

MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL

TUESDAY, February 17, 2015

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:04 p.m. by Mayor Shuey in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Shuey, Vice Mayor Geller and Councilmembers Diaz and Haydon. Councilmembers absent: Councilmember Pierce. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, City Clerk/HR Manager Janet Brown, Community Development Director Charlie Mullen, Finance Manager Kevin Mizuno and City Engineer Rick Angrisani.

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

3. **CONSENT CALENDAR**

It was moved by Councilmember Diaz, seconded by Councilmember Haydon, to approve the Consent Calendar as submitted. (Passed; 4-0 vote).

- (a) Approved the minutes of the regular meeting of January 20, 2015.
- (b) Approved Financial Demands and Obligations of the City.
- (c) Adopted Resolution No. 04-2015 approving a Loan Agreement in the amount of \$125,000 between the City of Clayton and the Successor Agency to the former Redevelopment Agency to cover the Successor Agency's statutory administrative cost allowance for the ROPS 2014-15B time period.

4. **RECOGNITIONS AND PRESENTATIONS**

- (a) Certificates of Recognition to the Fire Services Ad-hoc Committee Members for their diligence and commitment resulting in the full time re-opening of Contra Costa County Fire Protection District's Fire Station No. 11 on Center Street, Clayton.

Mayor Shuey recognized all of the members of the Fire Services Ad-hoc Committee. The following members were present to receive their certificates and say a few words about their service on the Fire Services Ad-hoc Committee: John Hunter, Lon Goetsch, Bill Safreed, Debby Bruno and Gary Hood. Mr. Hood presented the City Council and City Staff with Fire Station No. 11 Re-Opening Day T-shirts also given out at the January 31st community open house and BBQ event.

- (b) Certificate of Recognition to Gavin Hanratty, Troop 492, Muir District, Mt. Diablo Silverado Council of the Boy Scouts of America, for his Eagle Scout Project involving the installation of two six-foot aluminum benches in the Clayton Dog Park.

Mayor Shuey presented a Certificate to Eagle Scout candidate Gavin Hanratty from Boy Scout Troop 492. During a photo slideshow about the project at the Clayton Dog Park, Gavin explained the planning and installation process for the two six-foot aluminum benches. Gavin also thanked his parents for being a part of his Eagle Scout Project

Boy Scout Troop Leader Stan Hansen added Gavin is an exceptional member of the troop and is someone really deserving of this award.

Mayor Shuey then presented Lisa Cloven a Certificate for her service on the Fire Services Ad-hoc Committee.

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 Haydon attended a Joint Special Meeting with Mt. Diablo Unified School District Board and the Clayton Budget Sub-Committee meetings. He also announced the upcoming East Contra Costa Conservancy meeting hosted by the City of Clayton on Monday, February 23 in Hoyer Hall.

Councilmember Diaz attended the Contra Costa County Mayors' Conference, Association of Bay Area Governments legislative workshop and a Joint Special Meeting with Mt. Diablo Unified School District Board.

Vice Mayor Geller attended the Contra Costa County Mayors' Conference, Clayton Budget Sub-Committee meeting and a Joint Special Meeting with Mt. Diablo Unified School District Board. He also attended the Annual Clayton Historical Society Camellia Tea and added he has booked all of the bands for 2015 Saturday Concerts at The Grove Park in downtown Clayton.

Mayor Shuey attended the Contra Costa County Mayors' Conference.

- (e) Other – None.

6. **PUBLIC COMMENT ON NON - AGENDA ITEMS** – None.

7. **PUBLIC HEARINGS**

- (a) Public Hearing to consider the Introduction and First Reading of proposed City-initiated Ordinance No. 458 amending/updating various code sections, definitions, regulations, and permit procedures of the *Clayton Municipal Code* Chapters 5.04, 5.12, 17.04, 17.36, 17.60 and 17.70 relating to Mobile Vendors, including mobile food vendors and mobile retail vendors.

Community Development Director Mullen presented the staff report indicating changes are needed to update chapters of the *Clayton Municipal Code* regarding permitting of mobile vendors, in particular mobile food vendors due to recent inquiries. During the review process, staff considered approximately 14 other communities' mobile vending regulations and the City Attorney provided critical review and input regarding the Mobile Vendor Ordinance. It was found that cities may impose reasonable regulations but may not prohibit mobile food vendors.

Sections of the Clayton Municipal Code proposed for updates are the Business License & Taxes, Vehicles & Traffic, and Zoning. Mr. Mullen also noted on January 27th the Planning Commission conducted a noticed Public Hearing to consider Ordinance No. 458, after which it adopted Resolution No. 01-15 recommending approval with minor typographic suggestions. Two citizens at the Commission's hearing spoke in support of updating the Ordinance and supported the City being open to considering requests from upscale mobile food vendors.

Vice Mayor Geller asked if there is a distance restriction that a mobile food vendor is required to be away from an established restaurant? Community Development Director Mullen advised there are currently mobile vendor location designation restrictions. City Attorney Mala Subramanian added there are case law requirements that a city's regulations need to be reasonable in the time, place and manner conducted and related to public health and safety; however, a city cannot impose vendor restrictions that are for the benefit of our existing brick and mortar establishments.

