

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

TUESDAY, March 6, 2012

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 6:20 p.m. by Mayor Geller in Hoyer Hall of the Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Geller, Vice Mayor Medrano, Councilmembers Pierce, Shuey, and Stratford. Staff present: City Manager Gary Napper, Police Chief Dan Lawrence, City Engineer Rick Angrisani, City Attorney Mala Subramanian, and City Clerk Laci Jackson.

2. **CLOSED SESSION** - 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 (b)(1)*, Conference with Legal Counsel. Significant Exposure to Litigation against the City. One (1) Potential Case.

7:00 p.m. Report out of Closed Session: Mayor Geller stated the Council received a report from legal counsel and gave direction to staff.

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

- (a) Approved the minutes of the regular meeting of February 21, 2012.
 - (b) Approved the Financial Demands and Obligations of the City.

5. **RECOGNITIONS AND PRESENTATIONS**

6. **REPORTS**

- (a) Planning Commission – Vice Chairman Keith Haydon reported on the February 28th meeting of the Planning Commission. The Commission heard a presentation on the Housing Element zoning implementation project, which should be submitted shortly to the City Council for action.
 - (b) Trails and Landscaping Committee – No meeting held.
 - (c) The City Manager had no report.
 - (d) City Council

Councilmember Stratford attended the flag pole dedication in memory of Eldora Hoyer and the Mayors' Conference. He attended a Do the Right Thing committee meeting and stated the character trait is "Integrity" for March and April.

Councilmember Medrano attended the Mayors' Conference, a League of California Cities East Bay Division meeting, and an HR committee meeting for the Clayton Valley Charter High School.

Councilmember Shuey stated he has been working with the Clayton Valley Charter High School and they are searching for an Executive Director/ Principal for the Charter school and need volunteers for all of its committees.

Councilmember Pierce attended the ABAG and Council of Governments workshop in Sacramento with State Legislators. She also attended the dedication of the new flag pole in honor of Eldora Hoyer and the Mayors' Conference.

Mayor Geller noted he helped judge the Chili Cook-off at the Clayton Club.

- (e) Other – None.

7. PUBLIC COMMENTS

Cathie Gernhart asked when the City last did a survey about what citizens wanted to see in the downtown. She suggested the city do an online survey of the community to gain understanding of what everyone wants downtown and discuss the ideas at community meetings.

8. PUBLIC HEARINGS

- (a) Introduction and First Reading of proposed Ordinance No. 439 amending Chapter 10.41 of the *Clayton Municipal Code* to revise the definition of recreational vehicles and make other clarifying revisions for the purpose of regulating the on-street parking of recreational vehicles within the City of Clayton.

The Police Chief presented the staff report and stated that five years ago because of an increase in long-term parking on public streets the Council adopted an Ordinance regulating the on-street parking for recreational vehicles. He stated residents must obtain a City permit at no cost and guests must pay a nominal fee. Since the Ordinance went into effect 439 resident permits and 14 permits to guests have been issued. He stated officers have issued 29 citations, most of which were dismissed. He stated staff recently received letter from a citizen concerned about a vehicle which he considered a recreational vehicle parked in his neighborhood on public streets. The vehicle had a camper shell with a sleeping area and a bathroom facility and was not used for daily transportation. Because of situation and ambiguity of the ordinance language staff reviewed the Ordinance and recommended changes to clarify the language and definitions of recreational vehicle. Also, during the review, the City Attorney noted that signs needed to be posted at City entrances stating the recreational vehicle parking restriction. The City Attorney recommended signs be placed at the four entries to Clayton. He stated the fiscal impact would be \$800 for the purchase and installation of the signs but the enforcement would remain the same.

Councilmember Pierce stated her concern involves the Definition Section of Chapter 10.41 of the code. The Police Chief responded a pick-up truck with a camper shell that does not have a bathroom, sleeping area, or kitchen facility is not considered a recreational vehicle. He stated a pick-up truck with a camper shell can be parked on a street without a permit, while a camper with a restroom, sleeping area, or kitchen would be considered a recreational vehicle. If a defined recreational vehicle is parked on the street they are subject to a citation.

Councilmember Pierce asked how the officers would know when citing a vehicle if it met those criteria? The Police Chief stated they would have to use judgment when deciding to issue a ticket.

Councilmember Stratford asked that these wording of "business use" on a daily basis to be removed.

The Police Chief stated the changes would be incorporated into the final Ordinance for approval at the next Council meeting.

