

**MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL**

TUESDAY, May 17, 2011

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:02 p.m. by Mayor Shuey in Hoyer Hall of the Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Shuey, Vice Mayor Geller, Councilmembers Medrano, Pierce, and Stratford. Staff present: City Manager Gary Napper, Assistant City Attorney Maury Huguet Jr., City Engineer Rick Angrisani, Community Development Director David Woltering, and City Clerk Laci Jackson.
2. **CLOSED SESSION**- None.
3. **PLEDGE OF ALLEGIANCE** – led by Mayor Shuey.
4. **CONSENT CALENDAR**- It was moved by Vice Mayor Geller seconded by Councilmember Stratford to approve the Consent Calendar as submitted (Passed; 5-0 vote).
 - (a) Approved the minutes of the regular meeting of May 3, 2011.
 - (b) Approved Financial Demands and Obligations of the City.
 - (c) Adopted Resolution 12-2011 approving the Engineer's Report and declaring intention to levy and collect assessments for the Clayton Street Lighting Assessment District for Fiscal Year 2011-2012, and giving notice of the time and place for hearing on the levy of the proposed real property assessment.
 - (d) Approved a legal services agreement with Michael S. Treppa (Treppa Law Group) to serve as the City's legal defense counsel in a complaint filed by JFC Construction, Inc. (Case No. C10-00293, Superior Court of CA, Contra Costa County).

5. RECOGNITIONS AND PRESENTATIONS

- (a) Mayor Shuey presented Certificates of Appreciation to three Boy Scouts for installing their Eagle Scout Projects in Clayton. Clark Blatter, Brayden Moore, and Bryan Crase presented information about their projects at the Clayton Dog Park and thanked City Maintenance Supervisors John Johnston and Mark Janney and the Clayton K-9 coalition for their help on the projects as well as their parents and Scout leaders.

Brian Blatter, Scout Leader, stated the Boy Scouts of America are committed to creating and building great citizens. He thanked the City of Clayton, public employees and public officials of Clayton, and stated their support demonstrates to him the City wants to develop its citizens. He thanked the Maintenance Supervisors for working with the Eagle Scouts and for ensuring high quality work. He thanked the City Manager for treating the Scouts with respect and setting expectations and standards high. He thanked Councilmember Stratford who worked side by side with these Scouts on their projects.

- (b) Presentation of its 2010 Annual Report by the Clayton Community Library Foundation (CCLF).

Joyce Atkinson, CCLF President, presented the annual report and thanked the City for their support of the library. She stated the Clayton Library volunteers provided 7,079 hours last year. She stated the Library Foundation generated income of \$50,075 and also received many donations of books to be added to the collection.

- (c) Mayor Shuey read the Proclamation declaring June 17, 2011 as "Clayton Community Library Volunteer Day", and presented Certificates of Recognition to the Clayton Library Volunteers of the Year for 2011: John Robinson; Laura Carlson; Sara McCracken.

Clayton Branch Librarian Karen Hansen-Smith thanked the volunteers, the City, and the Library Foundation for their support of the Library.

6. REPORTS

- (a) Planning Commission –Community Development Director stated at the last Commission meeting that Toll Brothers, brought forward their proposed marketing sign for the development of the residential subdivision, Diablo Estates. The Commission approved the sign to be placed near Regency and Rialto Drives, but before approval the Commission made sure the sign is not in the sight vision triangle for cars.
- (b) Trails and Landscaping Committee – No meeting held to report.
- (c) The City Manager stated the Clayton Community Church has agreed to put up story poles to show the height and mass of their project and will string flags across the tops of the poles. The poles will be up for the start of the public review process of the draft Environmental Impact Review (DEIR). The first for the presentation of the EIR will be Tuesday, May 24th and comments will be accepted until June 25th. He also stated 4th of July Parade and Planning Commission appointment applications are available on the City's website.

