

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

**TUESDAY, January 17, 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, Community Development Director Mindy Gentry, Assistant to the City Manager Laura Hoffmeister (arrived at 7:44 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 Pierce, to approve the Consent Calendar as submitted. (Passed; 5-0 vote).**

- (a) Approved the minutes of the regular meeting of December 20, 2016.
- (b) Approved Financial Demands and Obligations of the City.
- (c) Adopted Resolution No. 01-2017 approving three (3) contracts for the purchase and outfitting of a new 2017 Ford Police Interceptor in the total amount of \$53,752.86, and declaring a 1998 Ford Crown Victoria vehicle (Unit 1720) as property surplus to the City's needs and authorizing its disposal by the City Manager at public auction.

4. **RECOGNITIONS AND PRESENTATIONS**

- (a) Recognition to Endashiian, LLC (McGuire Family) in appreciation for its generous donation of \$100,000 to The Grove Park Fund 2008-2017.

Mayor Diaz presented the Jack and Colleen McGuire with a local artist's framed color rendition of The Grove Park in appreciation for its generous donation of \$100,000 to The Grove Park Fund 2008-2017.

Mr. McGuire advised he has been involved in real estate for over 60 years and this is a very pleasant memory, working with Clayton and the City Council which was a real pleasure. When the Longs Drugstore project was approved, the mayor at that time asked what is the meaning of Endashiian? Mr. McGuire advised his grandfather was from Minnesota and there is an Ojibwe Native American Tribe that he was quite fond of; the word "Endashiian" means "the family" and he felt it was appropriate to use that name for the family's LLC.

- (b) Certificates of Recognition to public school students for exemplifying the "Do the Right Thing" character trait of "Kindness" during the months of November and December 2016.

Mayor Diaz and Mt. Diablo Elementary School Kindergarten teacher Ms. Lovejoy presented a Certificate to student Nathan Collier.

Mayor Diaz and Diablo View Middle School Principal Patti Bannister presented Certificates to students Michael Cianfrano and Ava Dodson.

- (c) Certificates of Recognition to Clayton Valley Charter High School students Kate Amos and Grace Lattin for their design and development of the Clayton Police Officer “baseball trading cards” and the Clayton Police Department’s 2016 Holiday Greeting cards for use in the Department’s community policing program.

Mayor Diaz and Police Chief Chris Wenzel thanked students Kate Amos and Grace Lattin for the development of the Clayton Police Officer “baseball trading cards”, and Clayton Police Department’s 2016 Holiday Greeting cards and presented them with Certificates of Recognition.

## 5. REPORTS

- (a) Planning Commission – No meeting held.
- (b) Trails and Landscaping Committee – No meeting held.
- (c) City Manager/Staff

City Manager Gary Napper reported there remains a Planning Commissioner vacancy for the unexpired term of newly-elected Councilmember Catalano through June 30, 2017. Applications can be found on the City’s Website or by contacting the City Clerk. Staff will extend the application deadline with a tentative Council interview to take place on February 7th prior to the regular City Council meeting.

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

Vice Mayor Haydon attended the Contra Costa County Mayors’ Conference hosted by the City of Danville.

Councilmember Shuey had no report.

Councilmember Catalano attended the Successor Agency Oversight Board meeting and a community event, “Taste of Mount Diablo,” hosted by a group of Mt. Diablo Elementary School parents who are raising funds for playfield renovations. If anyone would like more information on the fundraiser, there is a Facebook page one can visit called “MDUSD Playfield Project.”

Councilmember Pierce attended three Association of Bay Area Governments meetings, two Metropolitan Transportation Commission meetings, the Bay Area Economic Institute meeting, and the Contra Costa County Mayors’ Conference hosted by the City of Danville.

Mayor Diaz assisted the Clayton Business and Community Association’s annual Holiday decorations removal, attended the County Connection Board meeting, the Contra Costa County Association of Realtors 2017 Inaugural Installation Dinner, and the 38<sup>th</sup> Annual Shellie Awards.

- (e) Other – None.

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

7. **PUBLIC HEARINGS** – None.

