



AGENDA

REGULAR MEETING

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CLAYTON CITY COUNCIL

* * *

TUESDAY, MARCH 3, 2015

7:00 P.M.

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

Mayor: David T. Shuey
Vice Mayor: Howard Geller

Council Members

Jim Diaz
Keith Haydon
Julie K. Pierce

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review in City Hall located at 6000 Heritage Trail and on the City's Website at least 72 hours prior to the Council meeting.
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at www.ci.clayton.ca.us
- Any writings or documents provided to a majority of the City Council after distribution of the Agenda Packet and regarding any public item on this Agenda will be made available for public inspection in the City Clerk's office located at 6000 Heritage Trail during normal business hours.
- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7304.

* CITY COUNCIL *

March 3, 2015

1. **CALL TO ORDER AND ROLL CALL OF THE CITY COUNCIL** – Mayor Shuey.

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

3. **CONSENT CALENDAR**

Consent Calendar items are typically routine in nature and are considered for approval by the City Council with one single motion. Members of the Council, Audience, or Staff wishing an item removed from the Consent Calendar for purpose of public comment, question or input may request so through the Mayor.

(a) Approve the minutes of the regular meeting of February 17, 2015. ([View Here](#))

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

(c) Approve the dissolution of the City Council Fire Services Ad-hoc Committee. ([View Here](#))

(d) Adopt a Resolution approving a multi-year Amended and Restated Agreement between the City of Clayton and All Out Sports League (AOSL) for the continued provision of community recreation and enrichment programs at the Clayton Community Gymnasium. ([View Here](#))

(e) Adopt a Resolution reaffirming and implementing the provisions of Section 414(h)(2) of the Internal Revenue Code to tax defer employee retirement contributions to CalPERS. ([View Here](#))

4. **RECOGNITIONS AND PRESENTATIONS**

(a) A Proclamation declaring March 2015 as “Prescription Drug Abuse Awareness Month” in the City of Clayton. ([View Here](#))

(b) A Proclamation declaring Thursday, March 5, 2015 as “Kayla Elwy Day” in the City of Clayton in recognition of her achievement of the Girl Scout Gold Award. ([View Here](#))

5. REPORTS

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

6. PUBLIC COMMENT ON NON - AGENDA ITEMS

Members of the public may address the City Council on items within the Council's jurisdiction, (which are not on the agenda) at this time. To facilitate the recordation of comments, it is requested each speaker complete a speaker card available on the Lobby table and submit it in advance to the City Clerk. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Mayor's discretion. When one's name is called or you are recognized by the Mayor as wishing to speak, the speaker shall approach the public podium and adhere to the time limit. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. The Council may respond to statements made or questions asked, or may at its discretion request Staff to report back at a future meeting concerning the matter.

Public comment and input on Public Hearing, Action Items and other Agenda Items will be allowed when each item is considered by the City Council.

7. PUBLIC HEARINGS – None.

8. ACTION ITEMS

- (a) Consider the Second Reading and Adoption 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. ([View Here](#))
(Community Development Director)

Staff recommendations: **1.)** Receive the staff report; **2.)** Receive public comment; **3.)** Following Council consideration of any public comment and discussion, approve a motion to have the City Clerk read Ordinance No. 458 by title and number only and waive further reading; and **4.)** On completion of the City Clerk's reading, approve a motion to adopt Ordinance No. 458 with findings its adoption will not have a significant adverse effect on the environment and is therefore exempt under CEQA.

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

10. **CLOSED SESSION** – None.

11. **ADJOURNMENT**– the next regularly scheduled City Council meeting is March 17, 2015.

#

MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL

Agenda Date: 3-03-2015

Agenda Item: 3a

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 Inclinator 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.

#

Respectfully submitted,

Janet Brown, City Clerk

APPROVED BY CLAYTON CITY COUNCIL

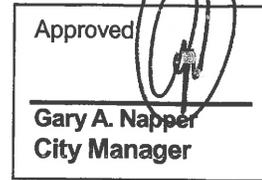
David T. Shuey, Mayor

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Agenda Date 3/3/2015

Agenda Item: 3b



STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: Kevin Mizuno, FINANCE MANAGER

DATE: 3/3/2015

SUBJECT: FINANCIAL OBLIGATIONS

RECOMMENDATION:

Approve the following Invoices:

2/27/2015 Cash Requirements	\$ 125,035.07
2/17/2015 Payroll, PPE 2/15/15, Pay 2/18/15	\$ 79,895.86

Total \$ 204,930.93

Attachments:

Cash Requirements Report dated 2/27/2015 (3 pages)
ADP Report Week 08, PPE 02/15/15 (1 page)

City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Alameda County Sheriff's Office								
Alameda County Sheriff's Office	3/3/2015	2/27/2015	3773	Driver/Force Option Simulator Course - Eddy	\$184.00	\$0.00		\$184.00
<i>Totals for Alameda County Sheriff's Office:</i>					<u>\$184.00</u>	<u>\$0.00</u>		<u>\$184.00</u>
All City Management Services, Inc.								
All City Management Services, Inc.	3/3/2015	2/27/2015	38218	School Crossing Guard Services 2/1/15-2/14/	\$458.19	\$0.00		\$458.19
All City Management Services, Inc.	3/3/2015	2/27/2015	38035	school crossing guard services 1/18/15-1/31/1	\$407.28	\$0.00		\$407.28
<i>Totals for All City Management Services, Inc.:</i>					<u>\$865.47</u>	<u>\$0.00</u>		<u>\$865.47</u>
American Fidelity Assurance Company								
American Fidelity Assurance Company	3/3/2015	2/25/2015	B271869	March Insurance Premiums	\$257.54	\$0.00		\$257.54
American Fidelity Assurance Company	3/3/2015	2/25/2015	1183548A	February Deductions	\$610.00	\$0.00		\$610.00
<i>Totals for American Fidelity Assurance Company:</i>					<u>\$867.54</u>	<u>\$0.00</u>		<u>\$867.54</u>
David Browett								
David Browett	3/3/2015	2/25/2015	CAP0139	Deposit refund 94 El Molino Dr - Addition	\$1,856.84	\$0.00		\$1,856.84
<i>Totals for David Browett:</i>					<u>\$1,856.84</u>	<u>\$0.00</u>		<u>\$1,856.84</u>
CalPERS Health								
CalPERS Health	3/3/2015	2/25/2015	1676	March Medical Benefits	\$34,077.14	\$0.00		\$34,077.14
<i>Totals for CalPERS Health:</i>					<u>\$34,077.14</u>	<u>\$0.00</u>		<u>\$34,077.14</u>
Caltronics Business Systems, Inc								
Caltronics Business Systems, Inc	3/3/2015	2/25/2015	1719524	Contract for 1/17/15-2/16/15	\$326.07	\$0.00		\$326.07
<i>Totals for Caltronics Business Systems, Inc.:</i>					<u>\$326.07</u>	<u>\$0.00</u>		<u>\$326.07</u>
City of Concord								
City of Concord	3/3/2015	2/27/2015	43730	vehicle maintenance January 2015	\$1,995.95	\$0.00		\$1,995.95
City of Concord	3/3/2015	2/27/2015	43766	printing services	\$24.40	\$0.00		\$24.40
<i>Totals for City of Concord:</i>					<u>\$2,020.35</u>	<u>\$0.00</u>		<u>\$2,020.35</u>
Contra Costa Topsoil								
Contra Costa Topsoil	3/3/2015	2/25/2015	113467	Topsoil Mix	\$423.15	\$0.00		\$423.15
<i>Totals for Contra Costa Topsoil:</i>					<u>\$423.15</u>	<u>\$0.00</u>		<u>\$423.15</u>
Carmen Cordova								
Carmen Cordova	3/3/2015	2/25/2015	SPR 02-13	Deposit refund for site plan review	\$192.02	\$0.00		\$192.02
<i>Totals for Carmen Cordova:</i>					<u>\$192.02</u>	<u>\$0.00</u>		<u>\$192.02</u>
De Lage Landen Financial Services, Inc.								
De Lage Landen Financial Services, Inc.	3/3/2015	2/25/2015	44633503	March Services	\$322.34	\$0.00		\$322.34
<i>Totals for De Lage Landen Financial Services, Inc.:</i>					<u>\$322.34</u>	<u>\$0.00</u>		<u>\$322.34</u>
Geoconsultants, Inc.								
Geoconsultants, Inc.	3/3/2015	2/25/2015	18725	well monitoring for February 2015	\$1,546.50	\$0.00		\$1,546.50
<i>Totals for Geoconsultants, Inc.:</i>					<u>\$1,546.50</u>	<u>\$0.00</u>		<u>\$1,546.50</u>