Mayor Shuey asked if the Council could look at the story poles so they do not have to be re-done when the project comes before the City Council? The City Manager responded Councilmembers may certainly go individually and look at the story poles.

The Community Development Director stated by Saturday May 21 the poles should be up for one week so that people can comment on the proposed mass of the project. He stated the story poles are not intended to provide detail but more illustrative for general massing and to give a sense of the project.

Councilmember Pierce asked if the story poles should stay up for the entire comment period? The Community Development Director stated there will be renderings of the project on-site but they are temporary structures by nature.

Vice Mayor Geller stated he would like to see the story poles up for a week longer and asked who was constructing the poles? The Community Development Director responded church members are constructing the poles but the licensed architect will certify in writing the story poles represent the outer envelope of the project.

The City Manager concluded his report by stating the State Budget gap has reportedly been reduced and now sits at \$10 billion of which the Governor called a structural deficit. He noted there remains concerns the Governor wants to eliminate redevelopment agencies as a way to fund schools and the COPS grant funds for law enforcement is still in jeopardy.

(d) City Council

Councilmember Stratford attended the Mayors' Conference and the East Contra Costa Conservancy meeting. He stated currently the "Do the Right Thing" program is emphasizing Courage as the monthly character trait and he encouraged people to stand up for what is right.

Councilmember Pierce attended a Transportation Authority Admin. Committee meeting, was a program presenter at the Mayors' Conference, and volunteered at the Historical Society Garden Tour.

Vice Mayor Geller stated he is now CERT certified. He noted the first Concert in The Grove for 2011 went well and the second Concert is scheduled for this Saturday [May 21st] with the Sun Kings performing, a Beatles tribute band.

Mayor Shuey attended the Mayors' Conference and commended Councilmember Pierce on her presentation to the Conference. He attended the opening of the Farmers' Market and has been involved with the Charter School effort for Clayton Valley High School.

(e) Other – None.

7. **PUBLIC COMMENTS** – None.

8. **PUBLIC HEARINGS**

- (a) Consideration of the Introduction and First Reading of a Planning Commission recommended Ordinance to amend the *Clayton Municipal Code* regarding the number of administratively-issued Temporary Use Permits (TUPs) per parcel per year and other TUP procedural requirements.

The Community Development Director stated there is a provision in our Municipal Code for temporary uses on properties but upon review staff noticed the Code is outdated. He stated the Clayton Club Saloon business owner indicated he would like to see more time available in a calendar year for such temporary uses (TUPs). Staff reviewed the ordinance in detail and looked at amendments which were approved by the Planning Commission. The amendments include: Clarifying how many days a property owner can use their property for temporary uses. Current Code states temporary uses can not exceed 45 days in a calendar year; amends the number of days for prior submittal of an application to 45 days before the event; amends the number of temporary uses allowed to be approved administratively in a year from 3 to 4 to encourage more activities and events; adds the Maintenance Department to the internal review process; and amends the Code to allow for the Community Development Director to refer unusual applications to the Planning Commission for a full review.

Mayor Shuey opened the Public Hearing at 8:10 p.m.; no public comments were received, and then he closed the Public Hearing at 8:11 p.m.

It was moved by Vice Mayor Geller, seconded by Councilmember Pierce to have the City Clerk read ordinance No. 433 by title and number only (Passed; 5-0 vote).

The City Clerk read Ordinance No. 433 by title and number only.

It was moved by Vice Mayor Geller, seconded by Councilmember Pierce to approve Ordinance No. 433 for Introduction (Passed; 5-0 vote).

- (b) Consideration of the Introduction and First Reading of an Ordinance amending Title 17 (Zoning) of the *Clayton Municipal Code* to increase the minimum interior side and rear yard setback requirement for a detached accessory structure and detached accessory buildings from three (3) feet to five (5) feet (ZOA 04-11).

Community Development Director presented the staff report and stated the Ordinance provides consistency between the building and fire codes and the Clayton Municipal Code. He stated some structures are exempt if they meet certain criteria and do not exceed 120 sq. ft.

