

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

TUESDAY, September 18, 2012

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 6:00 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, and Councilmembers Pierce, Shuey, and Stratford. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, City Engineer Rick Angrisani (7:00 p.m.), Community Development Director David Woltering (7:00 p.m.), and City Clerk Laci Jackson.
 2. **CLOSED SESSION** – Mayor Geller announced the following purposes for Closed Session and then adjourned into Closed Session at 6:00 p.m.
 - (a) City Council
 1. *Government Code Section 54956.9 (c)*, Conference with Legal Counsel.
Consider Initiation of Litigation: One (1) Potential Case.
 2. *Government Code Section 54956.9 (a)*, Conference with Legal Counsel.
Pending Litigation: *City of Clayton and Oakhurst Geological Hazard Abatement District v. Municipal Pooling Authority of Northern California*, Case No. MSC10-03626, Superior Court of California, Contra Costa County.
 3. *Government Code Section 54956.8*, Conference with Real Property Negotiator
Real Properties: 6055 Main Street, Clayton (APNs 118-560-010 & 119-011-003)
Instructions to City Negotiator (City Manager) concerning terms and conditions.
Negotiating Party: Clayton Community Church.
- Report out of Closed Session:** Mayor Geller reported the Council received information and gave directions to staff and legal counsel, and would return to Closed Session at the conclusion of the regular meeting.
3. **PLEDGE OF ALLEGIANCE** – led by Mayor Geller.
4. **CONSENT CALENDAR**- Councilmember Pierce pulled Item 4(e) for public comment.

Keith Haydon, CBCA President stated the Daffodil Hill beautification project was a great example of teaming with City staff to make a long term project happen. He said the idea initially was driven by the Clayton Garden Club but the CBCA had interest in the project and took advantage of the City's bid process with the Clayton Road Median project. He is happy the Landscape Maintenance District will be taking over the maintenance of the hill and stated this project completes the center section of the beautification project just in time for Oktoberfest.

Steven Lane, CBCA project designer, stated he was part of the subcommittee for the Daffodil Hill project. He echoed thanks to City staff in seeing this project through and stated the Clayton Garden Club now wants donate daffodil bulbs to be planted around the upper hill monument sign.

Mayor Geller pulled Item 4(f) for discussion. He stated Mr. Van Brusselen is seeking a full refund for the 27 stormwater inspections on his property.

Mr. Van Brusselen stated the inspections may have been done but he does not feel it was warranted. He stated inspections were done October to April and he was charged for 27 inspections. He did not start his project before 9 inspections were already charged.

Councilmember Shuey asked Mr. Van Brusselen if he notified the City Engineer that he would not be starting his project until later. Mr. Van Brusselen responded he called City the PERMCO office and he never saw the City inspector.

Councilmember Stratford stated you were required to call the Engineer, and you said you called. He asked what the other requirements are for these types of projects?

The City Engineer stated once ground is broken staff has to make inspections every week and before, during, and after storm events (due to the NPDES permit). He stated this must be done until the time the project is complete. He stated the requirement is to call if you are not going to start work for a while after the approval of the project. He stated he has no record of Mr. Van Brusselen calling his office on this and if staff had received a phone call they would not have started inspections.

The City Engineer stated the Regional Water Quality Control Board (RWQCB) has many requirements and conditions for projects. He stated for example straw waddles must be placed at drains downstream from the project but Mr. Van Brusselen's case is unique because the project was below the grade of everything around it. He stated as far as the inspections go there is not much leeway. He stated in March he used discretion and stopped doing the inspections because he felt if he was questioned by the RWQCB we could argue the reason he stopped inspections.

Councilmember Shuey stated the inspections started in May 2011 and lasted until March 2011. The City Engineer stated the last inspection was on March 1st when he met with Mr. Van Brusselen on site and made the decision to stop the inspections.

The City Engineer stated notwithstanding the NPDES requirements, he used discretion to stop the inspections. He stated had he not done that the weekly inspections would have continued and Mr. Van Brusselen would have been billed and required to pay.

The City Manager noted that because of that discussion, Mr. Van Brusselen had already received relief.

Vice Mayor Medrano stated the total at issue is \$676.00.

Councilmember Shuey stated he would like to put this item on the next meeting. He stated unfortunately the RWQCB makes the rules and it seems as though the City Engineer was trying to do the right thing, but he wants more information on the requirements.

Vice Mayor Medrano suggested instead of spending more staff time preparing this item to just split the cost with Mr. Van Brusselen (\$334.08).

