



AGENDA

REGULAR MEETING

* * *

CLAYTON CITY COUNCIL

* * *

TUESDAY, April 17, 2018

7:00 P.M.

*Hoyer Hall, Clayton Community Library
6125 Clayton Road, Clayton, CA 94517*

Mayor: Keith Haydon

Vice Mayor: David T. Shuey

Council Members

Tuija Catalano

Jim Diaz

Julie K. Pierce

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review in City Hall located at 6000 Heritage Trail and on the City's Website at least 72 hours prior to the Council meeting.
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at www.ci.clayton.ca.us
- Any writings or documents provided to a majority of the City Council after distribution of the Agenda Packet and regarding any public item on this Agenda will be made available for public inspection in the City Clerk's office located at 6000 Heritage Trail during normal business hours.
- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7304.

* CITY COUNCIL *

April 17, 2018

1. **CALL TO ORDER THE CITY COUNCIL** – Mayor Haydon.

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

3. **CONSENT CALENDAR**

Consent Calendar items are typically routine in nature and are considered for approval by one single motion of the City Council. Members of the Council, Audience, or Staff wishing an item removed from the Consent Calendar for purpose of public comment, question or further input may request so through the Mayor.

(a) Approve the minutes of the City Council's regular meeting of April 3, 2018.

[\(View Here\)](#)

(b) Approve the Financial Demands and Obligations of the City. [\(View Here\)](#)

(c) Adopt a Resolution directing the preparation of an Engineer's Report for calculation of the annual real property tax assessments in FY 2018-19 for the Diablo Estates at Clayton Benefit Assessment District (BAD). [\(View Here\)](#)

(d) Approve a 1-year single-bid award of contract to Waraner Brothers Tree Service in the amount of \$55,000 for performance of the City's 2018 Annual Weed Abatement Program for fire hazards on City-owned properties and open space (funded by the Citywide Landscape Maintenance District, CFD 2007-1).

[\(View Here\)](#)

4. **RECOGNITIONS AND PRESENTATIONS**

(a) Presentation of its Annual Report for 2017 by Joyce Atkinson, President of the Clayton Community Library Foundation. [\(View Here\)](#)

(b) Proclamation declaring the week of April 16 - 22, 2018 as "Clayton Community Library Volunteer Recognition Week," and recognition of Clayton's "Library Volunteers of the Year" for 2018. [\(View Here\)](#)

(c) Kickoff of Clayton's Certified Farmers' Market for 2018
"Opening Day" is Saturday, May 12th

(9:00 am – 1:00 pm, each Saturday in the Main Street public and KinderCare's parking lots)
(Shawn Lipetzky, Regional Manager, Pacific Coast Farmers' Market Association)

(d) Presentation by the Mt. Diablo Silverado Council, Boy Scouts of America, regarding the status of Scouting in Clayton (Arnel Jaime, District Executive).

5. **REPORTS**

- (a) Planning Commission – No meeting held.
- (b) Trails and Landscaping Committee – No meeting held.
- (c) City Manager/Staff
- (d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.
- (e) Other

6. **PUBLIC COMMENT ON NON - AGENDA ITEMS**

Members of the public may address the City Council on items within the Council's jurisdiction, (which are not on the agenda) at this time. To facilitate the recordation of comments, it is requested each speaker complete a speaker card available on the Lobby table and submit it in advance to the City Clerk. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Mayor's discretion. When one's name is called or you are recognized by the Mayor as wishing to speak, the speaker shall approach the public podium and adhere to the time limit. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. The Council may respond to statements made or questions asked, or may at its discretion request Staff to report back at a future meeting concerning the matter.

Public comment and input on Public Hearing, Action Items and other Agenda Items will be allowed when each item is considered by the City Council.

7. **PUBLIC HEARINGS**

- (a) Continued Public Hearing to consider the Introduction and First Reading of a proposed City-initiated Ordinance No. 481 amending Chapter 8.14 (Regulation of Smoking) of the *Clayton Municipal Code*. ([View Here](#))
(Community Development Director)

Staff recommendations: **1).** Receive the staff presentation; **2).** Re-open the Public Hearing and receive public comments; **3).** Close the Public Hearing; **4).** Following City Council discussion, and subject to any selection of alternative option for incorporation into the proposed Ordinance, approve a motion to have the City Clerk read Ordinance No. 481 by title and number only and waive further reading; and **5).** Following the City Clerk's reading, adopt a motion to approve Ordinance No. 481 for Introduction with the finding the action does not constitute a project under CEQA.

8. ACTION ITEMS

- (a) Policy discussion and direction concerning whether to incorporate rental housing units/projects into the City's existing inclusionary housing law (ref. AB 1505). (Community Development Director) ([View Here](#))

Staff recommendation: Following policy discussion and opportunity for public comments, it is recommended the City Council by motion direct staff to initiate the process to modify the City's Inclusionary Housing Ordinance to incorporate rental housing for local application of the same standards required for homeownership projects, and apply it to all housing types as defined and counted by the State Department of Housing and Community Development.

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

10. CLOSED SESSION

- (a) *Government Code Section 54957.6*, Conference with Labor Negotiator
Instructions to City-designated labor negotiator: City Manager
Employee Organization: Clayton Police Officers Association (CPOA)

Report out from Closed Session: Mayor Haydon.

11. ADJOURNMENT

The next regularly scheduled meeting of the City Council will be Tuesday, May 1, 2018.

#

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

TUESDAY, April 3, 2018

Agenda Date: 4-17-2018

Agenda Item: 3a

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, and Councilmembers Diaz and Pierce. Councilmembers absent: Vice Mayor Shuey and Councilmember Catalano. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Police Chief Elise Warren, and City Clerk/HR Manager Janet Brown.

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

3. **CONSENT CALENDAR**

It was moved by Councilmember Pierce, seconded by Councilmember Diaz, to approve the Consent Calendar as submitted. (Passed; 3-0 vote).

- (a) Approved the minutes of the City Council's regular meeting of March 20, 2018.
- (b) Approved the Financial Demands and Obligations of the City.
- (c) Adopted Resolution No. 12-2018 approving the City's list of local transportation improvement projects for Fiscal Year 2018-19 involving Road Maintenance and Rehabilitation Account – Local Streets and Road Funds (RMRA-LSR; SB1).

4. **RECOGNITIONS AND PRESENTATIONS**

- (a) Presentation by Margaret Romiti, Emergency & Volunteer Services Manager, Concord Police Department regarding availability of 9-1-1 Services and Emergency Notifications with Smart911.

Margaret Romiti (Emergency & Volunteer Services Manager, Concord Police Department) presented a slide show to inform the Clayton community about a new software program called RAVE Mobile Safety & Smart911. Initially, the City of Concord launched a self-service portal to its residents but it is also available to Clayton residents; the added software system enables push-out notification alerts and the creation of an individual's profile which will pop up to the dispatch center when 9-1-1 is dialed.

Some opt-in features include emergency and disaster topics and events available in three (3) languages; additional languages may be added as needed. Ms. Romiti advised the system includes business and school locations and their facilities; with the added capability to upload maps, should officers go onto one's property they will already have the owner's data in their CAD systems, including phone numbers of the business and business staff numbers if included in the profile. The system also has locations of Automatic External Defibrillators (AEDs); if someone has an event dispatchers can direct citizens or officers to AED locations. The City of Concord launched this program in November; since then several outreach presentations have been conducted and they want to reach out to additional locations such as senior centers. In Concord, an

appointment can be made to enroll seniors online to register with the assistance of a volunteer. Monthly campaigns are also conducted with a goal of 1% - 4% of citizens registered.

Ms. Romiti advised Smart911 is popular software platform on the east coast at its universities where a student can log into the platform and provide notification they are leaving their classroom and provide an estimate of how long it will take to get to their car. If the student does not call, dispatch will reach out to them and put out an emergency if they do not hear back from that student. This service is free to all citizens in the cities of Concord and Clayton; citizens can include as little or as much information they choose including work or home address, additional contact numbers including emergency contact, or if it involves an elderly parent one can register them especially if they have Alzheimer's or dementia list all household residents; and make, model, color, vin number and license plate of all vehicles. It is highly encouraged to add photos of one's children and elderly at the residence to assist dispatchers and police if ever calling 9-1-1. Also, if a caller dials 9-1-1 but cannot speak, police will be able to locate them. There is also an area to register any medical issues and medications. Once information is placed into the secure system, every 6 months the subscriber will receive an email indicating the profile has expired but a link is provided to update the profile with the most current information. To enroll go to www.smart911.com to register.

Councilmember Pierce indicated this is great and asked if Smart911 integrates with the Contra Costa Alert System? Ms. Romiti advised it does not integrate with each other as the Contra Costa System is through the County Sheriff's Office and is funded by the refineries as separate system which law enforcement can use as a whole throughout Contra Costa County. However, if someone is registered in Smart911 and they visit another city or county and dial 9-1-1, their information will pop up in that dispatch center. Current participants are Brentwood, Concord, Clayton, San Ramon and San Ramon Fire.

Councilmember Pierce asked if this system works with a First Alert type of device hooked through a home alarm system. Ms. Romiti advised the two systems are not compatible.

Councilmember Pierce further inquired if an iPhone or iWatch work with the Smart911 system. Ms. Romiti advised if the device has a phone number and can be used to dial 9-1-1, the Smart911 profile will indeed pop up to the dispatchers so long they enter those phone numbers onto their Smart911 profile.

Councilmember Pierce added this system sounds much more sophisticated than the other systems out there and perhaps in the future they could all be integrated. Councilmember Pierce noted during the North Bay fires, cell phone towers went down however text messages were still able to go out as they use less bandwidth. Is this something Smart911 has the capability to do? Ms. Romiti advised Smart911 has that capability however we have not pushed that out yet; a lot of dispatch centers are getting text capability.

Mayor Haydon remarked this will be a big benefit in responding to emergency services and he encouraged residents to register.

City Manager Napper clarified that Clayton's existing contract for dispatch services through the City of Concord has already paid for this service to Clayton residents and businesses. The contract provides that when Concord acquires new or additional software or other equipment that facilitates police dispatching our City is automatically included as a funding partner under a pre-determined formula.

Mr. Napper then inquired if this Smart911 system includes the locations of AEDs within the city of Clayton? Ms. Romiti advised they have not been included at this time as they use another company for AED locations; she noted AEDs are available in the City of Concord's police vehicles.

5. REPORTS

(a) Planning Commission – Vice Chair Bassam Altwal indicated the Commission's agenda at its meeting of March 27, 2018 included the consideration of a Home Occupation Permit to allow an after-school home-based instruction of Mandarin, calligraphy, painting, paper cutting art, and other Chinese-themed activities to elementary school and middle school aged children. Some neighbors were concerned about additional traffic; however, the former owner of the property used the property as a church. The commission added two (2) conditions to the approval by adding anyone around the attending children must be CPR-certified and clear a background check through Live Scan. This item was unanimously approved.

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

(c) City Manager/Staff –

City Manager Napper announced a Community Meeting will take place on April 4th at 7:00 p.m. in Hoyer Hall held by the City's prospective developer, Fulcrum Development, who will share information with the community about its facility elevations and site plan map on its proposed senior care facility for the City's vacant property in Clayton's downtown. The City's commercial broker will also be in attendance to explain what he has done to outreach for potential land uses on that vacant property. The community is invited to be self-educated regarding some of the thoughts behind what might be the use on that property; at this time it is characterized as senior housing facility with a retail component at the frontage of Main Street. This senior housing is different than Diamond Terrace as it is a senior living facility; the proposed facility will be senior assisted living which is higher-care senior living with a memory care unit; the occupants will not be driving thereby limiting the amount of traffic imposed on the downtown. Many constituents may wonder why the City Council and Planning Commissioners will not be in attendance; the Planning Commission will review and recommend a decision on the project to the City Council, which would then be the ultimate determiner to approve or deny the proposed land use. Attendance by any of those City officials could influence their bias for or against the project before it officially comes to them on a public agenda.

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

Councilmember Diaz noted he assisted in the rewriting and updating of the professional examination for software systems previously talked about in the private sector capacity. He attended the 29th Annual Valley Leadership Prayer Breakfast, and attended and chaired the Clayton Business and Community Association pre-meeting for the annual Art & Wine Festival scheduled for April 28 and 29.

Councilmember Pierce attended the Contra Costa Transportation Authority Board meeting, the East Bay Division League of California Cities meeting, and attended the Redefining Mobility Summit hosted by the Contra Costa Transportation Authority and GoMentum Station.

Mayor Haydon attended the Creekside Art Festival where he presented the Peoples' Choice Award, a Clayton Business and Community Association General Membership

meeting, and the Clayton Business and Community Association BBQ cook-off planning meeting with the event taking place on July 14.

(e) Other – None.

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

7. **PUBLIC HEARINGS**

(a) Consider a report by All Out Sports League (AOSL) regarding its community recreation sports programs and participant fees at the Clayton Community Gymnasium and adjacent Community Park through existing contract with the City of Clayton.

(City Manager; and Mr. Casey Copeland, AOSL)

City Manager Napper noted the Clayton Community Gymnasium sits on land once owned by the City through the Oakhurst Development process. After the middle school was built, there was no gymnasium and this community spearheaded an effort to obtain school bond money through the state; with additional donations from the community and using some Clayton redevelopment agency funds, the gymnasium was constructed that is now used by Diablo View Middle School. As this effort was a joint construction project, the City had to gift its land to the school district as the school district could not access state school bond monies without having title of the underlying property upon which an improvement would be made.

Since the gymnasium's opening there has been a master use agreement with the Mt. Diablo Unified School District wherein when school is in session the gymnasium is for exclusive use for school purposes; however, when school is out of session, including weekends, summer and school breaks, the City as a joint funding partner of the gymnasium has the opportunity to utilize that gymnasium. Since Clayton does not have sufficient organizational resources to create a Parks and Recreation Department, the City contracted initially with the Mt. Diablo Region YMCA to run community recreation programs at the gymnasium. That program went well for a number of years when suddenly and unfortunately the YMCA became ineligible to continue its operations.

The City immediately commenced an internal examination as to which entity or private contractor could operate a base of community programs at the gymnasium and who would be willing to step forward to fill that void. Fortunately All Out Sports League (AOSL) stepped forward and has been able to keep the community recreation programs operating. The City worked out an agreement with Mr. Casey Copeland (AOSL) providing access to the gymnasium during the City's scheduled use periods and AOSL commenced operation as a pilot program to observe how effective AOSL's programs would be. After about one (1) year the City asked Mr. Copeland to continue with a multi-year operating agreement with All Out Sports League, which is an independent contractor responsible for the generation, production, operation, and community recreation programs on a user-fee basis.

City Manager Napper noted the City does not contribute any money towards the contract or its programs, and the City has no legal rights to determine fees for programs or types of classes. Mr. Copeland's AOSL has since developed a following with the gymnasium overflowing with kids of all ages and adults; the most popular program is developing future players from our community for the NBA. One

of the Council's desires during its annual goals setting session this year was to have an update from Mr. Copeland and how the AOSL programs are doing along with a review prevailing rates compared to other competitive facilities.

Mr. Copeland provided a brief history and update regarding All Out Sports League. AOSL started ten (10) years ago as a 5-person basketball camp out in Brentwood; since then participation has grown to over 2,500 since its move to the Clayton Community Gymnasium. Currently, All Out Sports League has an overall 5-star rating on Yelp. Mr. Copeland provided an update to the program offerings primarily in the Clayton gym consisting of youth basketball leagues and camps; volleyball leagues and camps; flag-football camp every summer; T-ball in the Spring; Club basketball program; drop-in basketball; and AOSL offers financial scholarships to those who in need. All Out Sports league also offers adult volleyball; softball; and drop-in volleyball. In September, All Out Sports League is launching a Junior General Manager program covering such skills as how to write a professional contract and how to create programs. This new program will be run by Mr. Richard Tomlinson, who is a Certified Public Accountant and a professional at Los Medanos Community College. All Out Sports League also holds free financial seminars for kids such as check writing and credit card debt. Mr. Copeland noted All Out Sports League also rents the facility for private birthday parties, offers free live-streaming of its games, and has youth operating the snack bar and game clocks.

Mr. Copeland advised since its opening in Clayton, AOSL's youth basketball program grew in popularity with participants between four (4) and seventeen (17) years old, and its basketball leagues are very successful based on feedback received from the community. The next most popular program is youth volleyball consisting primarily of young ladies between ten (10) and fourteen (14) years old. Currently, the youth basketball camp is running 4 days a week from 9:00 am to noon consisting of forty (40) to fifty (50) participants. In the summer, a no-cost flag football camp is offered. All Out sports League also offers an adult coed softball from spring through fall, and adult volleyball.

City Manager Napper requested Mr. Copeland to go through a pricing comparison between All Out Sports League and neighboring programs offered, and the ratio of participants. Mr. Copeland advised he conducted research on costs associated with various competing local youth basketball programs located in Walnut Creek's "Ultimate Field House," City of Concord Recreation, City of Pleasant Hill Recreation, City of Walnut Creek Recreation, Walnut Creek Youth Athletic Association, Catholic Youth Organization, in Concord "Elevate," and the City of Pittsburg's Recreation. Mr. Copeland research concluded that All Out Sports League is very comparable in pricing in youth basketball and his program includes a new uniform each time, practice times, games, and live streaming of the games to offsite parents/relatives.

Mr. Copeland advised All Out Sports League is 50% of the cost of similar programs offered through "Ultimate Field House" and "Elevate". He also advised All Out Sports League offers drop-in basketball on Sundays at a rate of \$25.00 whereas, the City of Walnut Creek charges \$88.00, Ultimate Field House charges \$60.00, and Elevate charges \$75.00.

Mr. Copeland noted AOSL offers youth recreation volleyball league at \$140.00 while the City of Walnut Creek charges \$220.00. At this time, All Out Sports League is the only organization offering youth volleyball camps at a rate of \$75.00. All Out Sports League offers youth tee ball for three (3) to four (4) year olds, which is different then Clayton Valley Little League's as it offers youth tee ball to four (4) – six (6) year olds. He also indicated his youth football camps are offered at no-cost through All Out Sports League whereas the City of Pleasant Hill charges \$75.00.

AOSL's adult volleyball is offered at \$300.00 per team; the City of Walnut Creek charges \$425.00; and the City of Pleasant Hill charges \$295.00. All Out Sports League adult softball is offered at \$50.00 per player whereas the City of Pleasant Hill charges \$70.00 per player, the City of Concord charges \$60.00 per player, and Walnut Creek Adult Softball charges \$78.00 per player. He noted drop-in volleyball and basketball are offered at typical standard rates of \$5.00.

All Out Sports League offers club basketball, called Blaze, at a rate of \$750.00 whereas other club basketball organizations charge anywhere from \$1,500.00 to \$2,000.00 per participant. The new fall Junior General Manager Program will be offered at \$100.00 per participant for an 8-week program; he is currently working on the website to get the information populated. All Out Sports League also offers birthday parties at \$250.00 including 1 hour of sports in the gym, then a party in the party room, including a host; Ultimate Field House charges \$250.00 and Elevate charges \$350.00. All Out Sports League also rents out the courts at a rate of \$65.00 per court per hour; the City of Walnut Creek charges \$80.00 per court per hour, Ultimate Field House charges \$75.00 per court per hour, and Elevate charges \$125.00 per court per hour.

Youth financial seminars are offered at no-charge

AOSL does minimal advertising and is very popular amongst participants and adults. In evaluating participant boundaries: for youth basketball league and youth volleyball league, 78%-82% of the participants come from Clayton/Concord area; 6%-8% participating from Walnut Creek; 6%-8% participants from Pittsburg; and 3% participating from Antioch.

Councilmember Diaz noted the popularity of AOSL's basketball program and asked if it was offered year round. He also wanted to know how the CYO basketball program affects All Out Sports League basketball. Mr. Copeland advised CYO basketball program season is November to the end of February and uses the gymnasium only for practices, typically Monday through Thursday from 5:00 p.m. to 8:00 p.m. CYO basketball games are played elsewhere.

Councilmember Diaz inquired on the locations used for adult softball offered through All Out Sports League. Mr. Copeland responded Field 2 at Clayton Community Park is used for adult coed softball offered during the fall season.

Councilmember Diaz inquired how many participants are in the basketball program throughout the year. Mr. Copeland replied the typical league is 300 participants; usually five divisions consisting of the Kindergarten and first graders, second & third graders, fourth & fifth graders, middle schoolers, and high schoolers. Typically it is six teams per division and ten players per team.

Councilmember Pierce added she has seen and heard from colleagues of how impressed they are with the AOSL program and "Kudos" to the quality of its coaching; standards are really high, it emphasizes sportsmanship and how to play the game and how to play fair and clean; the kids put their heart and soul into each game. Mr. Copeland indicated his goal was to set up family-based programs, being on time, organized to game and practice times and expectations of players and coaches and parents; he wants offer fairly priced programs and feels that kids are safe and they are going to learn something when involved with AOSL.

Mayor Haydon added when the initial efforts were made to raise the monies for the gymnasium we had hopes for a gym for the school's usage and after-school activities as well. What is in operation now far exceeded the expectations on the types of programs to be offered, and AOSL is very successful in giving our youth in

the Clayton Valley area a real viable option for how they can spend their time after-school. We really appreciate that. Do you anticipate any other program offerings?

Mr. Copeland responded the concept for the upcoming Junior General Manager Program came about because parents were asking for additional educational programs. At this time AOSL is not offering any other type of sports programs unless it can be squeezed into a very busy gymnasium. Recently, AOSL offered an adult whiffle ball program that went pretty well and he may bring back that program.

No action was taken on this Agenda Item – information only. Councilmembers expressed again their individual support and impressions of a very well run community recreation program by AOSL.

9. **COUNCIL ITEMS** – limited to requests and directives for future meetings.
None.

10. **CLOSED SESSION**

Mayor Haydon announced he received a speaker card for Public Comment on this item.

Ann Stanaway, 1553 Haviland Place, remarked on Clayton's continuing lackluster enforcement of ordinances relevant to this item. She indicated this agenda item represent a golden opportunity to have the City's labor negotiator announce the City's dedication to provide a well-regulated workplace for its police force by enforcing Contra Costa County fire lanes within Clayton's jurisdiction. Both the police force and the general public will benefit from fire lane protocol enforcement with Clayton's byways cleared of illegally-parked vehicles; response times to crime scenes and calls for assistance will significantly decrease. The Clayton Police Organization will receive accolades from the public that has lately seen lawless behavior escalate significantly. The Council should take a lead in this for public safety sake and make ordinance enforcement part of the current labor contract negotiations.

Mayor Haydon announced the City Council will adjourn into Closed Session for the following noticed items (8:06 pm):

- (a) *Government Code Section 54957.6, Conference with Labor Negotiator*
Instructions to City-designated labor negotiator: City Manager
Employee Organization: Clayton Police Officers' Association (CPOA)

Report out of Closed Session (8:56 p.m.)

Mayor Haydon reported the City Council received information from and provided policy directions to its labor negotiator. There is no public action to report.

11. **ADJOURNMENT**– on call by Mayor Haydon, the City Council adjourned its meeting at 8:57 p.m.

The next regularly scheduled meeting of the City Council will be April 17, 2018.

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Respectfully submitted,

Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

Keith Haydon, Mayor


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Agenda Date: 4/17/18

Agenda Item: 3b

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: Kevin Mizuno, FINANCE MANAGER 
DATE: 4/17/18
SUBJECT: INVOICE SUMMARY

Approved: 

Gary A. Napper
City Manager

RECOMMENDATION:

Approve the following:

Cash Requirements Report dated 4/13/18	\$100,405.37
ADP Payroll, week 15, PPE 4/8/18	\$87,441.53
Total	\$187,846.90

Attachments:

Cash Requirements reports, dated 4/13/18 (5 pages)

ADP Payroll reports, week 15 (1 page)

City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
ADP, LLC								
ADP, LLC	4/17/2018	4/17/2018	511868048	Payroll fees PPE 3/25/18	\$152.11	\$0.00		\$152.11
				<i>Totals for ADP, LLC:</i>	<u>\$152.11</u>	<u>\$0.00</u>		<u>\$152.11</u>
All City Management Services, Inc.								
All City Management Services, Inc.	4/17/2018	4/17/2018	53922	School crossing guard services 3/11/18-3/24/18	\$498.69	\$0.00		\$498.69
				<i>Totals for All City Management Services, Inc.:</i>	<u>\$498.69</u>	<u>\$0.00</u>		<u>\$498.69</u>
Authorize.net								
Authorize.net	4/17/2018	4/17/2018	03/18	Online credit card gateway fee for March	\$26.10	\$0.00		\$26.10
				<i>Totals for Authorize.net:</i>	<u>\$26.10</u>	<u>\$0.00</u>		<u>\$26.10</u>
Bay Area Barricade Serv.								
Bay Area Barricade Serv.	4/17/2018	4/17/2018	0353603-IN	Driving gloves, safety glasses	\$253.17	\$0.00		\$253.17
Bay Area Barricade Serv.	4/17/2018	4/17/2018	0353455-IN	3' Parking bumpers	\$117.24	\$0.00		\$117.24
Bay Area Barricade Serv.	4/17/2018	4/17/2018	0353466-IN	White marking paint	\$93.53	\$0.00		\$93.53
				<i>Totals for Bay Area Barricade Serv.:</i>	<u>\$463.94</u>	<u>\$0.00</u>		<u>\$463.94</u>
Bay Area News Group East Bay (CCT)								
Bay Area News Group East Bay (CCT)	4/17/2018	4/17/2018	1116394	Legal ad (Smoking Reg) for March	\$153.08	\$0.00		\$153.08
				<i>Totals for Bay Area News Group East Bay (CCT):</i>	<u>\$153.08</u>	<u>\$0.00</u>		<u>\$153.08</u>
CalPERS Retirement								
CalPERS Retirement	4/17/2018	4/17/2018	032518	Retirement PPE 3/25/18	\$14,642.84	\$0.00		\$14,642.84
				<i>Totals for CalPERS Retirement:</i>	<u>\$14,642.84</u>	<u>\$0.00</u>		<u>\$14,642.84</u>
Caltronics Business Systems, Inc								
Caltronics Business Systems, Inc	4/17/2018	4/17/2018	2486049	Copier contract coverage 2/28/18-3/29/18	\$339.84	\$0.00		\$339.84
				<i>Totals for Caltronics Business Systems, Inc:</i>	<u>\$339.84</u>	<u>\$0.00</u>		<u>\$339.84</u>
CCWD								
CCWD	4/17/2018	4/17/2018	J Series	Water 2/2/18-4/6/18	\$6,139.74	\$0.00		\$6,139.74
				<i>Totals for CCWD:</i>	<u>\$6,139.74</u>	<u>\$0.00</u>		<u>\$6,139.74</u>
City of Concord								
City of Concord	4/17/2018	4/17/2018	64923	Business card printing	\$118.57	\$0.00		\$118.57
				<i>Totals for City of Concord:</i>	<u>\$118.57</u>	<u>\$0.00</u>		<u>\$118.57</u>
Clean Street								
Clean Street	4/17/2018	4/17/2018	89734	Street sweeping for March	\$4,500.00	\$0.00		\$4,500.00
				<i>Totals for Clean Street:</i>	<u>\$4,500.00</u>	<u>\$0.00</u>		<u>\$4,500.00</u>
Comcast								
Comcast	4/17/2018	4/17/2018	040118	Internet 4/10/18-5/9/18	\$386.08	\$0.00		\$386.08
				<i>Totals for Comcast:</i>	<u>\$386.08</u>	<u>\$0.00</u>		<u>\$386.08</u>
Contra Costa County Department of Conservation & Development								

