



**TOWN OF MORAGA
REGULAR MEETING**

**June 24, 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 SHELTER IN PLACE ORDERS OF THE HEALTH OFFICER OF CONTRA COSTA COUNTY, INCLUDING THE MOST RECENT ORDER DATED JUNE 16, 2020 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 Shelter in Place Orders including the most recent Order dated June 16, 2020, the June 24, 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 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

Town Manager Cynthia Battenberg led the Pledge of Allegiance.

3. SPECIAL ANNOUNCEMENTS

Mayor Korpus reported the Town Council had held a Special Closed Session prior to the regular meeting at 6:00 p.m. The Town Council had received a report, discussed, and provided direction to legal counsel regarding ongoing negotiations with the East Bay Municipal Utility District (EBMUD).

4. PROCLAMATIONS AND PRESENTATIONS

A. Proclamation Recognizing June 2020 as Pride Month

The Town Council read into the record the proclamation recognizing June 2020 as Pride Month.

PUBLIC COMMENTS OPENED

Mayor Korpus read into the record the following public comments received via e-mail:

Jacquie Guzzo: *My name is Jacquie Guzzo and I'm the parent of a transgender son who graduated magna cum laude and is applying to law school. Thank you for issuing a Pride Proclamation declaring June Pride Month in which all citizens are asked to recognize the contributions made by the many members of the LGBTQ+ community and to actively promote the principles of equality. In addition, I ask that Moraga officially fly the Philly Pride Flag underneath our City's flag. I'm a member of PFLAG Lamorinda which is made up of the Parents, Families and Friends of kids who happen to be LGBTQ+ and members of the LGBTQ+ community. Many of our families didn't learn they had LGBTQ+ kids until they went away to college. On visits home during spring break or holidays their kids came out to them – right before returning to campus. Why have there been so many of our kids who were afraid to talk to their families about the thoughts they were having around their gender or who they wanted to date? Why do our kids have to wait until they leave for college to live as the awesome people they are? You need to know it is easy for our Town Council to raise commemorative flags. Legally, you're on firm ground. It's called government speech and you can use it to raise whatever flags you feel represent the citizens of your town whenever you want and for as long or short as you want. Let me know if you need the legal opinion from Dublin's city attorney, which other Contra Costa County towns and cities have relied upon. There will be one or two of you who will raise all sorts of reasons why this is complicated and should take time. It isn't - and it shouldn't. Someone will say "We can't! We'll be overrun by requests from every Tom, Dick and Harry to fly flags representing all sorts of crazy things!" Research has shown cities which have been flying the Pride flag for years have not been overrun by an onslaught of other flag requests. With that in mind leave flexibility in the hands of our intelligent and compassionate councilmembers now and in the future. Someone may say "We can't do this without an Official Flag Policy." You can... it's in the legal opinions, and it's called Government Speech. Fly the flag now and the flag policy can be drawn up over the next few months, if you feel you need one. I can supply you with copies of other cities' policies to save you time as well. There may be a councilperson who will try to make it seem complicated. It isn't and shouldn't be... those are smoke screens and excuses. The single answer to most of those questions this person may raise is "Deal with it when it comes up and vote, leaving flexibility for yourselves and future councilpersons." Let's show our civic Pride and fly the symbol that says we are a diverse community, inclusive of our LGBTQ+ citizens and loved ones. Thank you.*

Wendell Baker: *Dear Town Council Members, Thank you for considering the resolution for Pride Month. I would also like to encourage you to fly the Rainbow Pride Flag in Town and at the Commons. I started to fly the pride flag at my house in Larch many years ago. When I first put it up I was concerned about how the neighbors would react. Over the years the flags have multiplied and moved to a more prominent location closer to the street. The reactions from my neighbors have been very positive. People have thanked me when walking by and even on social media (NextDoor). I've even donated rainbow flags to the elementary schools in town. They were going to fly them during May in honor of pride month. However, since the schools were closed in May they weren't able to fly the flags. I think it's important to let the children growing up here know that the LGBTQ+ community is supported. The Town flying the Rainbow Pride Flag would be a wonderful way to show support. The version with the additional black and brown stripes (Philly Rainbow Flag) would be particularly appropriate this year. If the Town would like to go one step further and post "Safe Space" signs they are available for free from the Moraga iKind Project. We have a whole catalog of free materials at: http://moragaikind.org/images/FS_catalog_2020_RevA_samll.pdf. Thank you for all you do for the Town. Best regards, Wendell Baker, Moraga iKind Project*

Jennifer Crain: To whom it may concern: I would like the following comment to be read into the public record during today's 6/24/20 town council meeting: My name is Jennifer Crain. I am the co-president of the newly formed chapter of PFLAG Lamorinda, the nation's largest LGBTQ+ support group. I am also a Moraga resident and a mother of 3 children who attend Moraga schools. I want to applaud you and thank you for proclaiming June 2020 as pride month. By issuing this proclamation, all 19 cities and towns in Contra Costa County have, for the first time ever, proclaimed June as pride month. I would like to encourage all town council members to fly the inclusive pride flag, also known as the Philly flag, and show their support for all members of the LGBTQ+ community. Help us show and not simply tell this underserved community that you are respected in Moraga, you are valued in Moraga, and you are welcome in Moraga!

Rebecca Jensen: Dear Moraga Town Council Members, I am a resident of Moraga and a proud ally to my LGBTQ+ friends and family. First, I would like to thank the Council for their proclamation recognizing LGBTQ Pride Month. That is an important statement of support, particularly during these troubled times when LGBTQ people are increasingly feeling vulnerable. Secondly, I would like to strongly encourage the Town Council to back up their support more visible to our community by raising the Pride Flag. The Council's statement of support is most welcome, but raising the flag makes that statement more prominently visible. It makes it clear that Moraga is a friendly and welcome place to the LGBTQ community. It is important to note that Pride flags are currently displayed by our neighboring communities Orinda and Lafayette. Whether intentional or not, the Town Council needs to recognize that Moraga's decision not to fly the Pride flag, when our neighbors are doing so, is also making a statement. Let's instead join our neighbor communities by flying the Pride flag, and make a visible statement of support to our LGBTQ community. Thank you, Rebecca Jensen.

