

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

**TUESDAY, May 16, 2017**

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:00 p.m. by Mayor Diaz in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Diaz, Vice Mayor Haydon and Councilmembers Catalano, Pierce and Shuey. Councilmembers absent: None. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Community Development Director Mindy Gentry and City Clerk/HR Manager Janet Brown.

2. **PLEDGE OF ALLEGIANCE** – led by Mayor Diaz.

3. **CONSENT CALENDAR**

**It was moved by Vice Mayor Haydon, seconded by Councilmember Pierce, to approve the Consent Calendar as submitted. (Passed; 5-0 vote).**

- (a) Approved the minutes of the City Council's regular meeting of May 2, 2017.
- (b) Approved the Financial Demands and Obligations of the City.
- (c) Adopted Resolution No. 12-2017 approving the Engineer's Report and declaring intent to levy and collect real property tax assessments for the Diablo Estates at Clayton Benefit Assessment District (BAD) in FY 2017-18, and setting July 18, 2017 at or about 7:00 p.m. as the date and time for a noticed Public Hearing on the proposed fiscal year tax assessment levies.
- (d) Adopted Resolution No. 13-2017 demonstrating City compliance with the State of California's Surplus Land Act – Government Code Section 54220, et. seq. (CDD-06-17)

4. **RECOGNITIONS AND PRESENTATIONS**

- (a) Recognition to Merle Hufford in grateful appreciation for dedicated civic service as Clayton City Treasurer from October 1997 through March 2017.

Mayor Diaz presented Mr. Hufford with a plaque of appreciation for his dedicated service as City Treasurer with the City of Clayton from October 1997 to March 2017.

Councilmembers thanked Merle for his many years of service, his availability to sign checks when a councilmember was not available, and his long-term uncompensated service to his city.

- (b) Proclamation declaring May 21-27, 2017 as “Emergency Medical Services Week”.

Mayor Diaz read the Proclamation declaring the week of May 21 – 27, 2017 as “Emergency Medical Services Week” and presented a signed proclamation to Roger Harless, Captain/Paramedic Station 11; to Marshal Bennett, Contra Costa Health Services Prehospital Care Coordinator; and to Kacey Hansen, Chairperson of the Emergency Medical Care Committee, Contra Costa County.

## **5. REPORTS**

- (a) Planning Commission – No meeting held.
- (b) Trails and Landscaping Committee – No meeting held.
- (c) City Manager/Staff – No Report.
- (d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

Councilmember Tuija Catalano attended the annual Urban Land Institute Conference, the Contra Costa County Mayors’ Conference in Walnut Creek, and several local school performances.

Vice Mayor Haydon attended the Contra Costa County Mayors’ Conference, Clayton Historical Society’s Annual Gardens Tour, and the first 2017 Saturday “Concerts in The Grove.”

Councilmember Pierce attended the Association of Bay Area Governments’ Regional Planning meeting, the Contra Costa County Mayors’ Conference, several Metropolitan Transportation Commission meetings, the Plan Bay Area 2040 Open House, the Bay Area Council Economic Institute meeting, the Saturday “Concerts in The Grove”, and the Pacific Coast Farmers’ Market in Clayton. She also announced the 4<sup>th</sup> of July Committee is seeking volunteers for upcoming Independence Day Parade.

Mayor Diaz attended the County Connection Board meeting, the Contra Costa County Mayors’ Conference, a Sunrise/Concord Rotary Club breakfast, the Pacific Coast Farmers’ Market in Clayton, and the first 2017 Saturday “Concert in The Grove.”

- (e) Other – None.

## **6. PUBLIC COMMENT ON NON - AGENDA ITEMS**

Robert Lutzow, Battalion Chief with the Contra Costa County Fire Protection District at Fire Station No. 11 in Clayton, provided a brief history of the beginnings of ambulance service and where ambulance services are today. Chief Lutzow also provided a report of recent calls Station No. 11 has responded to and noted with upcoming higher seasonal temperatures, fire and medical problems increase. He also asked the community to do its part by conducting appropriate weed abatement on real property, and he requested the City to repaint the curbs red on either side of the fire access road at the end of Regency Drive.

