

Council Meeting

April 8, 2024

7:00 p.m.

The Council Meeting of Mayor and Council was held on the above date and time with Council members Carrow, Flatter, Paisley, and DeBenedictis. Mayor Smith was presiding. Recording Secretary Sue Muncey, Chief Carl Hutson, Town Solicitor Scott Chambers, Jonathan Burnett, Marvin Pedigo, Alexander Dias, Cindy Lane, Jeff Lightcap, Jonythan Bailey, Karyn Spruel, Lamont Spruel, Janis Malloch, Helen Barlow, Logan Malloch, Jason Bailey, Jacob Tiberi, Deanna Tiberi, and Dale Umbenhauer were also in attendance.

1. **Call to Order** - Mr. Smith called the meeting to order at 7:00 p.m.
2. **Pledge to the Flag** – Ms. DeBenedictis led the Pledge of Allegiance.
3. **Determination of a Quorum** – Mr. Smith determined a quorum was present.
4. **Presentation of Tributes for the Maxwell Football Club Mini Max Award Winners**

Mr. Smith presented Jonythan Bailey and Jacob Tiberi with a tribute from the town.

5. **Approval of Minutes** –

Mr. Carrow made a motion to accept the Street Committee Meeting minutes of 03/06/24, Building Committee Meeting minutes of 03/07/24, Council Meeting minutes of 03/11/24, Special Council Meeting minutes of 03/19/24, and the Law & Legislature Committee Meeting minutes of 03/26/24 as presented in its written form. Mr. Flatter seconded the motion. Motion carried unanimously.

6. **Approval of Income and Expense Report** – Mr. Smith stated an adjustment has been made in the Office Overtime. It should have been posted to Office Salaries Regular.

Mr. Paisley made a motion to accept the March 2024 Income and Expense Reports as amended in its written form. Ms. DeBenedictis seconded the motion. Motion carried unanimously.

7. **Communications** – Ms. DeBenedictis read a thank you letter dated 03/14/24 from the Boys and Girls Club.

8. Report of the Chief of Police – Chief Hutson stated there were 469 calls for service. It is steadily increasing. There were 270 traffic arrests and 17 criminal arrests. Chief Hutson and Lt. Rau went to Millsboro Police Department for a tour of their accredited facility on 03/01/24. Lt. Scott, Sgt. Bishop, Cpl. Hume, Cpl. Fox, and Cpl. Hibbert read to children in schools for Read Across America on 03/04/24. Chief Hutson attended Kent County Chief’s Meeting in Wyoming and the Chief’s Foundation Meeting in Dover on 03/05/24. Lt. Scott and Cpl. Hume assisted with basketball at Clayton Intermediate School on 03/06/24. Multiple officers attended “I Love Smyrna School District Day” at Smyrna High School on 03/09/24. Chief Hutson attended the Chief’s Meeting in Dover on 03/12/24. Chief Hutson, Lt. Scott, Lt. Rau, Sgt. Bishop, and Cpl. Perna assisted with the intruder alert drill at Clayton Elementary School on 03/19/24. Sgt. Bishop provided security at the school board meeting at Clayton Intermediate School on 03/20/24. All officers received Stinger Stop Stick Training and Radar Training at the station on 03/27/24. Chief Hutson said he was closing out the EV Grant.

9. Report of the Town Solicitor – Mr. Chambers had no report.

10. Reports from Members of Council

a. Report from Electric Committee – Ms. DeBenedictis had no report.

b. Report from Street Committee – Mr. Carrow stated there is an item under New Business. Projects were approved last year. Looking at May to verify the figures.

c. Report from Sewer & Stormwater Committee – Mr. Flatter had no report. Mr. Smith stated the sewer project did not begin. The vendor should start in the next couple of weeks. Mr. Carrow asked about advance notice. Mr. Smith stated the residents will be notified directly in writing.