Bree Sanchez: I am a resident of Moraga and co-president of the Lamorinda chapter of PFLAG, the nation's largest organization of parents, families and friends of LGBTQ+ loved ones. I'd like to extend sincere thanks to the Moraga Town Council for their proclamation tonight recognizing June as LGBTQ Pride Month. Around the world, we are seeing that LGBTQ people are increasingly vulnerable in this time of physical and social isolation, health and economic instability, and lack (and repeal) of critical legal protections. The Town's proclamation represents a step in the right direction and the culmination of the work of many people in our community who are committed to respecting, valuing, and affirming LGBTQ people living in Moraga. Thank you. On that note - now more than ever, the Town Council should make their commitment meaningful and visible by raising the Pride Flag. The flag visibly demonstrates to the world - and those who live and work in our community - that all are welcome in Moraga. In starting up a PFLAG chapter in Lamorinda, my hunch - and my hope - was that if I looked below the surface I would find that there are other moms like me who are looking for support in creating a culture of inclusion for LGBTQ loved ones and in safely navigating this community. A Pride Flag is a much needed tool of navigation. A Pride Flag says you and your loved ones are safe here. It has been heartening to learn that Moraga is home to many, many vibrant and wonderful people who are LGBTQ, as well as their moms, dads, grandparents, families and friends. Unfortunately, listening closely to their stories first hand, I have also learned that many LGBTQ members of the Moraga community have experienced bullying, discrimination, and harmful microaggressions against them. The Pride Flag visibly demonstrates that our community leaders are on the side of equity and social justice. Pride flags are currently on display by cities and towns throughout Contra Costa County, most notably Orinda and Lafayette. Let's join them and raise the flag for all as a symbol of togetherness, tolerance, community, and acceptance. Sincerely, Bree Sanchez

Hen King: To the Town Clerk and the Moraga Town Council: I know of a few locations in the entire town that fly pride flags. The old Moraga post office, my house, and Wendell Baker's business location. I was inspired to fly the pride flag shortly after I came out. I would see the

flags flying on Wendell's business. Those flags gave me hope to be me, to finally shed my own self-hate. I believe others who see pride flags, that folks will feel unwelcome in this town. It has been almost two years since my son and I put the pride flags on our own home. On the anniversary of the Pulse nightclub shooting in Florida and a new repeal of transgender rights by the administration; my day was brightened when I was stopped by a neighbor who grew up near our home. He rushed out of his car to thank me for flying pride flags! When he grew up in this town, it was hard to be part of the LGBTQ+ community here. We both sadly agreed that it still is. My simple gesture of flying pride "brightened his day," it gave him hope! It made driving into his old neighborhood a joy. I am still so moved and in awe, how many others have been helped with this simple gesture? The small things we do, can indeed move mountains; just as inaction can unknowingly hurt and exclude. I would like to remind you that nearly half of all LGBTQ+ youth consider suicide (CDC 2017, link below). Flying a pride flag gives hope to those that need it most, and may even save a life. Think of the message we are sending when Lafayette and Orinda proudly fly the flag yet we do not. I for one feel very unwelcome - and I have lived in this town since 1984. Let's not turn our back this time. Hen King, Moraga Resident <https://www.cdc.gov/healthyyouth/disparities/health-disparities-among-lgbtq-youth.htm>

Eliot Smyrl: We are writing in support of the Town's proclamation of June as Pride Month. As the proclamation states, the LGBTQ+ community is an important part of the Town and it is important to support all residents and oppose intolerance in any form. As family members of LGBTQ+ individuals we know first-hand that important steps like such proclamations and recognition are an important part of bringing not only acceptance and tolerance but celebration of the lives of everyone in our Town. In addition, we request that the Town Council include in this recognition a decision to have the Town fly the Pride flag. Lafayette and Orinda (just to cite two nearby examples) already have made this decision, and this is another important step towards acceptance, tolerance, and celebration. Laura and Eliot Smyrl

PUBLIC COMMENTS CLOSED

Councilmember Sos thanked everyone for their comments, advocacy, telling their stories, and for highlighting for the Town Council the importance of LGBTQ+ equality in general and particularly in the community. In 2019, the proclamation had been read into the record to the LGBTQ+ members, families and allies who had been present in the Town Council Chambers at that time but which could not be done now due to the COVID-19 pandemic. She emphasized the proclamation and comments were just as heartfelt now as they had been in 2019. She acknowledged the current time of tremendous upheaval and uncertainty both economically and socially, which left many people including the LGBTQ+ youth and members of the community feeling vulnerable and fearful. She emphasized it was time for the Town to re-double its commitment to equality, fairness, and treating every person in the community with dignity and respect, for everyone in the community to feel welcome, safe, and be their true and authentic selves, and for children in the community to grow and thrive with authenticity without having to confront bigotry and intolerance. She suggested those were the values of Moraga which should be lived and protected. She wished everyone a Happy Pride Month.

Councilmember Woehleke suggested as the proclamation had stated, *a time to celebrate and recognize our dynamic and diverse Moraga community and to promote a healthy, safe and supportive environment for all*, should be celebrated year-round and not just during the month of June. While he recognized the Town Council could not take any action at this time he wanted to see the Town Council make that commitment year-round, significant, and substantive.

Vice Mayor McCluer thanked everyone for their comments. He took the opportunity to also celebrate the LGBTQ+ community, particularly in the current environment where racism of all types continued to exist. He noted the Town and its residents supported unity, acceptance and all ethnicities, religions and sexual orientations, but suggested the Town could do better and the

Town had the opportunity to do that through the support of Pride Month. He supported the LGBTQ+ community and was disappointed the Town Council could not hold its regular meeting in the Town Council Chambers, with an audience, given the need to make it a priority to recognize and honor the month of June as Pride Month.

