



**TOWN OF MORAGA  
REGULAR MEETING**

**August 26, 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 Order 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 August 26, 2020 meeting was not physically open to the public.**

***All Town Councilmembers, Town staff, and all others participated in this meeting via teleconference (Zoom webinar)***

**1. CALL TO ORDER**

The regular meeting was called to order at 7:01 p.m. by **Mayor Kymberleigh Korpus**.

**ROLL CALL**

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

Councilmembers absent: None

**2. PLEDGE OF ALLEGIANCE**

Chief of Police Jon King led the Pledge of Allegiance.

**3. SPECIAL ANNOUNCEMENTS**

There were no special announcements.

**4. PROCLAMATIONS AND PRESENTATIONS**

There were no proclamations or presentations.

**5. PUBLIC COMMENTS AND SUGGESTIONS**

**Mayor Korpus** read into the record the following comment received via e-mail:

John Glover: *Reference Material: The Plans approved by Council for the development of Rancho Laguna 2 in 2015 included mitigation details of Upper Rheem Creek and plantings along Rheem Boulevard to soften the visuals of over 350-feet of uninterrupted redwood fencing on the east side of Rheem Boulevard [reference drawings L1.0, D1.0 and D1.2 dated March 23, 2015]. Recognizing that ‘conceptual drawings’ (like Drawing T1.2 dated August 5, 2014) are neither to-scale nor exact in details, a concept of masking that fence line was presented for public, Design Review Board, Planning Commission and Town Council review and ultimate approval. Following construction of the Upper Rheem Creek stream-bed, the US Army Corps of Engineers declared it to be a “Wetlands.” While the longitudinal limits of the Wetlands banks are not clear to me, I don’t believe they extend to the back of the home’s fence-line or westerly to the paved surface of the sidewalk along Rheem Boulevard. Comments: 1. A concept of masking that dominant fence-line has been evident to me since project conception. Having participated in early approvals of this project, a blurred visual of that fence-line has been a significant element in the project’s design. 2. I have heard comments that the Wetlands delineation won’t permit plantings along Rheem Boulevard. Also that plantings along Rheem Boulevard will “block my view of the Ridge Line” to the east. I do not believe that the limits of the “Corps of Engineers Wetlands” extends to the development fencing or to the edge of the constructed sidewalk along Rheem Boulevard. I have walked the full length of upper Birchwood Drive and it would take a tree of 100’ in height to block even the upper grassy slope of Rheem Ridge. The IDEA of SummerHill’s conceptual drawing (T1.2) is to soften the harsh visual of that 300+ ft. fence-line. As of this date, that has not been done. 3. I have also heard comments that it is not practical or possible to deliver water to a line of plantings along Rheem Boulevard. For me, ‘not practical’ means ‘my long-term water bill will be large’ and ‘not possible’ means ‘I don’t want the cost of a small delivery water line or the plantings’. Closing: I understand that SummerHill Homes has submitted a request for final approval of the project. That approval would mean SummerHill is eligible for return of their Construction Bond. Summerhill has not lived up to this project’s delivery concept until that 350+ foot fence-line is softened to the eyes of those walking or driving along Rheem Boulevard. I ask that SummerHill Homes request for return of their Bond be denied until that aspect of their contract with the Town is completed. I thank Council for your attention to this matter. John O. Glover.*

**Mayor Korpus** stated that although she had read the e-mail into the record, she requested that it be attached to the meeting minutes and be distributed to the entire Council, with Town Manager Cynthia Battenberg affirming that would be done and that staff was working on the items the e-mail had referenced.

## **6. ADOPTION OF CONSENT AGENDA**

### **A. Acceptance of Consent Items**

Consent Agenda Items 6.1, 6.2 and 6.4 were removed from the Consent Agenda.

### **PUBLIC COMMENTS OPENED**

Town Clerk Marty McInturf reported no comments had been received via Zoom webinar attendees or via e-mail for this item.

### **PUBLIC COMMENTS CLOSED**

<b>ACTION: It was M/S (Woehleke/McCluer) to adopt Consent Agenda Items 6.3 6.5, and 6.6. Roll Call Vote: 5-0.</b>
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|-----|---|----------------|
| 6.1 | <i>Receive <u>Accounts Payable</u> Claims for: 07/03/20 (\$924,412.29); 07/17/20 (\$329,471.29); 07/17/20 (\$556,315.68); 07/31/20 (\$95,839.62); 7/31/20 (\$55,856.06)</i>   | <i>Removed</i> |
| 6.2 | <i>Approve <u>Minutes</u> for the Town Council Special and Regular Meetings on June 24, 2020</i>  | <i>Removed</i> |
| 6.3 | Approve <u>Minutes</u> for the Town Council Special Meeting on July 7, 2020   | Approved       |
| 6.4 | <i>Approve <u>Minutes</u> for the Town Council Regular Meeting on July 8, 2020</i>  | <i>Removed</i> |
| 6.5 | <u>Grand Jury Report on Police Department Staffing</u><br>Consider Authorizing the Town Manager to Sign and Submit the Town of Moraga Response to the Grand Jury Report No, 2004, "Police Department Staffing" by the 2019-2020 Contra Costa Grand Jury | Approved       |
| 6.6 | <u>Fire Prevention Subcommittee Charter</u><br>Consider Resolution 45-2020 Adopting the City of Orinda, Moraga-Orinda Fire District and Town of Moraga Joint Fire Prevention Subcommittee Charter   | Approved       |

**B. Consideration of Consent Items Removed for Discussion**

1. Receive Accounts Payable Claims for: 07/03/20 (\$924,412.29); 07/17/20 (\$329,471.29); 07/17/20 (\$556,315.68); 07/31/20 (\$95,839.62); 7/31/20 (\$55,856.06)

**Vice Mayor McCluer** referenced the Accounts Payable Claims and the amount of \$685,000 for Bridgeway Civil. He clarified with Town Manager Battenberg the costs were related to the Canyon Road Bridge rebuild and the project remained on budget. The Public Works Department had made two requests for payment; one for \$1.3 million, with the Town having received that reimbursement. The second request for payment was for \$830,000. The Town submitted the reimbursement requests on a monthly basis and were receiving the checks in a timely manner.