8. **ACTION ITEMS**

- (a) Presentation and discussion of Contra Costa County's Community Choice Aggregation (CCE) Technical Study findings and the range of further options for regional alternative electrical power.  
(Community Development Director; and Jason Crapo, Deputy Director of  
Contra Costa County Department of Community Development)

Community Development Director Mindy Gentry introduced Jason Crapo, Deputy Director for the Contra Costa County Department of Conservation and Development who presented a slideshow regarding the findings of Community Choice Energy (CCE) Technical Study commissioned by Contra Costa County.

Mr. Crapo noted Seth Baruch CCE Consultant, Local Energy Aggregation Network (LEAN) Energy US, is in attendance to provide a summary of the findings of the Community Choice Energy Technical Study enabling local governments to procure and/or develop power on behalf of their public facilities, residents and businesses from "green" or renewable energy sources not already served by Marin Clean Energy (MCE). Mr. Crapo advised the County is continuing to take comments through January 31, 2017 and then the Final Technical Study will be presented to the Board of Supervisors and various City Councils in March/April for final decisions and direction. Mr. Crapo advised the purpose of the study was to evaluate Community Choice Energy compared with current electrical service with PG&E on a number of important criteria including electricity and renewable "green energy" sources, greenhouse gas emissions, potential local solar development and potential impact of CCE on local economy. This study compared three (3) different CCE program alternatives: 1. Contra Costa form a new JPA; 2. Join the existing Marin Clean Energy (MCE) or the newly-formed Alameda County JPA, East Bay Community Energy (EBCE); or 3. Continue with existing PG&E service. Mr. Crapo added just today, the County Board of Supervisors expressed its preferred interest in joining an existing CCE program and not starting one of its own.

Mr. Baruch spoke briefly about the comparative analyses of the study looking at historical PG&E rates and forecasting future rates and growth rates and other established CCE programs. Mr. Baruch outlined the advantages of joining MCE as it is an established program that was launched in 2010 and has delivered cleaner energy at lower rates and currently has five (5) Contra Costa County jurisdictions in its membership. Mr. Baruch noted East Bay Community Energy (EBCE) based in Alameda County is a recently-formed CCE Joint Powers Authority which will be having its first meeting in a few weeks; this option may present a ground-floor opportunity for cities wishing to join. He provided some information regarding JPA board voting shares between MCE and EBCE (Simple and Weighted) noting Contra Costa County would have a 61% voting share with MCE whereas the voting share with EBCE could be 52% (Simple) or 34% (Weighted). Mr. Baruch added there are risks to CCE programs focusing on the higher risks such as legislative and regulatory risks, Power Charge Indifference Adjustment "Exit Fee" and Policy uncertainty.

Councilmember Shuey inquired if the City decides to join MCE or CCE would the "exit fee" be payable to PG&E and is it a one-time fee or an on-going fee? Mr. Baruch clarified the exit fee would be collected for as long as PG&E has procured energy on the

City's behalf until those contracts expire, at which time in theory the PCIA fees would go down.

Councilmember Shuey inquired on procured contract length through PG&E? Mr. Baruch advised programs within the CCE have short, medium and long term contracts, and it depends on the contract structure for the power that comprises the CCE customers when they depart, probably ten (10) or fifteen (15) years. The PCIA fee could be \$5.00 to \$10.00 per month reflected on the consumer's billing statement; even with these exit fees, CCE program rates have still been lower than current PG&E rates.

[Assistant to the City Manager Laura Hoffmeister arrived – 7:44 p.m.]

Mr. Crapo concluded the presentation by announcing upcoming Contra Costa city council presentations and a Public Workshop on January 26 in Danville.

Councilmember Pierce inquired on identifying sites for potential local solar development and if wind is potential source for consideration since the Technical Study summary did not specifically mention such? Mr. Crapo advised wind is definitely a renewable energy source; given the resources and budget for the Technical Study their attention was focused on solar energy. Councilmember Pierce also noted the Board of Supervisors expressed its preference in joining an existing CCE program; did they also express their preference for a Clean Energy Program versus going with PG&E? Mr. Crapo advised the Board of Supervisors was silent on that point and it was not explicitly discussed.