City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Globalstar LLC								
Globalstar LLC	3/3/2015	2/27/2015	1000000006259366	service 1/16/15-2/15/15	\$54.99	\$0.00		\$54.99
				<i>Totals for Globalstar LLC:</i>	<u>\$54.99</u>	<u>\$0.00</u>		<u>\$54.99</u>
Hammons Supply Company								
Hammons Supply Company	3/3/2015	2/25/2015	87577	Library Supplies	\$150.50	\$0.00		\$150.50
Hammons Supply Company	3/3/2015	2/25/2015	87578	Grove Park Supplies	\$150.75	\$0.00		\$150.75
				<i>Totals for Hammons Supply Company:</i>	<u>\$301.25</u>	<u>\$0.00</u>		<u>\$301.25</u>
HUB Inter of CA Ins Svc								
HUB Inter of CA Ins Svc	3/3/2015	2/25/2015	January 2015	January Insurance	\$884.49	\$0.00		\$884.49
				<i>Totals for HUB Inter of CA Ins Svc:</i>	<u>\$884.49</u>	<u>\$0.00</u>		<u>\$884.49</u>
John Deere Landscapes Inc								
John Deere Landscapes Inc	3/3/2015	2/25/2015	70674261	Order # 78989703	\$1,715.39	\$0.00		\$1,715.39
John Deere Landscapes Inc	3/3/2015	2/25/2015	70796376	Order # 79278952	\$517.24	\$0.00		\$517.24
				<i>Totals for John Deere Landscapes Inc:</i>	<u>\$2,232.63</u>	<u>\$0.00</u>		<u>\$2,232.63</u>
Arlene Kikkawa-Nielsen								
Arlene Kikkawa-Nielsen	3/3/2015	2/25/2015	March	March - Volunteer Coordinator Hours	\$900.00	\$0.00		\$900.00
				<i>Totals for Arlene Kikkawa-Nielsen:</i>	<u>\$900.00</u>	<u>\$0.00</u>		<u>\$900.00</u>
LarryLogic Productions								
LarryLogic Productions	3/3/2015	2/25/2015	1483	City Council Meeting 2/17/15	\$300.00	\$0.00		\$300.00
				<i>Totals for LarryLogic Productions:</i>	<u>\$300.00</u>	<u>\$0.00</u>		<u>\$300.00</u>
Main Fire Protection								
Main Fire Protection	3/3/2015	2/25/2015	1573	Work Order # 588676	\$217.81	\$0.00		\$217.81
				<i>Totals for Main Fire Protection:</i>	<u>\$217.81</u>	<u>\$0.00</u>		<u>\$217.81</u>
Marken Mechanical Services Inc								
Marken Mechanical Services Inc	3/3/2015	2/25/2015	415-1152-2	Library Maintenance for February 2015	\$150.00	\$0.00		\$150.00
Marken Mechanical Services Inc	3/3/2015	2/25/2015	415-1151-2	City Hall Maintenance for February 2015	\$150.00	\$0.00		\$150.00
Marken Mechanical Services Inc	3/3/2015	2/25/2015	415-1146	Library Maintenance for January 2015	\$502.17	\$0.00		\$502.17
				<i>Totals for Marken Mechanical Services Inc:</i>	<u>\$802.17</u>	<u>\$0.00</u>		<u>\$802.17</u>
MPA								
MPA	3/3/2015	2/25/2015	March	March Life/LTD	\$1,480.28	\$0.00		\$1,480.28
				<i>Totals for MPA:</i>	<u>\$1,480.28</u>	<u>\$0.00</u>		<u>\$1,480.28</u>
Neopost (add postage)								
Neopost (add postage)	3/3/2015	2/23/2015	2/19/15	Postage Added 2/19/15	\$300.00	\$0.00		\$300.00
				<i>Totals for Neopost (add postage):</i>	<u>\$300.00</u>	<u>\$0.00</u>		<u>\$300.00</u>
Pacific Telemanagement Svc								
Pacific Telemanagement Svc	3/3/2015	2/25/2015	727986	Courtyard Phne March 2015	\$73.00	\$0.00		\$73.00

City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<i>Totals for Pacific Telemangement Svc:</i>					\$73.00	\$0.00		\$73.00
PERMCO, Inc.								
PERMCO, Inc.	3/3/2015	2/25/2015	10338	Services 2/7/15-2/20/15	\$3,224.25	\$0.00		\$3,224.25
PERMCO, Inc.	3/3/2015	2/25/2015	10339	CAP Inspections 2/7/15-2/20/15	\$62.25	\$0.00		\$62.25
PERMCO, Inc.	3/3/2015	2/25/2015	10340	Collector Street Rehab 2/7/15-2/20/15	\$377.50	\$0.00		\$377.50
PERMCO, Inc.	3/3/2015	2/25/2015	10341	2015 Neighborhood St Proj 2/7/15-2/20/15	\$4,110.00	\$0.00		\$4,110.00
<i>Totals for PERMCO, Inc.:</i>					\$7,774.00	\$0.00		\$7,774.00
PG&E								
PG&E	3/3/2015	2/25/2015	01/15/15	Service 1/15/15-2/16/15	\$18,053.92	\$0.00		\$18,053.92
PG&E	3/3/2015	2/27/2015	2/23/15	Service 1/22/15-2/22/15	\$3,031.21	\$0.00		\$3,031.21
<i>Totals for PG&E:</i>					\$21,085.13	\$0.00		\$21,085.13
Pinnacle Construction Services, Inc								
Pinnacle Construction Services, Inc	3/3/2015	2/25/2015	2074	Management Services for February 2015	\$4,205.98	\$0.00		\$4,205.98
<i>Totals for Pinnacle Construction Services, Inc:</i>					\$4,205.98	\$0.00		\$4,205.98
Riso Products of Sacramento								
Riso Products of Sacramento	3/3/2015	2/27/2015	138024	contract 2/18/15-3/17/15	\$94.86	\$0.00		\$94.86
<i>Totals for Riso Products of Sacramento:</i>					\$94.86	\$0.00		\$94.86
US Bank Trust National Assoc								
US Bank Trust National Assoc	3/3/2015	2/23/2015	HYXDH-ZWRP8	Clayton 1990-1 Sp. Tax Bonds	\$40,951.44	\$0.00		\$40,951.44
<i>Totals for US Bank Trust National Assoc:</i>					\$40,951.44	\$0.00		\$40,951.44
Wally's Rental Center, Inc.								
Wally's Rental Center, Inc.	3/3/2015	2/25/2015	148645-3	rentals for CCP	\$325.62	\$0.00		\$325.62
<i>Totals for Wally's Rental Center, Inc.:</i>					\$325.62	\$0.00		\$325.62
Western Exterminator								
Western Exterminator	3/3/2015	2/25/2015	2936855	January Service	\$370.00	\$0.00		\$370.00
<i>Totals for Western Exterminator:</i>					\$370.00	\$0.00		\$370.00
GRAND TOTALS:					\$125,035.07	\$0.00		\$125,035.07



Agenda Date: 3-03-2015

Agenda Item: 3c

Approved: 

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY MANAGER

DATE: 03 MARCH 2015

SUBJECT: DISSOLUTION OF COUNCIL FIRE SERVICES AD-HOC COMMITTEE

RECOMMENDATION

Having met its primary objective to cause the re-opening of Contra Costa County Fire Protection District's sole fire station within the city of Clayton (Fire Station No. 11, Center Street), it is recommended the City Council, by minute motion, approve the dissolution of its Fire Services Ad-hoc Committee, effective immediately.

BACKGROUND

Following the failure of its proposed ballot measure in November 2012 (Measure Q) to levy a parcel tax on properties within its special district to augment revenues to operate the Contra Costa County Fire Protection District, the District's Board of Directors (i.e. County Board of Supervisors) commenced closing several fire stations within the Fire District. One of the fire stations shuttered starting in December 2012 was the city of Clayton's only fire station located on Center Street in the Clayton Town Center area. Due to contractual requirements originated by the former Clayton Redevelopment Agency's monetary contribution for the construction of this fire station, the Fire District did not fully shutter its operations from Fire Station No. 11 but rather indicated it would continue to staff it only from 2:00 pm – 8:00 pm, Monday through Saturday (75% closure of a 24/7 service).

Pressed with the de facto closure of Fire Station No. 11, the City Council at its public meeting on 15 January 2013 discussed the ensuing public safety concern and by motion established a new City Council Fire Services Ad-hoc Committee to examine options and alternatives to this new gap in local public safety and emergency responder services to its community. City Council Members Howard Geller and Jim Diaz were selected to comprise the membership of the Council Ad-hoc Committee.

On 04 February 2013 the Ad-hoc Committee and the Clayton City Council met in a noticed public meeting to further discuss the fire station's effective closure and to receive public input regarding community and local government options relative to the special fire district's decision.

At its regularly scheduled public meeting on 05 February 2013, among other matters the City Council adopted a motion to alter the membership of its Fire Services Ad-hoc Committee to be Council Members Jim Diaz and David Shuey.

DISSOLUTION OF AD-HOC COMMITTEE

Periodically the Fire Services Ad-hoc Committee met with members of the Clayton community to discuss ways and communicate the need to re-open full time the sole fire station in Clayton.

In April 2014 the Contra Costa County Fire Protection District announced it had been awarded a \$9.571 million federal 2-year SAFER grant (Staffing for Adequate Fire and Emergency Response) for use to augment fire personnel operations. The District's Board of Directors took formal action thereafter for partial use of the grant monies to re-open Fire Station No. 11 in the city of Clayton. On 16 January 2015 following graduation of one of its fire academies, Fire Station No. 11 was re-opened as a 24/7 public safety and emergency first responder operation. On Saturday, 31 January 2015, members of the Fire Services Ad-hoc Committee, in cooperation with the Fire District and funded by a donation from the Clayton Business and Community Association (CBCA), hosted a community "open house" and BBQ at Fire Station No. 11 to welcome back the full-time firefighters.

With the full re-opening of ConFire Station No. 11 in Clayton, the necessity of a Council Fire Services Ad-hoc Committee has expired.

Attachment: None.



Agenda Date: 3-03-2015

Agenda Item: 3d

Approved:

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY MANAGER

DATE: 03 MARCH 2015

SUBJECT: ADOPT RESOLUTION APPROVING AN AMENDED MULTI-YEAR AGREEMENT WITH ALL OUT SPORTS LEAGUE (AOSL) TO PROVIDE COMMUNITY RECREATION PROGRAMS AT THE CLAYTON COMMUNITY GYMNASIUM

RECOMMENDATION

It is recommended the City Council adopt the attached Resolution approving an Amended and Restated Agreement with All Out Sports League, Inc. (AOSL) for its continued development and operation of community recreation and enrichment programs at the Clayton Community Gymnasium.

BACKGROUND

Through agreement in 2001, the City, its former Redevelopment Agency, and the Mount Diablo Unified School District ("School District") jointly agreed to the donation of City land adjacent to the Diablo View Middle School campus and the joint contribution of public monies to construct a joint-use gymnasium now referred to as the "Clayton Community Gymnasium". In part the 2001 Agreement granted to the City the priority rights and access to the gymnasium during after-school hours and on non-school days to generate and conduct community recreation and enrichment programs.

