CITY OF CLAYTON
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# AGENDA

## REGULAR JOINT MEETINGS

* * *

## CLAYTON CITY COUNCIL

**AND**

## OAKHURST GEOLOGIC HAZARD ABATEMENT DISTRICT (GHAD)

***

## TUESDAY, October 18, 2011

## 6:15 p.m.

*Hoyer Hall, Clayton Community Library*
*6125 Clayton Road, Clayton, CA 94517*

**Mayor:** David T. Shuey
**Vice Mayor:** Howard Geller

**Council Members**
Joseph A. Medrano
Julie K. Pierce
Hank Stratford

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review in City Hall located at 6000 Heritage Trail on Monday prior to the Council meeting.
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at **www.ci.clayton.ca.us**
- Any writings or documents provided to a majority of the City Council after distribution of the Agenda Packet and regarding any public item on this Agenda will be made available for public inspection in the City Clerk's office located at 6000 Heritage Trail during normal business hours.
- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7304.

# * CITY COUNCIL AND GHAD*
**October 18, 2011**

# 6:15 P.M.

**1.** **CALL TO ORDER THE CITY COUNCIL** – Mayor Shuey

**CALL TO ORDER THE GHAD BOARD OF DIRECTORS** – Chairman Stratford.

**2.** **JOINT CLOSED SESSION**

(a) *Government Code Section 54956.9*, Conference with Legal Counsel
Existing Litigation: *Katzman, et al. v. City of Clayton, et al.* Coordinated Cases Master/C07-01461/C07-00707, Superior Court of CA, Contra Costa County

**Reports out of Closed Session**: 1. Mayor Shuey; and 2. Chairman Stratford.

**3.** **ADJOURNMENT OF THE GHAD BOARD OF DIRECTORS MEETING**
Chairman Stratford.

# 7:00 P.M. CITY COUNCIL

**3.** **PLEDGE OF ALLEGIANCE** – led by Mayor Shuey.

**4.** **CONSENT CALENDAR**
*Consent Calendar items are typically routine in nature and are considered for approval by the City Council with one single motion. Members of the Council, Audience, or Staff wishing an item removed from the Consent Calendar for purpose of public comment, question or input may request so through the Mayor.*

(a) Approve the minutes of the regular meeting of October 4, 2011. (View Here)

(b) Approve Financial Demands and Obligations of the City. (View Here)

(c) Authorize the purchase of nine (9) replacement mobile data computers for Clayton Police vehicles from Hubb Systems LLC in the amount of $62,834.91 via the City of Concord's competitive bid using budgeted Capital Equipment Replacement Funds. (View Here)

(d) Approve the award of contract to Dell Computers in the amount of $24,341.47 from the Capital Equipment Replacement Fund and the Landscape Maintenance District budgets for the purchase of twenty replacement computers and four laptops. (View Here)

(e) Approve the declaration of a three police bicycles and two police motorcycles as capital equipment surplus to the City's needs and authorize the City Manager to sell the surplus vehicles/equipment at public auction. (View Here)

## 5. RECOGNITIONS AND PRESENTATIONS

(a) Proclamation declaring November 2011 as "American Indian Heritage Month." (View Here)

(b) Recognition of Ted Meriam for service on the Clayton Planning Commission July 2009 - June 2011.

(c) Certificate of Recognition to Caleb Ricks for his Eagle Scout Project installing bicycle racks at Lydia Lane Park and the Black Diamond Plaza picnic area. (View Here)

## 6. REPORTS

(a) Planning Commission – No meeting held.
(b) Trails and Landscaping Committee – No meeting held.
(c) City Manager/Staff
(d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.
(e) Other

## 7. PUBLIC COMMENT ON NON - AGENDA ITEMS

*Members of the public may address the City Council on items within the Council's jurisdiction, (which are not on the agenda) at this time. To facilitate the recordation of comments, it is requested each speaker complete a speaker card available on the Lobby table and submit it in advance to the City Clerk. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Mayor's discretion. When one's name is called or you are recognized by the Mayor as wishing to speak, the speaker shall approach the public podium and adhere to the time limit. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. The Council may respond to statements made or questions asked, or may at its discretion request Staff to report back at a future meeting concerning the matter.*

*Public comment and input on Public Hearing, Action Items and other Agenda Items will be allowed when each item is considered by the City Council.*

## 8. PUBLIC HEARINGS – None.

## 9. ACTION ITEMS

(a) Second Reading and Adoption of an Ordinance rezoning 3 parcels in the Diablo Estates at Clayton subdivision located off Rialto Drive from R-40-H to R-40 (ZOA 05-11). (View Here)
(Community Development Director)

Staff recommendations: **1)** Receive the staff report; **2)** Receive public comments; **3)** Adopt a motion to have the City Clerk read Ordinance No. 435 by title and number only and waive further reading; and **4)** By motion, adopt Ordinance No. 435.

(b) Consideration of a Resolution approving the carry-over of specific project and operational encumbrances from the FY 2010-11 Budget into and amending the FY 2011-12 City Budget accordingly, and determination of the disposition of the FY 2010-11 General Fund excess of $136,029. (View Here)
(City Manager and Finance Manager)

Staff recommendation: Following staff presentation and public comment, adopt the Resolution.

(c) Second Reading and Adoption of an Ordinance No. 436 adding a new section to the Clayton Municipal Code regarding a City Attorney. (View Here)
(City Clerk)

Staff recommendations: **1)** Receive the staff report; **2)** Receive public comments; **3)** Adopt a motion to have the City Clerk read Ordinance No. 436 by title and number only and waive further reading; **4)** By motion, adopt Ordinance No. 436.

(d) Consider the Introduction and First Reading of an Ordinance to elect and implement the participation of the City of Clayton and its Redevelopment Agency in the Alternative "Voluntary" Redevelopment Program pursuant to recent and currently- litigated ABx1 26 and ABx1 27 state laws. (View Here)
(City Manager)

Staff recommendation: **1)** Receive the staff report; **2)** Receive public comments; **3)** Adopt a motion to have the City Clerk read Ordinance No. 437 by title and number only and waive further reading; **4)** By motion, approve Ordinance No. 437 for Introduction and First Reading.

(e) City Council determination of the date, time, location and agenda topics for its 3rd Annual Meeting with the Clayton Business Community. (View Here)
(City Manager)

Staff recommendation: Following agenda and date discussions and public comment, that Council by motion call for a special meeting to be held on a set date, time and location for its annual study session with the Clayton business community.

**10.** **COUNCIL ITEMS** – limited to requests and directives for future meetings.

**11.** **ADJOURNMENT**– the next regularly scheduled City Council meeting is November 1, 2011.

# # #

Agenda Date: 10-18-11

Agenda Item: 4a

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

**TUESDAY, October 4, 2011**

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:00 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 and Pierce. Councilmembers absent: Councilmember Stratford. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Community Development Director David Woltering, Police Chief Dan Lawrence, and City Clerk Laci Jackson.

2. **CLOSED SESSION** – Not held.

Mayor Shuey stated the Closed Session had been cancelled prior to the meeting.

(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

3. **PLEDGE OF ALLEGIANCE** – led by Mayor Shuey.

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

(a) Approved the minutes of the regular meeting of September 20, 2011.

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

(c) Approved the City Investment Report for the 4th Quarter of FY 2010-11 (April-June 2011).

(d) Adopted Resolution 39-2011 amending "Do The Right Thing Resolution" (Section 3 of No. 42-2010) regarding public display/frequency of banners.

5. **RECOGNITIONS AND PRESENTATIONS**

(a) Certificates to "Do The Right Thing" students of the month. Mayor Shuey presented Certificates of Recognition to six students for exemplifying the trait of "Responsibility." The students recognized from Mt. Diablo Elementary School were Ryan Morimoto and Ellie Tsao; from Diablo View Middle School, James Woods and Caitlin O'Leary; from Clayton Valley High School, Ted Hall and Sara Kommer.

(b) Mayor Shuey presented a Certificate of Recognition to Vince Scalise from the Pacific Coast Farmers' Market Association for their generous support of the Mayors' Healthy Cook-off by providing all of the produce used at the event.

Vince Scalise thanked the Mayor and stated it was a fun event and made a good impression of the Clayton Farmer's Market and the beautiful downtown and park.

## 6. REPORTS

(a) Planning Commission – No meeting held.

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

(c) The City Manager stated it is not too early to start thinking about the "Clayton Counts Down" New Year's Eve event and that donations and volunteers are needed.

(d) City Council

Councilmember Pierce attended the Contra Costa Transportation Authority board meeting, a Women's Transportation seminar, and an MTC meeting.

Vice Mayor Geller stated he volunteered to be an actor in the upcoming Clayton Valley Women's Club's Mystery dinner on October 23rd.

Councilmember Medrano stated he has been working on and with the Clayton Valley High School Charter committee.

Mayor Shuey stated he has been working on the Clayton Valley Charter High School application. He attended the last meeting of the school board and spoke during public comment. He asked citizens to attend the next school board meeting on October 11th. He also noted CBCA's Oktoberfest was a wonderful success.

(e) Other – None.

## 7. PUBLIC COMMENTS – None.

## 8. PUBLIC HEARINGS

(a) Consider the allocation of FY 2011-12 COPS Grant amount of $100,000 to law enforcement compensation.

The Police Chief presented a report on the proposed expenditure of the COPS Grant funds to pay for front line law enforcement personnel. He stated the funds are allocated by population and Clayton is eligible for the minimum $100,000. He stated by approving these funds the City can continue funding its 11th Police Officer position.

Mayor Shuey opened the Public Hearing at 7:28 p.m. No comments were received and the Public Hearing was closed at 7:29 p.m.

**It was moved by Councilmember Pierce, seconded by Vice Mayor Geller, to adopt Resolution 40-2011 approving the expenditure of SLESF/COPS Grant monies as recommended (Passed; 4-0 vote).**

(b) Introduction and First Reading of an Ordinance rezoning 3 parcels in the Diablo Estates at Clayton subdivision located off Rialto Drive from R-40-H to R-40 (ZOA 05-11).

The Community Development Director stated the Ordinance before the Council tonight reclassifies three lots from R-40H to R-40 so that horses will not be permitted. He stated the Diablo Estates subdivision went through the planning process in 2004-2005 and at that time there was a plan to put horses on the lots. He stated the project was picked up by another developer who has changed the plans for the subdivision in a way that does not anticipate horses on these properties. He stated with the proposed homes the developer has done substantial grading on the property and they would like the sloped areas behind the homes to remain unimproved and not to have horses on the property. Staff is forwarding the Ordinance recommended by the Planning Commission for Introduction and First Reading.

Mayor Shuey opened the Public Hearing at 7:33 p.m. No public comments were received and the Public Hearing was closed at 7:33 p.m.

**It was moved by Councilmember Medrano, seconded by Vice Mayor Geller, to have the City Clerk read Ordinance No. 435 by title and number only and waive further reading (Passed; 4-0 vote).**

The City Clerk read Ordinance No. 435 by title number only.

**It was moved by Councilmember Medrano, seconded by Vice Mayor Geller, to approve Ordinance No. 435 for first reading (Passed; 4-0 vote).**

## 9. ACTION ITEMS

(a) Adoption of a Resolution establishing a monetary reward system for information leading to the arrest and conviction of vandals to public property.

The Police Chief stated the Council directed staff to research and develop a Vandalism Accountability Rewards Program. He stated the goal of this program is to entice witnesses to come forward and identify people caught damaging City property. He stated, if approved, the program would be implemented and then reviewed in a year.

Councilmember Medrano asked if the City can charge the perpetrator for the cost of the reward even if they are not convicted by the court system? The City Attorney responded "Yes the City could still charge the perpetrator for the amount provided as the reward."

No public comments were received.

**It was moved by Vice Mayor Geller, seconded Councilmember Pierce, to adopt Resolution 41-2011 (Passed; 4-0 vote).**

(b) Introduction and First Reading of an Ordinance adding Chapter 2.11 to the Municipal Code regarding a City Attorney.

The City Clerk presented the staff report and stated when the new City Attorney was hired staff realized there was no section in the Clayton Municipal Code referring to the duties of the City Attorney. She and City Attorney worked on this Ordinance and stated there are minor amendments to formatting which will be provided in the final version of the Ordinance at the next City Council meeting. She also requested the Council amend the Ordinance to add "as requested by the City Council" to the end of the sentence in Section 2.11.020.

No public comments were received.

**It was moved by Councilmember Medrano, seconded by Councilmember Pierce, to have the City Clerk read Ordinance No. 436 by title and number only as amended and waive further reading (Passed; 4-0 vote).**

The City Clerk read Ordinance No. 436 by title and number only.

**It was moved Councilmember Medrano, seconded by Councilmember Pierce, to approve Ordinance No. 436 for first reading (Passed; 4-0 vote).**

10. **COUNCIL ITEMS**- None.

11. **ADJOURNMENT**– On call by Mayor Shuey the meeting adjourned at 7:40 p.m.