d. Report from Equipment Committee – Mr. Carrow had no report.

e. Report from Personnel Committee – Mr. Flatter stated we have a meeting tomorrow afternoon.

f. Report from Public Safety Committee – Mr. Smith had no report.

g. Report from Budget Committee – Mr. Flatter had no report. Mr. Smith asked to have a quarterly meeting in April.

h. Report from Economic Development Committee – Mr. Carrow stated on 06/08/24 there will be a community event at Metal Masters. There will be cars, vendors, and Movie Night. We will be playing Grease. Mr. Smith asked to have it posted on Facebook and the website in May. Ms. DeBenedictis asked about the hours. Mr. Carrow stated it will be all day.

i. Report from Downtown Development Rebate – Ms. DeBenedictis stated a house on East Street used funds. A house on the corner of Roth Alley and Main is getting a new roof. A house on Main Street is getting siding.

- j. **Report from DEMEC** – Ms. DeBenedictis stated there is a meeting this week. Mr. Smith notified the town of an electric increase effective 06/01/24.
- k. **Report from Board of Adjustments** – Mr. Smith had no report.
- l. **Report from Planning & Zoning Committee** – Mr. Smith stated the next scheduled meeting will be on 04/24/24 at 7:00 p.m.
- m. **Appeals Board** – Mr. Smith had no report.
 - a. **Law and Legislature Committee** – Mr. Paisley stated the committee met on 03/25/24 to consider the ordinances that were introduced last month. We have those ordinances on the agenda tonight for a final vote. The ones we will be introducing tonight are composed of reforms to the police title and also additions that were made to the Code Enforcement Officer’s stipulations. He thanked the Town Solicitor’s office and the police chief for their help with those ordinances. There was a lot of work that went into a lot of them. We will set up a meeting in April.
 - b. **Building Committee** – Mr. Carrow stated the committee approved to move forward with the project.

11. Public Forum

Mr. Dias asked if there was still an ordinance on the books about working on your cars in the streets. Chief Hutson answered as far as he is aware and asked where at. Mr. Dias stated Providence Crossing.

12. Unfinished Business

- a. **Discuss and Vote on Ordinance 2024-03 – An Act to Amend Article 1.1 of the Clayton Municipal Code Related to Business and Contractor Licensing. (RP)**
Mr. Paisley stated this ordinance was introduced on 03/11/24, passed by the Law & Legislature Committee on 03/26/24, and was approved by the Solicitor’s Office prior to introduction on 03/05/24. It completely overhauled our building code section, and the Code Enforcement Officer did a lot of hard work on this. I commend him for that.

Mr. Paisley made a motion to adopt Ordinance 2024-03, an act to amend Article 1.1 of the Clayton Municipal Code. Mr. Carrow seconded the motion. Motion carried unanimously.

- b. **Discuss and Vote on Ordinance 2024-04 – An Act to Amend Title 4 of the Clayton Municipal Code Related to Business and Contractor Licensing. (RP)**
Mr. Paisley stated that the ordinance was introduced on 03/11/24, passed by the Committee on 03/26/24, and approved prior to the Solicitor’s Office on 03/05/24. This

specifically deals with our business license. This was an area of code that we had not touched in a little bit of time, and we did some pretty good amendments too. It was brought up to date as well.

Mr. Paisley made a motion to adopt Ordinance 2024-04, an act to amend Title 4 of the Clayton Municipal Code related to business and contractor licensing. Mr. Flatter seconded the motion. Motion carried unanimously.

c. Discuss and Vote on Ordinance 2024-05 – An Act to Create Article 8.9 of the Clayton Municipal Code Related to the Department of Inspections and Enforcement. (RP)

Mr. Paisley stated the same thing – one introduction, approval by the Solicitor’s Office, and Committee approval. This one specifically kind of codifies the Code Enforcement Officer’s provisions and code. What his different responsibilities are and things of that nature.