## 7. PUBLIC HEARINGS

- (a) Public Hearing to consider the Introduction and First Reading of a proposed City-initiated Ordinance No. 475 updating the Clayton Municipal Code, Title 15 Building & Construction, Section 15.08 – Sign Provisions, to comply with the United States Supreme Court's recent decision in *Reed vs. Town of Gilbert, AZ*, to prohibit mobile billboards, and to incorporate other best practices.

Mindy Gentry, Community Development Director, presented the report noting the United States Supreme Court recently ruled in the case *Reed vs. Town of Gilbert, Arizona* the provisions of a municipality's sign code must be content-neutral. Portions of the Town of Gilbert's sign code was struck down by the U.S. Supreme Court due to its sign code subjecting ideological, political, and directional signs to size, location, and length of display time regulations. The court was clear that, as long as the regulation is not based on a sign's message, local governments may regulate the size, lighting, location, timing, and number of signs.

The majority of the proposed sign code changes are definitions in order to clarify and create regulations that do not distinguish between sign content such as ideological, political, or directional. Staff also recommends prohibition of mobile billboards; although this has not been an issue locally, prohibition is in the interest of the public for the safe movement of vehicular traffic, reduction of air pollution, and to maintain the aesthetic appearance of the City. Staff further recommends some clean-up language to the addition and deletion of zoning districts that have been removed or added since the last Sign Code update; consistency in height for monument signs, pole signs, commercial entry signs and noncommercial signs; and consistency with the prohibition of all signs in the public rights of way, with the exception of City-sponsored events.

Councilmember Pierce recalled last time the Sign Ordinance was updated there was a long drawn-out discussion about the size of what is now termed "temporary noncommercial signs," i.e., political signs, and others that are posted around town. Councilmember Pierce noted the proposed Ordinance has changed the size limit to thirty (30) square feet, whereas previously it was restricted to three (3) square feet. If the size of these signs is increased for posting on residential and non-commercial properties, there will be a public outrage as Clayton's current size restrictions are widely supported and admirably differentiate this city from others during election times.

Ms. Gentry responded that type of provision must be applied across the board severely restricting other types of signage by community organizations. She also noted thirty (30) square feet was a policy decision staff recommended pursuant to legal counsel advice that eighty (80) square feet was upheld in the courts; however, it is still possible the City Council has the ability to make a policy decision in terms of the square footage.

Councilmember Pierce indicated she would like to restrict that sign size, perhaps to four (4) feet at a maximum. Councilmember Shuey also recalled that historical discussion and would like to make a policy decision to reduce that sign size maximum, even though he noted it could be a legal risk. City Attorney Mala Subramanian advised the proposed reduction in sign size could be considered too small.

Councilmember Catalano inquired if banner sizes were also included in the proposed Sign Code Ordinance. Ms. Subramanian confirmed that banners are exempt in this section and covered under another section of the Clayton Municipal Code. She further indicated that a size modification suggested from 80 sq. ft. to 3-4 sq. ft. is a significant change to the proposed Ordinance, and therefore the Ordinance must go back to the Planning Commission for its review of the proposed modification as the provision is a part of the Zoning Code; the Commission can then make its recommendations to the City Council.

Councilmember Pierce added during a campaign season, Councilmembers receive a number of phone calls inquiring on where signs can be placed; she noted the current process of obtaining permits for the rights of way signs appear to be working.

Mayor Diaz opened the Public Hearing for public comment.

Dan Hummer, Stranahan resident, agrees with limiting the size of political signs.

Russ Remoy, 1843 Yolanda Circle, shared his concerns about high-density housing changing the character of Clayton. Mayor Diaz advised him those concerns would be allowed during the next item on the agenda.

Mayor Diaz closed the Public Hearing.

**It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to refer this item back to the Planning Commission for its further review on the sign size limit change to retain the existing 3 sq. ft. aggregate limitation in the Sign Provisions Ordinance (Passed; 5-0 vote).**

- (b) Public Hearing to consider a proposed City-initiated General Plan Amendment to modify the determination of residential developable acreage and density calculations and to not require a minimum density on residentially designated property with sensitive land areas and the Introduction and First Reading of Ordinance No. 476 adding Section 17.22 – Residential Density Calculations for Residential with Sensitive Land Areas to Title 17 Zoning of the Clayton Municipal Code describing and determining how General Plan densities are calculated for proposed residential projects with sensitive land areas.

