordinance had been scheduled for the next regularly scheduled MOFD Board meeting in June.

Town Manager Cynthia Battenberg added proposed updates to the MOFD Fire Code would be presented to the Town Council at its first meeting in July.

5. PUBLIC COMMENTS AND SUGGESTIONS

The following comment was received via e-mail and read into the record by **Mayor Korpus**:

Lynda Deschambault, requested that Consent Agenda Item 6.3 on short-term rentals be pulled from the Consent Calendar and be given a public hearing with important public comment.

6. ADOPTION OF CONSENT AGENDA

A. Approval of Consent Items

Consent Agenda Items 6.2 and 6.3 were removed from the Consent Agenda.

PUBLIC COMMENTS OPENED

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

PUBLIC COMMENTS CLOSED

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

- 6.1 Accounts Payable Claims for: 05/08/20 (\$156,775.00) Approved
- 6.2 Approve Minutes for the Town Council Special Meeting on April 22, 2020 Removed
- 6.3 Short Tern Rentals Ordinance Removed
Consider Waiving the First Reading and Introducing 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 (MMC) 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 Status: Exempt)
- 6.4 Storm Drain Operations and Maintenance Contract Approved
Consider Resolution 29-2020 Awarding a Service Contract to 360 Pipes (Discovery Bay) for On-Call Town Storm Drain Operations and Maintenance CCTV Inspection and Cleaning Services and Authorizing the Town Manager to Execute the Service Contract in an Amount of \$30,125 for Each Year for a Term of Three (3) Years with an Option to Extend for an Additional Two (2) Years, Contingent on Available Budgets (CEQA Status: Categorically Exempt)

B. Consideration of Consent Items Removed for Discussion

1. Approve Minutes for the Town Council Special Meeting on April 22, 2020

Mayor Korpus requested amendments to paragraphs 7 and 8 of Page 12 of the April 22, 2020 Special Meeting Minutes, as follows:

***Mayor Korpus** opposed the amendment since it was implied, although **Vice Mayor McCluer** argued the staff report had referenced ten years and it had not been implicit that it would be four years which he felt should be clarified.*

***Councilmember Woehleke** suggested the ten-year plan would be adjusted over time, and the requested clarification was unnecessary.*

In response to the Vice Mayor, Assistant Town Attorney Denise Bazzano advised the meeting minutes had been summarized, were not verbatim, and the Town Council had the discretion to approve or edit the draft minutes. The Mayor had provided some suggested edits she was of the opinion were appropriate. If the Council disagreed, they had the discretion to offer different edits or a different position on the suggested edits.

PUBLIC COMMENTS OPENED

Town Clerk Marty McInturf reported no comments from the public had been received.

PUBLIC COMMENTS CLOSED

Councilmember Woehleke understood the Mayor's edits were modifications based on her interpretation of what had been said. He was torn whether the Vice Mayor should have more say on what was being recommended unless staff went and listened to the meeting recording.

Mayor Korpus stated she had not re-listened to the meeting, but the point she was correcting was that the minutes reported something as true, rather than the Vice Mayor had argued that something was true. The minutes had represented it inaccurately by simply accepting his opinion as the truth. Her proposed edits were intended to clarify what he had argued, rather than having the minutes say what the Vice Mayor had stated as true.

Ms. Bazzano read into the record Section 5.7 of the Town Council Protocols which reads *An account of all public proceedings of the Town Council shall be recorded by the Town Clerk and entered into the Town records as official meeting minutes following approval by the Council and shall thereafter be kept published and or distributed in compliance with applicable Town policy.*

Mayor Korpus reiterated the intent of her modifications.

Vice Mayor McCluer commented the Town Council had discussed this issue before and he could foresee the Council spending time each meeting going over the meeting minutes and discussing opinions and facts, which he found could be a slippery slope. He could accept the changes this time but emphasized that the Livestream was available and as long as nothing was misrepresented by each person that should be fine.