Councilmember Wykle thanked everyone for their input. He too was disappointed the Town Council could not meet normally in the Town Council Chambers allowing for the public to be present as it had in 2019 during Pride Month. He thanked staff for the preparation of the proclamation. He was proud to be a member of a community of inclusion year-round.

Mayor Korpus also thanked everyone for their comments and input. She emphasized the Town Council was listening to the public and extended its welcome to all people in the Town of Moraga. She expressed her hope that in 2021 when Pride Month was again recognized the Town Council would be able to meet live in the Town Council Chambers with the public present in the audience. She too thanked staff for the preparation of the proclamation.

5. PUBLIC COMMENTS AND SUGGESTIONS

Mayor Korpus reported no public comments and suggestions had been received via e-mail at this time.

6. ADOPTION OF CONSENT AGENDA

A. Approval of Consent Items

Consent Agenda Item 6.3 was removed from the Consent Agenda.

PUBLIC COMMENTS OPENED

Ms. Battenberg reported no comments from the public had been received to be read into the record for this item.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (McCluer/Woehleke) to adopt Consent Agenda Items 6.1, 6.2, 6.4, 6.5, 6.6, and 6.7. Roll Call Vote: 5-0.

6.1	Receive <u>Accounts Payable</u> Claims for: 06/05/20 (\$293,013.08)	Approved
6.2	Approve <u>Minutes</u> for the Town Council Regular Meeting on May 27, 2020	Approved
6.3	<i><u>Ordinance Amending Chapter 8.88 (Signs)</u> Consider Waiving the Second Reading and Adopting Ordinance ___ Amending Chapter 8.88 – Signs, of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code to Streamline the Approval Process for Certain Types of Signs; Allow for New Master Sign Programs to Include Greater Variation from the Standards Prescribed by Chapter 8.88; and Amend Certain Specific Standards and Regulations for New Commercial Signage including Wall Signs, Monument Signs and Portable Signs (CEQA Status – Exempt)</i>	Removed

- 6.4 Public Works/Parks Maintenance Supervisor Job Description Approved
 Consider Resolution 35-2020 Approving the Public Works/Parks Maintenance Supervisor Job Description; and Consider Resolution 36-2020 Amending Resolution No. 32-2019 to Add the Public Works/Parks Maintenance Supervisor to the Compensation Package for Mid-Management/Professional Employees
- 6.5 Contract to Install Electric Vehicle Charging Stations Approved
 Consider Resolution 37-2020 Awarding a Construction Contract to El Camino Electrical Services for an Amount Not to Exceed \$34,440 to Install Electric Vehicle Charging Stations at the Town Offices and Moraga Commons Park as Part of the Electric Vehicle Charging Station Project of the Capital Improvement Program (CIP 20-103) and Authorizing the Town Manager to Execute the Contract for Electrical Services (*CEQA Status: Exempt*)
- 6.6 Canyon Road Bridge Tree Removal Project Approved
 Accept Tree Removal Services Completed by Julian Tree Care (Richmond) for the Canyon Road Bridge Tree Removal Project (CIP 14-101A) and Authorize the Town Engineer to File the Certificate of Completion with the County
- 6.7 Contract for On-Call Concrete Services Approved
 Consider Resolution 38-2020 Awarding a Contract Services Agreement to DMR Builders and Paving (Santa Rosa) for On-Call Concrete Services in an Amount Not to Exceed \$100,000 for the First Year and \$75,000 Each Subsequent Year Contingent on Available Annual Budget Appropriations for a Total Contract Period of Three Years (with an Option to Extend for an Additional Two Years) and Authorizing the Town Manager to Execute the Contract Services Agreement (*CEQA Status: Exempt*)

B. Consideration of Consent Items Removed for Discussion

1. Ordinance Amending Chapter 8.88 (Signs)
 Consider Waiving the Second Reading and Adopting Ordinance ___ Amending Chapter 8.88 – Signs, of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code to Streamline the Approval Process for Certain Types of Signs; Allow for New Master Sign Programs to Include Greater Variation from the Standards Prescribed by Chapter 8.88; and Amend Certain Specific Standards and Regulations for new Commercial Signage including Wall Signs, Monument Signs and Portable Signs (*CEQA Status – Exempt*)

Mayor Korpus explained that she had removed the item because she realized there had been some ambiguity in the language which made it unclear which provisions applied to private versus public property, complicated by the fact the Town had a process for temporary banners and signs on Town-owned property, which could undermine that policy if the amendments in the Ordinance were adopted.

Mayor Korpus detailed her redline edits to the Proposed Ordinance, as follows:

- Section 8.88.060 – Sign review procedure: A. revised to read: *Zoning Administrator. A sign permit for the following types of signs on private property shall be reviewed and issued upon approval by the Zoning Administrator:*
- Section 8.88.060 – Sign review procedure: B. revised to read: *Design Review Administrator. A sign permit for the following types of signs on private property, except such signs conforming to an approved Master Sign Program, shall be reviewed and issued upon approval by the Design Review Administrator:*
- Section 8.88.060 – Sign review procedure: Subsections B1, B2, B3, B4, B5, and B6, remove the text reading: *except such signs conforming to an approved Master Sign Program;* in each of these subsections.
- Section 8.88.060 – Sign review procedure: C. revised to read: *Design Review Board. A sign permit for the following types of signs and programs on private property shall be reviewed and issued upon approval by the Design Review Board:*
- Section 8.88.060 – Sign review procedure: D. eliminate the text reading *A sign permit or the following types of signs shall be reviewed by the Town Council* after the text reading Town Council.
- Revise Subsection D.1 to read: *A sign permit for an electronic message sign structure on private property shall be reviewed and issued upon approval of the town council, and*
- Section 8.88.060 – Sign review procedure, subsection D.2, revised to read: *Signs installed on town property shall be reviewed per Section 8.88.040 (D); and*

Mayor Korpus reported she had spoken with the Assistant Town Attorney about the changes and she recognized that, if approved, another reading of the Ordinance would be required; however, if the changes were not made to the Ordinance, in her opinion the Town Council may approve things that could be contradictory to the Town's temporary signs policies and practices. She understood the proposed changes had been reviewed by the Town Manager, Assistant Town Attorney and the Senior Planner.