Community Development Director Mindy Gentry presented the staff report noting as a real life example, the proposed Silver Oak Estates subdivision project will discussed tonight as to why these amendments are being proposed. However, she noted that project is not on the agenda therefore staff recommends the ensuing discussion not focus on the merits or details of that project; it is merely a real-world example to illustrate the beneficial necessity of the proposed amendments.

Ms. Gentry advised the proposed Silver Oaks Estates project consists of 59 units which are comprised of seven single family homes, 28 town homes and 24 “Green Courts” in the terminus of Lydia Lane. The currently proposed project has been through various stages in the entitlement process since 2010. Due to City staff attrition and cursory review of the project, in 2016 it became apparent the proposed townhomes and green courts were not in conformance with the City’s General Plan. The General Plan designation for the property is Single Family Medium Density which calls for 3.1 to 5 units per acre with a product type of single family detached homes. Consequently, the current General Plan would allow 43 to 70 units on the property. Although the proposed 59 units fits within that overall allowed density, the various single family detached product types do not; therefore, the proposed attached product type would only fit within one of three Multifamily General Plan land use designations. If the project applicant wanted to further pursue the proposed product type, a General Plan Amendment to multifamily low density would be required, resulting in a minimum unit count of 106 units, an increase of 47 units on the property above the proposed 59 units. Alternatively, if the project applicant tried to fit the proposed single family detached homes on the site resulting in a small lot single-family development of detached homes, it would likely occur with a zero lot line and/or minimal setbacks. Given the physical constraints of the property, it is questionable whether the parcel is large enough to even fit a detached

single-family product type in the density range prescribed by the current General Plan. The proposed Silver Oak Estates project land contains large physical constraints or sensitive land areas such as sloping topography and Mt. Diablo Creek. Specifically, the Habitat Conservation Easement is 6.53 acres, including a minimum 50-foot required setback from the top of the bank of Mt. Diablo Creek; this constraint removes almost half of the developable acreage of the site making it nearly impossible to fit within the parameters of the General Plan.

This issue is occurring because the General Plan bases the density range on legal or gross acreage of the parcel, regardless of whether there are physical constraints or sensitive land uses on the property. Another way to categorize the issue would be trying to fit unwarranted density on a site that is really much smaller given the constraints that exist. By not providing the option of using the net acreage by subtracting the constrained property, this could result in a less desirable project for the city. The General Plan requirement for density on the legal or gross acreage of the parcel fits for those properties that are flat and/or minimally constrained; however, this requirement does not appropriately apply to those properties that are limited in their developable land due to large physical constraints.

The city of Clayton is approximately 98-percent built-out and many of the available properties left to develop are marginal or more difficult, particularly properties with site constraints such as slopes or creeks. The proposed changes would allow density calculations to be determined based on the net developable acreage of the parcel as well as not require the minimum density to be met for sites that have sensitive land areas. The overall intent of these amendments would be to prevent unwarranted density on a site that is functionally much smaller, given the constraints that exist, and to provide the City with the opportunity for more desirable developments rather than applying a singular approach in regards to the determination of density.

Ms. Gentry further noted this proposed change will allow constrained lots containing sensitive areas to meet both the prescribed General Plan product type and density range, particularly for the single family residentially designated parcels. Given the community's lack of interest and tolerance for higher density housing developments and the General Plan's support of lower density developments, these proposed amendments would apply to and be required of all qualifying properties and not optional.

She indicated the proposed amendment captures the intent and vision as discussed in the goals of the General Plan. The amendment would decrease the overall density to help retain the rural character of Clayton, while balancing a variety of housing types and densities. The amendment will also help to preserve natural features, ecology, and scenic vistas by decreasing the overall required density on a property that has sensitive land areas such as creeks and rock outcroppings. The City has a total Regional Housing Needs Assessment obligation of 141 units and an estimated capacity of 272 housing units giving the City an estimated housing surplus of 131 units. The proposed amendment would only affect parcels with sensitive land uses or areas. It is anticipated the net decrease in density will still result in adequate housing capacity to accommodate the City's RHNA obligation given its large surplus of 131 units. The proposed zoning changes would further define and determine the calculation of residential density when there are sensitive land areas on the property. The Ordinance sets the perimeters of determining developable acreage as well as what sensitive lands areas are to be considered excluded from the gross or legal acreage of the parcel. The sensitive land areas that being identified are features that are clearly definable and constitute areas that cannot be developed, should avoid being developed, or should be preserved due to its environmental value such as floodplains, creeks and wetlands.

