

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

TUESDAY, November 7, 2017

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:02 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 (arrived at 7:16 p.m.). **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 Catalano, to approve the Consent Calendar as submitted. (Passed; 4-0 vote).

- (a) Approved the minutes of the City Council's regular meeting of October 17, 2017.
- (b) Approved Financial Demands and Obligations of the City.
- (c) Approved the City's Investment Portfolio Report for the 1st Quarter of FY 2017-18 ending September 30, 2017.
- (d) Adopted Resolution No. 43-2017 acknowledging and implementing the state-mandated requirement of California Assembly Bill 1379 to increase the existing Certified Access Specialist fee from \$1.00 to \$4.00 on each City Business License, effective January 1, 2018 through December 31, 2023.
- (e) Approved a Third Amendment to a Tolling Agreement extending the limitations period to May 8, 2018 for the filing of a legal challenge by West Coast Homebuilders, Inc., concerning a final map for the Oak Creek Canyon residential subdivision project (SUBD.6826).

4. **RECOGNITIONS AND PRESENTATIONS**

- (a) Recognition of outgoing Chief of Police Chris Wenzel in appreciation for his professional law enforcement leadership and service to the Clayton community from November 2015 to November 2017.

Mayor Diaz announced this is an item of City sadness but one of personal happiness for Police Chief Chris Wenzel, who has been with the City since November 2015 and is leaving Clayton employment for health and personal reasons. Mayor Diaz presented Chief Wenzel with an appreciation plaque for his valued and dedicated service to the Clayton community.

Chief Wenzel thanked the City Council for providing him the opportunity to serve the Clayton community. He then presented the City Council with a U.S.A. Flag flown over the National Capitol that was obtained from Congressman DeSaulnier's office. Chief Wenzel then gifted to the City a shadow box he had made displaying police officer patches from every city of Clayton in the United States. Chief Wenzel concluded his remarks by noting the Clayton Police Department has dedicated professionals on staff ready to serve and protect the Clayton community.

Vice Mayor Haydon, Councilmember Catalano, and City Manager Napper each thanked Chief Wenzel for his service to the Clayton community. Councilmember Pierce told Chief Wenzel he will be missed.

Dominic Aliano, on behalf of County Supervisor Karen Mitchoff, presented Chief Wenzel a certificate of appreciation for his services.

- (b) Certificates of Recognition to public school students for exemplifying the "Do The Right Thing" character trait of "Respect" during the month of October 2017.

Mayor Diaz and second grade teacher Amber Sharapata presented Certificates to students Preston Marks and Isabella Murillo.

[Councilmember Shuey arrived at 7:16 p.m.]

Mayor Diaz and Diablo View Middle School Principal Patti Bannister presented Certificates to students Noellani Garcia and Dominic Vines.

- (c) Recognition of a \$39,000 grant from Andeavor Foundation for the City's purchase of a Citizen Emergency Team (CERT) trailer.

Police Chief Wenzel provided Tom Lu, Refinery Manager from the Andeavor Foundation, with a City Certificate of Recognition for its very generous donation of grant monies to obtain a Citizen Emergency Response Team (CERT) trailer. Mr. Lu shared background information on the Foundation's purpose and mission, and Ms. Nicol Carranza, Government and Public Affairs Specialist, presented the City with an enlarged check symbolizing the \$39,000 grant donation for purchase of a Citizen Emergency Response Team (CERT) trailer.

5. REPORTS

- (a) Planning Commission – Commissioner Peter Cloven indicated the Commission's agenda at its meeting of October 24, 2017 included two (2) City-initiated Ordinances amending the Clayton Municipal Code to: 1. Allow six-foot high fences to be located within the required exterior side setback or at the public right-of-way line; and 2. Continue to prohibit outdoor cannabis cultivation for personal use, and to prohibit all commercial cannabis activities except for cannabis deliveries originating outside of the City of Clayton. These items were unanimously approved by the four (4) Commissioners present.
- (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 Catalano attended the recent meeting of the East Contra Costa Habitat Conservancy as the City's alternate voting delegate, as Vice Mayor Haydon was unavailable to attend.

Councilmember Pierce attended a Contra Costa Transportation Authority meeting, the National Association of Regional Councils 2017 Board Retreat in San Antonio, Texas on behalf of the Association Bay Area Governments, several Metropolitan Transportation Committee meetings, the Cal Poly Alumni Celebration and Awards Dinner whereat Randell Iwasaki, Executive Director Contra Costa Transportation Authority, received the college's Sandra Gardebring Ogren Leadership Award in appreciation for his longtime professional mentoring of Cal Poly alumni and graduates.

Councilmember Shuey reported someone contacted him expressing interest in using the Keller House; if it is a viable interest, it will be formally presented to the City for consideration.