It was moved by Vice Mayor Medrano, seconded by Councilmember Geller, to split the cost of the claim with Mr. Van Brusselen for \$334.08 (Passed; 4-0-1, Pierce abstained for conflict of interest because of her home's proximity to Mr. Van Brusselen's).

It was moved by Councilmember, seconded by Councilmember Shuey, seconded by Councilmember Stratford to approve the Consent Calendar excluding Item 4(f) (Passed; 5-0 vote).

- (a) Approve the minutes of the regular meeting of August 7, 2012.
- (b) Approve the Financial Demands and Obligations of the City.
- (c) Adopted Resolution 58-2012 approving an amended City of Clayton Conflict of Interest Code pursuant to the Political Reform Act of 1974.
- (d) Adopted Resolution 59-2012 approving a 9 month Addendum No. 5 to the base MOU with the Clayton Police Officers Association (CPOA) to end June 30, 2013.
- (e) Adopted Resolution 60-2012 approving a Notice of Completion for the Clayton Road Median and Daffodil Hill Landscaping Projects (CIPs No. 10430 & 10431) and ordering the filing of the Notice of Completion.
- (f) Did not approve the rejection of a liability claim filed against the City by Mr. Jon Van Brusselen regarding stormwater inspection fees at 5851 Pine Hollow Road.
- (g) Adopted Resolution 61-2012 awarding and approving a 3-year contract in the initial amount of \$49,188.00 through December 31, 2013 with Pinnacle Residential Services for the property management and maintenance services of the Diablo Estates at Clayton Development (Subd. 8719), funded by the Diablo Estates at Clayton Benefit Assessment District.

5. RECOGNITIONS AND PRESENTATIONS

- (a) Proclamation declaring September 22-28, 2012 as "Fall Prevention Awareness Week.

Emily Hopkins of the Fall Prevention Program for Contra Costa County accepted the Proclamation and invited citizens to the Walk for Fall Prevention in Pleasant Hill on September 22, 2012.

6. REPORTS

- (a) Planning Commission – Commission Chair Keith Haydon reported on the September 11th Planning Commission meeting. He stated the Commission approved a Use Permit for AT&T antennas at a residence after the presentation of an acoustical study. He stated the second item was a development plan amendment by the Mitchell Creek Place Home Owners Association because they want to replace size and type of the trees in the property. He stated the third item was approval of exterior signage for the new Sherman Williams paint store in Clayton Station.
- (b) Trails and Landscaping Committee – No meeting held.
- (c) The City Manager had no report.
- (d) City Council

Councilmember Stratford met with the "Do The Right Thing" committee and the monthly trait is "Responsibility" in September and "Respect" in October. He stated at the October 16th Council meeting they would recognizing the selected students.

Vice Mayor Medrano attended a committee meeting of the Charter High School and noted student attendance rate is at 98% so far this school year.

Councilmember Pierce attended the Concerts in The Grove, the Mayors' Cook-off, ABAG meetings, two California Council of Cities meetings, a Transportation Authority meeting, a TRANSPAC meeting, the parade in honor of our Olympians, and lastly the Clayton Valley Charter High School ribbon cutting.

Councilmember Shuey attended the volunteer faire at the Charter High School and attended its Student Services Committee meeting.

Mayor Geller attended the Mayors' Conference and the Olympian Parade. He thanked Councilmember Pierce for working with the families of the Olympians and staff. He also thanked Jim Diaz for working with DVR to set up barricades and do crowd control. He stated the final Concert of the season raised nearly \$2200 making a total of nearly \$16,000 in community donates from the concerts this year. He also noted he got married.

(e) Other – Introduction of candidates present for City Council elected office.

Kevin Liberman stated he is running for City Council and has lived in the community for four years. He stated he is thrilled to live in a City that fosters an environment of culture and recreation. He stated he is running for City Council because he admires the culture that presents itself as a place to raise a family and he wants to maintain and enhance that culture. In addition he wants to promote and support the events and the overall landscape and business of Clayton. He stated he is well equipped to work with the Council and serve the best interests of Clayton.

Jim Diaz stated he is running for City Council. He thanked Mayor Geller for recognizing DVR for its help they continue to provide the City and CBCA. He stated he is a 33 year member of the community and a local business man. He stated his involvement started as a Clayton Police Department Reserve Officer. He is a member of the CBCA and the Vice President of Membership. He has been involved with the Art and Wine Festival, Oktoberfest, the Rib Cook-off, and the Clayton Classic golf tournament. He stated he has also been involved with the Concerts in The Grove Saturday and Thursday night concerts. He thanked the community for their support.

