

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

TUESDAY, September 20, 2011

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 6:18 p.m. by Vice Mayor Geller in Hoyer Hall of the Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Vice Mayor Geller, Councilmembers Medrano, Pierce and Stratford. Councilmembers absent: Mayor Shuey. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Community Development Director David Woltering, and City Clerk Laci Jackson.

2. **CLOSED SESSION**

- (a) *Government Code Section 54956.9, Conference with Legal Counsel*
Existing Litigation: *JFC Construction, Inc. v. City of Clayton, and related cross action*
Superior Court of CA, Contra Costa County; Case No. C-10-00293

Report Out from Closed Session: Vice Mayor Geller reported the Council gave direction to legal counsel.

Vice Mayor Geller introduced Mala Subramanian of Best Best & Kreiger, the new City Attorney. Ms. Subramanian stated she is a Partner for the firm and represents only public agencies.

3. **PLEDGE OF ALLEGIANCE** – led by Vice Mayor Geller.
4. **CONSENT CALENDAR-** It was moved by Councilmember Pierce, seconded by Councilmember Stratford, to approve the Consent Calendar as submitted (Passed; 4-0 vote).
- (a) Information Only (No Action)
1). Correspondence from the Clayton Community Church informing City staff to suspend the processing of its mixed-use development project land-use application for the Town Center area until further written notification due likely before the end of October 2011.
- (b) Approved the minutes of the special meeting of August 15, 2011, regular meeting of August 16, 2011, and special meeting of August 22, 2011.
- (c) Approved Financial Demands and Obligations of the City.
- (d) Approved the declaration of a 2003 Ford Crown Victoria police vehicle and a 1992 Ford F-450 truck as capital equipment surplus to the City's needs and authorize the City Manager to sell the surplus vehicles at public auction.

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

6. **REPORTS**

- (a) Planning Commission – Commission Chair Dan Richardson reported on August 23rd September 14th meetings of the Planning Commission. He stated the consultant presented the draft report on the Clayton Community Church Fiscal Analysis. Then at

the next meeting the Commission reviewed lot line adjustments for the Diablo Estates project and welcomed Keith Haydon and Gregg Manning to the Commission.

- (b) Trails and Landscaping Committee – No meeting held.
- (c) The City Manager reported CBCA's Oktoberfest will be held this weekend with the carnival starting Friday night. He stated the California Supreme Court took up the Redevelopment Agency issue and in the meantime the Clayton Redevelopment Agency is preparing the required documents. In the meantime the information from the League of California Cities and California Redevelopment Association is that Redevelopment agencies can charge and continue certain contractual obligations.
- (d) City Council

Councilmember Stratford stated he and Allison Guacagalupo, met with Tim Grayson from the Concord City Council and informed him about the Do the Right Thing program. He stated the current trait being emphasized is "Responsibility" and the first of October "Respect" will be the trait emphasized. He also attended the Mayors' Cook-off and thanked Councilmember Pierce for her work on the event.

Councilmember Medrano asked people to pre-buy the carnival tickets for Oktoberfest. He updated the Council and stated he wrote the Fair Political Practices Commission (FPPC) about his office being within 500 feet of the Clayton Community Church project and his having the Church as a client for his insurance business. He stated the FPPC responded in writing. He then summarized the FPPC written response. In regards to his office he is on a month to month tenancy so there is no conflict. He stated in regards to the Church being a client as long as he does not receive more than \$500 within a year of the project coming before the Council there is no conflict. He stated he will not have received any income of the church within 12 months prior to the project coming to the City Council. He stated he will be providing this information in writing to the rest of the Council.

Councilmember Pierce clarified that he will not have received more than \$500 since November 2010. Councilmember Medrano stated that was correct and he stated he did not sponsor the Soap Box Derby this year either.

Councilmember Pierce attended press conference with Senator Boxer at the Caldecott Tunnel, the Mayors' Healthy Cook-off meetings, a CA Council of Governments Committee, Eagle Scout Nick Swiatco's Court of Honor, three Concerts in the Grove, the Mayors' Conference in El Cerrito, an ABAG Housing Methodology Committee, an ABAG Executive Board meeting, and an E-Bart meeting

Councilmember Stratford asked Councilmember Pierce why the East County E-Bart can't be an electric train. Councilmember Pierce stated it would be too expensive.