Respectfully submitted,

Laci J. Jackson, City Clerk

APPROVED BY CLAYTON CITY COUNCIL

David T. Shuey, Mayor

CITY OF CLAYTON
Founded 1857 – Incorporated 1964

**Agenda Date:** 10/18/11

**Agenda Item:** 4b

Approved:

Gary A. Napper
City Manager/Executive Director

# STAFF REPORT

**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** MERRY PELLETIER, FINANCE MANAGER

**DATE:** OCTOBER 18, 2011

**SUBJECT:** INVOICE SUMMARY

**RECOMMENDATION** **Approve the following Invoices.**

| | | |
|---|---|---|
| 10/14/11 | Cash Requirements Report | $135,952.65 |

Attachments:
Cash Requirements Report dated 10/14/11 (4 pages)

# City of Clayton
# Cash Requirements Report
## CC Meeting 10/18/11



| Vendor Name | Due Date | Invoice Date | Invoice Number | Invoice Description | Invoice Balance | Potential Discount | Discount Expires On | Net Amount Due |
|---|---|---|---|---|---|---|---|---|
| **Access One** | | | | | | | | |
| Access One | 10/13/2011 | 10/2/2011 | 1192512 | Long Distance Phone Service 9/11 | $54.73 | $0.00 | | $54.73 |
| | | | | *Totals for Access One:* | *$54.73* | *$0.00* | | *$54.73* |
| **All City Management Services, Inc.** | | | | | | | | |
| All City Management Services, Inc. | 10/13/2011 | 9/27/2011 | 24441 | Crossing Guard WE 9/24/11 | $465.00 | $0.00 | | $465.00 |
| | | | | *Totals for All City Management Services, Inc.:* | *$465.00* | *$0.00* | | *$465.00* |
| **Arlene H. Kikkawa-Nielsen** | | | | | | | | |
| Arlene H. Kikkawa-Nielsen | 10/14/2011 | 10/14/2011 | 10/11 | Library Volunteer Coordinator 10/11 | $820.00 | $0.00 | | $820.00 |
| | | | | *Totals for Arlene H. Kikkawa-Nielsen:* | *$820.00* | *$0.00* | | *$820.00* |
| **AT&T/ CalNet 2** | | | | | | | | |
| AT&T/ CalNet 2 | 10/13/2011 | 10/3/2011 | 9/11B | Local Phone Service 9/11B | $460.51 | $0.00 | | $460.51 |
| | | | | *Totals for AT&T/ CalNet 2:* | *$460.51* | *$0.00* | | *$460.51* |
| **BAE Urban Economics Inc** | | | | | | | | |
| BAE Urban Economics Inc | 10/13/2011 | 10/6/2011 | 1712-Sept11 | CC Church Initial Impact Study 9/11 | $500.00 | $0.00 | | $500.00 |
| | | | | *Totals for BAE Urban Economics Inc:* | *$500.00* | *$0.00* | | *$500.00* |
| **Bay Area News Group East Bay (CCT)** | | | | | | | | |
| Bay Area News Group East Bay (CCT) | 10/13/2011 | 9/24/2011 | 4164848-7607 | Public Hearing Notices 9/11 | $218.80 | $0.00 | | $218.80 |
| | | | | *Totals for Bay Area News Group East Bay (CCT):* | *$218.80* | *$0.00* | | *$218.80* |
| **Best Best & Kreiger LLP** | | | | | | | | |
| Best Best & Kreiger LLP | 10/13/2011 | 10/10/2011 | 662746 | City Attorney Legal Services 10/11 | $8,000.00 | $0.00 | | $8,000.00 |
| Best Best & Kreiger LLP | 10/13/2011 | 10/10/2011 | 662749 | City Attorney Legal Fees 10/11 | $1,541.00 | $0.00 | | $1,541.00 |
| | | | | *Totals for Best Best & Kreiger LLP:* | *$9,541.00* | *$0.00* | | *$9,541.00* |
| **CCC Animal Svcs Dept** | | | | | | | | |
| CCC Animal Svcs Dept | 10/12/2011 | 9/22/2011 | ASD M5556 | Animal Control Services 10/11-12/11 | $14,552.00 | $0.00 | | $14,552.00 |
| | | | | *Totals for CCC Animal Svcs Dept:* | *$14,552.00* | *$0.00* | | *$14,552.00* |
| **Christina P Mason** | | | | | | | | |
| Christina P Mason | 10/13/2011 | 10/13/2011 | C&D 10/11 | Refund C&D Deposit 10/11 | $2,943.00 | $0.00 | | $2,943.00 |
| | | | | *Totals for Christina P Mason:* | *$2,943.00* | *$0.00* | | *$2,943.00* |
| **City of Concord** | | | | | | | | |
| City of Concord | 10/12/2011 | 9/22/2011 | 25945 | PD Printing NCR Booking Reimb Forms 9/11 | $248.00 | $0.00 | | $248.00 |
| City of Concord | 10/13/2011 | 9/22/2011 | 25948 | Admin Printing of Budget Books 9/11 | $107.00 | $0.00 | | $107.00 |
| City of Concord | 10/13/2011 | 10/6/2011 | 26222 | PD Dispatch & Router Service 10/11 | $13,285.00 | $0.00 | | $13,285.00 |
| | | | | *Totals for City of Concord:* | *$13,640.00* | *$0.00* | | *$13,640.00* |
| **Clean Street** | | | | | | | | |
| Clean Street | 10/12/2011 | 9/30/2011 | 65196 | Street Sweeping 9/11 | $3,500.00 | $0.00 | | $3,500.00 |

# City of Clayton
# Cash Requirements Report
## CC Meeting 10/18/11

| Vendor Name | Due Date | Invoice Date | Invoice Number | Invoice Description | Invoice Balance | Potential Discount | Discount Expires On | Net Amount Due |
|---|---|---|---|---|---|---|---|---|
| | | | | *Totals for Clean Street:* | *$3,500.00* | *$0.00* | | *$3,500.00* |
| **Contra Costa Water Dist.** | | | | | | | | |
| Contra Costa Water Dist. | 10/13/2011 | 10/11/2011 | D Series 8-9/11 | Water Services 8-9/11 | $36,001.54 | $0.00 | | $36,001.54 |
| | | | | *Totals for Contra Costa Water Dist.:* | *$36,001.54* | *$0.00* | | *$36,001.54* |
| **De Lage Landen Financial Services, Inc.** | | | | | | | | |
| De Lage Landen Financial Services, Inc. | 10/13/2011 | 9/10/2011 | 10738316 | Admin Copier Lease 9/11 | $431.68 | $0.00 | | $431.68 |
| De Lage Landen Financial Services, Inc. | 10/13/2011 | 10/8/2011 | 11202035 | Admin Copier Lease 10/11 | $453.27 | $0.00 | | $453.27 |
| | | | | *Totals for De Lage Landen Financial Services, Inc.:* | *$884.95* | *$0.00* | | *$884.95* |
| **Emergency Vehicle Solutions, Inc** | | | | | | | | |
| Emergency Vehicle Solutions, Inc | 10/13/2011 | 9/16/2011 | INV0001043 | PD Equipment for New Vehicle 9/11 | $433.00 | $0.00 | | $433.00 |
| Emergency Vehicle Solutions, Inc | 10/13/2011 | 9/16/2011 | INV0001059 | PD Equipment for New Vehicle 9/11 | $476.30 | $0.00 | | $476.30 |
| | | | | *Totals for Emergency Vehicle Solutions, Inc:* | *$909.30* | *$0.00* | | *$909.30* |
| **Employee Benefit Specialists, Inc** | | | | | | | | |
| Employee Benefit Specialists, Inc | 10/13/2011 | 9/30/2011 | 0054056-IN | FSA Admin Fees 9/11 | $100.00 | $0.00 | | $100.00 |
| | | | | *Totals for Employee Benefit Specialists, Inc:* | *$100.00* | *$0.00* | | *$100.00* |
| **Globalstar LLC** | | | | | | | | |
| Globalstar LLC | 10/12/2011 | 9/16/2011 | 3364307 | PD Sat Phone 9/11 | $26.92 | $0.00 | | $26.92 |
| | | | | *Totals for Globalstar LLC:* | *$26.92* | *$0.00* | | *$26.92* |
| **Grainger, Inc.** | | | | | | | | |
| Grainger, Inc. | 10/13/2011 | 9/27/2011 | 9646335035 | PW Ear Plugs & Dust Masks 9/11 | $172.43 | $0.00 | | $172.43 |
| Grainger, Inc. | 10/13/2011 | 9/27/2011 | 9646335043 | PW Respirators 9/11 | $128.89 | $0.00 | | $128.89 |
| | | | | *Totals for Grainger, Inc.:* | *$301.32* | *$0.00* | | *$301.32* |
| **J & R Floor Services** | | | | | | | | |
| J & R Floor Services | 10/12/2011 | 10/1/2011 | SEPT 2011 | Janitorial Services 9/11 | $4,909.00 | $0.00 | | $4,909.00 |
| | | | | *Totals for J & R Floor Services:* | *$4,909.00* | *$0.00* | | *$4,909.00* |
| **Jack McMurry III** | | | | | | | | |
| Jack McMurry III | 10/12/2011 | 10/5/2011 | EH 10/1/11 | Refund EH Deposit for 10/1/11 | $500.00 | $0.00 | | $500.00 |
| | | | | *Totals for Jack McMurry III:* | *$500.00* | *$0.00* | | *$500.00* |
| **John Deere Landscapes Inc** | | | | | | | | |
| John Deere Landscapes Inc | 10/13/2011 | 9/22/2011 | 59319634 | PW Sprinkler Supplies 9/11 | $2,462.07 | $0.00 | | $2,462.07 |
| | | | | *Totals for John Deere Landscapes Inc:* | *$2,462.07* | *$0.00* | | *$2,462.07* |
| **LarryLogic Productions** | | | | | | | | |
| LarryLogic Productions | 10/13/2011 | 10/5/2011 | 1185 | City Council Meeting Video 10/4/11 | $275.00 | $0.00 | | $275.00 |
| | | | | *Totals for LarryLogic Productions:* | *$275.00* | *$0.00* | | *$275.00* |
| **Local Government Consultants** | | | | | | | | |

# City of Clayton
# Cash Requirements Report
## CC Meeting 10/18/11



| Vendor Name | Due Date | Invoice Date | Invoice Number | Invoice Description | Invoice Balance | Potential Discount | Discount Expires On | Net Amount Due |
|---|---|---|---|---|---|---|---|---|
| Local Government Consultants | 10/12/2011 | 10/3/2011 | 93 | State Mandated Cost Claiming Svc #1 | $1,000.00 | $0.00 | | $1,000.00 |
| | | | | *Totals for Local Government Consultants:* | *$1,000.00* | *$0.00* | | *$1,000.00* |
| **Neopost Leasing (Mail Finance)** | | | | | | | | |
| Neopost Leasing (Mail Finance) | 10/13/2011 | 9/23/2011 | N2795367 | Admin Postage Machine Lease 11/11 | $222.02 | $0.00 | | $222.02 |
| | | | | *Totals for Neopost Leasing (Mail Finance):* | *$222.02* | *$0.00* | | *$222.02* |
| **PERMCO, Inc.** | | | | | | | | |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9547 | Engineer Retainer 9/24/11-10/7/11 | $2,355.50 | $0.00 | | $2,355.50 |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9548 | CCWD EP (Minor) Insp | $41.50 | $0.00 | | $41.50 |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9549 | General SW Inspections | $115.50 | $0.00 | | $115.50 |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9550 | Richards SWP 11-10 Inspections | $20.75 | $0.00 | | $20.75 |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9551 | ABAG Maz Mit Plan Update 2009-11 | $57.75 | $0.00 | | $57.75 |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9552 | CCP Park Lot Inspections & Meetings | $7,156.06 | $0.00 | | $7,156.06 |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9553 | Diablo Estates SPR - Review CC&R's | $300.00 | $0.00 | | $300.00 |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9554 | Diablo Estates Const Inspections Sub Improv | $450.00 | $0.00 | | $450.00 |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9555 | Diablo Pointe Grading Inspections | $41.50 | $0.00 | | $41.50 |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9556 | Diablo Pointe SW BMP Inspections | $62.25 | $0.00 | | $62.25 |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9557 | Van Brusselen 0010 SW Inspections | $20.75 | $0.00 | | $20.75 |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9557 | Hosler 0025 SW Inspections | $20.75 | $0.00 | | $20.75 |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9557 | JMS Builders/ Magdefrau 0016 SW Insp | $20.75 | $0.00 | | $20.75 |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9557 | Diablo Tropicals/ Farley 0022 SW Insp | $20.75 | $0.00 | | $20.75 |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9557 | Runnion 0005 SW Inspections | $41.50 | $0.00 | | $41.50 |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9558 | Clayton Rd Relandscape Base Sheets | $32.75 | $0.00 | | $32.75 |
| PERMCO, Inc. | 10/13/2011 | 10/10/2011 | 9950 | O'Meara SWP 01-10 Inspections | $20.75 | $0.00 | | $20.75 |
| | | | | *Totals for PERMCO, Inc.:* | *$10,778.81* | *$0.00* | | *$10,778.81* |
| **PG&E** | | | | | | | | |
| PG&E | 10/13/2011 | 9/22/2011 | 9/11 Mst #121 | Service Mst #121 9/11 | $2,937.33 | $0.00 | | $2,937.33 |
| PG&E | 10/13/2011 | 9/22/2011 | Ind Inv 9/11 | Service Individual Invoices 9/11 | $527.08 | $0.00 | | $527.08 |
| PG&E | 10/13/2011 | 9/15/2011 | WW Pk 9/11 | Westwood Park Service 9/11 | $573.41 | $0.00 | | $573.41 |
| | | | | *Totals for PG&E:* | *$4,037.82* | *$0.00* | | *$4,037.82* |
| **PMC Investigative Services** | | | | | | | | |
| PMC Investigative Services | 10/13/2011 | 10/7/2011 | 11-0203 | PD Investigation 10/11 | $2,875.00 | $0.00 | | $2,875.00 |
| | | | | *Totals for PMC Investigative Services:* | *$2,875.00* | *$0.00* | | *$2,875.00* |
| **Riso Products of Sacramento** | | | | | | | | |
| Riso Products of Sacramento | 10/12/2011 | 9/20/2011 | 79723 | PD Copier 9/11 | $94.79 | $0.00 | | $94.79 |
| | | | | *Totals for Riso Products of Sacramento:* | *$94.79* | *$0.00* | | *$94.79* |
| **Sprint Comm (PD)** | | | | | | | | |
| Sprint Comm (PD) | 10/13/2011 | 9/29/2011 | 118 | PD Cell Phone Service 9/11 | $295.32 | $0.00 | | $295.32 |
| | | | | *Totals for Sprint Comm (PD):* | *$295.32* | *$0.00* | | *$295.32* |

