MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL

TUESDAY, October 18, 2011

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 6:17 p.m. by Vice Mayor Geller in Hoyer Hall of the Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Shuey (arrived at 6:20 p.m.) Vice Mayor Geller, Councilmembers Medrano, Pierce and Stratford. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Community Development Director David Woltering, City Clerk Laci Jackson, and Defense Counsel John Broghammer.

2. **CLOSED SESSION** – Vice Mayor Geller announced the following purpose for Closed Session and then adjourned into Closed Session at 6:17 p.m.

(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

Report out of Closed Session: Mayor Shuey stated the Council received information and gave direction to legal counsel.

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

4. **CONSENT CALENDAR**- Councilmember Medrano pulled Item 4(d). for discussion. He stated he wanted to make sure the computers were high end and would have maximum capacity. The Finance Manager stated the City's IT consultant believed the computers would be more than adequate for staff's needs. The City Manager suggested the Council authorize the purchase tonight but staff will provide further details and bring the information back to the Council if there are better options available.

It was moved by Councilmember Medrano, seconded by Councilmember Stratford, to approve the Consent Calendar with that understanding on Item 4(d) (Passed; 5-0 vote).

(a) Approved the minutes of the regular meeting of October 4, 2011.

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

(c) Authorized 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.

(d) Approved 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.

(e) Approved the declaration of 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.

5. RECOGNITIONS AND PRESENTATIONS

(a) Mayor Shuey read the Proclamation declaring November 2011 as "American Indian Heritage Month" and indicated it would be mailed to the requestor.

(b) Recognition of Ted Meriam for service on the Clayton Planning Commission July 2009 - June 2011. Mr. Meriam was unable to attend the meeting to receive his recognition.

(c) Mayor Shuey presented a Certificate of Recognition to Caleb Ricks for his Eagle Scout Project installing bicycle racks at Lydia Lane Park and at the Black Diamond Plaza picnic area. Mr. Ricks thanked everyone at the City and his parents for their help with his project.

6. REPORTS

(a) Planning Commission – No meeting held.

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

(c) The City Manager had no report.

(d) City Council

Councilmember Stratford apologized for being absent at the last meeting. He stated this month the "Do The Right Thing" group is focusing on "Respect" and November and December traits focus on "Kindness." He also attended a Conservancy Board meeting.

Councilmember Pierce attended the ABAG Disaster Resilience Council meeting, ABAG Regional Planning Committee, and two meetings for the Transportation Authority. She was also part of panel for Governing Magazine, attended the Mayors' Conference, and the ABAG General Assembly.

Vice Mayor Geller attended the Mayors' Conference, the Mt. Diablo Unified 5k run/walk, rehearsals for the Women's Club Murder Mystery Dinner, and attended the Budget ad-hoc committee meetings.

Mayor Shuey worked with the Clayton Valley Charter High School petition and met with District staff. He thanked the community for its support of this initiative and asked citizens to attend the School Board meeting on October 22nd at 7p.m.

(e) Other – None.

7. PUBLIC COMMENTS – None.

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).

The Community Development Director presented the staff report on this Ordinance introduced at the City Council meeting of October 4th. The Ordinance rezones lots 1, 2, and 3 of the Diablo Estates at Clayton subdivision so that horses cannot be kept on the property.

No public comments were received.

It was moved by Councilmember Medrano, seconded by Councilmember Pierce, to have the City Clerk read Ordinance No. 435 by title and number only and waive further reading (Passed; 5-0 vote).

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

It was moved Councilmember Medrano, seconded by Councilmember Pierce, to adopt Ordinance No. 435 (Passed; 5-0 vote).

(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.

The Finance Manager presented the staff report and stated there are several line items open but staff anticipates future payment will be needed in the current fiscal year to complete the projects. She stated the encumbrances need to be approved and would amend the FY 2011-2012 budget. She stated the City's General Fund Reserve is $5,182,302 with the excess funds deposited as recommended.

Vice Mayor Geller noted the interest earnings came in higher this year. The Finance Manager stated many of the interest earnings came in higher this year because of bank closures and calls on maturities.