For illustrative purposes, if a developer has a property that is ten legal or gross acres in size and the property has a General Plan designation of Single Family Medium Density

General Plan 3.1 to 5 units per acre, it would result in a density range of 31 to 50 units. However if the property happens to contain sensitive land areas, such as 1.3 acres of land within the 100-year floodplain and 0.7 acres with a slope that exceeds 26%, then those combined two acres would need to be subtracted from the gross or legal acreage to determine the developable acreage. By exclusion of these sensitive areas, the calculation results in eight developable acres which creates a new density range of 24.8 to 40 units per acre. This proposed methodology results in lowering the overall density on residential parcels with sensitive land areas.

Ms. Gentry concluded by noting on the Council dais is an email from Mr. Bill Jordan indicating his support of the amendments; however he requests exclusion of his potential housing project which would be on a vacant piece of land on High Street behind the U.S. Post Office.

Councilmember Pierce summarized this Amendment is having the effect of looking carefully at the sensitive habitat within our community and eliminating those acres from the calculation for allowable buildings, thereby reducing the number of possible buildings on those properties; which is significant improvement with much lower development then previously allowed.

Vice Mayor Haydon reiterated the proposed Silver Oaks Project was just an example and not for discussion this evening.

Mayor Diaz opened the Public Hearing for public comment.

Brian Buddell, 2 year resident of Clayton in the Peacock Creek Subdivision, remarked some of the things that drew his family to this area are its rural nature, beautiful vistas, the sense of community and community pride. Clayton did not have many apartments, town homes or overcrowded parking lots like surrounding communities. Mr. Buddell indicated these amendments do not prevent a large condominium complex to be built, and carries a fatal flaw of it being based on a 1985 Environmental Impact Report; there have been a lot of changes in the community since that Report which may bring potential legal challenges and raises questions if this has been properly evaluated. In fact, he will look into a lawsuit if it is passed, and he is opposed to it.

David Nieman, 5903 Cardinet Drive, indicated the location of his home is desirable as it is very close to the mentioned creek and he spent his childhood running through the creek every Saturday and after school, knee deep in water. He moved his family from Boston to Clayton so they could have similar childhood experiences. Mr. Nieman advised it is a confusing proposal and he wanted to clarify if it constricts the number of developable acres that are considered, but then increases the number of units that can be built? Ms. Gentry clarified this item decreases the overall developable acreage, which concurrently decreases the number of units that may be built on one particular site that has sensitive land areas. To meet the General Plan density range and product type this would take into consideration sensitive land areas and reduce the overall developable acreage, the density range would still remain the same. An applicant would have to request a General Plan amendment to change the designation from single-family to multi-family units.

Mark Ventura, Tara Court resident, understands the amendment removes the minimum density requirements in sensitive land areas, what about non-sensitive land areas? If a developer or land owner has property with a slope of 26%, what prevents a retaining wall to be built pushing the slope further away and expand the developable land area? Ms. Gentry advised the 26% slope refers to existing topography on the site, prior to a developer seeking entitlements from the City to alter it; the area will be mapped out with identifiable areas that can be developed. Ms. Gentry added the General Plan identifies designated density ranges with a minimum and maximum.

Dan Hummer, had a question about Mr. Jordan's property and the exclusion request in regards to the minimum density, with the existing slope would his property be affected by the proposed amendments and reduce the number of possible units? Ms. Gentry responded the City has not received any detailed documents showing the existing grades on his property.

Russ Remoy, Yolanda Circle, expressed concerns about possible traffic issues that may arise on the building of additional housing units and he would prefer more open space to improve the quality of life in Clayton. It is all about greed, money, and more taxes. Councilmember Shuey remarked the City does not own the land parcels and private citizens that own the land have rights to develop their land. Councilmember Shuey also reiterated the proposed amendment actually reduces the number of required housing units allowed when developing in sensitive land areas. City Manager Napper added the proposed Silver Oaks Estates project was used only as an example this evening; for those concerned about the higher density in town, the status quo is far worse than the proposed Amendment. He noted the City of Clayton receives only 6.9% of one's property tax bill paid on a home's assessed valuation, which places Clayton into the category of Low Property Tax Cities. If it was about chasing money and tax revenues, the lands in town would be converted by the City to commercial designations which create more local tax revenues than residential properties.