**PUBLIC COMMENTS OPENED**

Ms. McInturf reported no comments had been received via Zoom webinar attendees or via e-mail for this item.

**PUBLIC COMMENTS CLOSED**

**ACTION: It was M/S (McCluer/Korpus) to receive Accounts Payable Claims for: 07/03/20 (\$924,412.29); 07/17/20 (\$329,471.29); 07/17/20 (\$556,315.68); 07/31/20 (\$95,839.62); 7/31/20 (\$55,856.06), as shown. Roll Call Vote: 5-0.**

2. Approve Minutes for the Town Council Special and Regular Meetings on June 24, 2020

**Mayor Korpus** requested an amendment to the last sentence of the second to last paragraph of Page 14 of the Town Council Regular Meeting Minutes of June 24, 2020, as follows:

She [Mayor Korpus] 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.

#### PUBLIC COMMENTS OPENED

Ms. McInturf reported no comments had been received via Zoom webinar attendees or via e-mail for this item.

#### PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Korpus/Woehleke) to approve Minutes for the Town Council Special and Regular Meetings on June 24, 2020, as modified by Mayor Korpus. Roll Call Vote: 5-0.**

#### 3. Approve Minutes for the Town Council Regular Meeting on July 8, 2020

**Councilmember Woehleke** provided the following redline changes to the Town Council Regular Meeting of July 8, 2020:

- Page 12, revise the fifth full paragraph to read:

**Councilmember Woehleke** commented that during the June 24, 2020 Town Council meeting, an opinion had been expressed specific to the project that the Measure K parcel tax vote outcome was a message from voters to use grants for storm drain projects such as this, although of the residents he had polled, they had concerns with the annual costs and lack of sunseting in combination with a lack of confidence in quality decision making by the Town Council.

- Page 12, revise the second sentence of the sixth full paragraph to read:

While there could be 99 percent confidence with the project, surprises happen, particularly with projects in-ground and he [Councilmember Woehleke] emphasized a robust program could be achieved through basic good project management.

- Page 13, revise the first full paragraph to read:

**Councilmember Woehleke** emphasized the importance of project risk management, which had been disputed during the Canyon Road Bridge project. He suggested using risk management would help to optimize the project and make it more robust. He referenced the Caltrans Risk Management Manual which discussed risk management starting early and all the way through the project. Also, a credible and appropriate robust cost estimate should be prepared for the project and a credible cost estimate assurance was required. He believed the Town Council should expect staff to follow that path.

- Page 13, revise the second full paragraph to read:

**Councilmember Woehleke** recognized that grant funding specific to daylighting had been pursued and that it was difficult to walk away from grant funding, although daylighting had challenges. He recommended that staff and Town Council be aware of two alternative cases. One, the Capital Constraint Case: what revised and reduced configuration could

*be executed with confidence within the approved budget, which may require some consolidation, simplification or use of value engineering to optimize the design. The second case, the Alaskan Wilderness Case: for a small town in the Alaskan Wilderness, how flood protection could be provided at the Pavilion.*

#### PUBLIC COMMENTS OPENED

Ms. McInturf reported no comments had been received via Zoom webinar attendees or via e-mail for this item.

#### PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (Woehleke/Sos) to approve Minutes for the Town Council Regular Meeting on July 8, 2020, subject to the redline edits provided by Councilmember Woehleke. Roll Call Vote: 5-0.**

### 7. ADOPTION OF MEETING AGENDA

#### PUBLIC COMMENTS OPENED

Ms. McInturf reported no comments had been received via Zoom webinar attendees or via e-mail for this item.

#### PUBLIC COMMENTS CLOSED

**ACTION: It was M/S (McCluer/Sos) 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 attended a Zoom meeting for the Moraga Liaison Committee; attended the Moraga-Orinda Joint Fire Prevention Subcommittee meeting with Councilmember Woehleke with the next meeting scheduled for September 17, 2020 at 4:00 p.m.; participated in a Zoom meeting with residents regarding the Camino Pablo Annexation Project, and telephone calls with residents about the same project related to process and options; also several telephone calls with resident Steve Smith regarding various Public Works Department issues; and an impromptu chat with the Town Manager and the Moraga-Orinda Fire District (MOFD) Fire Chief to discuss agenda Item 11. A. to obtain additional information.

**Vice Mayor McCluer** – Reported he had attended the Virtual Contra Costa Mayors' Conference and briefed the Council on the discussions; met with many residents, Town staff and MOFD Fire Chief regarding the Moraga Center Specific Plan Implementation Project (MCSP-IP); observed the July 20 and August 17, 2020 Planning Commission meetings regarding the MCSP-IP; communications with the Superintendent of the Moraga School District (MSD) briefing the Council on the discussions; attended a MSD Board meeting in July; obtained an update from the Executive Director of the Moraga Chamber of Commerce on the status of Moraga's retail businesses; and forwarded several resident suggestions for restaurants to the major property owner of the Rheem Valley Shopping Center. He added the California Public Employees' Retirement System (CalPERS) had

announced the investment return for the last fiscal year of 4.7 percent with a guaranteed goal of 7 percent, with the Town's unfunded liability to increase.

