

MINUTES OF OCTOBER 1, 2019

**REGULAR MEETING
OF THE
CORTE MADERA TOWN COUNCIL**

Mayor Andrew called the Regular Town Council Meeting to order at Town Hall Council Chambers, 300 Tamalpais Drive, Corte Madera, CA on October 1, 2019 at 6:32 p.m.

1. CALL TO ORDER AND ROLL CALL

Councilmembers Present: Mayor Andrews; Councilmembers Bailey, Kunhardt and Ravasio

Councilmember Absent: Vice Mayor Beckman

Staff Present: Town Manager Todd Cusimano
Town Attorney Teresa Stricker
Planning and Building Director Adam Wolff
Code Enforcement Officer Mike Morarity
Fire Chief Scott Shurtz
Fire Marshal Ruben Martin
Town Clerk/Assistant to the Town Manager Rebecca Vaughn

SALUTE TO THE FLAG – Mayor Andrews led in the Pledge of Allegiance.

1.A. Report out of Closed Session from September 17, 2019 Town Council Meeting regarding the following item:

CONFERENCE WITH LABOR NEGOTIATOR
Closed Session Pursuant to Cal. Gov't Code Section 54957.6
Agency Negotiator: James H. Andrews, Mayor
Unrepresented Employee: Town Manager

Mayor Andrews announced that no reportable action was taken from the September 17, 2019 Closed Session.

2. OPEN TIME FOR PUBLIC COMMENTS

PAT RAVASIO stated the cities of Palo Alto and Menlo Park are joining Berkeley in becoming the first cities to set up a Building Code that does not allow new gas infrastructure. An all-electric grid allows for solar to power homes and reduces dependency on natural gas and she asked that Corte Madera join with this progressive movement.

3. PRESENTATIONS – None

4. CONSENT CALENDAR

Mayor Andrews asked if Item 4.D. was a request from the League of California Cities.

Town Clerk Vaughn stated the letter came from The Elected Officials to Protect California, and the request is for support from the Town to sign the letter.

Councilmember Kunhardt voiced support of the letter.

Councilmember Ravasio voiced support for approval but opposed the fact that the Town Council was being asked to approve a letter from an outside source without the League's, the liaison to the Legislative Committee or staff's evaluation and suggested restricting

future Consent Calendar or Business Items that come from outside sources that have not been reviewed.

Mayor Andrews opened the public comment period, and there were no speakers.

- A. Authorize Introduction and/or Adoption of Resolutions and Ordinances by Title Only.
(Standard procedural action – no backup information provided)
- B. Adopt Resolution No. 39/2019 (1) Endorsing the Friends of the Larkspur Library Fundraiser, (2) Allowing Three Temporary Signs in the Public Right-of-Way from October 15, 2019 to November 10, 2019 Publicizing the Friends of the Larkspur Library’s “What’s It Worth” Fundraiser; and (3) Determining that the Project is Exempt from the California Environmental Quality Act (CEQA) Pursuant to CEQA Guidelines 15061(B)(3).
- C. Adopt Resolution No. 40/2019 of the Town Council of the Town of Corte Madera Approving Application Fee for a Tobacco Retailer License in the Town of Corte Madera
- D. Authorize The Mayor To Sign On To The Climate Action Letter To Governor Newsom, From “Elected Officials To Protect California”, Which Asks The Governor To Make A Commitment To Phase Out Oil And Gas Production
- E. Approval of Minutes of the September 17, 2019 Regular Town Council Meeting

MOTION: Moved by Bailey, seconded by Kunhardt, and approved unanimously by the following vote: 4-0-1 (Ayes: Bailey, Kunhardt, Ravasio and Andrews; Noes: None; Absent: Beckman)

To approve Town Consent Calendar Items A, B, C, D and E.

5. PUBLIC HEARING

- A. First Reading and Possible Introduction of Ordinance No. 989, An Ordinance of the Town Council of the Town of Corte Madera Repealing and Replacing Chapter 9.36 of the Municipal Code to Update and Clarify the Regulation of Excessive and Offensive Noise

Town Manager Todd Cusimano gave an overview of the staff report regarding issues relating to the Town’s current subjective noise ordinance which needs to be amended to be objective such that it is enforceable. Staff tried to provide balance in the ordinance for various staff members to be able to work on enforcing the ordinance throughout the Town. He introduced the Town’s new Code Enforcement Officer Mike Morarity.

The Town strives to mirror San Anselmo and Larkspur within Central Marin Police Authority’s (CMPA) jurisdiction whenever possible and both of those agencies recently made changes to their leaf blower ordinance but not their noise ordinance. All three cities have similar issues with noise and San Anselmo and Larkspur will work to amend their ordinances after Corte Madera’s.

Town Attorney Stricker commented that violation of the Town’s noise ordinance results in a misdemeanor offense, with the exception of the leaf blowers which is an infraction.

Mr. Cusimano referred to changes with leaf blowers and said there was a thoughtful process and participation in Larkspur. Staff attempted to mirror exactly what the City of Larkspur adopted. Key components include banning gas powered leaf blowers, allowing electric leaf blowers within certain hours and making certain exceptions for commercial businesses.

Ms. Stricker clarified that electric leaf blowers do not have to comply with decibel readings, as they are regulated separately based upon their type and time of day and day of the week.

Mr. Cusimano reiterated that staff attempted to strike a balance and felt it appropriate that based upon Larkspur's community discussions to start where they landed. He then referred to mechanical noise, and gave credit to Mr. Peter Hensel who provided input on this type of noise. The current ordinance does not address ambient noise and he presented an average noise level chart. At times, ambient noise can be 20 decibels over what the Town's noise ordinance is.

For example, an air conditioning unit is about 60 decibels. In the current ordinance, it is in the 40-50 decibel range, so now every pool pump, air conditioning unit, or anything mechanical, will be in violation of the current noise ordinance, which is a problem. On average, a residential area that is set back in town, the average ambient noise level could be anywhere from 30-50 decibels. When starting to get closer to Tamalpais, Casa Buena, Tamal Vista, Paradise Drive and the highway, it could be anywhere from 50 to 65 decibels.

He spoke about a study where residential units close to the highway were separated from those not, and the range would be 60-65 decibels and back away from the highway it was 45-50 decibels. Staff considered this and he referred to a chart on page 5 of the staff report, and provided examples of decibel readings at various times of the day and various locations.

After discussing the ordinance and hearing public comments, the Council could focus on the General Plan and use the ranges of 50-55 and 60-65 and then go a certain percentage above such as 50% to make comparisons of mechanical noises. As a starting point for a violation, the decibels should be higher than 65 because 50% of the community will already be in violation of the ordinance.

Another change addresses commercial next to residential and where the reading should be taken and which zoning classification should be used. Staff is recommending using the zone wherever a business is located and wherever noise is emanating from. In the case of the liquor store on Willow Avenue with an air conditioning system, they would use the commercial decibel level. If the noise was coming from the residential unit, they would use the residential decibel level.

Mechanical devices would also be regulated under the nighttime section and he noted residents have provided feedback and he thinks the Town should be sensitive to those comments. There were also five major construction projects along Willow Avenue over the last few years and this caused impact to neighbors, especially on the weekends. He noted the City of Kentfield restricts construction on weekends and he thinks the Council should discuss the pros and cons of this.

He stated the Town Attorney and her staff has done a good job of structuring the ordinance for success in enforcement so the Council can make decisions and can return at the next meeting with refinements.

He also said there is some confusion over barking dog complaints and staff pushing these to the County. The Town adopted the County's ordinance years ago but CMPA enforces it. They push neighbors to work together and mediation is available, as well as citations, and he briefly spoke about the process. In hearing from the community, some believe the Town does nothing and he recognized communication and education has not always been as good as it could have been, but staff and the Council will meet with the Chief and talk about priorities of the town regarding quality of life issues.

Also, now that the Town has a dedicated code enforcement officer who used to work for CMPA, Mr. Morarity is tasked to coordinate all quality of life code enforcement types of

issues, share them with CMPA, and there is follow-up conducted. Code enforcement and addressing problems is a major component of this work and Mr. Cusimano stated he was available for questions of the Council.

Mayor Andrews questioned residential properties other than multi-unit residences of two or more units, and also the definition of a house and an accessory dwelling unit (ADU) which is considered as one residence.

Mr. Cusimano stated Planning Commissioner Phyllis Metcalfe forwarded this question in her email and he asked for comment by Director Adam Wolff.

Director of Planning and Building Adam Wolff stated a home and ADU is not defined as a multi-unit residence and it's reference is contained by definition in Section 9.36.020, paragraph D of the ordinance.

Mayor Andrews stated if someone gets home from work at 5:30/6:00 a.m. and uses an electric leaf blower after work, he asked if they would be in violation or not.

