

MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL

TUESDAY, September 19, 2017

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:00 p.m. by Mayor Diaz in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Diaz, Vice Mayor Haydon and Councilmembers Catalano, Pierce and Shuey. Councilmembers absent: None. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Finance Manager Kevin Mizuno, City Engineer Scott Alman, PE, Community Development Director Mindy Gentry, and City Clerk/HR Manager Janet Brown.
2. **PLEDGE OF ALLEGIANCE** – led by Mayor Diaz.
3. **CONSENT CALENDAR**
Councilmember Shuey requested Item 3(a) be pulled from the Consent Calendar for separate discussion.
It was moved by Vice Mayor Haydon, seconded by Councilmember Pierce, to approve the Consent Calendar Items (b) – (k). (Passed; 5-0 vote).
 - (a) Information Only – No Action Requested.
1. Status Report on the City's CalPERS unfunded actuarial liabilities (UALs).
 - (b) Approved the minutes of the City Council's regular meeting of August 1, 2017 and its special meetings of August 2, 2017 and August 14, 2017.
 - (c) Approved the Financial Demands and Obligations of the City.
 - (d) Adopted Resolution No. 35-2017 approving the Final Map (Tract Map 9419), and authorizing the executions of a Storm Water Operations and Maintenance Agreement and a Subdivision Improvement Agreement for the Verna Way Development Project, a 6-lot subdivision stretching between Verna Way and Pine Hollow Road.
 - (e) Adopted Resolution No. 36-2017 approving the Parcel Map (MS 01-15) and authorizing the execution of a Subdivision Improvement Agreement for the St. John's Church/Southbrook Drive Mixed Use Planned Development Project.
 - (f) Adopted Resolution No. 37-2017 adding the City Hall ADA Accessibility Improvement Project to the City's Capital Improvement Program (CIP) as Project No. 10443, awarding a competitive bid contract to Greentech Industry, Inc., in the amount of \$24,050 for ADA remedial improvements to the front entrance of City Hall, and approving the allocation of necessary Project monies.
 - (g) Adopted Resolution 38-2017 approving three (3) contracts for the purchase and outfitting of a new 2017 Ford Police Interceptor in the total amount of \$49,358.68, and declaring a

2011 Ford Crown Victoria patrol vehicle (Unit 1733) as property surplus to the City's needs and authorizing its disposal by the City Manager at public auction.

- (h) Approved the Mayoral re-appointment of Ronald Tervelt to the Contra Costa County Advisory Council on Aging as the City of Clayton's representative with the term of office ending September 30, 2019.
- (i) Approved the City's Investment Portfolio Report for the 4th Quarter of FY 2016-17 ending June 30, 2017.
- (j) Adopted two (2) Resolutions No. 39-2017 and Resolution No. 40-2017 approving a series of actions authorizing the City's submittal of a regional grant application with the City of Concord to the California Department of Resources Recycling and Recovery (CalRecycle) to incorporate rubberized asphalt materials in the City's 2018 Neighborhood Street Repaving Project.
- (k) Adopted Resolution No. 41-2017 approving the redirection of \$375,000 in unused Measure J funds (CCTA) from the completed 2016 Arterial Street Rehabilitation Project to rehabilitate the City's portion of Pine Hollow Road as a local arterial street project (CIP Project No. 10379), including installation of a City entryway monument sign.

Consent Calendar Item 3 (a) - Pulled

- (a) Information Only – No Action Requested.
 - 1. Status Report on the City's CalPERS unfunded actuarial liabilities (UALs).

Councilmember Shuey asked to have Finance Manager Kevin Mizuno provide a brief update regarding the CalPERS unfunded actuarial liabilities (UALs) and specifically if the City is able to leave the CalPERS retirement system and the requirements to do so.

Vice Mayor Haydon added CalPERS stands for the California Public Employees' Retirement System; which is the retirement system the City of Clayton is a participant.