As a small municipality the City had neither the resources nor the personnel to sustain the operations of an in-house recreation department to develop and operate community recreation programs once the new gymnasium opened. Generally, public recreation programs are not self-sustaining and cities that do operate recreation and parks departments universally must subsidize the net operations using General Fund monies. The public will not pay the true cost of program fees to sustain recreation department operations and staffing.

Recognizing this constraint the City initially contracted with the now-defunct Mt. Diablo Region YMCA to be its independent contractor for the purposes of developing and running community recreation programs during City facility use hours and times at the gymnasium. When that YMCA charter suddenly went bankrupt in 2010, the City was fortunate to have All

Out Sports League, Inc. (AOSL) step forward and offer to maintain community recreation programs at the gymnasium. Over the last five (5) years AOSL has launched and generated an enthusiastic community recreation program following supported by active participants from the Clayton community.

AMENDED AGREEMENT WITH AOSL

In January 2015 the City and the School District finally and amicably settled its chronic disputes over inter-agency charges and fees for custodial services at the gymnasium during City use hours. That revised agreement eliminated any charges by either public agency for use of the gymnasium by the City or use of the adjacent Clayton Community Park as physical education grounds by the School District. Since the City's original arrangements with both the YMCA and now AOSL stipulated each of those independent contractors was responsible for 100% reimbursement to the City of any fees or charges levied by the School District for its use of the gymnasium during City use hours, those payment provisions have now effectively ceased. However, as an independent contractor granted the privilege of operating consumer-paid recreation programs at the gymnasium during the City's use hours, AOSL must pay the City some monetary consideration for that private party opportunity to use a public facility.

In setting user fees for community recreation programs there is a fine line between what program expenses are incurred to operate the programs and what the public will bear in terms of a "fee to play". Neither the YMCA's nor AOSL's financial experiences of actually running community recreation programs at the gymnasium resulted in a net profit operation during any one of those past thirteen (13) years. Should the City charge too much for the privilege of using the gymnasium during City use hours and days, an independent contractor will either decline the privilege or raise program fees beyond the tolerance level of the paying public. In both situations, the City would either have an unhappy or non-existent contractor or have unhappy or non-participatory public members using the local programs or instead migrating permanently to other nearby competing community recreation programs. AOSL's current balance of program fees and payment to the City seems to be working as active participation and enjoyment is present at the gymnasium.

So as not to disturb the existing delicate balance of AOSL offering meaningful community recreation programs coupled with successful public participation in those programs, the amended Agreement has been negotiated with slight increases in AOSL payments to the City that should not cause or result in substantial recreation program fees to the participants. AOSL's current payment to the City is \$2,200 per month (\$26,400 per year); in consideration of a seven (7) year agreement, AOSL has offered to increase that monthly facility use payment by \$150.00 per month each fiscal year commencing in FY 2015-16. AOSL believes it can absorb that initial 6.8% monthly increase without having to significantly bump program fees to levels which will result in participant dropouts. In essence, neither the City nor AOSL gains substantial monetary windfalls under this arrangement nor is the general public priced out of its desire to participate in local community recreation programs. Further, AOSL agrees to keep its recreation program fees at least ten percent (10%) below comparable recreation program fees charged by other public entities or organizations in the

general East Bay area in order to remain competitive in the Clayton Valley community (ref. Section 1, first paragraph on Page 3).

Although the amended Agreement is for a term of approximately seven (7) years, Section 3 (page 5) allows either party to terminate the Agreement on sixty (60) days' notice. Enhanced insurance requirements and provisions have been incorporated into this amended Agreement along with new boiler-plate language recommended by the City Attorney's office, which has reviewed the amended Agreement and approves of its legal provisions.

FISCAL IMPACT

Presently and through 30 June 2015, AOSL makes a payment to the City of \$2,200.00 per month in consideration of an independent contractor using a public facility during the City's use hours. Starting in FY 2015-16 and each year thereafter, that monthly charge will rise by \$150.00 per month. In FY 2015-16 this contractual arrangement will generate a revenue stream to the City General Fund of \$28,200 per year. There are no direct expenses incurred by the City for this amended Agreement other than contract management.

Exhibits and Attachments:

- Exhibit A: City Resolution [3 pp.]
- Attachment 1: Amended and Restated Agreement with AOSL [13 pp.]

RESOLUTION NO. – 2015

**A RESOLUTION APPROVING AN AMENDED AND RESTATED AGREEMENT
BETWEEN THE CITY OF CLAYTON AND ALL OUT SPORTS LEAGUE, INC.
FOR ITS DEVELOPMENT AND OPERATION OF COMMUNITY RECREATION
AND ENRICHMENT PROGRAMS AT THE CLAYTON COMMUNITY GYMNASIUM**

**THE CITY COUNCIL
City of Clayton, California**

WHEREAS, by Agreement dated 22 May 2001, the City of Clayton (the “City”), the former Clayton Redevelopment Agency and the Mount Diablo Unified School District (the “School District”) jointly constructed a gymnasium on land donated by the City to the School District adjacent to the Diablo View Middle School campus; and

WHEREAS, on 07 January 2015 an Amended and Restated Facilities Use Agreement (the “2015 Agreement”) between the City and the School District was entered into for the purpose of resolving chronic disputes between the public agencies pertaining to the City’s real property known as the Clayton Community Park and the community recreation programs offered through the City and operated at the Clayton Community Gymnasium (the “Gymnasium”); and

WHEREAS, pursuant to the 2001 Agreement and continued in the 2015 Agreement the City has rights and access to the Gymnasium during after school hours and on non-school days, and the City exercised said rights by contracting first with the Mt. Diablo Region YMCA and then All Out Sports League, Inc. (“AOSL”) commencing in July 2010 to develop, offer and operate community recreation and enrichment programs at and in the Gymnasium; and

WHEREAS, since 01 July 2010 and continuously thereafter AOSL has offered, provided and operated successful community recreation programs at the Gymnasium as an independent contractor to the general satisfaction and acceptance of the City and its populace; and

WHEREAS, predicated on the revised and amended terms and conditions of the 2015 Agreement, it is appropriate and necessary for the City and AOSL to re-examine and re-evaluate its 2010 Agreement and its current contractual relationship for the provision of community recreation and enrichment programs at the Gymnasium; and

WHEREAS, AOSL has indicated to the City Manager its continued and renewed desire and capacity to continue offering such community recreation services through a restructured multi-year Agreement and payment plan; and

WHEREAS, the City and AOSL each wish to continue the existing mutually-beneficial five (5) year relationship that has been established to better serve the general health and welfare of City residents and the greater Clayton Valley area;

NOW, THEREFORE, BE IT RESOLVED that the City Council of Clayton, California does hereby approve and adopt the following:

Section 1. The above Recitals are true and correct statements of facts and understandings associated with this matter and constitute in part the findings relied on by the City Council for its determinations and actions herein.

Section 2. The City Council does herewith adopt and approve the "Amended and Restated Agreement between the City of Clayton and All Out Sports League, Inc. for the Development and Operation of Recreation and Enrichment Programs at the Clayton Community Gymnasium", a true and correct copy of which is attached hereto to this Resolution, labeled as "Attachment 1", and incorporated into this Resolution as if fully set forth herein.

Section 3. The City Council does hereby approve and authorize its Mayor and its City Manager to sign and execute said Agreement for and on behalf of the City of Clayton.

Section 4. The City Council does herewith authorize its City Manager to take all appropriate and reasonable actions to manage and oversee said Agreement with AOSL for and on behalf of the City of Clayton.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 3rd day of March 2015 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CALIFORNIA

By: David T. Shuey, Mayor

ATTEST:

By: Janet Brown, City Clerk

**AMENDED AND RESTATED AGREEMENT BETWEEN THE CITY OF CLAYTON
AND ALL OUT SPORTS LEAGUE, INC., FOR DEVELOPMENT
AND OPERATION OF RECREATION AND ENRICHMENT
PROGRAMS AT THE CLAYTON COMMUNITY GYMNASIUM**

WHEREAS, pursuant to the Agreement between the City of Clayton (herein "City"), the Redevelopment Agency of the City of Clayton (herein "Agency"), and the Mt. Diablo Unified School District (herein "District") dated 22 May 2001, a gymnasium known as the Clayton Community Gymnasium (herein "Gymnasium") was constructed on land donated by the City at the Diablo View Middle School in Clayton, CA; and

WHEREAS, on 07 January 2015 an Amended and Restated Facilities Use Agreement between the City and the District was entered into for the purpose of resolving disputes between the Parties regarding the 2001 Agreement referenced above and an Agreement dated 07 February 1995 pertaining to the District's use of adjacent City-owned real property known as the Clayton Community Park; and

WHEREAS, pursuant to this 2015 Amended and Restated Facilities Use Agreement (hereafter the City/District Agreement) the District shall continue to make the Gymnasium and adjacent parking lot on Gym Court available for use by the City during non-school hours, Monday through Sunday, during the following times:

School Days	3:30 p.m. through 11:00 p.m.
Non-School Days	8:00 a.m. through 11:00 p.m.; and

WHEREAS, pursuant to the City/District Agreement, the City is to be responsible for the use, operation and control of the Gymnasium and adjacent parking lot on Gym Court during the City's periods of facility use; and

WHEREAS, All Out Sports League, Inc. (herein "AOSL") is a 501 (c) (3) public charity recognized by the Internal Revenue Service (IRS) of the Department of Treasury effective 13 June 2008, and is a nonprofit Mutual Benefit Corporation organized in the State of California with Articles of Incorporation first endorsed and filed with the CA Secretary of State on 22 December 2008; and

WHEREAS, at its regular public meeting held on 01 June 2010 the City's Council did review, approve and authorize an Agreement with AOSL for the development and operation of recreation and enrichment programs at the Gymnasium; and

WHEREAS, since 01 July 2010 and continuously thereafter, AOSL has offered, provided and operated community recreation programs, leagues and classes at the Gymnasium and at Clayton Community Park to the general satisfaction and acceptance of the City; and

WHEREAS, predicated on the revised and amended terms and conditions of the City/District Agreement, it is appropriate for the City and AOSL to re-examine and re-evaluate its 2010 Agreement and current relationship for the provision of community recreation and enrichment programs offered and provided by AOSL at the Gymnasium; and

WHEREAS, AOSL has indicated to the City's Manager its continued and renewed desire and capacity to continue offering such recreation services to the greater Clayton community at said facilities under a longer term agreement; and

WHEREAS, AOSL is familiar with the terms and conditions of the City/District Agreement pertaining to use of the Gymnasium, having received and reviewed a copy of same, and has expressed interest in operating community programs at the Gymnasium; and

WHEREAS, the City and AOSL each wish to continue the existing mutually-beneficial relationship in this regard for the betterment and well-being of City residents and the greater Clayton community.