Ms. Battenberg acknowledged that the Mayor's edits offered some clarity and also acknowledged an applicant was waiting for the amendments to be approved. While a delay would be unfortunate, the changes would provide beneficial clarifications.

Senior Planner Steve Kowalski agreed the Mayor's changes provided some clarity but in his opinion the changes were not critical.

Assistant Town Attorney Denise Bazzano confirmed she had reviewed the Mayor's proposed redline edits as presented, found they added clarity to Section 8.88.060, and distinguished that the changes only applied to private property given there could be an interpretation that could cause confusion. She suggested the edits were appropriate.

PUBLIC COMMENTS OPENED

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

PUBLIC COMMENTS CLOSED

Councilmember Wykle accepted the changes since they would add clarity and recognized that another reading of the Ordinance would be required.

Ms. Bazzano asked for a motion referencing the sections to be amended in the redline edits and waiving the first reading and introducing by title an Ordinance.

ACTION: It was M/S (Korpus/Sos) to waive the First Reading and Introduce by Title, an Ordinance Amending Chapter 8.88 – Signs, of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code to Streamline the Approval Process for Certain Types of Signs; Allow for New Master Sign Programs to Include Greater Variation from the Standards Prescribed by Chapter 8.88; and Amend Certain Specific Standards and Regulations for new Commercial Signage including Wall Signs, Monument Signs and Portable Signs (CEQA Status – Exempt), subject to further amendment in the redline edits as shown by the Mayor, and as discussed by the Town Council, which further amended Section 8.88.060, Subsections A, B, C, and D. Roll Call Vote: 4-0-1. Abstain: Woehleke.

7. ADOPTION OF MEETING AGENDA

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 (Wykle/McCluer) to adopt the Meeting Agenda, as shown. Roll Call Vote: 5-0.

8. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Korpus – Reported she had participated in a tour of the Canyon Road Bridge Project with staff, and the project and construction management teams; League of California Cities Mayors and Councilmembers Executive Forum via Zoom with another meeting scheduled for June 25, 2020; and an inaugural meeting of the Fire Prevention Joint Subcommittee and briefed the Council on all of the discussions. She had also attended a Closed Session of the Town Council prior to the current regular meeting.

Vice Mayor McCluer – Reported he too had participated in a tour of the Canyon Road Bridge Project; an Association of Bay Area Governments (ABAG) General Assembly meeting via Zoom; and a League of California Cities Mayors and Councilmembers Executive Forum via Zoom and briefed the Council on the discussions.

Councilmember Sos – Reported on the Moraga Cares Program and the Lamorinda community effort to provide free COVID-19 testing at all senior care facilities, reporting that all Moraga care facilities had tested negative. She had also attended an emergency meeting of the Lamorinda School Bus Transportation Agency (LSBTA) Board and briefed the Council on the discussions.

Councilmember Woehleke – Reported he had attended the ABAG General Assembly meeting via Zoom; Moraga-Orinda Fire District (MOFD) Board meeting; teleconference with Verizon representatives regarding the deployment

of 5G technology in Moraga; and the Fire Prevention Joint Subcommittee meeting and briefed the Council on all discussions.

Councilmember Wykle – Reported he had a self-guided tour of the Canyon Road Bridge Construction Project site. He congratulated staff on the efforts to expedite the project.

- B.** Town Manager Update – Town Manager Battenberg reported the Town was making progress on the Canyon Road Bridge project and as of June 20, 2020 the bridge was open to the public during the day, with intermittent delays and closure to occur on an as-needed basis. Status information would be posted on the Town website. Also, tours of the Canyon Road Bridge Project were being conducted with members of the Town Council (consistent with the regulations of the Brown Act) and letters had been sent to all households in the vicinity of the Canyon Road Bridge regarding a critical early morning concrete pour scheduled for July 3, 2020 from 3:30 a.m. to 3:00 p.m. Nearby residents should expect noise and traffic impacts during the construction period but the work would be the only early morning bridge closure for the calendar year. Updates would be provided to the community on the Town website, Facebook, About Town, NextDoor and Nixle, and would include contact information for the construction manager.

Ms. Battenberg reported the Town had been awarded \$189,000 in Proposition 68 Per Capita Grant Funds which had been programmed into the next year's budget for design work to renovate the picnic areas at Commons Park. She also reminded everyone about the Fourth of July virtual celebrations that had been planned. Community photos were encouraged to be submitted to be shared on the Town website.

9. DISCUSSION ITEMS

There were no discussion items.

10. PUBLIC HEARINGS

A. Street Lighting Assessment District

Conduct a Public Hearing and Consider Resolution 39-2020 Confirming the Engineer's Report for the Town of Moraga Street Lighting Assessment District 1979-1, Approving Assessments and Assessment Diagram, and Levying Assessments for Fiscal Year 2020/21 (*Continued from June 10, 2020*)

Public Works Director/Town Engineer Shawn Knapp introduced Randy Leptien, with LCC Engineering & Surveying, Inc., the engineer for the Town of Moraga Street Lighting Assessment District who had submitted the Engineer's Report for Fiscal Year 2020/21.

Randy Leptien, LCC Engineering & Surveying, Inc., provided a PowerPoint presentation to highlight the background of Street Lighting Assessment District 1979-1. He reported that no increase in the assessment had been proposed for Fiscal Year 2020/21 and improvements included the installation, operation, servicing, and maintenance of existing or future street lights, and traffic signals in the Town. He asked the Town Council to conduct a public hearing on levying assessments for Fiscal Year 2020/21 for the Town of Moraga Street Lighting Assessment District 1979-1, and upon closure of the public hearing the Town Council was asked to approve the resolution contained in Attachment A, which continued the current

assessment of \$58.00 for a typical single family residence within the Street Lighting Assessment District to fund operations and repairs of the Town's streetlights and traffic signals.