# City of Clayton
# Cash Requirements Report
## CC Meeting 10/18/11



| Vendor Name | Due Date | Invoice Date | Invoice Number | Invoice Description | Invoice Balance | Potential Discount | Discount Expires On | Net Amount Due |
|---|---|---|---|---|---|---|---|---|
| **Thales Consulting Inc** | | | | | | | | |
| Thales Consulting Inc | 10/12/2011 | 9/26/2011 | 498 | Financial Statements Prep for 10-11 | $8,269.36 | $0.00 | | $8,269.36 |
| | | | | *Totals for Thales Consulting Inc:* | *$8,269.36* | *$0.00* | | *$8,269.36* |
| **US Bank Corp Pymt System (Cal Card)** | | | | | | | | |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | ADM 9/11 | Adm Office Supplies, Shirts | $764.04 | $0.00 | | $764.04 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | ADM 9/11 | Adm ISDN Phone Line 9/11 | $214.51 | $0.00 | | $214.51 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | ADM 9/11 | Geoconsultants Well Monitoring 8/11 | $1,546.50 | $0.00 | | $1,546.50 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | ADM 9/11 | Geoconsultants Well Monitoring 9/11 | $1,546.50 | $0.00 | | $1,546.50 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PD 9/11 | PD Supplies, Manuals, Monitor, Canisters | $1,046.94 | $0.00 | | $1,046.94 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PD 9/11 | PD Office Supplies | $139.73 | $0.00 | | $139.73 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PD 9/11 | PD Postage | $35.88 | $0.00 | | $35.88 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PD 9/11 | PD Radar Battery Charger | $135.05 | $0.00 | | $135.05 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PD 9/11 | PD Vehicle Supplies & Car Washes | $531.41 | $0.00 | | $531.41 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PD 9/11 | PD Paint Repair for Chief's Car | $793.53 | $0.00 | | $793.53 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PD 9/11 | PD Vehicle Fuel | $2,734.09 | $0.00 | | $2,734.09 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PD 9/11 | PD Request for Phone Records | $24.00 | $0.00 | | $24.00 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PW 9/11 | PW Shop, concert supplies | $371.88 | $0.00 | | $371.88 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PW 9/11 | PW Wasp spray | $53.24 | $0.00 | | $53.24 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PW 9/11 | PW Welder wire | $33.40 | $0.00 | | $33.40 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PW 9/11 | PW Vehicle Fuel | $1,033.54 | $0.00 | | $1,033.54 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PW 9/11 | PW Street Light Supplies | $157.03 | $0.00 | | $157.03 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PW 9/11 | PW Landscape Supplies | $1,299.42 | $0.00 | | $1,299.42 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PW 9/11 | PW Trailer Tires | $752.00 | $0.00 | | $752.00 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PW 9/11 | PW Landscape Fuel | $1,171.18 | $0.00 | | $1,171.18 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PW 9/11 | PW Grove Park Supplies | $72.75 | $0.00 | | $72.75 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PW 9/11 | PW Lamps | $182.05 | $0.00 | | $182.05 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PW 9/11 | CCP Drop-off Signs | $144.34 | $0.00 | | $144.34 |
| US Bank Corp Pymt System (Cal Card) | 10/14/2011 | 9/22/2011 | PW 9/11 | EH Refrigerator Repair | $196.88 | $0.00 | | $196.88 |
| | | | | *Totals for US Bank Corp Pymt System (Cal Card):* | *$14,979.89* | *$0.00* | | *$14,979.89* |
| **Western Exterminator** | | | | | | | | |
| Western Exterminator | 10/13/2011 | 9/30/2011 | 589956 | Extermination Services 9/11 | $334.50 | $0.00 | | $334.50 |
| | | | | *Totals for Western Exterminator:* | *$334.50* | *$0.00* | | *$334.50* |
| | | | | **GRAND TOTALS:** | **$135,952.65** | **$0.00** | | **$135,952.65** |

Agenda Date: 10-18-11

Agenda Item: 4c

Approved:

Gary A. Napper
City Manager/Executive Director

# AGENDA REPORT

**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** CHIEF OF POLICE

**DATE:** OCTOBER, 18, 2011

**SUBJECT:** APPROVE THE PURCHASE OF NINE NEW MOBILE DATA COMPUTERS (MDC) FOR EACH POLICE VEHICLE TO REPLACE NINE OUTDATED AND UNSERVICABLE MDC'S

## RECOMMENDATION

It is recommended that the City Council, by minute motion, formally approve the purchase of nine upgraded Mobile Data Computers (MDC) in the amount of $62,834.91 from Hubb Systems LLC, DBA, using the budgeted Capital Equipment Replacement Fund (CERF) for the replacement of this equipment.

## BACKGROUND

The City of Clayton's Police Department currently has a fleet of nine vehicles; seven patrol vehicles, one parking enforcement vehicle, and one emergency command trailer. Each of these vehicles is equipped with one Motorola MDC, which has allowed Clayton officers to communicate with each other, with Concord officers, and with the dispatchers. MDC's also enable police officers access to various enforcement data bases, such as Department of Motor Vehicles. The Motorola MDC's, that are now in each police vehicle, were installed in 2003-04 and have provided over seven years of service. This period of time is past the common and recommended practice of computer replacement after a five-year cycle. In addition to MDC age, Concord Police Department recently upgraded their Computer Assisted Dispatcher Center with new software. As a result, the current Motorola MDC's, utilized by both Clayton PD and Concord PD, are not capable of supporting the new software upgrades. Replacement with new updated specialized equipment is a vital requirement for continued law enforcement communication.

On June 21, 2011, the City Council approved the City's operating budget for FY 2011-2012, which included funds to purchase nine new upgraded MDC's for Clayton police vehicles, as

described above. The new MDC's will replace nine outdated and unserviceable Motorola MDC's currently installed in PD vehicles.

## DISCUSSION

Approximately six months ago, Concord PD conducted a competitive open bid process, and after reviewing proposals from several vendors, their IT personnel selected the Data 911 brand MDC, supplied by Hubbs Systems, LLC, DBA. Concord IT personnel determined that Hubbs Systems were able to provide the Data 911 MDC which is capable of supporting the Dispatch Center upgrades, at the lowest price. Because Clayton PD contracts with Concord PD for dispatch services, it becomes necessary for Clayton PD to also purchase the same Data 911 MDC's in order to replace the outdated Motorola MDC's currently in each Clayton police vehicle.

At the beginning of the current FY 2011-2012 Budget, Concord PD began a three month transition period, gradually replacing their old Motorola MDC's with the new upgraded Data 911 MDC's in each of their police vehicles. Once Concord PD started this transition period, Clayton police staff needed to act quickly. Since Concord PD had already conducted an open bid process, staff began replacing Clayton's older Motorola MDC's with the newer Data 911 MDC's, as well. This action required staff to expend budgeted funds to purchase the new Data 911 MDC's prior to securing formal approval from the City Council.

As a result, staff recommends formal approval for the purchase of the new Data 911 MDC equipment from Hubbs Systems, using the budgeted Capital Equipment Replacement Fund (CERF) for the replacement of this equipment. Public Code section 3400(c)(3) allows the City to purchase this equipment using Concord's competitive bid result because the police dispatch relationship requires compatibility in equipment that is only available from this one low-bid source.

## FISCAL IMPACT

Purchase price for nine Data 911 MDC's is $62,834.91, which includes hardware, software, installation, taxes, and a five-year warranty on each MDC. There are no additional costs associated with this purchase as Concord Police Department IT personnel will continue to provide software support for the new Data 911 MDC's. This service is a standard provision that is included in the Dispatch Services contract that the City of Clayton Police Department has with the City of Concord Police Department.

Attachment: None.

Agenda Date: 10-18-11

Agenda Item: 4d

Approved:

Gary A. Napper
City Manager/Executive Director

# AGENDA REPORT

**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** Laura Hoffmeister, Assistant to the City Manager

**DATE:** OCTOBER, 18, 2011

**SUBJECT:** APPROVE THE PURCHASE OF TWENTY-THREE (23) REPLACEMENT COMPUTERS AND ONE NEW COMPUTER, FOR POLICE OFFICES, ADMINISTRATION, AND MAINTENANCE DEPARTMENTS

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## RECOMMENDATION

It is recommended that the City Council, by minute motion, formally approve the purchase of twenty-three replacement computers (19 CPU's and four laptops) plus one new computer (irrigation control system) from Dell Computers, a state approved CMAS vendor - in the amount of $24,341.47, using the budgeted Capital Equipment Replacement Fund (CERF) and Landscape Maintenance District for the acquisition of this equipment.

## BACKGROUND

The City of Clayton's office staff (police, administration, maintenance), currently has nineteen CPU's and four laptops, which allow office staff to conduct most of their work, email communication, and web training etc. The recent computers were purchased and installed in 2003-04 and have provided over seven years of service. At the time they were purchased the City obtained low end computers as a short term technology since staff needed to combine three different operating systems and software into one integrated standard. It was also known at the time that Windows XP might be replaced in the future and Office 2003 would be replaced. Although Vista Operating System and Office 2007 did come about, they had many issues and most businesses did not jump to the switch; neither did Clayton based upon reports of poor performance, etc. Shortly after these releases, there was in the works the creation by Microsoft of a new operating system platform, Windows 7 and Office 2010. City staff waited until more was known about these systems and the OS and software became standardized before considering any computer upgrades. This was a successful strategy for the City as it reduced IT costs and the City was able to skip one upgrade computer purchase/software cycle. However, City offices are no longer able to continue with the older IT hardware and software.

## DISCUSSION

The current equipment is generally 7+ years old; the CPUs are Celeron processors, or less; 286 RAM and 20 gig hard drives. Since 2003/04 we have been using Windows XP operating system and Office 2003 software. With the release of Windows 7 Microsoft will no longer support Windows XP. Various software programs and updates for Finance, Business Licensing, and Document Management Scanning, will not function with the Windows XP operating system platform, and the Office 2003 software. The City's IT strategy is to keep all software and security up to date and all hardware uniform. This ensures problems will not be unique to a single user and any preventative action or remediation performed for one will work for all.

The City's IT consultant (Jason Delmar - Undercover Computers), provided an assessment of the existing computer hardware and found that the current computers are outdated and will not support the needed Windows 7 and Office 2010 or do online reporting, on line tutorials/ training, support business license program updates, webinars etc., which have become more standardized and necessary in our office workplace. Replacement of the old outdated computers with new updated computers will allow for the use of new standardized operating systems and software, a vital requirement for continued office operations of the staff for the City. Presently, City staff wastes considerable time at their desk painfully waiting for information, emails and other electronic data, and time converting newer version attachment files (word, xcel etc) to older files in order to read/edit etc.

On June 21, 2011, the City Council approved the City's operating budget for FY 2011-2012, which included funds to purchase replacement computers and new upgraded software for City police, administration, and maintenance offices, as described above. The Landscape Maintenance District Budget also included budgeted funds for one computer for computerized irrigation control system. The new computers will replace outdated hardware that will not accommodate the new operating system, new software, and software upgrades.

As a result, staff recommends formal approval for the purchase of the new computers from Dell Computers using the budgeted Capital Equipment Replacement Fund (CERF) for the replacement of this equipment, and one computer from the Landscape Maintenance District funds. The City's IT consultant assisted in providing review of options for the new computers with the objective they would be mid grade with the goal to last many years into the future. Dell Computers is a state approved vendor through the California Multiple Award Schedule (CMAS) – or State Competitive Bid. As the State already conducted open bidding, local agencies are allowed to make purchases through the approved vendors without doing a separate bid. By using this process the time and cost is greatly reduced for the City to undertake its own specifications and public bidding process. The City's IT consultant reviewed the CMAS Dell computer products and verified it is the correct equipment for our needs.

## FISCAL IMPACT

Purchase price for twenty computers and four laptops is $24,341.47, which includes taxes, software, and three year warranty – there are no shipping costs. Dell is a state approved vendor - CMAS listed vendor. Funds are available through the City FY 11/12 adopted budget for this purchase.

## CONCLUSION

Authorize the City Manager to procure using the CMAS vendor competitive bid, Dell Computer Systems, for the purchase of the twenty three replacement computers and one new computer, for a total amount of $24,341.47 using budgeted FY11/12 CERF funds for twenty-three replacement computers and budgeted Landscape Maintenance District funds for one new irrigation control master computer.

Attachment: None.

CITY OF CLAYTON
Founded 1857 . . Incorporated 1964

Agenda Date: 10-18-11

Agenda Item: 4e

Approved:

Gary A. Napper
City Manager/Executive Director

# STAFF REPORT

**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** CHIEF OF POLICE

**DATE:** OCTOBER 18, 2011

**SUBJECT:** DECLARATION OF EQUIPMENT SURPLUS TO THE CITY'S NEEDS

## RECOMMENDATION

Declare two Police Department motorcycles and three bicycles as property surplus to the City's needs, and authorize the City Manager to dispose of the surplus and unserviceable vehicles for their most economical value.

## DISCUSSION

The equipment, listed below, was purchased to provide the Police Department with alternative transport modes for Clayton police officers in order to patrol the city's trails and other off-road locations.

- 1988 Honda Dual Purpose Motorcycle, Model NX250, CA License #42K21
- 1989 Honda Dual Purpose Motorcycle, Model NX250, CA License #42K20
- 1998 Avalanche Bicycle, serial #F97108196
- 1998 Avalanche Bicycle, serial #F98013764
- 1998 Avalanche Bicycle, serial #F97108357

Each piece of the listed Department equipment was purchased during the listed equipment's model year. The two motorcycles and three bicycles are in poor condition and have reached the age where this equipment is unable to provide reliable transportation or public safety response. The described unserviceable equipment has been taken out of service and are currently being stored in the Department's storage garage.

