CITY OF CLAYTON

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AGENDA

REGULAR MEETING

* * *

CLAYTON CITY COUNCIL

***

TUESDAY, April 2, 2013

7:00 P.M.

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

Mayor: Julie K. Pierce
Vice Mayor: Hank Stratford

Council Members
Jim Diaz
Howard Geller
David T. Shuey

- 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*
April 2, 2013

7:00 P.M.

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

2. **CLOSED SESSION** – None.

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

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 March 19, 2013. (View Here)

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

5. **RECOGNITIONS AND PRESENTATIONS**

(a) Report on Central Contra Costa Transit Authority (CCCTA) by Mr. Gregg Manning, CCCTA Board Member (City of Clayton's Board Representative).

(b) Proclamation declaring April 9, 2013 as "National Service Recognition Day." (View Here)

6. **REPORTS**

(a) Planning Commission – Vice Chair Gregg Manning.
(b) Trails and Landscaping Committee – Vice Chair Ryan Lowe.
(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 Ordinance No. 444 amending Chapter 13.2 of Title 13 of the Clayton Municipal Code relating to Stormwater Management and Discharge Control for compliance with the National Pollution Discharge Elimination System (NPDES) Program (Stormwater Pollution Prevention) Municipal Regional Permit (MRP) imposed by the California Regional Water Quality Control Board. (View Here)
(Assistant to the City Manager)

Staff recommendations: **1)** Receive the staff report; **2)** Receive public comments; **3)** Approve a motion to have the City Clerk read Ordinance No. 444 by title and number only and waive further reading; and **4)** By motion, adopt Ordinance No. 444.

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

11. ADJOURNMENT– the next regularly scheduled City Council meeting is April 16, 2013.

# # # # #

Agenda Date: 4-2-13

Agenda Item: 4a

MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL

TUESDAY, March 19, 2013

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:01 p.m. by Mayor Pierce in Hoyer Hall of the Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Pierce, Vice Mayor Stratford, Councilmembers Diaz, Geller (arrived at 7:04 p.m.). Councilmember absent: Councilmember Shuey. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Maintenance Supervisor Mark Janney, Finance Manager Merry Pelletier, and City Clerk Laci Jackson

2. **CLOSED SESSION**- None.

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

4. **CONSENT CALENDAR**- **It was moved by Vice Mayor Stratford, seconded by Councilmember Diaz, to approve the Consent Calendar as submitted (Passed; 3-0 vote).**

(a) Approved the minutes of the regular meeting of March 5, 2013.

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

(c) Adopted Resolution 09-2013 certifying the City's Annual Housing Element Report for 2012.

(d) Adopted Resolution 10-2013 setting the City's Equivalent Runoff Unit (ERU) real property parcel assessment rates in FY 2013-14 at current rates to fund local storm water/clean water programs and services required by the federal and state-mandated National Pollution Discharge Elimination System (NPDES) Program (storm water pollution prevention).

5. **RECOGNITIONS AND PRESENTATIONS**

(a) Certificates of Recognition to "Do The Right Thing" public school students exemplifying the character trait of "Self-Discipline". Mayor Pierce announced these recognitions will be presented at the April 16th City Council meeting.

6. **REPORTS**

(a) Planning Commission –Commissioner Sandra Johnson reported on the March 12th meeting of the Planning Commission. She stated the Commission approved a Site Plan Review for a balcony on a residence in the Peacock Creek Subdivision.

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

(c) The City Manager stated a prospective developer for the Creekside Terrace project is moving forward by working on an appraisal and construction costs. He noted the prospective developer has been put in touch with the original architectural team.

(d) City Council

Councilmember Diaz attended the Mayors' Conference and the CERT training for CPR/AED. He commended the Police Chief for attending the Art and Wine Festival planning meeting and addied positive information.

Vice Mayor Stratford stated the "Do the Right Thing" trait of the month is "Integrity." He attended the Mayors' Conference and the Mid-Year Budget Sub-Committee meeting.

Councilmember Geller attended the Mayors' Conference and the Clayton Valley Charter High School Crab Feed.

Mayor Pierce attended the Caldecott Tunnel program held by the Clayton Historical Society, a Transportation Authority meeting, and the Mayors' Conference. She also attended two joint meetings of ABAG and MTC, two meetings with the ABAG Joint Policy Committee, and attended Career Day at Diablo View Middle School. She noted she spoke with Heather Schiffman from the Contra Costa Association of Realtors and stated it is concerned with possible Gas Shut-off valve requirements being considered by the County. Lastly, she attended an Eagle Scout Court of Honor for Jason Fernandez.

(e) Other – None.

7. PUBLIC COMMENTS – None.

8. PUBLIC HEARINGS – None.

9. ACTION ITEMS

(a) Presentation of the Mid-Year City Budget status report for Fiscal Year 2012-2013.

The Finance Manager presented the Mid-Year Budget report recommending no mid-year budget adjustments. She noted overall General Fund revenues are coming in higher than projected but Property and Sales Taxes are down slightly; Business License taxes and Building Permit fees are up. General Fund expenditures will be on-budget so it is estimated the City may close the fiscal year with a nominal surplus of &784 in contrast to the deficit of $197,464. The remainder of the total City Budget (Special Revenue and Enterprise funds) are operating within budgeted projections. Staff met with the Council Budget Sub-Committee on March 19th to examine the mid-year actuals and year-end projections, and it is the Sub-Committee's recommendation that no mid-year budgetary adjustments are necessary.

Vice Mayor Stratford thanked the Finance Manager for her work on the numbers.

The City Manager stated when the 2012-13 Budget was adopted General Fund revenues were not expected to come in high enough to cover expenses and the Council agreed that if it was needed the deficit could be plugged at the end of the fiscal year with General Fund Reserves. He noted tonight's report shows that revenues are coming in higher than expected and it looks as if expenses will stay on budget. He stated hopefully this trend will continue and revenues will continue to come in higher than expected. He stated during the extended economic challenges this City has not run the general fund in an annual deficit situation due to careful budgeting, has had no employee layoffs,

although all employees have experienced a 4.3% reduction in pay with unpaid furlough days for Miscellaneous and no Holiday Premium pay for Public Safety the last 4 years.

No public comments were received.

It was moved by Vice Mayor Stratford, seconded by Councilmember Diaz, to accept the Mid-Year Budget Report for FY 2012-13 (Passed; 4-0 vote).

(b) Consider the Introduction and First Reading of proposed Ordinance No. 444 amending Chapter 13.2 of Title 13 of the Clayton Municipal Code relating to Stormwater Management and Discharge Control for compliance with the National Pollution Discharge Elimination System (NPDES) Program (Stormwater Pollution Prevention) Municipal Regional Permit (MRP) imposed by the California Regional Water Quality Control Board.

The Assistant to the City Manager stated the City of Clayton participates in the Contra Costa Clean Water program. The Regional Water Quality Control Board issued the new MRP so there would be more consistency throughout the Bay Area regarding local requirements. She noted in 2004 and 2009 there were changes to the permit process. Staff reviewed the City's Ordinance and upon review noted our Ordinance should be updated to reflect the 2009 requirements. The City Attorneys' and a technical work group of the stormwater program managers completed a work model ordinance to address issues the State Water Board thought needed clarity. She stated the revised Ordinance updates the exempt discharges and resources, updates the Best Management Practice for pesticides and herbicides, adds more specific language to the requirements for the discharge into the storm drain system, and includes language that allows cities to require retrofits of existing facilities. She stated the new Ordinance deletes a section where previously it allowed for Homeowners Associations to do the state required reporting and monitoring of facilities because a City can not delegate its responsibility for inspection to a third party.

There were no public comments on this item.

It was moved by Vice Mayor Stratford, seconded by Councilmember Diaz, to have the City Clerk read Ordinance No. 444 by title and number only and waive further reading (Passed; 4-0 vote).