The seated incumbents declined to speak.

7. PUBLIC COMMENTS

Deborah Mason stated she is running for the Mt. Diablo Unified School District School Board. She stated she attended the meetings last year regarding the Charter High School and did not believe that was the way to run business. She asked for the community's support.

8. **PUBLIC HEARINGS-** None.

9. **ACTION ITEMS**

- (a) Presentation of information by the Contra Costa County Fire Protection District regarding fire protection, suppression, and first-responder emergency medical services provided by the Fire District, and consideration of a City Council position on Ballot Measure Q, a special fire district parcel tax on the November 6, 2012 local ballot.

District Fire Chief Daryl Louder thanked the Council for the opportunity to be here this evening. He stated his presentation was to focus on the challenges the district is facing. He presented a powerpoint presentation outlining the services provided by the district and the fiscal problems the district is experiencing.

Councilmember Pierce asked why the redevelopment return to source money was not being included in the analysis? Chief Louder stated the District took a conservative approach because they do not know how much or when the money will be returned to them from redevelopment agencies. He also noted the numbers provided do not include savings from the Governor's pension reform.

Mayor Geller questioned the cost of the insurance increases for homes. Chief Louder stated the Insurance Services Organization (ISO) evaluates fire protection and unfortunately they do not have an exact formula for the rate increases. He stated it is believed the ISO will re-evaluate area insurance rates if the District closes stations.

Vice Mayor Medrano stated Clayton residents may not have insurance impacts due to other nearby situations.

Councilmember Shuey asked if this was just a stop-gap measure? Chief Louder stated the District has taken action to reduce their structural costs by having lower starting salary steps and there will be a significant impact based on the Governor's pension reform.

Councilmember Shuey asked for a response to the Contra Costa County Tax group's opposition to the measure. Chief Louder stated the District has made changes in pension, there has been a substantial reduction in benefits, and the County has been working on OPEB reductions. He stated the pension obligation bond will be paid of in year 10.

Chief Louder stated one station works well for medical responses but major fire events require multiple units, typically five. He stated if 10 fire stations close no community will be immune because the resources will have to be shifted.

Supervisor Karen Mitchoff stated she sits on Clayton's Oversight Board. She stated the County cannot use resources to promote the ballot measure but she stated if you have any questions please do not hesitate to contact her. She stated the Contra Costa Taxpayers Association is wrong. She stated Measure Q will not address structural issues but hopefully property taxes will rise. She stated the State has too found there is no money in Redevelopment and the goal of the District was to provide very conservative information as a way to see what the implications are. She stated in East County residents saw huge increase in their fire insurance premiums. She stated Contra Costa County has been a leader in pension reform. She stated all employees in the District have taken a 10% pay cut, and firefighters pay 25% of their gross pay towards their pension.

Councilmember Shuey noted he has not made up his mind on this issue.

Supervisor Mitchoff stated the Board is committed to continuing to make changes to benefits. She stated more information could be obtained at the following sites: www.cccfpd.org and www.protectccfire.com

Jack Verderame, local fireman, thanked the Chief for fighting to keep people safe. He stated he was uncomfortable listening to the conversation tonight. He stated the numbers can be twisted to make them look any which way but he is making the same salary he was in 2005. He also stated the District is very lean and he suggested the Council and citizens be informed and ask questions.

Carol Johlen and Laurie Gomez stated they are in support of Measure Q. She stated if stations close there will be slower response times and you cannot appreciate the speed of the response until you are waiting for it to arrive. Carol stated there was a Labor Day Fire on Margo Lane in Concord and because of the loss of a company at Station 6 there was an 8 minute response time and the home could not be saved. She stated people need to understand the slower response times have an impact.

Councilmember Pierce suggested the Council obtain additional information and bring it back to next meeting, though she is not sure it is the Council's job to take a position on this ballot measure.

This item was continued to the next meeting date to obtain more information.

- (b) Consideration of the award of contract to Everbrite, LLC in the amount of \$18,449.05 for the purchase of three (3) replacement multi-sport scoreboards for installation at the three sports fields in Clayton Community Park.

Maintenance Supervisor Johnston presented the staff report and stated the Council asked staff to research multi-sport scoreboards in January. He stated staff researched the cost of the scoreboards and the installation and included the costs of having each league using the boards having their own remote control.

Councilmember Shuey asked what the range was on the remotes? Maintenance Supervisor Johnston stated approximately 400 feet.

No public comments were received.

