

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

TUESDAY, July 5, 2016

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 5:23 p.m. by Mayor Geller in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Geller, Vice Mayor Diaz and Councilmembers Haydon, Pierce and Shuey. Councilmembers absent: None. Staff present: City Manager Gary Napper, City Clerk/HR Manager Janet Brown, and Community Development Director Mindy Gentry.

2. **COUNCIL INTERVIEW OF PLANNING COMMISSION APPLICANTS**

The City Council interviewed the following four (4) candidates whom had applied for appointment to the City Planning Commission (starting at 5:25 p.m.):

Bassam Altwal, Carl “CW” Wolfe, Robert Scrosati and William Gall

RECESS: The City Council took a short recess from 6:46 p.m. – 7:00 p.m.

7:00 P.M. REGULAR PUBLIC MEETING

3. **RECALL TO ORDER THE CITY COUNCIL** – The meeting was recalled to order at 7:00 p.m. by Mayor Geller in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Geller, Vice Mayor Diaz and Councilmembers Haydon, Pierce, and Shuey. Councilmembers absent: None. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Community Development Director Mindy Gentry, and City Clerk/HR Manager Janet Brown.

4. **PLEDGE OF ALLEGIANCE** – led by Mayor Geller.

5. **CONSENT CALENDAR**

It was moved by Councilmember Shuey, seconded by Councilmember Pierce, to approve the Consent Calendar as submitted. (Passed; 5-0 vote).

- (a) Approved the minutes of the regular meeting of June 21, 2016.
- (b) Approved Financial Demands and Obligations of the City.
- (c) Adopted Resolution No. 38-2016 approving a 3-year Memorandum of Agreement with the Clayton Undesignated Miscellaneous Employee Unit effective July 1, 2016 and covering the Fiscal Years of 2016-2017, 2017-2018, and 2018-2019.

6. **RECOGNITIONS AND PRESENTATIONS** – None.

7. **REPORTS**

- (a) Planning Commission – Commissioner Dan Richardson summarized the Commission’s meeting of June 28, 2016. He noted its agenda included approval of a Site Plan Review Permit at 1844 Yolanda Circle to allow construction of a second-story balcony and exterior spiral staircase to replace an existing second story balcony on the rear of an existing two-story single-family residence.

The Commission also reviewed and recommends to the City Council several Municipal Code amendments, including Multifamily High Density, that are required as a part of the City’s Housing Element and state law.

- (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.

Vice Mayor Diaz attended the Wednesday Night Classic Car Show and Concert in The Grove, the Clayton Business and Community Association’s general membership meeting, the Saturday Concert in The Grove, the annual Clayton 4th of July Parade, and “Family Day” at Diablo Valley Ranch. Mr. Diaz also announced the upcoming July 6th Wednesday Classic Car show and Concert featuring “Mixed Nuts”.

Councilmember Pierce attended two Metropolitan Transportation Commission (MTC) meetings, the National Association of Regional Council conference in Salt Lake City, the Saturday Concert in The Grove Park, and the annual Clayton 4th of July Parade.

Councilmember Haydon attended the Clayton Business and Community Association’s general membership meeting, the Saturday Concert in The Grove, the Bocce Ball Spring League playoffs, and the annual Clayton 4th of July Parade.

Councilmember Shuey indicated “No Report”.

Mayor Geller attended the Bocce Ball Spring League playoffs, the Saturday Concerts in The Grove, and the annual Clayton 4th of July Parade. Mr. Geller thanked Vice Mayor Diaz for his assistance with the Clayton Business and Community Association’s 30 years of the “Clayton Classic” golf tournament. Mayor Geller announced there is now a Facebook page for both the Saturday and Wednesday Concerts in The Grove and can be found under “Clayton Concerts”. He also announced the upcoming Saturday Concert in the Grove on July 9th featuring “The Retromaniax” band.

- (e) Other – None.