Mr. Cusimano stated leaf blowers are separate and stand on their own. The timeframes are identified, and the issue the Town will have from an enforcement aspect is that CMPA will not be responding in 5 minutes or less to a leaf blower complaint. Therefore, it will be an after-the-fact response and these will need to be worked through.

Mayor Andrews referred to the "Repeat Complaints Section" and a single strike. If someone complains once, he asked if there is enforcement.

Mr. Cusimano stated this is a section that identifies how important it is for compliance. If someone gets one warning and then is in violation, the Town will move forward with enforcement actions. He likened it to the residential parking ordinance which involves a one-month education period and then citing if a violation occurs. Whatever the Town does, it will be thoughtful, but if anything, residents have told staff they are too lax and they want to see enforcement.

Mayor Andrews referred to Section 9.36.070 and said it sounds like if the first complaint does not stick, they will be ignored.

Ms. Stricker stated this provision was taken from San Francisco's ordinance. The purpose of this section is to prevent complaints from becoming a way to harass another member of the community. There is a 3-step process: 1) If the first complaint a person makes about a particular noise, it is investigated; 2) if found to be unfounded, there is no violation. If there is another complaint that is identical from the same person about the same noise source, it will not be investigated unless the person complaining comes forward with evidence to suggest a different result would happen; 3) If after two attempted complaints that there was no basis for, it would not be investigated at all unless either the Code Enforcement Officer or CMPA felt it was appropriate to investigate.

Mr. Cusimano noted there were examples of ambiguity in the ordinance and neighbor issues with skateboarding and riding bikes down a street in East Corte Madera. Using a common sense approach, practicality, and determination by CMPA staff and the Town, there was not a violation given continual complaints and these were "Resolved with determination that there was no violation." Once this is done on multiple occasions, at some point the Town must move on with its resources. There are a handful of community members that have issues with their neighbors and he thinks CMPA is put in a bad spot, so staff attempted to address the issue using San Francisco's model.

Mayor Andrews said he was trying to figure out a way to make it three strikes before citations or a certain number of complaints within a timeframe.

Mr. Cusimano said he was supportive of changing it, but staff would never cite based on one or two complaints. It would be multiple times and significant expenditure of staff time.

Councilmember Ravasio asked if the Code Enforcement Officer Mike Morarity had any concerns about enforceability of the ordinance.

Officer Morarity said no; he had a couple of cases he was trying to resolve and is working through neighborhood issues and resolving each complaint by either moving the mechanical device or something else. Often, he is able to resolve the complaint through dialogue and getting neighbors together to solve them, similar to mediation. During daytime hours he will be able to assist with enforcement but often times, enforcement will occur through CMPA officers to evaluate the reported issues, conduct investigations and address the issues if needed.

Councilmember Ravasio said his interpretation of this is that it would cover party noise between 10PM and 6AM in neighborhoods, whether it is violating a decibel level or not.

Ms. Stricker confirmed and referred to the decibel chart in the staff report and the ordinance applies to mechanical device noise only, but general noise restrictions, which are nighttime restrictions, would apply to mechanical devices as well as speaking or other noise. There are a variety of factors considered in determining whether they are a violation. But, the primary factor will be the decibel level of the noise. If an ambient is taken, the noise level will be taken but it is not a magical decibel reading, as there are other factors such as the nature of the noise, its origin, whether it is natural or not, and the proximity to sleeping accommodations or residential properties, etc. Those noise restrictions will apply from 10PM to 6AM daily. Even if it is a mechanical device like a stereo, it could still be a violation, if on too loudly, under all circumstances, during nighttime hours.

Councilmember Kunhardt referred to the distance from the generator of noise is important. When operating a table saw or belt sander which are in the 95-105 decibel level, the ordinance is designed to pick up what noise is read at the property line. He asked if there was any way to interpret the degradation of noises over 50 feet or some other distance.

Mr. Morarity stated the example specifies construction noise, and the Town has its own specific ordinance as it relates to construction. Therefore, the noise he was referring to would be prohibited based upon the hours of construction and would be an initial violation of construction after hours.

Mr. Wolff added that if construction was being done from 7AM to 5PM during the weekday, the user would be exempt from the decibel readings. The point is that this is a difficult issue because someone may have a problem with the noise a certain distance away but the Town must establish consistent ways of measuring the noise from certain locations. Here, it is measured from the property line.

Mayor Andrews asked if a provision would be needed in the ordinance that allows the Town Manager or Chief of Police to suspend the ordinance if power is shut off and everyone turns on backup generators.

Mr. Wolff replied there are specific provisions in the ordinance that exempt noise from emergency generators in the instances of emergencies, and this policy was taken directly from the 2009 General Plan.

Mayor Andrews opened the public comment period.

Public Comments:

PETER CHAMBERS asked what would happen if a homeowner works 5 days a week and comes home on the weekend and wants to do some construction work around his property.

He asked if he would be prohibited from using tools.

PETER HENSEL voiced disappointment with the noise ordinance, stating a case could be made for varying ambient noise noting the Town proposes to increase the limit for a violation by 40 decibels above ambient, and he suggested it be 20 decibels. There is also no indication how far away noise should be from air conditioners. Speech at 3 feet away is 60 decibels and then on the other side of the room it reduces possibly down to 52 decibels. Therefore, he thought measurement from the property line was very important and asked to include degradation measurement over distances in the ordinance.

He spoke about CMPA wanting to remove general noise regulations altogether about four years ago with the remedy to work with police instead. Complaints would be made to the District Attorney wherein the case would be dismissed and mandated back to the local jurisdiction. He said he has a large construction project going on next to him and he must tune it out, but he objected to noise from loud drunk people at midnight.

BOB BUNDY voiced support of the proposed ordinance, said he likes the idea of an absolute ban on gas-powered leaf blowers, and spoke of noise and air pollution from other gas-powered equipment and he thinks they may be at a tipping point. Going to battery-powered equipment will also get people to realize they work efficiently. He has a battery-powered chainsaw and weed eater and they work fine. He also likes the idea that the ordinance is being coordinated with Larkspur and San Anselmo. He would like to see cards available to neighbors that have the requirements to ban gas-powered leaf blowers in both English and Spanish so neighbors can hand them over to landscape workers or neighbors.

Regarding repeated complaints, a neighbor made life miserable for those in the neighborhood and police went to great lengths to try and respond to this individual but they realized it was impossible to resolve. Therefore, he supported less response which will save time and misery.

BARBARA SOLOMON spoke about her two pet peeves: barking dogs and construction noise. She lives at the corner of Willow and Redwood and over the last 5 years they have had 5 major renovations within one half block of their home. The work has gone on 7 days a week and many times she was deprived of the enjoyment of her home. She considered selling it and moving. She urged the Town Council to cut back on construction hours and not allowing it on weekends. She also suggested the ordinance identify clear procedures regarding barking dogs.

PETER CHASE stated his company installs generators, air conditioners and other equipment and whether in San Francisco or rural areas, they are required to follow 80 decibels, 10 feet from the property line which is a sustained noise for these types of units. They have to check it and often code enforcement officers in communities will check it.

Councilmembers asked and confirmed the 10 feet was measured from the inside the property line.

KARL SPURZEM commended staff on the work on the ordinance and supported the ban of gas-powered leaf blowers altogether. His concern is that he feels the ordinance will be completely unenforceable, did not believe police will be able to address it and thinks it pits neighbors against neighbors. He also did not believe the table was easy to understand and assumed the sound levels in the middle column were in all different zoning districts. Of the 27 electric leaf blowers reviewed there is only one at 50 decibels and all others are higher. Therefore, the table is not enforceable. He also did not know how these noise levels were determined, where they were going to be taken from, who would take them and who would be responsible for them and how they are documented.

STEVE HOFFMEIER said he lives on Willow and brought a leaf blower in, stating the reason the gas blowers are popular by commercial workers is because they are cordless. He

turned on an electric Makita model which can be regulated from levels of 1 to 6 which he turned on and said it is about half the sound of a gas powered blower. Now, blowers can be used with 4 batteries and a charger. As a 40 year contractor, he agrees with banning weekend work and stated hopefully neighbors can work with noise levels. When Amazon deliveries come and they cannot get around the corner and there is beeping going on all day, he questioned whether it was the Town's job to do deliveries for them, so he would like the Council to try to get this addressed. Delivery trucks are parking in the park which is illegal and Tam Paints were also parking in the neighborhood which he described, and he asked that everybody work together on what is a very emotional topic. Over the last 5 years noise has doubled and the park is the jewel of the Town.

PAT RAVASIO voiced support of the noise ordinance and said leaf blowers drive her crazy. She would also alert the commercial establishments that a full ban may come and hopefully the Town could indicate that within one year they anticipate going to electric. She also agrees construction should not occur on weekends, given the need for rest on the weekends. She also thanked the Town Council, police and staff for all of their work being done.