Mayor Shuey opened the Public Hearing at 8:15 p.m.; no public comments were received, and he then closed the Public Hearing at 8:16 p.m.

It was moved by Councilmember Pierce, seconded Councilmember Stratford by to have the City Clerk read Ordinance No. 434 by title and number only (Passed; 5-0 vote).

The City Clerk read Ordinance No. 433 by title and number only.

Mayor Shuey stated while he recognizes the benefits of having identical code provisions, believes this represents over-regulation of private property so he will abstain from the vote because he does not think it takes into account what Clayton is.

It was moved by Councilmember Pierce, seconded by Councilmember Stratford to approve Ordinance No. 434 for Introduction (Passed; 4-0-1 vote; Shuey, abstain).

- (c) Consideration of a Resolution approving a General Plan Amendment for updates to the Growth Management Element of the City of Clayton's General Plan (GPA 01-11).

Community Development Director presented the staff report and stated the intent of the Growth Management Element is to ensure that development pays its own way for public services and infrastructure. He stated this update is a requirement of Measure J in order to receive local transportation funding from the Contra Costa Transportation Authority. He stated staff worked with Rainey Planning and Management to provide the General Plan amendment.

Councilmember Pierce noted a grammatical error in the report. The Community Development Director responded the error will be corrected on final copy.

Mayor Shuey opened the Public Hearing at 8:25 p.m.; no public comments were received, and he then closed the Public Hearing at 8:26 p.m.

It was moved by Councilmember Stratford, seconded by Councilmember Pierce to adopt Resolution 13-2011 approving a revised Growth Management Element to the City of Clayton General Plan, as amended by Councilmember Pierce (Passed; 5-0 vote).

9. ACTION ITEMS-

- (a) Consideration of a request for the City to provide \$8,000 for assistance in the payment of legal expenses for the production of a charter and application for the conversion of Clayton Valley High School to a Charter High School.

Mayor Shuey stated this item was placed on the agenda because of a request by the teachers involved in trying to put together a Charter Conversion. He stated so far the group has raised \$1,500, but part of the implementation will require attorney help to vet and write the charter application to the School District. The initial understanding is it will cost \$10-10,500 to complete the review and prepare the application and charter. The organizers are hoping to have a completed charter document and application so they can have a vote of the teachers by June 3rd. The Charter application has to be completed before the vote can be taken. The selected law firm has done charter conversions throughout the state. He stated he attended a meeting where preliminary analysis was presented by ExED who is preparing a realistic budget analysis. He stated the group is working to secure financing in order to be considered a viable entity.

With regard to the Item on this agenda, Mayor Shuey stated he believes the objective is of interest to the City of Clayton. He stated the group has petitioned CBCA for funds but will not know if they are willing to contribute until after May 26th. He stated he is concerned that if CBCA is not willing to give money they will have no way to pay the attorney. He stated the Charter group is asking for \$8,500.

Councilmember Geller stated the CBCA Board has the ability to donate \$1,000 without taking the issue to the membership. Mayor Shuey responded the CBCA president wanted to put the matter before the group as a whole and have them decide. Vice Mayor Geller stated CBCA usually wants to give money to buy tangible items and that many people in CBCA feel there is too much money given already to this high school.

Councilmember Stratford asked if there were any future funding needs? Mayor Shuey responded they are setting up a non-profit and then they will have the ability get grants, but the approval stage must occur first.

Councilmember Medrano stated this matter has a time issue. Councilmember Pierce asked why this was such an urgent matter? Mayor Shuey stated they want to put the vote to the current group of teachers that are at Clayton Valley during this school year. He stated 50% plus 1 of the teachers must vote for the conversion. Councilmember Pierce asked why the teachers have to vote? Mayor Shuey stated it is a requirement of the conversion process.

Councilmember Pierce asked if the City of Concord had been approached to make a contribution? Mayor Shuey stated there are 5 high schools in the City of Concord, Clayton Valley is one and it would be too political for the Concord City Council to make a decision on this topic for one high school without commitment to other potential conversions.