The City Clerk read Ordinance No. 444 by title and number only.

It was moved by Vice Mayor Stratford, seconded by Councilmember Diaz, to approve Ordinance No. 444 for Introduction (Passed; 4-0 vote).

(c) Consider staff and consultant reports and general discussion of repairs and long-term cost-benefit analysis for eventual replacement of Heating, Ventilation and Air Conditioning (HVAC) systems in City Hall, the Clayton Community Library and Endeavor Hall.

Maintenance Supervisor Mark Janney presented the staff report on the HVAC systems in City owned buildings. He stated the City has four properties that have systems and one property is not in use (Oak Street buildings). He stated Entek in Pleasant Hill, performed the evaluation of the current systems and provided a detailed report on the two buildings. He noted the City Hall system is the same system installed during the remodel of the building in 1997.

In the Library there are two separate systems: one for the meeting room and offices, and one for the main library. He stated both HVAC systems have a chiller which cycles 150 gallons per minute of chilled water. The HVAC systems are controlled by Johnson Control panels. In addition to these systems there is a separate single package unit to heat or cool the Story Room.

The Endeavor Hall HVAC system was installed in 2001, and is only responsible for cooling 2,450 sq/ft. and has 2 primary systems. He stated they are controlled by a thermostat, similar to a home system, and these systems were not reviewed by the report provided, as they are newer.

He stated the City currently contracts HVAC maintenance with Markham Mechanical Services out of Concord. He stated the contract price for City Hall is $1,330 a year, the Library is $3,113 a year, and Endeavor Hall is $998. He noted the City also has a separate maintenance contract of $3,600 for the controller. He stated the information provided shows the equipment and labor costs for repairs over the last three years.

He stated all HVAC systems are unique and age is a factor for the maintenance costs. Staff has outlined the needed repairs, the future repairs, energy upgrades, and the comfort upgrades for the current systems.

The Library HVAC needs to have the chiller replaced that could cost $128,104 with an additional $7,690 for engineering costs. As part of this replacement the underground piping needs to be evaluated and if it needs to be replaced there will be an added cost of $98,550. The inspection cost alone for the piping is $3,250.

In the future the five condensing units at City Hall will need to be replaced at an approximate cost of $109,000 plus an additional $6,900 for engineering. He also stated the air handlers at the Library will need to be replaced and could cost between $108,460 and $200,330 depending on where the units are placed plus engineering costs.

He stated when PG&E recently evaluated the HVAC systems for energy cost savings upgrades and the cost for doing energy management upgrades was not feasible because the payoff timeline is too long (40 years). He stated staff is still seeking ways to obtain grants for energy upgrades.

He stated the comfort upgrades at the Library to work on air distribution in the Library Meeting Room can be done but the cost is substantial.

Lastly, he stated the fiscal impact to perform all replacement projects as stated in the report is $586,000-$862,000. He stated the needed HVAC repairs are expected to cost between $156,000-$260,000.

The City Manager commented the Capital Equipment Replacement Fund (CERF) has not been replenished recently due to budget constraints, and large facilities repairs are beyond current budgeted resources. Therefore, the City would need to look to the General Fund Reserve for replacement.

The City Manager noted the reason for this report is to bring awareness to the size and magnitude of such projects and to give a blueprint for moving forward. He stated if the Library chiller goes out the only source of funding is going to be the General Fund Reserves. He stated the purpose for the General Fund Reserve is for infrastructure and/or catastrophic losses. During in the last budget cycle, surplus General Fund money was allocated to the Trust and Agency account for holding and the Budget Sub-Committee will need to meet to discuss the disposition of those funds.

Councilmember Geller asked if having a service contract saves money in the long run? Maintenance Supervisor Janney stated yes because it is preventative maintenance.

Councilmember Pierce stated she is continuing to do research for solar energy to serve the City's buildings.

No public comments were offered, and no action was taken on this item.

10. **COUNCIL ITEMS** – None.

11. **ADJOURNMENT**– on call by Mayor Pierce the meeting adjourned at 8:14 p.m.

# # # # #

Respectfully submitted,

_____
Laci J. Jackson, City Clerk

APPROVED BY CLAYTON CITY COUNCIL

_____
Julie K. Pierce, Mayor

Agenda Date 4/2/2013

Agenda Item: 4b

Approved:

Gary A. Napper
City Manager/Executive Director

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: MERRY PELLETIER, FINANCE MANAGER

DATE: 4/2/2013

SUBJECT: INVOICE SUMMARY

RECOMMENDATION:

Approve the following Invoices:

4/2/2013 Cash Requirements Report	$ 55,671.65
Total:	$ 55,671.65

Attachments:
Cash Requirements Report dated 3/29/2013 (3 pages)

City of Clayton
Cash Requirements Report
City Council 4/2/13

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Advanced Trenchless								
Advanced Trenchless	4/2/2013	3/26/2013	0035	Deposit refund CAP 0035	$832.95	$0.00		$832.95
				Totals for Advanced Trenchless:	*$832.95*	*$0.00*		*$832.95*
American Fidelity Assurance Company								
American Fidelity Assurance Company	4/2/2013	3/15/2013	A967681	Premiums, April 2013	$156.64	$0.00		$156.64
				Totals for American Fidelity Assurance Company:	*$156.64*	*$0.00*		*$156.64*
AT&T/ CalNet 2								
AT&T/ CalNet 2	4/2/2013	3/22/2013	4214006	Phone, March 2013	$1,825.73	$0.00		$1,825.73
				Totals for AT&T/ CalNet 2:	*$1,825.73*	*$0.00*		*$1,825.73*
Caltronics Business Systems, Inc								
Caltronics Business Systems, Inc	4/2/2013	3/15/2013	1271527	Konica Contract 2/15/13-3/14/13	$218.01	$0.00		$218.01
				Totals for Caltronics Business Systems, Inc:	*$218.01*	*$0.00*		*$218.01*
CCC General Services (Traffic)								
CCC General Services (Traffic)	4/2/2013	3/20/2013	4869	Traffic Signal Maintenance February 2013	$996.63	$0.00		$996.63
				Totals for CCC General Services (Traffic):	*$996.63*	*$0.00*		*$996.63*
Concord Garden Equipment								
Concord Garden Equipment	4/2/2013	2/28/2013	440676	.095 5 lb trimmer line	$59.00	$0.00		$59.00
Concord Garden Equipment	4/2/2013	2/28/2013	440455	nozzles	$89.94	$0.00		$89.94
Concord Garden Equipment	4/2/2013	2/28/2013	435762	hedger service	$240.51	$0.00		$240.51
Concord Garden Equipment	4/2/2013	2/28/2013	435765	parts	$469.59	$0.00		$469.59
Concord Garden Equipment	4/2/2013	2/28/2013	435823	parts	$267.81	$0.00		$267.81
Concord Garden Equipment	4/2/2013	2/28/2013	437294	grinding stones	$58.73	$0.00		$58.73
Concord Garden Equipment	4/2/2013	2/28/2013	437694	parts	$676.02	$0.00		$676.02
Concord Garden Equipment	4/2/2013	2/28/2013	438546	o-ring	$1.09	$0.00		$1.09
				Totals for Concord Garden Equipment:	*$1,862.69*	*$0.00*		*$1,862.69*
Contra Costa Water Dist.								
Contra Costa Water Dist.	4/2/2013	3/18/2013	I914983	Irrigation, Marsh Creek	$177.58	$0.00		$177.58
				Totals for Contra Costa Water Dist.:	*$177.58*	*$0.00*		*$177.58*
Goldfarb & Lipman								
Goldfarb & Lipman	4/2/2013	3/19/2013	107913	Current Fees February 2013	$416.50	$0.00		$416.50
				Totals for Goldfarb & Lipman:	*$416.50*	*$0.00*		*$416.50*
Graybar Electric Co, Inc								
Graybar Electric Co, Inc	4/2/2013	3/6/2013	965293370	S7582E 150 HPS HADCO Prod Craftlite	$1,510.55	$0.00		$1,510.55
				Totals for Graybar Electric Co, Inc:	***$1,510.55***	***$0.00***		***$1,510.55***
Hammons Supply Company								
Hammons Supply Company	4/2/2013	3/21/2013	76975	soap, tissue	$272.41	$0.00		$272.41