Councilmember Bailey questioned Mr. Morarity about his opinion on the criticism that noise is almost impossible to enforce because it is complex and not objectively quantified.

Mr. Morarity stated enforcement itself can be defined in different ways. He knows the philosophy of law enforcement but they try to resolve complaints the most effective way as possible. Often, there are very few citations issued in Corte Madera but this does not mean they have handled a complaint and resolved it by stopping the noise or educating someone of the current ordinance. This is the reason for the open discussion; to find out what is reasonable and what direction the Council wishes to give in terms of enforcement.

Councilmember Bailey asked if the ordinance seems reasonably interpretable to a normal person, particularly for a police officer or for those trying to determine whether sounds the person is hearing is against the law or not.

Mr. Morarity said this ordinance provides much more clarity because in the past they did not address ambient noise. A 40 decibel reading is just a bit higher than a whisper, and he noted Councilmember Ravasio gauged his voice at 60 decibels. The ordinance gives a clear threshold that is reasonable. He thinks noise needs to be higher than the 55 to 60 decibel current reading which is already established in neighborhoods. The proposed ordinance allows for identification of the ambient noise through calculation of the mean, and then addresses the current 40, 50 or 60 decibels higher than the ambient so it is a clear threshold.

Councilmember Bailey asked why the Town receives a consistent level of complaints in the Willow Avenue area, and/or he asked if enacting this ordinance help the problem in a meaningful way.

Mr. Morarity stated he is hearing two issues in the Willow Avenue area; one with mechanical noises across the street with the commercial business; and second, about construction noise in the community. He has personally not fielded any of the complaints because he began in April, but those received outside of Willow were addressed with letters, phone calls and visits to people's homes to let them know of the complaints.

Councilmember Bailey recognized the distinction between trucks, construction noise, etc. and he asked if noise from the trucks be a violation of the ordinance so it would make a difference, or he asked if the ordinance does not address this.

Mr. Cusimano clarified that the leaf blower ordinance is helpful for staff to enforce because it does not relate to the mechanical noise chart. It stands on its own and it is very easy and tangible to enforce. Again, there will be a response time and education issue, and he would

question whether the landscape contractors would know the regulation because right now they are citing the operator. Therefore, they need to work through education.

Regarding the chart, he thinks they need to simplify the chart and educate. Based upon comments he is hearing he now has questions about the chart. The numbers can be reset based on the General Plan study and they can then include a decibel level higher than that number. He has a deep respect for Willow neighbors and in some ways it is unacceptable but in other ways it is how the neighborhood is set up. There is the Civic Center which provides traffic and noise, the commercial business that butts up to the residential area, a lot of construction going on, and the big one is the Post Office and staff has gone to extraordinary efforts to work on this. He has never been treated as badly as he has by the Post Office which is shocking. Everything mentioned in public comments is accurate and staff will continue to work on it and it is not okay.

It has been traumatic for neighbors because deliveries start at 3:30 a.m. Insult to injury on a weekend, 15-17 parking spaces are lost in the park because the Post Office vehicles are parked there. He thinks it is the wrong location for the use, but the ordinance does not affect it at all.

In addition, there is the skateboard park, a playground which is in the area, so Willow neighbors deal with continual noise and they are the most susceptible to it. The noise ordinance will help staff define issues with commercial to residential noise, with leaf blowers, and they should discuss construction and consider restrictions for weekends which have pros and cons. However, it will not ultimately solve the problem.

Mayor Andrews asked if construction can be limited neighborhood by neighborhood in Corte Madera.

Mr. Cusimano said as a practice, the Planning Commission will specify times of construction through conditions and it is based upon the area and circumstances.

Mr. Wolff stated the Town clearly could create zones and different construction hours for every part of the Town. There is a lot of construction going on now throughout many neighborhoods, so it becomes complicated and cumbersome to establish appropriate hours for everybody, but it is possible.

Mayor Andrews stated for the first 25 years he lived in Madera Gardens and his home had no insulation and he heard everything. Depending on which neighborhood, many homes have been upgraded and are more sound proof. Most of the Willow homes are fairly old and not insulated. Therefore, he asked if the Town can be more sound-sensitive as well as in terms of timing for construction.

Mr. Wolff stated it would be difficult to identify for all adjacent homes and base construction hours on that information.

Councilmember Bailey asked if the speaker questions could be answered.

Mr. Cusimano addressed the following questions:

- Regarding whether construction is allowed for those that work during the week and whether they can work on weekends, currently the ordinance allows for Saturday and Sunday hours between 10AM to 5PM on weekends.
- Regarding the issue regarding enforceability, he thinks it is enforceable. Leaf blowers are exempted from the chart.
- He thinks there was a comment about creating cards to educate people on the ordinance which is a great idea, and it is similar to what they do with the barking dog ordinance.
- In the Town's ordinance they refer to the County's ordinance about barking dogs but they do not spell out what that is. Staff can do this and will return with language

about that. He also thinks they can do a better job explaining the procedures.

- He thinks it would be helpful to hear from the Council about returning with a chart redistributing the maximum numbers for the specific zones in the chart as it relates to mechanical noise and going a percentage above that to initiate a citation process. This is what staff is recommending after hearing feedback.
- Regarding Post Office noise, it is an absolute issue.

Mayor Andrews stated the options for Council are to 1) introduce the ordinance as is; 2) have staff work on it more; or 3) take no action at this time.

Councilmember Bailey said before the Council is a very specific ordinance and while they do not need to make a decision tonight, they are being asked to give direction. On balance, if only because it coordinates with neighboring towns and possibly adds certain standards, the concept makes sense to have a uniform ordinance.

The Council has listened to comments very carefully and reads all correspondence and while people may not feel they receive satisfaction, the comments are well received. He would specifically ask people on Willow to do is that unless they think the ordinance is worthless, come up specifically how it could be modified or changed to make sense. For example, the ambient level being lower for enforceability reasons, per Peter Chase. On the other hand, he was not sure on balance speakers were against it or that there were specific things in it and did not think the ordinance was ready for its first reading.

A complaint heard repeatedly tonight and he has heard independently over the years are traffic noises. He recognized these as legitimate complaints but he did not think they were in front of the Council with this ordinance. This ordinance is not designed to address those.

He thinks he was becoming 100% against the gas-powered leaf blowers and thinks banning them would be well-received.

Regarding not having construction on the weekends, he is empathic with this. His sense is that this might be going far, and while he was happy to consider it, he has heard comments and was not sure.

Councilmember Kunhardt stated this noise is not just from commercial construction but any homeowner working on gardening with tools and he would be cautious about taking away the right for do-it-yourself projects on weekends.

Councilmember Bailey referred to and supported the idea for having a specific citation like an industry standard which goes with whatever is current. He has concerns though about enforceability, but also leaves it to police to tell him who actually performs it as to whether or not it is enforceable. There is a tension when passing any local ordinance between the more specific and objective it is, the more they take any real discretion of the hands that do the enforcement. On balance, police do an amazing job of weighing competing demands in rapidly changing situations. He therefore is cautious about being overly restrictive in what they have to do because it takes away the very thing that makes them effective. So, if police have specific changes he would like them.

Councilmember Kunhardt voiced general agreement with Councilmember Bailey's comments. He would caution having tighter restrictions on weekend work. He also has no problem with moving towards a ban on gas-powered leaf blowers. He questioned why there are exceptions in the draft ordinance for schools and Town properties for leaf blowers and asked for an explanation.

Mr. Cusimano said for every 5 people who want a complete ban on leaf blowers he could find 5 others who support it. Therefore, staff tries to land in the middle for a balance. Staff looked to Larkspur and they have the same issues. He thought their Council did a good job deliberating and finding a middle ground in banning gas-powered equipment, but they do

allow gas-powered only in commercial areas, school districts, and city facilities or properties. Therefore, for enforceability, it was a good process and while it is this Council's decision, staff thought it was a good starting place. Town staff still uses gas and they are starting to move toward battery-powered from an ergonomics standpoint as they are lighter and were able to function equally well, so they are transitioning over the next year. However, there are some areas where gas-powered has advantages for more power and more efficiency in some situations, so there should be a transition phase if this is implemented and to allow more discussion and input from larger commercial areas and businesses.

Mayor Andrews voiced support to phase out gas-powered leaf blowers and asked staff to get the workers to wear ear plugs.

Mr. Cusimano stated the workers are trained and mandated to wear ear protection and he thanked him for bringing this to his attention.

Mayor Andrews said in terms of the annoyance of sounds, he asked if the pitch matters and whether it travels.

Councilmember Kunhardt stated he was awoken from what sounded like a screaming baby and it was an electric leaf blower from 10 years ago.

Mr. Cusimano stated this varies among people and this cannot be enforced. Decisions must be made on evidence known of gas-powered and battery-powered equipment or implement an outright ban. Staff found a thoughtful balance and they will evolve over time.