ACTION: It was M/S (Sos/Woehleke) to approve Minutes for the Town Council Special Meeting on April 22, 2020, as modified, and as read into the record by Mayor Korpus. Roll Call Vote: 5-0.

2. Short Term Rentals Ordinance
Consider Waiving the First Reading and Introducing 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 Status: Exempt*)

Councilmember Sos suggested the first reading, which had been approved by the Town Council at its May 13, 2020 meeting, had furthered public safety and provided property owners with economic use of their residences. She had pulled the item to allow for additional public comment and suggested there was a way to modify the Ordinance to simply continue to protect public safety and provide property owners more opportunity to have economic use of their property. She offered redline edits to the Ordinance for discussion.

The consensus of the Town Council was to first open the floor to public comment.

PUBLIC COMMENTS OPENED

The following comment was received via e-mail and read into the record by **Mayor Korpus**:

Lynda Deschambault, *Honorable Mayor and Councilmembers, Thank you for your time to keep our community safe. It is critical that we ensure Moraga does not have the tragic event similar to Orinda's. I kindly ask you to postpone this event as non-essential and wait until the 19 small home businesses you are considering regulating, can be properly notified and invited to participate in the process. In the meantime, please consider defining a "hosted home" using a federal definition (Freddie/Fannie Mae/Mac) and consider this change in the ordinance to this wording. "STRs in Moraga are only allowed, at owner occupied homes; that is the owner must occupy the home for the major portion of each calendar year." Using this language provides the important on-site presence and property oversight that we all want to ensure is in place. Avoiding an investor-only and absent-landlord situation is critical to avoid what happened in Orinda. At the same time, policy must be logical, enforceable, and have common sense regarding common occurrences. Example: an Airbnb host takes in a repeat annual visiting professor during Saint Mary's prestigious Jan term. For a three week stay. The host has season lift tickets in Tahoe and may overnight for a ski visit. Nothing changes. The host is engaged on-site and watching all personal belongings in the clearly owner-occupied, primary residence household. Full oversight and clear hosting. Thank you for considering revising to this wording: "STRs in Moraga are only allowed, at owner occupied homes; that is the owner must occupy the home for the major portion of each calendar year." Lynda Deschambault.*

PUBLIC COMMENTS CLOSED

Councilmember Sos commented that based on concerns that had been expressed by the Mayor and Councilmember Woehleke during the May 13, 2020 Town Council meeting, and on input received from the public and from other property owners, she recommended the Ordinance, as amended during the May 13 meeting, be kept the same, with the exception of the following:

- Amend Section 8.04.020 – Definitions: *"Hosted Short-Term Rental" is a Short-Term Rental with an Owner or Operator who resides on-site, in either the primary or accessory dwelling unit, for the majority of the calendar year, and amend the definition for "Non-Hosted Short-Term Rental," is a Short-Term Rental without an Owner or Operator who resides on-site for the majority of the calendar year.*

Councilmember Sos found the Ordinance, as amended by the Town Council on May 13, sound and defensible and with the proposed edits a refinement based on the concerns expressed and comments received, which in her opinion would not affect the public safety component. She encouraged the Town Council to accept the revisions and move forward with the second reading of the Ordinance.

Councilmember Woehleke reported he had met with two members of the Airbnb Public Policy Team to discuss the Town's Ordinance, and who had offered comments, which he provided and highlighted. The comments from Airbnb were also provided to the Town Manager for the record. Airbnb's approach had been to focus on primary residences as opposed to a Hosted versus Non-Hosted, where the ownership could be easily verified and which would address the issue of multiple homes.

Chief of Police Jon King offered his perspective assuming a homeowner or property owner was a responsible person and present full time and would monitor what was going on at the property. As an example, if a homeowner was intending to come back and live in the residence they would be less likely to rent it to someone who wanted to have a party and would do their best to screen the occupants. As to the party situation in the City of Orinda in 2019, that situation involved a rental for a party house, which he did not want to see happen in Moraga. He preferred a defined Hosted regulation and then secondarily a defined Primary Resident.

