

MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL

TUESDAY, May 19, 2015

1. **CALL TO ORDER & ROLL CALL** –the meeting was called to order at 7:00 p.m. by Vice Mayor Geller in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Shuey (arrived at 8:10 p.m.), Vice Mayor Geller and Councilmembers Haydon and Pierce. Councilmembers absent: Councilmember Diaz. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, City Clerk/HR Manager Janet Brown, and Community Development Director Charlie Mullen.

2. **PLEDGE OF ALLEGIANCE** – led by Vice Mayor Geller.

3. **CONSENT CALENDAR**
It was moved by Councilmember Pierce, seconded by Councilmember Haydon, to approve the Consent Calendar as submitted. (Passed; 3-0 vote).
 - (a) Approved the minutes of the regular meeting of May 5, 2015 and the minutes of the adjourned regular meeting of May 12, 2015.
 - (b) Approved Financial Demands and Obligations of the City.
 - (c) Adopted Resolution No. 16-2015 accepting as complete the public works project involving the removal and replacement of the resilient play surface at the tot lot of The Grove Park in the amount of \$54,605.61 by Miracle PlaySystems, Inc. (Fund 211 – The Grove Park), and ordered the filing of a Notice of Completion.
 - (d) Adopted Resolution No. 17-2015 accepting as complete the public works project involving the removal and replacement/improvement of the water play feature at The Grove Park in the amount of \$57,612.23 by Miracle PlaySystems, Inc. (Fund 211 – The Grove Park), and ordered the filing of a Notice of Completion.
 - (e) Adopted Resolution No. 18-2015 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 2015-16, and set July 21, 2015 at or about 7:00 p.m. as the Public Hearing date and time on the fiscal year tax assessment levies.

4. RECOGNITIONS AND PRESENTATIONS

- (a) A Proclamation declaring Saturday, May 23, 2015 as "Sarah Owen Day" in the City of Clayton in recognition of her achievement of the Girl Scout Gold Award.

Vice Mayor Geller read the Proclamation declaring May 23, 2015 as "Sarah Owen Day" in the City. During a slideshow presentation of Sarah's Girl Scout Gold Award project, she thanked the community for its support of Clayton's First Annual 5k Fun Run and hopes the event will continue for many years to come in the Clayton community.

5. REPORTS

- (a) Planning Commission – No meeting held.

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

- (c) City Manager/Staff – City Manager Gary Napper provided an update from Contra Costa Water District regarding its intent to further revise its 2015 Water Drought Program. The State of California recently established 9 tiers of water usage within the state for each water supplier and its consumption rates; Tier 9 is the highest water consumer. The Contra Costa Water District fell into Tier 7, which mandates an increase in consumer reduction of water usage: Residential/Commercial water usage will go from 25% to 28%; Irrigation-only Meters from 40% to 45%; and Industrial to 5%. This revision means the City's parks and landscape irrigation meters must now reduce water usage by 45%. To further incentivize water use reductions CCWD intends to impose a temporary increase in its treated water quantity charge by \$0.50 per unit (a unit equals 748 gallons); this equates to a 14% rate increase. Residential usage below 200 gallons per day is considered to already be a conserver and will be exempt from the price adjustment. CCWD indicates the temporary rate increase will be eliminated when the Governor lifts the Executive Order mandating statewide water conservation.

- (d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

Councilmember Haydon attended a meeting of the Contra Costa County Mayors' Conference, the Clayton Historical Society's exhibit honoring and remembering World War II Veterans 70 years after the end of the war, Clayton's Certified Farmers' Market, the Saturday Concerts in The Grove featuring "The Department of Rock" band, and voted in Contra Costa County's 7th State Senatorial Special Election.

Councilmember Pierce attended a meeting of the Contra Costa Transportation Authority, the Clayton Historical Society's exhibit honoring and remembering World War II Veterans 70 years after the end of the war, Clayton's Certified Farmers' Market, Saturday's Concerts in The Grove featuring "Department of Rock," Central County's TRANSPAC meeting, the International Partnering Institute Awards Ceremony, and a meeting of the 4th of July Parade Committee. She also noted CCTA is considering a tax increase/tax time extension for voter

ballot in 2016 and indicated stakeholder and city outreach is commencing to discuss the merits.