8. PUBLIC COMMENT ON NON - AGENDA ITEMS

Cindy Gilmore, 1874 Eagle Peak Avenue, indicated her concern is the continued use of the high pitched sound machines in the city park. Supposedly, to keep teenagers from causing vandalism. The degree of vandalism is teenagers sitting on the railing at the gazebo and kicking their feet which damages or breaks the spindles, and teenagers sitting two or three on the swings breaking the seat. This does not seem like vandalism to her, more like teenagers being teenagers. She suffers from chronic pain; no one know what causes migraines and when she hears a machine was intentionally placed in the park that causes high pitched sounds, described by many as painful, she is very upset about this. Ms. Gilmore then shared related comments submitted by residents on "Nextdoor.com":

Shannon L. says "My son and I went for a walk one day at the park around 3:30 and asked if I could hear a loud noise. I heard nothing, I'm guessing it's because it was silent to my old ears, needless to say, we couldn't stay as it was too painful for his ears."

Kristine B. said "She was at the park about a week ago around Noon and could hear it, it was pretty annoying and it definitely kept us out of the gazebo area".

Ms. Gilmore noted these comments were made when the transmitters were on 24 hours a day.

Kendra O. said "I have heard that awful constant whine from the gazebo during the day between 11:00 a.m. and 3:00 p.m. it is a very high-pitched noise, painful to hear and keeps me and my 18 month old off of the lawn, I didn't know that it was meant to deter teens.. Ha Ha Ha I'm thirty five".

Brian P. posted a link to a clip from CNN from September 22, 2010 featuring these mosquito devices.

Gail B. said "Unfortunately, although Julie Pierce campaigned on building a park where kids can play, it seems like children are no longer valued here. Sirens to keep them from using the park! Don't play basketball, etc."

Jeff said "Well the idea is that it is annoyingly loud in the targeted areas I am assuming that our normal speakers and not some fancy directional technology So, I'm sure you can hear them almost anywhere in the park if it is quiet when it is active. The park just isn't that big."

Ms. Gilmore indicated the manufacturer's website states "The expected target range is 50 feet". It is not possible to limit the sound to just the gazebo. Adults and children are reporting that they can hear it outside of the gazebo and play structure.

City Manager Napper responded the comments read were, as indicated by Ms. Gilmore, when one noise emitter was on in the daytime. Following the City Council meeting of May 3rd when this issue was brought up, the next day the City turned off the one daytime emitter. That emitter was located in the gazebo off Marsh Creek Road, not near the picnic shelter or tot lot area off Main Street.

The purpose for operating one daytime emitter was to deter vandalism and certainly, as noted by Ms. Gilmore, within the hearing frequency range of ages twelve to twenty five. Mr. Napper then displayed photos of three separate acts of vandalism to that gazebo which has occurred during the daytime since that one emitter was turned off; within ten days, the City experienced its first vandalism to the gazebo noting it was a wood spindle from the arch above. The City has reports even from those in the community that kids

like to hang and swing from the wood arches of this gazebo; while we understand it is an attractive ornamental gazebo, it is not a wooden jungle gym. It takes time to repair and time away from other tasks of our Maintenance workers when such vandalism occurs. The evidence is there. He added one emitter at the gazebo actually faces out towards the Marsh Creek Road area.

Mr. Napper commented one of his favorite poets growing up was Paul Simon, whose lyrics include, "... the words of the prophet are written on the subway walls." Mr. Napper then showed three photos of numerous chalk drawings on the bomanite floor of this gazebo, adding while this normally isn't considered vandalism it did occur after the one daytime emitter was turned off; these drawings were not done by adults, this was done by kids being kids, however, it did take time for our Maintenance workers to clean it up. Because of the Contra Costa Water District conservation regulations still in place, a water power spray could not be used to clean it up; crews had to remove the drawings by hand scrubbing. This did not occur when the daytime emitter was on. It is not necessarily vandalism; however, he suspected had these drawings occurred on an upright wall in town, someone would have called City Hall to say there is "graffiti" on the wall, please remove it. He added the names of these "prophets" can be seen written in the last photo.