City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Contra Costa County Department of Co	3/31/2018	3/31/2018	Q3 FY18	Business license fee Q3 FY 18	\$340.05	\$0.00		\$340.05
<i>Totals for Contra Costa County Department of Conservation & Development:</i>					<i>\$340.05</i>	<i>\$0.00</i>		<i>\$340.05</i>
Contra Costa County Office of the Sheriff (Training)								
Contra Costa County Office of the Sheri	4/17/2018	4/17/2018	18-20808	In service course-Radar Oper. 3/19/18-3/21/1	\$460.00	\$0.00		\$460.00
<i>Totals for Contra Costa County Office of the Sheriff (Training):</i>					<i>\$460.00</i>	<i>\$0.00</i>		<i>\$460.00</i>
Crop Production Svcs								
Crop Production Svcs	4/17/2018	4/17/2018	35357925	Weed killer, grass seed	\$4,941.61	\$0.00		\$4,941.61
<i>Totals for Crop Production Svcs:</i>					<i>\$4,941.61</i>	<i>\$0.00</i>		<i>\$4,941.61</i>
De Lage Landen Financial Services, Inc.								
De Lage Landen Financial Services, Inc.	4/17/2018	4/17/2018	58688238	Copier contract 4/15/18-5/14/18	\$304.59	\$0.00		\$304.59
<i>Totals for De Lage Landen Financial Services, Inc.:</i>					<i>\$304.59</i>	<i>\$0.00</i>		<i>\$304.59</i>
Digital Services								
Digital Services	4/17/2018	4/17/2018	11127	IT services 3/2/18-4/10/18	\$1,690.99	\$0.00		\$1,690.99
<i>Totals for Digital Services:</i>					<i>\$1,690.99</i>	<i>\$0.00</i>		<i>\$1,690.99</i>
Dillon Electric Inc								
Dillon Electric Inc	4/17/2018	4/17/2018	3662	Repair main light fixtures in EH	\$2,673.09	\$0.00		\$2,673.09
<i>Totals for Dillon Electric Inc:</i>					<i>\$2,673.09</i>	<i>\$0.00</i>		<i>\$2,673.09</i>
Division of the State Architect								
Division of the State Architect	3/31/2018	3/31/2018	Q3 FY18	Business license fee, Q3, FY 18	\$44.70	\$0.00		\$44.70
<i>Totals for Division of the State Architect:</i>					<i>\$44.70</i>	<i>\$0.00</i>		<i>\$44.70</i>
Environtech Enterprises								
Environtech Enterprises	4/17/2018	4/17/2018	A001B-1B-18	Mustard, thistle abatement for January	\$11,163.25	\$0.00		\$11,163.25
Environtech Enterprises	4/17/2018	4/17/2018	A001-A1-18	Thistle abatement for January	\$8,891.05	\$0.00		\$8,891.05
Environtech Enterprises	4/17/2018	4/17/2018	A001B-2B-18	Mustard, thistle abatement for February	\$11,400.00	\$0.00		\$11,400.00
<i>Totals for Environtech Enterprises:</i>					<i>\$31,454.30</i>	<i>\$0.00</i>		<i>\$31,454.30</i>
Express Services, Inc								
Express Services, Inc	4/17/2018	4/17/2018	20402835	PD office temp week end 4/1/18	\$633.12	\$0.00		\$633.12
Express Services, Inc	4/17/2018	4/17/2018	20365970	PD office temp week end 3/25/18	\$580.36	\$0.00		\$580.36
<i>Totals for Express Services, Inc:</i>					<i>\$1,213.48</i>	<i>\$0.00</i>		<i>\$1,213.48</i>
Hammons Supply Company								
Hammons Supply Company	4/17/2018	4/17/2018	101503	Library janitorial supplies	\$169.89	\$0.00		\$169.89
Hammons Supply Company	4/17/2018	4/17/2018	101621	Library janitorial supplies	\$127.15	\$0.00		\$127.15
Hammons Supply Company	4/17/2018	4/17/2018	101680	EH janitorial supplies	\$367.41	\$0.00		\$367.41
<i>Totals for Hammons Supply Company:</i>					<i>\$664.45</i>	<i>\$0.00</i>		<i>\$664.45</i>
Harris & Associates, Inc.								
Harris & Associates, Inc.	4/17/2018	4/17/2018	37165	Engineering services 1/28/18-2/24/18	\$9,585.00	\$0.00		\$9,585.00
<i>Totals for Harris & Associates, Inc.:</i>					<i>\$9,585.00</i>	<i>\$0.00</i>		<i>\$9,585.00</i>

City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Hyde Printing Inc								
Hyde Printing Inc	4/17/2018	4/17/2018	77535	Flyers for Concerts in The Grove	\$935.25	\$0.00		\$935.25
				<i>Totals for Hyde Printing Inc:</i>	<u>\$935.25</u>	<u>\$0.00</u>		<u>\$935.25</u>
ICMA Retirement Corporation								
ICMA Retirement Corporation	4/17/2018	4/17/2018	41337	Plan fee 4/1/18-6/30/18	\$125.00	\$0.00		\$125.00
				<i>Totals for ICMA Retirement Corporation:</i>	<u>\$125.00</u>	<u>\$0.00</u>		<u>\$125.00</u>
iPayment								
iPayment	4/17/2018	4/17/2018	March 2018	Bankcard fee for March	\$146.49	\$0.00		\$146.49
iPayment	4/17/2018	4/17/2018	March 2018	Online bankcard fee for March	\$47.66	\$0.00		\$47.66
				<i>Totals for iPayment:</i>	<u>\$194.15</u>	<u>\$0.00</u>		<u>\$194.15</u>
Sandy Johnson								
Sandy Johnson	4/17/2018	4/17/2018	PC 04/18	Petty cash	\$49.84	\$0.00		\$49.84
				<i>Totals for Sandy Johnson:</i>	<u>\$49.84</u>	<u>\$0.00</u>		<u>\$49.84</u>
LarryLogic Productions								
LarryLogic Productions	4/17/2018	4/17/2018	1722	City council meeting production 3/6/18	\$360.00	\$0.00		\$360.00
				<i>Totals for LarryLogic Productions:</i>	<u>\$360.00</u>	<u>\$0.00</u>		<u>\$360.00</u>
Matrix Association Management								
Matrix Association Management	4/17/2018	4/17/2018	6258	Diablo Estates management for April	\$4,532.50	\$0.00		\$4,532.50
				<i>Totals for Matrix Association Management:</i>	<u>\$4,532.50</u>	<u>\$0.00</u>		<u>\$4,532.50</u>
Neopost (add postage)								
Neopost (add postage)	4/17/2018	4/17/2018	040518	Postage added 4/5/18	\$300.00	\$0.00		\$300.00
				<i>Totals for Neopost (add postage):</i>	<u>\$300.00</u>	<u>\$0.00</u>		<u>\$300.00</u>
NORCAL printing, inc.								
NORCAL printing, inc.	4/17/2018	4/17/2018	30613	Kids Guide to Backyard Bugs booklets	\$165.88	\$0.00		\$165.88
				<i>Totals for NORCAL printing, inc.:</i>	<u>\$165.88</u>	<u>\$0.00</u>		<u>\$165.88</u>
Pacific Telemanagement Svc								
Pacific Telemanagement Svc	4/17/2018	4/17/2018	978964	Courtyard payphone for April	\$73.00	\$0.00		\$73.00
				<i>Totals for Pacific Telemanagement Svc:</i>	<u>\$73.00</u>	<u>\$0.00</u>		<u>\$73.00</u>
Jessica Picazo								
Jessica Picazo	4/17/2018	4/17/2018	051218	Cancellation CCP reservation 5/12/18	\$367.00	\$0.00		\$367.00
				<i>Totals for Jessica Picazo:</i>	<u>\$367.00</u>	<u>\$0.00</u>		<u>\$367.00</u>
pmsigns								
pmsigns	4/17/2018	4/17/2018	18285	Clayton Cleans Up Banner date change	\$59.68	\$0.00		\$59.68
				<i>Totals for pmsigns:</i>	<u>\$59.68</u>	<u>\$0.00</u>		<u>\$59.68</u>
Psychological Resources Inc.								
Psychological Resources Inc.	4/17/2018	4/17/2018	8044	Pre-employment Screening, PD	\$500.00	\$0.00		\$500.00

City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<i>Totals for Psychological Resources Inc.:</i>					\$500.00	\$0.00		\$500.00
Sprint Comm (PD)								
Sprint Comm (PD)	4/17/2018	4/17/2018	703335311-196	Cell phones 2/26/18-3/25/18	\$380.50	\$0.00		\$380.50
<i>Totals for Sprint Comm (PD):</i>					\$380.50	\$0.00		\$380.50
U S Healthworks Medical Group, PC								
U S Healthworks Medical Group, PC	4/17/2018	4/17/2018	3302834-CA	Pre-employment exam, PD	\$131.00	\$0.00		\$131.00
<i>Totals for U S Healthworks Medical Group, PC:</i>					\$131.00	\$0.00		\$131.00
US Bank - Corp Pmt System CalCard								
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Storage unit rent	\$139.00	\$0.00		\$139.00
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Land's End, Shirt for Elise	\$35.67	\$0.00		\$35.67
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Alpine Awards, Plaque for A White	\$58.40	\$0.00		\$58.40
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Panera Bread, Food for interview panel	\$16.39	\$0.00		\$16.39
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Government Jobs, Admin Asst ad	\$175.00	\$0.00		\$175.00
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Craigslist, Seasonal MW ad	\$75.00	\$0.00		\$75.00
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Quill, Paper	\$198.31	\$0.00		\$198.31
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Fuel	\$252.25	\$0.00		\$252.25
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Fuel	\$370.90	\$0.00		\$370.90
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Fuel	\$254.98	\$0.00		\$254.98
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	OSH, level, chisels	\$50.00	\$0.00		\$50.00
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Fuel	\$59.34	\$0.00		\$59.34
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	OSH, wrench set	\$21.74	\$0.00		\$21.74
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Fuel	\$203.40	\$0.00		\$203.40
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	OSH, EH flowers	\$141.77	\$0.00		\$141.77
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Autozone, fuel cap	\$15.98	\$0.00		\$15.98
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Fuel	\$548.13	\$0.00		\$548.13
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Vehicle Gas	\$164.11	\$0.00		\$164.11
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Airfare, car rental, parking	\$501.58	\$0.00		\$501.58
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Vehicle Gas	\$114.89	\$0.00		\$114.89
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Vehicle Gas	\$361.19	\$0.00		\$361.19
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Vehicle Gas	\$225.02	\$0.00		\$225.02
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Hotel, training	\$529.56	\$0.00		\$529.56
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Transunion	\$25.00	\$0.00		\$25.00
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Image sales	\$207.81	\$0.00		\$207.81
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Vehicle Gas	\$143.79	\$0.00		\$143.79
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Vehicle Gas	\$337.66	\$0.00		\$337.66
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Discount latex gloves - 4 cases	\$444.28	\$0.00		\$444.28
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Autozone	\$63.14	\$0.00		\$63.14
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Vehicle Gas	\$345.58	\$0.00		\$345.58
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Vehicle Gas	\$520.21	\$0.00		\$520.21
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Office supplies	\$120.91	\$0.00		\$120.91
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Training lunches	\$229.99	\$0.00		\$229.99
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Vehicle Gas	\$40.12	\$0.00		\$40.12
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Vehicle Gas	\$108.70	\$0.00		\$108.70

City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Amazon, Proforce Law	\$311.21	\$0.00		\$311.21
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Vehicle Gas	\$270.40	\$0.00		\$270.40
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Car washes	\$12.99	\$0.00		\$12.99
US Bank - Corp Pmt System CalCard	3/31/2018	3/31/2018	Stmt end 3/22/18	Vehicle Gas	\$376.00	\$0.00		\$376.00
<i>Totals for US Bank - Corp Pmt System CalCard:</i>					<i>\$8,070.40</i>	<i>\$0.00</i>		<i>\$8,070.40</i>
Verizon Wireless								
Verizon Wireless	4/17/2018	4/17/2018	9804508796	Cell phones 3/2/18-4/1/18	\$82.97	\$0.00		\$82.97
<i>Totals for Verizon Wireless:</i>					<i>\$82.97</i>	<i>\$0.00</i>		<i>\$82.97</i>
Western Exterminator								
Western Exterminator	4/17/2018	4/17/2018	5916302	Pest control svcs for March	\$385.50	\$0.00		\$385.50
<i>Totals for Western Exterminator:</i>					<i>\$385.50</i>	<i>\$0.00</i>		<i>\$385.50</i>
Workers.com								
Workers.com	4/17/2018	4/17/2018	121717	Seasonal workers week end 3/25/18	\$768.95	\$0.00		\$768.95
Workers.com	4/17/2018	4/17/2018	121770	Seasonal workers week end 4/1/18	\$2,130.50	\$0.00		\$2,130.50
<i>Totals for Workers.com:</i>					<i>\$2,899.45</i>	<i>\$0.00</i>		<i>\$2,899.45</i>
GRAND TOTALS:					\$100,405.37	\$0.00		\$100,405.37

WEEK 15 BATCH 3380 37 PAYS

0 Employees With Overflow Statement

0 Overflow Statement 1 Total Statement

Tot Cks/Vchrs:00000000037 Tot Docs in all: 00000000040

First No. Last No. Total

Checks: ADPCHECK ADPCHECK 00000000006

Vouchers: 00000150001 00000150031 000000000031

Earnings Statement

Z7L TOTAL DOCUMENT

CITY OF CLAYTON

LOCATION 0001

COPY
CHECK STUFFING, RECONCILIATION

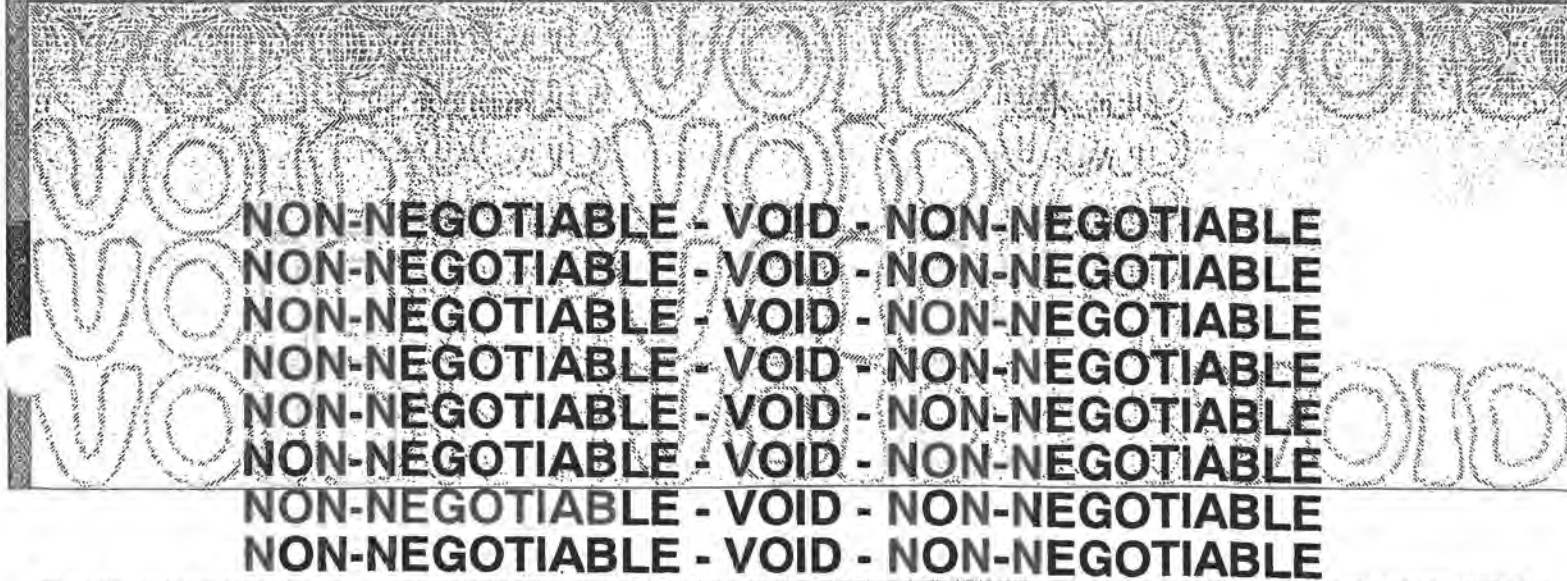
87441.53 GROSS
 62676.97 NET PAY (INCLUDING ALL DEPOSITS)
 8562.75 FEDERAL TAX
 125.57 SOCIAL SECURITY
 1212.53 MEDICARE
 .00 MEDICARE SURTAX
 .00 SUI/DI/FLI TAX
 3306.02 STATE TAX
 .00 LOCAL TAX
 71562.70 DEDUCTIONS
 2671.96 NET CHECK

COMPANY CODE Z7L
CITY OF CLAYTON
TOTAL DOCUMENT
LOCATION 0001

COPY

OPY

VERIFY DOCUMENT AUTHENTICITY - COLORED AREA MUST CHANGE IN TONE GRADUALLY AND EVENLY FROM DARK AT TOP TO LIGHTER AT BOTTOM




THE ORIGINAL DOCUMENT HAS AN ACETATE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW WHEN CHECKING THE ENDORSEMENT.



Agenda Date: 4-17-2018

Agenda Item: 3c

STAFF REPORT

Approved: 
Gary A. Napper
City Manager

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: SCOTT ALMAN, CITY ENGINEER

DATE: APRIL 17, 2018

SUBJECT: RESOLUTION DIRECTING THE PREPARATION OF AN ENGINEER'S REPORT FOR THE DIABLO ESTATES BENEFIT ASSESSMENT DISTRICT.

RECOMMENDATION

Adopt the attached Resolution.

BACKGROUND

At the request of Toll Bros., Inc., the developer of the Diablo Estates residential project, the City Council, by passage of Resolution 04-2012 on February 7, 2012, formed the Diablo Estates Benefit Assessment District (BAD), in accordance with the requirements of Landscaping & Lighting Act of 1972 and the Benefit Assessment Act of 1982. The purpose of the District is for the private property owners to collectively provide sufficient funds each year for the proper maintenance of its various subdivision improvements constructed as part of the residential project. The Engineer of Work for the preparation of the initial Engineer's Report was the Developer's consultant, SCI Consulting Group. The initial assessment was approved via a Proposition 218 ballot election by the property owner and its authorization included an annual CPI increase in the assessment amount.

Although the Benefit Assessment Act of 1982 does not require further action prior to levying the annual assessment if the assessments are not increased (other than any authorized adjustment due to a CPI increase), the Landscaping & Lighting Act of 1972 does require the filing and approval of an annual Engineer's Report prior to levying an annual assessment.

For the purpose of continuing to levy annual assessments for the property owners to maintain its improvements, the process must be initiated by the City Council officially calling for such an annual report. After enactment of this Resolution, the next step will be for the Engineer of Work (City Engineer) to submit, and the City Council to review and then accept, the Engineer's Report for this District. Following that submittal will be a single public hearing (with property owners' advance notification) prior to formally setting next year's assessments in sufficient time to be collected via the property tax bills issued by the County in 2018-2019.

Subject: Diablo Estates BAD – Call for Engineer’s Report

Date: April 17, 2018

Page 2 of 2

This Resolution does not commit the City Council to any action but is just the first administrative step required by the Landscaping & Lighting Act of 1972.

FISCAL IMPACT

None to the City. As designed and approved, all expenses of the BAD are borne by the private property owners as the beneficiaries of its subdivision improvements, maintenance, operation and repair.

Attachment: Resolution [2 pp.]

RESOLUTION NO. - 2018

**A RESOLUTION DIRECTING THE FILING OF AN ANNUAL REPORT
FOR THE DIABLO ESTATES BENEFIT ASSESSMENT DISTRICT (PURSUANT TO THE
LANDSCAPING AND LIGHTING ACT OF 1972)**

**THE CITY COUNCIL
City of Clayton, California**

WHEREAS, as requested by the development project's property owner and by Resolution No. 04-2012 adopted February 7, 2012, the Clayton City Council formed the Diablo Estates Benefit Assessment District pursuant to both the Landscaping & Lighting Act of 1972 and the Benefit Assessment Act of 1982; and

WHEREAS, an initial Engineer's Report was prepared by the project developer's own consultant, SCI Consulting Group; and

WHEREAS, an initial annual assessment, along with an allowable rate increase in accordance with annual increases in the San Francisco-Bay Area Consumer Price Index ("CPI"), was approved by the affected property owner(s) in a Proposition 218 ballot election; and

WHEREAS, although the Benefit Assessment Act of 1982 requires no further action to continue levying the annual assessment, the Landscaping & Lighting Act of 1972 does require that the City Council direct the Engineer of Work to prepare an Annual Engineer's Report prior to the levying of an assessment; and

WHEREAS, it is expedient for the City Council to commence said proceedings to ensure sufficient funds be assessed, levied, collected and expended each fiscal year to fulfill the property owner's intent and fiscal obligation to properly maintain, operate and repair the associated Diablo Estates subdivision improvements as private property owner beneficiaries;

NOW, THEREFORE, the City Council of Clayton, California does hereby resolve as follows:

1. The City Engineer is hereby directed to file an Annual Engineer's Report in accordance with the provisions of the Landscaping & Lighting Act of 1972.
2. This Resolution is adopted pursuant to Section 23622 of the Streets and Highways Code.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 17th day of April 2018 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CA

Keith Haydon, Mayor

ATTEST:

Janet Brown, City Clerk

#

I hereby certify that the foregoing Resolution was duly and regularly passed by the City Council of the City of Clayton, California at a regular public meeting held on April 17, 2018.

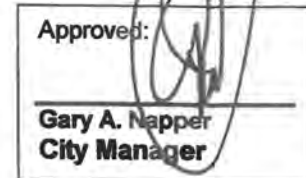
Janet Brown, City Clerk



Agenda Date: 4-17-2018

Agenda Item: 3d

STAFF REPORT



TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: MAINTENANCE SUPERVISOR

DATE: April 17 2018

SUBJECT: AWARD OF A ONE YEAR CONTRACT FOR WEED ABATEMENT FOR ANNUAL CITYWIDE WEED ABATEMENT SERVICES ON PUBLIC PROPERTIES

RECOMMENDATION

Approve a one-year contract for annual weed abatement services on City-owned public properties to Waraner Brothers Tree Service (Clayton) as the lowest and sole responsible bidder for a one year contract in the amount of \$55,000.00.

BACKGROUND

For the past eighteen years the Clayton Maintenance Department has contracted out the majority of its annual weed abatement work within the Citywide Landscape Maintenance Assessment District (CFD 2007-1). The contract work includes all mechanical mowing, hand work, and discing within the Landscape District. The standard of work is a thirty-foot wide firebreak from fence lines around homes that border on the City's open space. This weed abatement work is separate and distinct from the annual noxious weed abatement services performed on various Oakhurst hill slopes by a different contractor (also paid by the Citywide Landscape Maintenance District).

The Maintenance Department has determined the vast majority of weed abatement work is done more cost efficiently using an outside contractor. During the last eighteen years this work has been performed once a year. The contractor performing this work in the Landscape District over the past 9 years has been Waraner Brothers Tree Service. In past years this work usually started in the middle of May with the work completed by mid-June or earlier, pursuant to fire abatement deadlines annually ordered by the Contra Costa County Fire Protection District. Measure B Landscape District standards (approved by public vote in November 2007 and renewed in June 2016) continued this once-per-year weed abatement/firebreak service in the large open areas but did augment weed abatement services to twice a year for a single-pass mow strip immediately abutting certain public trails.

Date: April 17, 2018

Page 2 of 2

Recently, Maintenance staff has made numerous attempts to solicit bids from multiple contractors on the Contra Costa Fire Protection District's list of weed abatement contractors. The City desired multi-year contracts to perform this work. Unfortunately, staff has discovered the contractors do not have or want to hire the personnel to perform the tedious hand-held equipment work which constitutes the vast majority of the contracted work. They only want to perform all the work by mechanical means (i.e., by tractor), which method cannot be used on the hillside grades in our vast open space (Oakhurst hills). With the deadline for award of contract fast approaching, staff requested Waraner Brother Tree Service to submit a bid for another one year contract, which bid has been received. The price provided by Ed Waraner for this one year contract is \$55,000. This bid is the lowest and only responsible bid received by the City with the one year cost of \$55,000.

The Maintenance Department has worked with Waraner Brothers Tree Service for the past twenty five (25) years doing all of the City's major tree work, and over the last nine years doing the annual weed abatement for the Clayton Landscape Maintenance District. Staff has worked closely with the owner, Ed Waraner, and has found him very responsive to our needs when it comes to tree work within the city and with the weed abatement over the past nine years. Maintenance staff has full confidence that Mr. Waraner is fully informed as to the required task and will continue to be just as responsive as he has been in past years when doing the annual weed abatement work. The company is licensed to professionally perform such services.

FISCAL IMPACT

Funds for this annual work are budgeted in the approved Landscape Maintenance Assessment District budget for Fiscal Year 2017-18 (restricted-use monies). The 2017 Weed Abatement Program contract was \$49,000 performed by Waraner Brothers Tree Service.

This year's budget allocated \$60,000 for the weed abatement contract, which amount is \$5,000 above the bid of \$55,000 from Waraner Brother Tree Service. The bid amount constitutes a 12.25% increase in service expense.