Vice Mayor Geller asked if an applicant can apply for space usage on public or privately owned properties? Community Development Director Mullen advised we are not able to regulate street right-of-way; however, perimeters have been set in the policy specifying distance from the street corners and time limits.

Councilmember Diaz asked if there are any vendors operating in Clayton under the existing provisions? Community Development Director Mullen examined the active business licenses in Clayton and currently there are not any permitted mobile food vendors in operation.

Councilmember Diaz asked how this provision would affect vendors at the Oktoberfest, Art & Wine Festival and Clayton's Farmers' Market? Community Development Director Mullen advised by the approval of Temporary Use Permits

issued for these community wide events, there are exclusions included to allow these types of vendors for those events.

Councilmember Diaz asked if pizza delivery services located outside the city limits of Clayton would be required to comply with the proposed Ordinance updates? Community Development Director Mullen responded the proposed Ordinance updates do not regulate pizza delivery drivers, Safeway.com and food delivery services.

Councilmember Haydon confirmed this Ordinance updates the process of current City regulations on mobile food vendors. Community Development Director Mullen confirmed there is a process in place and this ordinance is updating the definitions and now includes the Planning Commission rather than the City Engineer in the permitting process.

Mayor Shuey asked what is the time frame for permitting, from application submittal to permit issuance? Community Development Director Mullen advised currently the Use Permit process is 4-6 weeks; a large factor depends on the completeness of the application upon submittal and timing of the required notice of public hearing.

Mayor Shuey asked if the City Engineer currently approves the permit? Community Development Director Mullen advised the current process requires the issuance of the written permit approval by the City Engineer and the City Council provides the final approval.

City Manager Gary Napper added there is a distinction between the Use Permit process, which would be used for the establishment of a permanent mobile vendor, versus a mobile vendor Temporary Use Permit process used in conjunction with a community event or one-time operation.

Mayor Shuey opened the Public Hearing to receive public comments; no public comments were offered and Mayor Shuey then closed the Public Hearing.

It was moved by Vice Mayor Geller, seconded by Councilmember Haydon, to have the City Clerk read Ordinance No. 458 by title and number only and waives further reading. (Passed; 4-0 vote).

The City Clerk read Ordinance No. 458 by title and number only.

It was moved by Vice Mayor Geller, seconded by Councilmember Haydon, to approve Ordinance No. 458 for First Reading and Introduction with findings the action does not constitute a project under CEQA. (Passed; 4-0 vote).

8. ACTION ITEMS

- (a) Presentation of the City's Mid-Year Budget status report for Fiscal Year 2014-2015.

Finance Manager Kevin Mizuno presented the staff report providing background of the Fiscal Year 2014-15 budget indicating there were two amendments made to the Fiscal Year 2014-15 adopted budget during the first half of the fiscal year. In December 2014, an award of contract to Miracle Playsystems for removal and replacement of tot lot play surface at The Grove Park, and Resolution No. 47-2014 authorized a transfer of funds to address additional projects remaining in the finalized 2010 Neighborhood Street Program. Mr. Mizuno indicated there were three one-time General Fund revenue enhancements at mid-year resulting from settlement of a dispute with Mt. Diablo Unified School District regarding the use of Clayton Community Gym Facilities, successful issuance of 2014 refunding Tax Allocation Bonds, and SB90 state-mandated reimbursements claims the City filed from prior fiscal years in arrears.

Councilmember Diaz noted the three non-recurring General Fund revenues indicated on the PowerPoint slide did not add up to the overall increase of \$121,747.00. Finance Manager Mizuno confirmed the three non-recurring General Fund revenues noted in the staff report were one-time items that were the most significant in the mid-year budget review; there were other smaller revenue enhancements which made up the difference.

Vice Mayor Geller asked if these revenues could possibly materialize in the future? Mr. Mizuno clarified these items were one-time revenues and would not be re-occurring to future budget revenue. However, each fiscal year could generate other unknown one-time revenues.

Mr. Mizuno continued his staff report noting there were some General Fund Expenditures in the mid-year budget ordered by the State Controller's Office for the City to repay \$200,000.00 in historical General Fund transfers back to the Successor Agency; this obligation is referred to as the State "clawback" and is expected to be paid by fiscal year end (June 30, 2015).

Mayor Shuey asked why the Legislative Budget increased in 2014-15 General Fund Expenditures? City Manager Napper advised the 2014 General Municipal Election costs increased this year's expenditures.

Vice Mayor Geller asked if the State Controller's Office order to repay \$200,000.00 could change or could the City fight it? Mr. Mizuno advised the original State Controller's Office order to repay was \$262,000.00. After staff's written challenge of \$62,000 with the State Controller's Office, it agreed to reduce the order to \$200,000.00 after the City's audited Due Diligence Review of the debt.