**Councilmember Sos** – Reported she had participated in a number of emergency meetings of the Lamorinda School Bus Transportation Agency (LSBTA), and briefed the Council on the discussions and actions taken; and Marin Clean Energy (MCE) Board meeting clarifying commentary/concerns she had seen on a NextDoor website thread on MCE and inviting anyone to contact her to discuss the issues further. She also participated in an on-site tour of the Canyon Road Bridge construction site and reported the Moraga Cares effort had wrapped up, with free COVID-19 testing at senior care facilities in the Lamorinda area. Over \$10,000 had been raised for Moraga's share of the testing costs via private donations; in particular she thanked the Lafayette Community Foundation (LCF) for its \$5,000 donation.

**Councilmember Woehleke** – Reported he had participated in an on-site tour of the Canyon Road Bridge construction site; observed the July 20, 2020 Planning Commission meeting and discussion of the MCSP-IP; attended the Moraga-Orinda Joint Fire Prevention Subcommittee meeting; observed the Town's Virtual Fire Evacuation Drill on August 1, 2020 at the Command Center, and briefed the Council on the activities and change to the telephone number for the Community Warning System (CWS). He had also observed the Virtual Contra Costa Mayors' Conference; the August 17 follow-up Planning Commission meeting on the MCSP-IP; and met with Sustainable Contra Costa, briefing the Council on all discussions from the meetings attended.

**Councilmember Wykle** – Reported he had spent most of the legislative break working in Port Angeles, Washington.

- B. Town Manager Update – Town Manager Battenberg reported the MCF had made a generous donation of \$5,000 to the Town for installation of a water bottle filling station at the Commons Park. She also reported the Moraga Police Department had been providing mutual aid to Solano County on some of the wildfires; the 2020 Overlay Program would commence in the next week for eight streets in the Town with the project to take around three months to complete; the Public Works Department was completing its work on the Moraga Way/Alta Mesa Project, to be complete by the end of September with a re-evaluation of some of the traffic flow after completion; and work was progressing on the Canyon Road Bridge Project which was on budget and on schedule.

In response to Councilmember Woehleke, Ms. Battenberg confirmed some Town projects had been delayed due to the COVID-19 pandemic or other unexpected items. The electric vehicle (EV) charging stations at the Commons Park had been delayed due to issues with the electrical panel installation, but staff was making progress and the funding for that project would be carried over to the next year.

## 9. DISCUSSION ITEMS

There were no discussion items.

## 10. PUBLIC HEARINGS

**A. Moraga Commons Park Bandshell Rental Fee**

**Consider Resolution 46-2020 Adopting the Hourly Rental Fees for the Bandshell at the Moraga Commons Park**

Parks and Recreation Director Breyana Brandt presented the staff report and reported that after the distribution of the staff report, she had some conversations with members of the Moraga Park Foundation (MPF) who had concerns the rental fees could impact summer concerts. She reassured the MPF of the Town's intent to continue its partnership with the MPF in the years to come to ensure the community continued to benefit from the concert series.

Ms. Brandt recommended the Town Council adopt the resolution of approval as shown in Attachment A to the staff report.

Ms. Battenberg added as part of next year's Master Fee Schedule, staff would evaluate how the hourly fees were working and would be making a recommendation to the Town Council to move forward with the hourly fees and possibly even consider an adjustment to the event fee structure.

Responding to the Council, Ms. Brandt clarified the Pavilion at the Hacienda de las Flores had been used daily, all summer, with small religious ceremonies and outdoor dining events just starting to come back to the Hacienda. The Town had been flexible with its off-peak rates with set rates in the off-peak schedule suitable for implementation. The bandshell at the Commons Park was available for rent at any time the park was open (one hour before sunrise and one hour following sunset), with most people interested in the stage area which had an overhang and offered shelter during inclement weather.

**PUBLIC COMMENTS OPENED**

Ms. McInturf reported no comments had been received via Zoom webinar attendees or via e-mail for this item.

**PUBLIC COMMENTS CLOSED**

**Councilmember Woehleke** explained that he had become involved with the matter in early August when an associate of his daughter's from high school who taught Pilates sought to rent the bandshell at the Commons Park on an hourly basis, but who had been informed there was a four-hour minimum. While he was pleased with the effort to change the rental fee for the bandshell to allow an hourly rental fee and he thanked staff for bringing the item forward as quickly as possible, when he had first raised the issue, staff had indicated the item could not be implemented until possibly October due to the 60-day wait for changes to the Master Fee Schedule. He found this response to be inadequate, particularly since the Town had declared an emergency due to the COVID-19 pandemic.

**Councilmember Woehleke** read into the record Section 2.48.070 of the Town's current Declaration of an Emergency. He asked whether the Town Council had the authority to provide direction to the Director of Emergency Services that during this Declaration of Emergency, the Director of Emergency Services had the authority to make adjustments quickly. He reiterated his concerns with the potential time lag.

Assistant Town Attorney Denise Bazzano understood that Councilmember Woehleke was trying to understand the scope of the emergency powers of the Emergency Services Director; in this case the Town Manager acted as the Emergency Services Director. In this situation, the fee involved an increase based on a regular resolution to be adopted by the Town Council and she believed the discussion was afield of the agenda item.

**Councilmember Woehleke** commented he had correspondence on this issue from staff stating the fees would be adjusted for multiple facilities, and in response he had responded yes to do that for the multiple facilities, but this agenda item was what had resulted. He noted the City of San Jose had announced on August 12, 2020, in response to the pandemic emergency, that it would open all of its available spaces gratis to businesses.

