

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

TUESDAY, February 20, 2018

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:00 p.m. by Mayor Haydon in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Haydon, Vice Mayor Shuey, and Councilmembers Catalano and Pierce. Councilmembers absent: Councilmember Diaz. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Police Chief Elise Warren, Finance Manager Kevin Mizuno, City Engineer Scott Alman, Community Development Director Mindy Gentry, and City Clerk/HR Manager Janet Brown.

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

3. **CONSENT CALENDAR**

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

- (a) Approved the minutes of the City Council’s regular meeting of February 6, 2018.
- (b) Approved the Financial Demands and Obligations of the City.
- (c) Adopted Resolution No. 3-2018 declaring a 2008 Ford Crown Victoria vehicle (Unit 1731) as property surplus to the City’s needs and authorizing its disposal by the City Manager at public auction.
- (d) Approved the City Engineer’s recommended list of local streets for inclusion in the City’s 2018 Neighborhood Street Repave Project.
- (e) Adopted Resolution No. 4-2018 opposing statewide efforts to repeal Senate Bill 1, “The Road Repair and Accountability Act of 2017,” and supporting Proposition 69 on the June 2018 state ballot to prohibit the State of California from diverting SB 1 monies to ensure the funds are used as intended for transportation improvement projects.

4. **RECOGNITIONS AND PRESENTATIONS**

- (a) Recognition of Joseph Kreins for his service and leadership to the City of Clayton as Interim Chief of Police from November 2017-February 2018.

Mayor Haydon presented Joseph Kreins, City of Clayton’s former Interim Chief a plaque in appreciation for his valued civic service to the Clayton community. Mr. Kreins remarked he enjoyed his interim time with the City and then presented City Manager, Gary Napper, with a LA Dodger’s T-Shirt displaying “Manager 00” on the back.

- (b) Administration of the Oath of Office to Clayton's new Chief of Police, Elise Warren.

The City Clerk administered the Oath of Office to Clayton's new Chief of Police, Elise Warren. Chief Warren's daughter Jessica then pinned the chief's badge to her mother's police uniform.

Chief Warren stated it is has been a wonderful first week and have never felt so welcomed. She is looking forward to leading a very capable Police Department and the great things its future holds.

Members of the Clayton City Council also welcomed Chief Warren.

7:09 p.m. Social Break

Mayor Haydon called for a short break in the Council proceedings so attendees in the audience and members of the City Council could meet and chat with Clayton's new Chief of Police.

7:21 p.m. Mayor Haydon called the Clayton City Council meeting back to order.

5. REPORTS

- (a) Planning Commission – No meeting held.
- (b) Trails and Landscaping Committee – Meeting held on February 12, 2018.

Vice Mayor Shuey provided the report on the Trails and Landscaping Committee meeting of February 12, 2018 due to his attendance as the City Council liaison. He noted a lengthy discussion of weed spraying done by City crews which included adding a dye to the spray to assist the public's awareness of recent weed spraying. The TLC suggested a future Mayor's column encouraging citizens to report items observed throughout the city, such as a tree that has fallen, as City personnel cannot be everywhere and are not always receiving notification of such occurrences. The TLC Committee also reviewed the recent clarifications adopted by the City Council on the roles of the advisory committee.

Mayor Haydon invited Brandon Bratcher forward, from the Field Office of Congressman Mark DeSaulnier, who read a letter of congratulations to incoming Police Chief Elise Warren on behalf of Congressman DeSaulnier. Mayor Haydon indicated staff would make sure Chief Warren receives the letter.

- (c) City Manager/Staff – No Report.
- (d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

Councilmember Catalano attended Council Budget Sub-Committee meeting last week.

Councilmember Pierce attended the Association of Bay Area Government Regional Planning Committee meeting, the TRANSPAC Board meeting, six Metropolitan Transportation Commission's committee and Board meetings, the Clayton Museum's 41st Annual Camellia Tea event, and a Bay Area Regional Collaborative meeting.