City of Clayton
Cash Requirements Report
City Council 4/2/13

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Hammons Supply Company	4/2/2013	3/8/2013	76729	supplies	$189.71	$0.00		$189.71
				Totals for Hammons Supply Company:	*$462.12*	*$0.00*		*$462.12*
Hauling Pros, Inc								
Hauling Pros, Inc	4/2/2013	3/19/2013	0065	Deposit Refund CAP 0065	$904.54	$0.00		$904.54
				Totals for Hauling Pros, Inc:	***$904.54***	***$0.00***		***$904.54***
Health Care Dental Trust								
Health Care Dental Trust	4/2/2013	3/19/2013	April 2013	Dental April 2013	$3,023.03	$0.00		$3,023.03
				Totals for Health Care Dental Trust:	*$3,023.03*	*$0.00*		*$3,023.03*
Innovative Impressions								
Innovative Impressions	4/2/2013	3/22/2013	617	Clayton Cleans Up Tshirts X 200	$429.93	$0.00		$429.93
				Totals for Innovative Impressions:	*$429.93*	*$0.00*		*$429.93*
J & R Floor Services								
J & R Floor Services	4/2/2013	4/1/2013	040113	March Billing	$4,910.00	$0.00		$4,910.00
				Totals for J & R Floor Services:	*$4,910.00*	*$0.00*		*$4,910.00*
Jarvis Fay Doporto & Gibson, LLP								
Jarvis Fay Doporto & Gibson, LLP	4/2/2013	3/14/2013	5276	CCC Prop Tax Admin Fees (PTAF) February 2	$20.16	$0.00		$20.16
Jarvis Fay Doporto & Gibson, LLP	4/2/2013	3/14/2013	5257	Chevron Property Tax Refund Dispute Februa	$14.39	$0.00		$14.39
				Totals for Jarvis Fay Doporto & Gibson, LLP:	*$34.55*	*$0.00*		*$34.55*
LarryLogic Productions								
LarryLogic Productions	4/2/2013	3/25/2013	1316	City Council Meeting 3/19/13	$300.00	$0.00		$300.00
				Totals for LarryLogic Productions:	*$300.00*	*$0.00*		*$300.00*
Marken Mechanical Services Inc								
Marken Mechanical Services Inc	4/2/2013	3/13/2013	413-1146-3	Library Maintenance March 2013	$502.17	$0.00		$502.17
				Totals for Marken Mechanical Services Inc:	*$502.17*	*$0.00*		*$502.17*
Muir/ Diablo Occupation Medicine								
Muir/ Diablo Occupation Medicine	4/2/2013	3/19/2013	215651	Tb skin Test	$20.00	$0.00		$20.00
				Totals for Muir/ Diablo Occupation Medicine:	*$20.00*	*$0.00*		*$20.00*
Municipal Pooling Authority								
Municipal Pooling Authority	4/2/2013	3/27/2013	April 2013	LTD/Life April 2013	$1,174.29	$0.00		$1,174.29
				Totals for Municipal Pooling Authority:	*$1,174.29*	*$0.00*		*$1,174.29*
NBS Govt. Finance Group								
NBS Govt. Finance Group	4/2/2013	3/20/2013	3130134	CFD Admin - Qtrly fees 4/1/13-6/30/13	$4,966.52	$0.00		$4,966.52
				Totals for NBS Govt. Finance Group:	***$4,966.52***	***$0.00***		***$4,966.52***
Neopost (add postage)								
Neopost (add postage)	4/2/2013	3/15/2013	Postage	Postage Added	$300.00	$0.00		$300.00

City of Clayton
Cash Requirements Report
City Council 4/2/13

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
				Totals for Neopost (add postage):	*$300.00*	*$0.00*		*$300.00*
Pacific Telemanagement Svc								
Pacific Telemanagement Svc	4/2/2013	3/27/2013	512124	Pay Phone in Courtyard April 2013	$73.00	$0.00		$73.00
				Totals for Pacific Telemanagement Svc:	*$73.00*	*$0.00*		*$73.00*
Paramount Elevator Corp.								
Paramount Elevator Corp.	4/2/2013	3/18/2013	179268	Oil & Grease	$220.00	$0.00		$220.00
				Totals for Paramount Elevator Corp.:	*$220.00*	*$0.00*		*$220.00*
PERMCO, Inc.								
PERMCO, Inc.	4/2/2013	3/25/2013	9945	Retainer - General Services	$3,836.75	$0.00		$3,836.75
PERMCO, Inc.	4/2/2013	3/25/2013	9946	First Horizon Lawsuit	$150.00	$0.00		$150.00
PERMCO, Inc.	4/2/2013	3/25/2013	9947	Diablo Pointe Construction Inspection	$207.50	$0.00		$207.50
PERMCO, Inc.	4/2/2013	3/25/2013	9948	CAP Inspection, non-utility	$41.50	$0.00		$41.50
PERMCO, Inc.	4/2/2013	3/25/2013	9949	2013 Pavement Rehabilitation Project	$3,484.64	$0.00		$3,484.64
PERMCO, Inc.	4/2/2013	3/25/2013	9950	Oakhurst Open Space Weed Abatement	$671.00	$0.00		$671.00
PERMCO, Inc.	4/2/2013	3/25/2013	9951	PG&E Gas Line Replacement - Dana Hills	$212.25	$0.00		$212.25
				Totals for PERMCO, Inc.:	*$8,603.64*	*$0.00*		*$8,603.64*
PG&E								
PG&E	4/2/2013	3/19/2013	3/19/13	service 1/23/13-3/18/13	$17,248.41	$0.00		$17,248.41
PG&E	4/2/2013	3/19/2013	March 2013	2/22/13-3/22/13	$2,465.25	$0.00		$2,465.25
				Totals for PG&E:	*$19,713.66*	*$0.00*		*$19,713.66*
R&S Erection of Concord								
R&S Erection of Concord	4/2/2013	3/19/2013	84195-COMR	Repairs - outside keystation roll-up door	$514.00	$0.00		$514.00
				Totals for R&S Erection of Concord:	*$514.00*	*$0.00*		*$514.00*
TMT Enterprises, Inc								
TMT Enterprises, Inc	4/2/2013	2/28/2013	64128	Candlestick Park Mix	$1,522.92	$0.00		$1,522.92
				Totals for TMT Enterprises, Inc:	*$1,522.92*	*$0.00*		*$1,522.92*
				GRAND TOTALS:	**$55,671.65**	**$0.00**		**$55,671.65**

declaring

April 9, 2013

As

Agenda Date: 4-2-13

Agenda Item: 5b

National Service Day

WHEREAS, service to others is a hallmark of the American character, and central to how we meet our challenges; and

WHEREAS, the nation's mayors are increasingly turning to national service and volunteerism as a cost-effective strategy to meet city needs; and,

WHEREAS, AmeriCorps and Senior Corps address the most pressing challenges facing our cities and nation, from educating students for the jobs of the 21st century and supporting veterans and military families to preserving the environment and helping communities recover from natural disasters; and

WHEREAS, national service expands economic opportunity by creating more sustainable, resilient communities and providing education, career skills, and leadership abilities for those who serve; and

WHEREAS, national service participants serve in more than 70,000 locations across the country, bolstering the civic, neighborhood, and faith-based organizations that are so vital to our economic and social well-being; and

WHEREAS, national service participants increase the impact of the organizations they serve with, both through their direct service and by recruiting and managing millions of additional volunteers; and

WHEREAS, national service represents a unique public-private partnership that invests in community solutions and leverages non-federal resources to strengthen community impact and increase the return on taxpayer dollars; and

WHEREAS, AmeriCorps members and Senior Corps volunteers demonstrate commitment, dedication, and patriotism by making an intensive commitment to service, a commitment that remains with them in their future endeavors; and

WHEREAS, the Corporation for National and Community Service shares a priority with mayors nationwide to engage citizens, improve lives, and strengthen communities; and is joining with mayors across the country to support the Mayors Day of Recognition for National Service on April 9, 2013.

