MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL

TUESDAY, December 7, 2010

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:02 p.m. by Mayor Stratford in Hoyer Hall of the Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Stratford, Vice Mayor Shuey, Councilmembers Geller, Medrano and Pierce. Staff present: City Manager Gary Napper, City Attorney Dan Adams, Community Development Director David Woltering, and City Clerk Laci Jackson.

2. **CLOSED SESSION** – None.

3. **PLEDGE OF ALLEGIANCE** – led by Mayor Stratford. Prior to the Pledge Mayor Stratford asked for a moment of silence in honor of those who served America since Pearl Harbor Remembrance Day is today.

4. **CONSENT CALENDAR- It was moved by Vice Mayor Shuey seconded by Councilmember Geller to approve the Consent Calendar as submitted (Passed; 5-0 vote).**

(a) Information Only
1. Notification by Republic Services (dba Allied Waste Services) that residential and commercial solid waste collection and disposal services rates will increase by 0.95% (90% of the annual CPI average increases, per the Franchise Agreement), effective January 1, 2011.

(b) Approved the minutes of the regular meeting of November 16, 2010 and the special meeting of November 23, 2010.

(c) Approved Financial Demands and Obligations of the City.

(d) Adopted Resolution 48-2010 approving and adopting updated City of Clayton Standard Specifications for Public Improvements (per Caltrans' revisions through November 2010) and authorizing the posting of same on the City's website.

(e) Adopted Resolution 49-2010 declaring the results of canvass of returns in the November 2010 General Municipal Election declaring two persons elected to the City Council of Clayton, California for full four-year terms of office.

5. **RECOGNITIONS AND PRESENTATIONS** – None.

6. **OATHS OF OFFICE BY NEWLY-ELECTED CITY COUNCIL MEMBERS**

The City Clerk administered the Oaths of Office to the newly elected Councilmembers: Ross "Hank" Stratford and David "Shoe" Shuey. The new Councilmembers took their seats at the Council dais and were provide framed Certificates of Election.

7. ANNUAL REORGANIZATION OF CLAYTON CITY COUNCIL

(a) Election of Mayor by the City Council.

Mayor Stratford opened nominations and nominated David Shuey for the position of Mayor. Councilmember Pierce seconded the nomination. There were no other nominations. **The election of David Shuey as Mayor passed by acclimation (5-0 vote).**

(c) Recognitions and Comments by Mayor and City Council.

Mayor Shuey thanked Councilmember Stratford for doing a wonderful job as Mayor. He stated it was a difficult financial year for the City and the State and he thanked him for his leadership guiding the Council through those tough times. Mayor Shuey presented Councilmember Stratford with a gavel plaque in appreciation of his service.

Councilmember Stratford thanked the Council and the public for letting him serve. He stated it was a great honor and he appreciated the support from the Council, staff and the public.

(b) Election of Vice Mayor by the City Council.

Mayor Shuey stated he believes this is going to be an interesting year as the City is facing difficult economic times and the Clayton Community Church proposed project will come before the City Council during this term. He stated the Council has made no decisions in regards to the project and is keeping its neutrality. He stated whenever religion is involved and divisions are formed in the community it is important to step back and realize both sides of the debate have an interest. He stated he looks forward to serving another term as Mayor.

Mayor Shuey opened nominations and nominated Joseph Medrano for the position of Vice Mayor, which was seconded by Councilmember Medrano. Councilmember Pierce nominated Howard Geller for the position of Vice Mayor, which was seconded by Councilmember Stratford.

Councilmember Stratford noted he had not been looking forward to this meeting. Councilmember Pierce stated it is a tough decision on Vice Mayor and is not as clear cut as in past years we have two qualified nominees.

Councilmember Medrano stated if the criteria for choosing the next Vice Mayor came from the most votes in the previous he would be selected. He stated he supported Ted Meriam in the last election and stated he believes it is important to mentor those who will be leaders in the community. He stated he has no hidden agendas and believes not agreeing on every issue encourages discussion. He stated he credits Council as a whole and staff for their hard work. He stated the new Vice Mayor should adapt to change.

Councilmember Geller stated it is tough choice for Vice Mayor because there are two very qualified candidates. He stated he takes his job as a Councilmember very seriously and has 36 years of service to the City of Clayton. He stated he served on many committees including the Budget and Audit sub-committee and the Concerts in the Grove committee. He stated he has attended many of the Mayors' Conferences to hear about issues facing the City and how other cities are dealing with those issues. He stated he has worked hard to keep a balanced budget while trying to maintain Clayton's charm.

Mayor Shuey called for the vote in order nominated: Joseph Medrano (Failed; 2-3 vote; Noes- Councilmembers Geller, Pierce and Stratford).