Finance Manager Kevin Mizuno clarified the numbers that Councilmember Shuey is referring to is the termination liability, where the numbers are publicly available on the CalPERS website within the annual actuarial reports published annually in August/September. Mr. Mizuno noted the City has been a member with CalPERS since July 1, 1975; in lieu of Social Security. There is an option of terminating the City's relationship with CalPERS, under a termination liability which is in excess of \$15,000,000.00 assuming a discounted rate 6.65%. At this time there is no possibility as there is not enough liquid cash available to consider termination.

Councilmember Shuey inquired on the amount of reserves available?

Mr. Mizuno advised the General Fund reserves are approximately \$5,000,000.00. If the City decided to terminate with CalPERS, it would have to consider purchasing bonds at a comparable interest rate. Because we are a small employer with less than 100 active participants, we qualify for the cost sharing multiple employer plans in CalPERS with several hundred other plans, mandated by CalPERS in 2006. Our Cost - Of - Living Adjustments (COLA) has been well under the 4% assumed by the cost-sharing plan we participate in, although we make the same contribution percentages as other participants in the plan.

Councilmember Shuey advised the information Mr. Mizuno provided is exactly what he wanted the community to know Council is monitoring.

Councilmember Pierce emphasized even before the State made the changes for a mandatory new Tier, Clayton created its own new tier for new employees known as Tier II and CalPERS implemented Public Employees' Pension Reform Act (PEPRA) which made even more changes. The City has chosen to participate in some of the lowest plans in the county, the cost to buy our way out of CalPERS would be cost prohibitive. If we decided we absolutely had to, we would still have to pay Social Security and pay into a 401K plan or similar type of benefit; which would cost more than what we are currently paying. When the budget was put together this year we set aside extra money in anticipation of the rate adjustments that are coming.

City Manager Gary Napper added there is a range which can go up to \$30,000,000.00 to terminate CalPERS, depending on which formula is used. If an entity decides to withdraw from CalPERS it actually is required to purchase an actuarial report which will provide the amount owed for all past, current and future retiring employees. The current city CalPERS contributions are able to be absorbed within the existing balanced budget. As Councilmember Pierce indicated that we are getting better, as there are some side funds, one of those will be paid off next year resulting in a rate reduction. I have talked to Mr. Mizuno to budget at the same level next fiscal year and the savings can go into the new City Council established Pension Rate Stabilization Fund. Another option is to pre-pay, it would be my professional recommendation not do that with the reasoning CalPERS is showing that they are creating new additional liabilities and we would still owe additional monies. Overall, our city is in very good shape and able to handle the costs because we have not offered the highest plans that are available. Statewide, if the City is not a CalPERS participant it would either be in Social Security with a 401K plan, or like the City of San Jose a charter city, and create your own retirement plan. Our city is not a charter city so we are unable to offer our own plans, we can only offer the plans CalPERS offers and we are in the Plan that has the least amount of benefit offered to our employees when they retire.

No action taken.

4. RECOGNITIONS AND PRESENTATIONS

- (a) Certificate of Recognition to Kate Amos, student at Clayton Valley Charter High School, for her design work and assistance developing a joint postal mailer from the Clayton Police Department and the U.S. Postal Service regarding mail theft.

Mayor Diaz, Clayton Police Chief Chris Wenzel, Kelsey Thomas - CVCHS Digital Arts Instructor, and Steve Sherwood - Assistant Inspector in Charge United States Postal Inspector, presented Certificates of Recognition to Kate Amos.

- (b) Proclamation declaring September 17 – 23, 2017 as “U.S. Constitution Week.”

Mayor Diaz noted the issuance of the Proclamation and indicated staff will send it to the requestor as no representative was present.

- (c) Presentation by Ernesto Avila, Director, Contra Costa Water District (Division 3). Director Avila discussed a variety of water topics including efforts at the state level to establish long-term statewide water conservation regulations and the potential future expansion of Los Vaqueros Reservoir.

Director Avila, noted he is a resident of Clayton. Director Avila provided an overview of Contra Costa Water District; noting the four key water sources for CCWD are from the Delta. In terms of today, the District was able to put the water collected into Los

Vaqueros Reservoir. Overall the precipitation is currently at 192% of average, with Los Vaqueros containing 152,000 acre feet of water, and is 95% full.