Mayor Haydon attended the Central Contra Costa Transit Authority's [County Connection] Finance Committee meeting, the Clayton Museum 41st Annual Camellia Tea event, the Council Budget Sub-Committee meeting, and the Central Contra Costa Transit Authority's Board of Directors meeting.

- (e) Other – None.

6. PUBLIC COMMENT ON NON - AGENDA ITEMS

Ann Stanaway, 1553 Haviland Place, indicated crime in Clayton is on the rise, there is a system of patronize here, and criminals have found the Council asleep at the wheel. She expressed her continued concern for the safety of emergency and first responders in Clayton.

7. PUBLIC HEARINGS

- (a) Review of the City's Mid-Year Budget status, report for Fiscal Year 2017-2018 and recommendations of mid-year adjustments.
(Finance Manager; Council Budget/Audit Sub-Committee)

Finance Manager Kevin Mizuno provided the financial summary noting the current budget was adopted by the City Council on June 20, 2017, which included an anticipated budgetary excess of \$10,830 in the General Fund.

The City Council Budget Sub-Committee recently met with the City Manager and the Finance Manager on February 14th to review the Mid-Year Budget results. Mr. Mizuno noted mid-year expenditures (55.13%) are currently outpacing revenues (53.09%) yet all the line items are on target with the budget projection and this measurement is not unusual as fixed annual costs are often paid in full at the beginning of the fiscal year. Expenditures are higher at the mid-year point due to some obligations are non-linear in nature, such as insurance premiums, and the City prepaid its CalPERS unfunded liability actuarial expense upfront in July, which action results in some savings to the budget by not paying CalPERS any interest on the balance due.

General Fund revenues at mid-year: Mr. Mizuno explained some positive revenue variances with a higher than projected increase in assessed values (AV) in the Secured Property Taxes; the budget was adopted with a potential AV growth of 2%, however the City received a letter from the County Assessor after the budget was adopted supporting a projected AV growth of 4.05%. The other area where the City experienced a favorable variance was in Sales and Use Tax revenues; prompted by the CA Department of Finance's unwinding of its "Triple Flip" act that took .25% of the Bradley Burns Tax towards the end of last fiscal year, Sales and Use Taxes should now be coming in around \$14,500 higher than projected.

The Redevelopment Property Tax Trust Fund distribution, the Secured Local Property Taxes, and in-lieu of Vehicle License Fees each had positive effects on City revenues. Mr. Mizuno indicated General Fund expenditures at mid-year are consistent with previous years with the exception of Clayton Community Park irrigation expense due to post-drought reactivation; staff is requesting an additional expense appropriation of \$22,000 to cover that expense. The new Professional Engineering services contract, which was unknown at the time of budget preparation and adoption, also requires an appropriation of \$34,735.

He further noted “no action” is recommended on other significant restricted-use funds at mid-year. Mr. Mizuno concluded his staff report advising several Capital Improvements Projects are in progress including the El Molino Sewer Project, the Keller Ridge Collector Street Repave Project, the El Portal Drive Restoration Project, the 2018 Neighborhood Streets Repave Project, and the Pine Hollow Road Restoration Project.

Mayor Haydon thanked Finance Manager Mizuno for his comprehensive report and then opened the Public Hearing item for public comments. No comments were offered and Mayor Haydon closed the Public Hearing.

Councilmember Pierce thanked staff for its diligence and in keeping a healthy reserve enabling the City to continue General Fund operations for a full year should a disaster to occur. Mayor Haydon noted he attended the Mid-Year review of the Budget at the Council Budget Sub-Committee meeting and Mr. Mizuno provides an excellent description of how we arrived at the current mid-year point with overall excess operating funds still available even with the recommended Mid-Year adjustments.

It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to adopt Resolution No. 5-2018 amending the Annual Operating Budget of the City of Clayton for the 2017-2018 Fiscal Year commencing July 1, 2017. (Passed; 4-0 vote).