Vice Mayor Geller attended the Contra Costa County Mayors' Conference, Contra Costa County Fire Protection District's Academy #48 Graduation, last Saturday's Concerts in The Grove featuring "Department of Rock," Clayton's Certified Farmers' Market, and voted by Absentee Ballot in the Contra Costa County 7th State Senatorial Special Election. Vice Mayor Geller also announced the next Saturday Concerts in The Grove will feature the "Big Band Beat" on May 23rd, San Francisco's legendary party band.

City Manager Gary Napper added the VFW will hold its 24th Annual Memorial Day Observance at the Veterans' Memorial Flagpole Monument at Oak and Main Streets in downtown Clayton on Monday, May 25th at 10:00 a.m.

(e) Other – None.

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

7. **PUBLIC HEARINGS** – None.

8. **ACTION ITEMS**

(a) Continued consideration of Resolutions authorizing participation in the State of California Property Assessed Clean Energy (PACE) Programs within the city of Clayton, consisting of the CaliforniaFirst, the Figtree, and the HERO Programs.

Community Development Director Charlie Mullen advised this item was continued from the last City Council meeting of May 5 requesting staff contact program administrators to determine if the Programs would include indemnification of the City, as a new associate member, by the individual joint powers authority (JPA). FigTree and the CaliforniaFirst Programs responded they do not indemnify its JPA associate members; however the HERO Program is willing to modify and included indemnification in its associate member contract with the City of Clayton.

City Manager Napper advised the updated indemnification agreement for the HERO Program is included in the staff report as "Attachment 2," and if the City Council wishes to adopt the HERO Program to include approval and execution of the amendment in its motion.

Councilmember Haydon clarified the offered amendment to the HERO Program contract would provide protection to the City of Clayton should someone within that Program file a lawsuit against the joint powers authority and name the City.

City Attorney Subramanian advised the City Council she is unable to opine on the HERO Program as she has a Conflict of Interest since her firm represents the Western Riverside Council of Governments sponsoring the HERO Program.

Community Development Director Mullen advised a representative from the HERO Program, Leah Rowell, is in attendance this evening and is available to answer any questions. She is the only PACE Program to have sent a representative to this meeting.

Leah Rowell advised the HERO Program's JPA has agreed to amend its contract with the City of Clayton regarding the indemnification concerns. She also wanted to point out that in addition to traditional energy saving projects, the HERO Program also offers many water savings alternatives such as artificial turf, rotating sprinklers, drip systems, water tolerant plants and rain water catch basins.

Councilmember Pierce asked City Attorney Subramanian if generally speaking of indemnification, where would the City of Clayton even be vulnerable? All the City is doing is allowing its citizens to participate in PACE programs offered independently and the City is not involved in any of the funding or financing options. City Attorney Subramanian advised if some issue came up, a Program participant may sue everyone; however, there is no specific risk to the City of Clayton in that regard.

Councilmember Pierce noted in her role as a delegate from the Contra Costa Transportation Authority, CalCog is contractor with PACE/HERO Programs in the western region with monitoring by the Western Riverside COG, which involvement provides her some oversight and insight on the PACE programs.

City Manager Napper commented the actual liability risk to the City is de minimis. Claim potential would be limited to the value of the improvements and consumers have only contracted for what the individual can prove in a claim.

Vice Mayor Geller asked if the City Council allows the three PACE Programs, would there be forced subordination of other financial institutions/lenders on a property, and could cumulative loan amounts exceed the value of the property? Would the City need to hire an attorney for potential litigation?

Councilmember Haydon commented on the issues noting there is no sense of urgency at hand and he is comfortable waiting for Mayor Shuey to be present as he is the one who raised the indemnification question. Vice Mayor Geller added his preference to continue this item as only three members of the City Council are in attendance this evening and continuance would allow the City Council more time to review each Program offered.

HERO Representative Leah Rowell indicated its property advisors handhold the potential customer throughout the process to ensure they meet their stiff qualifications to be considered for the PACE Program's financing options and the added loan does not over-extend the consumer.

Vice Mayor Geller advised he is a realtor and part of his responsibilities in the closing process is to educate the client by explaining details of the loan. In past experience, he has seen clients sign up for loans without full understanding of

the details; usually under duress, especially when it comes to losing their home. Some of his concerns with PACE are too many "what ifs" and he prefers the City Council have staff go back to FigTree and CaliforniaFirst and request each include JPA indemnification of the City and also get answers on loan subordinations.

City Attorney Subramanian indicated that FigTree and CaliforniaFirst have been contacted about the inclusion of the City of Clayton in the indemnification, however they were not interested in changing the existing JPA agreements.