Attachments: 1 pg. bid
1 pg map
1 pg scope of work

Waraner Bros. Tree Service

P.O. Box 142
 Clayton, Ca. 94517
 (925) 831-2323 Fax 925-673-1567

Estimate

Date	Estimate #
2/14/2018	4258

Name / Address
CITY OF CLAYTON 6000 Heritage Trail Clayton, Ca 94517

Project

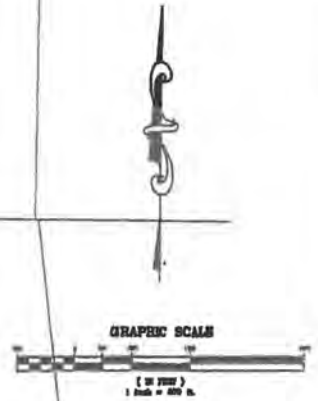
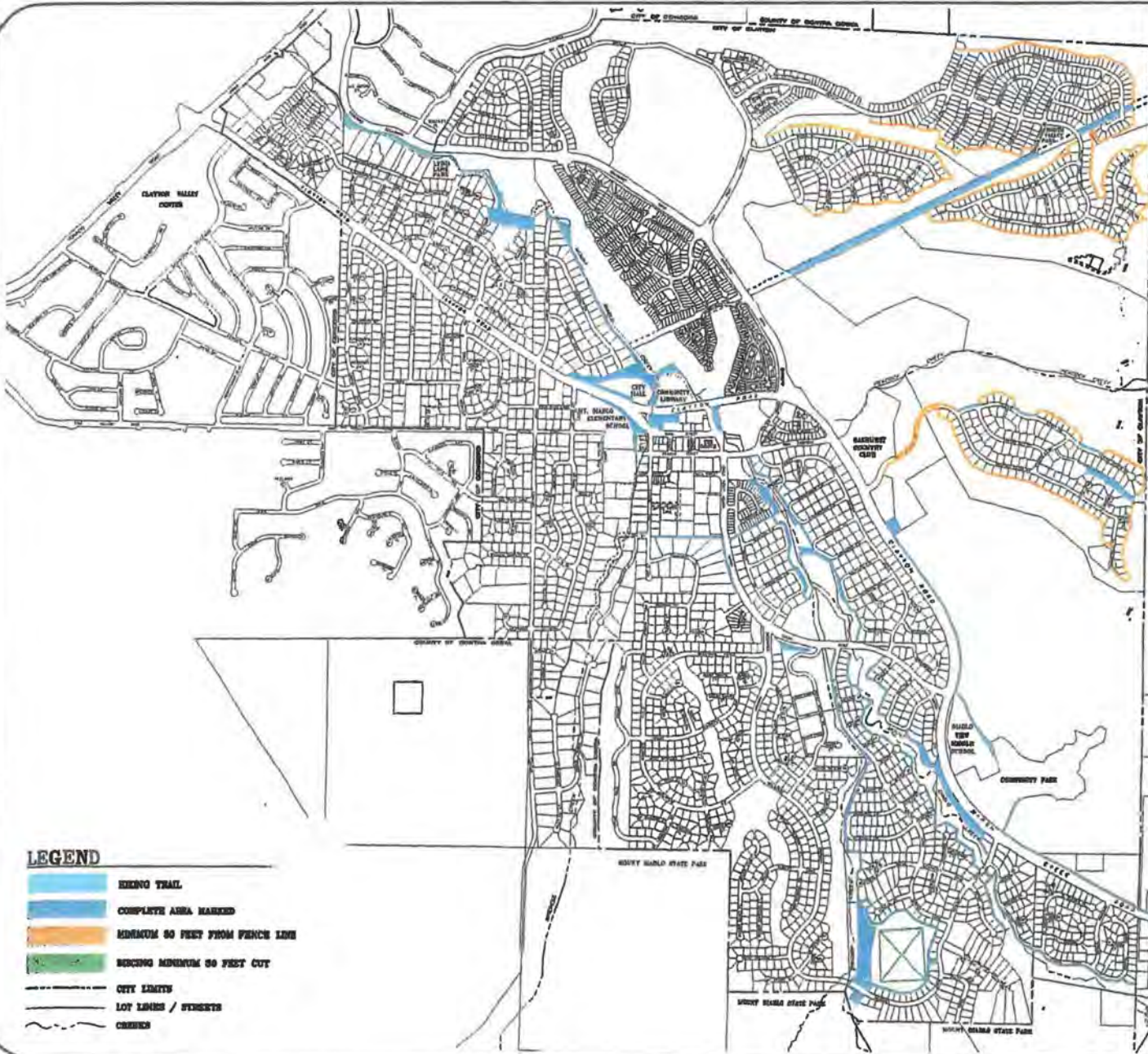
ED WARANER (925) 250-0335
ARBORIST LICENSE #WE3386A
CONTRACTORS LICENSE #642272
BONDED, LICENSED AND FULLY INSURED
ALL WORK DONE ACCORDING TO L.S.A
STANDARDS
 wbtrees2000@yahoo.com
 www.waranerbrosstree.com

Billing Information
FIRE ABATEMENT

Description	Qty	Cost	Total
AS ACCORDING TO CONTRA COSTA SPECIFICATIONS FOR FIRE ABATEMENT THE FOLLOWING ESTIMATE IS TO CREATE WEED ABATEMENT AND DISCING IN VARIOUS LOCATIONS FOR FIRE SAFETY LIMITS ON THE MAP AS APPROVED BY THE CITY OF CLAYTON LOCATION: CITY OF CLAYTON FIRE ABATEMENT 2018 ALL WORK SHALL BE DONE AS ACCORDING TO CONTRA COSTA COUNTY FIRE STANDARDS AND REGULATIONS		55,000.00	55,000.00
Total			\$55,000.00

CITY OF CLAYTON

JANUARY 2017



- LEGEND**
- RIDING TRAIL
 - COMPLETE AREA MARKED
 - MINIMUM 50 FEET FROM FENCE LINE
 - MINIMUM 50 FEET CUT
 - CITY LIMITS
 - LOT LINES / STREETS
 - CREEKS

01. 01. 2017 08:00 03:07 10 24 2 20 2. CITY OF CLAYTON/PLANNING/CLAYTON GIS SERVICES 2017 01. 01. 2017 08:00 03:07 10 24 2 20 2. CITY OF CLAYTON/PLANNING/CLAYTON GIS SERVICES 2017

Scope of Work For Weed Abatement

1. To perform weed abatement throughout the City of Clayton for fire protection using any type of mechanical equipment to perform this work including but not limited to weed eaters and flail mowers
2. All weeds are to be cut to a maximum of 2 1/2 inches from grade and meet the Contra Costa County Fire Protection District minimum weed abatement standards.
3. All areas that abut streets, sidewalks, and drainage ditches will be clean of all debris that is produced by the abatement.
4. This work will not start any later than May 14 of each year (unless agree upon by the City for a later start date) and will not start any earlier than May 1 of each year. Start date is approved yearly by the City of Clayton Maintenance Supervisor.
5. This work will be completed and pass the Cities inspection no later than 25 working days from the start date in any given year
6. Work crews will be on site everyday once work has started (by May 14 unless agreement is made by the City for a later start date)
7. Contractor must have work crews consisting of a minimum of 5 workers on site once work starts.
8. Work will be performed Monday through Friday during normal business hours (7am-5pm) excluding City Holidays unless given prior permission by the City of Clayton.
9. All work will be performed in areas marked on City map and work will be consisted to the map legend (please read map carefully)
10. This contract is for one year (2018)
11. Any question on the work to be performed can be sent to Mark Janney with the City of Clayton Maintenance Department call at 925-673-7327 or e-mail at mjanney@ci.clayton.ca.us

CLAYTON COMMUNITY LIBRARY FOUNDATION

2017 ANNUAL REPORT

Agenda Date: 4-17-2018

Agenda Item: 4a

The Clayton Community Library Foundation, established July 1989, continues to be actively involved in support of the Clayton Community Library. The CCLF is an all volunteer, tax exempt, non-profit 501(c)(3) corporation. The purpose of the CCLF is to support the Library by providing a pool of volunteers and funds to provide books, materials, special programs and furniture not provided by City and County budgets. The City of Clayton owns the 15,500 square foot building and its furnishings. The Board of Directors of the Foundation serves as the City of Clayton Library Advisory Committee.

Clayton Community Library in-library volunteers donated 4,4034.25 hours of library service in 2017. A very impressive statistic! Our volunteers checked in and shelved returned books, repaired books and videos, provided computer assistance, tutored students and helped out where needed. Volunteers working in the library numbered 54 adults and students. The Volunteer Coordinator oriented 7 adults and 10 students – 17 new volunteers in 2016. Three adult and one student volunteer tutor assisted 7 students, one-on-one, for a total of 208 hours. Five adults and 1 student group-study tutors worked 298 hours assisting 23 students. Two Computer Helpers worked 148 hours assisting 33 patrons with use of the Internet and word-processing. We had a Book Buddy for four months in 2016 reading to 29 children. The very popular “Paws to Read” had 51 children reading to friendly and very happy dogs. Based on the 2015 Independent Sector figure for the value of volunteer labor in California, \$27.59 per hour, the total monetary value of in library volunteerism is \$116,491.87!

Other volunteers donated 2338 hours working on Used Book Sales and other Foundation related activities worth \$65,505. Even our paid Volunteer Coordinator volunteered 132 hours, or 11 hours a month. Boy Scout Troop 484 provides man power to move books for our book sales and the Clayton Garden Club maintains our flower boxes and other volunteers maintain the garden areas surrounding the library. And don't forget the 4th of July volunteers. We are truly a community library.

We like to keep our volunteers happy, and this year Volunteer Coordinator, Arlene Kikkawa-Nielsen, planned two parties for the student volunteers: an End of Year/Grad Pizza Party for 11 students and a Holiday Pizza Party with a Gingerbread House and board games, attended by 21 students, several on winter break from college. They shared information on college with the high school age volunteers. The adult volunteers were entertained at a Spring Luncheon and the Lead Volunteers were entertained at a Holiday Luncheon at Joyce and Dave Atkinson's home.

The Twenty-Second Birthday celebration included the Annual Meeting of the Clayton Community Library Foundation and Volunteer Recognition on Saturday, March 4th, 2017 and the Creekside Arts Celebration “Life On Main Street” on the weekend of March 24th, 25th, and 26th. On Friday, April 1st there was an artist's preview, an animal visit, music and Art Awards for the juried show.

The show was juried by the local Galleries, Art Businesses, Writer's Club and the Arts & Culture Commission of CCC. Festivities on Saturday and Sunday included ongoing sales and demonstrations by local artists and crafters. Activities and entertainment featured “plein air” painting; an Eco update, African Fables, Discovering your Family History, Uke and Hula Song and Workshop, Taiko drumming Workshop, Meet the Author and Meet the Artist. A GREAT weekend!

225 students from second grade classes from Mt. Diablo and Silverwood Elementary schools visited the library and 93 students received library cards. Experience tells us that rest already had library cards! The very popular Book Club led by Sunny Solomon continues to meet at the Clayton Community Library as does the Knitting Club that meets twice a month!

The Clayton Community Library participated in the 4th of July Parade as we celebrated our 22st year. Our entry highlighted the Summer Reading Program, “S.T.E.A.M.” which stands for Science, Technology, Engineering, Arts and Math. Organized by Arlene Kikkawa Nielsen, 12 teens and 5

adults volunteered 300 hours to create our library entry. This year's entry featured 11 children, 6 teens and 28 adults marching in the parade. Total number of volunteer hours – 452.

In 2016 the CCLF was able to generate \$40,739.93 in income from a variety of sources; \$5,605 this represents the value of in-kind materials, in the form of used books and CDs and DVDs donated for the booksales and diverted to the library collection. The Foundation maintained an average membership of 278 units in 2016, which brought in \$9,965.00 in revenue. Our Used Book Store continues to be a success – run on the honor system this store earned \$2,094.25 of the revenue from Used Book Sales. Our two big Used Book Sales grossed a total of \$12,472.04 and online sales added \$35.00. In total, Used Book Sales accounted for \$14,601.29. We have learned that a Warriors game and rain can make an impact on our sales. The Creekside Arts Celebration generated \$1,191.10 in income. United Way/LIC donations added \$1,951.91. Organizations donated \$5,250; \$300 from Clayton Valley Woman's Club, \$50 from AAUW and \$4,000.00 from the Clayton Business and Community Assn. (CBCA), and \$900 from Clayton Valley Sunrise Rotary. Matching Gifts, donations and memorials in addition to account interest, merchandise sales, and fundraising activities complete our total revenue.

CCLF spent \$43,839.56 on Library Support. Money pulled from reserves made up the difference between income and expenditures. As mentioned in the previous paragraph, in-kind materials added to the collection from patron donations, valued at \$5,605, represent a portion of this amount. In 2016 CCLF gave \$20,012.94 for materials, books, CD's, DVD's and library programs. Reader's chairs for the Teen and Young Families area were purchased with the \$4,000 donated by CBCA. \$10,800 was paid to the City of Clayton, which in turn pays our volunteer coordinator, a private contractor. Additional money provided insurance for volunteers, and volunteer recognition events. For the first time CCLF gave the city \$2,000 to help pay for the additional Sunday hours paid for by Clayton.

CCLF spent \$4,390.53 on library programs and special events. This included 14 major programs, craft supplies for the programs presented by our talented staff, and prizes for the 4th of July, Creekside Celebration, the February "Rock Out and Read with Pete the Cat" and for the Summer Reading Program and Teen Reading Program.

We no longer count the number of readers signing up for the Summer Reading Program, because some signed up on line and we could not track those folks. However, 150 completed the program at the Clayton Community Library. Must be due to our great prizes! Completion numbers were down Countywide compared to 2016.

This was the eleventh year for "Clayton Reads". Special programming focused on the book, "The Language of Flowers". CCLF purchased 150 copies of the book so they could be made available to the public to encourage everyone to take part in this event.

The Clayton Community Library Foundation thanks the City Council, Staff and the community, for all the support you have shown over the years. The Clayton Community Library is a terrific asset to the community and it is a good feeling to know that this community values its public library. The 2017 circulation at the Clayton Community Library was 156,528 a slight decrease from 2016. We believe eBooks are responsible for the slight decrease in our circulation. For fiscal year 15/16 eBook circulation was about 275,000 for the entire county system. The Clayton Community Library door count was 112,539. The money raised by CCLF enables the staff to schedule additional programs and purchase more materials and therefore attract patrons into our library to utilize library services.

I want to encourage any interested citizen to attend our board meetings and become involved in our work. We meet on the 3rd Wednesday of the month at 7:00 in the Library Story Room. We do not meet in December or July.

Joyce Atkinson, President, 2017

Agenda Date: 4-17-2018

Agenda Item: 4b

declaring
the week of April 16th - 22nd
as
"Clayton Community Library Volunteers" week

WHEREAS, the Clayton Community Library has a total of 54 in-library adult and student volunteers whose work is essential to the support and functioning of library services; and

WHEREAS, In-library volunteers contributed 4,034 hours and Foundation volunteers contributed 2,495 in 2017, for a total of 6,525 hours; and

WHEREAS, on July 4, 2017, 39 Clayton Community Library volunteers and patrons contributed 441 hours to promote the Library's Summer Reading Program at the downtown parade, highlighting the importance of summer reading and summer library visits; and

WHEREAS, 2 volunteer tutors spent 168 hours, one-on-one with 5 students to provide homework help; and in the Group Tutoring Sessions on Wednesday afternoons 4 adult and 1 student tutors spent 246 hours to provide help to an additional 19 students; and

WHEREAS, Clayton Community Library volunteers shelve all the materials at the library, check in returned materials, do all mending of materials, read to children, deliver books to homebound patrons, and much more; and

WHEREAS, the Annual Creekside Arts Celebration was held to showcase local artisans, performance and community groups as well as raise funds for library support; and

WHEREAS, the Clayton Community Library Foundation contributed \$35,640 in 2017 for volunteer support and recognition, library materials and furniture, programs for adults, teens and young children, and Creekside Arts Celebration expenses.

NOW, THEREFORE, I, Keith Haydon, Mayor, on behalf of the Clayton City Council, do hereby acknowledge, April 16-22, 2018, as Clayton Community Library Volunteer Week, and urge my fellow citizens to recognize that the Clayton Community Library volunteers are a gift to the community and thank the operational volunteers, tutors, book buddies, computer helpers, parade volunteers, Creekside habitat and garden volunteers, homebound deliverers, Creekside Arts Celebration volunteers, Creekside Artists Guild artists, Library Commissioners, Foundation members, and Board for their outstanding volunteerism.

JOAN CHESTERMAN
"Volunteer of the Year"
2018
for
21 years of
outstanding service to the
Clayton Community Library

RAY DOD
"Volunteer of the Year"
2018
for
22 years of
outstanding service to the
Clayton Community Library

ELAINE GRAB
"Volunteer of the Year"
2018
for
21 years of
outstanding service to the
Clayton Community Library



Agenda Date: 4-17-2018

Agenda Item: 7a

Approved: 

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR 

DATE: APRIL 17, 2018

SUBJECT: CONTINUED PUBLIC HEARING TO CONSIDER THE INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 8.14 (REGULATION OF SMOKING) OF THE CLAYTON MUNICIPAL CODE (ZOA-01-18)

RECOMMENDATION

It is recommended the City Council consider the staff information provided and submitted, re-open the Public Hearing and take and consider all public testimony and, if determined to be appropriate, take the following actions:

- 1) Following closure of the Public Hearing, select the preferred option regarding smoking regulations in the Town Center; then subject to any further changes by the City Council, adopt a motion to have the City Clerk read Ordinance No. 481 by title and number only (announce the selected Option) and waive further reading; and
- 2) Following the City Clerk's reading, by motion approve Ordinance No. 481 for Introduction (with which Option) to amend the Clayton Municipal Code Chapter 8.14 – Regulation of Smoking (ZOA-01-18) (**Attachment 1**).

EXISTING STATE AND FEDERAL LAWS

Many laws and regulations regarding the prohibition of smoking, particularly regulating exposure to secondhand smoke already exist under State and federal law, with the State of California's laws more stringent than federal law. Nothing within State or federal law precludes local jurisdictions from passing more restrictive laws regarding smoking, and there

is no language in the applicable laws which recite any “smoker’s rights.” Below highlights a few of the more common or germane smoking laws, but this list is by no means inclusive:

- On June 9, 2016, several tobacco bills went into effect in California:
 - Updated provisions to major tobacco laws to cover electronic smoking devices with and without nicotine. Due to this change in the law, the term “smoking” now includes the use of electronic smoking devices in addition to traditional tobacco products.
 - Increased the minimum legal sales age for tobacco products, including electronic smoking devices, with or without nicotine, from 18 to 21 years of age.
 - Local governments may regulate electronic smoking devices to the same extent they are able to regulate traditional tobacco products.
- Smoking is already against state law in an enclosed space at a place of employment or owner-operated business, with some exceptions.
- Smoking is already prohibited inside public buildings, within 20 feet of a main point of ingress/egress or operable window, and in a passenger vehicle owned by the state.
- No smoking is allowed within 25 feet of any federal building.
- Smoking is already prohibited within 25 feet of the common commerce area of a certified farmers’ market.
- Smoking is already prohibited within 25 feet of a playground or tot lot sandbox area; however sidewalks within 25 feet of a playground or tot lot sandbox area are exempt but can be subject to local discretion.
- Smoking is already prohibited within 250 feet of a youth sports events.
- Tobacco and nicotine products are already prohibited at all times in county offices of education, in buildings owned or leased by a charter school or school district, on school or school district property, and in school or school district vehicles.
- Smoking is already prohibited on the premises of a licensed daycare center and a licensed family daycare home at all times.
- It is illegal to smoke in any motor vehicle in which a minor is present.
- Smoking is prohibited on public transportation systems.

BACKGROUND AND DISCUSSION

At the March 20, 2018 public hearing, the City Council considered and discussed possible amendments to the City’s smoking regulations, Chapter 8.14 of the Clayton Municipal Code (**Attachment 2**). During the hearing, Councilmembers expressed concerns regarding the proposed amendments, which through unintended consequences would extremely restrict smoking in the Town Center. Also discussed was a provision to clarify the definition of “multi-unit residence” and clarifications to the definitions of a “dining area” and “bar”.

Town Center Smoking Regulations

As requested by Councilmember Pierce, a map has been provided (**Attachment 3**) showing the locations in the Town Center (clouded in pink) where smoking would be prohibited with the implementation of the Ordinance as originally proposed at the March 20th Council meeting, in combination with existing federal and State law. This map does not reflect the preferences of local business owners regarding smoking on their private property. The majority of the Town Center is clouded in pink, showing smoking would only be allowable on private property including the parking lots of businesses, vacant properties, and single family homes.

Due to the proposed smoking restrictions within the Town Center having an unintended consequence of being restrictive, staff developed three Options for City Council consideration:

Option 1: Leave the Ordinance as it is currently drafted, which has been updated to reflect the changes discussed at the March 20th City Council hearing. Those changes include:

- a. Clarifying that a "dining area" does not include a "bar" and clarifying the exemption for private dining areas applies to all hours of operation and that the dining area is open to members only;
- b. Specifying a "multi-unit residence" includes a townhome;
- c. Widening the scope of who/what is responsible for designating a smoking area in a multi-unit residence;
- d. Inclusion of specific locations where smoking is permissible; and
- e. Adding specificity that State law only allows for violations of cannabis uses to be charged as an infraction (**Attachment 4**).

The benefits to Option 1 would be the reduction of secondhand smoke exposure because it would preclude smoking in the majority of locations in the Town Center, thereby improving public health. It is noted the City of Walnut Creek and the City of Concord preclude smoking in downtown areas. However, the drawback of this option would be the placement of burden onto private property and business owners regarding whether they want to permit smokers on their property and/or to establish a designated smoking area for smokers that may or may not be patronizing their business.

Option 2: Modify the Ordinance to exempt public sidewalks in the Town Center except for a 25 foot buffer around The Grove Park.

The benefit of Option 2 is the provision of a public place where smokers can locate; however the drawbacks to this option would be the exposure to secondhand smoke for pedestrians and consumers in the Town Center as well as the youth walking/bicycling into the Town Center from Mt. Diablo Elementary School or other trails.

If the City Council selects Option 2, the Ordinance may be modified at the meeting with the replacement of the following language in Section 8.14.040:

B. Smoking is prohibited in all unenclosed areas, owned, leased or operated by the City, including City parks, trails and recreational areas, parking lots, corporation yards, the grounds of any building owned, leased, or operated by the City, excluding public sidewalks in the Town Center except within twenty-five (25) feet of The Grove Park.

Option 3: Allow smoking to occur in a designated area(s) in the Town Center; the appropriate location(s) would be adopted by a City Council resolution at a future date.

Staff reviewed all probable areas in the Town Center where smoking could feasibly occur with minimal to no impacts for secondhand smoke exposure. Private property and areas where federal and State law already prohibit smoking were automatically excluded from consideration. Those exclusions left the City-owned properties along Oak and Main Streets, public parking lots, and rights-of-way as possible options. Given the City-owned properties along Oak and Main Streets could be developed and the City could sell those properties and no longer retain control of them, staff excluded those for consideration. Staff also excluded the public parking lots, due to the possibility of exposure to secondhand smoke for those parking in the lots as well as safety concerns regarding people congregating in areas with vehicular traffic. The public rights-of-way were not feasible given their propensity to be small and narrow with their design intended for passing through, which is not ideal for congregation. Therefore, after factoring in those constraints it left only one area for consideration, which would be the southern portion of the Clayton Corral (Black Diamond Plaza), away from the restroom facilities provided for the Concerts in The Grove.

If the City Council selects Option 3, staff would return with a resolution designating a portion of the Clayton Corral/Black Diamond Plaza at a future meeting. At the meeting tonight the Ordinance would require the following language additions and changes:

Section 8.14.040: *C. The City Council may, by resolution, designate certain unenclosed property owned, leased, or controlled by the City as a smoking(s) area(s).*

Section 8.14.060: *4. In a designated smoking area as provided by this chapter.*

Section 8.14.070: *A: In or upon all property owned, leased, or operated by the City, expressly including any public park, street, sidewalk, trail, bike path, alley, highway, parking lot, or parking structure, City designated smoking area(s), or in any public place as defined in this chapter and by state law. (See Cal. Health & Safety Code § 11362.3(a)(1).)*

Multi-Family Units

At the March 20, 2018 City Council meeting, a member of the public (Mr. Bruce George) stated he was supportive of the preservation of private property rights and smokers should be able to smoke in a townhome because they have a different standard of construction than other attached housing types. Following the March 20, 2018 hearing, Mr. George submitted a letter outlining the construction difference between townhomes and condominiums and reasserting his position that smoking should not be precluded from townhomes (**Attachment 5**). Further, his letter provides recommendations of provisions that should be taken to mitigate smoke traveling between units, such as the closing of all doors and windows and shutting down all externally vented appliances such as kitchen hoods and bath vents.

Given the City Council did not direct staff to incorporate any of Mr. George's concerns at the March 20th meeting and that staff's position remains unaltered, namely, that secondhand smoke still has the possibility of infringing on others because townhomes are not hermetically sealed and the close proximity of such housing units could still result in the unwanted and unhealthy exposure to secondhand smoke. Further, the provisions suggested by Mr. George are fundamentally unenforceable. Therefore, staff has added clarifying language to the proposed Ordinance to incorporate all types of attached housing, including townhomes, in order to eliminate any ambiguity.

ENVIRONMENTAL

This Ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment.

FISCAL IMPACTS

It is anticipated there will be additional expenses initially for enforcement and public education and outreach after the passage of the proposed Ordinance; however once the Clayton Municipal Code requirements have been circulated and understood by the general public, it is anticipated enforcement and education costs would decrease. There will also be an initial investment in signage costs around The Grove public park to ensure public areas are appropriately signed for public awareness and local enforcement.

Overall, the long term impacts compared to the City's existing smoking regulations are expected to be nominal.

ATTACHMENTS

1. Ordinance No. 481 with the following Exhibit:
 - a. Exhibit A – Clayton Municipal Code Section 8.14 – Regulation of Smoking [pp. 12]
2. Excerpt of the Staff Report and Minutes from the March 20, 2018 City Council Meeting [pp. 28]
3. Town Center Map – Proposed No Smoking Areas [pp. 1]
4. Redline Version of Clayton Municipal Code Section 8.14 from the March 20, 2018 City Council Discussion [pp. 8]
5. Letter from Mr. Bruce George [pp. 1]

ATTACHMENT 1

ORDINANCE NO. 481

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON
AMENDING CHAPTER 8.14 (REGULATION OF SMOKING) OF THE CLAYTON
MUNICIPAL CODE**

**THE CITY COUNCIL
City of Clayton, California**

**THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY FIND AS
FOLLOWS:**

WHEREAS, the U.S. Environmental Protection Agency has determined that tobacco smoke is the major contributor of particulate indoor air pollution; and

WHEREAS, reliable studies have shown that breathing side stream or secondhand smoke is a significant health hazard, in particular for elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function; including asthmatics and those with obstructive airway disease; and

WHEREAS, health hazards induced by breathing side stream or secondhand smoke include heart disease, lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, broncho constriction, and broncho spasm; and

WHEREAS, nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing side stream or secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same; and

WHEREAS, the smoking of tobacco, or any other weed or plant, is a danger to health; and

WHEREAS, the health care costs and lost productivity incurred by smoking-related disease and death represent a heavy and avoidable financial drain on our community; and

WHEREAS, the free distribution of cigarettes and other tobacco products encourages people to begin smoking and using tobacco products, and tempts those who had quit smoking to begin smoking again; and

WHEREAS, free distribution of cigarettes and other tobacco products promotes unsightly litter, thereby increasing the costs to the public in cleaning the streets; and also causes pedestrian traffic congestion; and

WHEREAS, electronic smoking devices, commonly known as "electronic cigarettes," "e-cigarettes," "e-cigars," "e-cigarillos," "e-pipes," "e-hookahs," "electronic nicotine delivery systems," "vape pens" etc., are battery operated devices designed to deliver nicotine, flavor, and/or other substances through a vapor inhaled by the users; and

WHEREAS, the use of electronic smoking devices, also referred to as 'e-cigarettes,' has grown in in popularity in recent years, even as traditional tobacco use has declined; and

WHEREAS, electronic smoking devices' vapor emissions and cartridge contents have been found to contain a number of dangerous substances including chemicals known to the State of California to cause cancer such as formaldehyde, acetaldehyde, lead, nickel, and chromium; and

WHEREAS, exposure to vapor from electronic smoking devices may cause passive or secondhand vaping; and

WHEREAS, electronic smoking devices emit vapor and other substances that may be inhaled by bystanders, who may include children and youth, the elderly, among others, and the effect of such substances on the user and bystanders has not been shown to be safe; and

WHEREAS, electronic smoking devices may have the capacity to 're-normalize' tobacco use and often mimic conventional tobacco products with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes; and

WHEREAS, the use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment; and

WHEREAS, due to the federal prohibitions on marijuana/cannabis use, the effects of cannabis smoking have not been widely studied, however, exposure to cannabis smoke may cause passive or second hand cannabis smoking and therefore similar health effects as exposure to smoke from tobacco products; and

WHEREAS, California Health and Safety Code, Section 11362.3, provides that smoking or ingesting cannabis or cannabis products is not permitted in any public place and smoking is prohibited in places where smoking tobacco is prohibited, among other places.

WHEREAS, the City of Clayton ("City") prohibits smoking in city-owned, leased or operated facilities, in parks, trails and open spaces, as well as certain enclosed and unenclosed areas of the City open to the public; and

WHEREAS, the purpose of the City's smoking restrictions is to serve the public health, safety and welfare due to the known dangers to health posed by smoking and secondhand smoke; and

WHEREAS, the City's smoking regulations have not been updated since 1993; and

WHEREAS, the City desires to clarify its local smoking regulations consistent with the recently enacted Adult Use of Marijuana Act of 2016 (commonly known as AUMA or Proposition 64) that cannabis smoking is prohibited anywhere tobacco smoking is prohibited; and

WHEREAS, the City Council desires to pass this ordinance in order to more fully protect City citizens against unwanted secondhand smoke in public places, in multi-family dwellings, and to clarify and confirm that smoking marijuana/cannabis and use of electronic smoking devices is prohibited and subject to the same enforcement and penalties as other smoking restrictions; and

WHEREAS, this Ordinance is authorized by California Health and Safety Code section 118910 and California Business and Professions Code section 26200.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLAYTON DOES ORDAIN AS FOLLOWS:

Section 1. Incorporation of Recitals. The above recitals are true and correct and are hereby incorporated into this Ordinance.