Councilmember Ravasio thanked the public for their comments and staff for their great work. He remembers the meeting 4 years ago and understands the issues. He thinks this ordinance largely addresses the issue from 4 years ago because it is creating something clear and enforceable. He agrees with Councilmember Bailey's comments and regarding the construction issue, he was sensitive to noise and it is the reason he has a decibel meter. He knows there are many people who need to work on the weekends and on the other hand, no one wants to hear a power saw at 9AM on Sunday, so he hoped for some way to work things out and solving homeowners' needs and at the same time preserve peace and quiet in the neighborhood. He suggested staff possibly do more work on this and propose a compromise, but there must be a way that solves that for everybody.

Mr. Cusimano summarized Council direction: 1) Council is on track for the leaf blower; 2) more work is needed on the chart regarding making it easy to understand and be reasonable for mechanical noise; and 3) to return with options for weekend construction.

5. BUSINESS ITEMS

- A. Accept The Recommendation Of The Parks And Recreation Commission And 1) Provide Direction Regarding The Potential Location And Preliminary Budget Of A Dog Park, Pathway, And Access Gates In Town Park, North Of The Park Madera Center, Which Is Located At 510 Tamalpais Drive; 2) Direct Staff To Work Through The Planning Commission For Consideration Of Design Review And Conditional Use Permits, And 3) Return To Town Council For Final Review And Approval Of Funding Allocation

Recusal:

Councilmember Bailey recused himself, stating his residence abuts the Town Park and he left the Council Chambers.

Mr. Cusimano stated staff has been working closely with the Parks and Recreation Commission after direction from Council was to continue to work on the project and return.

The recommended action is to receive the recommendation from the Commission regarding placement of the proposed dog park and to provide staff with direction regarding location and a preliminary budget for potential construction of the dog park in Town Park adjacent to the rear of the Park Madera Center. Also, to direct staff to work with the Planning Commission for consideration of design review and a conditional use permit (CUP) prior to returning to the Council for final review and approval of the funding allocation.

Staff hopes to receive direction tonight and begin a quick process with the Planning Commission. Staff worked with the Commission, began with a number of locations in evaluating the pros and cons. After the last meeting, they narrowed it to two potential locations; one on Pixley Avenue and the other is what is before the Council or to the rear of the Park Madera Center in Town Park.

Staff presented a single option to the Parks and Recreation Commission a few meetings ago and it was the recommended location, primarily because he saw and felt like there were a lot of issues regarding noise in the local neighborhood on Pixley and Willow. They heard from a number of residents at the Commission meeting of their concerns that the Town would consider placing a dog park on the median strip in the parking lot across from Pixley Avenue.

He noted there are a few options to consider and he began by stating that the dog park is .37 acres, with 518 feet of fence. The Town currently has temporary fencing there now and has noticed the community adjacent to the Town Park so they could visit the area. The Parks and Recreation Commission also visited the site with staff and visualized this location. Their conversation at the Commission meeting was having a dog park here as Option 1 and as something they could take to the Planning Commission, then onto the Town Council and begin work within this fiscal year. Staff initially budgeted \$50,000 and the estimate for fencing, amenities and ADA improvements is estimated at \$65,000.

Regarding other options, they spoke about the potential of a small dog park, which he highlighted in blue. There are potential environmental issues as they get close to the creek, as well as a drainage area. It is something staff is not recommending action on tonight, but staff will continue to evaluate as to whether it is possible because they believe this would also be a good location. However, staff is focused on Option 1.

Options 2 and 3 could be at the same time or spread out over fiscal years. There was discussion of a path from the shopping center into Town Park to the dog park, which he pointed to. The estimate for that is approximately \$36,000.

Roy Wolford reminded staff and the Council that the Town used to have access here and there were issues relating to people taking over parking for the whole shopping center which caused problems, and ultimately the access was closed. The Town has a healthy soccer program and many residents know where they can and cannot park; however, outdoor soccer leagues were the primary violators so staff believes this should be strongly considered as an option and is working with the shopping center now. Also, the master plan for Town Park from 2007/08 spoke about access from the parking lot on the Eastman extension and having one way going in and parking diagonally 18 spaces and being able to come back out of the shopping center. The Commission discussed this and supported these concepts.

Their engineer reviewed environmental, drainage, and other specifics, and Mr. Cusimano then presented costs and a display of what could be placed in the area, minor grading, access to the park area, and consideration for 8 to 9 parking spaces. He recommended the Council give direction for the location and a budget of \$65,000 to immediately take this to the Planning Commission and then return to the Council. Staff will continue to evaluate and return a plan with additional parking stalls and access from the shopping center into the park, which may be the start of the next fiscal year. As they go, they will continue to work

with the Commission to evaluate a dog park for smaller dogs and look at other locations on the east side and other locations.

Mayor Andrews referred to large and small dog parks and grass is still proposed. If they have to close the large dog park, having a small dog park would help having while the Town reseeds the grass on the large dog park area.

Mr. Cusimano said the farther right they go, which he displayed, the more environmental complexities which will slow the process and cost a lot. The concept of both large and small dog parks is important and they will vet this.

Councilmember Kunhardt said if the Town was to move on the earlier concept drawing and open up what is now a closed parking area at the far western end, he asked where dumpsters and/or utility uses would be placed.

Mr. Cusimano pointed to an area where staff is looking at installing a bocce court, reviewing spaces in the current parking lot. Behind the dumpster in the parking lot is a cement easement and there are dumpsters there as well. Staff will evaluate different options to add parking, improve ingress and egress and fire lane safety, move this out of the area and open up, moving it farther in the park or to the side of the shopping center. Staff is also sensitive to noise as they have heard concerns since 2007/08 and the Commission will evaluate noise and parking and hours of use of the dog park.

Mayor Andrews opened the public comment period.

Public Comments:

STACY PRINCE said she lives at 26 Mohawk Avenue and is speaking on behalf of her part of the neighborhood and said they all oppose the dog park. She likes all dogs but the assumption that everybody wants dogs and potential repercussions of having a dog park is unfair. She asked the Council to consider the neighborhood's concerns with noise, dog barking, more vehicles, lack of parking in the area, opposed additional parking, and dog poop, noting that her own back gate has a trash can and her family often must smell poop and have to deal with it on a daily basis. Lastly, she cited previous vagrants drinking and smoking pot in the pass through area, as well as people being able to access the parking lot and gas station and liquor stores.

PETER ORTH said his family has raised Labradors for a long time and he has taken them to dog parks. He now has a 2 year old mixed breed. He referred to Mill Valley's large dog park which has a bike path and big and small dogs interact fine. He sees dogs wanting to run with each other and play, and there are no noise issues. He also stated regular dog park users pick up after their dogs and he suggested the use of bark versus grass.

DAVID MACPHERSON said he has been using the fenced in park twice a day over the last few months and spoke about his dog running and retrieving tennis balls for about 40 minutes and he has not seen one other person. Hopefully, the area will be better utilized, said he saw no dog poop, but human waste along the fence line and toilet paper, so by putting the park in there it will minimize the likelihood of this sort of use at the park. He thought drainage down in the swale, as the hill drains down and it will get muddy. As long as water is being brought in for a drinking fountain and/or dog bowl, it would be nice to have a hose bib so people can rinse off their dogs. He thanked the Town for their efforts and voiced his support of its construction.

PAT RAVASIO said she got involved with construction of a dog park many years ago because she met a woman who would walk her dog daily but never got to know anyone. Her goal is to bring community together and voiced support of a dog park in the proposed location because it will become a connection point for people and dogs. She recognized those living on Mohawk Street who recognize it as an imposition on their neighborhood

and suggested pulling it back farther away which will remove the poop along the speaker's fence because people will have an area for dogs to run. The noise from barking is when dogs are left alone, so it is not loud or incessant. She also thought more parking is needed at Park Madera Center and at the Community Center and supported the opening of the path and also limiting the number of dogs per individual to a maximum of 3 dogs per person.

DAVID STAINBROOK Said he is representing 19 families that have condominiums on Pixley and was glad the Council was not thinking about putting the dog park by Pixley, as they must currently live with the skateboard park, but were supportive of its installation. He hoped for enforcement of regulations for the dog park because there is no enforcement at the skate park. Dog waste on the ground does not get cleaned up and if kids play on the grass there remains residue of dog poop even when it is picked up and spoke of three women who walk twice weekly with about 30 dogs and while they pick up their poop, it is still a problem. He was the person who originally had dogs banned from the park because kids were playing soccer and there was a lot of poop. Therefore, things get out of hand with the soccer games and Mohawk residents will be impacted.