NOW THEREFORE, City and AOSL agree as follows:

1. Program Development and Operation

AOSL will develop and operate diversified recreation and enrichment programs for youth, adults, and seniors, will advertise and market the same to take place at the Gymnasium and at other designated City-owned sites within the city of Clayton as may be agreed upon by City and AOSL. City will assist AOSL in marketing its programs through the City's existing web site and placement of City-approved AOSL-provided banners at locations within and approved by the City. The hours of operation of the Gymnasium shall be within the City's available and authorized use of the Gymnasium pursuant to the City/District Agreement as above outlined.

AOSL shall hire, train, and supervise its staff, and shall oversee and supervise all of its activities and programs offered at the Gymnasium or at other agreed upon sites pursuant to this Agreement. AOSL shall ensure each of its staff and individuals working with or volunteering to work with youth in its programs have cleared background checks and received necessary training as required by applicable state laws, prior to working with program youth.

City may suggest from time to time community programs to be offered at the Gymnasium, which AOSL will give good faith consideration to implement. City and AOSL staff will meet on a regular basis to discuss and review the operation of the programs in the Gymnasium and other aspects of this Agreement. The City will have the right to participate in the mutual development of additional programs and the option

to promulgate rules and regulations for such programs that are made available in the Gymnasium to non-AOSL affiliated groups.

AOSL will generate and recommend rules for use of the Gymnasium and rental policies to be reviewed and approved by City before they are implemented. In this regard, in its fees schedule AOSL agrees it shall ensure each of its community recreation and program fees that it charges is, at a minimum, at least ten percent (10%) less than comparable public recreation fees charged for comparable community recreation programs in the general East Bay area.

AOSL will exercise and implement due diligence and care of the Gymnasium pertaining to reasonable use of the facility during each and all activities under its supervision or operation, including the immediate report to the City of damages to the Gymnasium and the identification of responsible third parties, whenever possible.

The City's prior approval must be obtained before any long term or reoccurring third party rental contracts are entered into by AOSL lasting longer than six (6) months.

All contracts entered into between AOSL and any third party in any way related to this Agreement and the rights created herein shall include the following provision; "The parties are aware that AOSL is the City's independent contractor and that said parties will not have any enforceable rights as to the City of Clayton should ASOL be in default under this Contract."

All literature and collateral materials, related to the programs offered by the AOSL pursuant to this Agreement, including but not limited to uniforms, tee shirts, trophies, medals, banners, and other paraphernalia pertaining to the programs, will be printed with or bear both the AOSL and the City of Clayton logos, all of which are to be reviewed and approved in advance by staff of both agencies. AOSL will provide, and cause to be worn, appropriate shirts for its on-site staff identifying the "Clayton Community Gym" and the respective logos of each entity in order to assist users in the identification of the program and supervising personnel.

2. Fiscal Items and Reports

In valuable consideration thereof for the opportunity to perform community recreation programs and services under this Agreement and for the exclusive right of access to and priority use and management of the Clayton Community Gymnasium during the City's facility use days and hours, AOSL agrees to pay the City the following monthly rental amounts due and payable to the "City of Clayton" on or before the 1st day of each month during the Term of this Agreement and specified Time Period:

<u>Time Period</u>	<u>Monthly Rental Amount</u>
From Date of Agreement thru 30 June 2015	\$ 2,200.00
Fiscal Year 2015-16	\$ 2,350.00
Fiscal Year 2016-17	\$ 2,500.00
Fiscal Year 2017-18	\$ 2,650.00
Fiscal Year 2018-19	\$ 2,800.00
Fiscal Year 2019-20	\$ 2,950.00
Fiscal Year 2020-21	\$ 3,100.00
Fiscal Year 2021-22	\$ 3,250.00

AOSL shall act as the fiscal agent, collecting all user and rental fees related to Gymnasium rentals and daily use fees.

AOSL will account separately for all revenue received and expenses paid regarding its operation of the Clayton Community Recreation programs at the Gymnasium.

In the event a fiscal year (defined as July through June) operational surplus is experienced there will be an equal split of the revenue in excess of allowable expenses between the AOSL and City; said distribution to occur annually in the month of July. AOSL will provide monthly reporting no later than the fifteenth (15th) day of each month for the preceding month to the City Manager of City showing program usage and revenue and expenses. Allowable expenses include but are not limited to direct personnel and associated compensation costs, program and office supplies attributable to the Gymnasium and/or approved offsite locations, telecommunication expenses at the Gymnasium, direct supervisory personnel costs for the Gymnasium programs and activities, insurance premiums attributable to the Gymnasium, tenant improvements approved in advance by the City, advertisement/marketing expenses specific to the Gymnasium, and office furnishings and computer/software expenses for the Gymnasium and other fixed assets of a non-disposable nature (i.e., gym equipment) are to be expensed in a depreciation schedule approved by the City. Disallowed expenses include but are not limited to any corporate or administrative overhead costs of AOSL. In the event of disagreement over what constitutes an allowable expense, the final decision of the City shall prevail after notification in writing to AOSL.

Should the AOSL programs at or through the Gymnasium operate at an annual deficit as of June 30th of each year, AOSL herein understands and agrees it shall bear the entire cost with no recourse to City for reimbursement.

Each year by May 30th, AOSL will provide City with a "Performa" budget with its anticipated direct expenses in advance for the next fiscal year of operation at the Gymnasium. The City shall have the right to audit AOSL's records and hire an independent auditor at City's expense if it deems necessary.

A paid member from AOSL will attend and report on its current and upcoming program activities to the City's Council at one (1) of the Council's regularly scheduled public monthly meetings during each quarter of the calendar year.

3. Term

The initial term of this Agreement shall be from the date of execution of this Agreement by both Parties and continue for approximately eighty-eight (88) months ending 30 June 2022. Either party may terminate the Agreement during the term by giving the other party sixty (60) days prior written notice of termination.

In the event AOSL ceases the performance of services under this Agreement or otherwise abandons its program operations at and from the Gymnasium prior to the completion of the Term described in this Agreement, AOSL shall, without delay, deliver to the City all materials, City-purchased equipment and assets, and records prepared or obtained in the performance of this Agreement, and shall immediately and fully pay the remainder of any monies due the City.

4. Insurance

AOSL shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, AOSL shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) AOSL shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability

- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Contract
- (8) Broad Form Property Damage
- (9) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, AOSL shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) AOSL certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the

provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent AOSL has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, AOSL shall maintain full compensation insurance for all persons employed directly by it to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. AOSL shall require all sub-contractors to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$2,000,000 per occurrence/ \$4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$2,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$2,000,000 per occurrence

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

e. Evidence Required

Prior to execution of the Agreement, AOSL shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional

insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

f. Policy Provisions Required

(i) AOSL shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that AOSL shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, AOSL shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that AOSL's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. AOSL shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. AOSL shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow AOSL or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. AOSL hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve AOSL from liability in excess of such coverage, nor shall it limit the AOSL's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

g. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to

transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

h. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by AOSL, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by AOSL pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by AOSL or City will withhold amounts sufficient to pay premium from AOSL payments. In the alternative, City may cancel this Agreement.

(iii) The City may require AOSL to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor its City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

i. Subcontractor Insurance Requirements. AOSL shall not allow any subcontractors to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by AOSL, City may approve different scopes or minimum limits of insurance for particular subcontractors.

5. **Office Space**

The City shall provide to AOSL the non-exclusive use of its City office space within the Gymnasium at no cost by City during the time of its operational activities. AOSL agrees to and understands it shall provide at its sole expense any and all of its own office furniture, computer hardware and software programs, paper supplies and office equipment, and telecommunication, internet or cable connections sufficient to operate and maintain an on-site AOSL office within this space at the Gymnasium.

6. Indemnification

a. To the fullest extent permitted by law, AOSL shall defend (with counsel reasonably approved by the City), indemnify and hold the City, its City Council, members of the City Council, its employees, and authorized volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of AOSL, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the AOSL's services or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent AOSL's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the AOSL. AOSL's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its City Council, members of the City Council, its employees, or authorized volunteers.

b. Additional Indemnity Obligations. AOSL shall defend, with counsel of City's choosing and at AOSL's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against the City, its City Council, members of its City Council, its employees, or authorized volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the City, its City Council, members of its City Council, its employees, or authorized volunteers as part of any such claim, suit, action or other proceeding. AOSL shall also reimburse City for the cost of any settlement paid by the City, its City Council, members of its City Council, its employees, or authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for the City's attorney's fees and costs, including expert witness fees. AOSL shall reimburse the City, its City Council, members of its City Council, its employees, or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. AOSL's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its City Council, members of its City Council, its employees, or authorized volunteers.

7. Assignment

AOSL shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

Either party may change its address for the purposes of this Section by giving written notice of the change to the other party listed above in the manner provided for in this Section.

11. Independent Contractor

AOSL is retained as an independent contractor and is not an employee of City. No employee or agent of AOSL shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

12. Laws and Venue

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Contra Costa, State of California.

13. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and AOSL.

14. Equal Opportunity Employment

AOSL represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

15. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

16. **Warranty of Authority**

Each party executing this Agreement warrants it is authorized to enter into this Agreement on behalf of their respective organization.