Vice Mayor Haydon inquired on the start-up costs versus forming our own CCE or joining an existing program, indicating on the footnote start-up funds provided by the County and funding cities are likely to be reimbursed by the JPA; how likely would the start-up costs be reimbursed? Mr. Crapo advised in other CCA's the counties funded the program and have been reimbursed through program revenues. The biggest risk is if the program did not launch.

Councilmember Shuey inquired if the City joins a CCE program then decided they did not like it, is there an exit fee? Mr. Baruch advised yes, there will be an exit fee; however, they have not had a jurisdiction join, then leave, to date. It is very likely there would be a fee associated if that were to happen to cover the cost of the power that would have to be sold.

Councilmember Catalano inquired on the time period in which the City needs to make a decision to join or not? Mr. Crapo advised in March/April the various city councils will be given final information to make a decision including the specific terms of membership.

City Manager Napper commented that since the Board of Supervisors has now taken itself out of the lead option, going forward what the County does is irrelevant to the rest of the cities that have not joined a CCA program. For example, the City of Clayton can decide all on its own to join the MCE or EBCE Community Choice Energy JPAs or do nothing and stay with PG&E.

Mayor Diaz opened the item for Public Comment.

Dawn Weisz, CEO of Marin Clean Energy, advised it is difficult to compare an existing program to one that has not formed yet. Currently, MCE is 75% greenhouse gas free with lower rates for its customers, and it offer programs to get local renewable development built in Contra Costa County; MCE is interested in the wind and solar opportunities in this service area and job creation in the community. MCE also offers low income solar rebates having provided about 40 of those in the Contra Costa County in the last few years which enables the projects to complete. MCE's renewable energy portfolio is about twice as large as PG&E's which keeps rates very competitive and affordable; 50% renewable product and 100% renewable products. In addition, MCE offers a Local Solar choice which option allows customers that want their electricity to

come from a solar project within their service territory. Customers can also choose to opt-out of MCE and retain getting power generation from PG&E; but if one does not opt-out, you are getting greener power and paying about the same or less. MCE will be 75% greenhouse gas free this year moving to 100% by 2025 and 80% renewable by 2025. If Clayton decides to join MCE, they will be able to choose an elected official representative to sit on the JPA Board and attend monthly board meetings. MCE has a staff of about 40 with administrative costs of 3% to 5% of its budget.

Jenna Famular, Community Affairs Coordinator, Marin Clean Energy, added a concern of Clayton having the smallest weighted vote representation on the existing JPA Board is not accurate. Clayton would be the sixth smallest member, with two communities in Napa County and three in Marin County being smaller.

Jim Moita, 8117 Marsh Creek Road, noted the frustration he has gone through as a solar developer with a storage facility in Brentwood that is ready to provide a megawatt of power. Mr. Moita has worked with PG&E and it has been very difficult and he has not been able to sell power to PG&E. However, if someone wanted to sell power to MCE you can go to their website and review the power purchase agreement with a term of twenty years. Clayton needs to offer this option to its citizens and businesses.

Dara Salour, Clayton resident, inquired if a solar installation on a residential home using MCE or CCE, would “net metering” be available? Power that is purchased by CCAs is simply purchasing the renewable energy credits or purchasing power and wheeling it through the existing PG&E lines. Ms. Weisz advised MCE has a net energy meter program and the only difference between their program and PG&E is MCE pays more and allows customers to cash-out at the end of the year if they generated more energy than they have used in that year. MCE is purchasing actual energy and there is a list of entities that MCE is purchasing power from with a small percentage bought as renewable energy credits at 0% to 3%; the reason for that flexibility is you never know exactly how much load your customers will be using in the course of the year until the year is over.

Councilmember Pierce indicated she would like to see a little more dollars and cents written down or case studies before making a recommendation.

Mr. Napper indicated the Council will have an opportunity to provide input to the County within the noted time frame. He added a letter was sent out by MCE to all city managers in the county inviting cities to become members and offering a “no-cost” membership in MCE if joining by May 31, 2017. Additionally, should the Council wish to hear more details specific to MCE, he could invite them to return at a separate public meeting and provide additional information.