The Department still has one serviceable reconditioned dual-purpose police motorcycle and three brand new police bicycles, which were purchased with grant monies, received last year. The Department has several officers, with the State required specialized training, who are capable of utilizing this equipment for public safety responses during special events or on the City's trails.

Staff recommends that the City Council authorize the City Manager to dispose of the described surplus and unserviceable property by selling the property through public auction for its most economical value.

## FISCAL IMPACT

The value of the unserviceable equipment is unknown. There is not a large resale market for these types of vehicles, particularly those in poor mechanical condition and appearance. However, during a public auction, the two motorcycles could bring $250 each, while the three bicycles could be sold for $50 each. If this scenario were to occur, the total would be $650.

All proceeds from the sale of this surplus vehicle belong to the taxpayers (City) and will be placed into the City's Capital Equipment Replacement Fund (CERF).

Attachments: none.

# Declaring
# November 2011
# "American Indian Heritage Month"

***WHEREAS,*** the history and culture of our great nation have been significantly influenced by American Indians and indigenous peoples; and

***WHEREAS,*** the contributions of American Indians have enhanced the freedom, prosperity and greatness of America today; and

***WHEREAS,*** their customs and traditions are respected and celebrated as part of a rich legacy throughout the United States; and

***WHEREAS,*** Native American Awareness Week began in 1976 and recognition was expanded by Congress and approved by President George Bush in August 1990, designating the month of November as National American Indian Heritage Month; and

***WHERAS,*** in honor of National American Indian Heritage Month, celebrations as well as numerous cultural, artistic, educational and historical activities have been planned.

***NOW, THEREFORE BE IT RESOLVED,*** I, David T. Shuey, as Mayor of the City of Clayton, on behalf of the City Council, hereby proclaim the month of ***November 2011***, as ***"American Indian Heritage Month"*** in the City of Clayton and call upon our citizens and interested groups to observe the week with appropriate activities that promote awareness of American Indian Heritage.

Agenda Date: 10-18-11

Agenda Item: 5a

**CALEB J. RICKS**
Troop 492
Mt. Diablo Silverado Council
Boy Scouts of America
for
Preparation and Installation of
Five (5) Bicycle Racks
in Lydia Lane Park and in the
picnic area of the Black Diamond Plaza
as his Eagle Scout Project in August 2011
Clayton, CA 94517
October 18, 2011

Agenda Date: 10-18-11
Agenda Item: 5c

CITY OF CLAYTON
Founded 1857 – Incorporated 1964

Agenda Date: 10-18-11

Agenda Item: 9a

Approved:

Gary A. Napper
City Manager/Executive Director

# AGENDA REPORT

**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** DAVID WOLTERING, COMMUNITY DEVELOPMENT DIRECTOR

**DATE:** OCTOBER 18, 2011

**SUBJECT:** CONSIDERATION OF AN ORDINANCE AMENDING THE CITY'S ZONING MAP FOR LOTS 1, 2, AND 3 IN THE DIABLO ESTATES AT CLAYTON RESIDENTIAL SUBDIVISION FROM R-40-H TO R-40 (ZOA 05-11)

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## RECOMMENDATION

It is recommended the City Council approve Second Reading and Adoption of Ordinance No. 435 (See **Attachment**) to amend the City's Zoning Map for Lots 1, 2, and 3 of the Diablo Estates at Clayton residential subdivision from R-40-H to R-40.

## PROJECT INFORMATION

| | |
|---|---|
| Applicant: | Toll Brothers, Inc.<br>2000 Crow Canyon Place, Suite 200<br>San Ramon, California 94583 |
| Location: | Lots 1, 2, and 3 of the Diablo Estates at Clayton residential subdivision (APNs 119-630-001, 119-630-002, and 119-630-003) |
| General Plan Designation: | Low Density – Single Family Residential (1.1 to 3.0 units per acre). This proposal complies with the Clayton General Plan designation. |
| Zoning: | Current – Single Family Residential R-40-H District (40,000 square-foot minimum lot area, equestrian uses permitted by right)<br><br>Proposed – Single Family Residential R-40 (40,000 square-foot minimum lot area, equestrian uses not permitted by right) |

| | |
|---|---|
| Environmental Review: | Categorically exempt per Section 15061(b)(3), Article 5 of the California Environmental Quality Act (CEQA) Guidelines. |
| Authority: | Chapter 17.56 authorizes the City Council to amend the official Zoning Map of the City of Clayton. |

## BACKGROUND AND ANALYSIS

At its meeting of October 4, 2011, the City Council approved Introduction and First Reading of attached Ordinance No. 435 to amend the City's Zoning Map for Lots 1, 2, and 3 of the Diablo Estates at Clayton residential subdivision from R-40-H to R-40. On September 13, 2011, at a regular meeting, the Clayton Planning Commission considered and recommended City Council approval of this requested rezoning by a 4-1 vote. Generally, the four Commissioners who voted for recommending City Council approval of this rezone request acknowledged the request was a condition of an earlier Site Plan Review Permit approval granted to Toll Brothers Home Builders for this 24-home residential subdivision and that the subdivision was not planned in a manner to facilitate the keeping of horses. Described below in more detail are the various factors and concerns that resulted in the condition for processing this rezone from R-40-H to R-40 becoming a requirement of the Site Plan Review Permit approval. The Commissioner who voted against the recommendation indicated concerns that the developer had not done better in the planning of this subdivision to accommodate the keeping of horses. Staff supports the request to rezone the property from R-40-H to R-40, based on the factors and concerns described below.

On July 12, 2011, the developer of the Diablo Estates at Clayton project site, Toll Brothers, received Planning Commission approval of the companion Site Plan Review Permit, Variance, and Lot Line Adjustment applications for this subdivision. As part of that Site Plan Review Permit approval, Condition 2 in the Planning Commission Notice of Decision required the developer to submit an application to rezone Lots 1-3 from R-40-H to R-40 to assure consistency with other conditions of approval that require the more steeply sloped areas beyond the building pad and standard yard areas remain unimproved for safety and aesthetic purposes and to address prior concerns raised about keeping horses at this location related to degradation of water quality. Compliance with State and regional water quality standards is an important consideration. The current R-40-H zoning designation of Lots 1-3 allows equestrian uses to be permitted by right. Approval of the rezone to R-40 would no longer allow equestrian uses to be permitted by right on these lots.

During City review and approval of the Diablo Estates at Clayton Site Plan Review Permit, the City and Toll Brothers reached a consensus that equestrian uses would no longer be proposed on Lots 1-3 (resulting in this zone change request for Lots 1-3). It was agreed that having equestrian uses on the steeply sloped areas located on the rear portions of these lots would impact slope stability, drainage routes, and weed abatement, in addition to the water degradation concerns. The keeping of horses involves the maintaining of paddock areas as well as construction of barns, stables, troughs and other structures which would further impact the sloped areas. Aesthetic impacts must also be considered as horse movement across the slopes and construction of equestrian structures would foster an inconsistent visual pattern in the rear yard areas of Lots 1-3 (which are higher in elevation, and,

therefore, more visible, than any other location in the subdivision), detracting from the consistent natural appearance that would be created by protecting the sloped areas of these lots. As a result of the consensus reached and direction given by the City during approval of related project entitlements, engineering work on the slopes for grading, drainage, and slope stabilization purposes has already been performed by the developer with the idea that the lots would not have equestrian uses. In addition, the topography of the subject lots does not serve equestrian uses well. The level areas of Lots 1-3 are comprised of the front setback area, the residence, and the rear yard area, leaving extremely limited space for paddock areas and associated horse-related structures. Placement of horses and associated structures in the level areas would locate such amenities in close proximity to on-site and adjacent residences and would cause impacts created by horse manure, flies, and odors.

**FISCAL IMPACT**
None.

**Attachment**: Ordinance No. 435

# ORDINANCE NO. 435

## AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON AMENDING THE ZONING MAP FOR LOTS 1, 2, AND 3 IN THE DIABLO ESTATES AT CLAYTON RESIDENTIAL SUBDIVISION SITE AT THE NORTHEAST CORNER OF REGENCY DRIVE AND RIALTO DRIVE FROM R-40-H TO R-40 (ZOA 05-11)

**THE CITY COUNCIL OF THE CITY OF CLAYTON FINDS AS FOLLOWS:**

**WHEREAS,** Chapter 17.56 of the Clayton Municipal Code authorizes the City Council to amend the Official Zoning Map of the City of Clayton; and

**WHEREAS,** the Planning Commission held a duly-noticed public hearing on September 13, 2011 on amendment of the zoning classifications of Lots 1, 2, and 3 of the Diablo Estates at Clayton residential subdivision, generally located at the northeast corner of Regency Drive and Rialto Drive, from R-40-H to R-40; and

**WHEREAS,** the Clayton Planning Commission approved Planning Commission Resolution No. 04-11, which recommended City Council approval of the amendment; and

**WHEREAS,** on October 4, 2011, and on October 18, 2011 the Clayton City Council held duly-noticed public hearings and gave due consideration to all testimony, comments and documents received regarding the amendment; and

**WHEREAS,** the requested zoning of Lots 1, 2, and 3 of the Diablo Estates at Clayton subdivision will result in consistency with other requirements of the prior Site Plan Review Permit, SPR 01-11, approval for this residential subdivision to retain specified sloped areas in a natural condition without improvement as well as address concerns about assuring slope stability, the integrity of drainage improvements, facilitating weed abatement, helping to assure compliance with water quality standards, and avoiding nuisance concerns related to the keeping of horses; and

**WHEREAS,** this zoning amendment is exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15061(b)(3), Article of the CEQA Guidelines.

**WHEREAS,** the proposed amendment is in general conformance with the General Plan and that the public necessity, conveniences, and general welfare require the adoption of the proposed amendment; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The above-stated citations are true and accurate.

**SECTION 2.** Based on the entire record before the City Council, all written and oral

evidence presented to the City Council, and the findings made in this Ordinance, the real property comprised of Lots 1, 2, and 3 in the Diablo Estates at Clayton subdivision located within the City of Clayton and further described by Assessor Parcel Numbers 119-630-001, 119-630-002, and 119-630-003, respectively, and depicted in the map set forth in Exhibit "A" attached hereto and incorporated herein by reference ("Property") is hereby amended from R-40-H to R-40, as that zone described in the Clayton Municipal Code and the Official Zoning Map of the City of Clayton is herby amended accordingly as more specifically shown in the attached figure as set forth in Exhibit "B" attached hereto and incorporated herein by reference.

**SECTION 3.** If any provision of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses of the Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

**SECTION 4.** This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause it to be posted in the three (3) public places heretofore designated by resolution of the City Council for the posting of ordinances and public notices.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Clayton held on October 4, 2011.

Passed, adopted and ordered posted at a regular meeting of the City Council of the City of Clayton on October 18, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON

_____
David T. Shuey, Mayor

ATTEST

_____
Laci J. Jackson, City Clerk

APPROVED AS TO FORM

Malathy Subramanian
City Attorney

APPROVED BY ADMINISTRATION

Gary A. Napper
City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Clayton held on October 4, 2011, and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on October 18, 2011.

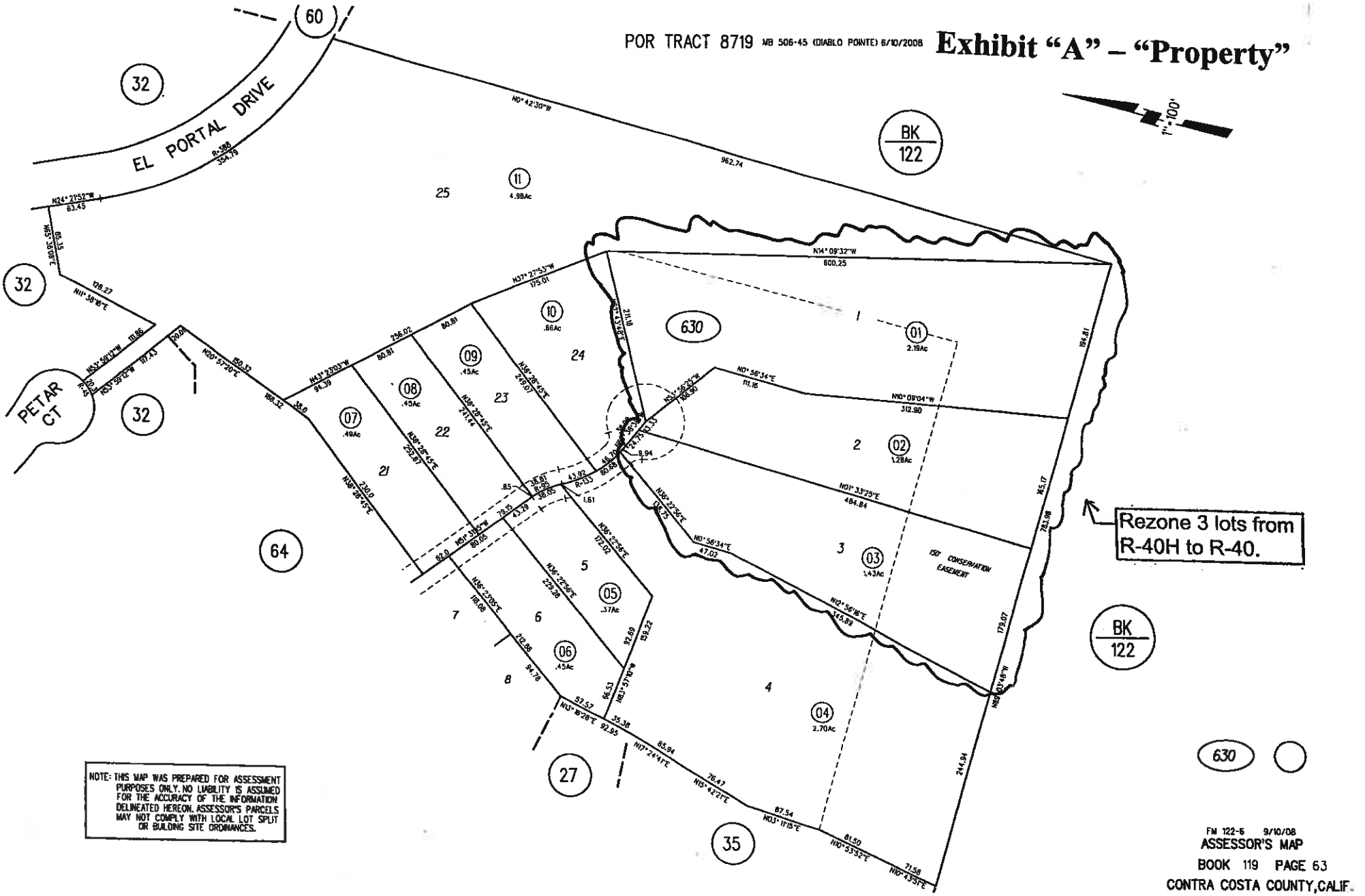
Laci J. Jackson, City Clerk

Exhibits:
"A" – "Property"
"B" – "Zoning Map"