THEREFORE, BE IT RESOLVED that I, Julie K. Pierce, on behalf of the Clayton City Council, do hereby proclaim April 9, 2013, as National Service Recognition Day, and encourage residents to recognize the positive impact of national service in our city, to thank those who serve; and to find ways to give back to their communities.

CITY OF CLAYTON
Founded 1857 – Incorporated 1964

Agenda Date: 4-2-13

Agenda Item: 9a

Approved:

Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: Laura Hoffmeister, Assist. to the City Manager

DATE: April 2, 2013

SUBJECT: SECOND READING AND ADOPTION OF AN ORDINANCE No. 444 OF THE CITY OF CLAYTON AMENDING CHAPTER 13.12 OF TITLE 13 OF THE MUNICIPAL CODE RELATING TO STORMWATER MANAGEMENT DISCHARGE CONTROL FOR COMPLIANCE WITH THE NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PROGRAM (STORM WATER POLLUTION PREVENTION) MUNICIPAL REGIONAL PERMIT (MRP) IMPOSED BY THE REGIONAL WATER QUALITY CONTROL.

RECOMMENDATION

Staff recommends the City Council receive public comments; have the City Clerk read the ordinance by title and number only and waive further reading; following the City Clerks reading that the City Council adopt the Ordinance.

BACKGROUND

At its March 19, 2013 City Council meeting, the attached Ordinance was introduced. No public comments were received, and the City Council approved the introduction and first reading (by title only) of the Ordinance as proposed by staff. The Ordinance will become effective 30 days after adoption.

DISCUSSION

To comply with the Water Boards mandated interpretation of our NPDES (Stormwater) permit, the attached ordinance amending the section "Stormwater Management and Discharge Control" to the Clayton Municipal Code is necessary. The new Municipal Regional Permit mandates that cities review and update their prior ordinance to ensure they are compliant with the new regulations. Failure to comply with state regulations would result in violation of our State issued Municipal Regional Permit NPDES permit and include the levy of fines. Although technically our current ordinance complies with the state regulations, State Water Board staff has reviewed current local jurisdiction ordinances and determined that by their interpretation additional updating is needed in order to be in permit compliance.

Attachments:

"Stormwater Management Discharge Control Ordinance"
March 19, 2013 City Council Staff Report

ORDINANCE NO. 444

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON AMENDING CHAPTER 13.12 TO TITLE 13 OF THE MUNICIPAL CODE RELATING TO STORMWATER MANAGEMENT AND DISCHARGE CONTROL FOR COMPLICANCE WITH THE NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM NPDES) PROGRAM (STORM WATER POLLUTION PREVENTION) MUNICIPAL REGIONAL PERMIT (MRP) IMPOSED BY THE REGIONAL WATER QUALITY CONTROL BOARD

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

WHEREAS, the 1987 Reauthorization of the Federal Clean Water Act, as well as similar State legislation, required local agencies to obtain a NPDES Permit for discharging the contents of municipal storm drainage water conveyance systems; and

WHEREAS, the Federal Clean Water Act and related permits are implemented and enforced by the State through the Regional Water Quality Control Board (San Francisco Bay Area Region), this permitting effort is intended to improve water quality in the Delta and San Francisco Bay Estuary System, protect endangered species, and safeguard public waters and waterways for continued economic, recreation and health purposes; and

WHEREAS, stormwater runoff pollution has been identified as a significant impact on water quality and wildlife in the Bay Area by the State and Federal Government; and

WHEREAS, the City of Clayton's National Pollutant Discharge Elimination System (NPDES) permit was reissued in 2009 by the San Francisco Water Quality Control Board in, which added various mandates, including that related to Stormwater Management and Discharge Control, and

WHEREAS, the public necessity, conveniences and general welfare require the adoption of the proposed ordinance for compliance with the City's NPDES permit though the Municipal Regional Permit (MRP) issued by the San Francisco Regional Water Quality Control Board; and

WHEREAS, on March 19, 2013 the City Council held a public meeting to consider amending the Municipal Code, as proposed in the Ordinance amendments "Stormwater Management and Discharge Control"; considered the information contained in the staff report and any other written and public testimony; introduced and held first reading of said Ordinance; and

WHEREAS, the additions to the Municipal Code are categorically exempt under the California Environmental Quality Act (CEQA) pursuant to Section 15307, Class 7; and Section 15308, Class 8--actions by regulatory agencies for the protection of natural resources and;

WHEREAS, there is no evidence that the additions will have the potential for any individual or cumulative adverse effect on fish and wildlife resources or their habitat, as defined in Section 711.2 of the Fish and Game Code.

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

Section 1. Revocation and Amendment.

Chapter 13.12 of Title 13 of the Clayton Municipal Code, as adopted by Ordinance No. 379 is hereby revoked in its entirety and amended to read as follows:

"Chapter 13.12. Stormwater Management and Discharge Control

Section 13.12.010. Intent and Purpose.

A. The intent of this Chapter is to protect and enhance the water quality in the City of Clayton's watercourses pursuant to, and consistent with the Porter-Cologne Water Quality Control Act (Water Code section 13000 et seq.) and the Federal Clean Water Act (33 U.S.C. section 1251 et seq.).

B. This Chapter also carries out the conditions in the City's National Pollutant Discharge Elimination System (NPDES) permit that require implementation of appropriate source control and site design measures and stormwater treatment measures for development projects.

C. It is the purpose of the City Council in enacting this Chapter to protect the health, safety and general welfare of Clayton's citizens by:

1. minimizing non-stormwater discharges, whose pollutants would otherwise degrade the water quality of local streams, to the stormwater system.

2. minimizing increases in nonpoint source pollution caused by stormwater runoff from development that would otherwise degrade local water quality.

3. controlling the discharge to the City's stormwater system from spills, dumping or disposal of materials other than stormwater.

4. reducing stormwater run-off rates and volumes and nonpoint source pollution whenever possible, through stormwater management controls and ensuring that these management controls are properly maintained and pose no threat to public safety.

Section 13.12.020. Definitions.

The following words and phrases when used in this Chapter shall be as defined herein. Words and phrases in this Chapter and not otherwise defined shall be interpreted as defined in the regulations issued by the U.S. Environmental Protection Agency to implement the provisions of the Federal Clean Water Act, and as defined by the State Water Resources Control Board to implement the Porter-Cologne Act:

A. Best management practices or "BMP" are structural devices, measures, stormwater management facilities, activities, prohibitions, or practices, general good housekeeping, pollution prevention practices, maintenance procedures and other management practices, to prevent or reduce the discharge of pollutants directly or indirectly to "waters of the United States," including watercourses, water bodies, and wetlands.

B. City's NPDES permit shall mean the NPDES permit issued to the City of Clayton, Permit No. CAS612008, and any subsequent amendment, reissuance or successor to the NPDES permit.

C. Construction shall mean any project, including projects requiring coverage under the General Construction Permit, that involves soil disturbing activities, including but not limited to, clearing, grading, paving, and disturbances to ground such as stockpiling and excavating. Construction sites are also all sites with disturbed or graded land area not protected by vegetation or pavement that are subject to a grading or building permit.

D. Development shall mean construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit, or planned unit development) or industrial, commercial, retail or other nonresidential project, including public agency projects.

E. Development runoff requirements shall mean the provisions in the City's NPDES permit that contain performance standards to address both the construction and post-construction

phase impacts of new projects and redevelopment projects on stormwater quality, as well as any requirements imposed by the director pursuant to a permit or other regulatory action.