Mayor Diaz closed the Public Hearing.

1. **It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to adopt Resolution No. 14-2017 amending the Clayton General Plan Land Use Element to modify the calculation of residential densities and not require a minimum density for residential parcels with sensitive land areas. (Passed; 5-0 vote).**
2. **It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to have the City Clerk read Ordinance No. 476, by title and number only and waive further reading. (Passed; 5-0 vote).**

The City Clerk read Ordinance No. 476 by title and number only.

3. **It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to approve Ordinance No. 476 for Introduction with the finding adding Section 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Areas to the Clayton Municipal Code describing and determining how General Plan residential densities are calculated for proposed residential projects on parcels with sensitive land areas will result in activities less intense than assumed in the previously-certified EIR for the City's General Plan adopted by the City Council on July 18, 1985. (Passed; 5-0 vote).**

## **8. ACTION ITEMS**

- (a) Update report and continued discussion on whether the City of Clayton should participate in a Community Choice Energy (CCE) Program, plus a further presentation from MCE Clean Energy (MCE) with the offer to join its Joint Powers Authority (JPA).

Community Development Director Mindy Gentry presented the staff report noting in October 2015 the Board of Supervisors directed County staff to research the possibility

of forming a Contra Costa County Community Choice Energy (CCE) program and to reach out to the cities to determine the willingness to jointly participate in a technical study. The County received adequate support and interest from a number of cities, including Clayton, to conduct and share the cost of a technical study analyzing four (4) possible options: 1. No change to the status quo and remain solely with PG&E; 2. Form a new CCE partnership among the cities within Contra Costa along with the County itself; 3. Partner with Alameda County (and its cities) to form a new CCE program; or 4. Join the existing MCE Clean Energy Program.

The City of Clayton was first presented with the concept of Community Choice Energy at its meeting in January 2016. At this meeting the City Council authorized Contra Costa County to obtain the PG&E load data for all customer classes within our city for the purposes of studying a local Contra Costa County Community Choice Energy program, confirming the City's preliminary interest. In January 2017, the Council received a presentation of the draft technical study, and staff requested preliminary policy direction and Council requested more specific information prior to making a decision. Following the release of the draft Technical Study, the Board of Supervisors indicated to County staff and the public its strong preference to join one of the existing CCE programs, either MCE or EBCE, rather than create a new joint powers authority. Just recently, the Board of Supervisors decided to join MCE, eliminating the option of forming a Contra Costa County CCE due to its lack of feasibility.

City staff invited PG&E to present publicly tonight but it declined; EBCE's invitation went unacknowledged, and MCE staff is available this evening to answer any questions. MCE was launched in 2010 as the first CCE program in the State of California and is offering a no-cost membership inclusion period until June 30, 2017. The default service for MCE is to provide 50% renewable energy, with an option of 100% renewable energy through an additional cost to subscribers. If all remaining cities in the county join MCE, Contra Costa County would have an overall voting share of 62% with Clayton having a 1.5% share. Employees of MCE are not a part of the CalPERS retirement system; rather, the JPA employs a 401k pension system instead. Ms. Gentry advised some of the benefits of a CCE noting local control, increase use of renewable and alternative energy, and increase in competition. She noted there are some risks of joining a JPA which can only be funded by program revenues and the City also would assume its portion of any debt incurred by the JPA. Another possible risk is a CCE cannot compete effectively against PG&E by not providing competitive rates with those offered by PG&E. Ms. Gentry then introduced representatives of MCE.

Alexandra McGee, MCE Community Power Organizer, introduced herself and then turned MCE's presentation over to Jenna Famular, MCE Community Affairs Coordinator, as she has been the liaison with the City.

Ms. Famular presented a general overview of MCE, a local not-for-profit electricity provider. MCE generates the electrical energy, with PG&E still providing delivery, line maintenance, and bill generation of energy to the consumer. The MCE consumer has the choice of where their energy comes from. Ms. Famular explained the renewable energy options provided by MCE as a standard 50% Renewable MCE Light Green, and an optional 100% Renewable MCE Deep Green energy at an additional cost. She also indicated that MCE is an opt-out program; if Clayton decided to join, residents and businesses would automatically be enrolled in MCE's standard 50% renewable energy program if the consumer did not opt-out after the first 60 days of the program. A small opt-out fee does apply. The MCE Community Outreach Team begins their program outreach to new communities approximately 6 months in advance to provide its potential consumers time to decide if they wish to remain with MCE or opt-out of the program and stay with PG&E.