Mayor Shuey called for the vote for Howard Geller as Vice Mayor (Passed; 3-2 vote; Noes- Mayor Shuey and Councilmember Medrano.

8. **REPORTS**

(a) Planning Commission – No meeting held to report.

(b) Trails and Landscaping Committee – No meeting held to report.

(c) The City Manager thanked Councilmember Stratford for his service and welcomed Mayor Shuey and Vice Mayor Geller to their offices on behalf of City staff.

(d) City Council

Vice Mayor Geller attended the Mayors' Conference and the Community Blood Drive.

Councilmember Stratford attended the Hospice Tree Lighting, Library Foundation meeting, Do the Right Thing program meeting, gave blood at the Community Blood Drive and attended the Mayors Conference and the CBCA Tree Lighting event.

Councilmember Medrano attended the Downtown Tree Lighting and noted the Cinderella carriage that went around downtown was sponsored and paid for by Ed Moresi and Stephanie Lopez. He thanked the downtown businesses for their support of the event. He stated the Clayton Counts Down is quickly approaching and is still in need of volunteers to staff the event and help with cleanup.

Councilmember Pierce attended the Downtown Tree Lighting, a Regional Planning Committee meeting, a Contra Costa Transportation Authority meeting, and the retirement party for County Librarian Anne Cain. She also stated the New Year's Eve event needs more volunteers and stated high school volunteers could earn service hours by working the event.

Mayor Shuey stated he and Councilmember Medrano were working on legal issues for the City, and he attended the Downtown Tree Lighting.

(e) Other – None.

9. **PUBLIC COMMENTS**- None.

10. **PUBLIC HEARINGS** - None.

11. ACTION ITEMS

(a) Consideration of a 2nd Reading and Adoption of Ordinance No. 430 to amend the Contracts Between the Board of Administration of the California Public Employees' Retirement System (CalPERS) and the City of Clayton to implement *California Government Code* Section 20475 (2.0% at 60 Full Formula for Miscellaneous Employees and 2.0% at 50 Full Formula for Local Public Safety) providing a Second Tier of Lower Level Pension Benefits for new City Employees.

The City Clerk presented the staff report and stated at its November 2, 2010 meeting the City Council adopted Resolution No. 47-2010, a Resolution of Intention to amend the contract with CalPERS for all new employees of the City. She stated over time the City will experience savings with the Tier II system. The final action for adoption of the Tier II system is the adoption of Ordinance No. 430.

No public comments were received.

It was moved by Councilmember Medrano, seconded by Councilmember Pierce to have the City Clerk read Ordinance No. 430 by title and number only and waive further reading (Passed; 5-0 vote).

The City Clerk read Ordinance No. 430 by title and number only.

It was moved by Councilmember Medrano, seconded by Councilmember Pierce to adopt Ordinance No. 430 (Passed; 5-0 vote).

(b) Consideration of a request by the new owners (NUCP, Inc.) of the Flora Square mixed-use commercial building located at 1026 Oak Street for the City Council's approval to allow a commercial recreation use (longevity fitness studio) as a ground floor lease occupancy rather than a commercial retail sales ground floor use as conditioned in the development's approved Site Plan Review permit (Oak Center SPR 01-06) and the associated Disposition and Development Agreement (DDA).

The Community Development Director presented the staff report. He stated at the time of the last meeting NUCP had not completed lease negotiations for the ground floor and staff suggested giving a full picture of what was proposed on the ground floor before coming to the Council for action. He stated the Flora Square building has a Disposition and Development Agreement (DDA) from 2005 which together with the subsequent Site Plan Review (SPR) approval spells out how the building is to be used. The DDA, narrowed by the SPR approval allows for only retail sales and restaurant use on ground floor and the use proposed by Longevity Fitness Studio is not a retail use or restaurant. The narrowed use of the building to restaurant and retail uses was due to the lot line to lot line development allowance and the City's full waiver on site parking requirements. The limit to restaurant and retail uses was to encourage a stronger revenue base for the community for the community.

He stated the property was developed in 2007-2008, and the property was acquired by NUCP during foreclosure in March 2010. The property owner has had challenges in renting out the spaces, but has been able to sign leases for all ground floor spaces. He stated with the full picture and the other two tenants being allowed retail and restaurant uses, staff is supportive with conditions as outlined in the proposed Resolution. The conditions include having Longevity fitness get a certificate of occupancy within one year. Also, if the fitness studio use is abandoned for 6 months or more, the property owner gives up the right to that specific land use added by the Council and the space would revert to either allowed retail or restaurant uses only.

