

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

TUESDAY, November 20, 2018

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:00 p.m. by “Mayor for the Day” Rhys Delaney (and by Mayor Haydon) in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Haydon, Councilmembers Catalano, Diaz and Pierce. Councilmembers absent: Vice Mayor Shuey. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Community Development Director Mindy Gentry, City Clerk Janet Calderon, and Finance Manager Kevin Mizuno.

2. **PLEDGE OF ALLEGIANCE** – led by “Mayor for the Day” Rhys Delaney.

3. **CONSENT CALENDAR**

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

 - (a) Information Only – No Action Requested
 1. Notification by Republic Services the residential and commercial solid waste/recycling collection and disposal services rates in Clayton will increase by 3.92% effective January 1, 2019 (ref. 90% of the annual October-October Bay Area Consumer Price Index (CPI) change of 4.36%, per the City’s Franchise Agreement).
 - (b) Approved the minutes of the City Council’s regular meeting of October 16, 2018.
 - (c) Approved the Financial Demands and Obligations of the City.
 - (d) Adopted Resolution No. 40-2018 approving the City’s Measure J Congestion Management Plan (CMP) Compliance Checklist for CYs 2016 and 2017.
 - (e) Approved a CMAS-vetted low bid multi-year services contract with ECS Imaging, Inc., in the amount of \$48,275.90 to commence electronic records management software and scanning services of City records for archival and retrieval purposes.
 - (f) Approved the 1st Quarter City investment Report for the period ending September 30, 2018, and adopted Resolution No. 41-2018 amending the City’s Investment Policy to authorize the investment of City monies in the California Asset Management Program (CAMP).
 - (g) Adopted Resolution No. 42-2018 approving the City’s AB 1600 Annual Report for FY 2017-18 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 levied and collected (per *California Government Code Section 66000 et. seq.*).

4. RECOGNITIONS AND PRESENTATIONS

- (a) Recognition of Rhys Delaney, student at Mt. Diablo Elementary School, as “Clayton Mayor for the Day”.

Mayor Haydon introduced Rhys Delaney as “Mayor for the Day” and presented him with a Certificate of Recognition declaring November 21, 2018 as “Rhys Delaney Day” in the City of Clayton.

5. REPORTS

- (a) Planning Commission – Commissioner William Gall indicated the Commission’s agenda at its meeting of November 13, 2018 included approval of a Site Plan Review Permit to allow an unpermitted previously partially constructed retaining wall located in the City’s right-of-way at 199 Mountaire Parkway. This item was conditionally approved unanimously, 4-0.

Councilmember Pierce inquired if this item will be presented to the City Council, as it is a use permit granted by the Planning Commission, unless appealed by one of the neighbors. Councilmember Pierce noted this policy issue of private fences in public rights of way was presented to the City Council in 2017; Council directed a Use Permit be required and the applicant provide liability insurance holding the City harmless and possible recordation against the property so every future owner would also be required to provide the insurance.

City Manager Napper responded the insurance policy and indemnification are requirements but was uncertain if recordation was required as well. Community Development Director Gentry added an encroachment agreement does not require recordation however the Site Plan Review permit approved by the Planning Commission runs in perpetuity with the property as long as the wall is there.

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

- (c) City Manager/Staff

City Manager Napper advised the recent General Municipal Election is indeed over but unfortunately final results are not yet available from Contra Costa County Elections. At this point, out of the 8,017 registered voters in Clayton, 5,604 cast ballots have been counted, a 69.9% turnout which is a slightly lower turnout than normal for Clayton. The Contra Costa County Elections Office has indicated there are still ballots remaining to be counted throughout Contra Costa County.

There are two (2) Council seats available with highest votes in order for Mr. Jeff Wan, Mr. Carl “CW” Wolfe, Mr. David Shuey and Mr. Brian Buddell at this time. It is unknown how many ballots are left to be counted specifically for Clayton and he encouraged anyone who is interested to visit the Contra Costa County Elections website for updates. The regular City Council meeting scheduled for December 4 is typically its Reorganization Meeting however election results will need to be certified and accepted by the Contra Costa County Board of Supervisors who are scheduled to meet earlier that same day. Therefore, final election results for Clayton will be benched at the December 4th City Council meeting. For those candidates likely be seated, please be prepared for final results and bring family to that meeting, if you are interested. There will be cake and a short social break to welcome the new City Council members.

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

Councilmember Catalano attended the Clayton Community Library Foundation Board meeting, and the Clayton Audit Sub-committee meeting.