Executed in duplicate this 18th day of March 2015.

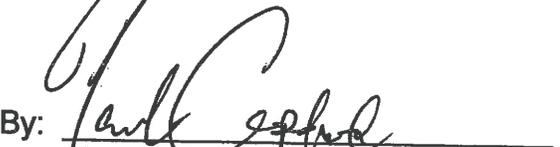
CITY OF CLAYTON, CALIFORNIA

ALL OUT SPORTS LEAGUE, a Mutual
Benefit Corporation

By: _____
David T. Shuey, Mayor

By: 
Casey Copeland, CEO

By: _____
Gary A. Napper, City Manager

By: 
Tamila Copeland, Board Secretary

APPROVED AS TO FORM AND EFFECT:

By: _____
Mala Subramanian, City Attorney

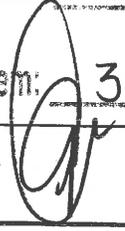
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Agenda Date: 3-03-2015

Agenda Item: 3e

Approved:


Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: KEVIN MIZUNO, FINANCE MANAGER, CPA

DATE: March 3, 2015

SUBJECT: AFFIRMATION AND IMPLEMENTATION OF THE PROVISIONS OF SECTION 414(h)(2) OF THE INTERNAL REVENUE CODE TO TAX DEFER EMPLOYEE RETIREMENT CONTRIBUTIONS TO CALPERS

STAFF RECOMMENDATION

It is recommended the City Council adopt the attached Resolution affirming and implementing the provisions of Section 414(h)(2) of the Internal Revenue Code (IRC) to tax defer employee retirement contributions to the California Public Employees' Retirement System (CalPERS).

BACKGROUND

During an on-site CalPERS compliance check in late November 2011, staff was informed that in order to continue reporting our CalPERS City-paid member pension system contributions as tax-deferred contributions, the City was required to adopt an Employer Pick-up Resolution that had been drafted by CalPERS and approved by the IRS in order to be compliant with Internal Revenue Code (IRC) Section 414(h)(2). The resolution would not alter the long standing percentage of member contributions paid by the City or by the employee. CalPERS staff confirmed there was no fiscal impact to the City in allowing this pre-tax contribution.

The IRS code section allows public agencies to designate required employee pension contributions as being "picked-up" by the employer and treated as employer contributions for tax purposes. Since the City had been reporting member contributions as pre-tax contributions, a resolution was required to continue this practice. The effect of the "pick-up" designation is to defer employee income tax on the member's contribution amount until the employee retires and receives retirement benefits, or separates from public employment and withdraws the employee contributions in a lump sum.

On December 20, 2011 using the Resolution template provided by CalPERS the City Council adopted Resolution No. 45-2011. This resolution authorized and confirmed the City's pre-existing benefit of the employer payment of the employee portion of the CalPERS pension rate as tax-deferred employer pension system contributions ('pick-up') per IRC 414(h)(2). The resolution template provided from CalPERS to the City was the only resolution type deemed acceptable to CalPERS so no modifications were or could be made to its original content.

DISCUSSION

During annual payroll tax preparation procedures for calendar year 2014, a closer examination of the City's treatment of employee-paid pension contributions for its Tier II and Tier III enrolled CalPERS members revealed that said contributions were being made on a "post-tax" rather than "pre-tax" basis. That is to say, employee paid pension contributions deducted from employee income did not result in a corresponding decrease to taxable wages. In addition, a closer examination of Resolution 45-2011 revealed that it failed to make a distinction between employee paid pension contributions and employer paid member contributions (EPMC), as permitted by Government Code Section 20691 for the City's Tier I "Classic" employees.

Out of an abundance of caution, and after consultation with the City's legal counsel (Best, Best & Krieger), staff has determined it is prudent to adopt another Resolution to distinguish between normal member contributions paid pursuant to employee salary reductions and the EMPC. The attached Resolution clarifies that "employee retirement contributions" shall mean both those contributions paid by salary reduction and credited to individual employee's account as normal member contributions and EPMC pursuant to Government Code Section 20691. Currently, staff is taking measures in-house to ensure affected employee tax records for calendar years 2012, 2013 and 2014 are corrected and amended to reflect the provisions of IRC 414(h)(2).

FISCAL IMPACT

The adoption of the attached Resolution results in no additional fiscal impact to the City and serves only to clarify the tax status of employee-paid CalPERS contributions. Advice was obtained from legal counsel in the normal course of operations in order to gain an understanding of the legal circumstances sufficient to recommend this action to City Council. Costs associated with seeking employer relations legal advice provided beyond the legal retainer with Best, Best & Krieger are not expected to exceed \$5,000.

Respectively submitted,

Kevin Mizuno, CPA
Finance Manager

Attachments:

(1) Resolution -2015

RESOLUTION ___ - 2015

A RESOLUTION REAFFIRMING AND IMPLEMENTING THE PROVISIONS OF SECTION 414(h)(2) OF THE INTERNAL REVENUE CODE TO TAX DEFER EMPLOYEE RETIREMENT CONTRIBUTIONS TO CALPERS

**THE CITY COUNCIL
City of Clayton, California**

WHEREAS, the City Council of the City of Clayton (“City”) has the authority to implement the provisions of Section 414(h)(2) of the Internal Revenue Code (“IRC”) whereby any amount contributed to a public employer pension plan, which is designated as an employee contribution, may be picked up on a pre-tax basis by the public employer and excluded from an employee’s gross income if the employer specifies that the contributions, although designated as employee contributions to the plan, are being paid by the employer in lieu of contributions by the employee, and the employee cannot choose to receive the amounts directly instead of having them paid into the plan; and

WHEREAS, the City Council has determined that even though the implementation of the provisions of IRC Section 414(h)(2) is not required by law, the tax benefit offered by IRC Section 414(h)(2) in reducing taxable employee gross income should be provided to all City employees who are members of CalPERS; and

WHEREAS, Internal Revenue Service Revenue Ruling 2006-43 requires an employer take contemporaneous action evidencing an intent to establish a proper pick-up under IRC Section 414(h)(2); and

WHEREAS, the City Council previously adopted Resolution No. 45-2011 which CalPERS drafted and required in order to tax-defer normal member contributions paid by employees pursuant to salary reduction but which failed to make the distinction between said contributions and the employer paid member contributions paid by the City as permitted by Government Code Section 20691 (“EPMC”); and

WHEREAS, out of an abundance of caution, the City Council has determined it is prudent to adopt this Resolution to distinguish between normal member contributions paid pursuant to employee salary reductions and the EPMC.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF CLAYTON AS FOLLOWS:

(a) Pursuant to IRC Section 414(h)(2), the City Council hereby elects to reaffirm its implementation of an employer pick-up pursuant to Resolution 45-2011 and to implement an employer pick-up pursuant to this Resolution, of employee retirement contributions on behalf of City employees who are members of CalPERS. “Employee retirement contributions” shall mean both those contributions paid by salary reduction and credited to individual employee’s account

as normal member contributions and normal member contributions paid directly by an employer pursuant to Government Code Section 20691. This provision will apply to all employees of the City that are members of CalPERS.

(b) Picked up contributions, although designated as employee contributions to CalPERS, will be picked up on a pre-tax basis, whether paid pursuant to salary reduction or directly by the City pursuant to Government Code Section 20691, in lieu of employee contributions so that such contributions are treated as employer contributions.

(c) Employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the City to CalPERS.

(d) Amounts picked up by the City shall be paid from the same sources of funds as used in paying salary.

(e) Amounts picked up by the City shall be treated for all purposes, other than taxation, in the same way that member contributions are treated by CalPERS. This treatment shall apply to all employees of the City.

(f) If any section, subsection, clause or phrase in this Resolution is for any reason held invalid, the validity of the remainder of this Resolution shall not be affected thereby. The City Council hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases or the application thereof be held invalid.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 3rd day of March, 2015.

AYES:
NOES:
ABSTAIN:
ABSENT:

DAVID T. SHUEY, Mayor

ATTEST:

Janet Brown, City Clerk

declaring

Agenda Date: 3-03-2015

March 2015

Agenda Item: 4a

as

"Prescription Drug Abuse Awareness Month"

WHEREAS, drug overdose was the leading cause of injury death in 2012, and among those 25 to 64 years old it caused more deaths than motor vehicle traffic accidents; and

WHEREAS, in 2013, drug overdoses in the United States caused 42,982 unintentional deaths with 22,767 of those from prescription drugs; and

WHEREAS, in 2011, an estimated 22.5 million Americans aged 12 or older used an illicit drug or abused a prescription drug in the past month; and

WHEREAS, in 2011, 1.4 million emergency department (ED) visits were related to misuse or abuse of pharmaceuticals; and

WHEREAS, of the 22,767 deaths relating to pharmaceutical overdose in 2013, 16,235 involved opioid analgesics and 6,973 involved benzodiazepines; and

WHEREAS, nonmedical use of prescription painkillers costs health insurers up to \$72.5 billion annually in direct health-care costs; and

WHEREAS, overdose deaths involving opioid pain relievers (OPR) now exceed more deaths than heroin and cocaine combined; and

WHEREAS, as many as 70% of people who abuse prescription drugs get them from a relative or friend instead of a doctor; and

WHEREAS, during the nine National Prescription Drug Take Back Days, a total of 4.8 million pounds (2,411 tons) of medication have been removed by the DEA and its state, local, tribal law-enforcement and community partners from circulation and potential diversion; and

WHEREAS, the National Coalition Against Prescription Drug Abuse, RxSafe Contra Costa, and the City of Clayton, in cooperation with the law enforcement, community based organizations, alcohol and other drugs service providers and civic and business leaders, will coordinate Prescription Drug Abuse Awareness Month activities in Clayton to engage our citizens in demonstrating their commitment to prevention campaigns and education aimed at raising awareness about the abuse/misuse of prescription drugs safe storing and disposal and using medications only as prescribed; and

