

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

TUESDAY, December 20, 2016

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:01 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 and Shuey (arrived at 7:14 p.m.). **Councilmembers absent:** Councilmember Pierce. **Staff present:** City Manager Gary Napper, Acting City Attorney Katy Wisinski, Community Development Director Mindy Gentry, Maintenance Supervisor John Johnston (arrived at 7:42 p.m.), and City Clerk/HR Manager Janet Brown.

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

3. **CONSENT CALENDAR**

It was moved by Vice Mayor Haydon, seconded by Councilmember Catalano, to approve the Consent Calendar as submitted. (Passed; 3-0 vote).

 - (a) Approved the minutes of the regular meeting of December 6, 2016.
 - (b) Approved Financial Demands and Obligations of the City.
 - (c) Adopted Resolution No. 59-2016 accepting the transfer of fee title to real property (APN 119-015-007) known as “The Grove Park” from the Clayton Successor Agency for its continued use as a governmental purpose asset [public park].
 - (d) Approved a Third Addendum to the Exclusive Sales Listing Agreement with Transwestern Property Company West, Inc. to extend the existing terms and conditions to January 2, 2018 for the list and market for sale and development certain City-owned real properties in the Clayton Town Center (APN 118-560-010, vacant 1.67 acre parcel off Main Street; and APNs 119-050-034, 119-050-008, and 119-050-009 located at 1005 and 1007 Oak Street).
 - (e) Adopted Resolution No. 60-2016 approving the City’s AB 1600 Annual Report for FY 2015-2016 with the finding there remains a reasonable relationship between the current needs for the City’s Development Impact Fees and the purposes for which they were originally charged and collected (per *California Government Section 66000 et. seq.*).
 - (f) Received the appointment of Council Member Tuija Catalano as Mayor Diaz’s mayoral appointment of a Clayton community member to the Oversight Board of the Successor Agency to the former Clayton Redevelopment Agency.

4. **RECOGNITIONS AND PRESENTATIONS** – None.

5. **REPORTS**

- (a) Planning Commission – Commissioner William Gall summarized the Commission’s meeting of December 13, 2016. He indicated its agenda included the selection of Vice Chair since its Vice Chair has now been elected to City Council [Tuija Catalano]. The Commission selected Carl “CW” Wolfe to fill the Vice Chair vacancy. The Commission also approved a Use Permit Time Extension for T-Mobile and a one-year time extension of the Creekside Terrace Development Plan and Vesting Tentative Map from January 6, 2017 to January 6, 2018.
- (b) Trails and Landscaping Committee – No meeting held.
- (c) City Manager/Staff

City Manager Gary Napper reported there is now a Planning Commissioner vacancy for the unexpired term of newly-elected Councilmember Catalano through June 30, 2017. The only requirement to apply is residency in the City of Clayton. Applications are due by January 12, 2017 at 5:00 p.m. with a tentative Council interview to take place on January 17, 2017 prior to the regular City Council meeting.

Mr. Napper noted with the upcoming rains the City of Clayton Maintenance Department has sand available near the Keller Ranch House with sandbags available at the Maintenance yard. This service is provided at no cost and is funded by the taxpayers.

Mr. Napper remarked the League of California Cities recently provided information on statewide sales and use tax information reporting the average city in California has annual sales and use tax revenues that equal approximately 30% of their General Fund budget, with some cities at a 45% level. The Clayton Finance Manager was asked to calculate the annual sales and use tax revenue received by our Clayton: on an annual basis it represents a mere 8.5% of our General Fund budget, confirming Clayton is primarily a residential community which impacts resources for public services.

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

Vice Mayor Haydon attended a Contra Costa Habitat Conservancy meeting and several private Christmas parties.

Mayor Diaz attended a League of California Cities East Bay Division meeting, the 30th Annual Hospice Tree Lighting event, and a County Connection Board meeting.

- (e) Other – None.

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

Dylan Kupsh, Northgate High School student, spoke about inequality in the United States noting in the City of Clayton 18% of the people are below the poverty line. The percentage could be reduced by coming together as a City and proposing an inequality tax like Portland implemented. Portland imposed the 10% surtax on large corporations which generates a lot of revenue for the City of Portland to use in public projects. Currently in the United States, CEO’s make 325 times the amount of the average worker. We can help the small businesses in our community compete with larger corporations by implementing this executive pay tax.

Max Kahn, Northgate High School student, added our nation is led by egregious levels of income inequality, specifically in the Bay Area; it is imperative Congress act in any way to reduce and curtail gaps between the “haves and the have nots” in our society. Like Portland, Senator DeSaulnier proposed a similar measure when he was in the California State Senate with a corporate tax imposed based on a CEO earning over 100 times the amount of the median salary of the average worker. He would like to see the City of Clayton curtail the inequality of income in its community and do the same.

7. PUBLIC HEARINGS

- (a) Public Hearing to consider the adoption of Urgency Ordinance No. 473 to prohibit outdoor cultivation of recreational marijuana plants, and discussion of various local policy issues arising from the California voters’ passage of Prop 64 regarding local regulation of legal recreational marijuana.