Mr. Napper then displayed another photo, taken after the one emitter was turned off, which revealed a second spindle has gone missing from the same wood arch. Fortunately, on this particular incident, we do know who caused this recent damage and Clayton's Police Department has been in contact with the person; and, it is not an adult. They have been talked to along with their parents and the City will be receiving restitution to replace that one spindle. He concluded by noting there is room for disagreement but the evidence is there the one daytime emitter, for 8 months at the gazebo, acting as a deterrent to vandalism, preventing it as opposed to receiving reports after the fact. There is no accounting for how much vandalism and City expense the one daytime emitter prevented.

Mayor Geller asked, "How many years have the emitters been operational?" Mr. Napper responded the emitters were installed in The Grove Park around 2012 and were night time operations only until mid-August 2015 when he ordered the one (1) emitter at the gazebo on full time due to chronic vandalism.

Mayor Geller asked, "How many complaints have been reported to City Hall by people having headaches or problems with the noise level?" Mr. Napper replied none directly, and only indirectly recently through social media when this issue surfaced in April 2016; however in fairness and defense there may have been those who heard the high pitched sound yet did not know who to report it to. The usual response for individuals when hearing the sound is to move away until it can no longer be heard.

Mayor Geller inquired about the emitter that was installed at the tot lot at Lydia Lane Park; have there been any complaints there? Mr. Napper advised it is hard to measure what the emitter there has deterred but added the adjacent neighbors were in favor of the installation of the emitter as they did not want people loitering in the park when the park is closed. Mr. Napper added that he received an email from a resident not in favor of the emitters operating during the day, however she applauded the City for using such innovation and creativity by using a deterrent in the evening when the parks are closed and police officers are unavailable to monitor each park.

Councilmember Pierce added she has been following the discussion regarding the gazebo and someone made a comment that "the City should have installed a higher quality gazebo". Ms. Pierce advised this gazebo is of commercial quality and was

donated by the Clayton Business and Community Association and intended to be used in a public park.

Mr. Napper added there have been reports of mothers taking photos of their children hanging from the gazebo's wood arch. Responsibility lies with people and their behavior; what we are trying to do is deter that bad behavior.

Mayor Geller mentioned that he received a call from a resident in the Keller Ridge area who would like an emitter installed in his public street cul-de-sac to deter older teenagers from parking and vandalizing that area. Mr. Napper advised these emitters are also used in nearby cities for the purposes they are intended, and reiterated the City of West Sacramento just purchased an additional 45 units for its use.

Councilmember Shuey added that he was on the committee for the design of the park and at that time there were some concerns brought up on how to keep the park free from vandalism and kids using the park in the evening. After consultation with the police, it was recommended for lower fences so they can have sightlines through the park to help keep kids and adults out of the park in the evening. The Social Media that was used to bring these issues to light was great as it caused a change in the hours, however it can also be very irresponsible blaming the City as not liking teenagers. His kids, who are also teenagers, go down to that park all the time and did not go to the gazebo when the emitter was on in the daytime, rather to the other side of the park where it was not heard. After school on Fridays, there are teenagers all over that park. We saw what was happening and staff took appropriate action.

9. PUBLIC HEARINGS – None.

10. ACTION ITEMS

- (a) Consideration and adoption of a Resolution of Support for the Countywide imposition of a one half of one percent sales tax to fund transportation improvements in Contra Costa and to conditionally amend the Growth Management Program in the Measure J Transportation Expenditure Plan (TEP) to match that found in the 2016 proposed Transportation Expenditure Plan.

Hisham Noeimi, Engineering Manager, Contra Costa Transportation Authority, presented his staff report noting if the proposed November 2016 Ballot Measure is passed by the voters, the funds collected will benefit all of Contra Costa County over the next thirty years. He estimated about \$2.8 billion will be collected over the next thirty years if the measure passes. The additional sales tax would begin collection on April 1, 2017 and end on March 31, 2047. By law, the Contra Costa Transportation Authority needs to receive a majority support from the cities and the County prior to placement of the measure on the November 2016 ballot, and it will need to pass with a two-thirds majority vote. The CCTA has appeared at sixteen cities in Contra Costa County to request their support for the countywide imposition of a one half of one percent sales tax and has received support from each city to proceed with the ballot measure. Mr. Noeimi presented a short Power Point presentation to the City Council to provide additional background.