Vice Mayor Geller asked if the City Council is able to pick and choose which PACE Programs it would like its citizens to be able to choose from? City Manager Napper advised City participation in any of the Programs would be a policy decision for the City Council weighing whether the community benefit is worth the potential risk or exposure to the City.

Vice Mayor Geller asked if the City Council does not approve the programs, would the citizens of Clayton still be able to apply for the financing options? Ms. Rowell advised if the City Council does not approve the PACE Programs, then its citizens will not be able to access the programs or the real property assessed financing option.

Councilmember Pierce confirmed applicants must have enough equity in their homes to qualify and be able to continue to make payments for the financing options and must have their credit approved first. Each PACE Program will advise the customer directly; there is no downside to the City or existing lenders on the property, it is strictly up to the consumer if they wish to use the financing options available.

Ms. Rowell added the HERO Program has established strict policy criteria which must be met to qualify one for the financing options available such as no late payments, current on payments, no bankruptcies, and not late on property tax bills.

City Manager Napper commented that should the City Council wait to make a policy decision on this matter for a full Council to be present, this item could not return until a July meeting. Mayor Shuey called him prior to this evening's meeting and had an additional litigation question: if, for example, someone sues the City of Antioch, would defense of that lawsuit involve expense by the City of Clayton since we would now be in the same Joint Powers Authority? Mr. Napper asked Ms. Rowell if the HERO Program has been sued to date and would the City of Clayton likely be removed from the lawsuit through a motion for summary judgement?

Ms. Rowell responded to date she is unaware of any lawsuits against the HERO Program.

Councilmember Haydon indicated he would like to approve the HERO Program and continue the FigTree and the CaliforniaFirst Programs to a later meeting date.

Jack Cooper, resident of Clayton, urged the Clayton City Council to consider adoption of a “PACE” (Property Assessed Clean Energy) or “HERO” (Homeowners Equity Recovery Opportunity) as means to offer clean energy improvements to its citizens. Mr. Cooper is employed by Custom Exteriors, which has provided residential assessment tests in other cities of the Bay Area currently participating in clean energy programs. In his experience, the HERO Program provides the consumer an opportunity for someone who has equity in their home to make improvements without any upfront costs, it has helped out senior citizens, and is a convenient way for middle class consumers to “go green” in an affordable way.

Vice Mayor Geller asked Mr. Cooper if the solar products available have lasted longer then what it takes for the consumer to “buy it”? Mr. Cooper advised the products offered are very good quality and gives the consumer an interest-only tax deduction for the duration of the financing.

City Manager Napper noted the origin of the City’s consideration of PACE Program participation came through its recent Housing Element update as a City Policy. The Policy goal is aimed at assisting property owners’ retention of value and integrity of the community’s housing stock, and promoting ways for our homes to remain habitable.

It was moved by Councilmember Haydon, seconded by Councilmember Pierce, to adopt Resolution No. 19-2015 agreeing to participation in and the inclusion of real properties within the City’s jurisdiction in the California HERO Program to finance distributed generation renewable energy sources, energy and water efficiency improvements and electric vehicle charging infrastructure, approving the indemnification amendment to a certain joint powers agreement related thereto, and ordering the continuance of the Figtree and the CaliforniaFirst PACE Programs to the City Council regular meeting on June 2, 2015. (Passed; 3-0 vote).

9. COUNCIL ITEMS – None.

10. CLOSED SESSION

- (a) *Government Code Section 54957.6, Conference with Labor Negotiator.*
Instructions to City-designated labor negotiator: City Manager
Employee Organization: Clayton Police Officers’ Association (CPOA)

On announcement by Vice Mayor Geller, the City Council went into Closed Session for the purpose noted at 8:03 p.m.

(Mayor Shuey arrived at 8:07 p.m.)

Report Out from Closed Session (8:21 p.m.)

Vice Mayor Geller reported the City Council received information from its negotiator and gave general direction to staff.

11. **ADJOURNMENT**– on call by Vice Mayor Geller, the City Council adjourned its meeting at 8:22 p.m.

The next regularly scheduled City Council meeting is June 2, 2015.

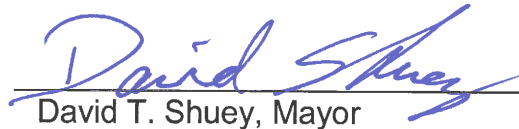
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Respectfully submitted,



Janet Brown, City Clerk

APPROVED BY CLAYTON CITY COUNCIL



David T. Shuey, Mayor

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