ZOA\2011\05-11.ord.diablo.estates.rezone

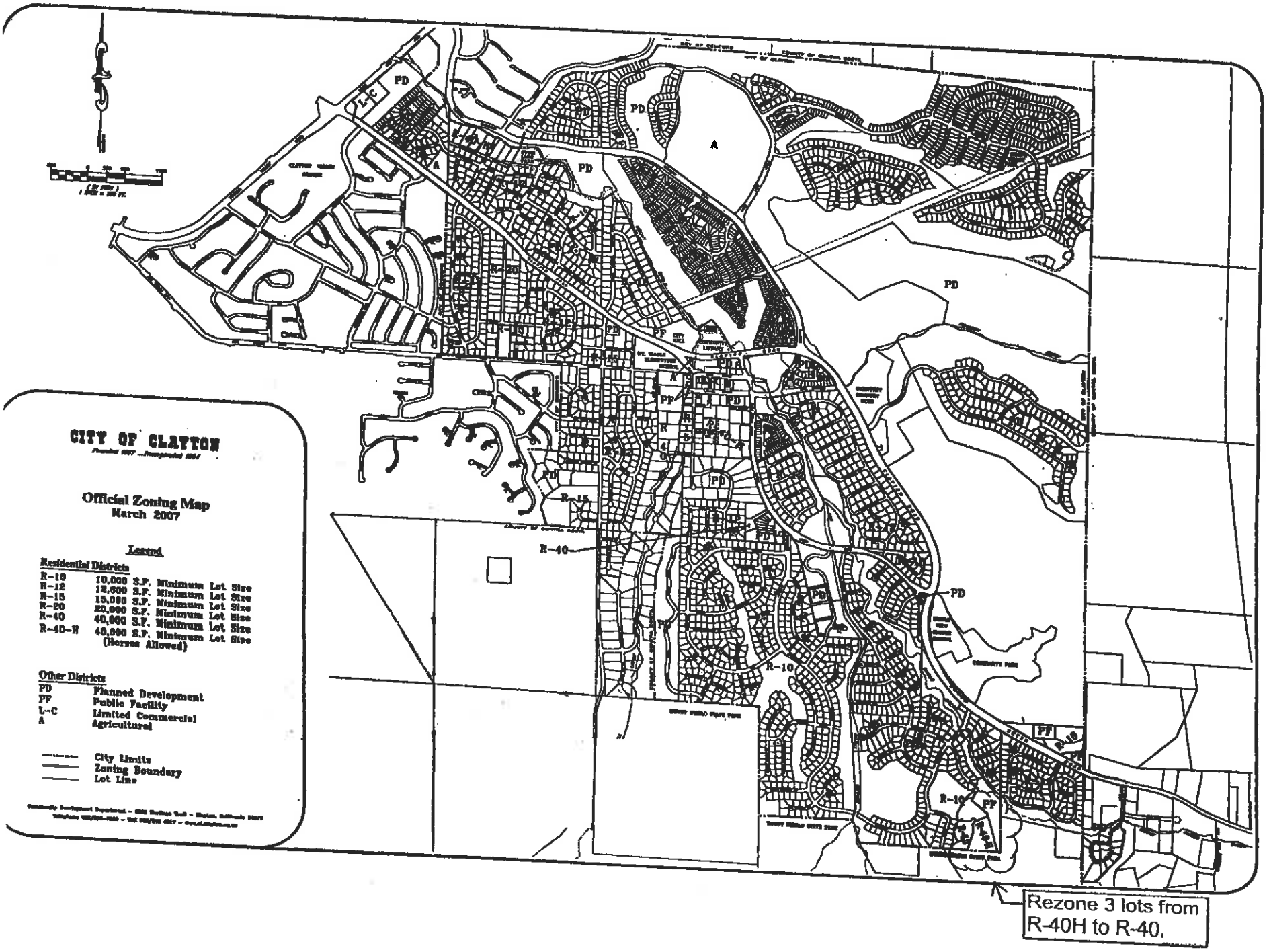
POR TRACT 8719 MB 506-45 (DIABLO POINTE) 6/10/2008

# Exhibit "A" – "Property"




FM 122-5 9/10/08
ASSESSOR'S MAP
BOOK 119 PAGE 63
CONTRA COSTA COUNTY, CALIF.

# Exhibit "B" – "Zoning Map"



CITY OF CLAYTON
Founded 1857 . . . Incorporated 1964

Agenda Date: 10-18-11

Agenda Item: 9b

Approved:

Gary A. Napper
City Manager/Executive Director

# STAFF REPORT

**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** City Manager and Finance Manager

**DATE:** October 18, 2011

**SUBJECT:** Approval of Prior Fiscal Year Encumbrances into FY 2011-2012 Budget

## RECOMMENDATION

It is recommended the City Council adopt the prepared Resolution approving the June 30, 2011 encumbrances of unexpended or incurred capital outlays and operational expenses into the Fiscal Year 2011-2012 Budget and the disposition of expectant General Fund excess from that year.

## BACKGROUND

On June 30, 2011 our fiscal year ended leaving some General Fund Department operational budgets with several line items open, which is a common occurrence in all budgets. Many of the open items recommended for future payment have not been incurred as of June 30, 2011, but are anticipated or desired for completion within the next fiscal year. The City traditionally evaluates each year the necessity of "rolling over" (i.e., encumbering) planned expenditures into the current fiscal year for completion and the City Council formally approves such fiscal action by adoption of the corresponding encumbrance Resolution.

In addition to General Fund items, the Gas Tax Fund (201), Landscape Maintenance District Fund (210), Grove Park Fund (211), Stormwater Fund (216), the Redevelopment Agency LMI Fund (302), the Capital Improvement Project Fund (303), and the Capital Equipment Replacement Fund (502) each have open line items that must be paid in the subsequent fiscal year (i.e., FY 2011-12).

It now appears the City's unaudited General Fund final revenues will actually exceed our original budget by $113,594, a remarkable occurrence in today's times. The excess is detailed below:

| General Fund Revenue Variance 2010-11 | |
|---|---|
| **Actual General Fund Revenue over Budgeted Revenue** | **$113,594** |

Noteworthy accounts of higher-than-expected key revenues:

| | |
|---|---|
| **Interest Earnings** | **$ 60,454** |
| **Sales Tax** | **$ 34,404** |
| **Planning Services (land use applications)** | **$ 26,120** |
| **Supplemental & other Property Taxes** | **$ 25,101** |
| **Franchise Fees** | **$ 12,628** |
| **Real Property Transfer Taxes** | **$ 12,476** |
| **Well Water Usage (Oakhurst Country Club)** | **$ 9,085** |
| **City Permits** | **$ 4,674** |
| **Business License Taxes** | **$ 4,299** |

Offsetting such positive news is that Secured Property Taxes came in lower than expected ($1,851), State Mandated Cost Reimbursements did not materialize ($49,943) as well as Fines and Forfeitures ($4,288), overhead cost recovery ($5,050), and Police Services ($4,827).

General Fund expenditures are projected to come in under budget by $257,823 due to prior year encumbrance carryover. This picture is also due to continuing efforts by City staff to find cost-saving measures (e.g. lower copier lease) and to not spend authorized funds needlessly just because monies are allocated. Therefore, the General Fund is in an unaudited position to realize a surplus of $136,029 when matching actual revenues received ($3,770,024) with actual expenses lessened ($3,634,175) during last fiscal year.

**RECOMMENDED ENCUMBRANCES**

Following analysis by staff and after meeting with the City Council ad-hoc Budget Committee of Vice Mayor Geller and Council Member Stratford on October 6th, it is recommended $192,546 in encumbrances for the General Fund (101) be approved as follows:

City promotional activity (4th of July Parade) $12,382; Employee Recognition Program $428; Audit Services $2,400; Computer Services $3,518; Consulting Services $1,500; Public Works general supplies $3,051; Maintenance machinery and equipment $2,366; Vehicle maintenance $1,981; Animal control services $325; Planning general plan update $20,847; Office equipment repairs $500; Police office equipment repair $603; Police employee recognition $231; Police volunteer recognition $125; Police computer services $848; Police emergency services $1,000; Police other professional services $9,211; Library building and grounds maintenance $2,807; Community park supplies $9,875, animal control services (wild pigs) $2,015; and our Deferred Maintenance account $116,533.

Encumbrances for the Gas Tax Fund (201) total $31,512 and involve planned or upcoming expenses for street maintenance supplies and labor, crack sealing, sidewalk repairs, and illuminated street name sign replacements.

Encumbrances for the Landscape Maintenance District Fund (210) total $85,654 and cover costs for general supplies, professional services and water services.

Encumbrances for The Grove Park Fund (211) total $29,431 and cover costs for deferred maintenance of the park's wood structures to include painting and resealing.

Encumbrances for the Stormwater Fund (216) total $3,883 and cover costs for Engineering services.

Encumbrances for the Redevelopment Agency LMI Fund (302 – Affordable Housing) total $28,455 and cover costs for other professional services to implement the Housing Element.

Encumbrances for Capital Improvement Projects Fund (303) total $2,462,867, and involve monies set aside for Utility Undergrounding $105,930; our Downtown Economic Development Account $1,686,117; ADA Compliance $10,190; and Community Park Parking Lot Expansion Project $660,630.

Encumbrances for Capital Equipment Replacement Fund (502) total $27,000 and cover the recent award of contract for a replacement truck (Ford F250) in Public Works.

Even with approval of these recommended encumbrances, none of the respective funds will be placed in a negative fund equity position.

## DISPOSITION OF GENERAL FUND ANNUAL SURPLUS

As noted above, the City's General Fund is expected to end last fiscal year with an annual excess of **$136,029**. Much of last year's expectant operational "savings" is attributed to City employees accepting compensation concessions over the last three (3) years, including concessions in FY 2010-11 alone valued at more than $229,270 (Misc. $116,342; Police $112,928). These concessions were agreed to by City employees when pressed with financial projections the City Budget would operate in an annual deficit due to the plunging economy and extended recession. The employee concessions included unpaid furlough days (4.3% reduction in pay), no cost of living adjustments (COLAs), no merit pay increases, unpaid City holiday premium pay for sworn police officers (4.1% reduction in pay), and employees absorbing medical and dental insurance premium hikes. In recognition of the 3-year employee concessions when weighed against an annual General Fund excess, it is proposed a portion of this year's annual surplus be returned to the twenty-six permanent employees in the form of a one-time fixed rebate for each employee.

The table below reflects the budgeted and actual experience of the City's General Fund operations over the last four (4) years:

**4-YEAR HISTORY OF GENERAL FUND (GF)**

| Fiscal Year | Furloughs and Concessions? | Budget Action | General Fund Year-End Actual | Disposition of GF Excess |
|---|---|---|---|---|
| 2008-2009 | No | Balanced | **$ 159,629** | To GF Reserve |
| 2009-2010 | Yes | Trust & Agency Fund transfer to GF of $155,579 | **$ 159,356** | **$ 155,579** back to Trust & Agency; and **$ 3,777** to GF Reserve |
| 2010-2011 | Yes | Trust & Agency Fund transfer to GF of $ 18,410* | **$ 136,029** | ? |
| 2011-2012 | Yes | Balanced | n/a | n/a |

Notes:
1. Furloughs are unpaid and represent an annual reduction of 4.3% in salary to Misc. employees.
2. Sworn Police employees had 4.1% reduction in pay for no Holiday premium pay.
3. Value of overall employee concessions (lost pay and no advances) equals $229,000 per year.

* Transfer monies not needed and not used.

Over each of the four (4) years in consideration, no reductions in public services to our community occurred. Further, although expecting to need one-time transfers of monies to patch a General Fund Budget gap in FYs 2009-2010 & 2010-2011, the City actually operated in the black and therefore during the last 3 years the City's General Fund Budget has not relied on any reserves for its operations. Therefore, the conclusion to be drawn is that without employee concessions valued at $458,000+ over the last two fiscal years, our General Fund Budget would have operated in the red requiring reliance on reserves or transfer of one-time monies. What a remarkable story in today's realm of deficit government budgets and public service reductions.

In FY 2009-10 when the City realized it operated to the good and did not need the one-time transfer of Trust & Agency Funds for its general operations, the City Council "returned" the unnecessary funds back to the Trust & Agency Fund. Similarly, when ending last fiscal year (FY 2010-11) with more General Fund monies than expected, no monies from the Trust & Agency Fund were utilized. Similarly, since last year's annual excess of **$136,029** was realized in part due to employee concessions of **$229,000+**, there is symmetry in the recommendation a portion of the "unneeded" funds be returned to its origin of source, namely the City employees who over the past two (2) years and in the current year have agreed to concessions valued at approximately $687,000.