Councilmember Pierce attended several Metropolitan Transportation Commission meetings including special meetings regarding the Executive Director recruitment, the Committee to House Bay Area meeting, attended the 2018 Focus on the Future transportation conference, the Contra Costa County Mayors' Conference in Orinda, the California Association Councils of Government board meetings, several Association of Bay Area Governments meetings, the Contra Costa Transportation Authority meeting, and the Bay Area Regional Collaborative meeting.

Councilmember Diaz attended the Clayton Business and Community Association General Membership meeting, the Clayton Business and Community Association 10th Annual BBQ planning committee meeting, chaired the 25th Annual Chief Special Agents Association Law Enforcement Appreciation luncheon in Danville, the Contra Costa County Mayors' Conference in Orinda, attended several Election Night events throughout Contra Costa County, the Contra Costa Water District Board meeting, and the Clayton-Concord Veterans Day Ceremony, and the Clayton Business and Community Association downtown decorating event. Councilmember Diaz announced the Clayton Business and Community Association annual Art and Wine Festival is taking place April 28 and 29, 2019. Councilmember Diaz advised earlier this evening he attended a retirement event in Oakley for former Clayton Chief of Police, Mr. Chris Thorsen.

Mayor Haydon attended the Contra Costa County Mayors' Conference in Orinda, the County Connection Operations and Scheduling Subcommittee meeting, spoke at the Concord-Clayton VFW Veterans Day ceremony, the Clayton Business and Community Association Oktoberfest wrap-up meeting, spoke at a Blue Star Moms dedication at Olympic High School honoring two fallen heroes: PFC Scott G. Barnett and PFC Benjamin T. Zieske; the County Connection Board meeting, the Clayton Business and Community Association General Membership meeting, announced the Clayton Business and Community Association Annual BBQ Cook-off will be on July 13, 2019, and met earlier in the day with our student "Mayor for the Day" Rhys Delaney and his father Lawrence.

- (e) Other

6. PUBLIC COMMENT ON NON - AGENDA ITEMS

Ann Stanaway, 1553 Haviland Place, expressed her concerns with the Westwood Property Owners Associations process in adopting new parking rules that threaten public safety under the leadership of Mayor Haydon, who is also President of the Board of Directors of the Westwood Property Owners Association. The members of that organization have proposed what amounts to back-door amendments to Westwood's Charter in violation of its obligations to public safety. The Westwood Property Owners Association was founded in 1984 with promises reiterated now in Article 3 of Westwood's Restated Declaration in 2015: "*Purpose and Power of the Association. The primary purposes include providing for and promoting safety while fair and interests of all owners of property and residents within the described property.*" The Westwood Property Owners Association has continued to give its directorship the power to enforce local ordinances, statutes and other governmental regulations referring to Section 10.2 of the

CC&R's, "Violation of Law. Any violation of a State, Municipal or local law Ordinance or regulation pertaining to the ownership occupation or use of any property within the project is hereby declared to be a violation of this declaration and subject to any and all of the enforcement procedures set forth herein." The new parking rules set for approval in thirty days seek to nullify Westwood Property Owners Association's promise to work in partnership with the City and lawful and responsible governments. Ms. Stanaway requested the City enforce the Fire Code as it will keep the streets clear for police, ambulance, fire and other emergency services when the need arises.

7. **PUBLIC HEARINGS** – None.

8. **ACTION ITEMS**

- (a) Presentation and approval of the City's audited Comprehensive Annual Financial Report (CAFR) for the Fiscal Year ending June 30, 2018 by Cropper Accountancy Corporation, an independent Certified Public Accountant firm.
(Finance Manager; and Mr. John Cropper, CPA)

Finance Manager Kevin Mizuno provided a brief introduction advising the City is receiving an "unmodified/clean opinion" on its Comprehensive Annual Financial Report (CAFR) for the Fiscal Year ending June 30, 2018. The goal of the in-house prepared CAFR is fairly presented in all materials respects in accordance with Generally Accepted Accounting Principles (GAAP). The audit was performed by Cropper Accountancy Corporation, a qualified independent auditing firm, and prepared in Generally Accepted Government Auditing Standards (GAGAS) issued by the American Institute of Certified Public Accountants (AICPA) and well as the Comptroller General of the United States. A Certificate of Achievement for Excellence in Financial Reporting issued by the Government Finance Officers Association (GFOA) was awarded to the City the past two fiscal years; City management intends to submit the current year CAFR to the GFOA for the same award for hopefully a third consecutive year.