JIM ROBINSON said he is neither an opponent nor proponent of the dog park, said he understands the need for it, and he and his wife walk the area every evening. Many dogs are off-leash in the park and it is almost impossible to enforce. They had a dog and went to Mill Valley and Sausalito and thinks allowing dogs to run off leash would be advantageous. He also recognized concerns expressed about noise from dogs barking. If the Town considers putting a dog park in, it will increase the level of pedestrian activity, volume of vehicles, and the parking lot by the Community Center needs to be restriped which may provide more compact spaces, also an inoperable fountain near the north parking lot, and he cited concerns about uneven pathways due to tree roots and a huge eucalyptus tree on the path which should be removed or trimmed. Lastly, any restrictions on the dog park will be difficult to enforce.

LUCINDA SMITH said she thinks comments made are applicable, particularly the number of dogs allowed for one person to bring to the park. Also, the park is too small and needs to be larger for dogs to run around and play and thinks it would address any noise problems. The site seems very small and she pointed to an area for additional space for the dog park, noting that staff indicated there were environmental issues which she questioned and asked the Council not to piece meal it into the future.

Councilmember Kunhardt asked and confirmed with staff it was .35 acres.

Mr. Cusimano explained there are no environmental issues. Staff was simply sensitive to the fact of its additional active use, removal of trees, noise issues when getting closer to Mohawk and its proximity to drainage and the creek. Staff would love to have one acre for many projects in the town, but they are limited in locations. He thinks there are many positive aspects of the project and recognized more work to be done.

Councilmember Kunhardt pointed to the blue rectangle and asked if it was a wading pond or bench.

Mr. Cusimano stated staff put in amenities of a water feature, a couple of benches, consideration of ground work, fencing and grading. The Planning Commission will spend more time on the types of amenities residents would like to see.

Councilmember Ravasio thanked staff for their efficiency and work on this, given the Council has not talked about the subject for a few years. He was very sensitive to the noise concerns on Mohawk, but also has some experience with dog parks and agrees that when they are running they do not make noise so hopefully noise would not be an issue. He asked how far away from Mohawk the park would be, thinking it was not that close.

Mr. Cusimano responded that the closest residences would be in the 200 to 300 foot range.

Town Clerk Vaughn pointed to the map of the area staff noticed in the radius of 300 feet. They took the noticing from the Community Center at 498 Tamalpais because that is the whole area seen in dark red. Marin Maps grabs every 300 feet from every point of that rectangular area, so the Council can see the medium red shade are parcels within 300 feet from any point of the two rectangular areas and the lightest red area would include notice to those living within the tiniest portion.

Councilmember Ravasio voiced support to move forward on the work as quickly as staff can. It is not perfect in size but it is the best the Town can do. There are many people in Corte Madera who would like to see the dog park developed and thinks it will be a great community-building project. He added that in moving forward, he would want to determine what to do about the dog walker issue and also believes the Town can learn a lot from other dog parks as far as issues.

Mr. Cusimano stated that per the Town's ordinance, 5-6 dogs are allowed to be walked at any time. Staff will review this and speak with the Code Enforcement Officer to conduct walks at the park.

Councilmember Kunhardt stated he is also in agreement with Councilmember Ravasio's comments and support of the dog park. He thought regulating off leash dogs throughout the park would be helpful if the Town had a specific dog run.

Mr. Cusimano agreed and said staff also spoke with CMPA about additional funding of approximately \$15,000 to use cadets to enforce parking, dogs off leashes and noise regulations.

Councilmember Kunhardt voiced his support of moving forward with the dog park.

Mayor Andrews recognized consensus by the Council and voiced his support to move forward. He asked staff that once built to seriously look at space on the east side of town which the Town owns or controls for a large dog run.

Noted Present:

Councilmember Bailey returned to the dais and was noted as present to participate in the remainder of the meeting.

- B. Discussion and possible direction to staff regarding request from the County of Marin that all Fire-responsible agencies in the County adopt a resolution by October 31, 2019 to (1) authorize the City/Town/District's participation in a Joint Exercise of Powers Agreement (JPA) to form the Marin Wildfire Prevention Authority; (2) authorize City/Town/District's Mayor/Presiding Officer to execute the JPA; and (3) request that the County of Marin place a Parcel Tax Measure on the March 3, 2020 ballot to fund the Marin Wildfire Prevention Authority. (This is a discussion item only. The proposed resolution and associated action items will be brought the Town Council for consideration and approval at the October 15, 2019 Town Council meeting.)

Mr. Cusimano stated this matter has been discussed over 9 months at the county level and the working group of the Fire Chiefs within the County. The Council and Fire Council received a presentation over the last two months and all 19 member agencies within this Joint Exercise of Powers Agreement (JPA) are being asked in the month of October to review what the County approved. The Council is being asked to 1) approve the JPA; and 2) request by resolution that the Board of Supervisors place this on the upcoming ballot in March.

He stated fire prevention and vegetation management is a big issue. There was a Grand Jury report on this and the City of San Rafael initially took the lead and moved fast to place a

similar ballot before the San Rafael voters. As they began to think about it, the direction from their Council was to jointly propose the measure, given 70% to 80% of vegetation issues are in unincorporated County jurisdictions. Discussion began amongst elected officials and they formed the working group who began to identify a governance model of a JPA and funding model. Polling was done and the process took its course.

The Managers have held a series of meetings to vet and make any necessary changes resulting in multiple changes in the JPA. One issue for Corte Madera and other towns is to have legal review and analysis. They wanted to problem-solve as many issues up front as they could.

The working group identified the need for an expeditious timeline. Managers and Chiefs want to make the JPA as open as possible to problem-solve issues as they go relating to pensions, employees, governance, etc. They had to have a basic model which is before the Council. The issue is that there are many outstanding questions and the Council must have faith in the JPA concept and that they will all be able to work together. If the Town is going to punt many positions and what the JPA will ultimately look like, they need to focus on governance.

In the early model of the JPA, 5 regions were identified with a number of members from each jurisdiction adding up to the governing board, an operations committee as well as a working group. As they discussed the item, Corte Madera indicated that if the group wanted to push these issues for later, Corte Madera must have equal representation. He did not want to delegate any authority when it comes to unfunded liabilities, staffing, governance and overall decision-making.

On Friday, prior to the item going to the Board of Supervisors, they changed the governance model at the Manager level which forces all jurisdictions to come to the table to problem-solve. All agencies have an equal vote regardless of their size. They would also have a population basis relating to costs. As they went through the JPA, the Board approved it and asked agencies to trust the governance model proposed. It is open ended so it allows the Town priority and a decision-making process.

Following that meeting the County Managers met and discussed certain points. The Southern Marin agency and others began bringing up concerns such as the sunset clause. The ballot language indicates that the tax will be on-going until repealed by the voters. This one concern he believes is not going to be changed and he noted the polling conducted identified an increase in 8% to 10% to not have a sunset clause.

He then distributed three documents and said the Managers delegated this process to the working group of City/Town Managers, County Administrators and Chiefs. The Town Attorney helped the Southern Marin agencies to get them to be comfortable with the JPA language, and the red-lined version has the recommended amendment. One section indicates that if there is a surplus at the end of any year, that money by formula goes back to member agencies.

The other item is that within the 5 districts there is a funding formula and he spoke about the money and taxes generated amongst the districts. The managers are focusing on the 60% portion for vegetation management. Some concerns were raised given some have their own tax, they have different priorities, etc. and the Board can change that formula, but all cities are being asked to accept the concept of the JPA, the governance model and decision-making and ask the Board of Supervisors to go on the ballot. If an agency chooses not to, when the vote is taken that city/town would not be taxed.

He then spoke about discussions with the Southern Marin agencies of Mill Valley, Sausalito, Tiburon and Belvedere to determine what would get them to accept this and take it to their Councils, and the amendments or redlined documents made would bring the discussion to their Councils. However, he believes they would not support the sunset issue and there is

no a lot of time to make changes given deadlines. He spoke about the speed in which the JPA has been moving and asked the Council to discuss it further and voiced his support.

Mayor Andrews stated if the JPA moves forward with a tax measure on the ballot which is similar to regional measures, he asked if the tax measure could be done at the Corte Madera level. He recalled that when Ross Valley Paramedic Authority increased their tax, every jurisdiction voted for that and then they pooled the funds.

Mr. Cusimano stated from a structural standpoint he recommended following the MERA model and vote along with the region. What could happen is they could lose Novato and Sausalito but everyone else in it, which is problematic.

Mayor Andrews asked if there was an opt-out clause. For example, if in 5 years they do not believe things are getting done, he asked if Corte Madera could opt out.

Mr. Cusimano stated getting out of a JPA successfully and without liabilities is difficult and a concern. They are legally bound per CalPERS and they do not want pensionable positions within this JPA but the question is how to treat employees on a contract level that CalPERS will approve and audit, and how these things work. They also have to consider the fully burdened rates for jurisdictions such as a firefighter, which is about \$60,000 to \$70,000 more than the fully burdened rate for Corte Madera. The reason is that they add unfunded liabilities for OPEB and retirement into those fully burdened rates.