Section 2. Clayton Municipal Code Chapter 8.14 (“Regulation of Smoking”) Amended. Clayton Municipal Code, Chapter 8.14, entitled “Regulation of Smoking,” is hereby adopted and amended as set forth in Exhibit “A” attached hereto and incorporated herein by reference.

Section 3. CEQA. This Ordinance is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment. This Ordinance expands the scope of smoke-free places in the City of Clayton and adds cannabis smoke and the use of electronic smoking or vaporizing devices, thereby reducing exposure to second hand smoke and offering greater protection to indoor and outdoor air quality.

Section 4. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

Section 5. Effective Date and Publication. This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution by the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause the amendments adopted in Section 2 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a regular public meeting of the City Council of the City of Clayton held on April 17, 2018.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular public meeting thereof held on May 1, 2018 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Keith Haydon, Mayor

ATTEST

Janet Brown, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

Malathy Subramanian, City Attorney

Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on May 1, 2018.

Janet Brown, City Clerk

EXHIBIT A

Chapter 8.14 - REGULATION OF SMOKING

Sections:

8.14.010 - Reserved.

8.14.020 - Purpose.

Because smoking is a positive danger to public health, and a cause of material discomfort and a public health hazard even to those exposed to secondhand smoke or vapor, the compelling purpose and intent of this chapter include, but are not limited, to:

- A. Promote the public health, safety and welfare by prohibiting smoking in certain areas which are used by or open to the public;
- B. Assure a cleaner and more hygienic environment for the City, its residents, visitors, and natural resources; and
- C. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including children and youth, to breathe smoke-free and drug-free air, recognizing the threat to public health and the environment caused by smoking and unwelcome secondhand smoke and vapor.

8.14.030 - Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as hereafter set out, unless it is apparent that they have a different meaning:

- A. "Bar" means any business licensed or required to be licensed by the Department of Alcoholic Beverage Control for alcoholic beverage on-sale privileged as a "public premise" as defined by California Business and Professions Code section 23039.
- B. "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes. For purposes of this chapter, the term "business" also includes a nonprofit entity.
- C. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For purposes of this chapter, the term "cannabis" shall include "cannabis," "cannabis concentrate" and "cannabis products" as those terms are defined by California Business and Professions Code section 26001, and specifically includes hashish, dabs, or similarly mildly euphorogenic and hallucinogenic drugs are prepared from the plant genus *Cannabis*, whether for medical or adult use.
- D. "Common Area" means every enclosed area or unenclosed area of a multi-unit residence that residents of more than one unit of that multi-unit residence are entitled to enter or use, including, for example, halls, paths, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.
- E. "Dining Area" means any area, including streets and sidewalks, that is available to or customarily used by the general public or an employee, and that is designed, established, or regularly used, for consuming food and drink. For purposes of this chapter, "dining area" does not include the unenclosed or outdoor areas of a private restaurant that is not open to the general public during all or any hours of operation and is only open to members. The term "dining area" shall not include a bar.
- F. "Distribute" means to give, sell, deliver, dispense, issue, or cause or hire any person to give, sell, deliver, dispense, issue or offer to give, sell, deliver, dispense or issue.

- G. "Electronic Smoking Device" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vapor or vape pen or any other product name or descriptor.
- H. "Employee" means any person who is employed or retained as an independent contractor by any employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer.
- I. "Employer" means any business or government entity that retains the service of one (1) or more employees.
- J. "Enclosed" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:
1. Any type of overhead cover whether or not that cover includes vents or other openings and at least three (3) walls or other vertical constraint to airflow including, but not limited to, vegetation of any height, whether or not those boundaries include vents or other openings; or
 2. Four (4) walls or other vertical constraints to airflow including, but not limited to, vegetation that exceed six (6) feet in height, whether or not those boundaries include vents or other openings.
- K. "Multi-unit Residence" means improved property containing two (2) or more dwelling units sharing one or more walls, including, but not limited to, attached single-family homes, townhomes, row houses, duplexes, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. Multi-unit residences do not include the following:
1. A detached single-family home; or
 2. A detached single-family home with a detached or attached in-law, second unit, or accessory dwelling unit permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City adopted pursuant to those sections; or
 3. A mobile home in a mobile home park.
- L. "Nonprofit Entity" means any entity that meets the requirements of California Corporations Code Section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is not a nonprofit entity within the meaning of this chapter.
- M. "Open Space" means land left basically in its natural, undeveloped state to promote scenic and aesthetic beauty and used for the preservation of natural resources, managed production of resources and outdoor recreation.
- N. "Park" means all public open spaces, recreation areas and trails owned and maintained by the City of Clayton, whose primary purpose is recreation, either passive or active.
- O. "Person" means any natural person, business, cooperative association, homeowners association, nonprofit entity, personal representative, receiver, trustee, assignee, or any other legal entity including a government agency.
- P. "Place of Employment" means any area under the legal or de facto control of an employer that an employee or the general public may have cause to enter in the normal course of the operations, regardless of the hours of operation. "Place of employment" does not include tobacco shops or private smokers' lounges that meet the requirements of subdivision (e)(2) of

Labor Code Section 6404.5 or its successor and this chapter. A private residence is not a place of employment unless it is used as a childcare or health care facility.

- Q. "Public Event" means any event which is open to and may be attended by the general public, including but not limited to such events as farmers' markets, parades, craft fairs, festivals, concerts, performances or other exhibitions, regardless of any fee or age requirement.
- R. "Public Place" means any area, whether publicly or privately owned, to which the public has access by right or by invitation, expressed or implied, whether by payment of money or not and regardless of any age requirement. "Public place" does not include tobacco shops or private smokers' lounges that meet the requirements of subdivision (e)(2) of Labor Code Section 6404.5 or its successor and this chapter.
- S. "Recreational Area" means any area that is open to the general public for recreational purposes, regardless of any fee or age requirement. The term "Recreational Area" includes, but is not limited to, open spaces, parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, and skateboard parks, but does not include the unenclosed outdoor areas of private golf courses.
- T. "Service Area" means any publicly or privately-owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. The term "Service Area" includes but is not limited to areas including or adjacent to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.
- U. "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine or cannabis or other controlled substances and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term "Smoke" includes, but is not limited to, tobacco smoke, electronic smoking device vapors, and cannabis smoke or vapors.
- V. "Smoking" means engaging in an act that generates smoke, such as, for example, inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, tobacco product, cannabis, or other plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking or vaping device for the purpose of circumventing the prohibition of smoking. The term "smoking" shall include, but not be limited to "smoking" as the term is defined by California Business and Professions Code, Section 22950.5.
- W. "Tobacco Product" means any of the following:
 1. A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.
 2. An electronic smoking device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, vapor pen or hookah.
 3. Any component, part, or accessory of a tobacco product, whether or not sold separately.

"Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic

purposes where the product is marketed and sold solely for such an approved purpose. The term "tobacco product" shall include, but not be limited to "tobacco product" as the term is defined by California Business and Professions Code, Section 22950.5.

- X. "Trail" means a marked or established path or route, paved or unpaved, used for the recreational activities of walking, hiking, bicycling, and/or horseback riding.
- Y. "Unenclosed" means any area that is not Enclosed.
- Z. "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes but is not limited to an attached single-family home; row houses; an apartment; a duplex; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a room in a single room occupancy ("SRO") facility; a room in a homeless shelter; a single-family home; and an in-law or accessory dwelling unit.
- AA. "Vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion or payment of money, whether by coin or paper bill, credit card, cell phone app or other item representative of value, which dispenses or releases a tobacco product and/or tobacco accessories.

8.14.040 - Regulation of Smoking in City Facilities.

- A. Smoking is prohibited in all buildings, vehicles, or other enclosed areas occupied by City employees, owned or leased by the City, or otherwise operated by the City.
- B. Smoking is prohibited in all unenclosed areas owned, leased, or operated by the City, including City parks, trails and recreational areas, parking lots, corporation yards, the grounds of any building owned, leased, or operated by the City and public sidewalks.

8.14.050 - Prohibition of Smoking.

Smoking is prohibited in the following places within the City of Clayton:

- A. Enclosed places of employment in accordance with California Labor Code, section 6404.5, including those enclosed places of employment exempted by the California smoke-free workplace law (Labor Code section 6404.5(e), as that section may be amended from time to time) except as provided below:
 - 1. Smoking inside a tobacco shop is not prohibited by this subsection if (a) the tobacco shop does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on the premises; (b) the tobacco shop prohibits those under the age of 21 from entering the store at all times; and (c) the premises of the tobacco shop is an independent freestanding building unattached to any other building, establishment, or use. For the purposes of this exception, "Tobacco Shop" means any tobacco retailer that derives more than seventy-five percent (75%) of gross sales receipts from the sale or exchange of tobacco products and tobacco paraphernalia.
- B. Enclosed public places.
- C. Service areas (enclosed and unenclosed).
- D. The following unenclosed areas:
 - 1. Dining areas.
 - 2. Recreational areas.

3. Public events.
 4. All areas within twenty-five feet of The Grove Park, including sidewalks and streets.
- E. All enclosed and unenclosed multi-unit residence common areas, except that a landlord or other person legally responsible for maintenance of the common area may designate a portion of an unenclosed common area as a smoking area. A designated smoking area of an unenclosed common area of a multi-unit residence must not overlap with any area where smoking is otherwise prohibited by local, state, or federal law; must be located at least twenty-five feet in all directions from non-smoking areas; must not include areas used primarily by children; must be no more than twenty-five percent of the total unenclosed common area; must have a clearly marked perimeter; and must be identified by conspicuous signs.
 - F. Dwelling units in any new multi-unit residence, including enclosed and unenclosed balconies, porches, decks, patios, garages, and carport areas, that receives a building permit on or after the effective date of this chapter.
 - G. Dwelling units in any existing multi-unit residence, including enclosed and unenclosed balconies, porches, decks, patios, garages, and carport areas, on or after May 1, 2019.

Nothing in this chapter prohibits any person with legal control over any property from prohibiting smoking on any part of such property, even if smoking is not otherwise prohibited in that area.

8.14.060 – Permissible Smoking Areas

Nothing in this chapter prohibits any person from smoking:

1. Inside private vehicles.
2. Inside private, detached single-family residences except private residences used as child care facilities or health care facilities.
3. Inside an accessory dwelling unit that is attached to or detached from a detached single-family residence.
4. As provided under subsection 8.14.050.G.

8.14.070 - Prohibition of Smoking and Ingesting Cannabis and Cannabis Products.

Smoking cannabis is prohibited in all places where smoking tobacco products is prohibited. In addition, smoking cannabis is prohibited in the following places:

- A. In or upon all property owned, leased, or operated by the City, expressly including any public park, street, sidewalk, trail, bike path, alley, highway, parking lot or parking structure, or in any other public place as defined in this chapter and by state law. (See, Cal. Health & Safety Code § 11362.3(a)(1).)
- B. Within 1,000 feet of a school, day care center, or youth center while children are present at such a school, day care center, or youth center, except in or upon the grounds of a private residence if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center while children are present.
- C. In or upon the grounds of a school, day care center, or youth center, regardless of whether children are present. (See, Cal. Health & Safety Code § 104559; Labor Code § 6404.5.)

- D. While driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation. (See, Cal. Health & Safety Code § 11362.3; Vehicle Code § 23152.)
- E. Ingesting cannabis is prohibited in any public place, as defined herein.

8.14.080 – Multi-unit Residences Required Lease Terms.

- A. Lease Terms. The following lease terms are required immediately following the effective date for all new units and are required for existing units by May 1, 2019 in multi-unit residences:
 - (1) Every lease or other rental agreement for the occupancy of a new or existing unit in a multi-unit residence entered into, renewed, or continued month-to-month after the effective date of this chapter shall include the following:
 - i. A clause providing that as it is a material breach of the agreement to allow or engage in smoking in the unit, including exclusive-use areas such as balconies, porches, or patios. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in the unit or exclusive use areas such as balconies, porches, or patios."
 - ii. A clause providing that it is a material breach of the agreement for any tenant or any other person subject to the control of the tenant to engage in smoking in any common area of the multi-unit residence other than a designated smoking area. Such a clause might state, "It is a material breach of this agreement for any tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any common area of the property, except in an unenclosed designated smoking area, if one exists."
 - iii. A clause providing that it is a material breach of the agreement for any tenant or any other person subject to the control of the tenant to violate any law regulating smoking while anywhere on the property. Such a clause might state, "It is a material breach of this agreement for any tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating smoking while anywhere on the property."
 - iv. A clause expressly conveying third-party beneficiary status to all occupants of the multi-unit residence as to the smoking provisions of the lease or other rental agreement. Such a clause might state, "Other occupants of the property are express third-party beneficiaries of those provisions in this agreement regarding smoking. As such, other occupants of the property may enforce such provisions by any lawful means, including by bringing a civil action in a court of law."
- B. Whether or not a landlord complies with subsection (A), the clauses required by that subsection shall be implied and incorporated by law into every agreement to which subsection (A) applies and shall become effective as of the earliest possible date on which the landlord could have made the insertions pursuant to subsection (A).
- C. A tenant who breaches a smoking provision of a lease or other rental agreement for the occupancy of a unit in a multi-unit residence, or who knowingly permits any other person subject to the control of the tenant or present by invitation or permission of the tenant, shall be liable for the breach to: (i) the landlord; and (ii) any occupant of the multi-unit residence who is exposed to smoke or who suffers damages as a result of the breach.

- D. This chapter shall not create additional liability for a landlord to any person for a tenant's breach of any smoking provision in a lease or other rental agreement for the occupancy of a unit in a multi-unit residence if the landlord has fully complied with this section.

8.14.090 - Posting and Notice Requirements.

- A. "No Smoking" signs with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is controlled by this chapter, by the owner, operator, manager or other person having control of such building or other place. For unenclosed areas, the signs must be posted at each point of ingress to the area, and in at least one other conspicuous point within the area. For multi-unit residences, the signage shall indicate smoking is prohibited within units in the multi-unit residence and within the common areas, except as designated under Section 8.14.050(E).
- B. With respect to each multi-unit residence, the person legally responsible for maintenance of the common area shall within thirty (30) days of the effective date of this chapter, notify the occupants and owners of units in writing by mail or delivery to the unit of the smoking prohibitions and penalties imposed by this chapter.
- C. Notwithstanding this section, the presence or absence of signs or failure to receive notice shall not be a defense to a charge of smoking in violation of any other provision of this chapter.

8.14.100 - Vending Machines.

Vending machines for the distribution of tobacco products and/or cannabis products shall be prohibited within the City of Clayton.

8.14.110 - Distribution of Free Samples and Coupons.

No person, including any agent or employee of any person, in the business of selling or otherwise distributing tobacco products or cannabis/cannabis products for commercial purposes shall in the course of such business distribute, or direct, authorize, or permit any agent or employee to distribute: (1) any tobacco product, including any smokeless tobacco product, or (2) coupons, certificates, or other written material which may be redeemed for tobacco products without charge, to any person in any public place.

8.14.120 - Out of Package Sales.

No person shall sell or offer for sale tobacco products or smokeless tobacco not in the original packaging provided by the manufacturer.

8.14.130 – Enforcement.

- A. Administration of this chapter shall be by the City Manager or his/her designees.
- B. Any citizen who desires to register a complaint hereunder may initiate enforcement consideration with the City Manager or his/her designees.
- C. Any person acting for the interests of itself, its members, or the general public (hereinafter "private enforcer") may bring a civil action in any court of competent jurisdiction, including small claims court, to enforce this chapter against any person who has violated this chapter two (2) or more times. Upon proof of the violations, a court shall grant all appropriate relief, including: (1) awarding damages; and (2) issuing an injunction or a conditional judgment. If there is insufficient or no proof of actual damages for a specific violation, the court shall award one

hundred fifty dollars (\$150.00) for each violation as statutory damages. A private enforcer shall provide a copy of his, her, or its action to the City Manager within seven (7) days of filing it.

- D. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity, including without limitation, administrative fines.

8.14.140 - Penalties.

- A. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this chapter to fail to properly post signs required hereunder.
- B. It shall be unlawful for any person to smoke in any area restricted by the provisions of this chapter. Each instance of smoking in violation of this chapter shall constitute a separate violation.
- C. No person shall knowingly permit smoking in an area which is under the legal or de facto control of that person and in which smoking is prohibited by this chapter.
- D. Unless state law requires a different remedy, any person who violates subsection A. or B. or C. herein, or any other provision of this chapter, shall be guilty of a misdemeanor unless it is charged as in an infraction, in the discretion of the City Manager in accordance with chapter 1.20 of the Clayton Municipal Code. As required by state law, violations of section 8.14.070 shall be charged as an infraction and subject to the penalties set forth in state law (See, Cal. Health & Safety Code § 11362.4, as may be amended.).

8.14.150 - Non-Retaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

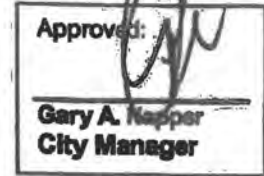
8.14.160 - Other Applicable Laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

ATTACHMENT 2

Agenda Date: 3-20-2018

Agenda Item: 7a



AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR *MG*

DATE: MARCH 20, 2018

SUBJECT: PUBLIC HEARING TO CONSIDER THE INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 8.14 (REGULATION OF SMOKING) OF THE CLAYTON MUNICIPAL CODE (ZOA-01-18)

RECOMMENDATION

It is recommended the City Council consider all information provided and submitted, open the Public Hearing and take and consider all public testimony and, if determined to be appropriate, take the following actions:

- 1) Following closure of the Public Hearing, subject to any changes by the City Council, adopt a motion to have the City Clerk read Ordinance No. 481 by title and number only and waive further reading; and
- 2) Following the City Clerk's reading, by motion approve Ordinance No. 481 for Introduction to amend the Clayton Municipal Code Chapter 8.14 – Regulation of Smoking (ZOA-01-18) (Attachment 1).

BACKGROUND AND DISCUSSION

During the City Council's consideration and discussion of the regulation of commercial cannabis uses due to the State of California's legalization of adult-use cannabis (Proposition 64), the City Council directed staff to bring back an update to the City's existing smoking ordinance in order to more thoroughly address the smoking and ingesting of cannabis. While examining the City's current smoking Ordinance, staff determined more wholesale changes would be necessary and desirable because the Ordinance had not been updated

since 1993 (**Attachment 2**); especially since there had been significant changes in State law that had occurred; significant changes to the smoking industry in how tobacco products are consumed, as well as societal shifts in acceptable behavior related to the use of tobacco products, particularly as it pertains to secondhand smoke.

On February 20, 2018, the City Council discussed and provided policy direction to staff to amend the Clayton Municipal Code's smoking regulations to address changes relating to the smoking and ingesting of cannabis as well as more stringent regulations regarding the prohibition of smoking in and around multifamily housing units and public spaces, in addition to more robust enforcement and penalties (**Attachment 3**).

DISCUSSION

The direction provided at the February 20, 2018 City Council meeting has been incorporated into the proposed Ordinance, which resulted in proposed comprehensive new smoking regulations.

The major issues incorporated into the Ordinance are as follows:

Definition of Public Place

State law prevents the smoking and consumption of cannabis and cannabis products in a "public place"; however the State did not provide a clear definition of a public place. To address this concern, a definition has been added to the proposed Ordinance to provide clarity. The provided local definition for public place means any area, whether publicly or privately owned, to which the public has access by right or by invitation, expressed or implied, whether by payment of money or not and regardless of any age requirement. "Public place" does not include tobacco shops or private smokers' lounges that meet the requirements of subdivision (e)(2) of Labor Code Section 6404.5 or its successor and this chapter.

Smoking in City Facilities

Smoking is proposed to be prohibited in all city buildings, vehicles, property, parks, trails, the corporation yard, and all other enclosed and unenclosed areas operated by the City.

Prohibition of Smoking

The proposed Ordinance provides more stringent regulations than State law regarding the prohibition of smoking. These regulations would preclude smoking from all enclosed places of employment that are exempt from State law except for a tobacco shop; however in order to allow smoking in a tobacco shop, the retail location could not sell or allow consumption of any food or drink; prohibit those under the age of 21 from entering; and would have to be located in a freestanding building.

Other proposed places that smoking would be prohibited are enclosed public places, services areas (enclosed and unenclosed), the following unenclosed spaces: dining areas,

recreational areas, public events (i.e. Art & Wine, Fourth of July Parade, Oktoberfest, etc.), and all areas within 25 feet of The Grove public park.

Multifamily Housing

Multiple studies have documented smoke migrating from neighboring apartments and condominiums through cracks in shared walls, vents, and open windows involuntarily subjecting others to secondhand smoke. The proposed regulations would prohibit smoking in all multifamily (two or more units) common areas, both enclosed and unenclosed, but would allow a landlord or Homeowners Association (HOA) to establish a designated smoking area as long as the required parameters are met such as having a clearly marked perimeter, appropriate signage, and not in an area primarily used by children. It would also preclude smoking inside of a multifamily unit, whether it's an apartment or a condominium, and would include unenclosed balconies, porches, decks, patios, garages, and carports.

The regulations, upon adoption, would take immediate effect for any new multifamily units; however the application to existing units would be phased in over the next year, with full implementation by May 1, 2019. Further, landlords would be required to disclose the smoking regulations in the lease terms or rental agreement and HOAs would be required to notify the occupants and owners in writing within 30 days of the City's new smoking regulations. These restrictions would not allow residents to smoke cannabis, including medical cannabis without a reasonable accommodation, within these housing units and State law does not allow the smoking or consumption of cannabis in a public place. Oddly, the growing of cannabis for personal use and edible cannabis products would still be permissible within multifamily residential units.

Cannabis

State law prohibits the smoking of cannabis where smoking tobacco is prohibited, which is reiterated in the proposed Ordinance. Further, the smoking of cannabis is prohibited on all City owned or leased property, including parks, open space, and trails; within 1,000 feet of a school, daycare, or youth center; in or upon the grounds of a school, daycare, or youth center; and while driving or riding in the passenger seat of a vehicle, boat, vessel, or aircraft. Lastly, the ingesting of cannabis is prohibited in any public place.

Cannabis and cannabis products were also added to the existing Clayton Municipal Code sections pertaining to the prohibition of vending machines and the distribution of free samples (§8.14.090 and §8.14.100, respectively).

Enforcement and Penalties

Enforcement of these local regulations would be performed by the Clayton Police Department; however a provision was added allowing a member of the public to bring a civil action in any court of competent jurisdiction. Upon the demonstration of proof of the violations, the court shall grant all appropriate relief including damages or injunction.

The penalty for any violations of these regulations could be subject to either an infraction or a misdemeanor, which would be at the discretion of the City Manager.

ENVIRONMENTAL

This Ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment.

FISCAL IMPACTS

It is anticipated there will be additional expenses initially for enforcement and public education and outreach after the passage of the proposed Ordinance; however once the Clayton Municipal Code requirements have been circulated and understood by the general public, it is anticipated enforcement and education costs would decrease. There will also be an initial investment in signage costs around The Grove public park to ensure public areas are appropriately signed for public awareness and enforcement.

Overall, the long term impacts compared to the City's existing smoking regulations are expected to be nominal.

ATTACHMENTS

1. Ordinance No. 481 with the following Exhibit:
 - a. Exhibit A – Clayton Municipal Code Section 8.14 – Regulation of Smoking [pp. 12]
2. Clayton Municipal Code Section 8.14 [pp. 7]
3. February 20, 2018 City Council Staff Report and Minutes [pp. 24]

ATTACHMENT 1

ORDINANCE NO. 481

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON
AMENDING CHAPTER 8.14 (REGULATION OF SMOKING) OF THE CLAYTON
MUNICIPAL CODE**

**THE CITY COUNCIL
City of Clayton, California**

**THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY FIND AS
FOLLOWS:**

WHEREAS, the U.S. Environmental Protection Agency has determined that tobacco smoke is the major contributor of particulate indoor air pollution; and

WHEREAS, reliable studies have shown that breathing side stream or secondhand smoke is a significant health hazard, in particular for elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function; including asthmatics and those with obstructive airway disease; and

WHEREAS, health hazards induced by breathing side stream or secondhand smoke include heart disease, lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, broncho constriction, and broncho spasm; and

WHEREAS, nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing side stream or secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same; and

WHEREAS, the smoking of tobacco, or any other weed or plant, is a danger to health; and

WHEREAS, the health care costs and lost productivity incurred by smoking-related disease and death represent a heavy and avoidable financial drain on our community; and

WHEREAS, the free distribution of cigarettes and other tobacco products encourages people to begin smoking and using tobacco products, and tempts those who had quit smoking to begin smoking again; and

WHEREAS, free distribution of cigarettes and other tobacco products promotes unsightly litter, thereby increasing the costs to the public in cleaning the streets; and also causes pedestrian traffic congestion; and

WHEREAS, electronic smoking devices, commonly known as "electronic cigarettes," "e-cigarettes," "e-cigars," "e-cigarillos," "e-pipes," "e-hookahs," "electronic nicotine delivery systems," "vape pens" etc., are battery operated devices designed to deliver nicotine, flavor, and/or other substances through a vapor inhaled by the users; and

WHEREAS, electronic smoking devices' vapor emissions and cartridge contents have been found to contain a number of dangerous substances including chemicals known to the State of California to cause cancer such as formaldehyde, acetaldehyde, lead, nickel, and chromium; and

WHEREAS, exposure to vapor from electronic smoking devices may cause passive or secondhand vaping; and

WHEREAS, electronic smoking devices may have the capacity to 're-normalize' tobacco use and often mimic conventional tobacco products with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes; and

WHEREAS, the use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment; and

WHEREAS, these findings, are equally applicable to the smoking of marijuana, now referred to as cannabis; and

WHEREAS, California Health and Safety Code, Section 11362.3, provides that smoking or ingesting cannabis or cannabis products is not permitted in any public place and smoking is prohibited in places where smoking tobacco is prohibited, among other places.

WHEREAS, the City of Clayton ("City") prohibits smoking in city-owned, leased or operated facilities, in parks, trails and open spaces, as well as certain enclosed and unenclosed areas of the City open to the public; and

WHEREAS, the purpose of the City's smoking restrictions is to serve the public health, safety and welfare due to the known dangers to health posed by smoking and secondhand smoke; and

WHEREAS, the City's smoking regulations have not been updated since 1993; and

WHEREAS, the use of electronic smoking devices, also referred to as 'e-cigarettes,' has grown in in popularity in recent years, even as traditional tobacco use has declined; and

WHEREAS, electronic smoking devices emit vapor and other substances that may be inhaled by bystanders, who may include children and youth, the elderly, among others, and the effect of such substances on the user and bystanders has not been shown to be safe; and

WHEREAS, the City desires to clarify its local smoking regulations consistent with the recently enacted Adult Use of Marijuana Act of 2016 (commonly known as AUMA or Proposition 64) that cannabis smoking is prohibited anywhere tobacco smoking is prohibited; and

WHEREAS, the City Council desires to pass this ordinance in order to more fully protect City citizens against unwanted secondhand smoke in public places, in multi-family

dwellings, and to clarify and confirm that smoking marijuana/cannabis and use of electronic smoking devices is prohibited and subject to the same enforcement and penalties as other smoking restrictions; and

WHEREAS, this Ordinance is authorized by California Health and Safety Code section 118910 and California Business and Professions Code section 26200.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLAYTON DOES ORDAIN AS FOLLOWS:

Section 1. Incorporation of Recitals. The above recitals are true and correct and are hereby incorporated into this Ordinance.

Section 2. Clayton Municipal Code Chapter 8.14 ("Regulation of Smoking") Amended. Clayton Municipal Code, Chapter 8.14, entitled "Regulation of Smoking," is hereby adopted and amended as set forth in Exhibit "A" attached hereto and incorporated herein by reference.

Section 3. CEQA. This Ordinance is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment. This Ordinance expands the scope of smoke-free places in the City of Clayton and adds cannabis smoke and the use of electronic smoking or vaporizing devices, thereby reducing exposure to second hand smoke and offering greater protection to indoor and outdoor air quality.