Finance Manager Mizuno summarized two areas of focus: GASB 75 pertains to the reporting of Other Post-Employment Benefits (OPEB) and was previously tracked by the City and reported in the government-wide financial statements as well as the footnotes in accordance with GASB 45 which is now superseded and replaced. Although it continues to be management's opinion the City does not have a real OPEB plan, which the statement was addressed as an unfunded liability, it has always been reported since the City does not have nor needs to have an irrevocable trust. Management is considering opening an irrevocable trust however at this time it has not been recommended due to the low-risk exposure. This new standard, like GASB 68, was previously issued for pensions ultimately resulted in a prior period adjustment to implement the standard to reduce the beginning net position of the government wide financial statements.

The second item noted is the status of the General Fund. Consistent with staff's predictions for Fiscal Year ending June 30, 2019, the CAFR reports reduction in General Fund Reserves approved by the City Council to address the non-operational and non-recurring projects using excess reserves reported in the three previous Fiscal Years of 2015, 2016 and 2017. Despite this planned reduction in General Fund excess reserves, after \$432,309.00 in expenditures for one-time uses the result is an operating surplus of \$181,500 for Fiscal Year 2018. Finance Manager Mizuno referred the City Council to Page 23 in the CAFR; the unused excess reserves approved by the City Council are \$281,930 as of June 30, 2018, reported as assigned as required by GASB 54. It also

reports unassigned reserves of the General Fund at \$5,302,751 as of June 30, 2018, approximately 1.5 times the size of the adopted Fiscal Year 2019 Operating Budget.

Finance Manager Mizuno introduced Mr. John Cropper, Audit Partner for Cropper Accountancy Corporation, to continue the audit presentation.

Mr. Cropper thanked the City Council for the opportunity to audit the City's financial records and performance and noted Mr. Bryce Rojas next to him who assisted as the senior lead on the analysis of Clayton's financial statements. Mr. Cropper presented a slideshow highlighting the audit results are an "unmodified audit opinion" with internal controls over financial reporting functioning well, with no material weaknesses, and no significant deficiencies identified. The Government Wide Net Position indicates City total assets are \$50.409 million with total liabilities of \$6.037 million, resulting in a net position of \$45.944 million. Mr. Cropper advised there was a net pension liability increase of \$488,000 to \$4.901 million; net OPEB liability increased by \$403,000 to \$545,000 due to implementation of GASB Statement No. 75.

Mr. Cropper explained the Statement on Auditing Standards (SAS) 114 auditors communication is a required letter, and the Statement on Auditing Standards (SAS) 115 letter communicates observations on internal control related matters and is often referred to as the "management letter." After review of the City's financial practices, his firm has issued no management letter for FY 2018 as there is no deficiency or weakness to note. With any audit there are always suggestions for improvement but his firm found nothing serious for the governing body to be informed of. Overall, Mr. Cropper noted the City Council should be very pleased with its financial status and accounting practices and the strength of the City's financial practices are displayed through its annual and total General Fund Reserve positions.

Councilmember Catalano requested further clarification as to why a management letter will not be produced by the auditors; in Clayton's case, is it really a positive statement by the auditors? Mr. Cropper confirmed it is a positive observation; typically, under the *Government Auditing Standards*, there is a requirement to issue a management letter if there is, for example, a journal entry made by the auditors that is material to the financial statements of the entity. If they recognize a risk, they then examine some of the internal controls that could reveal a material weakness that should be declared. Several significant deficiencies can add up a material misstatement. In Clayton, as a small city, there is typically present a struggle for segregation of financial duties; however, since Clayton cannot cure that segregation by employing more financial clerks due to limited resources and facility space, there is no need to make such a declaration as current financial practices are sufficient.

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

It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to approve the CAFR of the City of Clayton for the Fiscal Year ending June 30, 2018. (Passed; 4-0 vote).

- (b) Consider the adoption of Resolution No. 43-2018 delegating authority to a Council ad hoc committee approved by the City Council on a case-by-case basis (under Government Code Section 21152(C), 21156, and 21173) to make and certify determinations of City employee disability to the California Public Employees' Retirement System (CalPERS); and by separate Mayoral action, appoint an initial ad hoc committee to review and make a determination on a pending application for industrial disability retirement.
(City Manager)

City Manager Napper advised this item returns as indicated from the last Council meeting whereat staff brought forward a Resolution to resolve an inherent conflict between the legislative body of a contracting member of CalPERS to make determinations on disability retirements and industrial disability retirements, the latter only being offered to public safety members under contract. The conflict arises that in order for the legislative body to make those determinations on an application, there needs to be evidence presented and findings made on matters primarily medical or physical related; the conflict appears between a City Council sitting in a public setting making those determinations and that individual's right to privacy under HIPPA laws. State law does not allow a legislative body to adjourn into closed session to make this determination.

