MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL

TUESDAY, May 1, 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 (arrived at 6:21 p.m.), and Stratford. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Assistant to the City Manager Laura Hoffmeister, and City Engineer Rick Angrisani, and City Clerk Laci Jackson.

2. **CLOSED SESSION** – Mayor Geller announced the following purpose for closed session and then adjourned into Closed Session at 6:21 p.m.

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

Report out of Closed Session: Mayor Geller reported the Council gave direction to special legal counsel.

3. **PLEDGE OF ALLEGIANCE**- led by Mayor Geller.

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

(a) Information Only
1. Updated Clayton Trails & Landscaping Brochure.
2. Adopted Rules of Procedure of the Oversight Board, Clayton Successor Agency.

(b) Approved the minutes of the regular meeting of April 17, 2012.

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

(d) Adopted Resolution 18-2012 rescinding Resolution No. 72-92 and defining City volunteers for purpose of City workers' compensation benefit eligibility.

(e) Adopted Resolution 19-2012 calling for the preparation and filing of the Engineer's Annual Report for the levy of FY 2012-2013 assessments in the Clayton Street Lighting Assessment District (pursuant to the Street Lighting Act of 1919).

(f) Approved Save Mount Diablo as an acceptable third-party non-profit entity for developer dedication of real property title to and responsibility of Lot 25 (APN 119-630-011), satisfying the developer's (Toll Brothers, Inc.) open space mitigation parcel requirement pursuant to Condition No. 4 of the Diablo Estates at Clayton residential subdivision (SPR 01-11).

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

6. **REPORTS**

(a) Planning Commission – No meeting held.

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

(c) The City Manager reported the City is seeking citizens interested in serving on two citizen advisory committees for the CCCTA and CCTA and he noting applicants for three seats on the Planning Commission. He noted all applications are available on the City's website.

(d) City Council

Councilmember Stratford thanked the Clayton Pioneer for sponsoring the Clayton Cleans Up. He also thanked the citizens involved in the Mormon Helping Hands project and noted a good size group worked on trail restoration from Peacock Creek to Diablo View Middle School.

Vice Mayor Medrano stated Dave Linzey was hired as the first Executive Director for the Clayton Valley Charter High School. He noted all bands have been booked for the weeknight concerts and 11 concert sponsors, 5 of which are downtown businesses, have committed to helping fund the Thursday night series. He thanked Ed's Mudville Grill, the Clayton Club Saloon, the Royal Rooster, Diablo Ford, Tipperary Construction, Inc, Oakhurst Country Club, Subway, Diablo View Construction Inc., CBCA, the Passport to Communities Foundation, and the Clayton Community Church's Labor Day Derby for committing to be sponsors.

Councilmember Pierce attended the Contra Costa Transportation Authority meeting, the ABAG General Assembly, and worked at the Clayton Cleans Up. She thanked the Clayton Pioneer and Allied Waste for their sponsorship of the event. Lastly, she attended the California Council of Governments Conference in Monterey.

Councilmember Shuey met the new Clayton Valley Charter High School Executive Director Mr. Dave Linzey and noted there will be a meet and greet Thursday, May 10th at 6:30p.m. in the multi-use room at Clayton Valley High School. He attended the League of California Cities East Bay Division Bocce fundraiser and a mediation session regarding litigation for the City.

Mayor Geller thanked the Pioneer for sponsoring the Clayton Cleans Up. He attended the Knights of Columbus Blue Night Award ceremony where Clayton Police Officer Allan Pike was honored. He attended the Mayors' Club meeting with the local Mayors where they discussed reducing costs. He noted Clayton resident and former State Senator Dan Boatright passed away recently. He reminded everyone about CBCA's Art and Wine Festival this weekend. He stated CBCA still needed volunteers. He stated the first Concert in The Grove will be May 12th and the Farmers' Market starts at 8am the same day.

(e) Other – None.

7. PUBLIC COMMENTS

Gail Murray, Clayton's representative to the BART Board of Directors, invited interested Councilmembers, staff, and citizens to BART's Rust, Dust and Rail Tour from 8:30-10:30 a.m. on June 8th.