Councilmember Wykle clarified with Town Manager Battenberg the language proposed by Councilmember Sos had not been used as part of staff's research of Ordinances in other jurisdictions. He found the approach offered to be reasonable.

Councilmember Wykle noted that something was better than nothing, but the regulations allowed for Non-Hosted STRs for half of the year, which was a concern. He clarified with staff that if the revisions, as proposed, were made to the Ordinance another first reading of the Ordinance would be required.

Mayor Korpus commented she had initially opposed the Ordinance and her first choice continued to be opposition to the Ordinance, although she personally found Councilmember Sos' approach preferable since it offered more freedom. She pointed out there were some ambiguities in the current language as to what "residing" meant. She thought it meant to be lived in while others suggested it meant that one had to be physically present.

Mayor Korpus sought the inclusion of some sort of language to clarify which direction the Town wanted to go, to have someone physically on-site for the time or majority of the time the STR was happening, or say the STR could be hosted absent the owner being present for months at a time. She suggested the primary residence be defined as: *The location where the owner lives and treats as his/per primary residence for a majority of the 12-month period preceding the end of the Short-Term Rental.* She also suggested the definition of Hosted Short-Term Rental be defined as: *A place that the owner lives in and treats as the primary residence for the majority of the 12-month period preceding the end of the Short-Term Rental, so long as the absence from the site does not exceed more than 14 days during the Short-Term Rental.* She also had some modifications to the preamble language she requested the Town Council consider.

Councilmember Woehleke noted the City of Redwood regulations had been based on a principal residence and if Moraga required the Host to be on-site during the duration of the STR, it would be impractical and it was likely the regulation would be violated by the Host. He reported that Airbnb had offered to work with the Town to reach a solution based on its perspective.

Vice Mayor McCluer found the suggestions offered by Councilmember Sos and Ms. Deschambault to be thoughtful. He had followed the Orinda City Council's discussions on its Ordinance very closely and many people in that community wanted to keep the Hosted definitions for STRs. He pointed out that of the 19 STRs in Moraga, 16 were Hosted. He referred to the statistics of shootings nationwide related to STRs in the past six months, supported the Chief of Police's position on the matter, and suggested if someone was not present during the STR there was a risk to the safety of the community. He suggested that the definition for a Hosted STR remain as shown in the Ordinance, with the owner or operator to reside on-site.

Mayor Korpus stated she would vote against the Ordinance unless her vote was needed to have Councilmember Sos' less restrictive version survive.

Councilmember Sos commented she could accept a revision to the term "reside" to "lives at" in the definitions for Hosted and Non-Hosted STRs if that made the issue clearer. She had shied away from suggesting Primary Residence as a definition but was not opposed to it being used as clarification. She thanked the Police Chief for his comments, emphasized the uniqueness of Moraga, reiterated her support for what the Town Council had passed on May 13, and suggested the proposed revision could help property owners who had an economic interest in continuing to have STRs without jeopardizing the public safety component.

Councilmember Wykle reiterated his concerns, found the testimony from the Police Chief to be compelling, and clarified with staff a handful of jurisdictions had banned STRs entirely. He could accept the language offered by Councilmember Sos, as it was, and was ready to move forward.

Councilmember Woehleke recognized the Town Council would have to come to a compromise; however, he was not willing to accept that a Host be on-site continuously.

After further discussion, the consensus (not always unanimous) of the Town Council was to revise Attachment A, Proposed Short-Term Rental Ordinance, as follows:

- Amend Section 8.04.020 – Definitions, *“Hosted Short-Term Rental” is a Short-Term Rental with an Owner or Operator who lives on-site, in either the primary or accessory dwelling unit, for the majority of the calendar year and treats it as their primary residence.*
- Amend the following definition: *“Non-Hosted Short-Term Rental” is a Short-Term Rental without an Owner or Operator who lives on-site for the majority of the calendar year.*
- Amend the first WHEREAS clause on Page 1 to read:

WHEREAS, on November 13, 2019 the Town Council asked staff to facilitate its consideration as to whether a Short-Term Rental policy should be implemented; and

- Amend the third WHEREAS clause on Page 1 to read:

WHEREAS, the Town published a public hearing notice in the *East Bay Times*, a newspaper of general circulation, on April 10, 2020 to advertise a Planning Commission hearing on April 20, 2020 on proposed language amending the MMC to implement a Short-Term Rental Policy in accordance with California Government Code Section 65091; and

- Amend SECTION 2 (a), on Page 2 to read:

The change proposed is consistent with the objectives, policies, general land uses and programs specified in the general plan in that it is consistent with Land Use Goal LU1.1: “Neighborhood Preservation, protect existing residential neighborhoods from potential adverse impacts of new residential development and additions to existing structures.” By regulating Short-Term Rentals, the Town will preserve residential development and protect existing residential neighborhoods. There are risks to neighborhood safety associated with Short-Term Rentals, and the need for regulation is high as Short-Term Rentals are currently occurring within the Town. These operations are occurring without regulations and designed to mitigate such dangers, leaving neighborhoods vulnerable to danger that could have been reasonably mitigated by appropriate regulation.

- Amend SECTION 2 (c), on Page 2 to read:

A community need is demonstrated for the changes proposed in that on May 13, 2020 the Town Council, in response to a tragic incident involving a short-term rental in the City of Orinda, identified the need for a basic Short-Term Rental Ordinance for the community, and determined that the proposed ordinance would meet that need.

- Amend SECTION 2 (d), on Page 2 to read:

The adoption of the Ordinance will be in conformity with public convenience, general welfare, and good zoning practice in that the proposed Ordinance would provide additional regulation of a Moraga Home Occupation to increase the safety and welfare of the Town’s residential neighborhoods where Short-Term Rentals may exist. The proposed regulations would be consistent with good zoning practice as Short-Term Rentals are accessory to residential land uses and are becoming more commonly regulated in municipalities across the State.

- Amend SECTION 8.114.020, Restrictions C, Page 3 to read:

The Short-Term Rental must be located within a permitted and permanently constructed dwelling unit. For example, without limitation, Short-Term Rental in a vehicle, trailer, or tent is not allowed.

- Amend the second paragraph of SECTION 6, Page 4 to read:

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Moraga, California, held on May 27, 2020, and was adopted and ordered published at a regular meeting of the Town Council held on June 10, 2020 by the following vote:

As to the recommended revisions to Section 8.04.020 – Definitions, Ms. Bazzano commented on the difficulty of enforcing the term “majority of the calendar year.”

Councilmember Woehleke also spoke to the use of the term “primary residence” as it related to enforcement that had impacts due to tax and license purposes, which was enforceable in relation to primary residence six months plus.

Ms. Bazzano explained that the title in Attachment A would also have to be modified since, with the revisions, it would be an introduction of the Ordinance and a first reading. She recommended a motion to waive the first reading and introduce by title only, with the remainder of the description read into the record.

Ms. McInturf reported no additional comments from the public had been received for this item.

ACTION: It was M/S (Sos/Wykle) 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 by the Redlines Put into the Record. Roll Call Vote: 4-1. Noes: McCluer.

7. ADOPTION OF MEETING AGENDA

Vice Mayor McCluer offered a motion, seconded by **Councilmember Woehleke**, to move Item 8. A., Reports to the end of the meeting agenda.

Mayor Korpus offered an amendment to the motion to move Item 8. A. Reports with the exception of Item 8. B., the Town Manager’s Report, to the end of the meeting.

PUBLIC COMMENTS OPENED

Ms. McInturf reported no comments from the public had been received for this item.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (McCluer/Woehleke) to move Item 8. A. Reports with the exception of Item 8. B., the Town Manager's Report, to the end of the meeting. Roll Call Vote: 4-1. Noes: Wykle.