The City Manager stated the City examines operations down to the nearest dollar. He stated the recommendation tonight returning money to the General Fund Reserve (Reserve) is rare in this economy. The City Manager reviewed the four year history of the General Fund. He stated in 2008-2009, there was a balanced budget, and $159,629 money was moved into the Reserve. In 2009-2010 the City started to feel the downslide of the economy and in anticipation of that City employees took reductions in pay equaling $229,000; a 4.3% reduction for the Miscellaneous employees and a 4.1% reduction for the Police Officers. The concessions included no premium pay for holidays (Police), no cost of living adjustments, no merit increases, and increased employee contributions to medical and dental increases. At that time the City was also looking to rely on the Trust and Agency Fund to fill a gap in the budget. At the end of that fiscal year, revenues actually came in $159,356 over expenses so the money was never transferred from the Trust and Agency Account and $3,777 was put back into the Reserve. In 2010-2011 employees continued the status quo, but last year had 11 unpaid furlough days where City Hall was closed. Staff thought there would be a need for $18,410 from the Trust and Agency Account to remain balanced but revenues ended up

$136,029 over expenditures, again without having to transfer any monies from the Trust and Agency account. From 2008 to present, no monies have been used from Trust and Agency Fund or General Fund Reserve to balance the operations budget of the City.

The question before the Council tonight is whether to put that money in the Reserve, or as the recommendation states in the staff report to have a portion of those moneys be partially returned to City employees. The recommendation is for $63,660 to be returned to all permanent employees ($2,500 per full-time employee; pro-rated for part-time permanent employees). If the Council decided to give employees this one-time money outside of a Resolution or MOU, then it is not considered salary for pensions. The money is taxable to the employees. This is a good way to note the value and team effort of our employees; they have been part of the solution to create a balanced budget. He stated the remainder of the money ($72,069) would be returned to the General Fund Reserve.

Councilmember Stratford stated the staff recommendation is that each employee receives a flat $2,500 because employees that were paid less were probably hurt more by the concessions. He stated instead of the whole amount going to the General Fund reserve, he suggested repaying the Trust and Agency fund. The City Manager stated the City never made the transfer from the Trust and Agency last year so it does not need to be returned. He clarified that since 2008, no monies have been used from the Trust and Agency or the General Fund Reserve.

No public comments were offered.

Vice Mayor Geller commended staff for coming up with a method of giving money back to employees that is fair. This Council was one of the first to ask for concessions from employees, by creating furlough days, no COLA, and freezing merit increases. He stated employees helped and this is a method of saying thank you and for doing a good job and saving money wherever you can.

Councilmember Pierce thanked staff for their work. She stated Clayton is one of the few cities that winds up with a positive General Fund balance. She thanked staff for the contributions they have made and the willingness to take cuts and hold the line. She stated this meant no lay-offs of staff. She stated she appreciates the understanding of staff to be partners and weather the storm from the State and the economy. She stated this can't be a permanent give back but is a modest way the Council can say thank you for the harm done to employees. She stated this action was appropriate.

Councilmember Medrano stated we are very fortunate in the City of Clayton and a lot of that is due to staff. He stated he appreciates staff tremendously. He stated he fully agrees with giving back money to employees and stated it is a good time to do it. He stated there will be some citizens that believe this money should all go to the reserve, but the General Fund would not be increasing without employee cuts. He stated he liked that the managers were ok with making the give-back equal across the board for all employees. He stated we do work as a team around here and everyone is in it together. He also recommended that $10,000 be taken from the money to be returned to the General Fund Reserve and allocated for training and education for staff. He stated it is important for morale and for the good of the City that our employees receive training.

Mayor Shuey stated our employees are the best. He stated it is amazing what staff can do going down to the dollar. Unlike 99.9% of cities out there, Clayton is in an enviable position.

The City Manager suggested amending the second resolve on the Resolution, stating $10,000 be appropriated for employee training, at the discretion of the City Manager, and therefore have $62,369 be returned to the Reserve.

It was moved by Councilmember Medrano, seconded by Councilmember Stratford to adopt Resolution 42-2011, as amended for $10,000 in Employee Training, approving the carry-over of specific project and operational encumbrances from FY 2010-11 Budget into and amending the FY 2011-12 City Budget accordingly, and determining the disposition of the FY 2010-11 General Fund excess of $136,029 (Passed; 5-0 vote)

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

The City Clerk presented the staff report noting prepared this Ordinance to add a section to the Municipal Code regarding City Attorney.

No public comments were received.

It was moved by Councilmember Medrano, seconded by Councilmember Stratford, to have the City Clerk read Ordinance No. 436 by title and number only and waive further reading (Passed; 5-0 vote).

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

It was moved Councilmember Medrano, seconded by Councilmember Pierce, to adopt Ordinance No. 436 (Passed; 5-0 vote).

(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.

The City Manager presented the staff report and stated this issue arises due to legislation that Governor Brown declared in January 2011 he would bring forward and the Legislature approved. He stated this involves the Clayton Redevelopment Agency but the decisions are required of the City Council as the parent agency to the Clayton Redevelopment Agency. He stated essentially Abx1 26 was an extermination act and killed redevelopment agencies in California. He stated ABx1 27 is the voluntary redevelopment program act also known as "Pay to Play." He stated the Clayton Redevelopment Agency has contractual obligations for debt service. He stated the California Supreme Court is reviewing this case, which will be heard in December, with an expected ruling in mid-January. He stated the court did place a stay on the State's ability to enact these laws until after its ruling.