Section 4. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

Section 5. Effective Date and Publication. This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution by the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause the amendments adopted in Section 2 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a regular public meeting of the City Council of the City of Clayton held on March 20, 2018.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular public meeting thereof held on April 3, 2018 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Keith Haydon, Mayor

ATTEST

Janet Brown, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

Malathy Subramanian, City Attorney

Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on April 3, 2018.

Janet Brown, City Clerk

EXHIBIT A

Chapter 8.14 - REGULATION OF SMOKING

Sections:

8.14.010 - Reserved.

8.14.020 - Purpose.

Because smoking is a positive danger to public health, and a cause of material discomfort and a public health hazard even to those exposed to secondhand smoke or vapor, the compelling purpose and intent of this chapter include, but are not limited, to:

- A. Promote the public health, safety and welfare by prohibiting smoking in certain areas which are used by or open to the public;
- B. Assure a cleaner and more hygienic environment for the City, its residents, visitors, and natural resources; and
- C. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including children and youth, to breathe smoke-free and drug-free air, recognizing the threat to public health and the environment caused by smoking and unwelcome secondhand smoke and vapor.

8.14.030 - Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as hereafter set out, unless it is apparent that they have a different meaning:

- A. "Bar" means any business licensed or required to be licensed by the Department of Alcoholic Beverage Control for alcoholic beverage on-sale privileged as a "public premise" as defined by California Business and Professions Code section 23039.
- B. "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes. For purposes of this chapter, the term "business" also includes a nonprofit entity.
- C. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For purposes of this chapter, the term "cannabis" shall include "cannabis," "cannabis concentrate" and "cannabis products" as those terms are defined by California Business and Professions Code section 26001, and specifically includes hashish, dabs, or similarly mildly euphorogenic and hallucinogenic drugs are prepared from the plant genus *Cannabis*.
- D. "Common Area" means every enclosed area or unenclosed area of a multi-unit residence that residents of more than one unit of that multi-unit residence are entitled to enter or use, including, for example, halls, paths, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.
- E. "Dining Area" means any area, including streets and sidewalks, that is available to or customarily used by the general public or an employee, and that is designed, established, or regularly used, for consuming food or drink. For purposes of this chapter, "dining area" does not include the unenclosed or outdoor areas of a private restaurant that is not open to the general public during all hours of operation.
- F. "Distribute" means to give, sell, deliver, dispense, issue, or cause or hire any person to give, sell, deliver, dispense, issue or offer to give, sell, deliver, dispense or issue.

- G. "Electronic Smoking Device" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vapor or vape pen or any other product name or descriptor.
- H. "Employee" means any person who is employed or retained as an independent contractor by any employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer.
- I. "Employer" means any business or government entity that retains the service of one (1) or more employees.
- J. "Enclosed" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:
1. Any type of overhead cover whether or not that cover includes vents or other openings and at least three (3) walls or other vertical constraint to airflow including, but not limited to, vegetation of any height, whether or not those boundaries include vents or other openings; or
 2. Four (4) walls or other vertical constraints to airflow including, but not limited to, vegetation that exceed six (6) feet in height, whether or not those boundaries include vents or other openings.
- K. "Multi-unit Residence" means improved property containing two (2) or more dwelling units, including, but not limited to, attached single-family homes, townhomes, duplexes, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. Multi-unit residences do not include the following:
1. A detached single-family home; or
 2. A single-family home with a detached or attached in-law, second unit, or accessory dwelling unit permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City adopted pursuant to those sections.
- L. "Nonprofit Entity" means any entity that meets the requirements of California Corporations Code Section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is not a nonprofit entity within the meaning of this chapter.
- M. "Open Space" means land left basically in its natural, undeveloped state to promote scenic and aesthetic beauty and used for the preservation of natural resources, managed production of resources and outdoor recreation.
- N. "Park" means all public open spaces, recreation areas and trails owned and maintained by the City of Clayton, whose primary purpose is recreation, either passive or active.
- O. "Person" means any natural person, business, cooperative association, homeowners association, nonprofit entity, personal representative, receiver, trustee, assignee, or any other legal entity including a government agency.
- P. "Place of Employment" means any area under the legal or de facto control of an employer that an employee or the general public may have cause to enter in the normal course of the operations, regardless of the hours of operation. "Place of employment" does not include tobacco shops or private smokers' lounges that meet the requirements of subdivision (e)(2) of Labor Code Section 6404.5 or its successor and this chapter. A private residence is not a place of employment unless it is used as a childcare or health care facility.

- Q. "Public Event" means any event which is open to and may be attended by the general public, including but not limited to such events as farmers' markets, parades, craft fairs, festivals, concerts, performances or other exhibitions, regardless of any fee or age requirement.
- R. "Public Place" means any area, whether publicly or privately owned, to which the public has access by right or by invitation, expressed or implied, whether by payment of money or not and regardless of any age requirement. "Public place" does not include tobacco shops or private smokers' lounges that meet the requirements of subdivision (e)(2) of Labor Code Section 6404.5 or its successor and this chapter.
- S. "Recreational Area" means any area that is open to the general public for recreational purposes, regardless of any fee or age requirement. The term "Recreational Area" includes, but is not limited to, open spaces, parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, and skateboard parks, but does not include the unenclosed outdoor areas of private golf courses.
- T. "Service Area" means any publicly or privately-owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. The term "Service Area" includes but is not limited to areas including or adjacent to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.
- U. "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine or cannabis or other controlled substances and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term "Smoke" includes, but is not limited to, tobacco smoke, electronic smoking device vapors, and cannabis smoke or vapors.
- V. "Smoking" means engaging in an act that generates smoke, such as, for example, inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, tobacco product, cannabis, or other plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking or vaping device for the purpose of circumventing the prohibition of smoking. The term "smoking" shall include, but not be limited to "smoking" as the term is defined by California Business and Professions Code, Section 22950.5.
- W. "Tobacco Product" means any of the following:
1. A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.
 2. An electronic smoking device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, vapor pen or hookah.
 3. Any component, part, or accessory of a tobacco product, whether or not sold separately.

"Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose. The term "tobacco product" shall include, but not be limited to "tobacco product" as the term is defined by California Business and Professions Code, Section 22950.5.

- X. "Trail" means a marked or established path or route, paved or unpaved, used for the recreational activities of walking, hiking, bicycling, and/or horseback riding.
- Y. "Unenclosed" means any area that is not Enclosed.
- Z. "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes but is not limited to an apartment; a duplex; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a room in a single room occupancy ("SRO") facility; a room in a homeless shelter; a single-family home; and an in-law or accessory dwelling unit.
- AA. "Vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion or payment of money, whether by coin or paper bill, credit card, cell phone app or other item representative of value, which dispenses or releases a tobacco product and/or tobacco accessories.

8.14.040 - Regulation of Smoking in City Facilities.

- A. Smoking is prohibited in all buildings, vehicles, or other enclosed areas occupied by City employees, owned or leased by the City, or otherwise operated by the City.
- B. Smoking is prohibited in all unenclosed areas owned or leased by the City, including City parks, trails and recreational areas, parking lots, corporation yards, and the grounds of any building owned or leased by the City.

8.14.050 - Prohibition of Smoking.

Smoking is prohibited in the following places within the City of Clayton:

- A. Enclosed places of employment in accordance with California Labor Code, section 6404.5, including those enclosed places of employment exempted by the California smoke-free workplace law (Labor Code section 6404.5(e), as that section may be amended from time to time) except as provided below:
 - 1. Smoking inside a tobacco shop is not prohibited by this subsection if (a) the tobacco shop does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on the premises; (b) the tobacco shop prohibits those under the age of 21 from entering the store at all times; and (c) the premises of the tobacco shop is an independent freestanding building unattached to any other building, establishment, or use. For the purposes of this exception, "Tobacco Shop" means any tobacco retailer that derives more than seventy-five percent (75%) of gross sales receipts from the sale or exchange of tobacco products and tobacco paraphernalia.
- B. Enclosed public places.
- C. Service areas (enclosed and unenclosed).
- D. The following unenclosed areas:
 - 1. Dining areas.
 - 2. Recreational areas.
 - 3. Public events.
 - 4. All areas within twenty-five feet of The Grove Park, including sidewalks and streets.

- E. All enclosed and unenclosed multi-unit residence common areas, except that a landlord may designate a portion of an unenclosed common area as a smoking area. A designated smoking area of an unenclosed common area of a multi-unit residence must not overlap with any area where smoking is otherwise prohibited by local, state, or federal law; must be located at least twenty-five feet in all directions from non-smoking areas; must not include areas used primarily by children; must be no more than twenty-five percent of the total unenclosed common area; must have a clearly marked perimeter; and must be identified by conspicuous signs.
- F. Dwelling units in any new multi-unit residence, including unenclosed balconies, porches, decks, patios, garages, and carport areas, that receives a building permit on or after the effective date of this chapter.
- G. Dwelling units in any existing multi-unit residence, including unenclosed balconies, porches, decks, patios, garages, and carport areas, on or after May 1, 2019.

Nothing in this chapter prohibits any person with legal control over any property from prohibiting smoking on any part of such property, even if smoking is not otherwise prohibited in that area.

8.14.060 - Prohibition of Smoking and Ingesting Cannabis and Cannabis Products.

Smoking cannabis is prohibited in all places where smoking tobacco products is prohibited. In addition, smoking cannabis is prohibited in the following places:

- A. In or upon all property owned, leased, or operated by the City, expressly including any public park, street, sidewalk, trail, bike path, alley, highway, parking lot or parking structure, or in any other public place as defined in this chapter and by state law. (See, Cal. Health & Safety Code § 11362.3(a)(1).)
- B. Within 1,000 feet of a school, day care center, or youth center while children are present at such a school, day care center, or youth center, except in or upon the grounds of a private residence if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center while children are present.
- C. In or upon the grounds of a school, day care center, or youth center, regardless of whether children are present. (See, Cal. Health & Safety Code § 104559; Labor Code § 6404.5.)
- D. While driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation. (See, Cal. Health & Safety Code § 11362.3; Vehicle Code § 23152.)
- E. Ingesting cannabis is prohibited in any public place, as defined herein.

8.14.070 – Multi-unit Residences Required Lease Terms.

- A. Lease Terms. The following lease terms are required immediately following the effective date for all new units and are required for existing units by May 1, 2019 in multi-unit residences:
 - (1) Every lease or other rental agreement for the occupancy of a new or existing unit in a multi-unit residence entered into, renewed, or continued month-to-month after the effective date of this chapter shall include the following:
 - i. A clause providing that as it is a material breach of the agreement to allow or engage in smoking in the unit, including exclusive-use areas such as balconies, porches, or patios. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or

present by invitation or permission of the tenant to engage in smoking in the unit or exclusive use areas such as balconies, porches, or patios.

- ii. A clause providing that it is a material breach of the agreement for any tenant or any other person subject to the control of the tenant to engage in smoking in any common area of the multi-unit residence other than a designated smoking area. Such a clause might state, "It is a material breach of this agreement for any tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any common area of the property, except in an unenclosed designated smoking area, if one exists."
 - iii. A clause providing that it is a material breach of the agreement for any tenant or any other person subject to the control of the tenant to violate any law regulating smoking while anywhere on the property. Such a clause might state, "It is a material breach of this agreement for any tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating smoking while anywhere on the property."
 - iv. A clause expressly conveying third-party beneficiary status to all occupants of the multi-unit residence as to the smoking provisions of the lease or other rental agreement. Such a clause might state, "Other occupants of the property are express third-party beneficiaries of those provisions in this agreement regarding smoking. As such, other occupants of the property may enforce such provisions by any lawful means, including by bringing a civil action in a court of law."
- B. Whether or not a landlord complies with subsection (A), the clauses required by that subsection shall be implied and incorporated by law into every agreement to which subsection (A) applies and shall become effective as of the earliest possible date on which the landlord could have made the insertions pursuant to subsection (A).
- C. A tenant who breaches a smoking provision of a lease or other rental agreement for the occupancy of a unit in a multi-unit residence, or who knowingly permits any other person subject to the control of the tenant or present by invitation or permission of the tenant, shall be liable for the breach to: (i) the landlord; and (ii) any occupant of the multi-unit residence who is exposed to smoke or who suffers damages as a result of the breach.
- D. This chapter shall not create additional liability for a landlord to any person for a tenant's breach of any smoking provision in a lease or other rental agreement for the occupancy of a unit in a multi-unit residence if the landlord has fully complied with this section.

8.14.080 - Posting and Notice Requirements.

- A. "No Smoking" signs with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is controlled by this chapter, by the owner, operator, manager or other person having control of such building or other place. For unenclosed areas, the signs must be posted at each point of ingress to the area, and in at least one other conspicuous point within the area. For multi-unit residences, the signage shall indicate smoking is prohibited within units in the multi-unit residence and within the common areas, except as designated under Section 8.14.050(F).
- B. With respect to each multi-unit residence where the units may be sold individually, the person legally responsible for maintenance of the common area shall: (1) within thirty (30) days of the effective date of this chapter, notify the occupants and owners of units in writing by mail or delivery to the unit of the prohibitions imposed by Sections 8.14.050(E) and 8.14.050(G).

- C. Notwithstanding this section, the presence or absence of signs or failure to receive notice shall not be a defense to a charge of smoking in violation of any other provision of this chapter.

8.14.090 - Vending Machines.

Vending machines for the distribution of tobacco products and/or cannabis products shall be prohibited within the City of Clayton.

8.14.100 - Distribution of Free Samples and Coupons.

No person, including any agent or employee of any person, in the business of selling or otherwise distributing tobacco products or cannabis/cannabis products for commercial purposes shall in the course of such business distribute, or direct, authorize, or permit any agent or employee to distribute: (1) any tobacco product, including any smokeless tobacco product, or (2) coupons, certificates, or other written material which may be redeemed for tobacco products without charge, to any person in any public place.

8.14.110 - Out of Package Sales.

No person shall sell or offer for sale tobacco products or smokeless tobacco not in the original packaging provided by the manufacturer.

8.14.120 - Enforcement.

- A. Administration of this chapter shall be by the City Manager or his/her designees.
- B. Any citizen who desires to register a complaint hereunder may initiate enforcement consideration with the City Manager or his/her designees.
- C. Any person acting for the interests of itself, its members, or the general public (hereinafter "private enforcer") may bring a civil action in any court of competent jurisdiction, including small claims court, to enforce this chapter against any person who has violated this chapter two (2) or more times. Upon proof of the violations, a court shall grant all appropriate relief, including: (1) awarding damages; and (2) issuing an injunction or a conditional judgment. If there is insufficient or no proof of actual damages for a specific violation, the court shall award one hundred fifty dollars (\$150.00) for each violation as statutory damages. A private enforcer shall provide a copy of his, her, or its action to the City Manager within seven (7) days of filing it.
- D. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity, including without limitation, administrative fines.

8.14.130 - Penalties.

- A. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this chapter to fail to properly post signs required hereunder.
- B. It shall be unlawful for any person to smoke in any area restricted by the provisions of this chapter. Each instance of smoking in violation of this chapter shall constitute a separate violation.
- C. No person shall knowingly permit smoking in an area which is under the legal or de facto control of that person and in which smoking is prohibited by this chapter.
- D. Any person who violates subsection A. or B. or C. herein, or any other provision of this chapter, shall be guilty of a misdemeanor unless it is charged as in an infraction, in the discretion of the City Manager in accordance with chapter 1.20 of the Clayton Municipal Code.

8.14.140 - Non-Retaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

8.14.150 - Other Applicable Laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Chapter 8.14 - REGULATION OF SMOKING

Sections:

8.14.010 - Findings.

The City Council of the City of Clayton hereby finds that:

- A. The U.S. Environmental Protection Agency has determined that tobacco smoke is the major contributor of particulate indoor air pollution; and
- B. Reliable studies have shown that breathing side stream or secondhand smoke is a significant health hazard, in particular for elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function; including asthmatics and those with obstructive airway disease; and
- C. Health hazards induced by breathing side stream or secondhand smoke include heart disease, lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, broncho constriction, and broncho spasm; and
- D. Nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing side stream or secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same; and
- E. The smoking of tobacco, or any other weed or plant, is a danger to health; and
- F. The health care costs and lost productivity incurred by smoking-related disease and death represent a heavy and avoidable financial drain on our community; and
- G. The free distribution of cigarettes and other tobacco products encourages people to begin smoking and using tobacco products, and tempts those who had quit smoking to begin smoking again; and
- H. Free distribution of cigarettes and other tobacco products promotes unsightly litter, thereby increasing the costs to the public in cleaning the streets; and also causes pedestrian traffic congestion.

(Ord. 295, § 1, 1992)

8.14.020 - Purpose.

The compelling purpose and intent of this chapter includes, but is not limited to, generally promoting the health, safety, and welfare of all people in the community against the health hazards and harmful effects of the use of addictive tobacco products.

(Ord. 295, § 1, 1992)

8.14.030 - Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as hereafter set out, unless it is apparent that they have a different meaning:

- A. "Area Open to the Public" shall mean any area available to and customarily used by the general public.
- B. "Bar" means an establishment that is primarily devoted to the serving of alcoholic beverages and in

which the service of food is minimal and only incidental to the consumption of such beverages (Department of Alcoholic Beverage Control Type 61, 42 or 48 licenses - "stand alone" bars). A "bar area" means that portion of a restaurant establishment where alcoholic beverages are sold and from which tobacco smoke can filter into the dining area of the restaurant through a passageway, ventilation system, or any other means.

- C. "Bowlers' settee" means the area immediately behind the bowling lane in which score is kept and seating is provided for bowlers waiting their turn to bowl.
- D. "Bowling center concourse" means that area separated from the bowling lane, bowlers' settee, and visitors' settee by at least one step or a physical barrier.
- E. "Bowling lane" means the bowler's approach, the foul line and the lanes.
- F. "Distribute" means to give, sell, deliver, dispense, issue, or cause or hire any person to give, sell, deliver, dispense, issue or offer to give, sell, deliver, dispense or issue.
- G. "Employee" means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit.
- H. "Employer" means any person, partnership, corporation, including municipal corporation or public entity, who employs the services of two (2) or more persons or two (2) or more people conduct business within the establishment.
- I. "Enclosed" means closed in by a roof and walls with appropriate openings for ingress and egress.
- J. "General Public" shall mean shoppers, customers, patrons, patients, students, clients and other similar invitees of a Commercial Enterprise or Non-Profit Entity.
- K. "Open Space" means land left basically in its natural, undeveloped state to promote scenic and aesthetic beauty and used for the preservation of natural resources, managed production of resources and outdoor recreation.
- L. "Park" means all public open spaces, recreation areas and trails owned and maintained by the City of Clayton, whose primary purpose is recreation, either passive or active.
- M. "Place of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to, work areas, employee lounges, conference rooms, and employee cafeterias. A private residence is not a place of employment unless it is used as a childcare or health care facility.
- N. "Smoking" means the carrying or holding of a lighted pipe, cigar, or cigarette of any kind, or any other lighted smoking equipment or the lighting or emitting or exhaling the smoke of a pipe, cigar, or cigarette of any kind.
- O. "Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling centers, halls, ball fields and other playing fields, stadiums, and other similar facilities and places, whether indoor or outdoor, but excluding the outdoor areas of golf courses, where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.
- P. "Trail" means a marked or established path or route, paved or unpaved, used for the recreational activities of walking, hiking, bicycling, and/or horseback riding.
- Q. "Vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper bill, or other thing representative of

value, which dispenses or releases a tobacco product and/or tobacco accessories.

R. "Visitors' settee" means seating provided immediately behind the bowlers' settee.

(Ord. 295, § 1, 1992; Ord. 307, 1993)

8.14.040 - Regulation of Smoking in City-Owned Facilities.

Smoking is prohibited in all buildings, vehicles, or other areas occupied by city employees, owned or leased by the city, or otherwise operated by the city.

(Ord. 295, § 1, 1992; Ord. 307, 1993)

8.14.050 - Prohibition of Smoking.

Smoking is prohibited in the following places within the City of Clayton:

- A. All enclosed areas available to and customarily used by the general public and all businesses patronized by the public, including, but not limited to, retail stores, the common areas of hotels and motels, pharmacies, banks, shopping malls, and other offices;
- B. All indoor areas of restaurants, including but not limited to indoor dining areas, waiting areas, restrooms, offices, break rooms, food preparation areas, and bar areas. The owner, manager or operator of the restaurant shall post signs as prescribed by Section 8.14.080(A) and remove all ashtrays from tables. Smoking is permitted in any outdoor areas of restaurants, and also in the bar and dining indoor areas of restaurants after the consumption of all meals therein has ceased.
- C. Waiting rooms, hallways, wards, and semi-private rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, except that health facilities shall also be subject to the provisions of Section 8.14.060 regulating smoking in places of employment;
- D. Elevators, public rest rooms, indoor services lines, buses, taxicabs and other means of public transit under the authority of public entities, and in ticket, boarding, and waiting areas of public transit depot; provided, however, that this prohibition does not prevent the establishment of separate waiting areas for smokers and non-smokers, provided that at least sixty percent (60%) of a given waiting area shall be designated as a non-smoking area.
- E. In public area of museums and galleries;
- F. Theaters, auditoriums, concert facilities and halls which are used for motion pictures, stage dramas and musical performances, ballets or other exhibitions, both indoor and outdoor, except when smoking is part of any such production, provided however, in outdoor facilities, designated smoking areas may be provided which shall be segregated from non-smoking areas. Where seating area is provided in an outdoor facility, no more than forty percent (40%) of the total seats of the facility may be designated as smoking seats;
- G. Retail food marketing establishments, including grocery stores, and supermarkets;
- H. Public schools and other public facilities under the control of another public agency, which are available to and customarily used by the general public, to the extent that the same are subject to the jurisdiction of the city;
- I. Sports facilities, both indoor and outdoor, and convention halls.

- J. Bowling centers, including but not limited to bowling lanes, bowlers' settees, visitors' settees and game room provided however, that a designated smoking area may be provided on the bowling center concourse. The manager or operator of the bowling center shall post signs as prescribed by Section 8.14.080.A. and remove ashtrays from non-smoking areas;
- K. Private residences when used as child care or health care facilities. Board and care facilities shall provide smoke-free living quarters for non-smoking boarders;
- L. Bingo parlors, except a separate enclosed room may be designated as a smoking room. The owner, manager or operator of the bingo parlor shall post signs as prescribed by Section 8.14.080 and remove all ashtrays from the non-smoking room.
- M. Parks, Trails, and Open Space.

Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a non-smoking establishment.

(Ord. 295, § 1, 1992; Ord. 307, 1993)

8.14.060 - Regulation of Smoking in Places of Employment.

- A. Smoking is prohibited in any place of employment, including, but not limited to, open office areas, shared offices and private offices occupied by employees performing clerical, technical, administrative or other business or work functions; and, conference and meeting rooms, classrooms, auditoriums, rest rooms, medical facilities, hallways, and elevators.
- B. The provisions of this division shall be communicated to all employees within three (3) weeks of its adoption, and at least annually thereafter.

(Ord. 295, § 1, 1992)

8.14.070 - Optional Smoking Areas.

Notwithstanding any other provisions of this division to the contrary, the following areas shall not be subject to the smoking restrictions of this division:

- A. A private residence, including one which may serve as a place of employment, except when covered by Section 8.14.030.H;
- B. Bars, except as provided otherwise in this division;
- C. Licensed cardrooms;
- D. Hotel and motel rooms rented to guests, provided however, that each hotel and motel designates not less than thirty percent (30%) of their guest rooms as non-smoking rooms and removes ashtrays from these rooms;
- E. Rooms in restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms while these rooms are being used for private functions;
- F. Retail stores that deal exclusively in the sale of tobacco and smoking paraphernalia;
- G. In places of employment, employers may provide specific smoking areas for employees provided all of the following conditions are met:
 1. The smoking area shall be provided with a heating, ventilating and air-conditioning (HVAC) system

designed such that none of the air from the smoking area will be recirculated into the other areas of the building.

2. The smoking area shall be completely separated from the remainder of the building by solid partitions or glazing without openings other than doors, and all doors leading to the smoking area shall be self-closing. The doors shall be provided with a gasket so installed as to provide a seal where the door meets the stop on both sides and across the top.
3. The smoking areas shall maintain a minimum negative pressure of 0.005-inch water column relative to non-smoking areas.
4. The employer shall submit written verification and test results to the city manager or his/her designees prepared by a licensed mechanical contractor or engineer that the HVAC system has been designed and tested and meets the requirements set forth in subsections 1. through 3. above.
5. If the HVAC system is part of a smoke removal system or pressurization system, any modifications to these systems to provide smoking areas will require approval from the Consolidated Fire Department. Written verification of this approval shall be provided to the city manager.
6. If the specific smoking area is an employee break room, lunch room or other area which may be used by non-smoking employees, then a separate non-smoking break room, lunch room or other area shall be provided of equal or larger size and include at least equal facilities.

(Ord. 295, § 1, 1992)

8.14.080 - Posting Requirements.

- A. "Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is controlled by this division, by the owner, operator, manager or other person having control of such building or other place.
- B. Every hotel or motel regulated by this division will have posted at its entrance a sign clearly stating that non-smoking rooms are available, and every patron shall be asked as to his or her preference.

(Ord. 295, § 1, 1992)

8.14.090 - Vending Machines.

Coin-operated cigarette vending machines may be located only on those premises which have either a type 61, type 42 or type 48 license from the Department of Alcoholic Beverage Control. Cigarette vending machines must be located at least 25 feet from any entry into the premise.

(Ord. 295, § 1, 1992)

8.14.100 - Distribution of Free Samples and Coupons.

- A. No person, firm, association or corporation in the business of selling or otherwise distributing cigarettes or other tobacco or smoking products for commercial purposes shall in the course of such business distribute, or direct, authorize, or permit any agent or employee to distribute: (1) any cigarette or other tobacco or smoking product, including any smokeless tobacco product, or (2) coupons, certificates, or

other written material which may be redeemed for tobacco products without charge, to any person on any public street or sidewalk or in any public park or playground or on any other public ground or in any public building.

- B. No agent or employee of any person, firm, association or corporation in the business of selling or otherwise distributing cigarettes or other tobacco or smoking products for commercial purposes shall in the course of such business distribute, (1) any cigarette or product, or (2) coupons, certificates, or other written material which may be redeemed for tobacco products without charge, to any person on any public street or sidewalk or in any public park or playground or on any other public ground or in any public building.
- C. For purposes of this section, "public ground" and "public building" include sports arenas as defined in Section 8.14.030.J. and any entertainment facility whether enclosed or not, except a bar, for which a charge is made for admission, whether publicly or privately owned.

(Ord. 295, § 1, 1992)

8.14.110 - Out of Package Sales.

No person shall sell or offer for sale cigarettes or smokeless tobacco not in the original packaging provided by the manufacturer.

(Ord. 295, § 1, 1992)

8.14.120 - Enforcement.

- A. Administration of this chapter shall be by the city manager or his/her designees.
- B. Any citizen who desires to register a complaint hereunder may initiate enforcement consideration with the city manager or his/her designees.
- C. Any owner, manager, operator or employer of any establishment controlled by this chapter may inform persons violating this division of the appropriate provisions thereof.

(Ord. 295, § 1, 1992)

8.14.130 - Penalties.

- A. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this section to fail to properly post signs required hereunder.
- B. It shall be unlawful for any person to smoke in any area restricted by the provisions of this section.
- C. Any person or business who violates subsection A. or B. herein, or any other provision of this section, shall be guilty of an infraction, punishable by:
 1. A fine, not exceeding one hundred dollars (\$100.00), for the first violation;
 2. A fine, not exceeding two hundred dollars (\$200.00), for a second violation of this ordinance within one year;
 3. A fine, not exceeding five hundred dollars (\$500.00), for each additional violation of this ordinance within one year.

(Ord. 295, § 1, 1992)

8.14.140 - Non-Retaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this division.