Theoretically, if a contract employee was contracted into the JPA and CalPERS allowed it, the Council would have to accept the fact that the jurisdiction would pay unfunded liabilities for that contract employee for the County. So, there are concerns of what happens when an agency backs out, and currently that is a bit unclear. The Board has the authority, on an annual basis, to evaluate the tax to lower it at any point. The mechanism used would be to end the tax at the Board level and sever that way. Whether an individual agency can back out currently is a bit unclear.

Ms. Stricker stated an individual agency could back out of the JPA but the way the tax measure is contemplated, the tax would continue until it is repealed by the voters. If the measure passes then all of the properties within each of the member agencies would be taxed going forward. The only way that would stop is if it is repealed by the voters at some time in the future or if the Board of the JPA chooses to impose the tax at zero, which it could do.

Councilmember Bailey stated neither of the red-lined language would appear to provide a sunset provision.

Mr. Cusimano stated there were three points Southern Marin brought up and the third was the sunset provision amongst the County and some of the larger agencies. At the manager level, they felt comfortable enough supporting two of the three changes to move this forward for discussion and a recommendation, despite the third sunset clause. Two of the working group members voiced concerns and he thinks the best case scenario will be for those two amendments to be in there and if not, there will be a fractured JPA and the Council will be asked to approve it with the two amendments.

There is a lot of work to be done and he was concerned that the Town Attorney has highlighted some big questions, such as spending more time on the JPA and not approving it now. He believes the plan is well thought-out with the amendments.

Mayor Andrews stated he believed the tax measure has problems.

Ms. Stricker stated she and Mr. Cusimano spoke with the County and there is some room for modifications and strengthening. Some of the discussion focused on things to make it stronger, but this does not change the fundamental concept at all.

Mayor Andrews read a portion of the language, "The change in the CPI shall be calculated from February of the immediate preceding year to February of the current year of 1.03%, whichever is less." He hears the JPA will cap it at 3%, and he thought whoever calculated this should have put in a complete calculation or written it in at 3%.

Mr. Cusimano stated if the Council was to approve the resolution asking the Board of Supervisors to place this on the ballot they could do a series of bullet-pointed amendments in the resolution they wish to make to the ballot language or their concerns. What will happen is the working group will come together to discuss and make those changes.

Councilmember Bailey asked what Ms. Stricker meant by the "language could be stronger."

Ms. Stricker replied it could be made clearer. She thinks just from a drafting standpoint, this is not a final draft, and there are a couple of minor tweaks that appear to be minor but are fairly significant and were intended all along. She thinks improving what the purposes are where the money could be used for and making it clearer to voters would be an important way to strengthen it and improve its success. There are a couple of other things in that same category and while they do not change the fundamental concept, it is more of a drafting standpoint and making it clear to voters.

Mayor Andrews opened the public comment period.

Public Comments:

PETER ORTH said he worked for the federal government for a long time with inter-agency agreements and he recognized the complexities. Unfortunately in this county there is not much of a record of trust when it comes to doing things about the entire county. He cited examples are the need to go to legal proceedings in order to conform to existing law in many areas and then these are ignored and appealed. He thinks the Council is being asked to rush to judgment on something that is incomplete and to trust the working group, but he did not see a strategy in any of the documents he reviewed. He sees individual projects and there has been work in Marin County for decades by foresters, fire vectors, where fires will originate and affect, and there have been plans for Mt. Tamalpais for a long time but they have never been implemented.

Additionally, the big players are PG&E, MMWD, County Open Space, State Parks, Federal Parks and this is where many of Marin's fire interface problems exist. This document does not address anything about how they will interact with them at all. He thought local governments go out of their way to work with agencies like PG&E and get them to work with Open Space, but they never work with them. He sees a continuation and emphasis on the current mantra of 'defend your space' and nothing that addresses going after prevention and control of the environment, and this is a way of approaching that. The 5 districts do not make sense and he thinks they should be focused on the fire vectors.

BOB BUNDY said he agrees with Mr. Orth's comments and additionally, the whole concept of a JPA to corral the 19 individual agencies to create a fire plan because they are not individually able to do it does not make sense to him. Corte Madera just got through passing a sales tax that is supposed to be used for floods, fire protection, disaster preparedness and other infrastructure issues and they eliminated a parcel tax on the argument that the sales tax was going to bring in more money and it was not going to impact residents as much because the tax affected those purchasing things in town.

He said he has some real concerns about this and in listening to Chief Weber he thinks Corte Madera should work on continuing consolidation within fire and police departments rather than creating additional JPAs. He believes that if Corte Madera-Larkspur Fire Departments were consolidated with Ross Valley Fire Department where there could be savings from paramedic costs from the County, they would eliminate the Ross Valley

Paramedic JPA and have a combined agency. The cost savings would allow them to do a lot of fire protection, defensible space and looking at where money should be put locally, and this should be something that happens throughout Marin. Therefore, he was not in favor of the proposal to create another parcel tax.

JIM ROBINSON concurred with Mr. Orth and Dr. Bundy, said he supports some reliable method of dealing with the issues. According to the voter opinion survey, the majority of residents in San Rafael and Southern Marin supported a flat parcel tax and not a per-square foot tax, and he concurs with this opinion. An assessment on square footage alone is not equitable and does not recognize unique features of properties throughout the county. He also recognized that most of the areas with needs are State and County Parks and even municipal properties. He is also concerned with the lack of a sunset clause and it has been his experience that the most successful incentive for local government that will ensure revenues will be collected and utilized for critical projects in a timely manner is a deadline or the potential threat of a loss of revenues.

He received his property tax bill today and said they have had some recent parcel taxes; MERA for \$29; SF Bay Restoration Authority for \$12; Twin Cities Police Facility which was needed at \$109. He has still not figured out what it would cost him if this tax is approved. He is told it is based upon ten cents per square foot. His house is 1734 square feet so this would be \$173/year, and this would be the largest single parcel tax imposed on him in the last 22 years. Also, he received an email back from Mr. Cusimano late today and there seems to be an issue as to whether this tax would include the garage square footage. If this is added in, it is about 300-400 square feet additional square feet so this would bring his increase up to about \$213 per year and this is a significant amount based upon what residents are paying for other taxes. He also referred to the Marin IJ which pointed out MERA issues and he was told they were 3 years behind in their schedule, so there are successes, failures and foot tracking. Lastly, workshops have been held on junior second units and a new Town Hall, and he considers this issue much more important and thinks it might have been good to hold a workshop.

MIMI WILLARD, Coalition of Sensible Taxpayers, said they have been working with the County on this since June and they have been very welcoming of their input. They want to support development of a countywide approach for fire preparedness, but this is now looking very rushed and the tax being perpetual is a big deal. The JPA has the opportunity to change itself daily and from within, so she likened it to a leap of faith. The Town will not be able to get out and the voters will not be able to get enough signatures to repeal it, and renewal is very important because it is the democratic opportunity to adjust it based upon work accomplished.

She also thinks the polling was scanty, flawed and perplexing. If people really understood the questions, she questioned if people would vote for a tax that goes on forever or a tax for a certain period. She thinks "perpetual" is there as a convenience to the agencies. She lastly said all of the negotiation happened among the different agencies and managers and it never included the population. So the structure is one that is worked through by all those at the table, except for the voters.

KARL SPURZEM said he agrees with Ms. Willard's comments and commended their group evaluating tax initiatives and coming forward with intelligent and mature responses. He reinforced the fully burdened rate on members of the JPA is a big deal. He thinks Mr. Cusimano has done a great job and the Town has made great strides in reducing pension obligations and he was worried others will look at this as a way to dump this off on towns like Corte Madera. He thinks the survey must be reviewed regarding perpetual tax versus a limited time.

He also thinks the fire department consolidation is very important because there is a lot of money spent around the county and this could provide opportunities for cost savings. He did not know where MMWD was in this conversation but they are incapable of handling

their vegetation management as they do not have the resources, and he wondered how much of that burden will fall on Corte Madera.

MARLA ORTH said she is passionate about vegetation management and said she is very concerned about how rushed this is and was supportive of a strategy, but she cannot get neighbors from Mill Valley or Larkspur to work with them, so she questioned how this would work. Their efforts are very small compared to what is being proposed with the JPA. She also worries about why the item is being rushed. She asked to step back and answer critical questions. Having been a former regulator and CEO, this does not meet her “sniff test”, and she asked the Council to step back and determine whether this is something the Town should be doing right now without modifications and concerns being addressed.

Mr. Cusimano clarified that MMWD is not a member of the JPA; however, in their recent fee hike they promised voters they would put a portion of that money towards vegetation management. The County of Marin is negotiating with them now and working on a formula. MMWD would be required per the County-wide ordinance to be abated and accountable for vegetation management, but the agreement is not final but is in the works.