Vice Mayor McCluer offered a motion to adopt the meeting agenda, as modified, seconded by **Councilmember Wykle**, although he asked the Town Council to strive to keep all clarifying questions and comments to three minutes.

ACTION: It was M/S (McCluer/Wykle) to modify the Meeting Agenda, and Move Item 8. A. Reports with the exception of Item 8. B., the Town Manager's Report, to the end of the meeting. Roll Call Vote: 5-0.

8. REPORTS

- B. Town Manager Update – Town Manager Battenberg reported Moraga School District (MSD) schools would have car parades in the next two days. She also reported that the Town's summer camps were now being scheduled in accordance with all County Health Department standards limited to 12 children, with the camps to commence on June 8, 2020. Also, all Town parking lots were open and the community was being asked to comply with all County Health Department standards in terms of wearing face masks and social distancing. The Moraga Library painting project was also complete and the next phase of businesses allowed to reopen included indoor offices, with more information to be available May 28, 2020. While Town Offices remained closed, construction and planning activities were ongoing by appointment only. Remaining Town workers would return on June 1, 2020. Telecommuting was still being allowed.

Parks and Recreation Director Breyana Brandt provided an update on Parks and Recreation Department activities and reported staff was gearing up for some virtual 4th of July celebrations/activities in place of the annual 4th of July celebrations. Community volunteers were working to enhance the Town's plans. Staff had discussed fundraising for future firework celebrations but had decided not to pursue the campaign at this time.

9. DISCUSSION ITEMS

There were no discussion items.

10. PUBLIC HEARINGS

There were no public hearings.

Mayor Korpus declared a recess at 8:21 p.m. The Town Council meeting reconvened at 8:26 p.m. with all Councilmembers and staff participating via teleconference.

11. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

A. Ordinance Clarifying Responsibility for Right-of-Way Landscaping

Consider Waiving the First Reading and Introducing by Title Only, an Ordinance Amending Title 12, Adopting Chapter 12.10 – Trees, Shrubs, and Hedges and Other Landscaping in the Right-of-Way (*CEQA Status: Exempt*)

Public Works Director/Town Engineer Shawn Knapp provided a PowerPoint presentation outlining the Ordinance to clarify the responsibility of right-of-way (ROW) landscaping. He asked the Town Council to find the proposed Moraga Municipal Code (MMC) amendments to be exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), waive the first reading and introduce by title only an Ordinance amending Title 12, adding subsection Trees, Shrubs, and Hedges within the Right-of-Way. Alternatively, the Town Council may provide direction to staff on additional amendments to the Draft Ordinance and continue the public hearing to a date certain or uncertain for additional review of any such amendments.

Responding to the Council, Mr. Knapp explained that the California Streets and Highways Code allowed agencies to set regulations regarding the maintenance of the public ROW and the sidewalk area. Since 1990, the sidewalk area had been defined as the area between the edge of the pavement to the property line, with the responsibility put on property owners as allowed through the Streets and Highways Code, which had been cited in the MMC. He read into the record Section 12.04.010 A of Chapter 12.04, SIDEWALKS, of the MMC which identified the responsibility of the maintenance of the sidewalk area with the definition of sidewalk area included. The proposed clarification would strengthen the understanding of the intent and would provide assistance when dealing with a property owner who may not clearly understand the intent of the language in the MMC.

Mr. Knapp stated the agencies he had researched had such language in their codes and it had been very common. Some agencies had some variation but all had to some degree defined the requirement for the property owner of the responsibility of the landscaping in the ROW. In Moraga, the property owner had always been responsible for the landscaping in the ROW.

PUBLIC COMMENTS OPENED

Ms. McInturf reported no comments from the public had been received for this item.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (McCluer/Woehleke) to waive the First Reading and Introduce by Title Only, an Ordinance Amending Title 12, Adopting Chapter 12.10 – Trees, Shrubs, and Hedges and Other Landscaping in the Right-of-Way. (*CEQA Status: Exempt*). Roll Call Vote: 5-0.