Vice Mayor Haydon attended the Clayton Business and Community Association's General Membership meeting, and the Clayton Bocce Summer League Finals.

Mayor Diaz attended a County Connection Board meeting, the East Bay League of California Cities meeting, the Mayors' Conference hosted by the City of Moraga, and a performance of the Clayton Theatre Company's production of "The 1940's Radio Hour" at Endeavor Hall.

- (e) Other – None.

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

Claudia Crockett, Chaparral Springs, expressed her concerns of potential fire hazards based on the conditions located along Oakhurst Golf Course consisting of several dead trees, debris and garbage. Ms. Crockett had contacted the golf course several times; however, its staff has been unresponsive or has resigned. Ms. Crockett asked if the City could put pressure on the golf course to resolve the potential fire hazards.

John Barclay, employee of the Contra Costa Health Services Department and Director of Home and Community Based Service, Good Health and Case Management, provided information regarding the homeless population throughout Contra Costa County, and in the City of Clayton which by this year's count has 10 homeless 5 of which are "chronic." Mr. Barclay requested the City Council adopt a proclamation at its next regular meeting addressing this county-wide issue. He noted generally, 50% of the homeless population is children.

7. **PUBLIC HEARINGS**

- (a) Consider the Introduction and First Reading of Ordinance No. 479 amending Title 17 - Zoning of the Clayton Municipal Code for continuation of the local prohibition of outdoor cannabis cultivation for personal use, and to prohibit all commercial cannabis activities within the city except for cannabis deliveries originating outside of the city.

Community Development Director Mindy Gentry presented the staff report noting the City Council previously directed staff to prohibit all commercial cannabis activities including retail sales, commercial cultivation, distribution, testing and manufacturing, and regulate deliveries of both cannabis and adult use cannabis that originating outside of the city limits. The proposed Ordinance does prohibit all the previously disclosed commercial activities pertaining to cannabis and includes regulations in place for delivery of these products. The regulations include all employees delivering cannabis will have to carry a copy of the licensee's current state license, a driver's license, an employee identification card, a City of Clayton business license and a copy of the delivery request. The Ordinance also states no cannabis can be stored in the city, all deliveries will require a signature and proof of identification, and deliveries to physical residential addresses only with no porch drop-offs allowed.

Councilmember Catalano inquired if there is a definition of "adult use"; is it imbedded in state legislation? Ms. Gentry advised it is contained within the State legislation which is 21 years of age.

Councilmember Catalano noted it is proposed all cannabis deliveries require signature and proof of identification; what is the reasoning behind that requirement? Ms. Gentry responded the concern is having someone over the age of 21 requesting the delivery and the delivery being made to that correct eligible individual to prevent a miss-delivery or unlawful receipt. Porch drop offs are not allowed to prevent someone from gaining access to the product who did not request it.

Mayor Diaz opened the Public Hearing; no comments were offered. Mayor Diaz then closed the Public Hearing.

It was moved by Councilmember Pierce, seconded by Vice Mayor Haydon, to have the City Clerk read Ordinance No. 479, by title and number only and waive further reading. (Passed; 5-0 vote).

The City Clerk read Ordinance No. 479 by title and number only.

It was moved by Councilmember Pierce, seconded by Vice Mayor Haydon, to approve Ordinance No. 479 for Introduction with the finding is not a project under CEQA and it will not have a significant adverse effect on the environment and is therefore categorically and statutorily exempt under CEQA. (Passed; 5-0 vote).

- (b) Consider the Introduction and First Reading of Ordinance No. 480 amending Chapter 17.36.075 of the Clayton Municipal Code to allow six-foot high fences to be located within the required exterior side setback or at the public right-of-way line.

Community Development Director Mindy Gentry noted at the City Council meeting of October 3, 2017 policy direction was provided to staff to amend the Clayton Municipal Code to allow placement of six-foot high fences within the required exterior side setbacks or at the public right-of-way line. Currently, the Clayton Municipal Code allows fences on exterior side lots to be a maximum of 30 inches in height within 5 feet of the property line with a maximum of 6 feet in height in the remaining portion of the exterior side setback.

Staff views the current fencing regulations for exterior side setbacks as a questionable regulation because the residential property owner will either compromise its privacy by having a fence only 30 inches in height or must sacrifice usable private land in order to

have a six foot fence with added privacy. The required 5 foot set back from the property line creates a larger unusable area when coupled with the 5 foot setback of public right-of-way directly behind the sidewalk on the exterior side yard. She noted the City does not plant or maintain these adjacent public rights-of-way and it is left up to the property owner. If six-foot tall fences were allowed on the property line it would reduce the number of illegal fences throughout the city and the amount of space to be landscaped or left barren back of sidewalk to the fence.

Councilmember Pierce requested clarification: this Ordinance only deals with the location of the six-foot fence and not retaining walls or encroachments into public rights-of-way? Ms. Gentry responded that is correct, the discussion this evening is only on private fence locations.