F. Director shall mean the City Manager of the City of Clayton or his or her designee.

G. Enforcement officer or Officer shall mean those individuals designated by the director to act as authorized enforcement officers.

H. Guidebook shall mean the most recent version of the Contra Costa Clean Water Program Stormwater C.3. Guidebook.

I. Non-stormwater discharge is any addition of any pollutant to the City's stormwater system, except discharges pursuant to a NPDES permit, or discharges further exempted in Section 13.12.060(c) and (d) of this Chapter.

J. Pollutant shall mean any material other than stormwater including, but not limited to, petroleum products or by-products, solid waste, incinerator residue, sewage, sewage sludge, garbage, heat, chemical waste, biological materials, radioactive materials, wrecked or discarded equipment, rock, sand, soil and industrial, municipal or agricultural waste discharged into the water or stormwater system.

K. Premises shall mean any land, building, structure, facility, or installation, (including a building's grounds or other appurtenances), and adjacent sidewalks and parking strips.

L. Redevelopment shall mean land disturbing activity that results in the creation, addition, or replacement of exterior impervious area on a site on which some past development has occurred.

M. Regional Board shall mean the California Regional Water Quality Control Board, San Francisco Bay Region.

N. Responsible person shall mean the owner or occupant of any premises or who engages in, permits, or oversees any activity from which there is or may be a non-stormwater discharge or any person who releases pollutants to the City's stormwater system.

O. Stormwater shall mean storm water runoff, snow melt runoff, surface runoff and drainage flow on the surface of the ground resulting from precipitation.

P. Stormwater management facility shall mean any BMP or any device that utilizes detention, retention, filtration, harvest for reuse, evapotranspiration or infiltration to provide treatment (and/or control volume, flows, and durations) of stormwater for purposes of compliance with development runoff requirements.

Q. Stormwater control plan shall mean a plan that meets those criteria contained in the most recent version of the Contra Costa Clean Water Program Stormwater C.3. Guidebook.

R. Stormwater system is that system of facilities by which stormwater may be conveyed to any stream, watercourse, other body of water or wetlands, including flood control channels, any roads with drainage systems, city streets, catch basins, curbs, gutters, ditches, improved channels, storm drains or storm drain system, which are not part of a Publicly Owned Treatment Works ("POTW") as that term is defined in 40 CFR section 122.2.

Section 13.12 030. Responsibility for Administration.

The director or his or her designee shall administer this Chapter for the City.

Section 13.12.040. Construction and Application.

This Chapter shall be construed consistent with the requirements of the Federal Clean Water Act and amendments thereto or applicable implementing regulations and the City's NPDES permit.

Section 13.12.050 Stormwater Control Plan Required.

A. In accordance with thresholds and effective dates in the City's NPDES Permit, every application for a development project, including but not limited to a rezoning, tentative map, parcel map, conditional use permit, variance, site development permit, grading permit, encroachment permit, design review, or building permit that is subject to the development runoff requirements in the City's NPDES permit shall be accompanied by a stormwater control plan that meets the criteria in the most recent version of the Contra Costa Clean Water Program Stormwater C.3. Guidebook.

B. Implementation of an approved stormwater control plan and submittal of an approved stormwater control operation and maintenance plan by the applicant shall be a condition precedent to a final building inspection or the issuance of a certificate of occupancy for a project subject to this section.

C. All stormwater management facilities shall be designed in a manner to minimize the need for maintenance and reduce the chances of failure. Design guidelines are outlined in the Guidebook.

D. All stormwater management facilities shall be maintained according to the Guidebook and the approved stormwater control operation and maintenance plan. The person(s) or organization(s) responsible for maintenance shall be designated in the stormwater control operation and maintenance plan. Unless a different time period is provided for in the plan, those responsible for maintenance shall inspect the stormwater management facility at least annually. The stormwater control operation and maintenance plan shall also describe how the maintenance costs will be funded. Upon the failure of a responsible person to maintain a stormwater management facility in accordance with this Chapter or the plan, the City may perform the maintenance and recover its costs from the responsible person as provided in sections 13.12.100, 13.12.170 and 13.12.180.

E. A property owner shall, through recorded covenants or easements, provide the City, the Contra Costa Mosquito and Vector Control District, and the Regional Board access to stormwater management facilities for inspections and maintenance.

Section 13.12.060. Prohibited Discharges.

A. The discharge of non-stormwater to the City stormwater system is prohibited.

B. The discharge of stormwater from any premises and any activity that may cause or contribute to prohibited discharge, to a violation of receiving water limitations in the City's NPDES permit, or to a nuisance within the meaning of California Water Code section 13050 is prohibited.

C. The following discharges are exempt from the prohibition set forth in subsection (a) above, unless determined by the director to be a source of pollutants to or from the stormwater system or to receiving waters:

1. any discharge in compliance with a NPDES permit issued to the discharger.

2. flows from riparian habitats and wetlands, diverted stream flows, flows from natural springs, rising ground waters, uncontaminated and unpolluted groundwater infiltration, single-family homes' pumped groundwater, foundation drains, and water from crawl space pumps and footing drains, and pumped groundwater from drinking water aquifers.

D. The following discharges are exempt from the prohibition set forth in subsection (a) above, if and only if the director identifies such discharge as not being a source of any pollutant to the stormwater system or to a receiving water or if control measures required by the director and as set forth in Section C.15 of the City's NPDES permit are properly implemented: pumped groundwater from non-drinking-water aquifers; pumped groundwater from other sources, foundation drains, and water from crawl space pumps and footing drains; air conditioning condensate; planned discharges from routine operation and maintenance activities in the potable water distribution system; unplanned discharges from breaks, leaks, overflows, fire hydrant shearing, or emergency flushing of the potable water distribution system; emergency discharges of the potable water distribution system as a result of firefighting, unauthorized hydrant openings, or natural or man-made disasters; individual residential car washing; swimming pool, hot tub, spa, and fountain water discharges, and

discharges from irrigation water, landscape irrigation, and lawn or garden watering.

Section 13.12.070. Discharge in Violation of NPDES Permit.

Any discharge that may result in or contribute to a violation of the City's NPDES permit either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge shall be the responsibility of the person causing or responsible for the discharge, and such person shall defend, indemnify and hold harmless the City in any administrative or judicial enforcement action relating to such discharge.

Section 13.12.080. Unlawful Discharge and Unlawful Connections.

A. It is unlawful to allow, permit, establish, use, maintain or continue unauthorized drainage connections to the City's stormwater system, or to commence or continue any unauthorized discharges to the City's stormwater system.

B. No discharge shall cause the following conditions, create a nuisance, adversely affect beneficial uses of waters of the State, or cause or contribute to a violation of any applicable water quality standard for receiving waters:

1. floating, suspended or deposited macroscopic matter or foam;

2. bottom deposits or aquatic growth;

3. alterations of temperature, sediment load, nutrient load, or dissolved oxygen, which cause significant adverse impacts to native aquatic biota;

4. visible, floating, suspended or deposited oil or products of petroleum origin; or,

5. substances present in concentrations or quantities which cause deleterious effects on aquatic biota, wildlife or waterfowl, or which render any of these unfit for human consumption.

Section 13.12.090. Best Management Practices and Standards.

A. Generally. Any person owning or operating premises that may contribute pollutants to the City's stormwater system shall undertake best management practices to reduce the potential for pollutants entering the system to the maximum extent practicable. Examples of such premises include, but are not limited to, parking lots, gasoline stations, industrial facilities, and other commercial enterprises. Examples of best management practices include, but are not limited to, those described in publications by the United States Environmental Protection Agency, the California Water Boards, the California Stormwater Quality Association, the Bay Area Stormwater Management Agencies Association, the Contra Costa Clean Water Program, and the City of Clayton.