No Action Taken.

#### Public Comments

Mayor Diaz introduced Robert Lutzow, Battalion Chief with the Contra Costa Fire Protection District, who is the new Battalion Chief of Contra Costa County Fire at Fire Station No. 11 in Clayton. Chief Lutzow advised he worked at Station No. 22 for many years and when Station 11 was closed he was the person who drove back and forth everyday between the two stations. During that time he became familiar with the City of Clayton and its community events. He advised that Station 11 has now been open full time for two years. In 2016 they ran 358 calls for service in addition to calls to other jurisdictions as needed with an average response time of five (5) minutes and two (2) seconds. Station No. 11 responds to all-risks which means structure fires, EMS, vehicle accidents, water rescue and any hazardous materials that occur in Clayton.

- (b) Consider a Resolution approving and establishing City policy on Property Assessed Clean Energy (PACE) programs for the City's affordable housing units.  
(Community Development Director)

Mindy Gentry, Community Development Director, presented the report noting the establishment of a policy is needed on a deed-restricted housing unit's participation in the Property Assessed Clean Energy Program (PACE), those units specifically included in the City's Affordable Housing Inventory. The intent is to alleviate concerns regarding the City monetary investment/subsidy in providing those affordable housing units, not to lose an affordable housing unit due to an overburdened debt load, while continuing to support the merits of the PACE program. Additional concerns include over-extending the property owner and putting a PACE lien on the real property that impacts the property owner's equity in the property's financial viability. As a reminder, PACE programs allow residential and commercial property owners located within a participating district to finance up to 100% of energy, renewable and water efficiency projects through payments on their existing property tax bill.

This policy question arose when a property owner in a deed-restricted unit requested to use a PACE financing program for energy upgrades to her home. The City's Resale Restriction Agreement recorded on the title states an owner is at default if ... "a lien is recorded against the property other than the lien of a bone fide first mortgage loan". Staff prepared the attached policy that would require an interested property owner to first seek City review and approval of participation in the PACE Program by requiring submittal of a letter of request with pertinent information and a description of the proposed improvements along with the amount to be financed through PACE. Approval of lien financing could be approved if the owner is able to meet all of the criteria outlined in the policy.

Director Gentry added that prior to this evening's meeting a written public comment was received which included a recent article published in the *Wall Street Journal* about PACE programs putting vulnerable populations at risk.

Councilmember Shuey inquired if a property owner has enough equity in the affordable housing unit at the time they are funded for a PACE project, what happens if the housing economy drops and the equity value of the home is eroded to the point the debt owed on the property, including the PACE lien, is more than its market value; is the City's financial subsidy subordinated to that PACE lien? Ms. Gentry responded essentially yes; one of the provisions of a PACE program is that its property lien takes a higher position than even the primary mortgage.

Councilmember Pierce expressed a concern with potentially rewarding commercial PACE businesses and excluding other options, such as the Bay Area Regional Energy Network (BayREN) offered through Association of Bay Area Governments. It is important for our property owners to know about the other discounts, rebates and financing options available to them, not necessarily subject to income. City Manager Napper confirmed the proposed policy would not be restricted to only PACE financing programs but allows other energy-saving financing programs the opportunity to be involved with the City's affordable housing units. He noted that City staff does not market or push one PACE program or alternate options; it merely makes them available for property owner access.

Councilmember Shuey advised our affordable housing program has not run flawlessly, and it is not required to allow this program or any other program as we have a limited inventory of Affordable Housing Units which are always a higher risk to be a loss to the City. Why would we allow a policy that could jeopardize the City's financial investments in these affordable housing homes?

Mayor Diaz opened the item for Public Comment. No comments were offered and Mayor Diaz then closed the matter to Public Comment.

Councilmember Catalano expressed concern on the type of lien this would incur on the property and its owner.

No Action Taken.