Therefore, the Council Budget ad-hoc Committee and staff recommend each full-time permanent employee receive a one-time taxable fixed return of $2,500.00, which compensation is not subject to CalPERS pension payments by either the City or the employee. Part-time permanent employees (2) would receive a proportional rebate equal to the proportionate number of work hours each week compared to a 40-hour week employee. For example, a part-time permanent employee assigned to a 20-hour work week would receive a one-time rebate of $1,250 (50%). Since the City Council's disposition of these one-time monies to its employees is not a matter of previous Council policy, current Council policy or a contractual or negotiated obligation arising from state meet and confer laws (MOU or MOA), CalPERS has indicated to staff these monies are not subject to pension "spiking" or CalPERS' payments. Such action also does not set a precedent for the City as it is totally discretionary and has not been subject to a negotiation/meet and confer process.

If approved by the City Council, this one-time rebate would equal $63,660 ($62,750 in compensation + 1.45% for the City's match to Medicare), still leaving **$72,369** for placement in the City's General Fund reserve.

## CONCLUSION

Staff concludes that budgeted funds are available in the General Fund Operations Budget to encumber the $192,546 necessary to cover these expenditures in the current fiscal year. The projected revenue earned for fiscal year ending June 30, 2011 is $3,770,204 and projected expenditures are $3,634,175 leaving a surplus of $136,029. By including the unreserved designated fund balance of $235,389 (the prior year encumbrance balance) there are ample available funds to cover the recommended June 30, 2011 encumbrances.

The unreserved/designated General Fund balance will be reduced to $192,546; the unreserved/undesignated General Fund balance is increased to $4,739,756 after moving the net excess revenues over expenses ($72,369) and reduction in encumbrance reserve ($72,929); plus, the "untouchable" contingency remains at $250,000 leaving the City's total General Fund Reserves at $5,182,302.

Respectively submitted,

Gary Napper
City Manager

Merry Pelletier
Finance Manager

Attachment: City Resolution with Exhibit A – June 30, 2011 Encumbrances

**RESOLUTION NO. – 2011**

**A RESOLUTION APPROVING CARRY-OVER/ENCUMBRANCE OF UNEXPENDED OPERATING BUDGET, CAPITAL IMPROVEMENT AND CAPITAL OUTLAY FUNDS FROM FISCAL YEAR 2010-2011, AMENDING THE 2011-2012 CITY BUDGET ACCORDINGLY AND DIRECTING THE DISPOSITION OF EXCESS GENERAL FUND MONIES FROM FY 2010-2011**

**THE CITY COUNCIL**
**City of Clayton, California**

**WHEREAS,** on 21 June 2011, the Clayton City Council adopted the Fiscal Year 2011 – 2012 annual City Budget; and

**WHEREAS,** upon the completion of the fiscal year on 30 June 2011, certain funds unexpended in the 2010 – 2011 annual City Budget remain available and must be carried over into the next fiscal year for the necessary completion of specified and authorized City projects, operations and contingencies; and

**WHEREAS,** City staff has identified the essential operational and capital outlay services that require completion in Fiscal Year 2010 – 2011, the Finance Manager has verified the monies are available in the maximum amounts outlined in "Exhibit A" – June 30, 2011 Encumbrances, attached hereto and incorporated herein, and the City Manager has reviewed the list and recommends the carry-over/encumbrance of said funds; and

**WHEREAS,** the carry-over and encumbrance of prior year unexpended funds requires the appropriation approval by the City Council, and the matters have been reviewed and are recommended by the City Council ad-hoc Budget Committee during its meeting with City staff on October 6, 2011; and

**WHEREAS,** the unaudited General Fund annual excess is projected to be $136,029 and the City Council within its full discretion wishes to direct the disposition of these one-time monies.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of Clayton, California, does hereby approve the encumbrances listed in "Exhibit A" attached hereto and incorporated herein by reference, and does herewith amend the 2011 – 2012 City Budget accordingly with the noted maximum carry-over appropriations from Fiscal Year 2010 – 2011; and

**BE IT FURTHER RESOLVED** the City Council does hereby approve, authorize and direct that $63,660 of the FY 2010-2011 projected annual General Fund excess of $136,029 be distributed to its permanent City employees in the form of a non-negotiated, non-precedential, non-CalPERSable one-time taxable return of $2,500.00 per full-time permanent employee (prorated for part-time permanent employees) in partial recognition of their 3-year employee concessions valued at approximately $687,000, and that the balance of $72,369 be deposited into the General Fund reserve of the City; and

**BE IT FURTHER RESOLVED** that the City Manager of Clayton is hereby authorized to expend said funds in accordance with the laws of the State of California and the ordinances of the City of Clayton, pursuant to the adopted and amended Fiscal Year 2011 – 2012 Budget.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held the 18th day of October 2011 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CA

_____
David T. Shuey, Mayor

ATTEST:

_____
Laci J. Jackson, City Clerk

**EXHIBIT A**

# CITY OF CLAYTON
## JUNE 30, 2011
## ENCUMBRANCES

| Description | Account Number | Amount | Explanation |
|---|---|---|---|
| City Promotional Activity | 101-7362-01 | 12,382 | 4th of July Parade |
| Employee Recognition | 101-7364-02 | 428 | Service recognition supplies |
| Audit | 101-7414-02 | 2,400 | Interim Audit services |
| Computer Services | 101-7415-02 | 3,518 | Contingency |
| Other Professional Services | 101-7419-02 | 1,500 | Thales Consulting services |
| General Supplies | 101-7311-03 | 3,051 | Contingency |
| Machinery & Equipment Maintenance | 101-7342-03 | 2,366 | Contingency |
| Vehicle Maintenance | 101-7343-03 | 1,981 | Contingency |
| Deferred Maintenance Project Account | 101-7347-03 | 116,533 | Future projects |
| Animal Control Services | 101-7429-03 | 325 | Contingency |
| Other Professional Services | 101-7419-04 | 20,847 | General Plan Diagram Update |
| Office Equipment Repair | 101-7345-05 | 500 | Copier, scanner, printer & fax machine |
| Office Equipment Repair | 101-7345-06 | 603 | Contingency |
| Employee Recognition | 101-7364-06 | 231 | Service recognition supplies |
| Volunteer Recognition | 101-7365-06 | 125 | Service recognition supplies |
| Computer Services | 101-7415-06 | 848 | Contingency |
| Emergency Services | 101-7432-06 | 1,000 | Contingency |
| Other Professional Services | 101-7419-06 | 9,211 | Contingency |
| Buildings & Grounds Maintenance | 101-7341-07 | 2,807 | Contingency |
| Community Park Supplies | 101-7329-09 | 9,875 | Park ball field material |
| Animal Control Services | 101-7419-09 | 2,015 | Wild Pig Contingency |
| **TOTAL GENERAL FUND - 101** | | **192,546** | |
| | | | |
| Regular Salaries | 201-7111-00 | 13,619 | Crack Sealing & sidewalk repairs |
| Temporary Salaries | 201-7112-00 | 3,096 | Crack Sealing & sidewalk repairs |
| Benefits - Life & LTD | 201-7218-00 | 135 | Crack Sealing & sidewalk repairs |
| Benefits - PERS Retirement | 201-7220-00 | 2,039 | Crack Sealing & sidewalk repairs |
| Benefits - FICA & Medicare | 201-7233-00 | 283 | Crack Sealing & sidewalk repairs |
| Benefit Insurance | 201-7246-00 | 1,986 | Crack Sealing & sidewalk repairs |
| Street Maintenance Supplies | 201-7327-00 | 10,354 | Illuminated street name sign replacement, sidewalk repairs & crack seal supplies |
| **TOTAL GAS TAX FUND - 201** | | **31,512** | |
| | | | |
| General Supplies | 210-7311-00 | 5,277 | Contingency |
| Water Services | 210-7338-00 | 52,709 | Contingency |
| Other Professional Services | 210-7419-00 | 27,668 | Weed Abatement Services |
| **TOTAL LANDSCAPE FUND - 210** | | **85,654** | |
| | | | |
| Regular Salaries | 211-7111-00 | 14,196 | Deferred Maintenance-Paint & Resealing Wood |
| Temporary Salaries | 211-7112-00 | 8,031 | Deferred Maintenance-Paint & Resealing Wood |
| Benefits - Life & LTD | 211-7218-00 | 188 | Deferred Maintenance-Paint & Resealing Wood |
| Benefits - PERS Retirement | 211-7220-00 | 3,284 | Deferred Maintenance-Paint & Resealing Wood |
| Benefits - FICA & Medicare | 211-7233-00 | 523 | Deferred Maintenance-Paint & Resealing Wood |
| Benefit Insurance | 211-7246-00 | 3,209 | Deferred Maintenance-Paint & Resealing Wood |
| **TOTAL GROVE PARK FUND - 211** | | **29,431** | |
| | | | |
| Other Professional Services | 216-7419-00 | 3,883 | Engineering services for NPDES Report |
| **TOTAL STORMWATER FUND - 216** | | **3,883** | |
| | | | |
| Other Professional Services | 302-7419-00 | 28,455 | Housing Implementation |
| **TOTAL RDA - LMI FUND - 302** | | **28,455** | |
| | | | |
| Utility Undergrounding | 303-7520-00#3000 | 105,930 | Future Project |
| Downtown Economic Development | 303-7520-00#3001 | 1,686,117 | Future Project |
| ADA Compliance Program | 303-7520-00#3003 | 10,190 | Future Project |
| Community Park Lights/Turf Project | 303-7520-00#3007 | 660,630 | Construction in Progress |
| **TOTAL CAPITAL IMPROVEMENT FUND - 303** | | **2,462,867** | |
| | | | |
| Capital Equipment | 502-7485-00 | 27,000 | Public Works Ford F250 |
| **TOTAL CAPITAL EQUIPMENT REPL FUND - 502** | | **27,000** | |

CITY OF CLAYTON
Founded 1857 – Incorporated 1964

Agenda Date: 10-18-11

Agenda Item: 9c

Approved:

Gary A. Napper
City Manager/Executive Director

# STAFF REPORT

**TO:** **HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM:** **Laci J. Jackson, City Clerk**

**DATE:** **October 18, 2011**

**SUBJECT:** **Second Reading and Adoption of an Ordinance adding Chapter 2.11 "City Attorney" to the Clayton Municipal Code.**

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## BACKGROUND

At its August 22nd Special City Council meeting, the City Council hired Malathy Subrarmanian from the firm of Best, Best, & Kreiger to serve as the new City Attorney. At that time staff became aware that the Clayton Municipal Code does not refer to the City Attorney, its general role and responsibility.

Staff worked with the City Attorney to prepare the attached Ordinance which was introduced at the October 4, 2011 City Council meeting. There have been minor edits to the formatting of the Ordinance and additional language stating "as request by the City Council" was added to Section 2.11.020.

## RECOMMENDATION

Second Reading and Adoption of Ordinance No. 436 amending Title 2, adding Chapter 2.11 to the Clayton Municipal Code.

Attachments: Ordinance No. 436 (3 pages)

**ORDINANCE NO. 436**

**AN ORDINANCE AMENDING TITLE 2, ADDING CHAPTER 2.11 CITY ATTORNEY TO THE CLAYTON MUNICIPAL CODE.**

**THE CITY COUNCIL**
**City of Clayton, California**

**THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1: Amendment to Title 2, adding Chapter 2.11 of the Clayton Municipal Code is added to read in its entirety as follows:**

Chapter 2.11

CITY ATTORNEY

Sections:


2.11.010 Office Created- Appointment
2.11.020 Suits and Actions
2.11.030 Enforcement of Judgments
2.11.040 Legal Advisor of City
2.11.050 Meeting Attendance
2.11.060 Preparation of Ordinances, Resolutions and Documents
2.11.070 Assistant City Attorney
2.11.080 Vacating Office


2.11.010 Office Created- Appointment. There is created the office of city attorney in accordance with Section 36505 of the California Government Code. The city attorney shall be appointed by the city council and shall serve at the pleasure of the city council.

2.11.020 Suits and Actions. The city attorney shall prosecute or defend any and all suits or actions at law or equity to which the city may be a party, or in which it may be interested, or which may be brought against, or by, any officer of the city on behalf of the city, or in the capacity of such person as an officer of the city as requested by the City Council.

2.11.030 Enforcement of Judgments. It shall be the duty of the city attorney to seek the full enforcement of all judgments or decrees rendered or entered in favor of the city, and of all similar interlocutory orders as requested by the City Council.

2.11.040 Legal Advisor of City. The city attorney shall be the legal advisor of the city, and shall render advice on all legal questions affecting the city, whenever requested to do so by the city council or as authorized through its city manager. Upon request by the city council, the city attorney shall commit any such opinion in writing.

2.11.050 Meeting Attendance. The city attorney shall attend meetings of the city council, unless excused by the city council or as authorized by the city manager.

2.11.060 Preparation of Ordinances, Resolutions and Documents. Upon request by the city council or as authorized through its city manager, the city attorney shall prepare or review any contract, lease or other documents or instruments to which the city may be a party, and draft ordinances covering assigned subjects within the power of the city.

2.11.070 Assistant City Attorney. The City Council may designate an assistant city attorney to assist in the duties and appear in the place and stead of the city attorney during necessary absence from the city.

2.11.080 Vacating Office. On vacation of the appointed office, the city attorney shall surrender to his or her successor all books, papers, files and documents pertaining to present and past City affairs as required by state law.

**Section 2 Action to Challenge This Ordinance**

Any action or proceeding to attack, review, set aside, void or annul this ordinance must be commenced and the service made on the City no later than ninety (90) days after its effective date.