Vice Mayor Geller welcomed the new CERT class, attended Mayors' Conference, and the Mayors' Healthy Cook-off. He thanked Councilmember Pierce for planning the event and showing kids they can eat healthy. He stated the City of Concord won first place, and now Mt. Diablo High School will get a garden at their school. Councilmember Pierce added a thank you to the Pacific Coast Farmers' Market who paid for all of the produce used during the event. Vice Mayor Geller stated the Concert season collected \$14,084 in donations for next year. He attended the Mt. Diablo School District Board meeting and stated Oktoberfest is looking for volunteers.

- (e) Other – None.

7. **PUBLIC COMMENTS** – None.

8. **PUBLIC HEARINGS** – None.

9. **ACTION ITEMS**

- (a) Consideration of a Resolution approving revised landscape plans submitted by the Clayton Community & Business Association (CBCA) for completion of its Daffodil Hill Beautification Project on City property located at the southeast corner of the Clayton Road and old Marsh Creek Road intersection. CDD 03-11.

The Community Development Director introduced the agenda item and stated his project has been in the works since 2005. He stated the project was delayed because of the drought and water conservation standards. He stated at this point the CBCA is prepared to move forward and complete the project on city property. City Maintenance Supervisor John Johnston has worked with representatives of CBCA, Steven Lane and Nicole Hackett. He stated the plans have been updated to conform with the water conservation standard and conform with the City's adopted design standards. He stated there are some concerns by the Maintenance department that some of the plant materials will require more hand trimming.

The Community Development Director stated in the Resolution there is a condition about access and insurance. He stated in order for the CBCA to install the plan and CBCA have the proper insurance of \$2 million with the City named as additionally insured. He stated City employees cannot participate in the process when it goes to bid. He stated the CBCA has to hire an independent construction manager and the City would ensure they are qualified. He stated in terms of the planting and irrigation system CBCA would be responsible for the materials for six months after the project is completed then the City would take over the maintenance of the landscaping.

Ed Hartley, CBCA President, thanked the staff for the work they put in on it, and the committee who put in a lot of time to try to finish what was started. Maryanne Lawrence, Shannon Seven, Nicole Hackett and Steven Lane. He stated subject to what is approved tonight, there are bids out, and the desire is that this could go to the vote of the CBCA membership this month.

Steve Lane stated he is a drafting and design consultant and has worked on coming up with a revised planting plan. He stated the committee met with Vice Mayor Geller, the City Manager, and the Maintenance Supervisors and there were selections that did not meet up with City maintenance requirements or drought tolerance. He stated he had some help from John Johnston to help scale back some of the planting in the plan.

Nicole Hackett stated she was excited to get the work on this project. She stated she is familiar with proven plants for the area and tried to put together plants that would flower for every season, these plants are evergreen bushes with flowers.

Vice Mayor Geller asked if things will go around the rocks? Ms. Hackett stated there will be plantings to blend the rocks into the landscaping.

Councilmember Medrano asked Steve Lane if he does project Management work? Mr. Lane responded he does.

Councilmember Stratford stated it looks great. The plans call for some additional oak trees and he asked if they would block the large heritage oak at the top of the hill. Ms. Hackett stated the oak tree could be blocked a little in fifty years.

The City Manager stated that the oaks were suggested by the City Council to replace the Redwoods in the previous plan.

Councilmember Stratford asked if the oaks have to be there? Mr. Lane stated he and Nicole are not sold on the oaks.

Councilmember Pierce stated a couple of oak trees provide a backdrop and a balance at the back of the hillside. It is going to take a long time for the oaks to block anything and it will blend in once they are grown.

Mr. Lane stated you could remove the one in front of the existing oak and it would save a lot of money. Councilmember Stratford stated the Heritage Oak looks good, would like to see taking out two of the additional oaks.

Maintenance Supervisor stated the theme was to make it look like a natural setting and to blend the existing oak in with the design.

The City Manager stated the existing oak is on Diamond Terrace property.

Councilmember Pierce asked if the oaks need to be 36 inch box size? Maintenance Supervisor Johnston stated it is hit or miss but the 36 inch box sizes do better. He stated we do not have a problem with overgrowth we have a problem with bare spots in landscaping.

Vice Mayor Geller asked if six months is enough before the City takes back the property. The Maintenance Supervisor stated it would be unreasonable to ask them to maintain it longer. He stated the biggest concern with this is that Maintenance department will not be able to maintain some of the plants, as some are labor intensive and require more hand pruning techniques.

The City Manager stated this has taken a long time, staff is recommending this be added to the Landscape District providing a funding source for upkeep. He stated the whole purpose of the project is for the CBCA to donate something to the City.

Steven Lane suggested this could be a signature landscape for the district.