**Councilmember Sos** recognized the questions were important and that no one knew they would be in the position they were in now as related to the COVID-19 pandemic. She had been spending a lot of time at the Hacienda de las Flores, which had been a great place to walk dogs on a hot afternoon due to the shade. She complimented the Parks and Recreation Director and her staff on their nimbleness and flexibility in adjusting to current circumstances, and that the number of activities offered on a daily basis at the Hacienda were all compliant with COVID-19 regulations.

In response to Councilmember Wykle, Mr. Battenberg reported the Town of Moraga had been the first city in Contra Costa County to open its summer camps for a full summer camp season, and the program was at capacity with a waiting list. The Parks and Recreation Director had also worked with the Moraga School District to develop a full day remote learning enrichment and childcare club for T-K through 8th graders to provide childcare to essential workers residing in Moraga; Rancho Laguna Park had been leased out to Bay Area Ballplayers for summer camps; and the Town had worked with two different groups to facilitate the use of the volleyball courts for camps and programs, which would continue into the fall, while other individuals were renting spaces to augment the distance learning being provided.

As of August 15, 2020, the Town had established protocols to ensure religious and cultural ceremonies and outdoor dining could occur at the Hacienda de las Flores for groups up to 50 persons, and staff continued to work on opportunities to accommodate groups desirous of using Town facilities.

Ms. Battenberg added that staff had been cautious in its initial response to this agenda request but had later realized it could be expedited and had then brought the matter to the Town Council.

**Councilmember Wykle** thanked staff for its current and future efforts. He supported the staff recommendation.

**Mayor Korpus** found that staff had been nimble and active and that the engagement with the community had been great. She was pleased the item had been placed on the agenda as soon as it was rather than having to wait to get it done. She supported the staff recommendation.

**ACTION: It was M/S (McCluer/Wykle) to adopt Resolution 46-2020 Adopting the Hourly Rental Fees for the Bandshell at the Moraga Commons Park. Roll Call Vote: 5-0.**

## 11. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

### A. Amended 2019 Fire Code

Consider Resolution 47-2020 Ratifying Moraga-Orinda Fire District Ordinance 20-01, Adopting the 2019 Edition of the California Fire Code and the 2018 Edition of the International Fire Code by Reference with Certain Modifications to Those Codes to Reflect Local Conditions and Adopting Findings of Fact to Support Modifications with Associated Findings (*CEQA Status: Categorically Exempt*)

Ms. Battenberg provided an overview of the background of the Amended 2019 Fire Code, as shown in the August 26, 2020 staff report, and Associate Planner Brian Horn also provided an overview of the substantive specifics of the Amended 2019 Fire Code, also as outlined in the staff

report. Staff recommended the Town Council adopt the resolution of approval as contained in Attachment A to the staff report.

MOFD Fire Chief Dave Winnacker thanked staff for the comprehensive staff report and emphasized the intent to protect the community against the ravages of wildfire. The Amended 2019 Fire Code would reduce the risk to existing homes and residences by establishing well-defined defensible space, reduce the intrusion of direct flame impingement during a wildfire, and stop building homes or other construction that was known would burn. He referenced the 2018 Paradise California Camp Fire, where 52 percent of the homes which had been built with ember resistant construction standards had not burned, in contrast to the 18 percent of the homes that were not built to those standards that did burn.

Responding to the Council, Fire Chief Winnacker clarified the requirement for at least a one-foot air gap between the ground and lower portion of bushes within two feet of structures, and within that space there could not be combustible material. There was concern not with the trunk of a tree as part of foundation planting, but with the foliage, twigs and small branches. Fire typically did not climb the trunk of a well maintained tree or bush, but found the decadent material present in the canopy which could be used as a ladder, which was why MOFD desired a 12-inch air gap within two feet of the home. The two foot air gap MOFD had originally proposed would have resulted in either the removal of the vegetation or a hybrid making it unsightly, and as a result and for a compromise, MOFD had now proposed a 12-inch (one foot) air gap which could retain the vast majority of the fire safety element while minimizing the impacts on mature landscaping.

In response to concerns with financial impacts to residents required to comply with the Fire Code, Fire Chief Winnacker explained that MOFD, as an agency, did not have experience with community financing. He was sympathetic to the limitations of residents and noted MOFD had always found a way to work with residents to meet requirements. MOFD was committed to not being the reason someone must leave their home because they could not afford to do the work. Through a variety of measures, including the assistance of Boy Scouts, MOFD had found alternative ways to meet the requirements while also staying within peoples' means. He emphasized the seriousness of this issue, with property owners having the responsibility to maintain their property. MOFD was committed to working with any resident who could be challenged in meeting the requirements.

Ms. Battenberg confirmed that the Town had seen increased costs each year as MOFD had become more aggressive in its fire prevention efforts and continued to budget for those types of projects. For example, Mulholland Ridge required major clearing although MOFD had conducted a controlled burn on the property in 2019. While she did not see staff coming back with a budget adjustment, the Town was responsible for serious fire prevention work in its parks and along its roadways. She confirmed the current budget had increased the amount for maintenance.

Fire Chief Winnacker added MOFD had been working extensively with the Contra Costa County Association of Realtors and various people involved in various real estate transactions to ensure the fire code requirements were understood so there would be no surprises when the 2019 Amended Fire Code was adopted. Information would be provided to those submitting plans for construction or major remodels. The effective date for meeting the new requirements would be May 31, 2021. As MOFD did each year, it would continue to evolve to get information out to the public. Every parcel in MOFD's jurisdiction would be issued a mailer/postcard in the spring with links to the MOFD website and with succinct information on the requirements, including photographs of what that would look like, followed up with a social media push on various social media platforms. Either in person or virtually, depending on the status of the COVID-19 pandemic, a series of meetings would be held by MOFD in the spring to educate the public and to provide access to more information to achieve compliance. Also, a series of short videos would be utilized to educate the public and to increase awareness.