Mayor Andrews said he would be very comfortable asking citizens of Corte Madera to vote for a Corte Madera tax that mirrored what the county wants. When they get the JPA organized, he suggested rolling that tax into the JPA. But, he sat on Council when TAM came to ask the Council to support extension of their tax and they told them two reasons to do it—they would get more crossing guards and school bus money. The Reed Union School District has not received any bus money and the Town lost its one crossing guard. In terms of whether the County is an organization to get things done is also questionable, and he relayed a story about Sonoma Narrows, so he was hesitant to seed authority and taxing decision-making to a County entity because he was not sure they were capable of managing a JPA efficiently and effectively.

Councilmember Kunhardt asked if it would be Corte Madera managing the JPA. Mayor Andrews noted that the Town will be out-voted because of its size. If it is not set up right initially, it will be broken from then on and they cannot get out and go on their own.

Councilmember Kunhardt thanked speakers for their comments, especially Ms. Willard and her work with citizen involvement. Also, environmental agencies put forward several comments which have been reflected in this latest draft. He was struggling because the Town is not getting cooperation from other jurisdictions that should be cooperating while wildfire knows no boundaries. Therefore, he questioned how to get that cooperation unless they give the authority for everybody to work on vegetation management, fire mitigation, public education, creating defensible space and improving building codes.

He said he believes it was Councilmember Ravasio who asked the fire department if they have any money to do these things and the answer was “no.” So, they are trying to give themselves the authority to break down barriers and work together on managing this giant threat, so he congratulated the team for their efforts and did not know of any other way to get the work done other than through a JPA. To Dr. Bundy’s concern regarding consolidation, he agreed it is needed but action is needed now. He thinks there would be more opportunities for consolidation and working regionally together.

Mayor Andrews questioned why the measure has to go on the March 20, 2020 ballot.

Mr. Cusimano stated some of it began early on with San Rafael. They were going to do something and those negotiations with the County and some other jurisdictions resulted in doing something now.

Mayor Andrews said San Rafael could pass their own tax as well as Corte Madera, and Mr. Cusimano stated that model will not work, not to say they could hold off on the JPA. But, it is very complicated and there are many hurdles doing it solely as one body. The problems

are not within individual cities and towns but outside and in unincorporated lands.

EXTEND MEETING

MOTION: Moved by Kunhardt, seconded by Bailey, and approved unanimously by the following vote: 4-0-1 (Ayes: Bailey, Kunhardt, Ravasio and Andrews; Noes: None; Absent: Beckman)

To continue the meeting until 10:00 p.m.

Fire Chief Scott Shurtz referred to the notion that they could be more effective doing their own thing or asking individual agencies to do their own thing, he did not want to indicate that everything they have done or may do in the future was useless or ineffective. They have made great strides in their preparedness and wildfire protection, but what they would do individually as a single Town would pale in comparison to the overall regional effectiveness and might not come close to what they could accomplish under the JPA.

He agreed this is not a perfect plan or solution but especially after changes to governance were made, many of those with initial concerns about being out-voted or bullied based on project priorities and funding was satisfied because of the unique nature of what was developed for voting under this organization. Every agency will get a vote and also have population as one of the metrics to affect the power of the votes. So, it follows that House and Senate idea that everyone is getting a place but no one can be bullied. It lends itself to the necessary building of consensus and while not perfect, many of them are much more comfortable now. The fear that all of the money will get used in the north end of the county and none of the smaller districts will see this will not happen.

Regarding the concept of trust, he knows trust can be difficult to ask elected officials to entertain given history, but he wanted to make sure they were talking about the same definition. He was not in any way trusting the County to make this all work for everybody. He trusts the governance model being established here which is not the County of Marin but voices from every agency. So, he feels much more trustful of that process than simply thinking this is going to be a county-run agency. It is a JPA and a collective voice agency.

Councilmember Ravasio asked if Mr. Cusimano was confident that the JPA is structured well and will work. He has worked with him on a number of JPAs and he trusts his judgement better than anyone.

Mr. Cusimano stated he thinks there is a lot of work to be done on the JPA, but he feels like their representation on the governance model and knowing the political structure to get to "yes" and who has the ultimate control, he thinks it sways Corte Madera in today's environment, but could not speak for 10 years from now. He is comfortable getting there and he agrees with Ms. Stricker about process. He thinks they should push the concept of "why approve a JPA today?" to help voters to understand what they are working towards. They should focus on cleaning up ballot language and continue to work on the JPA and he was not sure it would be supported or not.

Strategically, he said Corte Madera is the first town to hold discussion on this and everyone will watch this video and will change it from an action item to a discussion item in order to get an idea of where everybody lands. When they come back on the 15th they will be better positioned to see what has happened with other cities. He feels they can get this JPA where it needs to go. As an example, the County wants Ms. Stricker as part of the team and there is a lot of work to be done.

Councilmember Ravasio stated he has been the Town's representative on this county-wide effort and he thanked the speakers for their input. He said everybody needs to figure this out and make it work and do something on a county-level, and he is completely convinced of this. This is starting to affect individual homeowners and making it difficult for them.

People cannot get fire insurance and will have to pay \$10,000 a year to get fire insurance from Lloyds of London on their own. Something must be done as a county, and while this may not be perfect, they need to get it as good as it can be, but something must be done soon.

For some reason, this fall has been cold and they have been lucky, but it could easily change into a different situation.

He said he heard points about continuing consolidation with other fire agencies, but consolidation is extremely hard. He met with Larkspur Councilmembers eight years ago to talk about consolidating and it took them seven years to get it done. They really wanted to make it happen but there was so much to work out which made it difficult. Many fire agencies do not even want to consolidate. So, he does not see this as reasonably working. Fire agencies are all different and have differing opinions as to how they should run and they like their independence, and this is one of the things this JPA is trying to solve.

Therefore, he thinks the Council needs to move forward and he would rely on Mr. Cusimano and Ms. Stricker's direction as to how to get this done to make it work so it will solve some of the issues brought up. The fire departments are set up to save lives and put out fires and are not set up to solve this problem. He thinks the only way to solve it is to do it on a county level.

Councilmember Kunhardt asked how it would work for Corte Madera to go alone when the Town is already part of the Central Marin Fire Department. He asked if they would only be able to act with Larkspur, for example.

Mayor Andrews said his main concern in setting up the JPA is that they get it done and everybody says it will take care of fire prevention and turns out to be ineffective. Then, they will not be able to get out of the JPA and be able to try an alternative because they are locked in. Ross Valley has had a flood control tax since the 1982 floods and is still flooding and arguing about how to fix the issues. Corte Madera was able to come up with a plan and it cost \$30 million to implement it, and will spend another \$50 million going forward and if they belonged to Ross Valley, they would still have problems. His issue is giving up control before they know if they will be effective.

If San Rafael insists it must be on the ballot for March, it passes at the Corte Madera or Larkspur level and they start collecting the money, he suggested then merging into the JPA once they figure out what the JPA plans to do over the next five years. It is supposed to be set up and then sorted out, and he was opposed to that.

Councilmember Bailey said he does not know how he would vote if they were going to vote tonight. He asked and confirmed that the Council will consider this on October 15th. He comes from this knowing about the potential catastrophe people are currently living under. He did not want their decision-making to be motivated by fear, but he is afraid. Sonoma and Napa in the immediate past went through disaster with lives and properties severely impacted. The Town is being asked to do something to ameliorate that.

Secondly, he thinks they all agree that there ought to be a large, consolidated Marin Fire Department.

Chief Shurtz said he can only answer for himself and not the other chiefs, but that this would be the most efficient use of resources.

Councilmember Bailey said people he knows tend to agree on this without hesitation except that it is not possible because of politics or some other things. Some reasons to consider the JPA is because there is a Grand Jury Report that recommended doing this, the Chiefs agree, The Town Manager supports it, Councilmember Ravasio agrees and he has sat as the Council's voice on this area, but his own experience on JPAs differs a bit from his

observation of what the County is as a whole. He sits on the Marin Clean Energy (MCE) Board and Ross Valley Paramedic Authority, which are efficient and have run famously despite all kinds of imbalances for a variety of reasons and complications. But, he has observed many examples of the County not treating people and tax monies very well and not being used appropriately for many years. Therefore, his own experience is a bit different from his own observations. He sits on these boards and thinks they are doing a good job.

He referred to the sheet that isolates the core program areas and their dollar figures. He agrees with Ms. Stricker's view that there ought to be explicit and specific ballot language that says how money is spent. It is clear that they have not thought this through and the Council is being asked to take a leap of faith with those whom they trust who have their best interests at heart, who are also smart and if they do not, the catastrophe could result with the loss of lives and property. Were it not for the catastrophe beyond doing it, none of them would think about committing themselves.