Mayor Geller opened the Public Hearing at 7:40 p.m., no comments were received, and closed the Public Hearing at 7:41 p.m.

It was moved by Councilmember Pierce, seconded by Councilmember Stratford, to amend the Definition of a recreational vehicle in the section 10.41.020 to remove "of materials and equipment" and "licenses business" regarding daily use exclusions and clarify the exclusion is for pick-up trucks carrying a camper shell and used for daily transportation "...that are not designed to be slept in or lived in with facilities such as a self-contained bathroom, kitchen or sleeping area." (Passed; 5-0 vote)

It was moved by Councilmember Pierce, seconded by Councilmember Stratford, to have the City Clerk read Ordinance No. 439 as amended, by title and number only and waive further reading (Passed; 5-0 vote).

The City Clerk read Ordinance No. 439 by title and number only.

It was moved was moved by Councilmember Pierce, seconded by Councilmember Stratford, to approve Ordinance No. 439, as amended, for Introduction (Passed; 5-0 vote).

9. ACTION ITEMS

- (a) Consideration of a Resolution approving the following two (2) Settlement Agreements resolving the Oakhurst Country Club Development construction defects and hillside movement-related various litigation:

1. Settlement Agreement and Partial Release of All Claims (between the City of Clayton, the Oakhurst Geological Hazard Abatement District, The Presley Companies, Presley Homes and William Lyon Homes, Inc.); and
2. Settlement Agreement, Release, and Covenant Not to Sue (between various named Plaintiffs and various named Defendants, including the City of Clayton).

The City Attorney presented the staff reported and stated the item is consideration of two settlement agreements relating to movement of the slope in the City open space. She stated both the Oakhurst Geological Hazard Abatement District and the City have been named in various related lawsuits. She stated the second attachment is the Settlement agreement between the City/GHAD, Presley Homes (Lyon Homes), various property owners, and this settles the lawsuit. She stated the settlement money is as follows: \$1 million from Lyon; \$250,000 from City's risk pooling authority; \$75,000 from various subcontractors. She stated \$600,000 would go to the property owners and \$700,000 would be used to perform remediation work to stabilize the slope. She stated the first

attachment clarifies the payments to be made. She stated the Council needs to approve the Resolution authorizing these settlement agreements and authorizing the contracts.

Councilmember Shuey noted in Agreement A 4(d), it states the City is standing down on the Achim and Brooks litigation, is still represented, but not take the lead in those litigations? The City Attorney stated he was correct. Councilmember Shuey asked if the ESR contract was already agreed to or what happens if ESR doesn't do that work? He asked if the actual cost is more, who pays for the extra if there is a not to exceed amount of \$725,000?

The City Attorney responded the ESR contractor did not have an issue with the price but had a problem with the indemnification language required.

Councilmember Shuey asked what happens if they cannot reach an agreement on the final cost? The City Attorney responded the Agreements indicate neither Lyon nor the City/GHAD has to pay.

Councilmember Shuey stated a section needs to be added that protects the City/GHAD in the event we cannot get the slope fixed for the set dollar amount or are unable to find another contractor to do the work for that dollar amount. He stated the City/GHAD should not get stuck with any added expense for the remediation field work. He stated he would not sign the agreement without that protection written in.

Based on that concern, the City Council referred the item back to staff for further review.

- (b) Continued consideration of a proposal and associated details by Vice Mayor Medrano regarding allowance of up to five (5) additional public Concerts in The Grove on selected Wednesday evenings to be sponsored by the City but funded solely by private sponsors organized by the P2C Foundation.

The City Attorney reported she believes if this is structured in a certain way whereby the City contracts with the P2C Foundation and the P2C Foundation and the P2C Foundation receives no compensation then the P2C Foundation avoids any financial conflict.

Vice Mayor Medrano stated the whole idea of trying to add weeknight concerts is for economic development in the community. He stated most cities have their concerts on a weeknight to bring people downtown. He stated from an economic development standpoint Saturday concerts hurt some businesses and helped others. He stated his goal was to see if a weeknight concert would bring people in. He stated the intent was not for the P2C Foundation to benefit in any way but to have a foundation or another non-profit for the liquor license or vendors for retail memorabilia. He stated the goal was hopefully to help bring people to the businesses. He stated he was not set on a certain evening, he just wanted a weeknight. He stated this is a way to try something different without disturbing the Saturday concerts, and help fund concerts through private sponsorships.