Councilmember Pierce thanked Gail for attending all of the BART and CCTA meetings and noted BART has the oldest fleet of trains in the country.

Keith Haydon thanked the Council for the promotion for Art and Wine Festival and noted the festival is where CBCA raises the majority of their funds for community benefit and charity. He thanked the City staff for their work leading up to the festival and for staffing the weekend.

8. PUBLIC HEARINGS

(a) Consideration of the Introduction and First Reading of Planning Commission-recommended Ordinance No. 441 adding Chapter 15.90 to the *Clayton Municipal Code* establishing a process for individuals with disabilities seeking equal access to housing to request reasonable accommodations in the application of the City's land use, zoning or building standards, regulations, policies and procedures (ZOA 01-12).

The Community Development Director presented the staff report. He indicated with the certification of the City's Housing Element in 2010 many implementation measures were required to be adopted. He stated one of the implementation measures was to adopt a reasonable accommodations ordinance. He mentioned that currently the City reviews reasonable accommodation requests on a case by case basis. He stated in this proposed Ordinance a procedure and evaluation criteria for addressing reasonable accommodations requests are clearly defined and can be performed at a staff level in many circumstances within 30 days of receiving the request. He noted once approved the party making the request would have to act on the approval within 12 months. He stated when the need for the accommodation goes away, there may be a need for a modified structure to accommodate the request to be restored to its original condition. He stated the fee for this would be established at a later date by Council resolution.

Councilmember Pierce asked how staff will keep track of the accommodations on the properties to assure they are removed once the need is no longer present?

The Community Development Director stated there would be a deed restriction on the property to let the future owner of the property know. If it were determined the new owner needed the accommodation, it could be retained, or if the accommodation blended in architecturally (assuming a structural modification was involved), it could be retained; otherwise, staff could ask to have the property restored to its original condition.

Mayor Geller stated a deed restriction will appear on a preliminary title report but will not assure the new owner notifies staff. The Community Development Director acknowledged the concern, but stated the new owner would be obligated to contact the City.

Mayor Geller asked if there could be a notice to the City upon property transfer so that staff would be made aware of the change in ownership.

The Council consensus was to have the City Attorney add language in the Ordinance under Section 15.90.090C. to require there be a deed restriction recorded so that the City would be notified of a transfer of property ownership or circumstance eliminating the need for the reasonable accommodation.

Mayor Geller opened the Public Hearing at 7:43 p.m. No comments were received and closed the Public Hearing at 7:44 p.m.

It was moved by Councilmember Shuey, seconded by Councilmember Pierce, to have the City Clerk to read Ordinance No. 441 by title and number only as amended to modify the language to a more affirmative requirement in Section 090C by replacing the word "could" with "shall" (Passed; 5-0 vote).

The City Clerk read Ordinance No. 441 by title and number only.

It was moved by Councilmember Shuey, seconded by Councilmember Pierce, to approve Ordinance 441 for Introduction as amended (Passed; 5-0 vote).

9. ACTION ITEMS

(a) Consideration of the Trails and Landscaping Committee's (TLC) recommendations on the priority to partially fund a joint landscaping project of Daffodil Hill with the Clayton Business and Community Association (CBCA), incorporate the targeted City-owned parcel into the Citywide Landscape Maintenance District (CFD 2007-1), and determine the of source of maintenance funds following completion of the joint landscape project.

The Assistant to the City Manager presented the staff report. She stated the Council referred this matter back to the TLC for its recommendation on whether Daffodil Hill should be added to the Landscape Maintenance District and whether or not the district should help fund the construction/planting and ongoing maintenance. The TLC had a long thoughtful discussion on this matter and looked at the original language in Measure B (2007). They also discussed the intent of the voters, the definitions of the tax, and the area for consideration which is adjacent to Clayton Road and open space. She stated the TLC deliberated over the budget of the District and were hesitant to take on more ongoing costs. She noted the CBCA President and its Landscape Designer were present at the TLC meeting. She stated at the end of their discussion the TLC decided to recommend including the area into the Landscape District, sharing the costs for the construction/planting 50-50 with the CBCA, and have the City's General Fund pay for the ongoing maintenance.