On the other hand, people would shame the Council for failing to act and people lose their lives or their property. He said he is generally against bureaucracy but has seen how it can work and if they do not do this the problem will perpetuate. He has seen that it is so much easier to throw a grenade than build something up. People come and say it is a terrible idea, but the Council must occasionally do something even when it is not the best idea because if they do nothing, it is even worse than a terrible idea. He has always been told, "if in doubt, be bold because it is better than doing nothing."

At the end of the day, his political theory is that they should never get bogged down in philosophy. They should always stick to operational concerns. Their operational problem is that they have terrible fire danger that must be addressed on a county-wide level. The operation problem is how they do it. The solution presented feels pretty bad and uncertain, and the commitment is in perpetuity, or until voters say 'no'. Therefore, he is uncertain.

Mayor Andrews asked if 4 or 5 jurisdictions say they want a vote. Mr. Cusimano stated the Council will have a good understanding of those who specifically worked on this measure, take it to their Councils and see how they respond. So, they will know more in two weeks. Staff will return and work hard on process. He thanked the Council for their feedback.

Councilmember Kunhardt stated he has always reflected on the best geographic scale of governance which is appropriate for the problem. If solving the issue, it must be at a county level.

Councilmember Bailey said the specific question is not whether that is the best scale but whether this JPA is the right thing. He was undecided on this and, in the interim, he hoped the language could be modified to make him more supportive, but it might be unmodifiable to be supportive.

Mayor Andrews asked staff before the next meeting to give him a better idea of what projects the Town Manager hopes to accomplish in the next seven years.

Chief Shurtz stated this whole process was based on the three guiding documents discussed in the presentation, the most important is the CWPP (Community Wildfire Protection Plan) which is a county-wide plan and there are shovel ready projects that have been developed through voices of every fire agency in the county, prioritizing where the biggest threats are and science based fuel modeling and data driven decisions.

He explained there is a plan and it is not just a situation where they will get the money and then figure out what to do with it. The plan will get them through years of work before they will need to go beyond that. As far as they are concerned about the perpetuity question, and this might be a deal breaker for other agencies, he knows it would be a heavy lift to be repealed by voters, but incorporated into the plan is an official, formal citizens'

oversight committee that is specifically laid out by region and area of specialty and interest. If that committee feels like this is being completely ineffective and money is being wasted, he did not think it would be that hard to motivate voters to repeal this.

Councilmember Kunhardt asked and confirmed there is a taxpayer representative on the committee and not simply fire representatives.

Councilmember Ravasio asked to re-arrange the agenda and take Item 6.D before breaking, as well as extending the time to another 15 minutes.

MOTION: Moved by Ravasio, seconded by Bailey, and approved unanimously by the following vote: 4-0-1(Ayes: Bailey, Kunhardt, Ravasio and Andrews; Noes: None; Absent: Beckman)

To re-arrange the agenda, extend the meeting another 15 minutes, and to hear Item 6.D.

- C. Consideration and Possible Action to Adopt Resolution No. 41/2019 Approving Revisions to Mid-Management Employees Memorandum of Understanding Regarding Benefits for Holidays, Reimbursable Expenses, and Mobile Technology Expense Allowance

This item was deferred to the next Town Council meeting.

Noted Absent: Town Manager Cusimano left the Council Chambers due to conflict of interest for the upcoming item.

- D. Introduction of Resolution No. 42/2019 To Amend Town Manager Todd Cusimano's Employment Contract by (1) Extending Its Expiration Date from September 1, 2021 to December 31, 2026, (2) Increasing His Annual Salary by \$11,400 (5.2%), (3) Establishing a Compensation Review Every Two Years, and (4) Making Other Appropriate Changes

Town Attorney Stricker said the item is an amended Town Manager contract. The Town Manager currently has a contract that took effect on September 1, 2016 and currently expires on September 1, 2021. The Council and Manager have decided to extend the term of the Town Manager's contract and for the Council's consideration is an amended contract to do that and other things.

First, the resolution would extend the contract with the Town Manager to December 31, 2026. The Town Manager's salary has not changed since he began over three years ago. His current base salary is \$219,000. He received a one-time 5% bonus in May 2018 and again in February 2019 and both bonuses were 5% of his base salary or \$10,950. But he has not received an increase in his salary since he began with the Town three years ago.

The proposed amendment would provide for an approximately 5.2% increase in his salary which would be an additional \$11,400 per year which would bring his annual salary to \$230,400 which is \$19,200 per month. The proposed increase would take effect retroactively to September 1st which is his third anniversary date.

Based upon the March 1, 2019 compensation survey of the Marin County Town and City Managers, which is included in the agenda packet, the proposed increase in salary would bring the Town Manager to be the fourth highest paid Town or City Manager in Marin County of the 11 jurisdictions.

The amended contract would also establish a periodic compensation review. Currently, there is no mandatory process for reviewing the Town Manager's salary in his current

contract. The current contract provides a requirement that if the other managers receive a cost of living adjustment (COLA). If the Town Manager requests, the Council will determine whether the Town Manager should receive a similar COLA. The proposed contract deletes that provision and provides for a periodic compensation review that would be required every two years, and the first requirement would be two years from now.

The contract also provides some clarifications as to the timing of the existing annual performance review and evaluation process. Under the current and proposed contract, the Town Manager receives a performance evaluation once a year. This clarifies that process will begin in September or October each year with the goal of having the process completed no later than December of each year.

There is another change made which is the timing for consideration of a discretionary performance review. The current contract provides that following the annual performance review, the Council may, in its sole discretion, grant the manager a performance bonus of up to 5% of the base salary, and he has received two of those. The proposed amendment makes clear that this discretionary performance will be considered, if at all, only in those years where there is not a salary increase. Again, it remains discretionary as there is nothing in the contract that requires the Council to provide that, even if considered.

The proposed contract would also delete, at the request of the Town Manager, a benefit that is in the existing contract which provides that the Town pay up to \$10,000 a year annually for professional coaching and mentoring for the Town Manager. This benefit was included in the original contract in recognition of the fact that the Town Manager had never served as a Town Manager previously. The Town Manager has requested that benefit be deleted, so the proposed contract does that.

There is additional clarification in the contract. The existing contract provisions did not explicitly reflect the party's understanding and intent that the Town Manager receive the same amount of administrative leave as the Town Department Heads may be granted each year, and this was something she recently discovered as a drafting oversight in that contract. Therefore, it is her recommendation that oversight be corrected and that the amendment provide for what has been happening all along which is that the Town Manager continue to accrue, at the beginning of every fiscal year, the same amount of administrative leave that Department Heads may be granted in that particular year.

The contract makes clear that the Town Manager may use the administrative leave at his discretion but that it has to be used in the year which it is accrued and cannot be carried forward beyond the end of the fiscal year.

There are a variety of other clarifications, none of which change the contract or situation that it has been for the past three years, but there are some cleanup provisions in the contract.

In terms of fiscal impact, for the current fiscal year, approval of the amendment would result in an increase in expenditures of \$10,268.74 as compared to the adopted budget. This includes the increase to salaries of \$9,500 and includes payroll taxes and increase in employer CalPERS contributions, as well.

For 2021, the fiscal impact would be a total of \$12,420 in expenditures as compared to the adopted budget. This includes \$11,400 in salaries and it also includes payroll taxes and the increase for employer CalPERS contributions.

Councilmember Kunhardt asked whether the Town can get other jurisdictions to pay the Town when Mr. Cusimano works out their problems instead of paying for management training.

Ms. Stricker stated this might be in the MOU and he would be happy to hear about that.

Mayor Andrews opened the public comment period, and there were no speakers.

Ms. Stricker reminded the Council that it is the Council's practice to have the item come forward for two readings, and she suggested making a motion to introduce the resolution.

Councilmember Bailey reiterated that the Council is not doing this without thought and private negotiation sessions. They thought carefully about the terms and they ended up in a good place which the Town Manager deserves.

MOTION: Moved by Bailey, seconded by Kunhardt, and approved unanimously by the following vote: 4-0-1 (Ayes: Bailey, Kunhardt, Ravasio and Andrews; Noes: None; Absent: Beckman).

To Introduce Resolution No. 42/2019 To Amend Town Manager Todd Cusimano's Employment Contract by (1) Extending Its Expiration Date from September 1, 2021 to December 31, 2026, (2) Increasing His Annual Salary by \$11,400 (5.2%), (3) Establishing a Compensation Review Every Two Years, and (4) Making Other Appropriate Changes

7. COUNCIL AND TOWN MANAGER REPORTS

- Town Manager Report
- Sanitary District Manager
 - o Update on recent emergency repair work
- Council Reports

These items were deferred to the next Town Council meeting.

8. REVIEW OF DRAFT AGENDA FOR UPCOMING TOWN COUNCIL MEETING

- A. Review of Draft Agenda for October 15, 2019 Town Council Meeting

This item was not heard.

E. ADJOURNMENT

The meeting was adjourned at 10:19 p.m. to the next regular Town Council Meeting on October 15, 2019 at Town Hall Council Chambers.