Director Avila provided a brief update on the work performed by Contra Costa Water District in regards to Morgan Territory Road landslide, where they used their mutual-aid agreement with Alameda County to install a temporary pipeline providing water service to its customers in just a few days.

Director Avila indicated a challenge for a local run water agency is the management of local water supplies. By working with a local water agencies and their water conservation programs, they have the ability to work with local communities to enhance conservation and water reclamation to optimize the use of water. Because of the California water shortage that occurred, the state started mandating water conservation measures. When the California drought occurred, the community overall saved over 35% of its normal water usage. The Contra Costa Canal is over 80 years old and is an aging infrastructure in need of updating to a pipeline system for quality and reliability.

Director Avila provided an update on the Los Vaqueros Reservoir Expansion Project. It was originally constructed back in 1997 and was expanded once from 100,000 acre feet to 160,000 acre feet. The next expansion is planned to increase it 270,000 acre feet. The opportunity has arisen to have more of a regional role working with eleven potential water agencies to enhance water supply, storage and optimize the use of those assets, by sharing the costs. If the project is approved by the State, the expansion will take place in 2020.

Director Avila concluded his presentation noting services available to Contra Costa Water District customers such as "In-Home Water Survey", "Lawn to Garden", Conversions and "My Water Report" available on their website.

Councilmember Shuey inquired on why the Los Vaqueros Reservoir is not 100% full?

Director Avila advised due to water movement by the wind spills over the spillway which is how the Reservoir was designed.

Councilmember Catalano asked what has the most impact for a local resident to do to conserve water?

Director Avila advised local resident water consumption is 50% for landscaping and 50% for indoor usage. If a resident uses high efficiency appliances or changes how they water their lawn they could conserve water.

Councilmember Pierce inquired if there are any rebates available for lawn replacement?

Director Avila advised there are rebates available for lawn replacement at \$1.00 per square foot up to a 1,000 foot maximum.

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 Catalano attended the special meeting for elected officials involving Incident Command System and the Contra Costa County Mayors' Conference hosted by Oakley.

Councilmember Shuey mentioned the Board of Supervisors appointed an Interim District Attorney and will be a race for re-election in 2018; Clayton's own Paul Graves currently an Assistant District Attorney has declared candidacy.

Vice Mayor Haydon attended the special meeting for elected officials involving Incident Command System, the Contra Costa County Mayors' Conference hosted by Oakley, the 10th Anniversary of the East Contra Costa County Habitat Conservancy plan at Roddy Ranch and the last Saturday Concert in The Grove.

Councilmember Pierce, as a member of the Contra Costa Transportation Authority with Alameda County Transportation Authority representatives, attended meetings in Sacramento regarding the upcoming Senate Bill 595 - Bridge Tolls; attended meeting at the Bay Area Council, the Contra Costa County Mayors' Conference, the Contra Costa Transportation Authority, the Metropolitan Transportation Committee, the Bay Area Regional Collaborative, and the Rail-volution conference in Denver.

Mayor Diaz attended the final Classic Car Show and D.J. event, the last Concerts in The Grove, the Relay for Life event, the Boy Scout Troop 484 Eagle Court ceremony, the Cops for Kids 19th Annual Golf Tournament, the County Connection Board meeting, the Clayton Community Church Labor Day Derby, the Special meeting of the City Council appointing its City Engineer, the Contra Costa County Mayors' Conference hosted by Oakley, and the Annual Conference of the League of California Cities held in Sacramento.

- (e) Other – None.

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

7. PUBLIC HEARINGS – None.

8. ACTION ITEMS

- (a) Consider the Second Reading and Adoption of Ordinance No. 476 adding Section 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Areas to Title 17 Zoning of the Clayton Municipal Code describing and establishing how General Plan densities are calculated for proposed residential projects with sensitive land areas.