Councilmember Pierce asked is there any potential that this could be a loan that would assure payback? She stated she would be more amenable to a loan, but without guaranteed repayment to the City she cannot support it.

Councilmember Geller stated he is 100% for the Charter High School but the City has never allocated money like this before. He asked why there hasn't been a grassroots effort to raise money? Mayor Shuey responded that fundraising takes time and this process is moving to swiftly. He added the City must be proactive, decisive and take strong leadership for its citizens and children.

Councilmember Geller agreed the Charter High School will benefit the citizens of the City. He is concerned because the City is in the process of negotiations with employees who have received no merit increase, have been given furlough days and no cost of living increases due to lack of City funds, and he does not know how this action will affect that situation.

Councilmember Stratford stated he likes the idea of the Charter High School and there is a benefit to the families and students. He stated as Mayor Shuey mentioned, unfortunately there is a time crunch and unless the group has those legal documents in place they cannot take a vote of the teachers. He stated he wrestled not with the idea but of the spending of public money on something different and outside of the comfort zone. He stated to get the ball rolling he is in favor of moving forward, especially since he believes it will increase property values and attract more businesses and people to our town.

Councilmember Medrano agreed with Councilmember Stratford and stated he thinks even though the CBCA hasn't done something like this before this would be a small amount for them. He stated the Council should move forward.

Councilmember Pierce stated she supports the teachers at the high school and agreed with the concept of the Charter High School. She stated she is skeptical that it will make a difference in real property values but agreed it will have an effect on the kids. She stated she applauded the energy and conviction of the teachers and group working on this but the City is in ongoing financial discussions with the School District over agreements and costs and does not believe this action will sit well with them. She also stated the City would not have control over the way the money is spent. She noted City employees have not had raises in 3 years, have had furlough days, had their merit raises frozen, and they have taken the brunt of this economic recession. She stated the Council is responsible for City services, not for the school district.

Mayor Shuey stated this is the time for bold leadership, and the only public high school Clayton citizens feed into is Clayton Valley. He stated he does not want to sound like he is discounting the concerns expressed, but he believes this will help our citizens and the one public high school. Mayor Shuey stated he could go back to the group and see if there is any way to do a loan.

The City Manager stated if you wish to condition this as a loan by preference, it will likely be an unsecured loan. He stated staff's recommendation is not to be a part of the production or product of services because the City does not want to be responsible for the outcome. He suggested, if Council moves forward, for the City to insert itself somehow into the review of the legal services when provided, ie. receive a copy of the bill paid and then reimburse or pay for the services rendered.

The Assistant City Attorney stated if the Council moves forward they need to have a determination of finding that it is a benefit to the citizens. He also stated as a matter of disclosure that his Law Firm does handle some estate business for members of the law firm hired by the Charter High School group.

Councilmember Geller stated the Council should not put restrictions on how the attorneys operate. He stated he would like to see this written as a loan and have the dollar amount come after the results from the CBCA meeting.

It was moved by Mayor Shuey, seconded by Councilmember Medrano, to have the City reimburse for attorney fees up to \$8,500 associated with a Charter High School application for Clayton Valley High School, have it characterized as an unsecured loan to be re-paid, if allowed by law, and hopefully CBCA will contribute up to one half of that amount, with finding and upon the successful establishment of a charter school and line of credit, there is a public benefit to the City and the citizens to take this action.

Councilmember Stratford stated if the CBCA pays \$4,000 it will limit the exposure to the City.

Councilmember Medrano stated he thinks this is showing leadership and that the Council is doing this for our citizens.

The City Manager suggested the motion be amended to state this money be allocated from General Fund reserves, and that whoever signs the legal services agreement be required to provide the City with an attestation from the Charter School organization that the legal services were performed and are satisfactory.

It was moved by Mayor Shuey, seconded by Councilmember Medrano to amend the previous motion to include the City Manager's suggestions.