Ms. Battenberg noted the Charter of the Moraga-Orinda Joint Fire Prevention Subcommittee had outlined as one of its goals “Working together with organizations to coordinate MOFD’s activities related to fire prevention.”

Fire Chief Winnacker clarified the Fire Code was clear on what would be required. Where there was a conflict or perceived conflict with a plan, area, or idea an applicant held prior to the Fire Code being amended, the Fire Code that was in force at the time an application was received would be the Fire Code imposed. The prior Fire Code would be rescinded (a new Fire Code was adopted by the State every three years). The Fire Code represented MOFD’s attempt to adopt best practices and apply the measures MOFD believed were the best suited to protect the community from fire risk. The State Fire Code was also clear; when a literal application of the Fire Code was impractical or could not be met, the Fire Code Official had the authority to consider alternate means or measures and examples were offered of potential scenarios where that could happen.

Fire Chief Winnacker reiterated the background of the efforts of MOFD on the Amended 2019 Fire Code, particularly in response to years of substantial wildfire risk, the reasons for the recommended amendments as outlined in the staff report, and clarified the requirement for ember resistant construction in areas classified as High Fire Hazard Severity Zones and Very High Fire Severity Zones, again in an effort to adopt best practices and apply the measures MOFD believed were the best suited to protect the community from fire risk.

Ms. Battenberg confirmed that correspondence had been received from Dave Bruzzone, who had expressed concern with impacts to the Moraga Center Specific Plan (MCSP) Area. She explained that members of Town staff, MOFD Fire Chief, and the Fire Marshal had spoken with Mr. Bruzzone recently after multiple meetings to discuss the issues, with many of Mr. Bruzzone’s concerns related more to potential impacts to the MCSP rather than what was actually in the Fire Code.

Fire Chief Winnacker also acknowledged Mayor Korpus had identified clerical errors on Pages 6 and 7 of the 2019 Amended Fire Code, as shown in Attachment B, MOFD Ordinance 20-01. He had spoken with MOFD Counsel after the Mayor had brought the items to MOFD’s attention who had recommended that at a subsequent meeting the clerical errors could be adopted by the four entities involved (MOFD, Contra Costa County Board of Supervisors, Town of Moraga and City of Orinda) via an administrative amendment on consent, and the changes could be made at one time without having to restart the process.

Ms. Bazzano commented that while it appeared there were clerical errors, an argument could be made they were not clerical errors and it was best to make the changes through a formal process as MOFD Fire Chief had described.

**Mayor Korpus** also referenced Section 503.2.1.3 as shown on Page 15 and the amendment to Section D105.2, as shown on Page 20 of Attachment B, with both provisions changing a road width requirement from 26 feet to 36 feet. She asked the Fire Chief to articulate the justification for the increase in road width requirements.

Fire Chief Winnacker explained that increased road width was always better when it came to an evacuation and road widths were important when building a multistory building. As an example, when a fire occurred in a multistory building, firefighters needed to gain access to the roof, either via ladders or through the use of an aerial apparatus. In order for the firefighters to safely gain access to the roof, the distance from the truck to the building needed to be great enough that the climbing angle was low enough where firefighters could safely ascend the ladder in full equipment, potentially in smoky conditions, to be able to access the roof safely.

Fire Chief Winnacker reiterated that when there were any conflicts between elements of the Fire Code, the more restrictive elements took precedence. He also clarified the intent of a document referenced by the Council provided by MOFD Fire Marshal Kathy Leonard.

#### PUBLIC COMMENTS OPENED

Brian Myers reported he had submitted an e-mail to the Town Council this date. He liked what had been prepared which had laid the foundation that if the right actions were taken it would be good for fire safety. He agreed that establishing a certain level of standards could enhance how a neighborhood appeared house-to-house; however, he opposed ratifying the Amended 2019 Fire Code given that many residents might be unaware of the changes that would be effectively enforced in May 2021. As such, he questioned what expectations were being established. He also expressed concern with the potential impacts to real estate transactions.

Mr. Myers emphasized the public should be informed and urged consideration of a Transportation Security Administration (TSA) Rule 311 (rules on what could be taken through security) to complement this effort. He added that while the Town Council dialogue had been helpful he urged more clarity with the public. He also urged that the public be educated and informed via segmentation of various audiences, such as the schooling crew who were not aware what was going on, the fixed income population, and the group of supporters, such as realtors and landscapers. He suggested that while mailers and videos from MOFD made sense, the easiest way to educate some people would be via NextDoor, the Parent Teachers Association (PTA), and through the use of other types of communication.

#### PUBLIC COMMENTS CLOSED

**Councilmember Woehleke** completely supported the Amended 2019 Fire Code and the additional focus on prevention as opposed to just response and he urged MOFD to provide that focus and priority. He acknowledged some of the requirements would be new to some residents and may require modifications to existing landscaping, but for the vast majority of residents the modifications would be benign and insignificant as compared to the loss of their home due to fire, an event which he personally had experienced.

**Councilmember Woehleke** agreed that communication would be important and he recognized MOFD had made multiple efforts over the past six to nine months to communicate to the public and solicit feedback, with some of the modifications reflecting that feedback. He found the Ordinance was an overlay to the State Fire Code, which by itself was a significant document and which had been written for the entire State. The reality was that staff understood the primary requirements of the new Fire Code and could understand and endorse it in applications but had not gone through the entire State Fire Code, its amendments, and had not rationalized it.

**Councilmember Woehleke** commented that the Town was relying upon the technical expertise of MOFD on the Fire Code and was not certifying the document itself but understanding the primary impacts. He noted that many of the details in the Fire Code had not been technically evaluated, which should be reflected in the resolution of approval.