WHEREAS, families, schools, businesses, faith-based communities, law enforcement, medical professionals, county and local governments, health care practitioners and pharmacists in the city of Clayton and the general public will demonstrate their commitment to the prevention of prescription medication abuse by participating in activities intended to highlight local efforts during the month of March 2015;

NOW THEREFORE, I, David T. Shuey, Mayor, on behalf of the Clayton City Council, do hereby proclaim March 2015 as "Prescription Drug Abuse Awareness Month" in Clayton and encourage all residents to actively participate in prevention programs and activities and safely store and dispose of their medications on a continual basis. Be It Further Resolved the City Council of Clayton encourages all community members to pledge, "Spread the Word ... One Pill Can Kill".

declaring
Thursday, March 5, 2015
as
"Kayla Elwy Day"

Agenda Date: 3-03-2015

Agenda Item: 4b

WHEREAS, the Girl Scouting movement founded by Juliette Gordon Low in 1912 enables girls to learn skills to provide duty to God and Country, service to others, service to oneself; and

WHEREAS, Girl Scouting requires a commitment of time and energy to moral, civic, and physical ideals which help the individual, the community, and our Nation; and

WHEREAS, Girl Scouting has leadership Journeys and levels of accomplishment, with the ultimate being the coveted and rare Girl Scout Award; and

WHEREAS, Kayla Elwy, of Troop 32386, Diablo Shadows Service Unit, has advanced through the Scout levels from Daisy in 2002 to earning her Gold Award as an Ambassador in November 2014; and

WHEREAS, Kayla Elwy carried out the Girl Scout Law and Girl Scout Promise; she completed many Girl Scout Interest Projects and Badges plus three Leadership Journeys of "Sow What", "Mission Sisterhood" and "Bliss, and she also earned the Gold Torch award; and

WHEREAS, Kayla Elwy completed over 1,000 hours of community service, including work with youth for the Standing Ovations Theatre Company and the Jewish Family and Children's Services of Contra Costa County, and contributed many hours of service time to her community of Clayton; and

WHEREAS, Kayla Elwy also earned the three highest medal awards in Girl Scouting: the Bronze, Silver, and Gold Awards; and

WHEREAS, Kayla Elwy completed her Gold Award project, which consisted of organizing 11 singing events for senior homes, including Diamond Terrace in Clayton. Under Kayla's guidance and leadership, younger Girl Scouts learned songs for these events and participated in music-related crafts. These events brought generations together in the community through music.

NOW, THEREFORE, I, David T. Shuey, Mayor of the City of Clayton, on behalf of the entire Clayton City Council, do herewith declare our civic pride in Kayla Elwy, commend her for her accomplishments and contributions to the betterment of society and our community, and in recognition of her Girl Scout Gold Award achievement do hereby proclaim Thursday, March 5, 2015 as "Kayla Elwy Day" in the City of Clayton, California.



Agenda Date: 3-03-2015

Agenda Item: 8a

Approved:

Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CHARLIE MULLEN, COMMUNITY DEVELOPMENT DIRECTOR

DATE: MARCH 3, 2015

SUBJECT: SECOND READING AND ADOPTION OF ORDINANCE NO. 458 AMENDING AND/OR UPDATING VARIOUS CODE SECTIONS, DEFINITIONS, REGULATIONS AND PERMIT PROCEDURES OF THE CLAYTON MUNICIPAL CODE, CHAPTERS 5.04, 5.12, 10.36, 17.04, 17.36, 17.60 and 17.70, RELATING TO MOBILE VENDORS, INCLUDING MOBILE FOOD VENDORS AND MOBILE RETAIL VENDORS (ZOA-01-15).

RECOMMENDATION

Staff recommends that the City Council receive any public comment; have the City Clerk read the Ordinance by title and number only and waive further reading; following the City Clerks reading the City Council may adopt Ordinance No. 458 (Attachment 1).

BACKGROUND

At its February 24, 2015, City Council meeting the Council approved the introduction and first reading (by title only) of Ordinance No. 458 (see report Attachment 2). No members of the public spoke on the proposed ordinance.

DISCUSSION

Periodically, cities are prompted by inquiries from businesses and/or the general public to review their Municipal Code as it pertains to certain matters or topics. Recent inquiries pertaining to the permitting of mobile vendors, particularly mobile food vendors, have prompted such a review. Upon conducting a thorough review of the applicable Clayton Municipal Code Chapters relating to Mobile Vendors, specifically Chapters 5.04, 5.12, 10.36, 17.04, 17.36, 17.60, and 17.70 of Titles 5, 10, and 17, staff has determined that Ordinance amendments to these Chapters are warranted in order to modernize and integrate the various code sections, definitions, regulations, and permit procedures.

ATTACHMENTS

1. Ordinance No. 458 – Mobile Vendor Ordinance (in strikeout/red-underline changes).
2. February 17, 2015, City Council Staff Report (without attachments).

ORDINANCE NO. 458

AN ORDINANCE AMENDING CHAPTERS 5.04, 5.12, 10.36, 17.04, 17.36, 17.60 AND 17.70 OF THE CLAYTON MUNICIPAL CODE RELATING TO MOBILE VENDORS (ZOA-01-15)

**THE CITY COUNCIL
City of Clayton, California**

THE CITY COUNCIL OF THE CITY OF CLAYTON, CALIFORNIA DOES HEREBY FIND AS FOLLOWS:

WHEREAS, this Ordinance will amend and/or update various code sections, definitions, regulations and permit procedures of the Clayton Municipal Code pertaining to mobile vendors, including mobile food vendors and mobile retail vendors, to help protect the public health, safety and general welfare; and

WHEREAS, the Clayton Planning Commission held a duly-noticed public hearing on January 27, 2015, at which they adopted Resolution No. 01-15 recommending City Council approval of the proposed Ordinance to amend the Clayton Municipal Code relating to Mobile Vendors of food products and non-food products; and

WHEREAS, the Clayton City Council, at its regular public meetings on February 17, 2015 and March 3, 2015, held duly-noticed public hearings to review and consider an Ordinance to amend the Clayton Municipal Code relating to Mobile Vendors of food products and non-food products; and

WHEREAS, the City Council has determined that, pursuant to California Environmental Quality Act (CEQA) Guideline 15061(b)(3), it can be seen with certainty that there is no possibility that these amendments and/or updates to the Clayton Municipal Code may have a significant effect on the environment and, therefore, is not subject to CEQA; and

WHEREAS, proper notice of this public hearing was given in all respects as required by law; and

WHEREAS, the Clayton City Council has reviewed and considered all written evidence and oral testimony presented to date on this local matter.

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

Section 1. Recitals. The above recitals are true and correct and are hereby incorporated into this Ordinance.

Section 2. Amendment. Sections 5.04.540, 5.12.010, and 5.12.340 of Chapters 5.04 and 5.12 of Title 5 Business Licenses & Taxes of the Clayton Municipal Code are hereby amended in part to read as set forth in Exhibit A, incorporated herein by this reference.

Section 3. **Amendment.** Section 10.36.120 of Chapter 10.36 of Title 10 Vehicles & Traffic of the Clayton Municipal Code is hereby amended in part to read as set forth in the attached Exhibit B, incorporated herein by this reference.

Section 4. **Amendment.** Specified Sections of Chapter 17.04 Definitions, Chapter 17.36 General Regulations, Chapter 17.60 Use Permits and Chapter 17.70 Temporary Use Permits of Title 17 Zoning of the Clayton Municipal Code are hereby either amended or amended in part to read as set forth in the attached Exhibit C, incorporated herein by this reference.

Section 5. **Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

Section 6. **Conflicting Ordinances Repealed.** Any ordinance or part thereof, or regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this Ordinance.

Section 7. **Effective Date and Publication.** This Ordinance shall become effective thirty (30) days from and after the date of its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution of the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause Sections 2, 3 and 4 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a duly-noticed public hearing during a regular public meeting of the City Council of the City of Clayton held on February 17, 2015.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular public meeting thereof held on March 3, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

David T. Shuey, Mayor

ATTEST

Janet Brown, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

Malathy Subramanian, City Attorney

Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Clayton held on February 17, 2015, and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on March 3, 2015.

Janet Brown, City Clerk

EXHIBIT A

Title 5 BUSINESS LICENSES & TAXES

Amendment. Sections of Chapter 5.04 Business Licenses and Taxes Generally of the Clayton Municipal Code is hereby amended in part to read as set forth below:

Sections:

5.04.540 Mobile food vendor ~~Lunch wagon, catering truck.~~

Amendment. Section 5.04.540 of Chapter 5.04 Business Licenses and Taxes Generally of the Clayton Municipal Code is hereby amended in part to read in full as set forth below:

5.04.540 Mobile food vendor ~~Lunch wagon, catering truck.~~

Amendment. Sections of Chapter 5.12 Food Handling Activities of the Clayton Municipal Code is hereby amended in part to read as set forth below:

Sections:

5.12.340 License fees—Mobile food vendor ~~Retail food vehicle—food peddler.~~

Amendment. Section 5.12.010.E. of Definitions of Chapter 5.12 Food Handling Activities of the Clayton Municipal Code is hereby amended to read in full as set forth below:

E. "Mobile food vendor ~~Retail food vehicle~~" means any vehicle, pushcart, trailer, wagon, portable stand or temporary location, designed or used or intended to be used, by or for any one or more of, but not limited to, the following persons and/or uses: bakery distributor, fish or meat peddler, food salvage distributor, fruit, nut and/or vegetable distributor, grocery distributor, commercial or industrial catering, ~~mobile food cooking and/or~~ preparation unit, and itinerant restaurant. It includes, but is not limited to, any vehicle, pushcart, trailer, wagon, portable stand or temporary location, from which animal food, bakery products, fish, shell fish, seafood, fruits and nuts, vegetables, meats, poultry, preserves, jelly, relish, milk or any other dairy products, fresh, frozen or non-perishable food or food products, ice cream, shaved ice or yogurt products, ice or beverages, whether in bulk, canned, wrapped, bottled, packaged, or any other form, are sold or kept for sale at retail, or are distributed to the consumer.