8. ACTION ITEMS

- (a) Discussion and policy directions regarding the City’s existing and proposed no-smoking regulations in public places to comprehensively address smoking and consumption of cannabis, and vaping.
(Community Development Director)

Community Development Director Mindy Gentry presented the staff report noting during the process of addressing policy issues associated with adult-use of cannabis, the City Council requested staff examine the City’s existing no smoking regulations to address new state laws on the smoking and ingesting of cannabis. Current state law does contain limitations on the public consumption of cannabis; however, some existing Municipal Code language is vague so direction has been given to prohibit the smoking of cannabis in same locations where smoking tobacco is also prohibited. Ms. Gentry noted the City’s smoking ordinance was last updated in 1993, and since that time there have been significant changes to state law regarding tobacco use and consumption, and societal shifts in acceptable behavior as it pertains to secondhand smoke. For example, state law prohibits the smoking of tobacco, including electronic cigarettes, in many locations; however, many local jurisdictions are enacting more stringent laws to address complaints and health concerns received from their communities.

Ms. Gentry then presented a series of Policy Questions for City Council to provide direction to staff regarding the preferred content of an updated No Smoking ordinance:

- a. Should the City further regulate tobacco and cannabis products that do not create vapor or smoke? Staff does not recommend this action.
- b. Should the City further regulate smoking at places of employment? Staff recommends smoking be prohibited in all places exempted by the state except retail or wholesale tobacco establishments with a private smokers’ lounge, and establish codified operational and location regulations including no minors, no food or drink available and it must be a standalone building.

c. Should the City regulate smoking in multifamily residential uses? Staff recommends smoking prohibited in enclosed and unenclosed common areas or multifamily residences and within the units of all multifamily residences, including balconies and patios and allow designated smoking areas with a threshold established at two or more units.

d. Should the City regulate smoking in unenclosed spaces? Staff recommends establishment of a 25 feet buffer around The Grove park for concerns with the drifting of secondhand smoke; also prohibit smoking at all outdoor public events, including but not limited to the 4th of July parade, the Art & Wine festival, and Oktoberfest; prohibit smoking at unenclosed dining areas; and the establishment of a reasonable smoking distance from any doorway, window, opening, etc.

e. Staff seeks Council input on what level of penalty should be applied for the no smoking violations? Staff recommends allow the penalty to be a “wobbler” between an infraction and a misdemeanor, thereby allowing situational law enforcement discretion; and also allow private citizens to obtain an injunction against individuals or businesses for repeat violations.

f. Ms. Gentry advised state law does not allow the smoking or ingesting of cannabis in a public place, but fails to define “public place”. Staff recommends adding a definition of “public place” within the local ordinance for clarity and enforcement purposes, and specify cannabis is not allowed on any City real property.

Vice Mayor Shuey asked if a private citizen wanted to obtain an injunction, would this allow private individuals to go through the court system to obtain. Ms. Gentry and City Attorney Subramanian each advised that is the correct process.

Vice Mayor Shuey also inquired on cannabis not being allowed in public places; is that just for the smoking of it or also ingested? Ms. Gentry advised state law includes both the prohibition of cannabis smoking and ingesting in public, following the same prohibition for the consumption of alcohol in public. Vice Mayor Shuey questioned then why is alcohol consumption allowed in public every other weekend at The Concerts in The Grove? City Manager Napper responded that public alcohol consumption is allowed by the City’s Special Use Permit for review and approval for its use in a public park.

Vice Mayor Shuey then inquired if the City would allow ingestible cannabis as well by permit? City Manager Napper advised presently, the City does not have an edible cannabis use permit.

Councilmember Catalano commented since Clayton does not have a lot of multifamily residences, would residences in the Oakhurst and Black Diamond areas that share a common wall be prohibited from smoking in their own unit? Ms. Gentry advised that is correct, that proposal is recommended due to the health dangers of secondhand smoke.