**Councilmember Sos** supported the 2019 Amended Fire Code, suggested the Town had the opportunity to improve the safety of the community against fire risk at a relatively low cost, and acknowledged it would impose some cost on property owners. She credited the Fire Chief for his statement that no one would be forced from their homes if they could not afford to achieve compliance, which was an opportunity for the community to pull together to help those in need. She noted the Fire Code authorized the Fire Chief to work with developers to achieve alternative fire safety means in cases where literal compliance was not practicable without sacrificing the

overall protections against fires. She supported a clear communication plan with the public, clearly and often. She also encouraged the Moraga-Orinda Joint Fire Prevention Subcommittee to participate in that effort to get the word out as efficiently as possible to the various sections of the community.

**Vice Mayor McCluer** thanked the Fire Chief for all his work and for the Wildfire Urban Interface (WUI) requirement for ember resistant construction in new homes and areas classified as High Fire Hazard Severity Zones and Very High Fire Hazard Severity Zones, which was incredibly important for a Town unable to evacuate all its people at one time. While he recognized the efforts MOFD had already provided, he was uncertain of its effectiveness and how much the community was really aware of the new regulations.

**Vice Mayor McCluer** recommended the Town Council conditionally approve the agenda item and allow an additional 30 days for additional communication with residents. If there were no material changes or suggestions and MOFD was in agreement, the Amended 2019 Fire Code could move forward. He asked whether that action would be something MOFD would entertain.

Fire Chief Winnacker deferred to the Town Council with regard to its decision-making process. As to any changes to the 2019 Amended Fire Code, adoption by MOFD and the Orinda City Council would be required, effectively restarting the process. He noted the implementation date, as identified, had been designed to be delayed until May 31, 2021 to allow messaging and outreach. MOFD could not begin messaging the requirements, as he had previously explained, prior to approval of the Amended Fire Code to avoid confusing the public. He recognized that community outreach was difficult but emphasized that the Amended 2019 Fire Code had been under discussion since December 2019, with a series of outreach activities. There was not much more MOFD could do to push it out, but he deferred to the Town Council and Town staff on the additional outreach efforts that may be beneficial.

**Vice Mayor McCluer** understood the 2019 Amended Fire Code would require many residents to make sacrifices in terms of their time, cost, privacy, and in some cases, it would be emotional, which was necessary since it would save lives. He acknowledged there may be some complaints and resistance, but it was necessary for the community to be safe and to save lives.

**Councilmember Wykle** supported the 2019 Amended Fire Code as the right thing to do in the new normal in terms of wildfires and pandemics. He agreed the communication plan was challenging and he recognized MOFD's existing outreach efforts. He agreed with the Vice Mayor's comments that there could be challenges and sacrifices for some property owners, but it was the right thing to do.

**Mayor Korpus** advised of Town Council consensus to support the 2019 Amended Fire Code and joined in that support for the reasons stated. She described the Fire Code as progressive but recognized the Town's ingress/egress issues, the fact the Town was surrounded by so much fuel, and there had been clear communications from residents that protection from fires was needed even given the financial and physical effort to comply with the new regulations. She thanked the Fire Chief for his efforts and for being persistent, progressive, and thoughtful on behalf of the Town.

**Mayor Korpus** agreed there should be a clear communication plan, with communication early and often, and to the extent possible segregating the audience in the ways that had been recommended; however, she did not see delaying adoption of the 2019 Amended Fire Code would improve those communications, particularly since MOFD could not start promoting the message until there was a final product. She suggested a delay would not be effective or helpful, and that a conditional approval did not exist since it would actually be a continuance of the agenda

item, which she did not support. She wanted a clear record of what was being approved to allow residents to be provided as much and as clear notice as possible.

**Councilmember Woehleke** recommended the last WHEREAS clause on Page 2 of the resolution be amended to read:

*WHEREAS, MOFD has substantiated the necessity of said amendments because of the climatic, geologic, and topographical conditions within the district boundaries as stipulated in the Findings of Fact for adoption of MOFD Fire Code.*

Ms. Bazzano saw no problem adding the language Councilmember Woehleke had proposed in the recital, although pursuant to the statutory requirements of the ratification, the Town needed to adopt the Findings of Fact and there was language in the resolution stating that the Town of Moraga hereby adopted those Findings of Fact.

**Councilmember Woehleke** noted that the Findings of Fact were a misrepresentation.

**Mayor Korpus** stated it was the Town Council's job to either make the findings or not. If the language was adjusted, as proposed, it almost said the same thing but could potentially open the Town to the claim it had not met the findings. Based on all of the information she had gleaned since she had been a member of the Town Council, and in conversations with the Fire Chief, she could make the findings and adopt the Findings of Fact as set forth by MOFD. She had no question as to MOFD's qualifications or experience and found it was perfectly acceptable for the Town Council to take expert opinion into account in deciding what was true. She could not support Councilmember Woehleke's recommended amendment to the resolution.

**Councilmember Woehleke** inquired whether Town staff had done the work to make the required findings in that he believed staff had depended on MOFD to do so. He found the language to be confusing and he did not like feeling forced into deciding his vote based on poor wording. His modification was only clarification and not changing the meaning.

**Councilmember Sos** thought Councilmember Woehleke's modification was a clarification, not a change to the meaning of the WHEREAS clause. She asked whether the modification actually strengthened the Findings of Fact that had been made by MOFD.

**Mayor Korpus** viewed the modification as offering weaker language. She found the original language to be stronger with a stronger conclusion rather than being open to interpretation and result in ambiguous language. She preferred the resolution remain as written and as recommended by the Town Attorney and Town staff.