[Councilmember David Shuey arrived – 7:14 p.m.]

Community Development Director Mindy Gentry advised she would summarize prevailing federal, state and local laws on this subject before addressing the local policy questions. She provided background regarding marijuana regulation per federal law: in 1970 Congress passed the Controlled Substances Act declaring marijuana as a Schedule 1 narcotic, defined as a drug with no currently accepted medical use and has a high potential for abuse. That Act declares the manufacture, importation, possession, use and distribution of marijuana is illegal. In 2013, the U.S. Department of Justice under the Obama Administration issued a memo providing guidance on marijuana enforcement; with the recent Presidential Election, this DOJ enforcement abeyance may change under new administration taking place January 20, 2017.

Ms. Gentry noted in 1996 voters passed state law entitled the Compassionate Care Act (Prop 215) allowing patients and caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from prosecution under criminal laws, which otherwise prohibit possession or cultivation of marijuana. In 2015 three bills were passed by State legislation to license the commercial cultivation, manufacture, retail sale, transport, distribution and delivery of medical marijuana but with no licenses to be issued until January 1, 2018.

Ms. Gentry advised Clayton’s Municipal Code addresses medical marijuana regulation but is silent on recreational/personal use. The Code does prohibit outdoor cultivation, dispensaries, and testing facilities, however, it allows limited indoor cultivation for patients and caregivers under physician orders and medical marijuana deliveries due to concerns with patient access.

Ms. Gentry added State Proposition 64 recently passed with Clayton voting 53.8% in favor; effective immediately, personal use and personal cultivation is allowed but no issuance of commercial licensing until January 1, 2018. The legalization allows possession, transport, purchase, use and transfer for those 21 years of age or older with no more than 28.5 grams or 8 grams in concentrate and cultivation of up to six plants for personal use. Proposition 64 further allows some local control in the areas of banning marijuana-related commercial businesses, all outdoor cultivation, and for regulation of indoor cultivation in private residences without banning it outright.

Ms. Gentry reviewed the recommended policy option for Council to adopt an Urgency Ordinance to place a similar ban on outdoor personal-use cultivation due to concerns of the plants being seen from public areas which would attract easy access by the public, including youth and children, possible theft and odor and broader growth due to larger

spaces, and the plants being less secure. These concerns raise an immediate threat to public safety and health and are negative effects of allowing outdoor cultivation.

Ms. Gentry concluded her presentation with policy questions to the City Council to consider regarding local regulations on Indoor/Outdoor Cultivation, Commercial Marijuana Activities, Regulation of Personal Marijuana Use locations and other issues, and with options to wait and see if the legal interpretations change over time or see what other neighboring jurisdictions adopt before embarking on local policies.

Mayor Diaz opened the Public Hearing for public comment.

Dylan Kupsh recommended the City Council not regulate indoor cultivation of marijuana as it is private property and the government should not interfere within private property as the smell will not affect surrounding neighbors.

Max Kahn considers it obscene to regulate the indoor cultivation of marijuana and thinks the police force and City resources could be better used in other areas.

Mayor Diaz closed the Public Hearing.

Councilmember Shuey offered he does not feel that indoor cultivation needs regulation and he would like the smoking of marijuana to be included within Clayton's smoking policy.

Vice Mayor Haydon would like to allow the indoor cultivation of marijuana for personal use without regulation by City staff. He also had some concerns on the smoking restrictions in regards to workers and patrons who are required to go outside to smoke tobacco; he is hesitant to allow the smoking of marijuana in those same places as cigarettes. Vice Mayor Haydon preferred marijuana restrictions be included under the City's alcohol ordinances; alcohol cannot be consumed out in public or on public streets, and he would like further staff research as this is a brand new law that has just been passed.

Councilmember Catalano inquired on commercial sales as a state license is required which will not be issued until January 2018, and asked what happens in the interim with other cities that allow medical dispensaries: are they able to sell recreational marijuana prior to January 1, 2018? Ms. Gentry responded the passage of Prop 64 left medical marijuana regulations in place for which state-issued commercial licenses are slated for issuance in January 2018. Currently there is a ban on marijuana dispensaries in the City of Clayton; if someone were to come into the city to open a dispensary, the City would rely on the Municipal Code which states it is still against federal law and therefore issuance of a local City business license to operate in town would be unlawful.

Councilmember Catalano asked since Prop 64 passed it still allows local jurisdictions to do some regulation; in terms of the cities enacting some regulation based on health and safety, is that allowed within the Adult Use of Marijuana Act? Acting City Attorney Katy Wisinski advised the City is authorized to regulate or ban outdoor cultivation or personal marijuana use and if the City opts to ban, it that is fine; if the City opts to regulate it in some fashion then it becomes a land-use decision and we would apply the same land-use principles as are used with any other proposed use.

Councilmember Catalano indicated she is in favor of the outdoor cultivation ban and would like to explore this item further in 2017 so far as brick and mortar sales in commercial sites.