B. Litter. No person shall throw, deposit, leave, keep or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage or other discarded or abandoned objects, articles or other litter in or upon any street, alley, sidewalk, business place, creek, stormwater system, fountain, pool, lake, stream, river or any other body of water, or upon any public or private parcel of land so that the same might become a pollutant, except in containers or in lawfully established waste disposal facilities.

C. Sidewalks. The occupant or tenant, or in the absence of occupant or tenant, the owner or proprietor of any real property in front of which there is a paved sidewalk shall maintain said sidewalk free of dirt or litter to the maximum extent practicable. Sweepings from the sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained as required for the disposal of solid waste.

D. Maintenance of Facilities and Landscaped Areas. Every responsible person shall implement Best Management Practices to minimize the release of pesticides, fertilizers, herbicides, and other related materials used to maintain landscaping and facilities.

E. Parking Lots, Paved Areas and Related Stormwater Systems. Persons owning, operating or maintaining a paved parking lot, the paved areas of a gasoline station, a paved private street or road, or similar structure, and related stormwater systems shall clean those premises as frequently and thoroughly as practicable in a manner that does not result in the discharge of pollutants to the City's stormwater system. As part of an enforcement action pursuant to this Chapter, the director may require installation and maintenance of BMPs to prevent the discharge of trash or other pollutants from private parking lots, streets, roads, and drainage facilities into the stormwater system. Failure or refusal to comply with such a requirement is prohibited and shall constitute a separate violation of this Chapter.

F. Construction Activities. In addition to any other requirement imposed by this Chapter, all construction projects shall incorporate site-specific BMPs, which can be a combination of BMPs from the California BMP Handbook, Construction January 2003, the Caltrans Stormwater Quality Handbooks, Construction Site Best Management Practices, the San Francisco Bay Regional Water Quality Control Board Erosion and Sediment Control Field Manual, 2002, the City's NPDES Permit, the City's grading and erosion control ordinance, generally accepted engineering practices for erosion control, and any other conditions required by the director when undertaking construction activities. The director may establish controls on the rate, volume, and duration of stormwater runoff from new developments and redevelopment as may be appropriate to minimize the discharge and transport of pollutants.

G. Notification of Intent and Compliance with General Permits. Each discharger associated with construction activity or other discharger described in any general stormwater permit addressing discharges, as may be adopted by the United States Environmental Protection Agency, the State Water Resources Control Board, or the Regional Board shall provide the director with the notice of intent, comply with and undertake all other activities required by any general stormwater permit applicable to such dischargers. Each discharger identified in an individual NPDES permit relating to stormwater discharges shall comply with and undertake all activities required by the permit.

H. Development Runoff Requirements. Every applicant for a new development and redevelopment project subject to the development runoff requirements shall submit a stormwater control plan and implement conditions of approval that reduce stormwater

pollutant discharges through the construction, operation and maintenance of treatment measures and other appropriate source control and site design measures. Similarly, increases in runoff volume, flows, and durations shall be managed in accordance with the development runoff requirements.

I. Stormwater Pollution Prevention Plan. The director may require any business or utility in the City that is engaged in activities that may result in non-stormwater discharges or runoff pollutants to develop and implement a stormwater pollution prevention plan, which must include an employee training program. Business activities which may require a stormwater pollution prevention plan include maintenance, storage, manufacturing, assembly, equipment operations, vehicle loading, fueling, vehicle maintenance, food handling or processing, or cleanup procedures, carried out partially or wholly out of doors.

J. Coordination with Hazardous Material Release Response and Inventory Plans. Any business subject to the Hazardous Material Release Response and Inventory Plan, Division 20, Chapter 6.95 of the California Health and Safety Code (commencing with section 25500), shall include, in that Plan, provision for compliance with this Chapter, including the prohibitions of non-stormwater discharges and the requirement to reduce release of pollutants to the maximum extent practicable.

Section 13.12.100. Reserved.

Section 13.12.110. Authority to Inspect.

A. Generally. The director and officer shall have the authority to enter property and make an inspection to enforce and carry out the provisions of this Chapter. Routine or scheduled inspections shall be based upon as reasonable a selection process as may be deemed necessary to carry out the intent of this Chapter, including, but not limited to, random sampling or sampling in areas with evidence of stormwater contamination, evidence of the discharge of non-stormwater to the stormwater system, inspection of stormwater treatment and flow-control facilities for proper operation and evidence of routine and corrective maintenance, or similar activities. Inspections may also be conducted in conjunction with routine or scheduled inspections conducted by other public agencies or special districts, including but not limited to the Central Contra Costa Sanitary District, the Contra Costa County Fire Protection District, County Environmental Health Department, the Contra Costa Mosquito and Vector Control District, or the Regional Board. The City Council may by resolution establish a schedule of fees for inspections.

B. Authority to Sample and Establish Sampling Devices. With the consent of the owner or occupant, or pursuant to a search or inspection warrant, the officer may establish on any property such devices as are reasonably necessary to conduct sampling or metering operations. During all authorized inspections, the officer may take any sample deemed necessary to aid in the pursuit of the inquiry or in the recordation of the activities on site.

C. Notification of Spills. All persons in charge of the premises or responsible for emergency response for the premises have a responsibility to train premises' personnel and maintain notification procedures to ensure that immediate notification is provided to the City of any suspected, confirmed or unconfirmed release of pollutants creating a risk of non-stormwater discharge into the City stormwater system.

As soon as any person in charge of the premises or responsible for emergency response

for the premises has knowledge of any suspected, confirmed or unconfirmed release of non-stormwater discharge entering the City stormwater system, such person shall take all necessary steps to ensure the detection and containment and clean up of such release and shall notify the City of the occurrence by telephoning the director. This notification requirement is in addition to and not in lieu of other required notifications.

D. Requirement to Test or Monitor. The officer may require that any person engaged in any activity or owning or operating any premises that may cause or contribute to non-stormwater discharges, undertake such monitoring activities or analysis and furnish such reports as the officer may specify. The burden, including costs of these activities, analysis and reports shall bear a reasonable relationship to the need for the monitoring, analysis and reports and the benefits to be obtained. The recipient of such request shall undertake and provide the monitoring, analysis and reports required.

E. Cost Recovery. If an inspection pursuant to this section results in an enforcement action, the City may issue an invoice of costs and recover in an enforcement action its reasonable inspection costs.

Section 13.12.120. Violations Constituting Misdemeanors or Infractions.

The violation of any provision of this Chapter, or failure to comply with any of the mandatory requirements of this Chapter shall constitute a misdemeanor, except that notwithstanding any other provisions of this Chapter, any violation constituting a misdemeanor under this Chapter may, at the discretion of the director, officer or city attorney, be charged and prosecuted as an infraction.

Section 13.12.130. Penalty for Violation.

A. Upon conviction of a misdemeanor, a person shall be subject to payment of a fine, or imprisonment, or both, not to exceed the limits set forth in California Government Code section 36901.

B. Upon conviction of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in California Government Code section 36900.

Section 13.12.140. Continuing Violation.

Every day that any violation of this Chapter shall continue shall constitute a separate offense.

Section 13.12.150. Concealment.

Concealing, aiding or abetting a violation of any provision of this Chapter shall constitute a violation of such provision.

Section 13.12.160. Acts Potentially Resulting in Violation of the Federal Clean Water Act or Porter-Cologne Act.

Any person who violates any provision of this Chapter, or the provisions of any permit issued pursuant to this Chapter, or who releases a non-stormwater discharge, or who violates any cease and desist order, prohibition or effluent limitation, may also be in violation of the Federal Clean Water Act or the Porter-Cologne Act and may be subject to the enforcement provisions of those acts, including civil and criminal penalties. Any enforcement actions authorized pursuant to this Chapter may also include notice to the violator of such potential

liability pursuant to federal or state law.

Section 13.12.170. Violations Deemed a Nuisance.