Responding to the Council, Mr. Leptien reiterated the history of the Street Lighting Assessment District 1979-1, with the vast majority of the lights having been recently converted to Light Emitting Diodes (LEDs), which would extend the life of the light infrastructure. He noted that some of the existing infrastructure belonged to PG&E, and there were some costs and elements of the system that were depreciating. At this time no funding was being provided for undergrounding the systems. The budget for Assessment District 1979-1 involved an annual maintenance budget. As to what additional weight the light poles could handle from an infrastructure standpoint, he explained that while they could handle the weight of banners and the like, wind forces were significant for lateral loads.

Mr. Knapp added in response to Councilmember Woehleke that he could not state the maximum weight that could be placed on the top of the light poles given the variety of different poles of differing ages in the Town, with updates in the system over time as technology changed. Since the fixtures had been changed multiple times as energy efficiency improved, those updates had increased the life of the fixture. He could conduct some investigation but suggested they had done what could be done at this time in terms of energy efficiency projects while also contemplating commercial lighting in the future around the Town's commercial centers. He expressed the willingness to review available reports to answer some of Councilmember Woehleke's questions off-line.

PUBLIC HEARING OPENED

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

PUBLIC HEARING CLOSED

Councilmember Woehleke pointed out the light poles could be used for other purposes in the future and he sought some information as to their design lifespan, when they would have to be renewed, and the additional weight load that could be accommodated on the top of the poles.

Mayor Korpus asked whether the desire to increase the strength of the poles so they could bear communications on the top, such as 5G technology, was something that could be used to justify an increase in the annual assessments for the Street Lighting Assessment District, to which Mr. Leptien commented that most likely that would not be possible, and the assessment would have to do with street lighting or landscaping, and not communications.

ACTION: It was M/S (Woehleke/McCluer) to adopt Resolution 39-2020 Confirming the Engineer's Report for the Town of Moraga Street Lighting Assessment District 1979-1, Approving Assessments and Assessment Diagram, and Levying Assessments for Fiscal Year 2020/21. Roll Call Vote: 5-0.

11. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

Mayor Korpus declared a recess at 8:35 p.m. The Town Council meeting reconvened at 8:45 p.m. with all Councilmembers and staff present via teleconference.

A. 2020 Overlay Project Construction Contract

Consider Resolution 40-2020 Awarding a Construction Contract to Bay Cities Paving and Grading (Concord, CA) for the 2020 Pavement Overlay Project in the Amount of \$1,347,800 and Authorizing the Town Manager to Execute the

Construction Contract and Contract Change Orders for up to 10% of the Contract Amount for a Total Amount Not to Exceed \$1,482,580 (Status: CEQA Exempt)

Public Works Director/Town Engineer Shawn Knapp introduced Assistant Engineer Sharon Chan.

Assistant Engineer/Pavement Management Manager 2020 Overlay Project, Sharon Chan provided a PowerPoint presentation of the 2020 Overlay Project which highlighted the recommended pavement overlay streets in the Town, samples of existing conditions on various Town streets, bid results, and the background of Bay Cities Paving & Grading Inc. She recommended the Town Council consider the adoption of the resolution contained in Attachment A to the staff report, as shown.

Responding to the Council, Mr. Knapp explained that the bid received from Bay Cities Paving & Grading Inc. had been less than the Engineer's Estimate. The timing of project bidding was analyzed based on the market factors, with bids typically sought earlier in the year since projects were usually not lined up yet and materials not yet assigned to a project. He recognized an economy of scale for the larger projects with neighboring communities in the past but stated that was not feasible in this case. He noted that prices always tended to increase through the year and timing was of the utmost importance. Staff was of the opinion that getting the bid early would be a chance to obtain lower prices, which had turned out to be the case.

Mr. Knapp also clarified the Town would not take on a project that was not its responsibility. As an example, if a private lateral (whether a storm drain or sewer) was the responsibility of the private property owner, the Town would send a notice about the Town project allowing the private property owner the opportunity to upgrade their line at that point. The Town would also provide information that it had a no-cut policy after the road had been paved to incentivize the private property owner to conduct repairs rather than waiting until the matter had become worse. He recognized Councilmember Woehleke had been contacted about an issue with a private residence, and advised that staff had contacted that private property owner to determine the best approach to be taken to resolve the resident's situation.

Mr. Knapp further clarified that if a lateral, as an example, was located under Town-owned property it would be the Town's responsibility to repair. If located under private property it was generally the private property owner's responsibility unless the Town had accepted some type of easement or maintenance. He noted the Town had records that could be provided to a specific property owner.

Ms. Battenberg pointed out that a sewer lateral was generally a resident's responsibility and not the Town's.

Ms. Chan stated if the contract was awarded by the Town Council, work on the streets that had been identified for the pavement overlay would start within a month, with notification to those residents whose access would be impacted. She added the project would take care of almost all of Ascot Drive, with the exception of a portion of the street that had previously been completed and which had been eliminated from the project.

PUBLIC COMMENTS OPENED

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

PUBLIC COMMENTS CLOSED

Councilmember Woehleke thanked Mr. Knapp and Ms. Chan for interfacing with the Town's residents and for trying to address the issues.

Mayor Korpus was pleased to see the bids received were lower than the Engineer's Estimate. She encouraged staff to keep up the good work.

ACTION: It was M/S (Woehleke/McCluer) to adopt Resolution 40-2020 Awarding a Construction Contract to Bay Cities Paving and Grading (Concord, CA) for the 2020 Pavement Overlay Project in the Amount of \$1,347,800 and Authorizing the Town Manager to Execute the Construction Contract and Contract Change Orders for up to 10% of the Contract Amount for a Total Amount Not to Exceed \$1,482,580 (Status: CEQA Exempt). Roll Call Vote: 5-0.