He stated when the staff report was put together staff did not believe the Clayton Redevelopment Agency had the ability to pay to play because of the "ransom note" amount and the debt service requirements. At that time staff was thinking the Agency would not be able to come up with $943,672, because there would not be enough money after debt service to make the payment for its "ransom note" of $1,635,348. He stated the Agency appealed the amount of the ransom note indicating that there was not enough money to pay the debt service because the debt payments were back-loaded in the final years. The Finance Manager filed an appeal of the State's calculation

On Monday, staff received notice that our "ransom note" had been reduced to $957,794; therefore the net effect makes it only $360,388 to stay alive and pay to play. He stated the Agency could work with that dollar amount. He stated this gives more importance to introducing the ordinance to stay alive. He stated it is a no-lose proposition to introduce the Ordinance and it creates a place holder for Agency flexibility. He stated legislation is silent on whether or not the Agency can use low to moderate income housing (LMI) funds to pay the ransom but there is enough money in the LMI fund to make the payment as a loan. He stated the Agency has housing projects that need to go into place and interested developers. He stated the recommendation was to begin the process by introducing the Ordinance.

Councilmember Pierce suggested the Council needs to introduce this Ordinance.

Councilmember Medrano wanted to make sure the State cannot come after the City's General Fund by adopting this Ordinance. The City Attorney stated she does not believe there is a risk to the City's General Fund by introducing the Ordinance.

Mayor Shuey stated he finds it odd to introduce the Ordinance since there is a stay on the legislation. He stated he is concerned the California Supreme Court may view the action of the city councils in the state introducing such Ordinances to "pay to play" as having sufficient monies and he does not want them to get the wrong idea.

The City Manager stated the matter before the Supreme Court is the issue of the constitutionality of the take-aways, not the money to be paid to the State. He stated this Ordinance is hedging the City's bets, but again it is more of a cautionary action.

The City Attorney stated some attorneys do not believe councils should adopt these Ordinances as the court's decision, if adverse, does not go into effect for 30-45 days and within that time frame cities can enact these ordinances.

The City Manager stated he does not see any jeopardy to the Agency or City to introduce the Ordinance at this time.

The City Attorney stated the California Redevelopment Association feels confident there will be necessity to alter the compliance deadlines should the legislation stand.

Mayor Shuey stated he believes this is sending the wrong message, but thanked the City Manager for bringing it to the Council because it is their policy decision and the City Manager is doing his job by bringing them options.

Councilmember Medrano asked if Council will still have 30 days to adopt the Ordinance after the Supreme Courts decision. The City Attorney stated she believes in addition to the 30 days more time may be available.

No public comments were received.

By general consensus, no action was taken.

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

The City Manager stated for the third year the Council expects to hold a meeting with Clayton business owners. He stated attendance has increased and many business owners are looking forward to an opportunity for a roundtable discussion. He stated the staff report outlined a tentative scope for the agenda including:

1. Critique of the 2011 Concerts in The Grove series and any suggestions for the 2012 series.
2. Consider a request to allow a private sponsor to hold five (5) additional Wednesday evening in The Grove park in 2012 to include one food sales booth and one alcohol sales booth.
3. General Roundtable Discussion on the City's General Plan goals (Housing Element) to encourage second-story housing in the Town Center area.
4. Ideas for promotion of a healthier local business economy (e.g. a Business Improvement District).
5. Discuss the benefits of holding semi-annual meetings of this nature.

Vice Mayor Geller indicated he wants to invite the Easleys to the meeting as they have future business interests for their property. Councilmember Medrano noted it is a public meeting and anyone could attend.

It was moved by Vice Mayor Geller, seconded by Councilmember Pierce, to call for a special meeting to be held on Tuesday, December 6, 2011 at 9 a.m. in Hoyer Hall of the Clayton Community Library for its annual town hall meeting with the Clayton business community (Passed; 5-0 vote).

10. __COUNCIL ITEMS__- Councilmember Pierce asked that a request from former Clayton Mayor Bob Hoyer to donate a flag pole for The Grove public park in memory of Eldora Hoyer be placed on a future agenda.

11. __ADJOURNMENT__– On call by Mayor Shuey the meeting adjourned at 8:59 p.m.

Respectfully submitted,

Laci J. Jackson

Laci J. Jackson, City Clerk

APPROVED BY CLAYTON CITY COUNCIL

David Shuey

David T. Shuey, Mayor