Community Development Director Mindy Gentry stated the subject Ordinance was introduced to the Council on August 1st. The Ordinance would add a chapter to the *Clayton Municipal Code* for the purpose of describing and establishing how General Plan densities are calculated for proposed residential properties with sensitive land areas. A General Plan Amendment was already approved by the City Council modifying the manner in which densities are calculated on “Residential” zoned parcels with sensitive land areas. This Ordinance and the General Plan Amendment together will reduce the overall buildable density on residentially zoned parcels by taking the sensitive land areas into consideration. The reduction in density occurs because sensitive land areas are not considered to be developable, therefore subtracted from the overall acreage; reducing the available land area by the calculation of units per acre applied to determine the allowable number of housing units. No changes were made to the Ordinance.

Mayor Diaz opened matter for public comments; no comments were offered.

It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to have the City Clerk read Ordinance No. 476, by title and number only and waive further reading. (Passed; 5-0 vote).

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

It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to adopt Ordinance No. 476 amending Title 17, "Zoning". By adding Chapter 17.22 to the Clayton Municipal Code regarding Residential Density Calculations for Residential Parcels with Sensitive Land Areas.

(Passed; 5-0 vote).

- (b) Consider the Second Reading and Adoption of Ordinance No. 477 adding Section 15.96 – Electric Vehicle Charging Stations to Title 15 Building & Construction of the Clayton Municipal Code to establish an expedited and streamlined permitting process in compliance with State law.

Community Development Director Mindy Gentry presented the staff report noting on August 1st this Ordinance was introduced to the City Council. The Ordinance would be implementing AB 1236 which requires a process to streamline the approval of Electrical Vehicle Charging Stations. Any application made for an Electrical Vehicle Charging Station must be approved administratively through the issuance of a building permit and the review of the Building Official is limited to health and safety requirements of local, state and federal law. This process will be enacted in coordination and consultation with Contra Costa County Building Division, since the County provides building and inspection services for the city of Clayton. No changes were made to the Ordinance.

Mayor Diaz opened matter for public comments; no comments were offered.

It was moved by Councilmember Shuey, seconded by Vice Mayor Haydon, to have the City Clerk read Ordinance No. 477, by title and number only and waive further reading. (Passed; 5-0 vote).

The City Clerk read Ordinance No. 477 by title and number only.

It was moved by Councilmember Shuey, seconded by Vice Mayor Haydon, to adopt Ordinance No. 477 adding Chapter 15.96 to the Clayton Municipal Code Establishing procedures for expedited permit processing for Electric Vehicle Charging Stations. (Passed; 5-0 vote).

- (c) Consider the adoption a Resolution amending the City's FY 2017-2018 Capital Improvement Program (CIP) regarding the 2018 Neighborhood Streets Project (CIP No. 10436) recognizing additional state revenue (\$76,157) allocated to Clayton in FY 2017-18 from the new state-legislated Road Maintenance and Rehabilitation Fund (via Senate Bill 1, the "Road Repair and Accountability Act of 2017"), and establishing the list of neighborhood streets to be treated in 2018 using said monies.
(City Engineer)

City Engineer Scott Alman, presented the staff report noting Senate Bill 1 was enacted earlier this year providing additional revenues to the city for street maintenance. One of

the requirements of obtaining that revenue is to have a list of the streets where the revenue will be used, included in a Council resolution and amending our Capital Improvement Program to include those streets. With approval from the California Transportation Commission (CTC), these streets will be included in the funding through this program beginning January 1, 2018. The streets were selected based on the Street Saver Program list, using the first six from the list which are a part of the next Neighborhood paving project would be funded through RMRA funds. The number of streets were based RMRA funding amount, and the other streets would be covered by Measure J, and or Gas Tax funds.

Councilmember Catalano asked is this an annual source of funding?

Mr. Alman confirmed yes it is an annual source of funding.

Councilmember Catalano asked if the sources of funding could increase next year as it looks like it is tax based.

Mr. Alman advised yes, this year we were projected to have a total of \$76,157 and that is made up of a loan repayment where previously issued Gas Tax money was lent to the General Fund, under SB1 there is a requirement that be repaid at an amount of \$12,825. Next year the projection would be \$12,825 in loan repayment and RMRA funds projected to be \$189,985.