- (c) Consider a report on the likely construction and operation/maintenance costs, and possible site locations, for the City's construction of a possible second public restroom in the Clayton Town Center area.  
(Laura Hoffmeister, Assistant to the City Manager)

Laura Hoffmeister, Assistant to the City Manager, presented the staff report arising from a previous Council request for more information on a possible permanent second restroom located in the Clayton Town Center area. During the Concert season, Republic Services has provided portable restrooms at the Black Diamond Corral area to reduce the wait lines at the existing permanent public restroom in The Grove Park. Staff conducted research of recommended industry standards for an event that are three (3) to four (4) hours in length with attendance levels of two hundred fifty (250) to two thousand (2,000) attendees. Within that attendance range, 4-12 toilets are the recommended accommodation; presently, The Grove Park restrooms have a total of 3 toilets, plus 2 portable toilets in the Corral open during actual concerts. The Grove Park restroom maintenance costs are \$18,900 per year so doubling the number of permanent toilets in the park would double its maintenance and operating costs to \$37,800 per year. Ms. Hoffmeister presented several options for consideration: 1. Build a second restroom at the Black Diamond Corral across the street from The Grove Park (\$250,000 - \$350,000); 2. Expand the existing restroom (\$200,000 - \$350,000) or rebuild it with a new larger building in The Grove Park (\$300,000 - \$450,000); and 3. Rent luxury portable restrooms during the Concert season as a more inviting environment than the current portables (\$30,000 per concert season).

Councilmember Shuey inquired about the cost of additional police services costs to close that section of old Marsh Creek Road to vehicles so concert attendees feel safer to cross the street there and use the temporary restrooms at Black Diamond Corral? Ms. Hoffmeister advised she would need to have the Police Department take a look at the area as it has previously been determined for buffer safety purposes its preferred closure location has always been at Clayton Road so that a driver does not inadvertently run the barrier and immediately drive into a crowd through a closure; it is also easier to divert traffic at Clayton Road rather than once the vehicle has entered the downtown area. City Manager Napper added from a staff perspective, it is unknown if the public's disinclination to use the temporary portables is due to ambiance or if crossing the street is the deterrent. Staff can always order additional portable restrooms at the Corral during concert season but doing so may not necessarily solve the issue with the wait lines at The Grove Park restroom.

Councilmember Pierce added she does not think it has anything to do with the number of portable restrooms, rather people just do not like using portables, period. Most people do not like to go to a location they consider the backside of the concert; they would rather stand in the line at The Grove Park restroom and enjoy the music and sociality of waiting in line. Given the recent City repairs and 2 mini water storage tanks that have been added to the current park restroom, they appear to be functioning properly now, the wait lines are significantly shorter, there were fewer complaints, and it creates a more social atmosphere when standing in the park where the concert is.

Mayor Diaz opened the item for Public Comment. No comments were offered and Mayor Diaz then closed Public Comment.

No Action Taken.

- (d) City Council discussion to determine the date, time and location for the City Council's annual Goals and Objectives Setting Session with its City Manager.  
(City Manager)

Councilmember Pierce suggested Tuesday, February 7<sup>th</sup> at 5:00 p.m. City Council Members reviewed their calendars and discussed options and availability.

**It was moved by Councilmember Shuey, seconded by Vice Mayor Haydon, to call a City Council special meeting for Tuesday, February 7<sup>th</sup>, at 5:00 p.m. in the 3<sup>rd</sup> Floor Conference Room at City Hall for this purpose. (Passed; 5-0 vote).**

9. **COUNCIL ITEMS** – None.

10. **CLOSED SESSION**

Mayor Diaz announced the City Council will adjourn to a closed session to discuss the subject matter listed below [9:27 p.m.]:

- (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 Party: Pacific Union Land Investors, LLC (Joshua Reed).

Report out from Closed Session (10:33 p.m.)

Mayor Diaz reported the City Council received and discussed information, and then directed its negotiators regarding these matters but no reportable action was taken.

11. **ADJOURNMENT**– on call by Mayor Diaz, the City Council adjourned its meeting at 10:34 p.m.

The next regularly scheduled meeting of the City Council will be February 7, 2017.

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Respectfully submitted,



Janet Brown, City Clerk



APPROVED BY THE CLAYTON CITY COUNCIL

  
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Jim Diaz, Mayor

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