Ms. Bazzano suggested Councilmember Woehleke's recommended revision to the resolution could result in some ambiguity since the recital, as it had been worded, stated that "said amendments are necessary" and as the Mayor had stated it was more individualized towards the Town. She was not opposed to Councilmember Woehleke's recommended revision since there would still be the "Now, Therefore be it Resolved" language which clearly indicated the Council had adopted the findings. Councilmember Woehleke's recommended revision to the resolution would not create such ambiguity it would negate the resolve language in the resolution. There would be no question in her mind that the Council adopted the findings.

**Councilmember Woehleke** wanted to reach a point where staff could accurately report reality. He pointed out the same situation had occurred with revisions to the Building Code which he believed had resulted in a nonsensical resolution.

Councilmember Wykle was not opposed to the revision offered by Councilmember Woehleke based on Ms. Bazzano's opinion.

**ACTION: It was M/S (Woehleke/McCluer) to adopt Resolution 47-2020 Ratifying Moraga-Orinda Fire District Ordinance 20-01, Adopting the 2019 Edition of the California Fire Code and the 2018 Edition of the International Fire Code by Reference with Certain Modifications to Those Codes to Reflect Local Conditions and Adopting Findings of Fact to Support Modifications with Associated Findings (CEQA Status: Categorically Exempt), as written by staff and subject to a revision to the last WHEREAS clause on Page 2 of the resolution further amended to read:**

***WHEREAS, MOFD has substantiated the necessity of said amendments because of the climatic, geologic, and topographical conditions within the district boundaries as stipulated in the Findings of Fact for adoption of MOFD Fire Code.***

**Roll Call Vote: 5-0.**

**Mayor Korpus** declared a recess at 9:26 p.m. The Town Council meeting reconvened at 9:36 p.m. with all Councilmembers and staff present via teleconference.

**B. Amended Contract with Placeworks, Inc.**

Consider Resolution 48-2020 Approving an Amendment to the Professional Services Contract with Placeworks, Inc., (Berkeley) to Increase the Existing Contract by \$24,200 to an Amount Not to Exceed \$200,214 for Additional Technical Assistance to Complete the Moraga Center Specific Plan Implementation Project and Authorizing the Town Manager to Execute the Amendment

Planning Director Afshan Hamid presented the staff report and clarified the Town had been awarded a grant from the Metropolitan Transportation Commission (MTC), which currently stated the grant funding completion date would be December 2020, which should be corrected to read *June 1, 2021*. She recommended the Town Council adopt the resolution of approval as shown in Attachment A to the staff report.

Ms. Battenberg reported the Planning Commission had adopted the recommended zoning changes to the Moraga Center Specific Plan Implementation Project (MCSP-IP) during its August 17, 2020 meeting, with another meeting scheduled to discuss the Design Guidelines with the Planning Commission to provide recommendations to the Town Council. The Town Council's original goal had been to adopt the new zoning by December 2019. The project was a year behind schedule; however, staff had been working hard to incorporate the comments received from the community and to do the necessary due diligence required with the item to be brought to the Town Council for adoption prior to year's end.

Responding to the Council, Ms. Hamid and Ms. Battenberg clarified the MTC grant could be extended, although it did not include staff time and further involvement including legal and consultant fees would have to be considered. Also, the majority of the public comments the Town had received thus far had been related to fire safety and evacuation. As a result, the September 2, 2020 Community Meeting would be focused more on Town-wide safety concerns, with Police Chief King, MOFD Fire Chief Winnacker, and legal counsel to be present to discuss the implications of Senate Bill (SB) 330.

Ms. Battenberg explained that Ms. Hamid had the background and expertise to respond to the technical questions, and Placeworks did not need to be present for the

September 2 community meeting. Placeworks would be present for the third Planning Commission meeting when the Design Guidelines for the MCSP-IP would be discussed.

Ms. Hamid explained that technical questions thus far had been related to the Zoning Districts, development standards, and Design Guidelines. SB 330 was State legislation and legal counsel would be present at the September 2 meeting to provide clarification.

Ms. Battenberg clarified the Town had funding in the budget to complete the process including a community meeting to allow additional input, another Planning Commission meeting, up to two Town Council meetings, and staff, legal counsel, and Placeworks' time to continue to respond to comments and make revisions as necessary. There was no money in the budget for the project to extend out a couple more years. She emphasized there were other Town projects waiting to move forward which had deadlines, including streamlining the Planned Development permit process which involved a SB 2 grant, a Local Early Action Planning (LEAP) Grant to start the Regional Housing Needs Allocation (RHNA) process, and the Bollinger Valley Rezone Study. Given the limited size of Town staff along with other projects and duties, and since staff typically did one large project at a time, the focus of staff's efforts had been on the MCSP-IP.

Ms. Hamid explained that all jurisdictions in the State were anticipating the receipt of the RHNA numbers in the next several months, and the Town would need to update its Housing Element, which would involve a great undertaking and public process.

#### PUBLIC COMMENTS OPENED

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

#### PUBLIC COMMENTS CLOSED

**Vice Mayor McCluer** supported the staff recommendation noting that the MCSP-IP was one of the largest projects in the Town. Given all of the associated requirements and public input, he emphasized the need to spend the time and resources on this effort.

**ACTION: It was M/S (McCluer/Woehleke) to adopt Resolution 48-2020 Approving an Amendment to the Professional Services Contract with Placeworks, Inc., (Berkeley) to Increase the Existing Contract by \$24,200 to an Amount Not to Exceed \$200,214 for Additional Technical Assistance to Complete the Moraga Center Specific Plan Implementation Project and Authorizing the Town Manager to Execute the Amendment. Roll Call Vote: 5-0.**

#### **C. Coronavirus Relief Fund Grant**

Consider Resolution 49-2020 Approving the Acceptance of the \$209,235 CARES Act Funded State Coronavirus Relief Grant, Approving the Expenditure Plan, and Amending the FY 2020/21 Budget to Add \$209,235 in Revenue and Expenses for Costs Associated with the Town's Emergency Response to COVID-19.