Vice Mayor Medrano stated VIP seating would be sold, and reserved seating would be given to the business who sponsors the concert. He stated that money would go toward helping to fund the actual concert. He also stated Clayton memorabilia with Clayton logos would be sold to raise additional funds. He stated right now personal alcohol is already allowed at the Saturday concerts, but he is proposing one booth to sell alcohol. He stated the goal is some people might purchase alcohol instead of bringing their own. He stated it is something to try and since most people work during the week the alcohol

consumption will be less. He stated some of these ideas might be able to be used for Saturdays if they work. He stated the music would be local bands, and the expense for a sound technician was less for a weeknight concert. He stated he also budgeted for police, maintenance, and janitorial supplies. He also stated he received an email from ABC confirming that people who purchase alcohol and those who bring their own can sit in the park together. He stated the P2C Foundation would not make any money on the concerts, and he strongly believe concerts should be tried on a weeknight.

Councilmember Shuey asked about the insurance situation. Vice Mayor Medrano stated he is working on that with the City Attorney. He stated the City has liability coverage the P2C could pay for.

The City Manager clarified this coverage is provided through a separate insurance company and the cost is determined based on event risk.

Councilmember Geller asked if this is a City sponsored event, wouldn't somebody go after the deep pocket on liability? Vice Mayor Medrano stated the liability is the same as for the Saturday Concerts by the City when allowing alcohol consumption during the event.

Councilmember Stratford stated he would like to avoid Wednesday nights due to conflicts with other business activities in the downtown.

Vice Mayor Medrano stated if the Council feels the money should be run through the City then that could happen. The City Manager stated this is a proposal in progress, and the City could be responsible for cutting the checks, provided there is money coming in to underwrite the contractual relationship.

Councilmember Shuey stated he likes the idea of a Thursday night.

Mayor Geller asked why not just take out the alcohol sales portion? He also noted the Council received letter from La Veranda Restaurant and a letter from Mike and Barbara Dywer.

Mayor Geller opened the item up for public comments.

Skip Ipsen, on behalf of Skipolini's Pizza, stated for 23 years Skipolini's has been paying the fees to get the Wednesday night Car Show going and it now draws a large enough crowd that the other businesses benefit. He stated he is not against the concerts on a trial basis but is against Wednesday nights and the liquor sales competition.

Ted Meriam, P2C Foundation, stated the goal of Foundation is to support the local community. He stated adding 5 concerts was really about stimulating the downtown economy since many businesses must rely on the events to draw people downtown. He stated the Council should try something new, support local businesses, and hold mid-week concerts during the summer.

Steve Barton, Clayton Club Saloon, stated his principle objection is the sale of alcohol in the park. He stated he believes alcohol sales would detract from the concerts with a "water cooler" effect. He stated Wednesday nights are not a good night for these concerts and he objects to the sale of alcohol. He added the additional concerts in the park may cause confusion for the public.

Ed Hartley stated he supports the experiment to revitalize downtown. He stated all of the civic amenities started as small experiments and if it works out, the citizens benefit.

Doug Rodgers stated he objects to the sale of alcohol at the event because it competes with downtown business. He asked if P2C will not financially benefit from it how would a profit be handled? Vice Mayor Medrano stated all of the money would go back to the City for future concerts.

Mayor Geller read a letter from La Veranda.

Vice Mayor Medrano noted the letter states the Saturday nights take away business from La Veranda, but the goal of the weeknight concert is to bring people down on a night when they wouldn't normally come downtown.

Mayor Geller read a letter from Mark and Barbara Dwyer.

Lynn Hadley stated she agreed with the liquor sales elimination as other people noted. She stated the City already has four days a week of activities in the downtown and stated one of the reasons the Council cut down the number of concerts was because it inconvenienced residents in the proximity to the downtown.

Bill Walcutt stated he really has a problems with this because the City has to assume the liability but has no control. He stated the City is financially secure and this proposal is an unreasonable risk. He stated there is an impact on businesses and surrounding neighborhoods. He noted he read the response from ABC but stated the proposal should remove alcohol sales. He stated when the park was designed the Council did not want it to be dominated by one use. He stated he didn't think it would do the businesses any good but will publicize Vice Mayor Medrano's Foundation.

Pete Laurence agreed with Bill Walcutt and stated he is very against the concerts being on Wednesdays. He also stated he hopes the weeknight concerts won't diminish the Saturday concerts. He added if the point is to bring more people downtown the Council might want to consider a 6p.m.-8p.m. window so that people can go to dinner after the concert.

Public Comment period ended and the Council took a short break (8:50 p.m.)