Councilmember Catalano inquired if consumers will have the ability to switch between PG&E and MCE programs? Ms. Famular advised if the consumer opts-out after the first 60 days of service, a one-time fee will be applied from MCE. However, with PG&E's terms and conditions, a consumer must remain with PG&E for at least one-year prior to switching back to MCE with no re-entrance fee.

Vice Mayor Haydon inquired if the exit fee is permanent? Ms. McGee advised the exit-fee is intended to be linked with energy contract lengths which could be 10 to 25 years in length, which would expire over that period of time and billed as a monthly charge. Vice Mayor Haydon asked if the fee would increase as more consumers exit PG&E? Ms. McGee advised the fee is billed proportionately in one's service area, which matter is currently under discussion with the California Public Utilities Commission as the CCE program is taking off in the state with an anticipation of 60% of consumers remaining with CCE programs for the next thirty (30) years.

Ms. Famular continued her presentation by providing examples of the differences between the programs and a sample monthly energy statement provided by PG&E and one with MCE service, noting the MCE bill provides a detailed break-down of energy service. Ms. Famular offered some benefits of joining MCE including long-term contracts, established credit profile, and \$50 million in reserves. In four (4) years MCE customers eliminated 122,102 metric tons of greenhouse gas emission from 2010-2014. Governance of MCE in Contra Costa County currently includes the City of Walnut Creek as the largest Board vote, followed by the City of Richmond, based on electrical loads. If every city in Contra Costa joined, Contra Costa County would be the largest board vote followed by the city of Concord. If the city of Clayton were to join MCE, it would be the 6<sup>th</sup> smallest community overall in the weighted Board vote. MCE offers a solar cash-out to solar customers that have roof-top or carport solar panels beyond what PG&E offers with excess energy generation at retail plus one penny per kilowatt hour. MCE also offers a Feed-In Tariff Program with a standard 20 year contract offered to small scale solar providers, with less than one megawatt, MCE pays higher than retail rates for this energy which helps stimulate local economic renewable energy development. Ms. Famular continued noting MCE will be conducting 43 community outreach events in Contra Costa County from January to April 2017 by providing education about the program and answering questions the communities may have.

Councilmember Shuey inquired if MCE has provided lower electricity rates than PG&E since it launched in 2010? Ms. McGee advised the PG&E's energy rates go before the California Public Utilities Commission in December for consideration and go into effect in January, not providing much time for MCE to respond to comparative rate increases. Therefore, in the first quarter of each year, MCE will be more expensive than PG&E; typically in April each year the MCE Board takes a vote on how to adjust its MCE rates and it has usually been to decrease MCE rates going forward.

Councilmember Shuey inquired if the City of Clayton chooses not to join during the inclusion period, what could we expect the membership fee to be? Ms. Famular responded it could be approximately a \$15,000.00 one-time fee. Councilmember Shuey inquired on the size of the JPA MCE staff. Ms. Famular advised MCE has 40 employees in offices currently located in San Rafael however they are looking to open a second location in the East Bay as their work load would be doubled and they would need to hire additional staff; MCE has about a 4% overhead for staff costs.

Councilmember Catalano inquired on risk incurred by the JPA would the city also be responsible? Ms. Famular advised there is a firewall between MCE and its members eliminating any potential debt to a city member; currently, MCE does not have any debt. If in the future the city decided to leave the JPA a fee would occur as energy contracts were entered into on the City's behalf of electrical load. Ms. McGee noted in the JPA

contract there is a withdrawal provision for a member community leaving the JPA; however, she emphasized a decision to join MCE is intended to be a long-term commitment for renewable energy sources, and to date no community has voted yet to leave its CCE.

Mayor Diaz opened the item to public comment.

Mark Ventura recommended the Council to take no action on this item as the topic needs to be studied a little more and in consideration of upcoming state legislation requiring 100% renewable energy. Mr. Ventura also wondered where all the renewable power is coming from as MCE does not own any power?