Mr. Noeimi advised Contra Costa County has a history of being a self-help county and was the third one statewide to pass a one half of one percent sales tax after Alameda and Santa Clara Counties back in 1988 with the passage of Measure C. In 2004,

Measure J was passed by 71% which collects the tax until 2034. Some of the projects funded by Measure J were the Caldecott Tunnel fourth bore which was completed in 2013, the widening of State Route 4 and all travel lanes are currently open, BART extensions in East County should be completed in 2018 and construction scheduled to start in 2017 for a new High Occupancy Vehicle lane on Highway 680.

The reason for the request of the additional sales tax is the county continues to grow, with a population of people who are getting too old to drive or choose not to drive and use an alternate means of transportation which we really need to accommodate their needs. Another reason is Measure J has been very successful in completing major projects in only ten years that would normally take twenty five years. By 2017, ninety percent of the funding of Capital Improvement Projects will be spent. This was done through a combination of bonding against the future sales tax revenues at low interest rates done during the recession with the proceeds leveraging regional, state and federal funds; with every dollar put on a Measure C or Measure J project, regional, state and federal funds provide approximately \$3.00 more. Finally, there is a large transportation funding crisis, which can be seen in the declining sales tax revenue. At this time there are no foreseen fixes from Sacramento; the CCTA needs to improve our current transportation. The reason Measure C and Measure J were so successful is each of the cities and stakeholders received their fair share of funds and equitable benefits. There have been many meetings with large stakeholders to make sure that all key areas of concern have been addressed in this proposed ballot measure. The Transportation Expenditure Plan summarizes improvements to the BART, Bus, Ferry and Train Networks, and provides affordable and safe transportation for children, seniors, and people with disabilities. Some of the Central County benefits include the Interstate 680 and State Route 4 interchange and State Route 4 corridor improvements, BART capacity and station improvements, and major streets, Complete Streets and roadways. The polling showed voters want improvements to BART, traffic smoothing, and more transit service for seniors and people with disabilities. In regard to BART there are over 700 cars in the BART car fleet, with a proposal to be replaced by 2018 which are fully funded. The train control system is over forty years old, the tracks need replacement, and constant improvements to the infrastructure. There will be significant funds to relieve congestion on Interstate 680 and improve transit in the corridor.

Councilmember Shuey asked if there are any plans on Interstate 680 to add an additional travel lane? Mr. Noeimi, advised the plans do not show an addition of a travel lane. Councilmember Pierce added CCTA is closing that gap in the HOV lanes to no longer have those vehicles weave in and out.

Mr. Noeimi referenced the public's request to repair the potholes; he advised approximately 24% of the monies will go back to the cities based on population and road miles formula for Street Maintenance, with about 42% of total funding for local programs of street maintenance, pedestrian/bicycle facilities, major roads/complete streets, safe transportation for children and a community development transportation program. Currently, the City of Clayton is receiving about \$236,000.00 from Measure J funds; the new measure if passed will generate an additional \$332,000.00 for Clayton's use.

Mayor Geller asked for some clarification of the monies used. Mr. Noeimi clarified that when revenues are received they are split into projects and programs. About 42% of the project revenues collected was put into bonds and CCTA is currently paying back those bonds.

Mayor Geller also asked about the management of the funds? Mr. Noeimi advised for the projects they are managing are coming in under budget, and on-time with no defects. The current administration of the programs is at 1% if the new Measure is passed that will increase by ½%.

Mayor Geller inquired on the depreciation and obsolete BART equipment and why that was not in the original plan with the knowledge that equipment wears out? Is there something happening along those lines? Mr. Noeimi is unsure as CCTA does not control BART; it is a separate public entity. There has been a regional solution reached with BART, the Metropolitan Transportation Commission, and the counties served by BART. The CCTA was concerned in the beginning and did not want to contribute more than its fair-share if other jurisdictions do not contribute.