Mr. Paisley made a motion to adopt Ordinance 2024-05, an act to create Article 8.9 of the Clayton Municipal Code related to the Department of Inspections and Enforcement. Ms. DeBenedictis seconded the motion. Motion carried unanimously.

d. Discuss and Vote on Ordinance 2024-06 – An Act to Amend Title 3 of the Clayton Municipal Code Related to Police Enforcement of the Laws of the State of Delaware, Houses of Prostitution and Gambling, and Skateboarding. (RP)

Mr. Paisley stated this is a multi-section ordinance. An ordinance that is amending several different parts of code. This ordinance was introduced 03/11/24 and passed on by the Law & Legislative Committee on 03/26/24. Specifically, what it is doing is kind of updating the general clause of the police title to give them the authority to enforce the laws. As you have seen, the old section referred to a Charter amendment back in the ‘80’s. Since we have had several since then, we just adopted, we are amending it to be more up to date. In addition, we are removing the houses of prostitution and gambling houses sections, as obviously those would be handled through State code and not town ordinance. We are also removing the prohibition against utilizing a skateboard in town.

Mr. Paisley made a motion to adopt 2024-06, an act to amend Title 3 of the Clayton Municipal Code related to police enforcement of the laws of the State of Delaware, houses of prostitution and gambling, and skateboards. Mr. Flatter seconded the motion. Motion carried unanimously.

e. Discuss and Vote on Ordinance 2024-07 – An Act to Amend Article 3.2-3 of the Clayton Municipal Code Related to Use of Vehicle, Public Streets, or Public Place for Sleeping Quarters. (RP)

Mr. Paisley stated this is another ordinance that we introduced on 03/11/24 and was adopted by the Committee on 03/26/24. Very simply, here we are adding exemptions to use a public street for sleeping quarters for commercial truck drivers and recreational RV's provided that they are not using the street for that purpose for more than 72 hours which commensurate with our other ordinances that we have that pertain to truck drivers and RV's.

Mr. Paisley made a motion to adopt Ordinance 2024-07, an act to amend Article 3.2-3 of the Clayton Municipal Code related to use of vehicles, public streets, or public place for sleeping quarters. Mr. Flatter seconded the motion. Motion carried unanimously.

f. Discuss and Vote on Ordinance 2024-08 – An Act to Amend Article 3.3-7 of the Clayton Municipal Code Related to Basketball Poles and Other Items Left in the Roadway. (RP)

Mr. Paisley stated he is just going to read the synopsis for this one because the Committee made a few adjustments to this one. It was introduced and passed by the Committee last month. This act removes the prohibition of placing a basketball pole on the street and maintains the moratorium on storing one on the public avenues. In addition, it removes the stipulation that places liability for a public basketball pole left on the roadway on the nearest homeowner and clarifies that at no time shall a basketball pole or similar device impede traffic. Furthermore, this updates the penalty for violations of this act to first require a written warning. Finally, this includes grammatical corrections to the existing.

Mr. Paisley made a motion to adopt Ordinance 2024-08 an act to amend Article 3.3-7 of the Clayton Municipal Code related to basketball poles and other items left in the roadway. Ms. DeBenedictis seconded the motion. Motion carried unanimously.

13. New Business

a. Presentation of FY'21 Town of Clayton Audit by Maillie Accountants. Discuss and Vote on FY'21 Town of Clayton Audit. (NS)