**Section 3 Conflicting Ordinances Repealed**

Any ordinance or part thereof, or regulations in conflict with the provisions of this ordinance, are hereby repealed. The provisions of this ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this ordinance.

**Section 4 Severability**

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase thereof be declared unconstitutional, invalid or ineffective.

**Section 5 Effective Date and Publication**

This ordinance shall become effective thirty (30) days after its adoption by the city council. Within fifteen (15) days after the passage of the ordinance, the City Clerk shall cause a copy of the ordinance, including the names of the council members voting for and against it, to be posted in three (3) public places heretofore designated by resolution of the City Council for the posting of ordinances and public notices.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Clayton held on the 4th day of October 2011.

**PASSED, ADOPTED AND ORDERED** posted at a regular meeting of the City Council of the City of Clayton on the ___day of October 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The City Council of Clayton, California

_____
David T. Shuey, Mayor

ATTEST:

_____
Laci Jackson, City Clerk

APPROVED AS TO FORM:

_____
Malathy Subramanian, City Attorney

APPROVED AS TO ADMINISTRATION:

_____
Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Clayton held on the 4th day of October and was duly adopted and ordered posted at a regular meeting of the City Council held on _____.

_____
Laci Jackson, City Clerk

Agenda Date: 10-18-11

Agenda Item: 9d

CITY OF CLAYTON
Founded 1857 . . Incorporated 1964

Approved:

Gary A. Napper
City Manager/Executive Director

# AGENDA REPORT

**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** CITY MANAGER

**DATE:** 18 OCTOBER 2011

**SUBJECT:** CONSIDERATION OF AN ORDINANCE TO POTENTIALLY PARTICIPATE IN THE STATE'S ALTERNATIVE "VOLUNTARY" PAYMENT PROGRAM FOR REDEVELOPMENT AGENCIES

---

**RECOMMENDATION**

During June 28th – 30th 2011, the Governor approved the State Budget for FY 2011-12 and signed a number of implementing trailer bills, including ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Voluntary Program Act"). Effective at the time of legislative enactment, the clear intent and devastating impact of these bills was to suspend a redevelopment agency's ability to issue debt or enter into new obligations until October 1, 2011, at which time an existing redevelopment agency would be dissolved unless the governing city enacts an ordinance agreeing to participate in the absurdly-created "Voluntary Program Act" (aka "Pay to Play") and makes certain required contributions funneled to local schools and special districts. If a city enacts such an ordinance, then its redevelopment agency will continue to be subject to existing rules and regulations in the California Community Redevelopment Law.

The City of Clayton has an active Redevelopment Agency affected by this draconian state legislation and is now subject to those laws calling for its dissolution unless agreeing to "Pay to Play." However, before our City could fully analyze whether the Clayton Redevelopment Agency could afford to make the required state payments and still service its previously-incurred maturing debt as well as operate, a necessary lawsuit was filed challenging the constitutionality of the imposed legislation. Fortunately, the CA Supreme Court accepted the case. As the Supreme Court is not expected to make its decision until the middle of January 2012, cities with redevelopment agencies have been advised to proceed with taking local action anyway to agree with the harsh financial payments and regulations according to the legislation's imposed time line in order to retain flexibility and keep options open as to the ultimate desire and fiscal capability of our Agency to remain in redevelopment operation and existence.

Therefore, it is recommended that following the staff presentation and public comments, the City Council enact a motion to have the City Clerk read Ordinance No. 437 by title and number only and to waive further reading; and then following the City Clerk's reading of the Ordinance, enact a separate motion to approve Ordinance No. 437 for Introduction.

## BACKGROUND

In late June 2011, the Governor approved the State Budget for FY 2011-12 and signed a number of implementing trailer bills. Two of these trailer bills significantly modify [gutted] the California Community Redevelopment Law ("CRL") and fundamentally alter the future of California redevelopment operations and functions: ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Voluntary Program Act") (together, the "Redevelopment Restructuring Acts"). Firstly, the Dissolution Act immediately suspended all new redevelopment activities or the incurrence of indebtedness, and fundamentally dissolved redevelopment agencies effective October 1, 2011. Secondly, the "Voluntary Program Act" then allows redevelopment agencies to avoid extermination under the Dissolution Act by opting into an "alternative voluntary redevelopment program" (the "Voluntary Program") that requires stiff annual contributions distributed to local schools and special districts.

The California Redevelopment Association ("CRA") and the League of California Cities ("League") quickly filed a petition with the California Supreme Court challenging the constitutionality of both the Dissolution Act and the Voluntary Program Act and requested a "stay" delaying enforcement of certain provisions of these two acts while the lawsuit is pending. On August 11, 2011, the Supreme Court granted a partial "stay" of the Dissolution Act and a full "stay" of the Voluntary Program Act. Pursuant to the terms of the "stay", redevelopment agencies are suspended while the lawsuit is pending. All provisions of the Voluntary Program Act were stayed by the Court. The case before the Supreme Court has been fully briefed and oral arguments are expected to be scheduled soon. The Supreme Court in its order on the "stay" indicated its intent to issue a decision before January 15, 2012, when the first voluntary payment is due under the base legislation.

## DISCUSSION/ANALYSIS

### A. Dissolution Act

The Dissolution Act immediately suspends and prohibits most redevelopment activities. Accordingly, redevelopment agencies are no longer authorized to do the following:

- Incur new indebtedness or other obligations or restructure existing indebtedness and other obligations
- Make loans or grants
- Enter into contracts
- Amend existing agreements, obligations or commitments
- Renew or extend leases or other agreements
- Transfer funds out of the Low and Moderate Income Housing Fund

- Dispose of or transfer assets
- Acquire real property
- Cause development or rehabilitation of housing units

The above is only a partial listing. This suspension and prohibition of most redevelopment activities is intended, to the maximum extent possible, to preserve the revenues and assets of redevelopment agencies such that assets and revenues that are not needed to pay for enforceable obligations (generally, bonds and existing contracts with outside third parties) may be diverted to state and other local governments to fund their core governmental services, including police and fire protection district services and public schools. With limited exceptions, the Dissolution Act expressly states that enforceable obligations do not include agreements, contracts or arrangements between a redevelopment agency and the city or county that created the redevelopment agency.

Under the challenged terms of the Voluntary Program Act, if a redevelopment agency had not opted into the Voluntary Program by November 1, 2011 by ordinance, it is considered dissolved and a successor agency will be created. The Supreme Court order stayed all of the dates in the Voluntary Program Act time line but it is not known how the Supreme Court might adjust those dates if the questioned Act is ultimately found to be constitutional. The successor agency will be the sponsoring community of the redevelopment agency (in this case, the City of Clayton), unless it elects not to serve in that capacity. In that case, the successor agency will be the first taxing entity having jurisdiction in the community that submits to the County Auditor-Controller a duly adopted resolution electing to become the successor agency. The actions of the successor agency will be monitored, and in some cases approved, by an oversight board. The oversight board will consist of seven members appointed by (and representing) the following:

- County Board of Supervisors (two members)
- Mayor (one member)
- County Superintendent of Education (one member)
- Chancellor of California Community Colleges (one member)
- Largest special district taxing entity (one member)
- A former redevelopment agency employee appointed by the Mayor/Board of Supervisors (one member)

The Dissolution Act also includes a provision lengthening the period to challenge redevelopment agency actions taken after January 1, 2011, from ninety days to two years. If a redevelopment agency is dissolved pursuant to the Dissolution Act, the sponsoring community may not establish a new redevelopment agency until all debts of the dissolved redevelopment agency have been retired by the applicable successor agency, and the sponsoring community has enacted an ordinance agreeing to make the payments required under the Voluntary Program.

B. Alternative Voluntary Redevelopment Program Act.
To avoid being dissolved and to lift the suspension of new redevelopment activities and indebtedness under the Dissolution Act, a redevelopment agency and its sponsoring community [city] may elect to continue operating under the current CRL if they make specified payments to their County Auditor-Controller beginning in FY 2011-12 and in all succeeding years the redevelopment agency's redevelopment program continues to operate. Once a sponsoring community [city] enacts the appropriate opt-in ordinance, its redevelopment agency will no longer be subject to the provisions of the Dissolution Act and may immediately recommence normal redevelopment activities under the CRL, such as entering into contracts, disposing of assets, and incurring new indebtedness and obligations [note: the terms of the Supreme Court "stay" result in agencies remaining suspended until the Court makes a decision on the case].

The forced remittances are technically required to be made by the redevelopment agency's sponsoring community [city] on behalf of the redevelopment agency. Remittances may be made from any available funds (e.g. General Fund) of the sponsoring community, logically including funds available from its redevelopment agency as follows:

- A redevelopment agency and its sponsoring community [city] may enter into an agreement whereby the redevelopment agency transfers a portion of its tax increment revenues to the sponsoring community [city] in an amount not-to-exceed the required annual remittance.

- For FY 2011-12 only, a redevelopment agency will be exempt from making its full deposit into the Low and Moderate Income (LMI) Housing Fund (and as of now not required to repay unmade deposits), but only to the extent that it makes a finding there are insufficient other monies to meet its debt and other obligations, current priority program needs, or its obligations to reimburse the sponsoring community [city] for that year's remittance.

- The remittances payable by a sponsoring community [city] and its redevelopment agency participating in the Voluntary Program are due in equal installments each fiscal year of operation by January 15 and May 15.

  Remittances received by the County Auditor-Controller from a participating redevelopment agency/sponsoring community will be distributed, as follows:

  1. Through a special district allocation fund, a minor portion of FY 2011-12 remittances (and thereafter 15% of annual remittances) will be distributed to special districts that provide fire protection services to the participating redevelopment agency's project areas, and to transit districts that serve the redevelopment agency's project areas.

  2. Through the Educational Revenue Augmentation Fund (ERAF), the balance of all remittances will be distributed to public school entities that serve the participating redevelopment agency's project areas.

The Voluntary Program was designed by the state to generate $1.7 billion statewide for FY 2011-12 and $400 million statewide thereafter in each subsequent year if every sponsoring community/redevelopment agency agrees to participate. The formula for calculating each sponsoring community/redevelopment agency's share is similar, but not identical, to the formula used to calculate each redevelopment agency's share of the "stolen" statewide $1.7 billion and $350 million Special Educational Revenue Augmentation Fund (SERAF) obligations in FYs 2009-10 and 2010-11, respectively. The State Department of Finance calculated the amount required to be paid by each sponsoring community/redevelopment agency. The amount calculated by the Department of Finance for the City of Clayton [and its Redevelopment Agency] is $1,635,348.

Clayton's remittance amount in subsequent years is estimated to be roughly $385,000+ (subject to increase under a complicated formula to the extent the Agency incurs new non-Housing Fund debt or other obligations on or after October 1, 2011).

As an initial measure following the wake of this thundering legislation, City staff filed an appeal with the California Department of Finance documenting Clayton's proportionate remittance share is based on a faulty formula that does not account for heavily-increasing annual debt service payments of our Agency in its current yet latter years of operation. For example, in our Agency's adopted budget for FY 2011-12, the total debt service payment is $3,523,663. Combining that debt obligation with the legislation's extortion payment of $1,635,348 this first year, "Pay to Play" equals $5,159,011. The Clayton Redevelopment Agency in FY 2011-12 is estimated to receive total revenues of only $4,215,339! Clearly, facing the annual gap of $943,672 leaves a huge hole with no redevelopment funds to operate; what, then, is our Agency's purpose to enroll in the "Pay to Play" Program? It is unimaginable the City Council would consider paying the almost $1 million dollar shortfall so the Agency could exist on paper with no money to operate programs or services, much less pay for staff services and overhead expenses.

If an opted-in sponsoring community/redevelopment agency fails to make an annual remittance, its redevelopment agency will become subject to the Dissolution Act and will be dissolved. While the sponsoring community [city] is technically the party paying the remittances, the primary sanction to the sponsoring community [city] for failure to make a remittance is dissolution of its redevelopment agency. In addition, any agreement between the sponsoring community and its redevelopment agency to receive redevelopment agency funds will be assigned to the State. Therefore, the sponsoring community's General Fund and other funds are not at risk if it fails to make the remittance, but the sponsoring community [city] might forego future repayments owed by its redevelopment agency that would be diverted to the State to make-up for the missed remittance payments.

## CONCLUSION

With the unknowns of our remittance amount appeal and the Supreme Court's ruling with associated details, staff recommends the City Council enact the proposed Ordinance at this time in order to avoid a circumstance whereby the Supreme Court finds the Redevelopment

Restructuring Legislation is constitutional but does not give additional time for cities to adopt the required ordinance following its ruling. If such a situation were to occur, the result for Clayton would be automatic dissolution of its redevelopment agency before the City had the opportunity to fully consider its options. Adoption of the ordinance at this time preserves the City's options related to this onerous state legislation. If the City Council subsequently determines that opting-in is not the best course of action, the City then repeals this Ordinance. As a further safety net, failure to make the required extortion payments automatically results in the dissolution of the Clayton Redevelopment Agency.

## FISCAL IMPACT

Staff has reviewed the accounts of the Clayton Redevelopment Agency and has preliminarily concluded there is insufficient annual tax increment in FY 2011-12 to manage the obligated debt service and make the initial year payment to the State (i.e. gap of $943,672). The Agency/City could "borrow" from the Agency's existing LMI Housing Fund (No. 302) reserve balance of $5,765,303 to make up this first-priority difference but those borrowed funds must be repaid in the Agency's remaining years, a questionable commitment. The futility in this course of action is the City/Agency meets debt service and borrows monies to make the State payment, but then what? Borrow more monies to operate and staff the Agency from the LMI Fund, which monies are needed to aid the development of affordable housing projects in Clayton? The image becomes clear: the cycle becomes an endless act of self-cannibalism that results in nothing for the Project Area.