Mayor Geller inquired if the Measure does not pass, what is the alternate plan for BART to receive funding for improvements? Mr. Noeimi advised that BART is actually going out with its own bond measure and if that does not pass they may go out again in two or four years. The CCTA is requiring BART to have a plan by 2024, and if not the CCTA reserved monies will be used for improved access for people to get to the BART stations.

Mr. Noeimi also advised part of the Transportation Expenditure Plan is to add new Growth Management Policies, primarily the jurisdictions can have the ability to amend its Urban Limit Line. Making this change will amend and improve the checklist by incorporating Measure C and Measure J.

Mr. Noeimi also noted referenced the Agenda Packet letter submitted by Public Advocates, Inc., made some false assertions that CCTA is unwilling to commit to sticking with its stated expenditure plan (TEP); he assured the City Council there is no intent to do so and there is a 45 day comment period before CCTA could make any changes to the TEP. He also noted the letter states that CCTA did not go through the Environmental Impact Report process for this ballot measure, which is an action actually not required as the CCTA is not creating a new project.

Mayor Geller opened the item for public comments.

Lorna Van Ackeren, Contra Costa Council on Aging, Board of Director on Meals on Wheels, commented she works for Hill and Dell Home Care, and is a member of the Senior Mobility Action Council. However, she appears this evening as an individual advocate for the needs of our older population. She believed our community needs to plan for our aging population and its needs for transportation. Ms. Van Ackeren shared some statistics from the Department of Finance for Contra Costa County: in the year 2060, there will be a 125% increase in "young retirees" aged 65 to 74, a 198% increase in "mature retirees" aged 75 to 84, and a 299% increase in seniors aged 85 and older. She requested the City Council approve this tonight to get this item on the ballot for voters to decide.

Robert Scrosati expressed concerns he has about the Growth Management Plan and how the plan will be managed along with funding for BART improvements. He also wanted more dollars to go to roads to relieve traffic congestion. Councilmember Pierce replied that BART is not perfect, and the system is indeed outdated and is in desperate need of improvement for its riders. It is important for the improvements to be made to the system to keep people moving throughout the Bay Area.

It was moved by Councilmember Pierce, seconded by Councilmember Haydon, to adopt Resolution No. 39-2016, to support the ballot measure for the countywide imposition of one half of one percent sales tax to fund transportation improvements in Contra Costa, and to conditionally amend the Measure J transportation expenditure plan growth management program. (Passed; 5-0 vote).

- (b) City Council discussion and determination of citizen appointments to three (3) vacancies on the Clayton Planning Commission for 2-year terms of appointed office effective July 6, 2016 through June 30, 2018.

Mayor Geller opened the discussion among the City Council to select three citizens for appointment to the three vacancies on the Planning Commission. After considerable discussion it was the City Council's consensus to appoint Mr. Bassam Altwal, Mr. William Gall, and Mr. Carle Wolfe to fill the Planning Commission vacancies.

Mayor Geller opened that intention for public comments; no comments were offered.

It was moved by Councilmember Pierce, seconded by Mayor Geller, to adopt Resolution No. 40-2016, appointing Mr. Bassam Altwal, Mr. William Gall and Mr. Carl Wolfe to 2-year terms of appointed office on the Clayton Planning Commission, with each term of office starting from July 6, 2016 through June 30, 2018. (Passed; 5-0 vote).

- (c) Discuss Mayor Geller's request to discuss the creation of a "Clayton Centenarian Recognition Program" within the city of Clayton.

Mayor Geller opened the topic to get some input on the creation of a "Clayton Centenarian Recognition Program" to acknowledge Clayton residents 100 years of age or better and recognizing each with a Proclamation for a day in their honor. The requests can come through the City Council or at City Hall.

Mayor Geller opened the item for public comments; no comments were offered.

By general consensus, the City Council endorsed the program as outlined for a "Clayton Centenarian Recognition Program."

11. **COUNCIL ITEMS** – None.


12. **CLOSED SESSION** –None.

13. **ADJOURNMENT**– on call by Mayor Geller, the City Council adjourned its meeting at 8:59 p.m.

The next regularly scheduled City Council meeting is July 19, 2016.


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Respectfully submitted,



Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL



Howard Geller, Mayor

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