Councilmember Catalano inquired if there is a different Municipal Code section pertaining to retaining walls and the addition of a fence so as not to create an overall fence exceeding 6 feet in height. Ms. Gentry advised that regulation is indeed addressed in a separate section of the Municipal Code.

Vice Mayor Haydon inquired if this Ordinance will resolve previous illegal fence violations. Ms. Gentry responded its passage will create less illegal violations within the city

Mayor Diaz opened the Public Hearing.

Mark Kelson, 29 Tiffin Court, expressed his concern the City's right-of-way is not always at 5 feet away from the curb; fences placed directly on the edge of the sidewalk impair pedestrian visibility. Ms. Gentry responded there are areas, for example, along Keller Ridge Drive where the fence is placed at the back edge of sidewalk but there is a green belt between back of curb and front edge of sidewalk to create space. She noted the public rights-of-way lines do indeed vary throughout the city and are location dependent.

With no other public members wishing to comment, Mayor Diaz then closed the Public Hearing.

It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to have the City Clerk read Ordinance No. 480, by title and number only and waive further reading. (Passed; 5-0 vote).

The City Clerk read Ordinance No. 480 by title and number only.

It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to approve Ordinance No. 480 for Introduction with the finding is exempt from the California Environmental Quality Act, pursuant to CEQA Guidelines Section 15303, Class 3 Categorical Exemption for construction of new small facilities or structures. (Passed; 5-0 vote).

8. ACTION ITEMS

- (a) Consider the approval of an Exclusive Negotiation Agreement (ENA) between the City of Clayton and Fulcrum Development, LLC, to facilitate the City's processing and consideration of the developer's proposal to construct a senior care/memory care facility with limited ground-floor retail commercial establishments through eventual purchase and development of the City's 1.67 gross acres of unimproved real property located at 6005 Main Street (APN 118-560-010-1).

City Manager Napper noted in April 2013 the City purchased an unimproved vacant parcel off Main Street, behind Clayton Community Church, from the Clayton Community Church for \$1 million in cash. The purchase was made for economic development purposes in the downtown center and shortly thereafter the City placed "For Sale" signs on the property. After approximately one year with no interests, the City invited proposals from commercial realty companies who could assist with marketing and listing that property for sale.

The City Council determined the best partnership would be with Transwestern, which has since been marketing that property for sale and development. The current zoning for the property is retail-commercial on the ground floor with mixed uses allowed on the second floor. Transwestern went to 650-700 retail establishments to see if anyone was interested in the Clayton opportunity. Unfortunately, there were not any responses for commercial retail. Transwestern did receive four (4) proposals in 2015 and 2016: two (2) for medium to higher residential uses on the entire property, and the other two (2) developers were interested in mixed uses having limited commercial retail with a senior care facility of assisted living or memory care facility as the primary use. Currently in this county there is a need for senior assisted living facilities.

In July 2016 the City approved an Exclusive Negotiation Agreement with Pacific Union Land Investors, LLC, for its eventual purchase and development of a senior/memory care facility with some minor retail. Pacific Union offered \$1.62 million for the City's land and both parties agreed the proposed project could be enhanced if they were able to obtain the adjoining property for sale and owned by the Clayton Community Church. Unfortunately, the timing was not right for the church and despite examining a stand-alone facility on just the City's land, Pacific Union Land Investors eventually informed the City in early summer 2017 it would not be filing a land use application for the project concept.

Transwestern went back out into the commercial market in 2017 to find other developers interested in the property with the concept of senior care facilities with some retail development on the ground floor. The City Council's Economic Development Sub-Committee then met with two prospective developers: Vesta Development Company, and Fulcrum Development, LLC. After series of negotiations with both parties, Fulcrum Development presented the most viable project proposal for consideration of land use development as a senior assisted-living and memory care facility with some limited commercial retail on the ground floor. The purchase price of the land is \$1.9 million.

City Manager Napper indicated Fulcrum Development, LLC is in the business of developing and operating assisted living and memory care facilities. Currently it has two (2) similar operating facilities located in Fairfield and Vacaville, and three (3) developments in various stages located in Vallejo, San Ramon, and Bakersfield. It also has contracts for similar facilities under contract in Los Gatos, El Dorado Hills, Sausalito, and San Jose. Mr. Napper emphasized an Exclusive Negotiation Agreement is not a binding agreement on the City to ultimately sell its property or approve the use. The approval of the ENA allows the project review process to move forward under specific guidelines and processes. Mr. Napper shared a PowerPoint noting the ENA deal points and timetables.