Amendment. Section 5.12.340 of Chapter 5.12 Food Handling Activities of the Clayton Municipal Code is hereby amended in part to read as set forth below:

5.12.340 License fees—Mobile food vendor ~~Retail food vehicle—Food peddler.~~

EXHIBIT B

Title 10 VEHICLES & TRAFFIC

Amendment. Sections of Chapter 10.36 Stopping Standing Parking of the Clayton Municipal Code is hereby amended in part to read as set forth below:

Sections:

~~10.36.120 Vending from vehicle.~~

10.36.130 Mobile vending ~~Selling food from parked vehicle~~-Permit required.

Amendment. Section 10.36.120 of Chapter 10.36 Stopping Standing Parking of the Clayton Municipal Code is hereby deleted in its entirety as set forth below:

~~10.36.120 Vending from vehicle. Except with written permission from the city engineer, subsequent to city council authorization, no person shall stand or park any vehicle, wagon or pushcart from which goods, wares, merchandise, or food stuffs are sold, displayed, solicited or offered for sale or bartered or exchanges, or any lunch wagon or eating car or vehicle, on any portion of any street within this city. In issuing a permit, the city council may impose such conditions as they deem appropriate to preserve the public peace, safety and welfare. The provisions of this section shall not apply to persons delivering such articles upon order of, or by agreement with, a customer from a store or other fixed place of business or distribution. Notwithstanding the foregoing, the city council shall not issue any permit permitting any type of vending from any vehicle, wagon or pushcart parked upon a city arterial street. (Ord. 208, 1981; Ord. 148, 1975; Ord. 71, 1969; Ord. 22, 1964).~~

Amendment. Section 10.36.130 of Chapter 10.36 Stopping Standing Parking of the Clayton Municipal Code is hereby amended in part to read as set forth below:

10.36.130 Mobile vending ~~Selling food from parked vehicle~~ Permit required. No person, vehicle, pushcart, trailer, wagon, portable stand or temporary location, designed or used or intended to be used, by or for any one or more of, but not limited to, mobile food vendors and/or mobile retail vendors (as defined in Chapter 17.04 of the Clayton Municipal Code) shall park, ~~or stand~~ or locate permanently or temporarily on any public or private street, sidewalk, parking lot, easement or right-of-way ~~any lunch wagon, eating cart or vehicle, or pushcart from which articles of food or drink are sold or offered for sale without first obtaining a Use Permit approval from the Planning Commission for a Mobile Food Vendor and/or Mobile Retail Vendor, as specified and required under Section 17.36.084 of the Clayton Municipal Code.~~ written permit to do so from the city engineer, subsequent to city council authorization, which shall designate the specific location in which such cart shall stand. In issuing a permit, the city council may impose such conditions as they deem appropriate to preserve the public peace, safety and welfare. Notwithstanding the foregoing, the city council shall not issue any permit permitting any type of vending from any vehicle, wagon, or pushcart parked upon a city arterial street. (Ord. 208, 1981).

Amendment. Section 10.36.150 of Chapter 10.36 Stopping Standing Parking of the Clayton Municipal Code is hereby amended in part to read as set forth below:

10.36.150 Permits—~~Cited or Revoked when~~. Whenever any permit is granted under the provisions of Sections ~~10.36.120 through 10.36.130 and 10.36.140~~ such permits may be administratively cited or revoked in accordance with the applicable provisions of the Clayton Municipal Code, including but not limited to Chapters 1.14 and 17.64, ~~and a particular location to park or stand is specified therein, no person shall park or stand any vehicle, specified therein, no person shall park or stand any vehicle, wagon, or pushcart on any location other than as designated in such permit. In the event that the holder of any such permit is convicted in any court of competent jurisdiction for violating any of the provisions of this section and Sections 10.36.120 through 10.36.140, such permit shall be forthwith revoked by the city engineer upon the filing of the record of such conviction with such officer and no permit shall thereafter be issued to such person until six months have elapsed from the date of such revocation. (Ord. 148, 1975; Ord. 71, 1969, Ord. 22, 1964).~~

EXHIBIT C

Title 17 ZONING

Amendment. Sections of Chapter 17.04 Definitions of the Clayton Municipal Code is hereby amended in part to read as set forth below:

Sections:

17.04.142 Mobile Food Vendor

17.04.143 Mobile Retail Vendor

17.04.144 Mobile Vendor

17.04.14~~5~~2 Non Conforming Use

17.04.14~~6~~5 Off-Street Loading Facility

17.04.14~~7~~6 Off-Street Parking Facility

Amendment. Chapter 17.04 Definitions of the Clayton Municipal Code is hereby amended in part to read as set forth below:

17.04.142 Mobile Food Vendor. “Mobile Food Vendor” means any vehicle, pushcart, trailer, wagon, portable stand or temporary location, designed or used or intended to be used, by or for any one or more of, but not limited to, the following persons and/or uses: bakery distributor, fish or meat peddler, food salvage distributor, fruit, nut and/or vegetable distributor, grocery distributor, commercial or industrial catering, food cooking and/or preparation unit, and itinerant restaurant. It includes, but is not limited to, any vehicle, pushcart, trailer, wagon, portable stand or temporary location, from which animal food, bakery products, fish, shell fish, seafood, fruits and nuts, vegetables, meats, poultry, preserves, jelly, relish, milk or any other dairy products, fresh, frozen or non-perishable food or food products, ice cream, shaved ice or yogurt products, ice or beverages, whether in bulk, canned, wrapped, bottled, packaged, or any other form, are sold or kept for sale at retail, or are distributed to the consumer. See Section 17.36.084 for permits required and regulations.

17.04.143 Mobile Retail Vendor. “Mobile Retail Vendor” means any vehicle, pushcart, trailer, wagon, portable stand or temporary location, designed or used or intended to be used, by or for any one or more of, but not limited to, the following persons and/or uses: sales of non-perishable goods, items or merchandise, new or used, including but not limited to art or art objects, auto parts or equipment, candles, electronic equipment, handmade crafts, housewares, household goods, flowers, flags, furniture, jewelry, landscape plants and goods, rugs, sports equipment or memorabilia, yard ware and yard accessories, or other similar items which are sold or kept for sale at retail, or are distributed to the consumer. See Section 17.36.084 for permits required and regulations.

17.04.144 Mobile Vendor. "Mobile Vendor" means any business, person or use defined as either a Mobile Food Vendor or as a Mobile Retail Vendor.

17.04.14~~5~~2 Non Conforming Use.

17.04.14~~6~~5 Off-Street Loading Facility.

17.04.14~~7~~6 Off-Street Parking Facility.

Amendment. Sections of Chapter 17.36 General Regulations of the Clayton Municipal Code is hereby amended in part to read as set forth below:

Sections:

17.36.084 Mobile Vendor – Permits and Regulations.

Amendment. Chapter 17.36 General Regulations of the Clayton Municipal Code is hereby amended in part to add new Section 17.36.084 to read as set forth below:

17.36.084 Mobile Vendor – Permits and Regulations. The purpose of these regulations is to promote the health, safety, convenience, prosperity, and general welfare by requiring that mobile food vendors and mobile retail vendors provide the community and customers with a minimum level of cleanliness, quality, safety, security and comply with all applicable licensing and permitting requirements of the City of Clayton and Contra Costa County.

A. Use Permit Required. In order to conduct a mobile vendor business operation within the City of Clayton all mobile vendors, including mobile food vendors and mobile retail vendors, shall be required to obtain Use Permit approval from the Planning Commission, in accordance with the Use Permit processing provisions of Chapter 17.60. All mobile vendors applying for individual Use Permits shall also be required to comply with the following applicable Subsection C. Minimum Use Permit Submittal Requirements, Standards and Conditions. Notwithstanding the foregoing, a mobile vendor exclusively operating in the right-of-way in compliance with all terms and conditions of this chapter and other applicable law shall be granted a Use Permit.

B. Exceptions. The exception to the Use Permit requirement shall only apply when either a mobile food vendor and/or mobile retail vendor applies and receives administrative approval of a Temporary Use Permit or is part of a special event that applies and receives administrative approval of a Temporary Use Permit, in accordance with the Temporary Use Permit processing provisions of Chapter 17.70. All mobile vendors applying for individual Temporary Use Permits shall also be required to comply with the following applicable Subsection C. Minimum Use Permit Submittal Requirements, Standards and Conditions.

C. Minimum Use Permit Submittal Requirements, Standards and Conditions.

1. Any business or person(s) desiring to conduct in a mobile vendor operation, as defined by Chapter 17.04 of this code, shall submit a completed Use Permit application, including a written description of their mobile vending operation, applicable plans and information as deemed necessary, and pay a Use Permit processing fee as established from time to time by City Council resolution.

2. The mobile vending operation or activity as proposed by the applicant shall comply with all applicable laws including, but not limited to, the applicable building, fire, health, safety and zoning, regulations under state law, county codes and this code.
3. If applicable, provide a copy of the vehicle's current registration and of the vehicle insurance policy, and maintain current validity of the documentation with the City during the full term of the Use Permit.
4. Provide at least two photographs (showing different exterior views) of each vehicle, pushcart, trailer, wagon, portable stand or temporary location.
5. Each mobile vendor business operation must supply a Live Scan background check of each individual person working for said business in the City of Clayton to the Clayton Police Department and a California identification card to prove that he or she is the person in the background check.
6. Prior to commencement of business operations all mobile food vendors shall provide the city with a copy of their approved Contra Costa County Mobile Food Facility Application/Permit.
7. Prior to commencement of business operations each mobile vendor business operation shall obtain a city Business License and display it prominently at all times when conducting business in the city.
8. For mobile food vendors shall provide to and maintain with the City a list of all food items that will be offered for sale. Nonfood items are not allowed for sale from mobile food vendors.
9. For mobile retail vendors shall provide to and maintain with the City a list of all goods, items and merchandise that will be offered for sale. Food items are not allowed for sale from mobile retail vendors.
10. Permitted hours of operation for mobile vendors operating in a public right-of-way are from dawn to 9:00 pm. Permitted hours of operation for mobile vendors in all residential zoning districts locations are from dawn to dusk, unless otherwise restricted or allowed under an approved Use Permit or Temporary Use Permit.
11. Mobile vendors shall not operate within one hundred (100) feet of any street intersection controlled by a crosswalk, traffic light, or stop sign.
12. Mobile vendors shall not operate within five hundred (500) feet of another mobile vendor.
13. Mobile vendors shall not stop in one location for more than three (3) hours, except in residential zoning districts in which case mobile vendors shall not stop for more than ninety (90) minutes in one location. Mobile vendors shall not return to the same location on the same calendar day.
14. No mobile vendor shall locate within three hundred (300) feet of the property line of a school between seven a.m. and four p.m. on days when school is in service or during a school event.
15. No mobile vendor shall locate, park or stop in a location on or along an arterial street or on a public or private street, sidewalk, parking lot, easement or right-of-way that prohibits parking or stopping of vehicles or conflicts with other signed or designated restrictions.
16. No mobile vendor shall interfere with access, driveways, aisles, or circulation, and shall not operate in a place where the operation will create a traffic hazard.