Councilmember Shuey noted the audience is concerned about the alcohol sales. He stated maybe the Foundation could ask for the \$2,500 liquor sales revenue quote from CBCA so that there doesn't have be liquor sales?

Councilmember Pierce stated she is fine with trying the idea if all of the details and conflicts can be mitigated. She stated she is basically opposed to selling alcohol in the park because she does think it sends the wrong message and image and might detract from the event. She stated she is worried about taking away business from the downtown businesses. She asked who handles the money and how the bills are paid? She stated her other concern was that if the P2C had a loss on the concerts, could that be a financial conflict?

Vice Mayor Medrano asked if another organization were involved would there be this issue? He stated he is trying to do something good for the community, but if the Council would rather use someone else he has no problem with that.

Councilmember Pierce stated she does respect the intent but is politically torn because the people she talked to oppose the alcohol sales. She stated she fundamentally disagrees with selling the alcohol and merchandise.

Councilmember Shuey stated he thinks the idea is whether we want to try a weeknight concert which has been talked about for 3 years. He has some concerns with the sale of liquor, and we could take that out. He asked if it is worth it to try? He stated it is all about bringing new people downtown.

Councilmember Pierce stated if we were to drop the alcohol sales out of it all together, it is close to the same thing as Saturday concerts with the exception of the reserve seating. She stated then maybe it becomes more of a clean comparison from weeknight to weekend.

Vice Mayor Medrano indicated he is now pulling P2C from the proposal; he stated it is not worth having the perception of a conflict. He stated he did this proposal as a concept.

Councilmember Pierce asked if the City could put up the \$5,000 to be replenished by sponsorships?

Councilmember Stratford stated he thinks the weeknight concerts are a good experiment, and there is no way to knowing if they will work without trying. He stated as far as P2C goes he thinks transparency could be handled and believes Vice Mayor Medrano has no financial interest. As far as the alcohol sales in the park he stated it is not going to make much money, but at the same time we already allow people to bring their own or they go buy something from the Village Market.

Mayor Geller stated weeknight concerts he has attended in other cities do not seem to be as well attended. He stated he does not know of any series where the City sells alcohol. He stated many of the citizens who spoke did not like the alcohol or merchandise sales. He stated a lot of people he spoke with do not like the noise created by the concerts and other downtown events. He stated Thursday nights seem to be a better night. He stated he does not want this to cost staff more time and stated there is still a perception of a conflict of interest that would need to be resolved if the Council moves forward.

Councilmember Shuey stated Vice Mayor Medrano should withdraw this item. He stated Vice Mayor Medrano was trying to raise funds from non-traditional funds and people are getting lost in the minutia. He stated he would love to try Thursday night concerts and would vote for it without alcohol sales.

Vice Mayor Medrano stated he has an obligation to sit down with Ted Meriam (P2C Boardmember) to further discuss the proposal after this input, and stated he would rather not utilize the P2C Foundation in any form. He stated unless we can find someone else put the concert on, he will pull the proposal.

Councilmember Pierce asked if the Council were willing to find money to have the experiment would he consider it? Vice Mayor Medrano responded he is opposed to having City funds pay for the Concerts.

The proposal was pulled from the agenda by Vice Mayor Medrano, therefore no action was taken.

- (c) Mayor appointment of an elected official of the City Council to serve as Clayton's representative to the Contra Costa County Delta Stakeholders' Coalition.

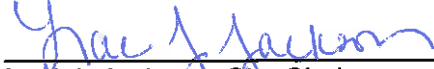
Councilmember Pierce called and checked to see when the meetings would be scheduled. She stated there would only be three to four total meetings.

Mayor Geller appointed Councilmember Stratford to the Contra Costa County Delta Stakeholders' Coalition.

10. **COUNCIL ITEMS**- None.

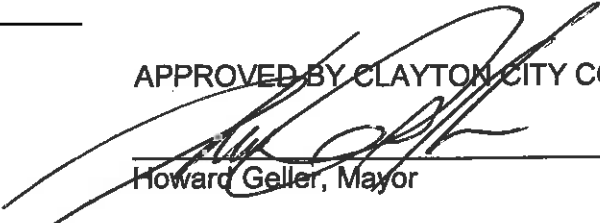
11. **ADJOURNMENT**- On call by Mayor Geller the meeting adjourned at 9:40 p.m.

Respectfully submitted,



Laci J. Jackson, City Clerk

APPROVED BY CLAYTON CITY COUNCIL



Howard Geller, Mayor