Councilmember Catalano advised the current ordinance prohibits smoking in City parks; is The Grove not considered a City park or are we considering creation of a buffer around it of 25 feet? Ms. Gentry advised currently, someone could smoke on the sidewalk adjacent to the tot lot at The Grove Park and that secondhand smoke could drift into the park and impact children and adults playing in the park. City Manager Napper added the tot lot in The Grove Park is adjacent to the public sidewalk, whereas in other City parks the tot lot is further removed from the public sidewalks.

Councilmember Pierce inquired on notification methods to current and future tenants of multifamily establishments? Ms. Gentry advised a legal notice could be placed in local newspapers of the City Council’s action, and then subsequent code enforcement would be a reactionary civil complaint. Councilmember Pierce inquired if the City would enforce a civil complaint? Ms. Gentry advise the City Police Department would enforce if there is a report of violation.

City Manager Napper commented we have not moved fully to the implementation phase of the Ordinance yet and staff would reach out to some of the other communities that have gone through this process to determine appropriate outreach. Perhaps, he suggested, should there be an HOA that had units with shared walls the City could inform the HOA; or if there is an associated property manager holding a City business license, the City could send a letter to that property management company along with a notice with the City business license application.

Councilmember Pierce wondered about the proposed buffer around The Grove Park; Clayton was one of the first in the county to add a no-smoking ordinance in the parks. During Concerts in The Grove, a lot of people ignore the fact there is no smoking allowed in local parks and they gather around the sidewalks while some go across the street in front of the U.S. Post Office; the proposed buffer seems to mean smokers must then go across the street which gets them closer to another establishment, or would they just move to the private parking lot of Village Market where it would not be regulated? Ms. Gentry advised the buffer would still apply for public or private property if it is within 25 feet of the downtown park.

Councilmember Pierce inquired on the policy question on a “reasonable smoking distance” from open doors and windows; is that intended for just the downtown or citywide? Ms. Gentry clarified that would be citywide. Councilmember Pierce noted this would effectively prohibit smoking anywhere within the downtown area and it would be difficult for any of our restaurants to have a designated smoking area without placing that area in front of another business. City Manager Napper responded that question is exactly the reason staff brought this subject to the City Council in advance to establish, via the policy checklist, what content and prohibitions are desired in a revised No Smoking Ordinance such that when staff writes the ordinance for Council consideration, these provisions would already be somewhat addressed and be more comfortable in receiving public input.

Mayor Haydon inquired on regulation of smoking at places of employment in private residences and how that is defined. Ms. Gentry responded private residence businesses require a City-issued home occupation permit; if the home-occupied business has no employees working within the residence, then the prohibition would not apply. Should the home occupation have employees in addition to the owner, the no smoking provisions would then be applicable.

Mayor Haydon opened the item for Public Comment; no comments were offered.

Vice Mayor Shuey remarked he is comfortable with staff’s recommendations except for the prohibition for a reasonable distance from establishments having doors and windows that could or would be open. He further recommended a 6, 9 or 12 month City review to determine if there were any infractions or misdemeanors issued.

Councilmember Pierce suggested when this local no-smoking law is introduced to the public we need to encourage people to be neighborly and talk to each other about their concerns. City Manager Napper inquired whether there is any merit, once the draft ordinance is prepared by staff, that it be mailed to local business owners and condo/townhome associations in advance of the Public Hearing and invite them to the meeting? The City Council concurred with that idea to be proactive on outreach of the proposed update to the City’s No Smoking regulations.

General policy directions as noted were provided to staff on this subject.

9. COUNCIL ITEMS

a. Councilmember Pierce received an email that a representative is needed to serve on the Citizens Advisory Committee of the Contra Costa Transportation Authority and requested this be addressed in a future Mayor's column.

b. Vice Mayor Shuey requested a discussion take place about a potential partnership between the City and Clayton Valley Little League regarding the sports fields located at Clayton Community Park.

10. **CLOSED SESSION** – None.

11. **ADJOURNMENT**– on call by Mayor Haydon, the City Council adjourned its meeting at 8:26 p.m.

The next regularly scheduled meeting of the City Council will be March 6, 2018.


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Respectfully submitted,



Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL


Keith Haydon, Mayor

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