B. FY 2020/21 Operating and Capital Improvement Program Budgets

Consider Resolution 41-2020 Adopting the Fiscal Year 2020/21 Operating and Capital Improvement Program Budgets, Including the Five-Year Financial Plan and Five-Year Capital Improvement Program

Administrative Services Director Norm Veloso and Ms. Battenberg provided an extensive PowerPoint presentation of the Fiscal Year 2020/21 Operating and Capital Improvement Program Budgets. The Town Council was asked to adopt the resolution contained in Attachment B to the staff report adopting the Fiscal Year 2020/21 Operating and Capital Improvement Program Budgets, including the Five-Year Financial Plan and Five-Year Capital Improvement Program.

Responding to the Council, Mr. Veloso and Ms. Battenberg clarified again:

- The numbers for the head count for regular permanent employees.
- The recent hiring of the Senior Civil Engineer resulted in savings from hiring outside consulting assistance.
- The temporary accounting intern position was converted into a permanent part-time Accounting Technician position; and
- The budget adjustment to the fund balance was not mentioned in the budget message as the 5-year projection reflected the adjustment to correct prior years' presentation of the General Fund fund balance.

PUBLIC COMMENTS OPENED

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

PUBLIC COMMENTS CLOSED

Vice Mayor McCluer thanked staff for the preparation of the budget. He found the challenges of succession to be great, supported consideration of a biennial budget, and looked forward to discussing that possibility with the Town Manager. He also found the investment review to be a great idea but cautioned on the risk of higher return. He emphasized the bar had been set high on the budget; offsetting the reduction in revenue with expenses and other related actions, no deficit, keeping the reserve over 50 percent, and making progress on unfunded needs. He recognized the challenges but did not want to lose the fact that the budget had been well done despite the challenges. He complimented the Town Manager's writing style in the budget message finding that the executive summary had been well done.

Vice Mayor McCluer noted he was disappointed that the reserve adjustment had not been mentioned in terms of transparency and suggested it was a material item. He recommended the second sentence of the third paragraph on Page 1 of the Budget Message, as shown in Attachment A to the staff report, be revised to read:

The budget projects a small surplus of \$2,196 and a year-end General Fund Reserve level of \$4.87 million, or 51%. This was achieved primarily through a series of expense actions and a reduction in prior year project reserves.

Councilmember Woehleke echoed the positive comments offered by the Vice Mayor and the opportunity to have multiple meetings to digest the complicated budget. He referenced Capital Improvement Projects, Page CIP-14, Laguna Creek Restoration at Hacienda de las Flores, and commented that the project was unique, large, and challenging. He emphasized he had been trying to get more information on the project since January 2019. He understood that staff planned to brief the Council on the project at its next meeting in July, although the project funds had been included in the budget for approval at this time.

Councilmember Woehleke expressed concern that the Town Council's direction to staff in 2014 to pursue a daylighting of the creek artificially restricted consideration of alternatives to achieve the project objective to reduce flooding at the Pavilion which had been identified in the project description. One potential impact of not having the full range of alternatives was if none of the daylighting alternatives were a good or imperfect fit, the Town Council would have incomplete information to make an informed decision. He suggested there were other potential alternatives besides the 8 x 10 foot replacement box culvert from the 2015 Storm Drain Master Plan.

Councilmember Woehleke commented that while daylighting the creek was a value, ensuring the park was safe was also a value, and safety was an issue, which had already been evidenced by the large cyclone fence which currently prevented access of the entire area downstream of the culvert. Daylighting would entail creating an approximate 10-foot deep gully or trench, which could be a drowning or falling hazard, and he questioned the trade-off of daylighting for safety as worthwhile or whether the 10-foot deep restored creek must be fenced off to protect Town residents, especially children. He also questioned whether modifying the Pavilion to ensure foundation stability was within the project scope. In addition, the integrity of the adjacent sanitary trunk line was also a value and he questioned whether daylighting would involve a trade-off with the integrity of the sanitary sewer line or whether the cost of protecting the sanitary sewer line had been included in the cost estimate.

Councilmember Woehleke further questioned whether the design would allow an adequate buffer between the daylighting of the creek and the sewer line and suggested that providing a path along the restored creek would almost certainly require modification of the Pavilion structure, which he questioned as an acceptable trade-off. Given the Town was small and under-resourced, and based on the project scope and preliminary project estimates, he suggested the approximate five percent contingency was exceedingly small and the Town would be responsible for any cost overruns.

Councilmember Woehleke commented that all of the issues were the responsibility of the Town Council and staff to decide as a team and there remained other issues he had with the project which could affect grant funding and put the Town at risk. He questioned whether the additional costs had been included in the cost estimate, had concerns with the time the project would require of staff, and commented on the fact that previous communications had stated that the project would prevent flooding at the Pavilion, which he suggested was untrue. He reiterated there were viable alternatives for the Laguna Creek Restoration project, no

alternatives should be excluded, and he had been emailing staff seeking information since 2019. Since the project was part of the budget, he could not support the budget, as proposed, which pained him since he had also voted against the budget in 2019.

Councilmember Sos described the budget process as exhaustive and transparent. She appreciated the multiple opportunities throughout the year the Town Council had been given to provide input and direction to staff. She found the budget message had been clear, concise, and laid out in a transparent way to identify the challenges facing the Town. She stated that staff had cleared the high bar the Town Council had set, and she found that some of the revenue assumptions had been well reasoned and well thought out in consultation with the Town's consultants. She appreciated and supported staff's commitment to watch the trends carefully and to return to the Town Council at the first occasion where staff saw things going in a way they had not assumed to allow the Town Council to make the appropriate adjustments. She supported the budget as proposed.