(Ord. 295, § 1, 1992)

8.14.150 - Other Applicable Laws.

This division shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(Ord. 295, § 1, 1992)

6. PUBLIC COMMENT ON NON - AGENDA ITEMS

Ann Stanaway, 1553 Haviland Place, expressed her unhappiness with the intemperate remarks made by Vice Mayor Shuey at the last meeting regarding ADA access issues on the replacement playground equipment scheduled for North Valley Park. She noted she has complained since 2007 about ADA noncompliance of the City and the City's contempt attitude toward public safety in general.

7. PUBLIC HEARINGS

- (a) Public Hearing to consider the Introduction and First Reading of a proposed City-initiated Ordinance No. 481 amending Chapter 8.14 (Regulation of Smoking) of the *Clayton Municipal Code*.
(Community Development Director)

Community Development Director Gentry presented the staff report noting during the City's previous consideration on regulation of commercial cannabis uses, the City Council directed staff to bring back an update to the City's smoking ordinance to more thoroughly address the smoking and ingestion of cannabis. While examining the City's current smoking ordinance, staff determined more wholesale changes would be necessary and desirable as the ordinance has not been updated since 1993. Ms. Gentry then outlined specifics of the proposed ordinance:

a. Definition of Public Place.

State law did not provide a clear definition so staff is recommending a local definition: "A public place means any area, whether publicly or privately owned, to which the public has access by right or invitation, expressed or implied, whether by payment of money or not and regardless of any age requirement." 'Public place' would not include tobacco shops or private smokers' lounges.

b. Smoking in City Facilities.

Smoking would be prohibited in all City buildings, vehicles, property, parks, trails, the corporation yard, and all other enclosed and unenclosed areas operated by the City.

c. Prohibition of Smoking.

The proposed Ordinance provides more stringent regulations than State law to preclude smoking from all enclosed places of employment that are currently exempt from State law such as patron smoking areas and long term health care facilities, theatrical production sites, except for tobacco shops or smoking lounges; however these shops would have to meet certain criteria such as no one under the age of 21, no consumption or sales of any food or drink, and the shop would have to be located in a freestanding building. Other proposed places that smoking would be prohibited are enclosed public places, enclosed and unenclosed service areas such as an ATM or lines to purchase tickets, unenclosed areas include dining area, recreational areas, public events such as the Fourth of July Parade, Oktoberfest, and within 25 feet of The Grove public park.

d. Multifamily Housing.

Due to smoke migrating from neighboring apartments and condominiums through cracks in shared wall, vents, and open windows involuntarily subjecting others to secondhand smoke; these proposed regulations would prohibit smoking in all multifamily common areas both enclosed and unenclosed as well as inside these housing units. The HOA or management company may designate an outdoor smoking area as appropriately signed

and marked away from children. It is also proposed to prohibit smoking inside of these multifamily units including unenclosed balconies, porches decks, patios, garages and carports. Upon adoption, these particular regulations would take effect immediately for any new multifamily units, with existing units a phased-in compliance by May 1, 2019. Landlords would be required to disclose the smoking regulations in the lease terms or rental agreements.

e. Cannabis.

State law prohibits the use of cannabis anywhere smoking tobacco is prohibited, specifying the smoking of cannabis is prohibited on all owned or leased City property including parks, open space, trails; within 1,000 feet and in or upon the grounds of a school, daycare or youth center; and while driving or riding in a vehicle, boat, vessel or aircraft. The ingesting of cannabis is also prohibited in any public place.

f. Enforcement and Penalties.

Enforcement would be by the Clayton Police Department; however, a member of the public can bring a civil action in any court and upon demonstration of proof of the violations do exist the court shall grant appropriate relief including damages or injunction.

Ms. Gentry advised the City received a note of support for its proposed ordinance from the Contra Costa County Tobacco Prevention Coalition comprised of thirty (30) organizations and individuals within the county.

Lastly, staff recommends a few changes in the ordinance language tonight, as recommended by legal counsel, with the first change the replacement of a recital to clarify federal prohibition on cannabis and concerns regarding secondhand smoke from cannabis uses. Secondly, clarifying a mobile home and mobile home park is not considered to be a mobile home by unit residence. Thirdly, requiring the application notification requirements apply to both rental and home ownership and require the notification to include associated penalties. Lastly, a language change that will allow for modifications or changes to State law in regards to how penalties for violating this section of the Municipal Code will be applied. For example, State law for cannabis currently only allows violations to be infractions and not on the level of a misdemeanor.

Councilmember Diaz requested clarification on the 25' boundary around The Grove park, especially during the concerts as a number of people attend who smoke and they typically gather around a tree in the adjacent parking area; with the proposed 25' extending to the center of the adjacent street, where would we direct these people to smoke? Ms. Gentry advised they may go across the street so long as they are outside of the 25' boundary. The impetus for this boundary is existing State law prohibition within 25' of a tot lot or playground; with this particular area there is an exemption under State law that allows for smoking on a public sidewalk.

Councilmember Diaz inquired if a smoking area should be designated during the concerts to direct people there? Ms. Gentry advised staff will have to look into that suggestion; if we were to designate an area it must be on City property and not on private property and away from The Grove's playground area.

Councilmember Catalano inquired on the multi-unit development and lease provisions regarding the exception where the landlord could designate an unenclosed area as the designated smoking section in a common area where you can smoke; why would the landlord necessarily have the authority to designate the area? Why not a HOA or a property management company?

Ms. Gentry replied staff could amend the language to clarify it is the management company or HOA in addition to the landlord.

Councilmember Catalano further inquired on the dining areas including unenclosed areas; there is an exemption if the area is not used 100% of the open hours for access by general public? Would it then not be a dining area that could be used for smoking? Ms. Gentry responded this provision pertains to private restaurants such as the Oakhurst Country Club, which would fall under this provision with its dining area.

Councilmember Pierce inquired on sections 8.14.040 and 8.14.050 Prohibition and locations of Smoking; it seems when applying the restrictions the entire downtown area becomes prohibited from smoking. She wanted to clarify if that is the intent? Ms. Gentry advised that is not the intent.

Councilmember Pierce indicated the proposed ordinance reads, "... prohibited in all unenclosed areas owned or leased by the City including city parks, trails, recreational area, parking lots, corporation yards and the grounds of any building owned or leased by the city," which definition would include city streets, sidewalks, and the downtown corral. Private property is private property and dining establishments are considered public. Based on this language, there is no place in downtown where it is legal to smoke. If we are intending to ban smoking in all of downtown, we should state that.

Ms. Gentry responded that is not the intent of the ordinance since the Clayton Club is across the street and exempted from the ordinance where smoking could take place on its back deck, with the distinction restaurants earn gross receipts from food sales not alcohol, whereas the Clayton Club is designated as a bar therefore would not be captured in the ordinance.

Councilmember Pierce desired a map be prepared to see what areas are covered under the proposed ordinance, to know where it is and is not legal to smoke in the downtown, especially with the upcoming Concert season starting.

Mayor Haydon sought clarification if smoking is prohibited in unenclosed areas and limiting it to the dining areas, recreation areas, public events, and within 25', there are sections in town that unenclosed smoking would still be legal, such as Clayton Club in its patio. Ms. Gentry confirmed that statement is correct.

Mayor Haydon opened the Public Hearing.

Bruce George requested a definition of multifamily units and what does multifamily unit mean in this ordinance? Is it condominiums? Is it apartments? Is it townhomes? What is a multifamily unit by definition? His reason for asking is he resides in a townhome and there is a huge difference between townhome and condominiums. He is also a cancer survivor so for the most part he supports anything that is going to keep him from inhaling somebody else's garbage. Unfortunately, smokers have rights, too. In a townhome you own the dirt and building, with the property line between your left wall and your neighbors' right wall with a minimum of 1 chair space. If you take this ordinance and apply it to townhomes, you are infringing on the rights of smokers. If there was a definition of multifamily units in its truest form, it would exclude townhomes. The public areas could be worded to include townhome rear yards, but there is not a rear yard in our community that is not more than 25' from an adjacent home that has openings; there could be a nearby door, patio door or windows. There may be one or two end units that may be exempted from that restriction. Townhome interiors should be excluded and exteriors included.

William Colin, representing the Contra Costa Tobacco Prevention Coalition, expressed his support and the support of the Coalition to help assist the City. It has information on smoking laws recently passed in Contra Costa County and is still working with

neighboring cities on smoking ordinances. Passing this ordinance would be important for our children, as when his niece was three she got asthma for secondhand smoke from a neighbor living in an adjacent apartment. She is now eighteen years old and limited in outdoor activities because of her asthma. Mr. Colin expressed interest in creating a healthier community with the support of the Coalition.

Richard Haile noted he is also a cancer survivor and would like to add to the multifamily unit concern: what comes through the wall has a long duration and probably not worth worrying about if we can deal with the larger issue upfront. The definition of what a multifamily housing unit needs to be clarified to include what a townhome is and what a condominium or co-op is. In regard to cigar lounges and smoking shops and the preclusion of sale or consumption of food or liquor on premises, most cigar lounges serve wine and people bring in food, so it seemed to be a part of the ordinance aimed at excluding one from happening in Clayton. The last thing we need is a business that cannot operate. We need more clarification on where food and liquor work into this proposed ordinance.

Vice Mayor Shuey inquired if Mr. Haile is requesting smoking prohibited in townhomes and allowed in condominiums? Mr. Haile replied the primary reason for the ordinance is not clearly stated, defeating the purpose of the ordinance by controlling smoke within those tight environments, regardless of the quality of the wall in between those types of units.

Steve Barton, owner of the Clayton Club, Clayton resident and non-smoker since the early 1980s remarked he applauds the efforts the Council and City staff in generating an ordinance that is going to clarify this matter for everyone. He was hoping for this since vaping has come along. He has a concern in making allowances for customers who do smoke to have an area they can go to without leaving the City, and has heard different interpretation of this tonight. In the newspaper he read there is an intention to allow designated areas. At the Clayton Club people consume drinks which is considered dining based on the definitions in the proposed ordinance. He is keenly interested in designating a clearly understood smoking area that makes the regulations as he hopes are intended. If the Clayton Club were the only business that would benefit from this, it worries him about other businesses with outdoor areas wherein people congregate. Every business that has a social atmosphere needs to have a smoking area it can designate. It is not clear from the ordinance that sidewalks are excluded from State law. He would like to see people walk down the street when there is not a public event and be able to have a cigarette if they so choose; and designated large smoking areas so people can congregate removed from those who do not want to be around the smoke. He is happy to put up any signs to designate a smoking section. He specifically wants to know if people can smoke in the back or on the sidewalk in front of his property. We do need a map, and would like to work with the Community Development Director to determine the location for where his signs need to be placed. He also suggested the wording on any no smoking signage be clear and not subject to interpretation.

Mayor Haydon closed the Public Hearing.

Vice Mayor Shuey referred to Section K, definition of multifamily, and he believes it is being confused; it should read multiunit residence defining townhomes, duplexes, apartments, and condominiums.

Mayor Haydon allowed Bruce George to speak again. Mr. George indicated the problem with that approach is you are taking away what people have purchased by not allowing them to degrade their own interior units or homes. He is more for people's rights.

Vice Mayor Shuey noted he would also like to see an updated map to clarify where downtown businesses would be allowed to designate as smoking areas for its patrons; otherwise, they will lose business.

Councilmember Catalano inquired on vending machines; are we intending to not have a standalone unit anywhere? Do local businesses have this type of machine? Ms. Gentry responded currently there are no vending machines dispensing tobacco products; they are essentially unmonitored, and so somebody under the age of 21 could purchase cannabis or tobacco products if they were to be allowed.

Councilmember Pierce added she would like to make allowances for the smokers in town so they would not feel banned from the social activities in the downtown. We do not want anyone's health harmed, but we must have designated areas to smoke.

It was moved by Vice Mayor Shuey, seconded by Council Member Diaz, to continue the Public Hearing to the City Council meeting of April 17, 2018, and for staff to work on revisions to the proposed Ordinance and prepare a map of the Clayton downtown illustrating where people could smoke under the proposed restrictions.

Motion passed (5-0 vote)

8. **ACTION ITEMS** – None.

9. **COUNCIL ITEMS** – None.

10. **CLOSED SESSION** – None.

11. **ADJOURNMENT**– on call by Mayor Haydon, the City Council adjourned its meeting at 7:56 p.m.

The next regularly scheduled meeting of the City Council will be April 3, 2018.

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Respectfully submitted,

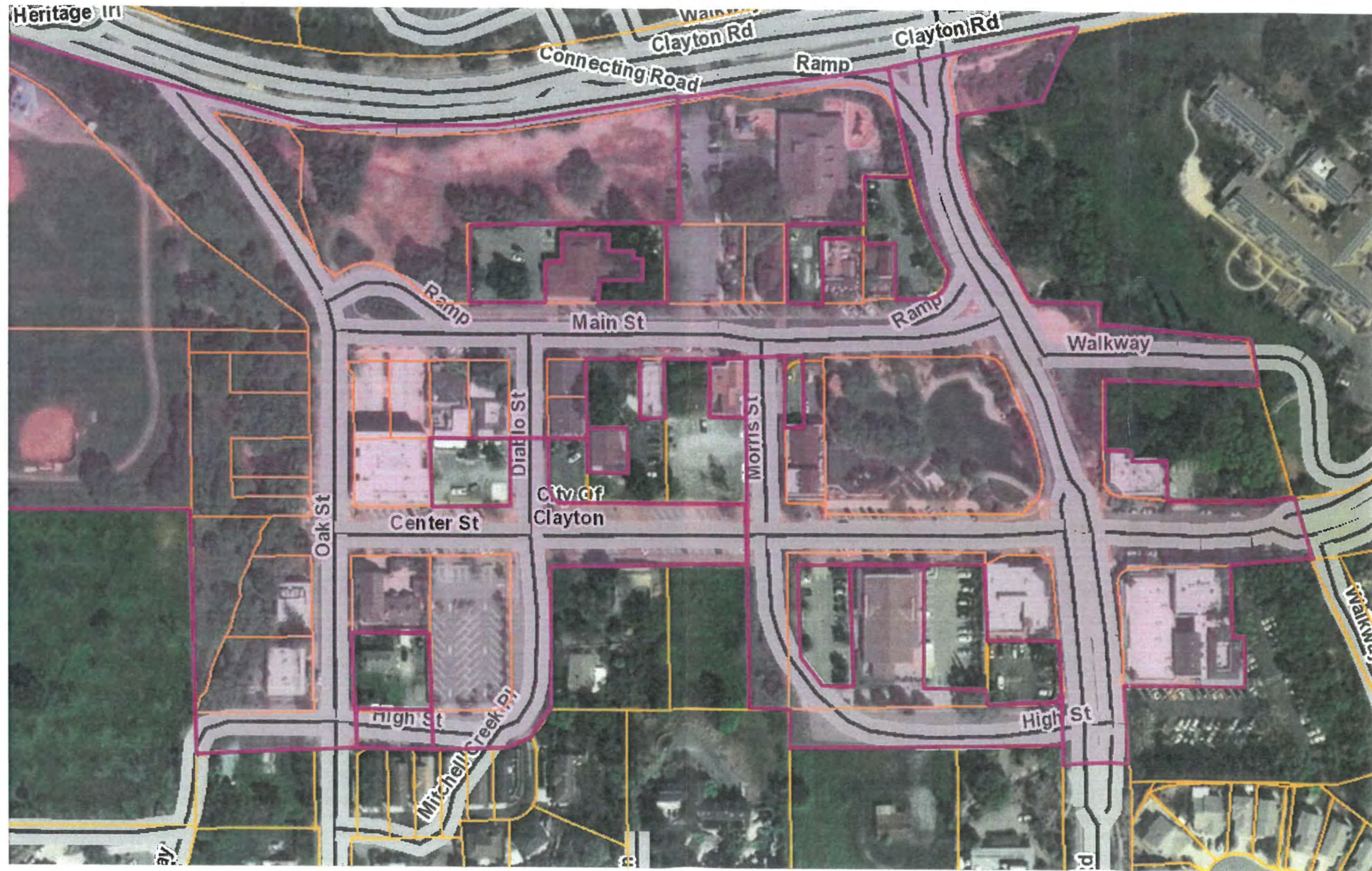
Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

Keith Haydon, Mayor

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ATTACHMENT 3
Proposed "No Smoking" Areas



ATTACHMENT 4

EXHIBIT A

Chapter 8.14 - REGULATION OF SMOKING

Sections:

8.14.010 - Reserved.

8.14.020 - Purpose.

Because smoking is a positive danger to public health, and a cause of material discomfort and a public health hazard even to those exposed to secondhand smoke or vapor, the compelling purpose and intent of this chapter include, but are not limited, to:

- A. Promote the public health, safety and welfare by prohibiting smoking in certain areas which are used by or open to the public;
- B. Assure a cleaner and more hygienic environment for the City, its residents, visitors, and natural resources; and
- C. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including children and youth, to breathe smoke-free and drug-free air, recognizing the threat to public health and the environment caused by smoking and unwelcome secondhand smoke and vapor.

8.14.030 - Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as hereafter set out, unless it is apparent that they have a different meaning:

- A. "Bar" means any business licensed or required to be licensed by the Department of Alcoholic Beverage Control for alcoholic beverage on-sale privileged as a "public premise" as defined by California Business and Professions Code section 23039.
- B. "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes. For purposes of this chapter, the term "business" also includes a nonprofit entity.
- C. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For purposes of this chapter, the term "cannabis" shall include "cannabis," "cannabis concentrate" and "cannabis products" as those terms are defined by California Business and Professions Code section 26001, and specifically includes hashish, dabs, or similarly mildly euphorogenic and hallucinogenic drugs are prepared from the plant genus *Cannabis*, whether for medical or adult use.
- D. "Common Area" means every enclosed area or unenclosed area of a multi-unit residence that residents of more than one unit of that multi-unit residence are entitled to enter or use, including, for example, halls, paths, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.
- E. "Dining Area" means any area, including streets and sidewalks, that is available to or customarily used by the general public or an employee, and that is designed, established, or regularly used, for consuming food ~~or~~ and drink. For purposes of this chapter, "dining area" does not include the unenclosed or outdoor areas of a private restaurant that is not open to the general public during all and-or any hours of operation and is only open to members. The term "dining area" shall not include a bar.
- F. "Distribute" means to give, sell, deliver, dispense, issue, or cause or hire any person to give, sell, deliver, dispense, issue or offer to give, sell, deliver, dispense or issue.

- G. "Electronic Smoking Device" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vapor or vape pen or any other product name or descriptor.
- H. "Employee" means any person who is employed or retained as an independent contractor by any employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer.
- I. "Employer" means any business or government entity that retains the service of one (1) or more employees.
- J. "Enclosed" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:
1. Any type of overhead cover whether or not that cover includes vents or other openings and at least three (3) walls or other vertical constraint to airflow including, but not limited to, vegetation of any height, whether or not those boundaries include vents or other openings; or
 2. Four (4) walls or other vertical constraints to airflow including, but not limited to, vegetation that exceed six (6) feet in height, whether or not those boundaries include vents or other openings.
- K. "Multi-unit Residence" means improved property containing two (2) or more dwelling units sharing one or more walls, including, but not limited to, attached single-family homes, townhomes, row houses, duplexes, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. Multi-unit residences do not include the following:
1. A detached single-family home; or
 2. A detached single-family home with a detached or attached in-law, second unit, or accessory dwelling unit permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City adopted pursuant to those sections; or
 3. A mobile home in a mobile home park.
- L. "Nonprofit Entity" means any entity that meets the requirements of California Corporations Code Section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is not a nonprofit entity within the meaning of this chapter.
- M. "Open Space" means land left basically in its natural, undeveloped state to promote scenic and aesthetic beauty and used for the preservation of natural resources, managed production of resources and outdoor recreation.
- N. "Park" means all public open spaces, recreation areas and trails owned and maintained by the City of Clayton, whose primary purpose is recreation, either passive or active.
- O. "Person" means any natural person, business, cooperative association, homeowners association, nonprofit entity, personal representative, receiver, trustee, assignee, or any other legal entity including a government agency.
- P. "Place of Employment" means any area under the legal or de facto control of an employer that an employee or the general public may have cause to enter in the normal course of the operations, regardless of the hours of operation. "Place of employment" does not include tobacco shops or private smokers' lounges that meet the requirements of subdivision (e)(2) of

Labor Code Section 6404.5 or its successor and this chapter. A private residence is not a place of employment unless it is used as a childcare or health care facility.

- Q. "Public Event" means any event which is open to and may be attended by the general public, including but not limited to such events as farmers' markets, parades, craft fairs, festivals, concerts, performances or other exhibitions, regardless of any fee or age requirement.
- R. "Public Place" means any area, whether publicly or privately owned, to which the public has access by right or by invitation, expressed or implied, whether by payment of money or not and regardless of any age requirement. "Public place" does not include tobacco shops or private smokers' lounges that meet the requirements of subdivision (e)(2) of Labor Code Section 6404.5 or its successor and this chapter.
- S. "Recreational Area" means any area that is open to the general public for recreational purposes, regardless of any fee or age requirement. The term "Recreational Area" includes, but is not limited to, open spaces, parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, and skateboard parks, but does not include the unenclosed outdoor areas of private golf courses.
- T. "Service Area" means any publicly or privately-owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. The term "Service Area" includes but is not limited to areas including or adjacent to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.
- U. "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine or cannabis or other controlled substances and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term "Smoke" includes, but is not limited to, tobacco smoke, electronic smoking device vapors, and cannabis smoke or vapors.
- V. "Smoking" means engaging in an act that generates smoke, such as, for example, inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, tobacco product, cannabis, or other plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking or vaping device for the purpose of circumventing the prohibition of smoking. The term "smoking" shall include, but not be limited to "smoking" as the term is defined by California Business and Professions Code, Section 22950.5.
- W. "Tobacco Product" means any of the following:
1. A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.
 2. An electronic smoking device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, vapor pen or hookah.
 3. Any component, part, or accessory of a tobacco product, whether or not sold separately.

"Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic

purposes where the product is marketed and sold solely for such an approved purpose. The term "tobacco product" shall include, but not be limited to "tobacco product" as the term is defined by California Business and Professions Code, Section 22950.5.

- X. "Trail" means a marked or established path or route, paved or unpaved, used for the recreational activities of walking, hiking, bicycling, and/or horseback riding.
- Y. "Unenclosed" means any area that is not Enclosed.
- Z. "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes but is not limited to an attached single-family home; row houses, an apartment; a duplex; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a room in a single room occupancy ("SRO") facility; a room in a homeless shelter; a single-family home; and an in-law or accessory dwelling unit.
- AA. "Vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion or payment of money, whether by coin or paper bill, credit card, cell phone app or other item representative of value, which dispenses or releases a tobacco product and/or tobacco accessories.

8.14.040 - Regulation of Smoking in City Facilities.

- A. Smoking is prohibited in all buildings, vehicles, or other enclosed areas occupied by City employees, owned or leased by the City, or otherwise operated by the City.
- B. Smoking is prohibited in all unenclosed areas, ~~owned, or leased,~~ or operated by the City, including City parks, trails and recreational areas, parking lots, corporation yards, ~~and~~ the grounds of any building ~~owned, or leased,~~ or operated by the City and public sidewalks.

8.14.050 - Prohibition of Smoking.

Smoking is prohibited in the following places within the City of Clayton:

- A. Enclosed places of employment in accordance with California Labor Code, section 6404.5, including those enclosed places of employment exempted by the California smoke-free workplace law (Labor Code section 6404.5(e), as that section may be amended from time to time) except as provided below:
 - 1. Smoking inside a tobacco shop is not prohibited by this subsection if (a) the tobacco shop does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on the premises; (b) the tobacco shop prohibits those under the age of 21 from entering the store at all times; and (c) the premises of the tobacco shop is an independent freestanding building unattached to any other building, establishment, or use. For the purposes of this exception, "Tobacco Shop" means any tobacco retailer that derives more than seventy-five percent (75%) of gross sales receipts from the sale or exchange of tobacco products and tobacco paraphernalia.
- B. Enclosed public places.
- C. Service areas (enclosed and unenclosed).
- D. The following unenclosed areas:
 - 1. Dining areas.
 - 2. Recreational areas.

3. Public events.
 4. All areas within twenty-five feet of The Grove Park, including sidewalks and streets.
- E. All enclosed and unenclosed multi-unit residence common areas, except that a landlord or other person legally responsible for maintenance of the common area may designate a portion of an unenclosed common area as a smoking area. A designated smoking area of an unenclosed common area of a multi-unit residence must not overlap with any area where smoking is otherwise prohibited by local, state, or federal law; must be located at least twenty-five feet in all directions from non-smoking areas; must not include areas used primarily by children; must be no more than twenty-five percent of the total unenclosed common area; must have a clearly marked perimeter; and must be identified by conspicuous signs.
- F. Dwelling units in any new multi-unit residence, including enclosed and unenclosed balconies, porches, decks, patios, garages, and carport areas, that receives a building permit on or after the effective date of this chapter.
- G. Dwelling units in any existing multi-unit residence, including enclosed and unenclosed balconies, porches, decks, patios, garages, and carport areas, on or after May 1, 2019.

Nothing in this chapter prohibits any person with legal control over any property from prohibiting smoking on any part of such property, even if smoking is not otherwise prohibited in that area.

8.14.060 – Permissible Smoking Areas

Nothing in this chapter prohibits any person from smoking:

1. Inside private vehicles.
2. Inside private, detached single-family residences except private residences used as child care facilities or health care facilities.
3. Inside an accessory dwelling unit that is attached to or detached from a detached single-family residence.
4. As provided under subsection 8,14,050.G.

8.14.0760 - Prohibition of Smoking and Ingesting Cannabis and Cannabis Products.

Smoking cannabis is prohibited in all places where smoking tobacco products is prohibited. In addition, smoking cannabis is prohibited in the following places:

- A. In or upon all property owned, leased, or operated by the City, expressly including any public park, street, sidewalk, trail, bike path, alley, highway, parking lot or parking structure, or in any other public place as defined in this chapter and by state law. (See, Cal. Health & Safety Code § 11362.3(a)(1).)
- B. Within 1,000 feet of a school, day care center, or youth center while children are present at such a school, day care center, or youth center, except in or upon the grounds of a private residence if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center while children are present.
- C. In or upon the grounds of a school, day care center, or youth center, regardless of whether children are present. (See, Cal. Health & Safety Code § 104559; Labor Code § 6404.5.)

- D. While driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation. (See, Cal. Health & Safety Code § 11362.3; Vehicle Code § 23152.)
- E. Ingesting cannabis is prohibited in any public place, as defined herein.

8.14.0870 – Multi-unit Residences Required Lease Terms.

- A. Lease Terms. The following lease terms are required immediately following the effective date for all new units and are required for existing units by May 1, 2019 in multi-unit residences:
 - (1) Every lease or other rental agreement for the occupancy of a new or existing unit in a multi-unit residence entered into, renewed, or continued month-to-month after the effective date of this chapter shall include the following:
 - i. A clause providing that as it is a material breach of the agreement to allow or engage in smoking in the unit, including exclusive-use areas such as balconies, porches, or patios. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in the unit or exclusive use areas such as balconies, porches, or patios."
 - ii. A clause providing that it is a material breach of the agreement for any tenant or any other person subject to the control of the tenant to engage in smoking in any common area of the multi-unit residence other than a designated smoking area. Such a clause might state, "It is a material breach of this agreement for any tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any common area of the property, except in an unenclosed designated smoking area, if one exists."
 - iii. A clause providing that it is a material breach of the agreement for any tenant or any other person subject to the control of the tenant to violate any law regulating smoking while anywhere on the property. Such a clause might state, "It is a material breach of this agreement for any tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating smoking while anywhere on the property."
 - iv. A clause expressly conveying third-party beneficiary status to all occupants of the multi-unit residence as to the smoking provisions of the lease or other rental agreement. Such a clause might state, "Other occupants of the property are express third-party beneficiaries of those provisions in this agreement regarding smoking. As such, other occupants of the property may enforce such provisions by any lawful means, including by bringing a civil action in a court of law."
- B. Whether or not a landlord complies with subsection (A), the clauses required by that subsection shall be implied and incorporated by law into every agreement to which subsection (A) applies and shall become effective as of the earliest possible date on which the landlord could have made the insertions pursuant to subsection (A).
- C. A tenant who breaches a smoking provision of a lease or other rental agreement for the occupancy of a unit in a multi-unit residence, or who knowingly permits any other person subject to the control of the tenant or present by invitation or permission of the tenant, shall be liable for the breach to: (i) the landlord; and (ii) any occupant of the multi-unit residence who is exposed to smoke or who suffers damages as a result of the breach.