In addition to the penalties provided herein, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to the public health, safety and welfare. Such condition is hereby declared and deemed to be a nuisance, which may be abated as provided in Chapter 8.08 of Title 8 (commencing with section 8.08.010) of this Code including the assessment of the costs of abatement which may be collected at the same time and in the same manner as ordinary municipal taxes as provided by Government Code section 38773.5, and by civil action to abate, enjoin or otherwise compel the cessation of such nuisance by the City Attorney.

Section 13.12.180. Civil Actions.

A. In addition to any other remedies provided in this Chapter, any violation of this Chapter may be enforced by civil action brought by the City. In any such action, the City may seek, as appropriate, any and all of the following remedies:

1. a temporary restraining order, preliminary injunction and permanent injunction;

2. an action for an unlawful business practice pursuant to Business and Professions Code section 17206;

B. Any person violating any provision of this Chapter shall be liable for:

1. reimbursement for the costs of any investigation, inspection or monitoring which led to the discovery of the violation;

2. costs incurred in removing, correcting, or terminating the adverse effect(s) resulting from the violation;

3. compensatory damages for the loss of, or destruction to, water quality, wildlife, fish or aquatic life. Costs and damages under this subsection shall be paid to the City and shall be used exclusively for costs associated with monitoring and establishing a stormwater discharge pollution control system and implementing or enforcing the provisions of this Chapter;

4. the cost of maintenance and repair of any BMP or stormwater management facility that is not maintained in accordance with the guidebook or the stormwater control plan;

5. the reasonable costs of preparing and bringing administrative action under this Chapter.

Section 13.12.190. Remedies Not Exclusive.

The remedies identified in this Chapter are in addition to, and do not supersede or limit, any and all other remedies, administrative, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

Section 13.12.200. Administrative Remedies.

A. In addition to any other remedies provided in this Chapter, any violation of this

Chapter may be enforced by the following administrative remedies:

1. Notice of Violation. The director or officer may deliver to the owner or occupant of any premises, or to any person responsible for a violation of any provision of this Chapter a Notice of Violation in accordance with Chapter 1.14 of Title 1 of this Code. The Notice of Violation shall identify the provision(s) of this Chapter or the applicable permit or regulatory order which has been violated and shall state that continued noncompliance may result in additional enforcement actions against the owner, occupant and/or responsible person.

2. Suspension or Revocation of Permit. The director may suspend or revoke any City-issued permit when it is determined that:

i. The permittee has violated any term, condition or requirement of the permit or any applicable provision of this Chapter; or

ii. The permittee's discharge or the circumstances under which the discharge occurs have changed so that it is no longer appropriate to except the discharge from the prohibitions on prohibited discharge contained within this Chapter; or

iii. The permittee fails to comply with any schedule for compliance issued pursuant to this Chapter; or

iv. Any regulatory agency, including EPA or a Regional Water Quality Control Board having jurisdiction over the discharge, notifies the City that the discharge should be terminated; or

v. Any other circumstances where the director determines in his or her sole discretion that continuation of the discharge will result in substantial harm to public health or the environment.

3. Permit Modification. The director may modify any permit provided that the permittee shall be informed of any change in the permit terms and conditions at least forty-five (45) business days prior to the effective date of the modified permit when it is determined that:

i. Federal or state law requirements have changed in a manner that necessitates a change in the permit; or

ii. The permittee's discharge or the circumstances under which the discharge occurs have changed so that it is appropriate to modify the permit's terms, conditions or requirements; or

iii. A change to the permit is necessary to ensure compliance with the objectives of this Chapter or to protect the quality of receiving waters.

B. Cease and Desist Order. The director or officer may deliver to the owner or occupant of any premises, or to any person responsible for a violation of any provision of this Chapter a Cease and Desist Order. The Cease and Desist Order shall be delivered in accordance with Section 13.12.210. The Cease and Desist Order may direct the recipient to:

1. Immediately discontinue any action constituting a violation of this Chapter;

2. Immediately contain or divert any flow of non-stormwater off the premises where the flow is occurring in violation of any provision of this Chapter;

3. Clean up the area affected by the violation; and

4. Implement BMPs necessary to prevent a future violation.

Section 13.12.210. Notice.

Unless otherwise required under Chapter 1.14, any notice or order to be delivered pursuant to this Chapter shall be subject to the following:

A. The notice or order shall state that the recipient has a right to appeal the matter as set forth in Section 13.12.220 or in Section 1.14.060.

B. Delivery shall be deemed complete upon personal service to the recipient; deposit in the U.S. mail, postage pre-paid for first class delivery; or facsimile service with confirmation of receipt.

C. Where the recipient is the owner of the property, the address shall be the address from the most recently issued equalized assessment roll for the property or as otherwise appears in the current records of the City.

D. Where the owner or occupant of any property cannot be located after the reasonable efforts the notice shall be deemed delivered after posting on the property for a period of ten (10) business days.

Section 13.12.220. Appeal.

Except as provided for a notice of violation under Section 1.14.060, any person aggrieved by the decision of the officer, may file a written appeal to the director within 10 (ten) days following the date of delivery of the decision. Upon receipt of such request, the director shall request a report and recommendation from the officer and shall set the matter for hearing at the earliest practical date. At said hearing, all evidence and testimony deemed relevant and admissible by the Director shall be considered, and the Director may reject, affirm, or modify the officer's decision. Formal rules of evidence shall not apply. The decisions of the director shall be final. Failure to request a hearing or appear at the hearing shall constitute a waiver and failure to exhaust administrative remedies.

Section 13.12.230. Judicial Review.

The provisions of Code of Civil Procedure section 1094.5 are applicable to judicial review of determinations made by the director pursuant to this Chapter."

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 the effective date of the ordinance.

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 City 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 19th day of March 2013, and PASSED, ADOPTED AND ORDERED posted at a regular meeting of the City Council of the City of Clayton on the 2nd day of April 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

_____

Julie K. Pierce, Mayor

ATTEST:

_____

Laci Jackson, City Clerk

Laura/ordinance re stormwater management discharge control 2013

CITY OF CLAYTON
Founded 1857 . . Incorporated 1964

STAFF REPORT

Approved:

Gary A. Napper
City Manager

TO: **HONORABLE MAYOR AND COUNCILMEMBERS**

FROM: Laura Hoffmeister, Assist. to the City Manager

DATE: **March 19, 2013**

SUBJECT: Introduction of an Ordinance of the City of Clayton Amending Chapter 13.12 of Title 13 of the Municipal Code Relating to Stormwater Management Discharge Control for compliance with the National Pollution Discharge Elimination System (NPDES) program (storm water pollution prevention) Municipal Regional Permit (MRP) imposed by the SF Regional Water Quality Control Board.

RECOMMENDATION

Staff recommends the City Council receive public comments; have the City Clerk read the ordinance by title and number only and waive further reading; following the City Clerks reading that the City Council approve the introduction and first reading of the Ordinance.

BACKGROUND

The 1987 Reauthorization of the Federal Clean Water Act, as well as similar State legislation, required local agencies to obtain a NPDES Permit for discharging the contents of municipal storm drainage water conveyance systems. As implemented and enforced by the State through the Regional Water Quality Control Board (San Francisco Bay Area Region), this permitting effort is intended to improve water quality in the Delta and San Francisco Bay Estuary System, protect endangered species, and safeguard public waters and waterways for continued economic, recreation and health purposes. Stormwater runoff pollution has been identified as a significant impact on water quality and wildlife in the Bay Area by the State and Federal Government. During wet weather, large amounts of pollutants, such as oil and grease from automobiles, heavy metals from vehicle exhaust and brake pads, such as copper and lead, pesticides, herbicides and fertilizers from lawns and gardens, soil erosion, and biological material enter the storm drain system and ultimately empty, untreated, into creeks, waterways, the Delta and Bay.