Councilmember Wykle also acknowledged and recognized the staff efforts to reduce expenses for the Town, which had shown the Town could accomplish all it could. As to the figures shown for the total budget for FY 2020/21, he pointed out the importance of noting that at least half of the funds came from grant or reimbursement funds. He thought it was premature to turn those grant funds down now and he looked forward to the staff presentation in July on the Laguna Creek Restoration project, which also involved grant funding. He noted that using other people's money for a major storm water project was exactly what residents had wanted when the citizenry had narrowly defeated the Town's storm drain measure. He believed the Town was going down the right road. As to the recommended verbiage changes to the budget message as proposed by the Vice Mayor, he was uncertain it was necessary, but would support the majority decision of the Town Council.

Mayor Korpus echoed the positive comments the Council had made regarding staff's efforts to provide organization and clarity to what was going on in the Town organization and the efforts to set the Town on a path where it was operating more smoothly, easily, quickly, accurately and professionally. She stated the budget document gelled and offered a well-oiled machine of reporting out due to its organization. She was confident the Town Council would start seeing all of the hard work staff had done and how much was paying off. She was concerned about revenues and recognized that staff would return to the Town Council if the Town was heading off target. **Mayor Korpus** was reassured with the accuracy of what staff was doing so that staff could plan appropriately. As to the budget message and recommended verbiage modification offered by the Vice Mayor, she disagreed there were transparency issues and was more inclined for the budget message to remain as shown.

Mayor Korpus agreed that the Council should focus on the staff recommendation for succession planning, but was uncertain whether staff was seeking input. She was open to hearing more about that given her concerns with the mass exodus of Department Heads in 2017, which had brought things to a halt for the Town due to the loss of institutional knowledge. She would like to see a plan as to how the Town could keep that moving forward. She thought the staff recommendation for a biennial budget was a great idea and she looked forward to future presentations as to how the Town Council could increase its effectiveness and efficiencies.

Mayor Korpus recognized it had pained Councilmember Woehleke to vote against the budget in 2019. She encouraged him to rethink the question of whether he should vote against the budget. She noted that Councilmember Woehleke had clearly stated his concerns with the Laguna Creek Restoration project, but found his voting against the budget was actually penalizing staff for doing what they had been directed to do which was to explore the project with a presentation to the Town Council at its next meeting in July.

Mayor Korpus added that whether the Laguna Creek Restoration project moved forward or not, it would not affect the current planning in the budget. She thought that Councilmember Woehleke could state in good faith, for residents and himself, that this is what staff had been asked to do and if the project did not move forward, readjustments would be considered as necessary. She commended staff on the budget and the multiple opportunities for input from the Town Council, stated that staff had done a great job, and supported the budget as it was.

Vice Mayor McCluer shared the same concerns with the project and clarified with Mr. Knapp that a comprehensive presentation would be made on the project process.

Mr. Knapp clarified there was no designer on board at this time for the Laguna Creek Restoration Project, there would be a discussion on the vision and possibilities for the project, with direction to be provided from the Town Council on how to proceed. Staff also planned in parallel the hiring of an engineering firm for the design, which would not happen unless staff was so directed by the Town Council to proceed. The Town had received three grants providing the majority or all of the funding, with the details of the grants to be provided to the Town Council at its next meeting. He added that staff had been provided a detailed list from Councilmember Woehleke on what he would like to see and staff would try to provide all of that information at the July meeting.

Vice Mayor McCluer also appealed to Councilmember Woehleke to consider approving the budget in that no decision had been made on the Laguna Creek Restoration project, more discussion was to be held, and the project had only been included in the budget with identified funding with no decision on the project yet made by the Town Council.

Councilmember Woehleke read into the record the first paragraph of the budget message. He explained that in March 2020, he had requested the Laguna Creek Restoration project be agendaized for a Town Council meeting, although the Town Manager had noted there was already an approved budget. He reiterated his concerns (as outlined) and while he wanted the project to be consistent with the grant funding, any alternatives must be considered. He reiterated his inability to obtain information from staff on the alternatives and their estimates.

ACTION: It was M/S (McCluer/Sos) to adopt Resolution 41-2020 Adopting the Fiscal Year 2020/21 Operating and Capital Improvement Program Budgets, Including the Five-Year Financial Plan and Five-Year Capital Improvement Program. Roll Call Vote: 5-0.

C. External Communications Regarding Town Business

Discussion Regarding Whether the Town Council Protocols Should Be Amended to Clarify Who Speaks on Behalf of the Town and Who is Responsible for External Communications Regarding Town Business and Provide Direction to Staff

Ms. Battenberg presented the staff report and recommended the Town Council discuss whether the Town Council Protocols should be amended to clarify who was to speak on behalf of the Town and who was responsible for external communications regarding Town business, and provide direction to staff.

PUBLIC COMMENTS OPENED

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

PUBLIC COMMENTS CLOSED

Councilmember Sos commented that the timing of the item was appropriate and necessary given that these were unprecedented times and it was important that information be accurate, transparent and disseminated in a proper way, with social media the go-to platform for people to find information and find out what people were thinking. The Town Council had a duty to use whatever platform was provided responsibly and fairly, and be guided by what was good for the Town as a whole. The Town Council Protocols provided guidance to the Town Council and to future Town Councils on how the Town Council spoke.

Councilmember Sos spoke to the Town Council's previous discussion of Section 10.2, Communications with the Public of the Town Council Protocols but was interrupted by the Vice Mayor who believed that discussion of Section 10.2 was out of scope of the agenda item.

Mayor Korpus noted the discussion was whether the Town Council Protocols should be revised with two of the protocols having been referenced in the staff report, although discussion of any of the other protocols was not out of place as long as they were targeted and clarified the issue of who was to speak on behalf of the Town and how.

Councilmember Sos commented that given recent events the Town Council should be clearer in its guidance. She recommended that something should be included in the Moraga Municipal Code (MMC) provision on the Town Manager's duties, and potentially clarifying who speaks on behalf of the Town in the MMC. She focused on Section 10.2 of the Town Council Protocols, and she highlighted the reasons she was now offering the following revisions to this section:

When the opinions and positions that Councilmembers convey to the media or the public are their own individual positions, Councilmembers shall clearly state that they are speaking on their own behalf and not on behalf of the Council.