- D. This chapter shall not create additional liability for a landlord to any person for a tenant's breach of any smoking provision in a lease or other rental agreement for the occupancy of a unit in a multi-unit residence if the landlord has fully complied with this section.

8.14.0890 - Posting and Notice Requirements.

- A. "No Smoking" signs with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is controlled by this chapter, by the owner, operator, manager or other person having control of such building or other place. For unenclosed areas, the signs must be posted at each point of ingress to the area, and in at least one other conspicuous point within the area. For multi-unit residences, the signage shall indicate smoking is prohibited within units in the multi-unit residence and within the common areas, except as designated under Section 8.14.050(E).
- B. With respect to each multi-unit residence, the person legally responsible for maintenance of the common area shall within thirty (30) days of the effective date of this chapter, notify the occupants and owners of units in writing by mail or delivery to the unit of the smoking prohibitions and penalties imposed by this chapter.
- C. Notwithstanding this section, the presence or absence of signs or failure to receive notice shall not be a defense to a charge of smoking in violation of any other provision of this chapter.

8.14.1090 - Vending Machines.

Vending machines for the distribution of tobacco products and/or cannabis products shall be prohibited within the City of Clayton.

8.14.1190 - Distribution of Free Samples and Coupons.

No person, including any agent or employee of any person, in the business of selling or otherwise distributing tobacco products or cannabis/cannabis products for commercial purposes shall in the course of such business distribute, or direct, authorize, or permit any agent or employee to distribute: (1) any tobacco product, including any smokeless tobacco product, or (2) coupons, certificates, or other written material which may be redeemed for tobacco products without charge, to any person in any public place.

8.14.1420 - Out of Package Sales.

No person shall sell or offer for sale tobacco products or smokeless tobacco not in the original packaging provided by the manufacturer.

8.14.1320 - Enforcement.

- A. Administration of this chapter shall be by the City Manager or his/her designees.
- B. Any citizen who desires to register a complaint hereunder may initiate enforcement consideration with the City Manager or his/her designees.
- C. Any person acting for the interests of itself, its members, or the general public (hereinafter "private enforcer") may bring a civil action in any court of competent jurisdiction, including small claims court, to enforce this chapter against any person who has violated this chapter two (2) or more times. Upon proof of the violations, a court shall grant all appropriate relief, including: (1) awarding damages; and (2) issuing an injunction or a conditional judgment. If there is insufficient or no proof of actual damages for a specific violation, the court shall award one

hundred fifty dollars (\$150.00) for each violation as statutory damages. A private enforcer shall provide a copy of his, her, or its action to the City Manager within seven (7) days of filing it.

- D. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity, including without limitation, administrative fines.

8.14.1340 - Penalties.

- A. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this chapter to fail to properly post signs required hereunder.
- B. It shall be unlawful for any person to smoke in any area restricted by the provisions of this chapter. Each instance of smoking in violation of this chapter shall constitute a separate violation.
- C. No person shall knowingly permit smoking in an area which is under the legal or de facto control of that person and in which smoking is prohibited by this chapter.
- D. Unless state law requires a different remedy, any person who violates subsection A. or B. or C. herein, or any other provision of this chapter, shall be guilty of a misdemeanor unless it is charged as in an infraction, in the discretion of the City Manager in accordance with chapter 1.20 of the Clayton Municipal Code, with the exception of As required by state law, violations of subsection 8.14.070, which shall be charged as an infraction and subject to the penalties in compliance with set forth in state law (See, Cal. Health & Safety Code § 11362.4, as may be amended).

8.14.1450 - Non-Retaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

8.14.1560 - Other Applicable Laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

ATTACHMENT 5

City of Clayton Council Members & Community Development Director

- Keith Haydon Mayor
- David Shuey Vice Mayor
- Tuija Catalano Council Member
- Julie Pierce Council Member
- Jim Diaz Council Member
- Mindy Gentry Community Development Director

My name is Bruce George. I attended the March 20, 2018 informational discussion about the proposed ordinance 7a the smoking ban. I am a big proponent of these types of regulations, but also a big proponent of Homeowners rights.

When I asked for the Councils definition of "multi-unit residence", Mr. Sheuy directed me to the specific language contained in the ordinance at letter "K". I realize Townhomes were not included in this draft, but the door is left open by the language "but not limited to". I would like to see Townhomes included in this ordinance with some modifications to the wording.

I am sure most, if not all, of our Council members understand the differences between Condos and Townhomes, but a short recap might help clarify those differences to those that may not understand. Building codes are written separating the two, and inspections are done applying the appropriate codes. Most Planning departments understand and recognize these differences. They approve or deny applications based on this understanding. The following are a few of the major differences:

Condos Versus Townhomes

- Can share attic space up to 3,000 square feet before fire breaks are required.....No shared spaces in Townhomes.
- Share structural members including but not limited to, floors, walls, and ceilings.....No shared structural members in Townhomes.
- Can share utilities including water, sewer, HVAC systems and electric.....No shared utilities in Townhomes.
- Owners own paint to paint on the interior of their "unit". They own the air within the unit.....Townhome owners own the dirt, the four walls, and the entire structure from the ground through the roof. Including a designated property line.
- Fire ratings, depending on type of building construction, usually consist of one hour type X drywall on each side of common walls.....Townhomes usually consist of one hour type X drywall on each side of each wall separating addresses, running continually unbroken from foundation through roof sheathing.

Townhomes are basically free standing structures that could be picked up and moved to another parcel of land as an independent residence. This can NOT be done with Condos. These are a few of the major differences between the two residences. Excluding the proximity to the neighbors, I believe it's easy to see that Townhomes more closely resemble single family detached homes than Condos.

With a few adjustments to the ordinance language, Townhomes could be included in this ordinance without infringing on a homeowner's rights. The proposed changes could be worded as follows:

Smoking in Townhome communities should be prohibited in all common areas, including porches, balconies, patios and rear yards where openings to adjacent residences are 25' or less measured vertically, horizontally, or diagonally.


Smoking will be permitted within the smokers' address provided all precautions are taken to mitigate smoke from traveling to any adjacent residence. These precautions shall include, but not be limited to closing all windows and doors, including the overhead and side garage doors if so equipped in the smokers' residence. Shutting down all externally vented appliances such as kitchen hood vents and bath vents. These precautions will go a long way toward confining second-hand smoke to the smokers' residence.

Respectfully, Bruce George



Agenda Date: 4-17-2018

Agenda Item: 8a

Approved: 
Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR *MA*

DATE: APRIL 17, 2018

SUBJECT: POLICY DISCUSSION OF INCORPORATING RENTAL HOUSING UNITS INTO THE CITY'S EXISTING INCLUSIONARY HOUSING LAW (REF. AB 1505; 2017 STATUTES) (ZOA-02-18)

RECOMMENDATION

It is recommended the City Council discuss and provide policy direction on the incorporation of rental housing units into the City's existing Inclusionary Housing Ordinance.

BACKGROUND

On August 16, 2016, the City Council adopted an Ordinance implementing inclusionary requirements for affordable housing on new homeownership or for-sale housing developments; the current threshold is ten percent affordable housing units on residential projects having ten or more new units. The Ordinance specifically precluded rental units due to State law and pending the outcomes of two specific court cases (**Attachment 1 and 2**). Rental housing was excluded from consideration in Clayton's Inclusionary Housing Ordinance because of the decision in *Palmer/Sixth Street Properties v. City of Los Angeles (2009)*, which determined that cities may no longer require developers to construct affordable housing units. The court had concluded the City of Los Angeles's inclusionary housing ordinance conflicted with and was preempted by the vacancy decontrol provisions of the Costa-Hawkins Rental Housing Act, which allows residential landlords to set the initial rents at the commencement of a tenancy.

This court case was followed by an outcome in the case of the *California Building Industry Association (CBIA) v. City of San Jose (2015)*. In this particular case, the outcome of the court's decision impacted inclusionary housing ordinances statewide and resulted in a

finding that inclusionary housing ordinances do not constitute an unjust taking of property. The result of the court's decision upheld existing inclusionary housing ordinances; it allowed jurisdictions to adopt inclusionary housing ordinances but only for homeownership or for-sale development projects. When the City Council adopted Clayton's Inclusionary Housing Ordinance, the court's decision in *Palmer/Sixth Street Properties v. City of Los Angeles* was still relevant; therefore rental housing units were excluded due to the conflict with the Costa-Hawkins Rental Housing Act.

On September 29, 2017, Governor Brown signed a comprehensive package of 15 housing-related bills as the legislature's response to address California's housing supply shortage. One of these bills, AB 1505 (**Attachment 3**), known as the "Palmer fix," restores the authority of cities and counties to require the inclusion of affordable housing in new rental housing projects, thereby superseding the court's decision in *Palmer/Sixth Street Properties v. City of Los Angeles*. AB 1505 authorizes cities and counties to adopt ordinances that require, as a local condition of development of residential rental units, to include a certain percentage of residential rental units affordable to moderate, low, very low, and extremely low income. AB 1505 also requires cities and counties to provide alternative means of compliance that may include in lieu fees, land dedication, off-site construction, or acquisition or rehabilitation of existing units.

DISCUSSION

State law requires that local governments identify and plan for the existing and projected housing needs of all economic segments of the community in its Housing Elements. The law acknowledges that, in order for the private market to adequately address housing needs and demand, local governments must adopt land use plans and regulatory systems that provide opportunities for, and do not unduly constrain, housing development of all types and variations.

State law also requires the State Department of Housing and Community Development (HCD) to forecast statewide housing needs and allocate the anticipated need to regions throughout the state. For the Bay Area, HCD provides the regional need to the Association of Bay Area Governments (ABAG), which then distributes the Regional Housing Needs Assessment (RHNA) to the cities and counties within the ABAG region. ABAG allocates housing production goals for cities and counties based on their projected share of the region's household growth, the state of the local housing market and vacancies, and the jurisdiction's housing replacement needs.

For the 2014-2022 projection period, ABAG has allocated the City of Clayton a total of 141 new housing units which are broken down as follows by income category: 51 extremely low- and very low-income units, 25 low-income units, 31 moderate-income units, and 34 above moderate-income units. Given the City's RHNA allocation and the State legislature's push for local governments to identify actions that will make sites available for affordable housing as well as assist in the development of such housing, the City identified a goal

(Goal I) in its certified Housing Element to provide for adequate sites and promote the development of new housing to accommodate Clayton's fair share housing allocation. The City also adopted Policy I.2, which states, "*The City shall actively support and participate in the development of extremely low-, very low-, low-, and moderate-income housing to meet Clayton's fair share housing allocation. To this end, the City shall help facilitate the provision of affordable housing through the granting of regulation concessions and available financial assistance*".

To meet Goal I and Policy I.2, Implementation Measure I.2.1 was identified to require residential projects of ten or more units to develop an Affordable Housing Plan, which requires a minimum of 10% of the units to be built or created as affordable housing units. To promote the goal of actively supporting and participating in the provision of housing for all economic segments, the City Council adopted the current Inclusionary Housing Ordinance, which facilitates the fulfillment of Implementation Measure I.2.1 (**Attachment 4**). The adoption of the Inclusionary Housing Ordinance fully implements Measure I.2.1 by providing details regarding the process and standards for the City and developers to follow.

POLICY QUESTIONS AND IMPACTS

Does the City Council wish to expand the City's Inclusionary Housing Ordinance to incorporate new rental housing projects as allowed for by AB 1505? If the Council does wish to include rental housing projects in the City's Inclusionary Housing Ordinance, would this apply to all rental housing units as defined by HCD, including assisted living units?

The passage of AB 1505 by the State legislature raises the above policy questions for City Council consideration. Amending the City's Inclusionary Housing Ordinance to include rental housing units would further the goals and policies contained within the City's Housing Element; however, this amendment would affect housing projects currently within the City's project pipeline and would also affect any future housing projects containing ten or more rental housing units.

The projects that would be directly and immediately impacted, assuming approval of these projects by the City are: 1) A proposed Clayton Senior Housing project, the 81-unit senior apartments to be located on the eastern portion of High Street behind the United States Post Office and fronting onto old Marsh Creek Road, south of the AT&T switch station building; and 2) The proposed Grand Oak Assisted Living Facility and Memory Care project located on City-owned vacant property in the Town Center.

The 81-unit Clayton Senior Housing project is currently requesting a 35 percent Density Bonus, as allowed under State law and the Clayton Municipal Code, which is proposed to produce seven units dedicated to very-low income households; however, in order to determine the number of inclusionary units, the additional housing units authorized by the

Density Bonus would not be counted in determining the required number of inclusionary units. Therefore, if the Inclusionary Housing Ordinance was implemented as currently written but amended to include rental housing, this would require the developer of the Clayton Senior Housing project to incorporate a minimum of 5.9 affordable units (calculated off the maximum base density, not including the Density Bonus) available only to moderate and/or low income households in addition to the seven units already required under the Density Bonus law. Further, the developer could also elect to select one of the alternatives such as the in-lieu fee rather than provide the affordable units onsite.

While the prospective developer of the Grand Oak project has not formally submitted an application to the City, the project has been mentioned as part of this discussion since the developer has currently entered into an Exclusive Negotiation Agreement with the City and has made a preliminary submittal for staff review and feedback in addition to the onset of the required community outreach process.

Unless directed differently by the Council, the application of the Inclusionary Housing Ordinance to include rental housing would apply to all housing types as defined and counted by HCD. HCD defines permitted units as, *"A house, an apartment, mobile home, a group of rooms, or a single room occupied as separate living quarters... Separate living quarters are those in which occupants live separately from any other individuals in the building and which have direct access from outside the building or through a common hall."* More specifically, HCD's counting of senior housing includes individual units that would allow for eating and living separately from the broader community but does not include beds or quarters in an institution or hospital. For example and confirmed with HCD, assisted living units would count as housing units but the memory care units would not be included because those units do not have the amenities for separate eating and living, such as a kitchen area. Staff supports applying the HCD definition of "housing unit" due to the definition's linkage with the City's RHNA numbers, and by the State's ever-increasing prescriptive and aggressive stance on local governments to provide an adequate and affordable supply of housing.

It should be noted that AB 1505 does provide HCD with the authority to review a jurisdiction's inclusionary housing ordinance if the jurisdiction requires, as a condition of development, more than 15 percent of the total number of units to be affordable to households at 80 percent or less of the area median income. However, HCD is only granted this authority if the jurisdiction has: 1) failed to meet at least 75 percent of its share of the Regional Housing Needs Allocation for above-moderate income households over at least a five year period; or 2) the jurisdiction has failed to submit its annual Housing Element progress report for at least two consecutive years. If HCD determines any of the two aforementioned conditions exist, then HCD may request an economic feasibility study demonstrating the ordinance does not unduly constrain the production of housing.

From staff's perspective, HCD's threshold (for an economic feasibility study of 15 percent of the total number of units to be affordable to households at 80 percent or less of area median income) is significant because it infers the economic feasibility for developers is manageable

up to and around this threshold. Therefore, local developers have little substance to an assertion or claim of an economic hardship meeting the City's current and proposed inclusionary housing requirements. Since the City's current inclusionary housing requirements fall under the State's economic feasibility threshold it further infers the proposed requirements are not overly burdensome as to place an obstacle or governmental constraint in preventing housing production. Only if the City Council desired to require affordability to extremely low- or very low-income households would a feasibility study be advisable and possibly trigger a review of the City's Inclusionary Housing Ordinance by HCD.

STAFF RECOMMENDATION

By motion, direct staff to initiate the process to modify the City's Inclusionary Housing Ordinance to incorporate rental housing for local application of the same standards as required for homeownership projects, and apply it to all housing types as defined and counted by the State Department of Housing and Community Development.

FISCAL IMPACTS

None.

ATTACHMENTS

1. Excerpt from the July 19, 2016 City Council Staff Report and Minutes [pp. 13]
2. CMC Section 17.92 [pp. 9]
3. AB 1505 [pp. 4]
4. Excerpt from the City's Certified 2015-2023 Housing Element [pp. 4]



Approve: 
Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR *MS*

DATE: JULY 19, 2016

SUBJECT: Compliance with City 2015-2023 Housing Element and Recent State Laws: General Plan Amendment to Increase the Minimum Density of the Multifamily High Density Land Use Designation and Ordinances to Amend Various Chapters of Title 17 of the Clayton Municipal Code Pertaining to Density Bonuses, Transitional and Supportive Housing, Employee Housing, and Requiring Projects to Meet the Minimum Density in Multiple Family Residential Zoning Designations (M-R, M-R-M, and M-R-H) (GPA-01-16, ZOA-04-15, ZOA-03-16, ZOA-04-16, ZOA-05-16, and ZOA-06-16)

RECOMMENDATIONS

It is recommended the City Council consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, take the following actions:

1. Motion to approve the Resolution amending the General Plan to increase the minimum density in the Multifamily High Density land use designation from 15.1 to 20 dwelling units per acre to 20 units per acre (GPA-01-16) (**Attachment 1**).
- 2a. Motion to have the City Clerk read the Ordinance No. 463 by title and number only and waive further reading; and
- 2b. Following the City Clerk's reading, by motion approve Ordinance No. 463 for Introduction, requiring projects to meet the minimum density in compliance with the General Plan land use designations in Multiple Family Residential Districts (M-R, M-R-M, and M-R-H) (ZOA-04-16) (**Attachment 2**).

- 3a. Motion to have the City Clerk read the Ordinance No. 464 by title and number only and waive further reading; and
- 3b. Following the City Clerk's reading, by motion approve Ordinance No. 464 for Introduction, adding inclusionary housing regulations (ZOA-04-15) (**Attachment 3**).
- 4a. Motion to have the City Clerk read the Ordinance No. 465 by title and number only and waive further reading; and
- 4b. Following the City Clerk's reading, by motion approve Ordinance No. 465 for Introduction, permitting transitional and supportive housing in the Limited Commercial (LC) District (ZOA-05-16) (**Attachment 4**).
- 5a. Motion to have the City Clerk read the Ordinance No. 466 by title and number only and waive further reading; and
- 5b. Following the City Clerk's reading, by motion approve Ordinance No. 466 for Introduction, allowing employee housing of six or fewer by right within residential zones (ZOA-03-16) (**Attachment 5**).
- 6a. Motion to have the City Clerk read the Ordinance No. 467 by title and number only and waive further reading; and
- 6b. Following the City Clerk's reading, by motion approve Ordinance No. 467 for Introduction, updating the density bonus requirements to be compliant with AB 2222 and AB 744 (ZOA-06-16) (**Attachment 6**).

BACKGROUND

On June 28, 2016, the Planning Commission conducted a noticed public hearing and considered the subject General Plan amendment and Ordinances. At the meeting and during the public comment periods, members from the public spoke regarding their concerns about the proposed amendments citing concerns about traffic, crime, and the higher density housing. Staff also received the attached email regarding the opposition to higher density housing adjacent to downtown (**Attachment 7**). Following questions and a discussion, the Planning Commission passed six Resolutions recommending the City Council approve the General Plan amendment and approve the five proposed Ordinances for Introduction and First Reading (**Attachment 8**).

State law and state public policies have long recognized the vital role local governments play in facilitating the supply and affordability of housing; therefore each local government in California is required to have a General Plan to guide the physical development of the city. The Housing Element is one of the seven mandated elements that must be included within each city's General Plan. The Housing Element is subjected to statutory requirements and a mandatory review by the State's Department of Housing and Community Development (HCD). The laws governing Housing Elements require all jurisdictions to adequately plan to

meet their existing and projected housing needs. The laws focused around the Housing Element are the State's primary market-based strategy to increase the housing supply, affordability, and choice.

On November 18, 2014, the City Council approved the City's 2015-2023 Housing Element, which is available on the City's website at: http://ci.clayton.ca.us/?page_id=150 or it can be viewed at the City of Clayton Community Development Department, which is located at City Hall, 6000 Heritage Trail (**Attachment 9**). The City's 2015-2023 Housing Element contains goals, policies, and implementation measures that are not only important to the City, but must also be put into effect in order for the City to be compliant with, and remain in compliance with, State law. The subject General Plan amendment and the proposed Ordinances, except for the Ordinance pertaining to the density bonus regulations, are in response to the identified goals, policies, and the implementation measures that are contained within the 2015-2023 Housing Element. HCD's certification of the City's Housing Element was "conditional", relying on the City's stated intent to enact these local measures. The update to the density bonus regulations would merely make the City's zoning ordinance in compliance with State law following the passage of AB 2222 and AB 744.

ENVIRONMENTAL

Adoption of the Ordinance pertaining to the density bonus regulations (ZOA-06-16) is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment.

Approval of the General Plan amendment (GPA-01-16) and adoption of the remaining Ordinances (ZOA-04-15, ZOA-03-16, ZOA-04-16, ZOA-05-16, ZOA-06-16) will not result in a significant adverse environmental impact as these changes were considered as part of the November 18, 2014 City Council adoption of the IS/ND for the 2015-2023 Housing Element, which was prepared pursuant to the California Environmental Quality Act (CEQA). The IS/ND concluded there is no substantial evidence to suggest the 2015-2023 Housing Element document would have a significant effect on the environment and anticipated impacts have not changed nor is there new information that would alter those findings.

DISCUSSION

HOUSING ELEMENT IMPLEMENTATION

Density Increase of Multifamily High Density Designation (GPA-01-16, ZOA-04-16)

California state law Government Code Section 65583.2(c)(3)(B)(iii) requires suburban jurisdictions to establish a land use designation with a minimum density of 20 dwelling units per acre in order to accommodate lower income households. Therefore, the City, in

its 2015-2023 Housing Element established Goal 1, which was to provide adequate sites and promote the development of new housing to accommodate Clayton's fair share housing allocation. Under Goal 1, Policy I.1 states "The City shall designate and zone sufficient land to accommodate Clayton's projected fair share housing allocation (RHNA) as determined by the Association of Bay Area Governments."

In order for the City to be compliant with State law and in order to execute the City's Housing Element's aforementioned Goal 1 and Policy I.1, Implementation Measure I.1.2 was adopted. The Implementation Measure states the City will amend its Multifamily High Density (MHD) General Plan land use designation to meet the State requirements of a minimum of 20 units to the acre. This minimum density is specifically for sites rezoned to accommodate the City's lower-income RHNA from 2007-2014 planning period, to specifically allow multifamily housing by-right at a minimum density of 20 units per acre. The 2015-2023 Housing Element identified January 31, 2016 as the timeframe this Implementation Measure would be in place (**Attachment 10**).

The Multifamily High Density (MHD) General Plan land use designation is found in two locations within the City. There is a cluster of six parcels adjacent to the Town Center area, mostly fronting onto (old) Marsh Creek Road. The other location consists of two parcels: 1) the old fire station building located on Clayton Road; and 2) an adjacent parcel fronting onto (south) Mitchell Canyon Road (**Attachment 11**).

The attached Resolution (**Attachment 1**) is proposing the City Council approve a General Plan amendment to change the density of the City's Multifamily High Density designation from 15.1 to 20 units per acre to a minimum of 20 units per acre as required by State law. The companion Ordinance (No. 463) to the General Plan amendment would amend the Clayton Municipal Code to require projects within the Multiple Family Residential Districts to meet the minimum density requirements (**Attachment 2**). This amendment to the Municipal Code would ensure the minimum density is met, again ensuring compliance with State law. The implementation of the General Plan amendment and the companion Ordinance to require the minimum density would fulfill the City's requirement to meet State law as well as allowing the City to successfully implement its own Housing Element.

Inclusionary Housing (ZOA-04-15)

State law requires that local governments identify and plan for the existing and projected housing needs of all economic segments of the community in their Housing Elements. The law acknowledges that, in order for the private market to adequately address housing needs and demand, local governments must adopt land use plans and regulatory systems that provide opportunities for, and do not unduly constrain, housing development of all types and variations.

State law requires that the State Department of Housing and Community Development (HCD) forecast statewide housing needs and allocate the anticipated need to regions

throughout the state. For the Bay Area, HCD provides the regional need to the Association of Bay Area Governments (ABAG), which then distributes the Regional Housing Needs Assessment (RHNA) to the cities and counties within the ABAG region. ABAG allocates housing production goals for cities and counties based on their projected share of the region's household growth, the state of the local housing market and vacancies, and the jurisdiction's housing replacement needs.

For the 2014-2022 projection period, ABAG has allocated the City of Clayton a total of 141 units which are broken down as follows by income category: 51 extremely low- and very low-income units, 25 low-income units, 31 moderate-income units, and 34 above moderate-income units. Given the City's RHNA allocation and the State legislature's push for local governments to identify actions that will make sites available for affordable housing as well as assist in the development of such housing, the City identified a goal to provide for adequate sites and promote the development of new housing to accommodate Clayton's fair share housing allocation. The City also adopted Policy I.2, which states "The City shall actively support and participate in the development of extremely low-, very low-, low-, and moderate-income housing to meet Clayton's fair share housing allocation. To that end, the City shall help facilitate the provision of affordable housing through the granting of regulation concessions and available financial assistance."

In order to meet Goal I and Policy I.2, Implementation Measure I.2.1 was identified to require residential projects of ten or more units to develop an Affordable Housing Plan, which requires a minimum of 10% of the units to be built or created as affordable housing units. To promote the goal of actively supporting and participating in providing housing for all economic segments, the City is proposing an Inclusionary Housing Ordinance, which would facilitate the fulfillment of Implementation Measure I.2.1 (**Attachment 10**). The addition of an Inclusionary Housing Ordinance would fully implement Measure I.2.1 by detailing the process and standards for the City and developers to follow.

Many cities and counties, over 170 within the State of California including the cities of Concord and Walnut Creek locally, have adopted inclusionary housing/zoning programs in order to address the lack of affordable housing as well as the obligations imposed by the state legislature. Furthermore, affordable housing was the subject of two recent landmark court cases. The courts provided clarification on what could be required by local governments as it pertained to inclusionary housing. The first case was *Palmer/Sixth Street Properties v. City of Los Angeles* (2009), which determined that cities could no longer require developers to construct affordable rental housing units due to the determination that inclusionary rental programs are contrary to the Costa-Hawkins Act, a State law which limits the ability of local jurisdictions to control how apartment rents are set. Given this case law, inclusionary programs for rental units and affordable housing are limited. However, the case *California Building Assn v. City of San Jose* (2015) clarified that cities may indeed require a developer to construct for-sale affordable housing units.

Given the City's Implementation Measure I.1.2 and the clarification from the courts, the City is now proposing to codify a formal Inclusionary Housing Ordinance requiring developers to

include lower income units within a project, pay an in-lieu fee, and/or dedicate land (**Attachment 3**). The following discussion outlines the key aspects of the proposed program:

Applicability

The Inclusionary Housing Ordinance (No. 464) would pertain to developments of ten or more for-sale dwelling units. Ten percent of the newly constructed homes would be required to be offered and sold to low and moderate income households. In the event the calculation results in a fraction of unit, the developer will have the option to make an in-lieu payment in an amount equal to the percentage represented by the fractional unit or providing a full affordable unit.