Mayor Diaz wished to wait and see what develops following the passage of Prop 64; he has heard some surrounding communities who authorized commercial marijuana sales have had some problems as it is presently a federal illegal matter. Those businesses must operate on a cash-only basis as banks cannot accept monetary transactions from

these types of businesses without jeopardizing its FDIC standing. Cash-only businesses also become enhanced targets for ensuing criminal activities.

City Manager Napper added the only item for immediate attention this evening is the Urgency Ordinance as it would be difficult at this time for a police officer to differentiate between marijuana plants for medical or personal use. The remainder of the policy items raised by staff can wait for a full City Council to discuss in the new year.

It was moved by Vice Mayor Haydon, seconded by Councilmember Shuey, to have the City Clerk read Urgency Ordinance No. 473 by title and number only and waive further reading. (Passed; 4-0 vote).

The City Clerk read Urgency Ordinance No. 473 by title and number only.

It was moved by Vice Mayor Haydon, seconded by Councilmember Shuey, to adopt Urgency Ordinance No. 473 with the finding the action does not constitute a project under CEQA. (Passed; 4-0 vote).

8. ACTION ITEMS

- (a) Consider the Second Reading and Adoption of Ordinance No. 471 amending the Clayton Zoning Map from Agricultural District (A) to Planned Development District (PD) for 2.77 Acres that comprise the St. John's Church/Southbrook Drive Mixed Use Planned Development Project.

Community Development Director Mindy Gentry provided a brief background including the subject Ordinance's introduction back on December 6, 2016 to rezone the 2.77-acre St. John's Episcopal Church/Southbrook Drive Mixed Use Planned Development project site from Agricultural District (A) to Planned Development District (PD). No changes were made to the introduced Ordinance, the approval of a corresponding general plan amendment, rezone, and lot split for two single-family homes.

Mayor Diaz opened the item for Public Comment on this item; no comments were offered and Mayor Diaz then closed Public Comment.

It was moved by Vice Mayor Haydon, seconded by Councilmember Shuey, to have the City Clerk read Ordinance No. 471, by title and number only and waive further reading. (Passed; 4-0 vote).

The City Clerk read Ordinance No. 471 by title and number only.

[Maintenance Supervisor John Johnston arrived – 7:42 p.m.]

It was moved by Vice Mayor Haydon, seconded by Councilmember Shuey, to adopt Ordinance No. 471 with the finding the project will not have a significant effect on the environment as outlined in the City Council-adopted St. John's Church/Southbrook Drive Mixed Use Planned Development Project Final Initial Study/Mitigated Negative Declaration (IS/MND). (Passed; 4-0 vote).

- (b) Continued consideration of a proposal to share the cost for installation of fencing and related field improvements and storage by Clayton Valley Little League (CVLL) involving permanently fixed outfield baseball fence on Sports Field No. 3 at Clayton Community Park.

Prior to the presentation of the staff report, Councilmember Shuey noted he shared staff's preliminary report with Clayton Valley Little League (CVLL) at its board meeting that same evening. From CVLL's standpoint this improvement project is cost-prohibitive and it is withdrawing its request because CVLL does not have sufficient funds to proceed with the proposal. The CVLL appreciates City Maintenance staff's time in putting this proposal together and it now has a better understanding of the framework of this project.

City Manager Napper added staff remains interested in any cost-sharing or portions of cost-sharing in updating the sports fields. Prior to the meeting this evening he received an email from All Out Sports League who did not have an opinion about the Field 3 proposal but did express concerns with getting all of these fields into better shape because of the turf damage caused by gophers and ground squirrels.

Maintenance Supervisor Johnston remarked the last time anything was done to these fields was in May/June 2001 and only to the infield of Field 1 after baseball season. City Manager Napper noted the necessary turf rehabilitation could come back as a Capital Improvement Project for the entire Community Park in phases as it has not been renovated since establishment of the park in 1992.

No action taken.

- (c) Review of Mayoral determination for City Council ad-hoc, committee, inter-governmental and regional board assignments for 2017.

Mayor Diaz indicated he received individual input from Councilmembers regarding preferences for assignments and benched on the dais tonight is his written proposal for the 2017 assignments.

Mayor Diaz opened the item for Public Comment on this item; no comments were offered and Mayor Diaz then closed Public Comment.

It was moved by Councilmember Shuey, and seconded by Vice Mayor Haydon, to approve the City Council ad-hoc, committee, inter-governmental and regional board assignments for 2017 as presented by Mayor Diaz. (Passed; 4-0 vote).

- 9. **COUNCIL ITEMS** – None.

- 10. **CLOSED SESSION** - None.

- 11. **ADJOURNMENT**– on call by Mayor Diaz, the City Council adjourned its meeting at 7:51 p.m.

The next regularly scheduled meeting of the City Council will be January 17, 2017 as the January 3, 2017 was canceled by previous action of the City Council.

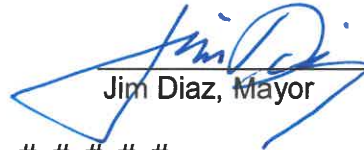
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Respectfully submitted,



Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL



Jim Diaz, Mayor

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