In addition to the above, the Town Council recognizes that there are inherent risks associated with the wide dissemination of information posted on social media platforms, and that Councilmembers have no ability to ensure their posts on social media platforms are understood by everyone in the manner in which they were originally intended to be understood. Given these dangers, Councilmembers are (a) discouraged from initiating or participating in conversations on social media on political or politicized matters; and (b) encouraged to limit their posts on social media platforms regarding issues that may come before the Town Council to provide relevant logistical or factual information pertaining to such issues.

Mayor Korpus found the comments to be on the border and cautioned the need to be careful that whatever was done was intended to clarify who was to speak for the Town. She confirmed with Councilmember Sos that her concern was when an individual Councilmember spoke it was as if that Councilmember was speaking for the Town.

Councilmember Woehleke suggested the Council was deviating from the original request and the original origin for this matter, which had been a Town Council Goal he had previously offered to *Update Town Manager Responsibilities, Documentation, and Develop Performance Management Plan* with a bulleted item to *have primary interface with a range of external entities*. He suggested that had not been adequately addressed in the Town Council Protocols. He questioned how external communications had strayed into the political side since it had been something he had not seen himself.

Councilmember Sos noted she had seen some instances where public officials had posted and it had been clear that the posts represented an individual's own views, and there was an immediate association by the reader of the statement that the person was speaking as a Councilmember, which she was trying to address via her redline edits.

Councilmember Woehleke referenced Section 2, Role of the Town Council of the Town Council Protocols, as written, and described it as the key essence of the Town Council Protocols. He noted that at times the Council must communicate with the people they represented.

Councilmember Sos explained she was not trying to prevent communication with the constituency. Her comments and revisions had been tailored solely to social media, while useful for some things, social media was also inherently risky due to its sound bite nature. The intent had been to highlight the places where confusion could be created on the part of the constituents if they were interpreting individual Councilmember comments to be speaking on behalf of the Town.

Mayor Korpus offered redline edits and highlighted her reasons to revise paragraph two of Section 4.1, Town Manager and Town Attorney of the Town Council Protocols, as follows:

The Town Manager's responsibilities are set forth in Moraga Municipal Code Section 2.08.070, including without limitation: (i) the day-to-day operations of the Town, (ii) developing the annual budget, (iii) executing the direction, goals and priorities articulated by the Town Council, (iv) directing Town staff, and (v) other duties as assigned by the Town Council during duly noticed meetings. In addition at all times other than during Town Council meetings the Town Manager is solely responsible in consultation with the Mayor and Town Attorneys, Police Chief, staff, and consultants as necessary for vetting, initiating, and managing all outward bound communications from the Town to the public at-large in a manner designed to (1) further the interests of the Town and residents; and (2) reflect the stated goals and priorities of the Town Council when possible. This responsibility includes without limitation responsibility for the timing, framing, and vetting of such communications regarding Town conditions, challenges, litigation, events, policies, goals and strategies, and Town Council, Committee, Commission, Department and employee activities and processes.

Councilmember Woehleke understood and agreed with the Mayor's intent but opposed the use of the term "solely." He noted the Town Manager represented the Town in official communications to the general public and nothing more needed to be said. He recommended a reference to simple communication would be more appropriate.

Vice Mayor McCluer emphasized the time, number of meetings, and hours spent on the Town Council Protocols which had included the two sections under discussion. He noted the original impetus for the agenda item before the discussion had deviated into another discussion.

Vice Mayor McCluer and **Mayor Korpus** referenced the League of California Cities Zoom meeting they had both participated in and spoke to their differing opinions on the discussions that had been held.

Councilmember Wykle read into the record the description of the agenda item and his perception the Town Council was going to discuss the Mayor and the Town Manager. He suggested the second paragraph of Section 4.1, Town Manager and Town Attorney, should be clarified to reflect that the Town Manager had primary external communications with the general public. As to the Mayor's responsibilities regarding external communications, he suggested that possibly more clarification was needed.

Councilmember Wykle also recognized the intent of Councilmember Sos' revisions, although he pointed out the Town Council had been down this path, and adding the revision to Section

4.1 as proposed would get them there. He noted the Town Council Protocols were not yet a year old and modifications were already being made.

The Town Council discussed paragraph two of Section 4.1 Town Manager and Town Attorney at length, and there was extensive discussion about the concerns with external communications regarding Town business and who spoke on behalf of the Town, concerns with problems that had occurred in the past related to who had spoken on behalf of the Town, and the fact that when new Councilmembers were provided orientation there should be a greater discussion about communication practices. The Town Council acknowledged people should be encouraged to talk to one another while also recognizing that at times people would disagree.

By consensus, the Town Council agreed to revise paragraph two of Section 4.1, as follows:

The Town Manager's responsibilities are set forth in Moraga Municipal Code Section 2.08.070, including without limitation: (i) the day-to-day operations of the Town, (ii) developing the annual budget, (iii) executing the direction, goals and priorities articulated by the Town Council, (iv) principal responsibility for all official communications from the Town to the public, (v) directing Town staff, and (vi) other duties as assigned by the Town Council during duly noticed meetings. The Town Council interfaces with Town staff only through the Town Manager, unless otherwise authorized by the Town Manager.

Ms. Bazzano noted the item was a directional item to Town staff, with the item to come back for approval of a resolution amending a previous resolution.

Town Council consensus was also to make none of the changes to Section 10.2, as proposed by Councilmember Sos.

12. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

There were no Council requests for future agenda items.

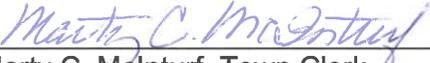
13. COMMUNICATIONS

There were no communications.

14. ADJOURNMENT

ACTION: It was M/S (Woehleke/McCluer) to adjourn the meeting at 10:41 P.M. Roll Call Vote: 5-0.

Respectfully submitted by:


Marty C. McInturf, Town Clerk

Approved by the Town Council:


Kymberleigh N. Korpus, Mayor