The City Attorney asked the Mayor amend his motion further to state that this is of public benefit to the City and its citizens.

It was moved by Mayor Shuey, seconded by Councilmember Medrano to amend the previous motion to include the City Attorney's suggestion on findings.

Councilmember Pierce stated "reimbursement" is the wrong word to use for the motion, it should be "repayment."

It was moved by Mayor Shuey, seconded by Councilmember Medrano to amend the motion to say "repayment of attorney's fees" instead of "reimbursement."

Councilmember Pierce stated again she supports the Charter High School idea, but feels the Council should not spend City money on the effort.

Vice Mayor Geller asked the Mayor why his motion included that CBCA pay half; he stated CBCA may be willing to pay more.

It was moved by Mayor Shuey, seconded by Councilmember Medrano to amend the motion stating up to \$8,500 subject to any offset by CBCA.

Vice Mayor Geller stated this is a one time thing for him, and this organization needs to find other funding sources. Mayor Shuey stated that would be conveyed to the group.

No public comments were received.

Mayor Shuey called for the vote on the amended motion (Passed 4-1 vote; Noes-Councilmember Pierce).

- (b) Consideration of a Resolution awarding low bid contract to Ghilotti Bros., Inc. (San Rafael, CA) in the amount of \$658,027.15 for construction of the Community Park Parking Lot Expansion Project (CIP No.10413), and allocating \$358,000.00 in interest earnings from the City's Capital Improvement Budget to CIP No. 10413 to augment project funding.

The City Engineer stated the bids for this project were opened on May 4th and five bids were received. He stated three of the bids were within \$4,000 of one another. He stated the project includes provisions for the Clean Water Act mandates, LED lighting fixtures, a lighted monument entry sign, and a large picnic area. He stated the total anticipated cost of the project is \$850,000. He stated the City has submitted a timely application for Measure WW grant money to EBRPD and final approval is expected by June 1st. The City must allocate an additional \$358,000 from CIP interest earnings in order not to impact the General Fund for this project.

Councilmember Stratford asked Ghilotti Brothers is a good firm? The City Engineer responded yes.

Mayor Shuey asked if the contract was approved by City Attorney? The Assistant City Attorney stated the City Attorney and the City Engineer have been using this contract for most recent public works projects.

Councilmember Medrano asked that the City add a waiver of subrogation rights by the contractor for workers' compensation insurance.

The City Engineer noted this contract version is consistent with Cal-Trans specifications.

No public comments were received.

It was moved by Councilmember Medrano, seconded by Councilmember Pierce to approve Resolution 14-2011 awarding the project contract and allocating additional project funds (Passed; 5-0 vote).

- (c) Consideration of City positions on several legislative bills introduced in the 2011 California State Legislative session:

1. Assembly Bill 506 (Wieckowski) – Municipal Bankruptcy; and
2. Senate Bill 286 (Wright) – Comprehensive Redevelopment Reform

The City Manager recommended the Council oppose AB 506, and he suggested counter to the League of California Cities the Council oppose SB 286 which overregulates redevelopment agencies and offers a path for the State to take more local money.

It was moved by Councilmember Pierce, seconded by Councilmember Stratford to have the Mayor send letters stating the City Council's opposition to these two bills (Passed; 5-0 vote).

10. **COUNCIL ITEMS-**

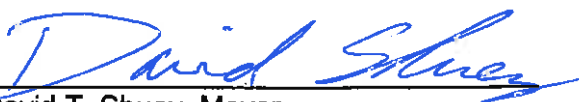
Vice Mayor Geller asked that the Council discuss a reward program for the arrest and conviction of vandals be placed on a future agenda.

11. **ADJOURNMENT-** On call by Mayor Shuey the meeting adjourned at 9:54 p.m.

Respectfully submitted,

Laci J. Jackson, City Clerk

APPROVED BY CLAYTON CITY COUNCIL


David T. Shuey, Mayor