Mr. Mizuno further noted there were some other special restricted funds at mid-year regarding Oakhurst GHAD Inclinometer meter readings which are non-reoccurring, and some accounting corrections from Development Impact Fees. The report was concluded by Mr. Mizuno indicating no mid-year budgetary action is necessary at this time.

Vice Mayor Geller thanked Finance Director Mizuno for his professional and user-friendly dialogue regarding the City's Budget.

Mayor Shuey added his thanks to Finance Director Kevin Mizuno for concisely covering highlights and points of the City's Budget. Mayor Shuey invited public comment regarding this Mid-Year Budget Report; no public comments were offered.

It was moved by Vice Mayor Geller, seconded by Councilmember Haydon, to accept the City's Mid-Year Budget Report for FY 2014-15 without any mid-year adjustments. (Passed; 4-0 vote).

- (b) Consideration and review of local candidate streets for inclusion in the City's Fiscal Year 2015-16 Neighborhood Street Repaving Project (CIP No. 10424).

City Engineer Rick Angrisani presented the staff report indicating prior to 1990 Clayton's street conditions were ranked as one of the worst in Contra Costa County. Between years 2000 – 2002 with use of Redevelopment Agency Funds, the City was able to underground overhead utilities and reconstruct downtown streets. The City also improved arterial streets using Federal and Measure C (CCTA) funds. The latest pavement condition index survey in 2014 revealed Clayton's overall Pavement Condition Index has increased to 83, one of the best ratings in the County. Based on the survey results, the worst street currently is Mt. Sequoia Place with a "Very Poor" Pavement Condition Index of 39.

This year's street repaving project as shown in the latest 5-year Capital Improvement Program indicates significant Gas Tax and Measure J funds available for use. After review of the Pavement Condition Index, staff recommends 19 of the 26 streets with rankings of 69 PCI or below eligible are probable candidates for street overlays and repairs. Mr. Angrisani indicated those available funds cannot be used for any purpose other than pavement rehabilitation and maintenance, and there is no use of or impact to the City's General Fund. He also indicated the timeline of competitive bids for the City's Neighborhood Street Repaving Project would start in March, award of contract in April, start of project in May, and project completion in August. As an alternative, after the beginning of the new fiscal year in July 2015, we could increase construction funding allowing the City to rehabilitate all of the residential streets having a Pavement Condition Index less than 70.

Vice Mayor Geller asked if we go out to bid at a slower time, would fees be associated on change orders to add more streets? City Engineer Angrisani indicated in our contracts, it is OK to change quantities without an additional fees assessed.

City Manager Gary Napper added several years ago the City advanced ourselves monies using next year's Gas Tax and Measure J funds; we were subsequently informed by the State Controller's Office audit that using state gas tax revenues in advance of actual receipt is prohibited by the State Constitution. That's why in this Staff Report only Measure J monies are recommended as being allocated in that manner, which is permissible by CCTA.

Councilmember Haydon asked for clarification on the second alternative. City Engineer Angrisani advised there may be a cost savings to go out to bid this Fiscal Year and add additional streets using next year's restricted revenues after the beginning of Fiscal Year 2015-2016.

Mayor Shuey confirmed initiation of the Neighborhood Street Rehabilitation Project by May 18th. City Engineer Angrisani confirmed that date will allow enough time after award of contract for the contractor to file necessary bonds and insurances needed before the actual project can begin.

Vice Mayor Geller asked if it would be beneficial to piggy back on neighboring cities' street projects to negotiate better pricing? City Engineer Angrisani advised if our neighborhood street rehabilitation project were smaller, it probably could work to piggy back on a neighboring city. Project timings are also variable.

Mayor Shuey recommended going out to bid now and add change orders later in the process to obtain unit pricing economies. Mayor Shuey asked when the last street overlay occurred on Molok Way as the pattern of wear is uneven; he requests the City do a better job of overseeing this street project. City Engineer Angrisani could not recall if Molok Way was an overlay or slurry seal project.

Mayor Shuey called for public comments on this item; no public comments were offered.

It was moved by Councilmember Haydon, and seconded by Vice Mayor Geller, to authorize the candidate streets listed be competitively bid for the City's FY 2015-16 Street Repaving Project. (Passed; 4-0 vote).

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

Councilmember Diaz recommended dissolution of the Fire Services Ad-hoc Committee as Clayton Fire Station 11 has re-opened to full services in January 2015. City staff indicated such action would be placed on the City Council's next agenda for its consideration.

10. **CLOSED SESSION** – None.

11. **ADJOURNMENT**– on call by Mayor Shuey, the City Council meeting adjourned at 8:21 p.m.

The next regularly scheduled City Council meeting is February 17, 2015.

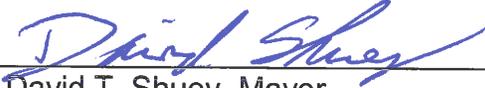
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Respectfully submitted,



Janet Brown, City Clerk

APPROVED BY CLAYTON CITY COUNCIL



David T. Shuey, Mayor

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