Councilmember Medrano stated the CBCA has donated a lot of money and the City should take on the responsibility. The City Manager concurred with Councilmember Medrano.

Councilmember Medrano asked that the insurance information state the CBCA and/or their contractor.

Councilmember Stratford stated hopefully we can work it out, if we have to hire a third party to do the trimming we could work that out.

The City Manager suggested the Council amend the Resolution to annex this area to the Landscape Maintenance District.

Councilmember Pierce asked what the definition of qualified landscape consultant means? The Community Development Director stated the intent would be to have the Maintenance Supervisor sign off on the selection.

Vice Mayor Geller asked if Council was amenable with removing one of the oak trees and spacing them out a little bit more to cover the same area.

It was moved by Councilmember Stratford, seconded by Councilmember Medrano to amended Resolution 37-2011 adding the area to the Landscape District, removing one tree from the plan and increase the spacing in between the oak trees (Passed; 4-0 vote).

- (b) Discussion on the Council-requested one year review of the one-week-per-trait public display of banners on certain City property within Clayton involving the community character initiative known as "Do the Right Thing".

The Assistant to the City Manager stated almost a year ago the Council approved the "Do the Right Thing" program. The program included hanging six character banners at the banner pole locations for one week per character trait. The Council asked for the program to be brought back for review after one year. The "Do the Right Thing" Committee is asking to continue to use the banner displays going forward and to have the character traits displayed one week per month instead of one week per character trait. The City has not received any complaints about the banners and there is no cost to the City for the banners or for displaying them at the pole locations.

Councilmember Stratford stated there were only three banners to go up last year due designing the banners.

All Councilmembers were supportive of extending the banner time period to one week per month.

It was moved by Councilmember Medrano, seconded by Councilmember Pierce to allow the banners to be displayed one week per month therefore amending Section 3 of Resolution 42-2010 (Passed; 4-0 vote).

- (c) Council Member request to set the number, dates and times for the City's annual "Concerts in The Grove" in calendar year 2012.

Vice Mayor Geller suggested the Concerts start the Saturday after Art and Wine (May 12th) and continue every other Saturday until September 15th.

Councilmember Medrano proposed the City do the 10 concerts on Saturdays and additional concerts on 5 Wednesday nights. He stated Jim Diaz has offered to work on these Wednesday night concerts, and suggested having one beer booth and one wine booth and not using any money from the City at all to fund these extra concerts.

Councilmember Pierce stated she doesn't mind trying it on a weekday but was unsure about the alcohol booths. Councilmember Medrano stated it would provide an option for people to purchase but some will still bring their own. He also stated with the concerts

being held during the week people would be more apt to buy from the downtown businesses instead of going home to prepare something.

Councilmember Stratford asked if another night would be better since Wednesday there is already the car show? Councilmember Medrano stated he chose Wednesday since there was already an influx of people in the downtown area.

The City Manager stated the Council will hold its annual meeting with the downtown business owners in November and it might give Councilmember Medrano time to set up a written proposal to talk about with the downtown business owners at this meeting.

It was moved by Councilmember Stratford, seconded by Councilmember Pierce to set the dates for the 2012 Concert Series as May 12 and 26, June 9 and 23, July 7 and 21, August 4 and 18, September 1 and 15, from 6:00 p.m. – 8:30 p.m. (Passed; 4-0 vote).

- (d) Council discussion of the Mt. Diablo Unified School District's Board of Education's recent decision on the community petition for the conversion of Clayton Valley High School into a charter school.

Councilmember Medrano stated basically the School Board decided to try to delay the process to approve the application for the Charter by placing unrealistic conditions on the Charter. He stated he agrees it is a defacto denial and is in full support of the Resolution.

Councilmember Pierce stated there is one word in the Resolution title that she finds offensive. She suggested replacing the word condemning with denouncing.

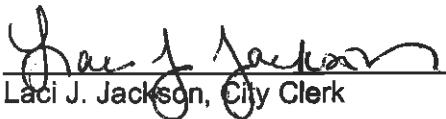
No public comments were received.

It was moved by Councilmember Pierce, seconded by Councilmember Stratford, to adopt Resolution 38-2011 as amended by replacing the word condemning with denouncing in the Resolution title (Passed; 4-0 vote).

10. **COUNCIL ITEMS**- None.

11. **ADJOURNMENT**- On call by Vice Mayor Geller the meeting adjourned at 8:50 p.m.

Respectfully submitted,


Laci J. Jackson, City Clerk

APPROVED BY CLAYTON CITY COUNCIL


David T. Shuey, Mayor