The City participates and obtained its joint NPDES permit from the SF Regional Water Quality Control Board via the Contra Costa Clean Water Program whose participants include the cities within the County, the County and the Flood Control District. The City of Clayton has participated since its inception in 1993. The SF Regional Water Quality Control Board issued the third permit, referred to commonly as the Municipal Regional Permit (MRP) in November 2009. This permit allows the city and other jurisdictions in the SF Bay Region to utilize the storm water drainage system for the next five years for discharges into creeks that

ultimately drain into the bay. This joint participation allows for the program management and permit process costs to be kept to a minimum through economies of scale and local and regional collaboration, at a fraction of the cost of doing it alone. The program provides for a regional approach to Stormwater pollution control, regional monitoring, public education and outreach, technical support and training, special studies and NPDES permit administration requirements.

As part of its permit conditions, Clayton is required to implement a comprehensive Stormwater Management Plan (SWMP). The SWMP includes public participation and inter-governmental coordination designed to reduce the discharge of pollutants into the storm drainage system to the maximum extent practicable through the required implementation of 256 Best Management Practices (BMP's). Additional standards by the Regional Board in the MRP of 2009 of our NPDES Permit required cities to increase regulations and monitoring activities for development/construction controls, municipal maintenance, public education and outreach, illicit discharge and inspection, and documentation and reporting. Staff currently participates, as is required by the program agreement and state permit, on the Clean Water Program's New Development Construction Controls Committee, Management Committee (Chair), Administrative and Finance Committee (Chair) and the Monitoring and Inspection Committee.

Historically the thresholds have been continually reduced by the SF Board. The Amendments to the NPDES Permit made by the San Francisco Regional Board in February 2003, added new requirements included reduction of the development threshold of significance from the current five acres to 1 acre to 10,000 sq. feet; then to further to 5,000 sq ft., and now are 2,500 sf. ft. These thresholds of impervious areas must be captured and treated and infiltrated; also needed are updates to the local municipal ordinances for establishing local authority for regulation and enforcement. Although still not required at this time, it is expected that future requirements may add quantitative particulate limits (TMDL's) which would involve water runoff quality testing and monitoring through gathering and testing of water samples from certain sties or locations within the community. Other pressures are related to legislation via litigation. Certain third-party interest groups have repeatedly brought successful legal action against the EPA, State and Regional Agencies, and the cities and county and program which has also increased the costs for legal defense and added to the program requirements standards issued by the State, or as a result of judicial decisions. These changes underscore the need to ensure that local ordinances are updated as the Regional Water Board staff has asked of the permittees.

DISCUSSION

The City of Clayton participates in the Contra Costa Clean Water Program (Clean Water Program), which coordinates stormwater NPDES permit compliance efforts countywide. The City of Clayton is a Co-Permittee under a National Pollutant Discharge Elimination System (NPDES) permit regulating discharges from storm drain systems in Contra Costa County. The first municipal stormwater permit was issued to the City of Clayton in 1993. The permit is titled the Municipal Regional Stormwater Permit issued by the San Francisco Bay Regional Water Quality Control Board in 2009 (MRP). The permit specify measures the Co- permittees must undertake to prohibit non-stormwater discharges to storm drains and to minimize the quantity of pollutants in stormwater.

It should be noted that the state mandated requirements are separate from, and in addition to, requirements for erosion and sediment control and pollution prevention measures during construction. These later requirements were the focus for the last 10 years of the Water Board. Over time the Water Board has moved to adding long term permanent reduction or elimination of water quality impacts from new development and redevelopment projects. In general our permit continues to require project site designs to minimize the amount of impervious surfaces such as paving and roofs; where possible use pervious surfaces instead of paving; have paving areas drain to landscape swales or detention basins so that runoff can percolate to the underlying soil. Runoff form impervious areas must be captured and treated. The permit specifies how to calculate the required size of treatment devices or facilities. Projects may also be required to infiltrate runoff so that peak flows and durations match pre-project conditions or non-development conditions. In addition project applicants must prepare plans, specifications and agreements to insure the stormwater treatment devices and facilities are maintained in perpetuity, including addressing vector control issues (i.e.: mosquitoes- West Nile Virus).

The Contra Costa Clean Water Program (Clean Water Program), brought together a group of municipal attorneys to prepare a model stormwater ordinance in the 1990's. A similar group updated the model ordinance in 2004 to include additional sections related to implementation of new development (stormwater permit Provision C.3) requirements added by the San Francisco Bay Regional Water Quality Control Board. The City's current ordinance is based on the 2004 model.

Following adoption of the MRP in 2009, the SF Regional Board Staff identified that they preferred the local ordinances be updated to more clearly reflect the 2009 MRP. In response, the Clean Water Program once again convened a group of municipal attorneys to review and update the 2004 ordinance. The attached updated ordinance is recommended to replace the existing ordinance. The attached ordinance is based on the most recent updated model. The Clayton Asst. to the City Manager (who serves as the city's stormwater manager) served on the technical work group, and the ordinance has been reviewed by the Clayton City Attorney, and Clayton City Engineer. The updated ordinance incorporates the following changes to the existing ordinance, consistent with new or updated provisions in the permit:

- Updates the definition of stormwater management facility to include facilities that use harvesting/reuse, evapotranspiration, and infiltration.
- Deletes the enumeration of specific project size thresholds for applicability of Provision C.3 (these 2003 thresholds have been superseded by lower thresholds in the current permit) and substitutes a reference to thresholds in "the City's NPDES permit".
- Updates the list of discharges exempt from the prohibition of discharges to the storm drain system.
- References specific publishers as sources of BMPs which the City [Town, County] may require to be implemented.

- Requires the use of BMPs to minimize the release of pesticides, fertilizers, herbicides, and other related materials used to maintain landscaping and facilities.
- Allows the City to require installation and maintenance of devices or facilities to prevent the discharge of trash or other pollutants from private parking lots, streets, roads, and drainage facilities into the storm drain system as a means of cost-effectively meeting permit mandates.
- Deletes a section in the 2004 model ordinance allowing compliance certificates for verifying the operation and maintenance (O&M) of privately owned stormwater management facilities; this method of O&M verification is not allowed by the current permits and O&M inspections must now be performed by the municipality.
- Strengthens administrative procedures for enforcement.

FISCAL IMPACT

Although a Federal and State Mandated program, cities do not receive any revenues from the Federal and State Government to offset or cover the mandated requirements. Unfortunately this program is not considered by the State as an unfunded mandate. The State has previously determined in the enacting legislations that local agencies can recover their costs through fees, assessment districts or other similar options. Consequently, the Stormwater Utility Rate Assessment areas were established in 1993 by the County and the Cities to develop a funding source to cover the costs of the Federal and State mandates. The City of Clayton is and has been at its maximum levy or $29 per Runoff Unit (single family parcel) per year to fund the NPDES requirements. This cap was established in 1993, when NPDES permit was first issued, thus any increase in the cap would trigger a Prop 218 voter process. A local revenue Prop 218 compliant measure was put before the property owners countywide last year, however did not receive sufficient ballot support to pass. Failure to comply with state regulations would result in violation of our State issued Municipal Regional Permit NPDES permit and include the levy of fines or other legal actions by the State or third party interest groups.

CONCLUSION

To comply with the Water Boards mandate, of our NPDES permit, the attached ordinance amending the section "Stormwater Management and Discharge Control" to the Clayton Municipal Code is necessary. The new Municipal Regional Permit mandates that cities review and update their prior ordinance to ensure they are compliant with the new regulations. Failure to comply with state regulations would result in violation of our State issued Municipal Regional Permit NPDES permit and include the levy of fines. Although technically our current ordinance complies with the state regulations, State Water Board staff has reviewed current local jurisdiction ordinances and determined that additional updating is needed in order to be in their interpretation in compliance.

Attachments:

- Stormwater C.3 Update (MRP) 2013 information
- "Stormwater Management Discharge Control Ordinance"