Councilmember Pierce asked why staff recommended a one year time frame to get the business up and running? The Community Development Director responded that was a standard time frame given by the City for similar entitlement requests, such as a Use Permit.

Steve Thomas, NUCP, stated his company acquired the building in March of 2010 and since that time has been working to try to find restaurants but with the financial outlook it has not been easy. He stated the leases he has signed for the three ground floor spaces will bring people to the Town Center area. He also noted NUCP would be investing $800-900,000 in tenant improvements and they would be working to get the building permits as soon as possible.

Councilmember Medrano asked if the flood gates have been installed? The Community Development Director stated yes. Councilmember Medrano stated that without the installation of those gates no one would have been able to occupy the building so the lapse in the time severity limited retail interest since once could not immediately occupy it..

Vice Mayor Geller asked about the tenants other than Longevity Fitness. Mr. Thomas responded Subway signed a lease as did a produce market. He also stated the owner of Longevity Fitness has been running business out of a variety of facilities and locations outside of the community (Concord).

Councilmember Pierce asked if Mr. Thomas would be opposed to shortening the time frame for the occupancy? Mr. Thomas responded as long as it wasn't too short he would be ok with that.

Councilmember Medrano asked if this would mean a Subway in the Clayton Station and Downtown. The City Manager reminded the Council they have no control over these two tenants as each is allowed retail sales use and not subject matter before the Council.

Ilima Howard, Clayton resident, owner of Longevity Fitness, stated she is currently working outside Clayton with her company Traveling Trainers for Life and using facilities in Concord and Pleasant Hill. She stated is hoping this new facility will allow for more class offerings for clients. She stated she is looking forward to opening because it has been a long and well planned out process. She stated the boutique fitness studio will offer group classes, Pilates, sell our own workout wear and equipment, and have an amazing aesthetic. She stated this will offer Clayton residents a place to go and stay downtown. Mr. Thomas added Longevity is expected to have 150-200 customers per day traveling to the downtown.

Councilmember Medrano stated he wants to encourage businesses to come to downtown that are retail oriented for the ground floor spaces. He stated he would like the property owner to try and recruit more retail uses for the next 6 months before the City approves this.

Councilmember Pierce stated she had struggled with this application but thinks staff has come up with a reasonable compromise and it will get the building full and rented. She stated hopefully occupancy can happen in less than a year and suggested 9 months. Mr. Thomas stated 9 months would be ok.

Councilmember Stratford thanked Mr. Thomas for bringing the whole package together. He stated he would like to see a full restaurant there, but would also love to see the building full. He stated he was ok with the one year time frame and wasn't sure a change to 9 months was necessary.

Vice Mayor Geller agreed with Councilmembers Pierce and Stratford and believes it is a good package.

Mayor Shuey stated he was initially very concerned with this but recognizes the need to build up foot traffic in the downtown.

Mayor Shuey discussed amendments to the Resolution including making sure the floor plan was attached and there was language ensuring only the back portion of the building was used for the fitness studio, with no opportunity for expansion.

Councilmember Medrano stated the vote tonight was for allowing Longevity Fitness as a non-retail use in the space.

It was moved by Councilmember Pierce, seconded by Councilmember Stratford to adopt the Resolution as amended authorizing a "fitness studio" use on ground floor in Flora Square subject to the listed conditions and strengthening of language in Section 1.A. allowing for no expansion of this use on ground floor (Passed; 4-1 vote, No- Medrano).

(c) Continued consideration of the status of holding the 8^{th} annual "Clayton Counts Down" New Year's Eve event being at risk due to the amount of community and business donations and event volunteers.

Councilmember Pierce stated the Clayton Counts Down Committee has received half of the funds needed for the event, but are hopeful CBCA will come through with a donation after their January meeting.

Councilmember Medrano stated he is confident CBCA will come through with a $4,000 donation.

Vice Mayor Geller suggested the CBCA donation request go out several months earlier next year to allow them time to approve it in advance of the event.

Councilmember Stratford stated the City of Martinez has cancelled its event for the last two years but he would like to see this event keep its momentum.

The City Clerk stated while the financial side of the event looks positive there is still a great need for volunteers.

Councilmember Pierce stated the event is coming together but volunteers are still needed.

No action was taken. The event will occur as scheduled on December 31, 2010 from 5:00pm-8:00 pm.

11. ADJOURNMENT– On call by Mayor Shuey the meeting adjourned at 8:45 p.m.

Respectfully submitted,

Laci J. Jackson

Laci J. Jackson, City Clerk

APPROVED BY CLAYTON CITY COUNCIL

David Shuey

David T. Shuey, Mayor