Mr. Smith asked Mr. Umbenhauer from Maillie to make the presentation. Mr. Umbenhauer introduced himself. He is the audit principal on the engagement for the town. He stated we are a few years late with this. Things are in pretty good order now. Mr. Umbenhauer stated he has a presentation for the audit that he is going to go over. The first thing he went over was the Key Financial Statement between the governmental activities and business type activities. So, the business type activities are the sewer and electric and the governmental activity is basically everything. For the governmental

activities in 2021 we had cash of \$6,485,975. Receivables were \$250,370. Capital Assets net of accumulated depreciation of \$2,338,301. Net pension asset of \$1,137,594. What that means is that the net pension fiduciary net position was actually higher than the liability at 12/31/21 so it created an asset. Compensated Absences were \$188,745. Unearned Revenue was \$750,078. That was due to the ARPA funds that came in 2021. OPEB Liabilities were \$2,109,561. For Business-Type Activities we had cash of \$714,835. Receivables of \$413,331. Capital Assets net of accumulated duration of \$3,258,377. There is nothing assigned to the business-type activities for the net pension asset. Compensated Absences of \$64,489. There was no Unearned Revenue in the business-type activities. There is no OPEB Liability applied to the business-type activities. The next page shows the Net Position for the past three years again broken down between the governmental activities and the business-type activities. There you can see the growth from 2019 to 2021. We went from \$4,890,767 to \$5,666,663. In the business-type activities we went from \$2,936,409 to \$3,825,282. The next page shows the Changes in Net Position. So, for 2021, we have revenues of \$3,271,900. Expenditures of \$2,889,030 giving us a net change before transfers of \$382,870. We had some transfers in from the business-type activities of \$327,553 giving us the change for the year of \$710,423. On the business-type activities, we have revenues of \$4,363,881. Expenses of \$3,596,498 for a change before transfers of \$767,383. Take the \$327,553 transfer out and we are left with the change in net position for the year of \$439,830. The next page is the General Fund Budget vs. Actual. The final budgeted revenues were \$1,895,124. The actual revenues were \$2,441,517 giving us a positive budget variance of \$546,393. The total expenditures we budgeted were \$2,636,791. They came in at \$2,966,107 for a negative budget variance of \$329,316. Our other financing sources we budgeted \$2,000. They came in at \$557,883 giving us a positive budget variance of \$555,883. We budgeted for a loss for the year of \$739,667 and we actually had a gain for the year of \$33,293. That gave us an overall positive budget variance for the year of \$772,960. The next page shows the breakdown between Governmental Fund Balances. The governmental fund balance is broken down between the non-spendable, restricted, committed, assigned, and unassigned. For the Town of Clayton, we had \$2,979 of non-spendable which was made up of prepaid expense. We have restricted amounts of \$3,946,724 which is restricted by outside donors. We have an unassigned amount of \$1,475,191 giving us a total fund balance of the year of \$5,424,894. The next two pages is just some highlights from the required communications. We did our audit in accordance with the United States Generally Accepted Auditing Standards. We had an unmodified opinion although we did have two restatements to adjust the prior year's cash receipts and to separate out the OPEB Trust Fund. We talked about significant accounting policies. There were no transactions that were lacking authoritative guidance. The next section talks about the significant estimates that we have during the audit and those are depreciation, compensated absences, the net pension asset or the liability, and the related deferred outflows and inflows. We had no difficulties or disagreements dealing with management. Subsequent events – disclosures concerning the sale of the town's water system substation.

Mr. Smith asked if anyone had any questions about the presentation. Maillie along with Horty & Horty has spent an endless amount of hours to get us caught up, restructured,

and get this 2021 audit done. Both firms have agreed to combine our 2022 / 2023 audit but have them separated. This is to be completed by the end of this year, which would bring us back up to speed and in line, in compliance, with our Charter. What you walked into and were still willing to work with us, all the hard work you put into this. We definitely do appreciate it. Mr. Umbenhauer stated absolutely, thank you very much. Mr. Smith stated if you need anything, give me a call.