Vice Mayor Haydon noted the prescribed three hundred (300) days after the filing of the full application but asked if it could be completed prior to three hundred (300) days? City Manager Napper responded it could take up to three hundred (300) days as this project will require a CEQA review and public hearings. The proposed ENA allows for worse-case scenarios; by not inserting too short of a time periods the process avoids delays for formal City Council time extensions at its regular public meeting schedule.

Councilmember Pierce suggested, assuming the ENA is agreed to tonight, by mid-May 2018 we could expect to receive a full application packet with sometime around March 2019 the land use entitlement process would be complete. Mr. Napper responded "yes"; the negotiated time frame with the developer included holiday downtimes and sufficient allowances for it to complete their due diligence to prepare its packet.

Councilmember Pierce recalled approximately one (1) year for construction, making the opening early 2020 or before? Mr. Napper advised that is correct; he added Fulcrum is very eager and excited to start this project as there is a market in this area with current senior facilities full and have waiting lists.

Councilmember Catalano inquired about the annual carrying costs on the property? Mr. Napper advised it is approximately \$8,000 per year to pay for all the special tax assessments on the land. While public property is exempt from paying assessed valuation property tax, a public entity is not exempt from payment of annual special parcel taxes approved by voters.

Councilmember Catalano noted the ENA indicates it will be approximately five hundred (500) days until the City Council is in a position to approve a project. Is there any need or potential use for any other thresholds, for example commencement of CEQA review or any foreseeable informational hearing for the Planning Commission? City Manager Napper responded those milestones were not addressed as those targets are not within the control of Fulcrum but rather City staff internally. Normally the City would not want an exclusive negotiation agreement to make those types of staffing promises with the limited amount of Community Development staffing levels that we have. There are other land use projects and tasks that the Community Development Department will be handling concurrently.

Mayor Diaz opened the item to public comment.

Ed Del Beccaro, Transwestern, added Fulcrum took to heart the architecture rendering critiques by the Council Sub-Committee and it will change the project's design, add some retail on Main Street, and square off the street frontage on Main Street.

No further comments were offered. Mayor Diaz then closed public comments.

It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to approve the Exclusive Negotiation Agreement (ENA) between the City of Clayton and Fulcrum Development, LLC and authorize the Mayor to sign on behalf of the City. (Passed; 5-0 vote).

- (b) Consider the adoption a Resolution appointing Joseph Kreins as Interim Chief of Police as recommended by the City Manager, pursuant to California Government Code Section 21221(h).
(City Manager)

City Manager Napper advised Chief Wenzel will be leaving the City on November 13, as noted earlier this evening and the position is currently under recruitment to fill the vacancy. The City received seven (7) applications, with five (5) candidates selected for the initial interview process.

Since an immediate vacancy will occur in the position of Police Chief, Mr. Joseph Kreins expressed interest in filling the vacancy until the City hires a permanent Police Chief. Mr. Kreins brings eight (8) years' experience as the City of Novato's Police Chief, Police Chief of Vallejo and Sausalito, and Interim Novato Police Chief, P.O.S.T. Executive

Certification, and is well respected in his field. Mr. Kreins is also a CalPERS Annuitant and it is that fact, under recent Public Employee Pension Reform Act laws, which require the City Council to approve this interim hiring via a public agenda item. The required Resolution officially approves the hiring by the city manager and makes the finding that the employment of this CalPERS annuitant is essential to the conduct of business to the City and its police operations. Mr. Napper added that by CalPERS' laws, Mr. Kreins cannot be paid an hourly rate any higher than that salary of the permanent police chief (\$60.85/hour), and no other employment benefits are allowed.

Mr. Kreins introduced himself to the City Council and noted he looks forward to the opportunity to serve the Clayton community.

It was moved by Councilmember Pierce, seconded by Vice Mayor Haydon, to adopt Resolution No. 44-2017 appointing Joseph Kreins as Interim Chief of Police pursuant to California Government Code Section 21221(h). (Passed; 5-0 vote).

9. **COUNCIL ITEMS** – None.

10. **CLOSED SESSION**

Mayor Diaz announced the City Council will adjourn into Closed Session (8:38 pm) for the following noticed items:

- (a) *Government Code Section 54957*
Public Employee Annual Performance Evaluation
Position Title: City Manager

City Manager Gary Napper left the meeting at 9:29 p.m.

- (b) *Government Code Section 54957.6*
Conference with Labor Negotiators
Agency designated representatives: Mayor Diaz, Vice Mayor Haydon
Unrepresented employee: City Manager

9:42 p.m. **Report out of Closed Session**

Mayor Diaz reported the City Council received information from staff and provided policy directions to its labor negotiators. However, there is no public action to report.

11. **ADJOURNMENT**– on call by Mayor Diaz, the City Council adjourned its meeting at 9:42 p.m.

The next regularly scheduled meeting of the City Council will be November 21, 2017.

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Respectfully submitted,



Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL



Jim Diaz, Mayor

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