In reviewing projections beyond the current fiscal year it does appear, based on very conservative tax increment growth assumptions, sufficient funds may be available to make the lesser opt-in payment of $384,000± in subsequent years, in addition to providing resources to make the Agency's pass-through payments to other taxing entities, to set aside 20% of tax increment for Low and Moderate Income Housing needs, and to pay debt service on the existing bond. However, the first year ransom note of $1.65 million chokes the Agency's gasp for life in FY 2011-12.

Should the City Council choose not to opt in now as a place holder, the Agency will not be able to continue any of its existing projects (essentially, all activities are suspended until the Court makes a decision). Depending upon the result of that final decision, the Agency would be dissolved if the legislation is found to be constitutional. Upon dissolution of the Agency, all agreements between the Agency and its sponsoring community [city] are considered null and void which will jeopardize several of the City/Agency existing reimbursement agreements that provide funding to the General Fund (e.g. overlooked 2% election payments). Additionally, the Agency would no longer receive its 20% allocation of tax increment for Low and Moderate Income Housing purposes. If the Agency is dissolved, approximately $400,000 in additional property tax revenue would become available to the City's General Fund each year thereafter.

Weighing all the uncertainties at this point, staff knows through past projects and services the Clayton Redevelopment Agency did and can provide significant benefits to the community that the City would not otherwise be able to fund. Therefore, it is recommended the City Council adopt the Ordinance to opt into the Voluntary Program to hedge our bets at this time.

## ENVIRONMENTAL REVIEW

The review and action taken by the City Council is exempt under Section 15378(b)(4) of the California Environmental Quality Act (CEQA) in that the activity is not defined as a "project," but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The appropriate environmental review will be completed in accordance with CEQA prior to the commencement of any future Agency-supported project or program. A Notice of Exemption will be filed with the Contra Costa County Clerk in accordance with the CEQA guidelines.

Attachments: 1. Ordinance No. 437 [5 pp.]

**ORDINANCE NO. 437**

**AN ORDINANCE ENACTED PURSUANT TO HEALTH AND SAFETY CODE SECTION 34193 TO ELECT AND IMPLEMENT PARTICIPATION BY THE CITY OF CLAYTON AND THE CLAYTON REDEVELOPMENT AGENCY IN THE ALTERNATIVE VOLUNTARY REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF THE CALIFORNIA COMMUNITY REDEVELOPMENT LAW**

**THE CITY COUNCIL**
**City of Clayton, California**

**THE CITY COUNCIL OF THE CITY OF CLAYTON, CALIFORNIA DOES HEREBY FIND AS FOLLOWS:**

**WHEREAS,** pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.; the "Redevelopment Law"), the City Council (the "City Council") of the City of Clayton (the "City") adopted Ordinance No. 213 on December 1, 1982 declaring the need for the Clayton Redevelopment Agency (the "Agency") to function in the City; and

**WHEREAS,** the City Council did adopt the Revitalization Plan for the Clayton Redevelopment Project Area (the "Project Area") by Ordinance No. 1164 on June 28, 1982 (the "Redevelopment Plan"); and

**WHEREAS,** the state of California in 2011 enacted ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Voluntary Program Act"), which together with the Dissolution Act (the "Redevelopment Restructuring Acts") significantly modified the Redevelopment Law generally as follows:

1. The Dissolution Act immediately suspends all new redevelopment activities and incurrence of indebtedness, and dissolves redevelopment agencies effective October 1, 2011; and

2. The Voluntary Program Act, through the addition of Part 1.9 to the Redevelopment Law (the "Alternative Voluntary Redevelopment Program"), allows a redevelopment agency to avoid dissolution under the Dissolution Act by opting into an alternative voluntary redevelopment program requiring specified annual contributions to local school and special districts; and

**WHEREAS,** specifically, Section 34193(a) of the Redevelopment Law (as added to the Redevelopment Law by the Voluntary Program Act) authorizes the City Council to enact an Ordinance to comply with Part 1.9 of the Redevelopment Law, thereby exempting the Agency from the provisions of the Dissolution Act, and enabling the Agency to continue to exist and function under the Redevelopment Law, so long as the City and the Agency comply with the Alternative Voluntary Redevelopment Program set forth in Part 1.9 of the Redevelopment Law; and

**WHEREAS,** through the adoption and enactment of this Ordinance, it is the intent of the City Council to enact the ordinance described in Section 34193(a) of the Redevelopment Law and to participate for itself and on behalf of the Agency in the Alternative Voluntary Redevelopment Program set forth in Part 1.9 of the Redevelopment Law; and

**WHEREAS,** pursuant to Section 34193.2(b) of the Redevelopment Law, the City Council understands that participation in the Alternative Voluntary Redevelopment Program requires remittance of certain payments as set forth in the Voluntary Program Act (as further described below), and also constitutes an agreement on the part of the City, in the event the City fails to make such remittance payments, to assign its rights to any payments owed by the Agency, including, but not limited to, payments from loan agreements, to the State of California; and

**WHEREAS,** the City Council does not intend, by enactment of this Ordinance, to waive any rights of appeal regarding the amount of any remittance payments established by the California Department of Finance, as provided in the Voluntary Program Act; and

**WHEREAS,** on August 11, 2011, the California Supreme Court agreed to review the California Redevelopment Association and League of California Cities' petition challenging the constitutionality of the Redevelopment Restructuring Acts and issued an order granting a partial stay on specified portions of the Redevelopment Restructuring Acts, as modified on August 17, 2011 (the "Stay"), including a stay of the provisions of the Voluntary Program Act; and

**WHEREAS,** accordingly, the City Council intends to adopt this Ordinance understanding that it will be effective only upon the lifting of the Stay and the Court's determination that the Voluntary Program Act is constitutional.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLAYTON, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:**

Section 1. To the extent required by law to maintain the existence and powers of the Agency under the Redevelopment Law (including the Redevelopment Restructuring Acts), the City Council hereby enacts the ordinance authorized by Section 34193(a) of the Redevelopment Law, whereby the City, on behalf of itself and the Agency, elects to and will comply with the provisions of Part 1.9 of the Redevelopment Law, including the making of the community remittance payments called for in Section 34194 of the Redevelopment Law (the "Remittance Payments"), and whereby the Agency will no longer be subject to dissolution or the other prohibitions and limitations of Parts 1.8 and 1.85 of the Redevelopment Law as added by the Dissolution Act.

Section 2. It is the understanding and intent of the City Council that, the City will enter into an agreement with the Agency as authorized pursuant to Section 34194.2 of the Redevelopment Law, whereby the Agency will transfer annual portions of its tax increment to the City in amounts not to exceed the annual Remittance Payments (the "Agency Transfer Payments") to enable the City, directly or indirectly, to make the annual Remittance Payments. Unless otherwise specified by resolution of the City Council, it is the City Council's intent that the City's

annual Remittance Payments shall be made exclusively from the Agency Transfer Payments or from other funds that become available as a result of the City's receipt of the Agency Transfer Payments. The City Council does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or other assets to make the Remittance Payments, it being understood by the City Council that any Remittance Payments will be funded solely from the Agency Transfer Payments and/or other assets transferred to the City in accordance with the Voluntary Program Act.

Section 3. The City Manager or the City Manager's designee is hereby authorized, on behalf of the City, to take any actions necessary to implement this Ordinance and comply with the Voluntary Program Act, including, without limitation, providing required notices to the County Auditor-Controller, the State Controller, and the Department of Finance, entering into any agreements with the Agency to obtain the Agency Transfer Payments, and making the Remittance Payments.

Section 4. The City Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project, but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The appropriate environmental review shall be completed in accordance with CEQA prior to the commencement of any future Agency-supported project or program. The City Council therefore directs that a Notice of Exemption be filed with the County Clerk of the County of Contra Costa in accordance with the CEQA guidelines.

Section 5. The City does not intend to participate in the Alternative Voluntary Redevelopment Program, if all or any portion of California Health and Safety Code Sections 34161, *et seq.*, or California Health and Safety Code Sections 34192, *et seq.*, are determined by a court of competent jurisdiction to be unconstitutional, illegal, invalid or otherwise unenforceable or inapplicable, for any reason or in any manner that allows the Agency to continue its operations and redevelopment activities in a manner acceptable to the City Council, without the City's participation in the Alternative Voluntary Redevelopment Program, and all appeals of such court determination are exhausted or unsuccessful, or the time for filing an appeal of such court determination has lapsed.

Section 6. By enacting this Ordinance, the City does not waive any right or make any acknowledgment or admission regarding and fully reserves herein all rights to challenge the constitutionality, legality, validity, enforceability or applicability of California Health and Safety Code Sections 34161, *et seq.*, California Health and Safety Code Sections 34192, *et seq.*, and related statutes, repeal this Ordinance or recover any or all amounts paid pursuant to California Health and Safety Code Sections 34192, *et seq.*

Section 7. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, clauses or phrases be declared unconstitutional or invalid.

Section 8. This Ordinance is deemed enacted as of _____, 2011 for purposes of Section 34193(a) of the Redevelopment Law, and shall take effect and will be enforced thirty (30) days after its adoption, conditioned upon the lifting of the Stay and the Court's determination that the Voluntary Program Act is constitutional.

Section 9. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause it to be posted in the three (3) public places heretofore designated by resolution of the City Council for the posting of ordinances and public notices.

The foregoing Ordinance was introduced at a regular public meeting of the City Council of the City of Clayton, California held on 18th day of October 2011.

Passed, approved, adopted and ordered posted at a public regular meeting of the City Council of the City of Clayton, California on the ____ day of November 2011 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CA

_____
David T. Shuey, Mayor

ATTEST:

_____
Laci J. Jackson, City Clerk

APPROVED AS TO FORM:

Malathy Subramanian, City Attorney

APPROVED BY ADMINISTRATION:

Gary A. Napper, City Manager

**********

I hereby certify that the foregoing Ordinance was duly introduced at a regular public meeting of the City Council of the City of Clayton, Clayton held on the ___ day of October, 2011 and was duly adopted, approved, passed and ordered posted at a regular public meeting of the City Council held on the _____ day of _____ 2011.

Laci J. Jackson, City Clerk,

Agenda Date: 10-18-11

Agenda Item: 9e

Approved:

Gary A. Napper
City Manager/Executive Director

# AGENDA REPORT

**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** CITY MANAGER

**DATE:** 18 OCTOBER 2011

**SUBJECT:** CITY COUNCIL ANNUAL MEETING WITH CLAYTON BUSINESS COMMUNITY

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## RECOMMENDATION

It is recommended the City Council provide the following directions to staff concerning its annual meeting with the Clayton business community to be held on a date in November 2011 to be determined by the City Council:

1. Determine the scope of Agenda items for roundtable discussion with Town Center property and business owners; and
2. Determine the date and time for the meeting to be held in Hoyer Hall at the Clayton Community Library, and then by motion call a City Council Special Meeting for that determined date, time and location.

## BACKGROUND

Following the second year "Concerts in The Grove" in 2009, the City Council held a study session with invited property owners and business persons of the Clayton Town Center. Each segment of our business community was individually notified of the outreach meeting and the special meeting was held on 24 November 2009 (Tuesday) at 9:00 a.m. The City pre-determined such a meeting would garner greater attendance by busy business owners if it were held on a week day morning. Forty-nine (49) invitations were mailed out in 2009 with 8 business persons ultimately in attendance representing 6 businesses.

At the conclusion of the 2009 inaugural meeting, all in attendance expressed support for further annual meetings of this nature. The City Council instructed staff to plan for an annual study session with its business community on matters of mutual interest and concern. Consequently, in 2010 the second annual meeting was held by the City Council on Tuesday, 23 November 2010 with sixteen (16) Clayton business owners in attendance.

Last year's notification was broadened to include business owners in the "Clayton Station" shopping center with one hundred and one (101) invitations mailed out by the City.

## POTENTIAL DISCUSSION ITEMS FOR CONSIDERATION

For the 2011 annual meeting, staff offers the following topics for consideration and seeks additional subjects as desired by the City Council:

A. Critique of the ten 2011 "Concerts in The Grove" series.
B. Council Member Medrano's request to allow a private sponsor to hold five (5) additional Wednesday evening concerts in The Grove Park in 2012 to include one food sales booth and one alcohol sales booth.
C. General roundtable discussion of the City's General Plan goal (Housing Element) to encourage second-story housing in the Town Center area.
D. Ideas for promotion of a healthier local business economy (e.g. a Business Improvement District); and
E. Benefits of holding semi-annual meetings of this nature.

It is necessary for the City Council to select a convenient date and time to hold the meeting, allowing for sufficient notice by the City to Town Center property and business owners. A calendar for the month of November 2011 is attached to this staff report. Each of the first two (2) study sessions were held on Tuesday mornings starting at 9:00 a.m.

## FISCAL IMPACT

Small costs are incurred by the City to prepare and mail meeting notices to the intended participants and set up/take down the chairs and tables in the Community Library Meeting Room (Hoyer Hall).

Attachments: 1. November 2011 calendar [1 pg.]

◄ October | ~ November 2011 ~ | December ►

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|---|---|---|---|---|---|---|
| | | 1<br>City Council Meeting | 2 | 3 | 4 | 5 |
| 6 | 7 | 8<br>Planning Commission Meeting | 9 | 10 | 11<br>Veteran's Day Holiday<br>City Hall Closed | 12 |
| 13 | 14<br>City Hall Closed *<br>**FURLOUGH DAY** | 15<br>City Council Meeting | 16 | 17 | 18 | 19 |
| 20 | 21 | 22<br>Planning Commission Meeting | 23<br>City Hall Closed *<br>**FURLOUGH DAY** | 24<br>Thanksgiving Holiday<br>City Hall Closed | 25<br>Thanksgiving Holiday<br>City Hall Closed | 26 |
| 27 | 28 | 29 | 30 | **Notes:** | | |