Ms. DeBenedictis made a motion to accept the 2021 audit as presented. Mr. Flatter seconded the motion. Motion carried unanimously.

b. Discuss and Vote on Donation to the Clayton Fire Company from General Funding. (NS)

Mr. Smith stated he understands this is being funded by the fireman side and they have raised some funds. They are short for the device of \$3,550. He put it on the floor for discussion if they have any questions or concerns. His understanding is it is a breaching device? Mr. Lightcap stated it is a forcible entry prop. It is a steel door. We can practice beforehand. The cost was actually \$7,915. We have raised \$3,500 through Breakfast with Santa and other fundraising activities. We would be able to keep it at the station and when younger members come in, we can actually do the training with them. Mr. Flatter asked will the \$3,550 cover the rest of it? Mr. Lightcap said yes.

Mr. Paisley made a motion to donate \$3,550 from the General Fund to the Clayton Fire Company to purchase a forcible entry prop. Mr. Flatter seconded the motion. Motion carried unanimously. Mr. Carrow abstained from the motion.

Mr. Smith stated this will be paid from the interest earned in March 2024.

c. Discuss and Vote on the Process for Constructing a New Town Hall and Police Department. Discuss and Vote on Quote Given to Draw up Building Plans. (WC)

Mr. Carrow stated we will scratch the part about voting on the quote given to draw up the building plan. We need to meet with the individual prior to going to Council. As far as the construction of a new Town Hall and Police Department, the Committee that was formed by the Mayor did meet. We had a long discussion. We had Mr. Ide who had been contacted by the town to come in and look at our general building. We looked at the deficiencies we have and what we need in the future. A presentation was given to the Committee. We felt that it would be important for the town to go forward with designing and eventually, hopefully, constructing a new Town Hall and Police Department. At this point I would like to make a recommendation that the Committee be given permission to go forward with the design. It would be brought back to Council before anything was decided money wise. This is basically giving the Committee permission to go forward with designing a Town Hall and Police Department and bringing it back to Council. Mr. Smith stated there is going to have to be a number

associated with that design that we will have to approve before we can do it. Mr. Carrow said if we do what? Mr. Smith stated if you are asking for a motion to proceed with the design, we are going to need a financial cost for that. Once we do that, we can approve the design. Mr. Carrow stated that is what we are going to do next month. Mr. Smith stated Council cannot approve going forward with the design until we know how much it is going to cost us. Mr. Chambers stated as he understands the motion, he is simply asking for authorization to proceed and get you a number and come back. Mr. Paisley asked if we needed to vote on that. Mr. Chambers stated you probably do not, but it is an advantage to do it. It is sort of perfunctory. Let him keep marching forward and come back. You are not really taking any action.

Mr. Carrow made a motion to get a quote for the design of the Town Hall and Police Department and bring it back to Council for approval. Mr. Paisley seconded the motion. Motion carried unanimously.

d. Announcement of Candidates for the 2024 Clayton Town Council Election. (NS)

Mr. Smith stated in 2024 two of the five seats on Council come open for election this year. So far three candidates have filed for election – Mary Ellen DeBenedictis, Ryan Paisley, and Marvin Pedigo. Since more than two candidates have filed, an election will be held on April 30th at Town Hall. The polls will open from noon until 8:00 p.m. Any individual who qualifies under the Charter has until tomorrow, April 9th, at 4:30 p.m. to file as a candidate. Good luck to all.

e. Discuss and Vote on Street Committee’s Recommendation that Council Solicit Two Quotes: One for Multi-Use Path and One for a Sidewalk Within the Same Path. (WC)