B. FY 2020/21 Capital Improvement Program Budget

Consider Preliminary Fiscal Year 2020/21 Capital Improvement Program (CIP) Budget and Provide Direction to Staff

Ms. Battenberg reported for the second year the Capital Improvement Program (CIP) projects were being presented to the Town Council prior to bringing forward the proposed budget allowing the opportunity to review the CIP projects and incorporate any comments into the budget to meet the June 30, 2020 deadline. She emphasized the financial investment in the Town's infrastructure in 2019 and the hope that in the next year a greater investment in the Town's infrastructure would occur.

Ms. Battenberg cited the Canyon Road Bridge Project as the largest project in the Town's history which was taking place over multiple years, and along with Measure K funds, the Town had been successful in obtaining other grant funding. She explained that the CIP budget was a little different this year so as to increase transparency on how the projects were presented and provide accountability tracking the projects and related expenditures. She cited the 2019/20 budget and commented if all of the projects identified were not completed this year, the budget for 2019/20 would be adjusted downward, with the funds carried over into the 2020/21 budget, and cited some examples of this process. The purpose of these changes had been to provide more accurate information about the projects and when the money was being spent. In addition, this year had been a challenge due to the purchase of a new budget software module.

Public Works Director/Town Engineer Knapp provided a PowerPoint presentation of the Preliminary Fiscal Year 2020/21 CIP, which outlined the process, FY 2019/20 projects completed, 2020/21 projects proposed, future projects, and unfunded and unscheduled projects. Responding to the Council, Mr. Knapp and Ms. Battenberg clarified the following:

- **Unfunded and Unscheduled Potential CIP Projects, St. Mary's/Rheem/Bollinger Canyon Roundabouts.** The Town had a grant contract to deliver a 35% level of effort Conceptual Engineering Plans and Environmental Analysis project. If that was not done, the Town would be responsible for the repayment of funding the Town had taken from the grant, which could cause the Town to be unable to participate in future grant project selections. The unfunded and unscheduled portions of the project were the completion of the Engineering Plans and Construction.

PUBLIC COMMENTS OPENED

Ms. McInturf reported no comments from the public had been received for this item.

PUBLIC COMMENTS CLOSED

Councilmember Wykle clarified with Ms. Battenberg the only item with funding from the General Fund was the Fiscal Year 2020/21 Proposed Creeks and Drainage, Parks and Open Space and General Government CIP, for the Bollinger Valley Study Area. During the May 13, 2020 Town Council meeting, the Town Council had decided to budget the project in 2021 and wait until the midyear adjustments to ensure funding was available.

At this time, and in order to balance the budget, Ms. Battenberg recommended the Bollinger Valley Study Area be budgeted over two years.

Councilmember Wykle also clarified whether the Town could afford all of the projects identified, with Ms. Battenberg again noting the only project that would touch the General Fund Reserve was the Bollinger Valley Study Area. If the project was funded over two years, the Town would be currently looking at an adjusted 2019/20 reserve balance of 52.2 percent, a Fiscal Year 2020/21 balance of 51 percent and a 2021/22 balance of 50 percent, with project reserves able to be kept at 50 percent through the next five years based on the projections.

Councilmember Wykle further clarified with Mr. Knapp there were some smaller programs with a bit of money for rainy day funds, as detailed in the CIP under the heading of Minor Building Facilities or Minor Transportation Facilities. In such an event where additional funding was needed for unfunded needs, staff would return to the Town Council with a request to take a look at those issues.

Councilmember Wykle was a little concerned seeing the Community Center in the Unfunded and Unscheduled Potential CIP Projects list, noting a priority/survey study had been done a while ago and a Community Center had not ranked high.

Ms. Battenberg advised that projects could be removed from the Unfunded and Unscheduled Potential CIP Projects list or be kept as shown since former Councils had cared about those projects.

Councilmember Wykle thanked staff for the presentation and the details provided. He supported the CIP budget.