Vice Mayor Medrano stated when the Committee discussed this they were aware that even though they do not want to pay for the ongoing maintenance, if Daffodil Hill was brought into the District, the District would still be obligated to pay for it.

When questioned, the City Manager stated the $26,000 presented to the TLC was the amount at that time, but the recommendation tonight is not to exceed $29,000 for the City's 50% share.

Councilmember Stratford stated he would like to make sure the City Maintenance staff looks at the plants and makes changes to the plan to bring in lower maintenance plants. The City Manager stated the plan bid on was part of the give and take design between

the CBCA committee and City staff. He stated down the road when the plants die they may not be replanted with the same plant.

Mayor Geller stated we have already made a lot of changes to the plan and the estimate given by City Maintenance for the cost of ongoing maintenance ($12,000), was a worst case scenario.

Vice Mayor Medrano stated he would be against delaying this project any longer.

Councilmember Pierce stated when the Council approved these plans we knew we were going to take care of it one way or another. She suggested Council approve the amount as recommended and replace the plants with something else if it does not work.

The City Manager clarified this design plan only encompasses landscaping on the City parcel and noted land behind the upper monument sign is Diamond Terrace property.

Keith Haydon stated the maintenance department participated in the review of the plans and made changes. He stated from CBCA's prospective this is a good overall plan. He stated the CBCA membership approved up to $29,000 as the amount given to build in a contingency.

No other public comments were received.

It was moved by Vice Mayor Medrano, seconded by Councilmember Stratford, to approve by motion the incorporation of the Daffodil Hill parcel into the Landscape Maintenance District (CFD 2007-1) (Passed; 5-0 vote).

It was moved by Vice Mayor Medrano, seconded by Councilmember Stratford, to agree to share the negotiated cost to complete the landscape beautification project on Daffodil Hill with CBCA at a 50-50 cost share not to exceed a City expense of $29,000 paid by Landscape Maintenance District funds (Passed; 5-0 vote).

It was moved by Councilmember Pierce, seconded by Councilmember Stratford, that the Landscape Maintenance District be the source of funds for the completed project's maintenance costs (Passed; 4-1 vote; No- Medrano).

(b) Public Meeting on the proposed formation of a Diablo Estates at Clayton Benefit Assessment District (BAD) for the Diablo Pointe Subdivision 8719, 24 residential parcels east of Regency Drive and north of Rialto Drive (approx.19 acres).

The City Engineer presented the staff report and stated at its March 20th meeting the City Council approved moving forward with the formation of the BAD in accordance with Proposition 219 requirements. He stated on May 15th the Council will hold another meeting to count the ballots. He stated the assessment will be $3,072.62 per parcel per year with an annual CPI increase up to 4%.

No public comments were received.

No action was taken.

(c) Consideration of the Introduction and First Reading of Ordinance No. 442 adding and amending certain sections of the *Clayton Municipal Code* relating to claims for refunds of City taxes and actions challenging City taxes, assessments and fees.

The City Attorney presented the staff report for a pay first ordinance based on recent case law which would require citizens to pay fees, assessments, or taxes before they are able to challenge them.

Vice Mayor Medrano asked what the financial impact would be based on this change? The City Attorney stated thus far the City has not received any challenge.

No public comments were received.

It was moved by Councilmember Pierce, seconded by Councilmember Stratford, to have the City Clerk to read Ordinance No. 442 by title and number only (Passed; 5-0 vote).

The City Clerk read Ordinance No. 442 by title and number only.

It was moved by Councilmember Pierce, seconded by Councilmember Stratford, to approve Ordinance 442 for Introduction (Passed; 5-0 vote).

10. **COUNCIL ITEMS**- None.

11. **ADJOURNMENT**– On call by Mayor Geller the meeting adjourned at 8:12 p.m.

Respectfully submitted,

Laci J. Jackson, City Clerk

APPROVED BY CLAYTON CITY COUNCIL

Howard Geller, Mayor