Councilmember Pierce added this was hard fought legislation. What it does for our community is that it almost completely doubles our portion of Measure J funds for Local Street and road maintenance.

Mayor Diaz opened matter for public comments; no comments were offered.

It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to adopt Resolution No. 42-2017 amending the City's 2017/2018 Capital Improvement Program for its 2018 Neighborhood Streets Project (CIP No. 10436), recognizing new revenue allocated to Clayton from the Road Maintenance and Rehabilitation account through SB1, the Road Repair and Accountability Act of 2017, establishing a list of local streets to be maintained in 2018, and approve findings the contemplated street maintenance is categorically exempt under CEQA Section 15301(c).

(Passed; 5-0 vote).

- (d) Policy discussion and direction on whether to prepare an ordinance to establish local regulations on the use of unmanned aerial systems (aka: drones) within the city.
(Chief of Police)

Chief of Police Chris Wenzel presented the staff report noting the many differences in regulations of surrounding areas, such as the State Park (allows), East Bay Park (prohibits), School District (no current policy) and adjacent communities. Chief Wenzel noted that drones fly several miles from the operator location, therefore there is difficulty for the drone operator to know what jurisdiction they are flying in or over or through.

The City of Richmond's Ordinance seems to be the guideline used throughout the Contra Costa, which appears to be comprehensive and accurately covers the use of drones. One item that requires more work is the registration of the drones, the interpretation of the registration process for a recreational drone and tracking to identify the owner of the drone. This is because the current FAA registry process is not in an accessible data base where the registered number and owner can be located. Chief Wenzel contacted Mount Diablo School District to inquire on any policies they may have

in place regarding drones. The School District does not have a policy, other than the use of drones for educational purposes under the supervisor of an instructor. The establishment of the areas where drones can be flown would need to be determined and included in any ordinance, as there are not too many places other than your own property. Other component's that would need to be considered in any ordinance are the heights in which drones can be flown, to what speeds and determination of fines if found in violation.

Councilmember Catalano asked if complaints are being received from our community regarding drones?

Chief Wenzel advised there has been at least one compliant of a drone flying by, as you can see the difficulty of making a determination of how far the drone will go? Can we trace it back to the individual who is using it?

Councilmember Pierce understands the need to be cautious however the rules are vague, and wonder how necessary it is.

Vice Mayor Haydon favors the prohibition on hovering over private property and looking into residence. Mr. Haydon asked about the co-sponsorship of the California Police Chiefs Association on SB 168 and how closely neighboring cities have followed.

Chief Wenzel advised he does not know the specifics of is unsure of SB 168 however is aware of concerns of the potential interruption of law enforcement and what they do with their drones in the recreational use and disruption of law enforcement.

City Manager Gary Napper noted the use of drones in Clayton is not currently a problem; however we wanted to be ahead of this issue as drones become more popular, and in case the city council decides to implement local regulations. There are currently codes addressing trespassing. The item this evening was to provide a glimpse of what is happening.

Mayor Diaz opened matter for public comments; no comments were offered.

No Action was taken.

9. COUNCIL ITEMS – None.

10. CLOSED SESSION

Mayor Diaz announced the City Council will adjourn into Closed Session (8:36 pm) for the following noticed items:

- (a) *Government Code Section 54956.8, Conference with Real Property Negotiator.*
Real Properties: 6005 Main Street (APNs 119-011-002-1; 118-560-010-1; 118-370-041-6).
Instructions to City Negotiators: Council Members Pierce and Shuey, and
Ed Del Beccaro, Managing Director, Transwestern,
concerning price and terms of payment.
Negotiating Parties:
1. Avesta Development Group (Mohammad Javanbakht, Managing Partner);
2. Fulcrum Development (Steven Ring, Sr. Executive Vice President)

9:10 p.m. Report out of Closed Session

Mayor Diaz reported the City Council received information from staff and its property negotiators and gave directions. There is no public action to report.

11. **ADJOURNMENT**– on call by Mayor Diaz, the City Council adjourned its meeting at 9:10 p.m.

The next regularly scheduled meeting of the City Council will be October 3, 2017.

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Respectfully submitted,



Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL



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