Mr. Carrow stated the Street Committee met and discussed a couple of things. One of those issues was the discussion to extend the walkway or sidewalk that stops at N. Bassett Street and Industrial Park to where it would meet back up again with a walking path which ends at the curve on N. Bassett Street by the old ice plant. There is a gap between Industrial Blvd. by Schwan’s and the curve on N. Bassett Street where there are no sidewalks. They are either walking on the grass or walking on the street. The Committee is asking for permission from the Council to try to seek some funding for that. We are going to look outside of our General Fund and see if we can obtain some funding for that. We would have to get some estimates for that. It is a public safety issue that needs to be addressed. There are a lot of people that use that now walking, school kids going back and forth to school, and it is just something that probably should have been done before but for some reason it was not. He thinks it is something that seriously needs to be looked at and possibly completed if we are able to do so. From Schwan’s to the curb where the railroad tracks crawl. Ms. DeBenedictis asked if you go around the curve. Mr. Carrow stated the curve is where it stops. So, we are talking about 500 feet, maybe 750 feet, something like that. Ms. DeBenedictis agrees it would be good to put a sidewalk in. Mr. Flatter stated you really open it up because after that gap where it picks up at the curb that goes all the way behind the high school and connects into Smyrna. The hardware store and everything so that connecting opens up a lot of possibilities. Mr. Carrow stated it gets people off of the street. They walk in the

grass or lawn, on the street, bicycles in the street. This would get them off of the street and off onto the walking path. It could be a walking path. It just really depends on cost estimates and what we can negotiate. We have to obviously do some negotiating with the businesses there right away to put that through. We are basically asking permission to go forward with that from the Council to bring that back at some point.

Mr. Smith made a motion to move forward with seeking funding to extend the walking path from where it stops by Schwan's to the old ice plant. Mr. Flatter seconded the motion. Motion carried unanimously.

Mr. Smith stated he will have Vice Mayor Paisley read the introductions of the following five ordinances. All ordinances that are introduced today will be sent to the Law & Legislature Committee for review.

f. Introduction of Ordinance 2024-09 – An Act to Amend Article 3.3-5 of the Clayton Municipal Code Related to Abandoned, Wrecked, Dismantled, Inoperative, or Unregistered Vehicles. (RP)

Mr. Paisley stated he would ask that Ordinance 2024-09 an act to amend Article 3.3-5 of the Clayton Municipal Code related to abandoned, wrecked, dismantled, inoperative, or unregistered vehicles be introduced.

g. Introduction of Ordinance 2024-10 – an Act to Amend Article 3.3-1 of the Clayton Municipal Code Related to Traffic, Parking, and Vehicles. (RP) 954040

Mr. Paisley stated he would ask that Ordinance 2024-10 an act to amend Article 3.3-1 of the Clayton Municipal code related to traffic, parking, and vehicles be introduced.

h. Introduction of Ordinance 2024-11 – An Act to Amend Article 3.2-7 of the Clayton Municipal Code Related to Disorderly Use of Premises. (RP)

Mr. Paisley stated he would ask that Ordinance 2024-11, an act to amend Article 3.2-7 of the Clayton Municipal Code related to disorderly use of premises be introduced.

i. Introduction of Ordinance 2024-12 – An Act to Amend Article 3.2-1 of the Clayton Municipal Code Related to Making, Creating, or Permitting Unreasonably Loud, Disturbing, or Unnecessary Noise Prohibited. (RP)

Mr. Paisley stated he would ask that Ordinance 2024-12 an act to amend Article 3.2-1 of the Clayton Municipal Code related to making, creating, or permitting unreasonably loud, disturbing, or unnecessary noise prohibited be introduced.

j. Introduction of Ordinance 2024-13 – An Act to Amend Article 3.2-2 of the Clayton Municipal Code Related to Disorderly Conduct. (RP)

Mr. Paisley stated he would ask that Ordinance 2024-12 an act to amend Article 3.2-2 of the Clayton Municipal Code related to disorderly conduct be introduced.

Mr. Smith stated to all of those that are introduced will be sent to the Law & Legislature Committee. Let the record reflect that. All the ordinances that were discussed and voted on today, after executed will be uploaded to Municode. There is a Public Meeting scheduled for the 16th of this month and that is in regard to any stakeholders of 605 West Street.

14. Adjournment

Mr. Carrow made a motion to adjourn. Mr. Flatter seconded the motion. Motion carried unanimously. The meeting was adjourned at 7:42 p.m.

Recording Secretary,

Sue Muncey