Councilmember Shuey asked how much money had been in the Deferred Maintenance Fund because he was not sure if this was the best use of the money?

The City Manager stated there was \$300,000 in the fund which was created by a General Fund excess in previous years. He stated staff did not prepare a prioritization list for this item: he stated it is coming back because the Council asked staff to research the options of the multi-sport scoreboards. He stated it comes down to what the Council wants the fields and park to look like. He stated the parking project was completed and the park is more attractive to the community and new scoreboards might enhance paid users.

In response to Council question, Maintenance Supervisor Johnston stated the lower field boards will get used but the scoreboards on the upper fields may not be used as much.

Councilmember Shuey stated the discussion for Little League has never been about where to play because of the scoreboards. He stated playing in Clayton is more expensive than the district schools which have no functioning scoreboards. He stated travel ball teams pay more and want scoreboards.

Councilmember Medrano asked if the Council would be opposed to having sponsors? The Council consensus was that sponsors could be sought to pay for the expense of the scoreboards.

The Council recessed at 9:35 p.m. and returned at 9:40 p.m.

The City Manager stated staff will go back and research adding panels for sponsors and the Council can continue to network for possible sponsors in the City for the lower-field scoreboard.

No action was taken.

- (c) Consideration of a Council Member request for the City Council to authorize the City Attorney to prepare for state legislator submittal a written request to the state attorney general seeking a legal opinion on whether it is an incompatible office for an elected member of the Clayton City Council to concurrently serve on the Clayton Valley Charter High School Executive [governing] Board.

Councilmember Shuey stated last year he started working on the Charter High School conversion process and was on its Steering Committee. That Committee would eventually become the Board. He was given an opinion by the City Attorney that serving on the Board and the Council would be incompatible offices but that the final determination would need to be made by the Attorney General. He stated he and Vice Mayor Medrano have been to all Executive Board meetings and feels it is important to get a definitive ruling. He stated he wants the City Attorney to draft the letter so that the right questions are asked. He stated you have to get elected to the board but he wants Councilmembers to have that opportunity.

Vice Mayor Medrano asked if the letter could be written under the retainer hours? The City Attorney responded yes.

Councilmember Stratford asked how Boardmembers are elected? Councilmember Shuey stated the parent/community seats are elected by the parents.

Councilmember Pierce stated she is torn on this. She stated she understands the passion for the Charter but asked if there a position for a City Council/ School District Liaison vs. a formal position.

Councilmember Shuey stated he just wants to get the opinion from the Attorney General. Vice Mayor Medrano stated it would not cost anything to have the City Attorney draft the letter.

It was moved by Vice Mayor Medrano, seconded by Councilmember Shuey, to have the City Attorney draft a letter addressed to the Attorney General and bring it back to the Council for approval before submitting it to a State Legislator for transmittal (Passed; 5-0 vote).

10. **COUNCIL ITEMS** – None.

11. **RECESS-** 10:17 p.m. The Council recessed the meeting until the conclusion of the Successor Agency meeting.

12. **CLOSED SESSION-** Mayor Geller announced the following purposes for Closed Session and then adjourned into Closed Session at 10:25 p.m.

(a) City Council

1. *Government Code Section 54956.9 (c)*, Conference with Legal Counsel.
Consider Initiation of Litigation: One (1) Potential Case.

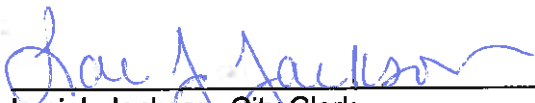
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Real Properties: 6055 Main Street, Clayton (APNs 118-560-010 & 119-011-003)
Instructions to City Negotiator (City Manager) concerning terms and conditions.
Negotiating Party: Clayton Community Church.

Report Out from Closed Session 10:57 p.m.: Mayor Geller reported the Council received information and gave direction to staff.

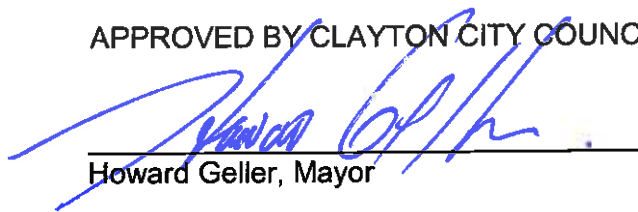
13. **ADJOURNMENT**– On call by Mayor Geller the meeting adjourned at 10:58 p.m.

Respectfully submitted,



Laci J. Jackson, City Clerk

APPROVED BY CLAYTON CITY COUNCIL



Howard Geller, Mayor