Vice Mayor McCluer thanked staff for the time to review the CIP with him prior to the meeting. He also thanked staff for the new projections on COVID-19 revenue previously presented, and suggested the direction should be wherever possible to consider ways to balance the budget and reduce the deficit. He also suggested the Bollinger Valley Study Area project was very important and should get done partially in Fiscal Year 2020/21, and then continue into the next fiscal year which would help to balance the COVID-19 deficit and get the study completed.

Councilmember Sos characterized the CIP budget as directionally right on. She appreciated the identification of the projects that were incomplete with information on the funding obligations and the expectations. She too found the Bollinger Valley Study Area a critically important project, which should be done as soon as practicable with the approach proposed to keep the funding as is and reevaluate. She thanked staff for presenting the information early in the budget process, supported the transparency of doing so, and agreed that the breakdown of projects completed, proposed, and unfunded had been very helpful.

Councilmember Woehleke reported he had met with the Town Manager and the Public Works Director/Town Engineer on the CIP prior to the meeting and they had answered all of his questions. As to the Fiscal Year 2020/21 Proposed Creeks and Drainage, Parks and Open Space, General Government CIP, Laguna Creek Restoration at Hacienda de las Flores project, he found it to be a great objective although he had significant concerns with the project having a hard budget.

Councilmember Woehleke reported at the beginning of 2019, he had met with the Town Manager and Public Works Director/Town Engineer to be briefed on the project, and had been informed of the desired budget although there had been nothing to define at that time. He expressed concern with the number of challenges for a project located in a congested area which would challenge the design and execution. The project scope, CEQA requirements, and appropriate pathway along the bank and other components had not been defined and he expressed concern that the cost could be higher than the fixed budget. He requested input from the public and wanted to see that framework considered prior to approving the budget. He was also concerned with proof of concept, and asked the Public Works Director/Town Engineer to provide local examples and examples on the Internet that clearly identified the alternatives in a congested area.

Mayor Korpus clarified with Mr. Knapp there had been previous Town Council action on the Laguna Creek Restoration project after the flooding of the Hacienda, and the Town had been able to obtain Federal Emergency Management Agency (FEMA) funding to build the headwall and culvert. After that time, Town Council direction had been to find a different solution and staff had been directed to look at daylighting and opening up the creek. Staff had obtained three different types of grants dealing with such work and were working with the agencies to move on to the next phase of preliminary design and analysis, each of which required detailed cost analyses and criteria to receive funding. Staff had proposed to come back to the Town Council in July 2020, for a presentation and potential awarding of a contract for a design and

environmental firm to design the project. There would be a short window to complete the work due to soft funding and time limitations on the grant received. At that time, staff expected to also provide updates and get directions from the Town Council on key issues the Town Council would like incorporated into the project based on cost. She confirmed that if the Town returned the money from the grant received there would be no negative impact to the Town.

Ms. Battenberg reiterated that staff would return to the Town Council in July with a recommendation for a design contract for the Laguna Creek Restoration project, and the contract would outline the work to be done including some community input and development of options for Town Council consideration.

Mayor Korpus agreed with the staff recommendation on the Bollinger Valley Study Area issue and agreed it was critically important for that project to move forward. She was optimistic and hopeful the Town would have the money, as planned, for the project to be completed this fiscal year to be reevaluated during the midyear budget review.

Ms. Battenberg clarified that staff's recommendation for the Bollinger Valley Study Area had changed a bit based on the numbers, noting that at the end of 2021/22 the Town would still end up at 50 percent but if the project were broken down over two years, the 50 percent goal would be maintained in both years. If the Town Council wanted the expenses to match revenues the project should be broken up into two years.

Mayor Korpus preferred to make a decision during the midyear budget review. She also concurred with all of the positive comments about the staff presentation and the organization and presentation of the CIP budget. She liked the prioritization and cleaning up of accounts which made it easier for the Town Council to track what was happening, what had happened, and what may happen in the future. Given her understanding of the Laguna Creek Restoration project, she was inclined to follow the staff recommendation to have money allocated in the budget with the question revisited in July after the staff presentation.