17. No mobile vendor shall locate on a sidewalk, trail or any area that may impede foot traffic or interfere with pedestrian movement or create a pedestrian hazard.
18. Vending from a vehicle, wagon, pushcart or trailer is prohibited on the exposed street and/or traffic side of the vehicle, wagon, pushcart or trailer.
19. Portable tables, chairs, shade structures and signs are prohibited.
20. Mobile vendors shall provide waste containers and take away all waste generated or associated with their activity, and properly and legally dispose of said waste.
21. No mobile vendor shall use live or amplified music or sound, unless otherwise allowed under an approved but Use Permit or Temporary Use Permit for an ice cream truck.
22. Mobile vendors shall comply with all applicable fire protection and safety requirements prescribed by the Contra Costa County Fire Protection District.
23. Additional Use Permit conditions of approval may be imposed and/or required based on the specifics of each individual request.

Amendment. Chapter 17.60 Use Permits of the Clayton Municipal Code is hereby amended in part to add new Subsection 20. of Section 17.60.030.C. to read as set forth below:

17.60.030 Use Permits Required.

C. Commercial Related Uses.

20. Mobile Vendors (as specified and regulated in Section 17.36.084).

Amendment. Chapter 17.70 Temporary Use Permits of the Clayton Municipal Code is hereby amended in part to add new Section G. of Section 17.70.020 to read as set forth below:

17.70.020 Conditionally permitted uses.

G. Mobile Vendors (as specified and regulated in Section 17.36.084).

H.G. Other similar temporary uses.



Agenda Date: 2-17-2015

Agenda Item: 7a

Approved: 
Gary A. Napper City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CHARLIE MULLEN, COMMUNITY DEVELOPMENT DIRECTOR 

DATE: FEBRUARY 17, 2015

SUBJECT: PUBLIC HEARING TO CONSIDER A CITY-INITIATED ORDINANCE AMENDING AND/OR UPDATING VARIOUS CODE SECTIONS, DEFINITIONS, REGULATIONS AND PERMIT PROCEDURES OF THE CLAYTON MUNICIPAL CODE, CHAPTERS 5.04, 5.12, 10.36, 17.04, 17.36, 17.60 and 17.70, RELATING TO MOBILE VENDORS, INCLUDING MOBILE FOOD VENDORS AND MOBILE RETAIL VENDORS (ZOA-01-15).

RECOMMENDATION

Staff recommends the City Council receive and consider the staff report, then open and conduct a Public Hearing and receive any public comment; after closure of the Public Hearing and subject to any changes by the City Council, by motion have the City Clerk read the Ordinance (see Attachment 1) by title and number only and waive further reading; and following the City Clerk's reading, the City Council by motion approve the introduction and first reading of the Ordinance.

BACKGROUND

City staff recently received inquiries relating to mobile vending, particularly mobile food vendors. These inquiries prompted staff to scrutinize various chapters of the Clayton Municipal Code pertaining to and regulating mobile vendors. After reviewing the applicable City Codes, staff determined that updating various Code Sections, definitions, regulations, and permit procedures of the Clayton Municipal Code, Chapters 5.04, 5.12, 10.36, 17.04, 17.36, 17.60 and 17.70, pertaining to Mobile Vendors, including mobile food vendors and mobile retail vendors was necessary and warranted.

In researching the current Municipal Code as it pertains to mobile vendors, staff also researched the history of the current codes and ordinances. It was determined they originate from Ordinance No. 22 adopted August 4, 1964, Ordinance No. 181 adopted May 17, 1978, and Ordinance No. 208 adopted November 4, 1981. With over 33 years since the last comprehensive review of this topic, this proactive review and update of the applicable codes would further appear to be warranted and timely.

On January 27, 2015, the Planning Commission conducted a noticed Public Hearing to consider the draft Ordinance, after which it adopted Resolution No. 01-15 (attached) recommending City Council approval of the proposed Mobile Vendor Ordinance with only four minor typographic suggestions that have been incorporated into the current draft Ordinance. Two citizens spoke in support of the Ordinance and in support of the City being open to considering requests from upscale mobile food vendors.

DISCUSSION

Periodically, cities are prompted by inquiries from businesses and/or the general public to review their Municipal Code as it pertains to certain matters or topics. Recent inquiries pertaining to the permitting of mobile vendors, particularly mobile food vendors, have prompted such a review. Upon conducting a thorough review of the applicable Clayton Municipal Code Chapters relating to Mobile Vendors, specifically Chapters 5.04, 5.12, 10.36, 17.04, 17.36, 17.60, and 17.70 of Titles 5, 10, and 17, staff has determined that Ordinance amendments to these Chapters are warranted in order to modernize and integrate the various code sections, definitions, regulations, and permit procedures.

As part of its research and review process, staff also examined mobile vending regulations of approximately 14 other communities, particularly the cities of San Ramon, Lathrop, Davis Woodland, and Santa Cruz. Reviewing other community regulations was very beneficial in updating and crafting particular components and regulations in the proposed Ordinance to best suit the City of Clayton. The City Attorney provided critical review and input into the proposed Mobile Vendor Ordinance. The City Attorney further advised staff that pursuant to State Law and recent court decisions, cities may establish and impose reasonable regulations for mobile food vendors, but cities cannot outright prohibit them.

EXECUTIVE SUMMARY

The following is a summary of the proposed Ordinance amendments by numerical Title and Chapter or Section. Please refer to the attached draft Ordinance that shows deleted text in strikeout and new text in red-font underline.

Title 5 **BUSINESS LICENSES & TAXES**

Sections 5.04.540 and 5.12.340 are being renamed "Mobile food vendor" for internal consistency and to cover a broader definition of uses and activities.

Section 5.12.010.E is the definition for "Mobile food vendor" and is being amended and updated for internal consistency and to cover a broader definition of uses and activities.

Title 10 **VEHICLES & TRAFFIC**

Section 10.36.120 is being deleted in its entirety as it will be covered by the general definition of "Mobile Vending".

Section 10.36.130 is the definition for "Mobile vending" and is being amended and updated for internal consistency and to cover a broader definition of uses and activities to include both mobile food vending and mobile retail vending. The permit process and reviewing body is also proposed to be change from an ambiguous "written permit" from the City Engineer subsequent to City Council authorization to a discretionary "Use Permit" from the Planning Commission. The Use Permit process has a clearly defined and tractable process and processing fee. This land use process provides for public hearing review before the Planning Commission, while still allowing for City Council review of appeals or referrals.

Section 10.36.150 is being amended to add administrative citation authority in addition to the revocation authority and adds cross references to the applicable provisions of the Clayton Municipal Code.

Title 17 ZONING

Chapter 17.04 Definitions is being amended to add new definitions for "Mobile Food Vendor," "Mobile Retail Vendor," and "Mobile Vendor." Renumbering of some existing definitions is also required. The mobile food vendor definition is specific to food sales and uses only, while mobile retail food vendor basically covers all non-food retail sales. The mobile vendor definition is the preferred broader use category that includes all mobile food vendors and all mobile retail vendors.

Chapter 17.36 General Regulations is being amended to add new Section 17.36.084 for Mobile Vendors, to establish the permit process and regulations for all mobile vendors, including mobile food vendors and mobile retail vendors. The primary permit process for year-round mobile vendors will be the discretionary Use Permit process. Use Permits are considered by the Planning Commission at a Public Hearing, and will end there unless appealed or referred to the City Council.

An exception to the Use Permit process will apply to mobile vendors that desire to obtain a Temporary Use Permit for not more than a combined total of 45 days or 4 individual events per calendar year (per existing Code). An exception will also apply to mobile vendors that are part of a primary special event that is approved by the City, for example the Art and Wine Festival or Oktoberfest.

Section 17.36.084 also includes minimum submittal requirements, standards, and conditions that clarify the information needed for Use Permit and Temporary Use Permit submittals and the standards and conditions that will apply to mobile vendors. The standards and conditions are established to protect and promote the health, safety, and general welfare of the community.

Chapter 17.60 Use Permits is amended to add "Mobile Vendors" to the list of uses that require a Use Permit.

Chapter 17.70 Temporary Use Permits is amended to add "Mobile Vendors" to the list of uses that require a Temporary Use Permit.

It is the professional opinion of staff and the City Attorney the proposed Ordinance language will provide an efficient and effective update of the Clayton Municipal Code Chapters as related to Mobile Vendors.

CEQA

Pursuant to California Environmental Quality Act (CEQA) Guideline 15061(b)(3) it can be seen with certainty there is no possibility the proposed text amendments and updates to the Clayton Municipal Code may have a significant effect on the environment, and therefore it is not subject to CEQA.

ATTACHMENTS

1. Draft Mobile Vendor Ordinance (in ~~strikeout~~/red-underline changes)
2. Planning Commission Resolution No. 01-15 (without Exhibit)