Dan Hummer asked where is all the energy generation coming from? How is the actual migration over to MCE service and how is MCE able to provide energy to all the cities that are signing up? If MCE cannot provide the energy needed is it buying back from PG&E?

Ms. Famular responded all of MCE's contracts are sources located in the Pacific Northwest; however, it tries to procure as much renewable energy as it can in the State of California. Any projects located inside of the MCE service area are considered "local", while projects located within a 100 miles of MCE service areas are considered "nearby". MCE is currently in the process of building MCE Solar 1 in the city of Richmond; it is a 10.5 megawatt facility that is partnered with RichmondBUILD, providing 350 jobs and a local hire requirements. The Richmond project will be purchased back from the developer in 6-10 years.

Vice Mayor Haydon inquired with neighboring communities recently signing up for MCE; how soon will they be online to provide their MCE service? Ms. Famular advised they are looking how to properly phase in the new communities expecting the enrollment process to start in approximately one year.

Mayor Diaz closed public comments.

City Manager Napper clarified if the City Council wishes to join MCE the process is by ordinance introduction then adoption of the ordinance at a subsequent meeting as opposed to the Resolution process indicated in the staff report.

Councilmember Pierce remarked when this subject first came up it was a great idea; however, this program is for electricity only and does not address natural gas usage. Councilmember Pierce researched PG&E's website and found it is already meeting the requirements for the state to have 1/3 of its energy in renewable resources by 2020. Due to its size, PG&E will still be able to get the best prices on energy and contracts for renewable energy. Councilmember Pierce expressed concerns with the unknown exit costs if the City decides to withdraw from the MCE program.

Councilmember Shuey commented he likes the idea of the renewable energy program, however he has concerns of joining a JPA and would prefer to monitor MCE's program, review it again in a year or two yet take no action this evening. The \$15,000 membership is not a huge burden and it is likely MCE will offer another no-fee incentive in the future.

Vice Mayor Haydon added MCE has a good track record at this time, but it is a fairly new company and is adding a lot of new customers very quickly; he is concerned with possible over-commitment in being able to serve all of the new customers.

Councilmember Catalano is attracted to having renewable energy options; however there is uncertainty in the costs, potential consequences and not enough information at this time.

Mayor Diaz shared similar concerns with joining the MCE at this time.

No action was taken; staff was instructed to return the CCE policy item to the City Council in about one year's time.

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

Councilmember Pierce inquired about the status of changes required in local housing laws, such as inclusion of accessory dwellings units and new regulations. Councilmember Pierce suggested looking into how the city wanted to facilitate these issues within our own community, and look at maximum lot coverages again.

Community Development Director Mindy Gentry responded City staff is in the process of drafting an Ordinance to addressing those housing issues.

10. **CLOSED SESSION**

Mayor Diaz announced the City Council will adjourn into Closed Session (9:33 pm) for the following noticed items:

- (a) *Government Code Section 54956.8, Conference with Real Property Negotiator.*  
Instructions to the City's Negotiators concerning price and terms of payment.  
Real Property: 222 Stranahan Circle (APN 119-620-012).  
Real Property Owner: Dean Wilkinson.  
City Negotiators: Gary Napper, City Manager; and  
Mindy Gentry, Community Development Director.
- (b) *Government Code Section 54956.8, Conference with Real Property Negotiator.*  
Real Properties: 6005 Main Street (APNs 119-011-002-1; 118-560-010-1; 118-370-041-6).  
Instructions to City Negotiators: Council Members Pierce and Shuey and  
Ed Del Beccaro, Managing Director, Transwestern, concerning price and terms  
of payment.  
Negotiating Parties:  
1. Pacific Union Land Investors, LLC (Joshua Reed, Chris Garwood); and  
2. Avesta Development Group (Mohammad Javanbakht, Managing Partner).

Report out of Closed Session (10:02 pm)

Mayor Diaz reported City Council received information from staff and its property negotiators and gave directions. However, there is no public information to report.

11. **ADJOURNMENT**– on call by Mayor Diaz, the City Council adjourned its meeting at 10:02 pm.

The next regularly scheduled meeting of the City Council will be June 6, 2017.

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Respectfully submitted,

  
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Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

  
\_\_\_\_\_  
Jim Diaz, Mayor

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