Typically, other CalPERS contracting agencies have resolved this public conflict by delegating the authority from the legislative body to their city manager. At the last meeting, Vice Mayor Shuey asked if a different process could be considered through establishing a Council ad-hoc committee working with the city manager but the ad-hoc committee would make the final determination on behalf of the City Council. Subject to several finesses on that suggested procedure, the Council ad-hoc committee would need to be appointed by the Mayor in a public meeting and the ad-hoc committee would then only be constituted for a particular industrial disability application; after determination the ad-hoc committee would dissolve because if it becomes an on-going sub-committee for such purposes its meetings are subject to public review and public meetings, which venue defeat the purpose of shielding HIPPA privacy rights.

The City Attorney and her office contacted CalPERS to inquire if such a process would be acceptable to CalPERS. CalPERS' response was that is a little unorthodox but it could live with it provided a Resolution is adopted each time that indicates the Mayor appointed an ad-hoc committee to rule on an industrial disability application or a disability retirement application when filed. Those two appointed ad-hoc committee members must sign their determination and accompanying the CalPERS filing with a letter from the Mayor indicating that in fact he/she appointed those two elected individuals to act in the Council's behalf.

City Manager Napper noted there are two options available for the City Council to consider: appoint a Council ad-hoc committee each time or designate its city manager to make application or certify determinations of City employee disability to CalPERS. If the City Council embraces the ad-hoc committee procedure, Mayor Haydon must make his appointments immediately as there is a pending industrial disability application that has been received.

Mayor Haydon inquired if action was delayed this evening, what would occur to the pending industrial disability application? Mr. Napper advised the City has until January 23, 2019 in which to inform CalPERS of the local agency's determination on whether to approve or deny the industrial disability application.

Mayor Haydon opened matter for public comments.

Ann Stanaway remarked it seems to her the HIPPA laws allow for the individual to waive their privacy rights, if they want to. She may be wrong and they may be mandated to maintain privacy but she thinks it is an individual's right to waive their rights and perhaps ask the individual if they would allow the hearings under a public setting. City Manager Napper advised he is unsure HIPPA laws allow that waiver to be acceptable and staff would need to consult further with the City Attorney on such a thought.

With no others wishing to comment, Mayor Haydon closed the matter for public comments.

Councilmember Pierce appreciates the opportunity to consider options; she trusts the City Manager to make wise decisions and does not think it is necessary for the City Council to get involved at this level; preferring adoption of the second Resolution delegating authority to the city manager.

Councilmember Diaz expressed support of delegating it to the city manager.

Councilmember Catalano added it seems these decisions have been made by the city manager for quite some time. City Manager Napper clarified since his employment with the City there has been three (3) Industrial Disability Retirements granted, done so at the City Council level since those time periods were prior to HIPPA laws that now make it difficult to do so in a public setting.

Mayor Haydon noted he reviewed the opinion and recommendations and agrees with the delegation of authority to the city manager as it is more efficient protecting the individual's privacy.

It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to adopt Resolution No. 43-2018 delegating authority to its City Manager under Government Code Section 21152(C), 21156, and 21173 to make and certify determination of City employee disability to the California Public Employee' Retirement System. (Passed; 4-0 vote).

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

10. **RECESS THE CITY COUNCIL MEETING** – Mayor Haydon.

(until after the conclusion of the Clayton Financing Authority meeting)

Mayor Haydon recessed the City Council meeting at 8:18 p.m.

11. **RECONVENE THE CITY COUNCIL MEETING** – Mayor Haydon.

Mayor Haydon reconvened the City Council meeting at 8:20 p.m.

12. **CLOSED SESSIONS**

Mayor Haydon announced the City Council will adjourn into Closed Session for the following two noticed items (8:20 p.m.):

- (a) *Government Code Section 54957*
Public Employee Annual Performance Evaluation
Position Title: City Manager

The City Manager left the Closed Session meeting at 9:38 p.m.

- (b) *Government Code Section 54957.6*
Conference with Labor Negotiators
Agency-designated representatives: Mayor Haydon and Vice Mayor Shuey
Unrepresented employee: City Manager

9:53 p.m. Report out of Closed Session

Mayor Haydon reported the City Council considered and discussed information, and provided policy direction to its labor negotiator. There is no public action to report.

13. **ADJOURNMENT**– on call by Mayor Haydon, the City Council adjourned its meeting at 9:54 p.m.

The next regularly scheduled meeting of the City Council is December 4, 2018.

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Respectfully submitted,



Janet Calderon, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL



Keith Haydon, Mayor

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