Administrative Services Director Norm Veloso presented the staff report and recommended the Town Council adopt the resolution of approval as shown in Attachment A to the staff report.

Responding to the Council, Mr. Veloso again clarified the Additional Recommended Investment in Town Facilities and Operations as outlined on Page 4 of the staff report. If some of the expenses were to become ineligible, the Town would still have around \$545,000 in payroll expenses under the Police Officers Payroll Expenses, but the expenses presented to the Town Council were considered eligible expenses and within the parameters of the CARES Act Funded State Coronavirus Relief Fund Grant.

## PUBLIC COMMENTS OPENED

**Mayor Korpus** read into the record the following comment received via e-mail:

*Kathe Nelson, Executive Director of the Moraga Chamber of Commerce: Small Business Relief Program \$30,000. On behalf of the Moraga Chamber of Commerce, we would like to strongly encourage you to approve the acceptance of the \$209,235 CARES Act Funded State Coronavirus Relief Fund Grant, Approving the Expenditure Plan, and Amending the FY 2021/21 Budget to add \$209,235 in Revenue and Expenses for Costs Associated with the Town's Emergency Response to COVID-19. The \$30,000 from the Small Business Relief Fund will provide a much needed opportunity for an economic boost that is sorely needed to continue business during these extraordinary times. Thank you all for your service to our Town. Regards, Kathe Nelson, Executive Director, Moraga Chamber of Commerce.*

## PUBLIC COMMENTS CLOSED

**Councilmember Wykle** clarified with Mr. Veloso the \$30,000 referenced in the correspondence from the Chamber of Commerce represented more than 10 percent of the total grant, and given there were other needs the Town must supplement due to the COVID-19 pandemic that was a good balance to help the community, cover the needs of the Town, and remain in compliance with the CARES Act.

Ms. Battenberg confirmed staff would be working with the Chamber of Commerce. The program would be set up for Moraga brick and mortar stores, not franchises, chains/businesses and no home occupation businesses, but targeting businesses which had between 3 and 20 employees. The reimbursement program criteria would require the business to submit to the Town costs incurred related to adjusting business practices in response to COVID-19. The recommendation would be \$500 to \$2,000 per applicant.

**Vice Chair McCluer** thanked staff for the work on the item and the ability to find reimbursable costs. He liked the reimbursement criteria and the recognition of the need to support small businesses in the community. He supported the staff recommendation.

**Councilmember Woehleke** also supported the program, and the recognition that small business distribution was sorely needed. He suggested if there were an inadequate number of businesses applying for one reason or another, some leeway in the \$2,000 upper limit should be considered.

**Councilmember Sos** also supported the staff recommendation and the small business relief program which could assist small businesses during the downturn caused by the protracted pandemic. She understood the Chamber of Commerce's Community Cup Program still had funds that had not been distributed, and she urged staff to work with the Chamber to ensure the Town's program was well advertised so that businesses could avail themselves of the opportunities.

**Mayor Korpus** also supported the staff recommendation.

In response to Councilmember Woehleke, Ms. Battenberg advised that if landlords incurred expenses in order to rent out their facilities (such as to provide outdoor dining) they could make the argument for qualification for the program.

**ACTION: It was M/S (Woehleke/Sos) to adopt Resolution 49-2020 Approving the Acceptance of the \$209,235 CARES Act Funded State Coronavirus Relief Grant, Approving the Expenditure Plan, and Amending the FY 2020/21 Budget to Add \$209,235 in Revenue and Expenses for Costs Associated with the Town's Emergency Response to COVID-19. Roll Call Vote: 5-0.**

**D. League of California Cities Voting Delegate**

Consider Delegating the Town of Moraga's Voting Delegate and any Alternate(s) at the League of California Cities Virtual Annual Meeting from October 7 to 9, 2020 for the Purpose of Voting on League Resolutions Regarding Issues of Statewide Concern

Ms. Battenberg presented the staff report and asked the Town Council to designate Mayor Korpus as the Town's Voting Delegate and Councilmember Sos as the Alternate at the League of California Cities Virtual Annual Meeting from October 7 to 9, 2020.

**PUBLIC COMMENTS OPENED**

Ms. McInturf reported no comments had been received via Zoom attendees or via e-mail for this item.

**PUBLIC COMMENTS CLOSED**

**ACTION: It was M/S (Wykle/Korpus) to Designate Mayor Korpus as the Voting Delegate and Councilmember Sos as the Alternate at the League of California Cities Virtual Annual Meeting from October 7 to 9, 2020 for the Purpose of Voting on League Resolutions Regarding Issues of Statewide Concern. Roll Call Vote: 4-1. Noes: Woehleke**

**12. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS**

There were no Council requests for future agenda items.

**13. COMMUNICATIONS**

There were no communications.

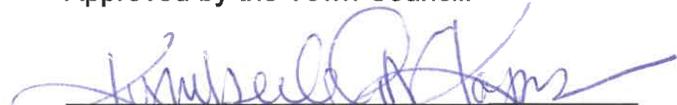
**14. ADJOURNMENT**

**ACTION: It was M/S (McCluer/Sos) to adjourn the meeting at 10:14 P.M. Roll Call Vote: 5-0.**

Respectfully submitted by:

  
Marty C. McInturf, Town Clerk

Approved by the Town Council:

  
Kimberleigh N. Korpus, Mayor