Councilmember Wykle supported keeping the Bollinger Valley Study Area in the CIP to be reevaluated during the midyear budget review.

Ms. Battenberg advised that staff would return with the preliminary Operating and CIP Budgets at the June 10, 2020 Town Council meeting.

C. Voluntary Temporary Furlough Program
Consider the Following Resolutions:

Resolution 32-2020 Authorizing the Town Manager to Enter Into the Town of Moraga and the Moraga Employees Association Side Letter Agreement Establishing a Voluntary Temporary Furlough Program

Resolution 31-2020 Adding a Provision Establishing a Voluntary Temporary Furlough Program to Resolution No. 32-2019 Regarding the Compensation Package for Mid-Management/Professional Employees

Resolution 30-2020 Adding a Provision Establishing a Voluntary Temporary Furlough Program to Resolution No. 31-2019 Regarding the Compensation Package for Department Directors

Ms. Battenberg presented the staff report and recommended the Town Council adopt the resolutions contained in Attachments A through C to the staff report.

Responding to the Council, Ms. Battenberg explained that many cities had been significantly impacted by COVID-19, although some cities had financial issues prior to the pandemic, and some had enacted mandatory furloughs. She had been pleased to learn Moraga was not projected to be significantly impacted. The temporary furloughs would be reasonable if there was no work and if the budget could meet the needs of some Town employees who had personal or child care issues. She clarified how the employees could work with the furlough program if they were in the 9/80 schedule.

PUBLIC COMMENTS OPENED

Ms. McInturf reported no comments from the public had been received for this item.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Woehleke/McCluer) to adopt Resolution 32-2020 Authorizing the Town Manager to Enter Into the Town of Moraga and the Moraga Employees Association Side Letter Agreement Establishing a Voluntary Temporary Furlough Program. Roll Call Vote: 5-0.

ACTION: It was M/S (Woehleke/McCluer) to adopt Resolution 31-2020 Adding a Provision Establishing a Voluntary Temporary Furlough Program to Resolution No. 32-2019 Regarding the Compensation Package for Mid-Management/Professional Employees. Roll Call Vote: 5-0.

ACTION: It was M/S (Woehleke/McCluer) to adopt Resolution 30-2020 Adding a Provision Establishing a Voluntary Temporary Furlough Program to Resolution No. 31-2019 Regarding the Compensation Package for Department Directors. Roll Call Vote: 5-0.

The Town Council returned to Item 8. A. at this time.

A. Mayor's and Councilmembers' Reports

Mayor Korpus – Reported she had a conversation with resident Lynda Deschambault about the STR Ordinance; and Kathe Nelson, Executive Director of the Moraga Chamber of Commerce about various issues related to businesses in Town; and had attended periodic COVID-19 related updates or webinars.

Vice Mayor McCluer – Reported he had found the research provided by Councilmember Woehleke from Airbnb and Councilmember Sos' recommendations related to STRs to be helpful. He also reported he had spoken with the Executive Director of the Moraga Chamber of Commerce and had a communication with resident Dave Bruzzone.

Councilmember Sos – Reported she had attended a Board meeting of Marin Clean Energy (MCE) via Zoom.

Councilmember Woehleke – Reported he had discussions with Airbnb related to STRs which information he found to be valuable.

Councilmember Wykle – Read into the record Section 6.1.8 of the Town Council Protocols on "Reports." He explained the reason the item had been placed at the beginning of Town Council agendas had been because it advised the public of a Councilmember's activities on behalf of the Town for purposes of transparency, and allowed judgment to be made whether or not there had been

any conflict of interest. In his opinion, moving the item to the end of the agenda was not good for transparency.

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/Wykle) to adjourn the meeting at 9:48 P.M. Roll Call Vote: 5-0.

Respectfully submitted by:


Marty C. McInturf, Town Clerk

Approved by the Town Council:


Kimberleigh N. Korpus, Mayor