Alternatives

As an alternative to providing the inclusionary units on-site, the developer may elect to construct off-site units, pay an in-lieu fee, or make a land dedication. The provision of the units off-site would increase the required percentage of units to 15 and the developer would have to complete the construction of the units prior to or concurrently with the development. The in lieu fee would be set by the City Council and could be paid by the developer for all or a portion of the inclusionary units. Lastly, instead of building the inclusionary units, the developer may request to dedicate land to the City that would be suitable for the construction of inclusionary units, however the developer would have to meet certain parameters as outlined in the Ordinance. Those parameters include, but are not limited to, marketable title transferred to the City, a residential General Plan designation, infrastructure available at the property line, and a completed environmental review.

Procedures

Ordinance No. 464 also contains procedures that need to be followed by both the developer and the City. These procedures include submittal of the Inclusionary Housing Plan by the developer, which requires review and approval by the Community Development Director. The Inclusionary Housing Agreement would then need to be recorded on the property, unless the in-lieu fee will be paid or a land dedication will be made. No discretionary approval shall be issued for all or any portion of the development until the developer has submitted an Inclusionary Housing Plan and no building permit shall be issued unless the City Council has approved the Inclusionary Housing Plan and, if required, the Inclusionary Housing Agreement has been recorded. Lastly, no certificate of occupancy shall be issued unless the Inclusionary Housing Plan has been fully implemented.

Standards

The inclusionary units shall be reasonably dispersed throughout the property and shall be proportional in number of bedrooms to the unrestricted units. The units shall also consist of the same finishes, appearance, materials, and amenities. All of the inclusionary units shall be constructed concurrently with or prior to the construction of the unrestricted units. The inclusionary units shall prohibit subsequent rental occupancy, unless approved for hardship reasons such as for military personnel. A deed restriction or other enforceable obligation shall also be recorded on the property requiring that, whenever the inclusionary unit is sold, it

must be sold to persons meeting the income eligibility requirements for low- and moderate-income households for a period of 55 years.

Transitional and Supportive Housing in Limited Commercial (LC) District (ZOA-05-16)

Senate Bill 2, which became effective January 1, 2008 (Government Code Section 65583 and 65589.5), required all local jurisdictions within California to consider transitional and supportive housing as a residential use, and the use shall be subject to only those restrictions that apply to other residential dwellings of the same type and size.

Transitional housing is defined by the State in Section 50675.2 of the Health and Safety Code as rental housing for stays of at least six months but where the units are re-circulated to another program recipient after a set period. This housing can take several forms, such as single family or multifamily units, and may include supportive services to allow individuals to gain necessary life skills in support of independent living. Supportive housing is defined by the State in Section 50675.14 of the Health and Safety Code as housing that is occupied by the target population, and that is linked to on-site or off-site services that assist the supportive housing resident in retaining housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

In order to be compliant with State law, the City adopted, within its 2015-2023 Housing Element, the following to address transitional and supportive housing (**Attachment 10**).

Goal II: To the extent feasible, remove governmental constraints for affordable and special needs housing.

Policy II.1: The City shall seek to meet the special housing needs of individuals with disabilities and developmental disabilities, extremely low-, very low-, and low-incomes, large families, senior citizens, farmworkers and their families, female-headed and single-parent households, and others with special needs.

Implementation Measure II.1.3: The City shall amend the Zoning Ordinance to allow transitional and supportive housing in the Limited Commercial (LC) zoning district as a residential use subject only to the requirements of other residential uses in this district in compliance with Senate Bill 2 (2007).

The approval of Ordinance No. 465 would allow transitional and supportive housing to be located within the Limited Commercial (LC) District; however residential uses require the approval of a Conditional Use Permit within this land use designation (**Attachment 4**).

The timeframe for implementation provided in the City's Housing Element was one to two years following the adoption of the Housing Element.

Employee Housing for Six or Fewer Employees (ZOA-03-16)

The California Health and Safety Code Section 17021.5 requires employee housing as a permitted use in residential zoning districts. Employee housing is a distinctly defined housing type (Health and Safety Code Section 17008), and is generally characterized as farmworker housing for agricultural employees (**Attachment 12**).

As stated earlier, one of the City's policies within the 2015-2023 Housing Element is to meet special housing needs of certain populations, which includes farmworker housing. Implementation Measure II.1.2 of the City's 2015-2023 Housing Element states "The City shall amend the Zoning Ordinance to specifically allow employee housing for six or fewer residents as a permitted use in residential zoning districts, in compliance with Health and Safety Code Section 17021.5." Currently, the City's Municipal Code does not expressly prohibit or allow employee housing for six or fewer residents and since the Code does not define the term "household", the use is essentially allowed. However, since the City has identified this as an Implementation Measure, and if adopted, proposed Ordinance No. 466 would expressly allow employee housing for six or fewer residents to be permitted in residential districts (**Attachment 5**).

The 2015-2023 Housing Element identified 2015 as the timeframe for implementation.

FAILURE TO IMPLEMENT ITS HOUSING ELEMENT

If the City does not fulfill the requirements of State law or the commitments made in its conditionally certified 2015-2023 Housing Element, it places the City at risk for a lawsuit, loss of regional, federal and/or State funds (e.g. CCTA's Measure J local street monies), potentially jeopardizes HCD's conditional certification of the City's current Housing Element, and not being able to achieve a State certified Housing Element in the future. There have been cities and counties who have attempted to disregard or did not comply with the State's statutory compliance regarding Housing Element law and the outcome has not played favorably to local governments. Put bluntly, each has failed and at considerable taxpayer expense. Here is a small sample of three court cases that have transpired throughout the State.

- *Urban Habitat v. City of Pleasanton (2006, 2008)* was a lawsuit challenging the housing policies of the City of Pleasanton. The lawsuit claimed the City had failed to enact the implementation measures within their Housing Element as well as challenging the legality of the voter-mandated housing cap. The City failed to make 30 to 40 acres of land available for high density housing as required by State law, which resulted in the State decertifying the City's Housing Element. After being subjected to \$1.9 million in legal fees and \$600,000 in defense fees and numerous years battling in the courts, the City of Pleasanton was ordered by the court to rezone areas up to 30 units per acre, including 15% or a minimum of 130 units of very low-income family housing.

- *Dotty Coplen v. County of Mendocino (2006, 2008)* was a lawsuit challenging the County's failure to adopt a Housing Element making sites available for development for sufficient affordable housing to meet the County's share of the regional need. As a result of the lawsuit, the County agreed to rezone 40 acres for the development of multifamily housing. Attorney's fees were also awarded for pre-litigation work and the court continues to monitor ongoing County compliance.
- *Winterhawk v. City of Benicia (1999)* was a lawsuit against the City of Benicia for identifying housing sites that were underwater or already developed. The Department of Housing and Community Development rescinded their certification of the City's Housing Element and the City settled after six months of litigation; however the new City Council refused to approve the agreement, appealed the court's decision three times, and lost on every appeal. The City was ordered to pay \$90,000 in legal fees and expended \$500,000 in attorney's fees fighting the lawsuit. The result was the City complying with State law.

Overall, challenges by local governments to the State's statutory requirements for housing have not resulted in positive outcomes for local jurisdictions. Not only has it resulted in the mandatory rezoning of properties and the payment of legal fees, but there also has been building moratoria put in place as well as threats to rescind local zoning powers and place such land use authority into the State's hands.

AB 2222 AND AB 744

Density Bonus (ZOA-06-16)

The State Density Bonus Law was originally enacted in 1979 to encourage public agencies to offer density bonuses and other development incentives in order to stimulate the private construction of affordable housing units. Since the law has been in effect, there have been periodic updates but most recently the State legislature passed AB 2222 (2014) and AB 744 (2015). The City's Municipal Code currently outlines density bonus requirements as required per State law; however, it does not address the two aforementioned Assembly Bills, given their recent passage.

AB 2222 prohibits a developer from receiving a density bonus unless the proposed project would, at a minimum, maintain the number and proportion of affordable housing units within the proposed development, and the Bill also increased the required affordability period from 30 to 55 years.

AB 744 allows a developer that is requesting a density bonus and including 100 percent affordable rental units in the development to also request to reduce the minimum parking requirements for the development. In order to qualify, the project would have to be within one-half mile of a major transit stop, a seniors-only development with access to transit, or a development that serves special needs individuals with access to transit. For mixed income

developments within one-half mile of a major transit stop that include the maximum number of very low- or low-income units under the Density Bonus Law the parking requirement cannot exceed 0.5 per bedroom. Local governments could require a higher parking ratio if a parking study has been completed within the last seven years and it supports the need for additional parking.

Minor language changes to the Density Bonus Chapter (17.90) of the Clayton Municipal Code have been proposed to address AB 2222 (**Attachment 6**). Those language changes (Ordinance No. 467) include increasing the affordability period from 30 years to 55 years and requiring the developer to maintain the number and proportion of affordable housing units within the development. No language amendments to the City's Municipal Code were required to address AB 744.

FISCAL IMPACT

None if the proposed actions are approved by the City Council. Potential exposure to litigation by interested third parties and/or jeopardy of local street repaving funds from CCTA are at risk should the City fail to implement its previously-stated Housing Element goal or comply with State laws.

ATTACHMENTS

1. Resolution No. ____ [3 pp.]
2. Ordinance No. 463 [3 pp.]
3. Ordinance No. 464 [13 pp.]
4. Ordinance No. 465 [3 pp.]
5. Ordinance No. 466 [3 pp.]
6. Ordinance No. 467 [4 pp.]
7. Email Regarding High Density Housing [1 pp.]
8. Excerpt of the Minutes from the June 28, 2016 Planning Commission Meeting [7 pp.]
9. Excerpt from the November 18, 2014 City Council Staff Report [10 pp.]
10. Excerpt from the City of Clayton's 2015-2023 Housing Element [6 pp.]
11. General Plan Map [1 pp.]
12. Health and Safety Code Employee Housing Definition [2 pp.]

Joanna Welch, Mt. Dell Drive, wanted to follow up on her prior suggestion for the City's consideration of the purchase and installation of license plate readers at each entrances and exits in town and inquired of its status. City Manager Napper responded that Ms. Welch's suggestion was given to the Clayton Police Chief and he is currently in discussions with the City of Concord about the idea as we share common borders at some of the entrances in and out of town. The City must also evaluate some of the considerations regarding use of license plate readers and privacy rights. He noted the City Council did set aside some monies for the purchase and installation of such equipment in the near future.

7. PUBLIC HEARINGS

- (a) Public Hearing on the proposed real property tax assessments in FY 2016-17 for the Diablo Estates at Clayton Benefit Assessment District (BAD) and consider the adoption of the Resolution setting, ordering and levying the annual assessments.

City Engineer Rick Angrisani presented the staff report noting at its public meeting on May 17th the City Council was presented with a proposed assessment incorporating the allowable CPI 2.7% increase over Fiscal Year 2015-16 assessments. As required by law, a notice regarding this evening's public hearing was mailed to the real property owners along with the Engineer's Report; for the benefit of the residents, the mailing included the expenditures of the District along with an accounting of its reserve funds. Mr. Angrisani advised the Benefit Assessment District Fund balance will cover the District's costs with the property management contract with Pinnacle until receipt of the first tax payment from the County in December, with no effect to the City's General Fund.

Mayor Geller opened the Public Hearing; no comments were offered. Mayor Geller closed the Public Hearing.

It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to adopt Resolution No. 48-2016 confirming assessments for the operation and maintenance of improvements within the Diablo Estates at Clayton Benefit Assessment District for Fiscal Year 2016-17. (Passed; 5-0 vote).

- (b) Public Hearing to consider a series of State and City required actions for compliance with its State Department of Housing and Community Development (HCD) conditionally-certified Housing Element and related state laws:
- 1). General Plan Amendment (GPA-01-16) to increase density allowed within the Multifamily High Density (MHD) designation from 15.1 – 20.0 units per acre to 20.0 units per acre.
 - 2). Introduction and First Reading of Ordinance No. 463 (ZOA-04-16) requiring projects to meet the minimum density in compliance with the General Plan Land Use designations in Multiple Family Residential Districts.
 - 3). Introduction and First Reading of Ordinance No. 464 (ZOA 04-15) adding inclusionary housing regulations.
 - 4). Introduction and First Reading of Ordinance No. 465 (ZOA-05-16) to permit transitional and supportive housing in the Limited Commercial (LC) zoning district.

- 5). Introduction and First Reading of Ordinance No. 466 (ZOA-03-16) to permit by right employee housing of six or fewer persons within residential zones.
- 6). Introduction and First Reading of Ordinance No. 467 (ZOA-06-16) to update density bonus requirements to be compliant with California Assembly Bills (AB) No. 2222 and 744.

Community Development Director Mindy Gentry presented the staff report along with a brief slideshow presentation highlighting the various items for consideration this evening and referenced the requirements for 2015-2023 Housing Element and State law compliances. She noted the Housing Element is one of seven mandated elements to be incorporated into each city's General Plan, which is subject to statutory requirements and a mandatory review by the State's Department of Housing and Community Development (HCD). Ms. Gentry also advised on November 18, 2014 the City Council approved the City's 2015-23 Housing Element containing goals, policies, and implementation measures that are not only important to the City, but must also be put into effect in order for the City to be compliant with and remain in compliance with State law; HCD's certification was "conditional" relying on the City's stated intent to enact these local measures. Ms. Gentry provided a brief explanation of the Regional Housing Needs Assessments (RHNA) and the unit allocation requirement by income category. Ms. Gentry also included a summary of what has occurred in other cities that had failed to implement the requirements with monetary penalties that were incurred and case law losses.

Councilmember Pierce requested clarification of affordable housing costs and their income categories as an example to the community of the household income eligibility ranges for such units. Ms. Gentry advised, for example, to qualify for the Low Income Category the annual household income limits \$46,751 - \$67,600 in Contra Costa County.

Councilmember Haydon inquired if the City does not comply with these requirements, will there be a loss of State funds? Mr. Napper advised in addition to losses of State funds and subventions, the City would also lose local road monies given to it by the Contra Costa Transportation Authority which approximates \$240,000.00 per year. Those monies are used to perform neighborhood street repaving projects.

Mayor Geller opened the Public Hearing.

Joanna Welch, Mt. Dell Drive, inquired if the Multi-Family High Density locations of development are mandated? She also asked if an Environmental Impact Study should be required. She further inquired about potential impacts if that report is negative; will alternate locations and additional traffic congestion, noise abatement, and infrastructure be considerations?

Ms. Gentry clarified an environmental impact review on the Housing Element was completed in 2014; further environmental impact reviews will be required on a project- specific basis on each individual site as required by the California Environmental Quality Act. City Manager Napper added currently there has not be a multi-family high density project submitted to the City; however, if one were submitted the process would consist of a land-use application review with consideration of the zoning of the property, then submitted to the Planning Commission, then ultimately a Public Hearing for consideration by the City Council prior to approval of any specific development.

Dan Hummer, Stranahan Circle, advised he was not aware of the Regional Housing Needs Allocation (RHNA) requirements on the City for its number of housing units and inquired if alternatives are available, along with any consequences if the number of required units is refused. Councilmember Pierce advised Clayton originally had a requirement of 254 RHNA units; however that was successfully negotiated down to 141 RHNA units.

Mr. Hummer noted the Minimum Density increase is from 15.1 to 20 dwelling units per acre to 20 units per acre. He inquired what happens if no one tries to develop the designated number of units on land zoned for such purpose. Ms. Gentry advised the State does not and cannot require units to be built; rather, the City must have a plan in place designating where this type of density development could occur. She added the State has the ability to change its laws and through the Housing Element process it routinely inquires on how cities plan to comply with current laws; compliance with State law can be found in Government Code 65583.2. City Manager Napper commented that in the past staff has been creative to find ways to accommodate the State requirements. An example of this past practice was several Housing Elements ago the City proposed its Regional Housing Needs Assessment (RHNA) be met with "granny units"; in the subsequent five years since that Housing Element was approved only one granny unit was built in the City. In its next 5-year housing element cycle, the State prohibited "granny units" as a local plan to meet all of a city's RHNA.

Mayor Geller closed the Public Hearing.

1. Resolution No. 49-2016 regarding an amendment to City General Plan Land Use Element to modify the permitted density within the Multifamily High Density Land Use Category (GPA-01-16).

It was moved by Councilmember Pierce, seconded by Vice Mayor Diaz, to adopt Resolution No. 49-2016 amending the Clayton General Plan Land Use Element to modify the permitted density within the Multifamily High Density Land Use Category (GPA-01-16) with finding the action will not result in a significant adverse impact and was considered as a part of the November 18, 2014 adoption of the IS/ND for the 2015-2023 Housing Element. (Passed; 5-0 vote).

2. Introduction of Ordinance No. 463 to require projects to meet the minimum density in compliance with the General Plan Land Use designations in Multiple Family Residential Districts (ZOA-04-16).

It was moved by Councilmember Pierce, seconded by Councilmember Haydon, to have the City Clerk read Ordinance No. 463, by title and number only and waive further reading. (Passed; 5-0 vote).

The City Clerk read Ordinance No. 463 by title and number only.

It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to approve Ordinance No. 463 for introduction with the finding the action will not result in a significant adverse impact and was considered as a part of the November 18, 2014 adoption of the IS/ND for the 2015-2023 Housing Element. (Passed; 5-0 vote).

3. Introduction of Ordinance No. 464 adding inclusionary housing regulations (ZOA-04-15).

It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to have the City Clerk read Ordinance No. 464, by title and number only and waive further reading. (Passed; 5-0 vote).

The City Clerk read Ordinance No. 464 by title and number only.

It was moved by Councilmember Pierce, seconded by Vice Mayor Diaz, to approve Ordinance No. 464 for Introduction with the finding the action will not result in a significant adverse impact and was considered as a part of the November 18, 2014 adoption of the IS/ND for the 2015-2023 Housing Element. (Passed; 5-0 vote).

4. Introduction of Ordinance No. 465 to permit transitional and supportive housing in the Limited Commercial (LC) zoning district (ZOA-05-16).

It was moved by Councilmember Pierce, seconded by Vice Mayor Diaz, to have the City Clerk read Ordinance No. 465 by title and number only and waive further reading. (Passed; 5-0 vote).

The City Clerk read Ordinance No. 465 by title and number only.

It was moved by Councilmember Pierce, seconded by Vice Mayor Diaz, to approve Ordinance No. 465 for Introduction with the finding the action will not result in a significant adverse impact and was considered as a part of the November 18, 2014 adoption of the IS/ND for the 2015-2023 Housing Element. (Passed; 5-0 vote).

5. Introduction of Ordinance No. 466 to permit by right employee housing of six or fewer persons within residential zones (ZOA-03-16).

It was moved by Councilmember Pierce, seconded by Vice Mayor Diaz, to have the City Clerk read Ordinance No. 466 by title and number only and waive further reading. (Passed; 5-0 vote).

The City Clerk read Ordinance No. 466 by title and number only.

It was moved by Councilmember Pierce, seconded by Vice Mayor Diaz, to approve Ordinance No. 466 for Introduction with findings the action will not result in a significant adverse impact and was considered as a part of the November 18, 2014 adoption of the IS/ND for the 2015-2023 Housing Element. (Passed; 5-0 vote).

6. Introduction of Ordinance No. 467 to update density bonus requirements to be compliant with California Assembly Bills (AB) No. 2222 and 744 (ZOA-06-16).

It was moved by Councilmember Pierce, seconded by Vice Mayor Diaz, to have the City Clerk read Ordinance No. 467 by title and number only and waive further reading. (Passed; 5-0 vote).

The City Clerk read Ordinance No. 467 by title and number only.

It was moved by Councilmember Pierce, seconded by Vice Mayor Diaz, to approve Ordinance No. 467 for Introduction with the findings the Ordinance is not subject to the California Environmental Quality Act because this activity is not considered to be a project and it can be seen with certainty that it will not have a significant effect or physical change to the environment. (Passed; 5-0 vote).

Sections:

17.92.000 - Intent.

It is the intent of this chapter to establish standards and procedures that facilitate the development and availability of housing affordable to a range of households with varying income levels to implement the City's Housing Element and as mandated by Government Code § 65580. The purpose of this chapter is to encourage the development and availability of such housing by ensuring the addition of affordable housing units to the City's housing stock is in proportion with the overall increase in new housing units.

17.92.010 - Definitions.

Whenever the following terms are used in this chapter, they shall have the meaning established by this section:

- A. "Affordable Housing Costs" means
 1. For Very Low-Income Households, the product of thirty percent (30%) times fifty percent (50%) of the area median income adjusted for family size appropriate for the unit.
 2. For Low-Income Households, the product of thirty percent (30%) times seventy percent (70%) of the area median income adjusted for family size appropriate for the unit.
 3. For Moderate Income Households, Affordable Housing Cost shall not be less than twenty-eight percent (28%) of the gross income of the household, nor exceed the product of thirty-five percent (35%) times one hundred ten percent (110%) of area median income adjusted for family size appropriate for the unit.
- B. "Developer" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks City approvals for all or part of a Residential Development. The term "Developer" also means the owner or owners for any such property for which such approvals are sought.
- C. "Director" means the City's Director of Community Development.
- D. "Discretionary Approval" means any entitlement or approval, including but not limited to a use permit, variance, design approval, and subdivision map.
- E. "Inclusionary Housing Agreement" means a legally binding, written agreement between a Developer and the City, in form and substance satisfactory to the Director and City Attorney, setting forth those provisions necessary to ensure that the requirements of this chapter, whether through the provision of Inclusionary Units or through an alternative method, are satisfied.

- F. "Affordable Housing Plan" means the plan referenced in Section 17.92.050.
- G. "Inclusionary Housing Fund" shall have the meaning set forth in Section 17.92.080.A.
- H. "Inclusionary Units" means a dwelling unit developed pursuant to an Inclusionary Housing Agreement that will be offered for sale to Low and Moderate Income Households, at an Affordable Housing Cost, pursuant to this chapter.
- I. "Low Income Households" means households who are not very low income households but whose gross income does not exceed the qualifying limits for lower income families as established from time to time pursuant to Section 8 of the United States Housing Act for Contra Costa County as set forth in Title 25 of the California Code of Regulations, Section 6932, or its successor provision and adjusted for family size and other factors by the United States Department of Housing and Urban Development.
- J. "Low Income Units" means Inclusionary Units restricted to occupancy by Low Income Households at an Affordable Housing Cost.
- K. "Moderate Income Households" means households who are not low income households but whose gross income does not exceed one hundred and twenty percent (120%) of the median income for Contra Costa County, adjusted for family size and other factors by the U.S. Department of Housing and Urban Development, as published annually in Title 25 of the California Code of Regulations, Section 6932, or its successor provision.
- L. "Moderate Income Units" means Inclusionary Units restricted to occupancy by Moderate Income Households at an Affordable Housing Cost.
- M. "Residential Development" means the construction of new projects requiring any specific plan, development agreement, planned unit development permit, tentative map, minor subdivision, conditional use permit, site plan review or building permit for which an application has been submitted to the City and which would create one or more additional dwelling units to be offered for sale by the construction or alteration of structures. All new construction projects creating one or more additional dwelling units to be offered for sale on contiguous parcels of land by a single Developer shall constitute a single Residential Development subject to the requirements of this Ordinance, and any accompanying regulations, regardless of whether such projects are constructed all at once, serially, or in phases. The term "Residential Development" shall include the conversion of rental units to for-sale units.
- N. "Unrestricted Units" means those dwelling units in a Residential Development that are not Inclusionary Units.
- O. "Very Low Income Households" means households whose gross income does not exceed the qualifying limits for very low income families as established from time to time pursuant to Section 8 of the United States Housing Act for Contra Costa County as set forth in Title 25 of the California Code of Regulations, Section 6932, or its successor provision and adjusted for

family size and other factors by the United States Department of Housing and Urban Development, adjusted for family size and other factors by the United States Department of Housing and Urban Development.

17.92.020 - Applicability.

This Chapter shall apply to all Residential Developments, except as provided below.

- A. Residential Developments proposed to contain less than ten (10) dwelling units.
- B. Residential Developments that obtained a current, valid building permit prior to the effective date of the ordinance adding this chapter.
- C. Any dwelling unit or Residential Development which is damaged or destroyed by fire or natural catastrophes so long as the use of the reconstructed building and number of dwelling units remain the same, and the cost of such rehabilitation constitutes no more than fifty percent (50%) of the of its reasonable market value at the time of destruction or damage.

17.92.030 - Inclusionary Unit Requirement.

- A. For-Sale Units: If the Residential Development includes ten (10) or more units for sale, a minimum of ten percent (10%) of all newly constructed for sale dwelling units in the Residential Development shall be developed, offered to and sold to Low and Moderate Income Households, in a ratio determined pursuant to Section 17.92.060, at an Affordable Housing Cost.
- B. The Inclusionary Unit requirement set forth in this section may be reduced as follows: If only Low Income Units are provided in lieu of any Moderate Income units, a credit of one and one-half units to every one unit shall be provided. However, the credits may only be applied to the extent such credit equals a whole number.
- C. In the event the calculation for the number of Inclusionary Units results in a fraction of an Inclusionary Unit, the Developer shall have the option of either: (i) providing a full Inclusionary Unit at Affordable Housing Costs; or (ii) making an in lieu payment to the Inclusionary Housing Fund in an amount equal to the percentage represented by the fractional unit multiplied by the applicable in lieu fee.
- D. The number of Inclusionary Units required for a particular project will be determined at the time a land use application is filed by the Developer for a Residential Development with the City. If a change in the subdivision design results in a change in the total number of units, the number of Inclusionary Units required will be recalculated to coincide with the final approved project.
- E. For purposes of calculating the number of Inclusionary Units required by this section, any additional units authorized as a density bonus under Chapter 17.90 and California Government Code § 65915(b)(1) or (b)(2) will not be counted in determining the required

number of Inclusionary Units.

17.92.040 - Alternatives.

In lieu of including the Inclusionary Units in the Residential Development pursuant to Section 17.92.030, the requirements of this chapter may be satisfied through the following alternatives set forth in this section.

- A. Off-Site. As an alternative to providing Inclusionary Units upon the same site as the Residential Development, the Developer may elect, by right, at the Developer's sole discretion to construct Inclusionary Units off-site subject to the following requirements:
 1. If the Developer constructs units off-site, the percentage of required Inclusionary Units shall be increased to fifteen percent (15%).
 2. The site of the Inclusionary Units has a General Plan designation that authorizes residential uses and is zoned for Residential Development at a density to accommodate at least the number of otherwise required Inclusionary Units, including the additional five percent (5%) for development off-site, within the Residential Development. The Developer shall obtain all required Discretionary Approvals and complete all necessary environmental review of such site.
 3. The site is suitable for development of the Inclusionary Units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria.
 4. Environmental review for the site has been completed for the presence of hazardous materials and geological review for the presence of geological hazards and all such hazards are or shall be mitigated to the satisfaction of the City prior to acceptance of the site by the City.
 5. The construction schedule for the off-site Inclusionary Units shall be included in the Affordable Housing Plan and the Inclusionary Housing Agreement.
 6. Construction of the off-site Inclusionary Units shall be completed prior to or concurrently with the Residential Development.
 7. Unless otherwise noted, all requirements applicable to on-site Inclusionary Units shall apply to off-site Inclusionary Units.
- B. In Lieu Fee. For Residential Developments proposing ten (10) units, the Developer may elect, by right, at the Developer's sole discretion to pay a fee in lieu of developing an Inclusionary Unit on-site. The amount of the in-lieu fee to be paid by Developer pursuant to this section shall be the applicable in-lieu fee set forth in the fee schedule adopted by the City Council. For all Residential Developments proposing eleven (11) units or more, the Developer may request to pay a fee in lieu of all or some of the Inclusionary Units otherwise required by the

Ordinance in lieu of developing Inclusionary Units on-site. The fee shall be charged for each unit or fraction of a unit as set forth in Section 17.92.030.C, and the fee shall be paid as follows:

1. The amount of the fee to be paid by Developer pursuant to this subsection shall be the fee schedule established by Resolution of the City Council, and as adjusted from time to time by Resolution of the City Council.
 2. One-half of the in-lieu fee required by this subsection shall be paid (or a letter of credit posted) prior to issuance of a building permit for all or any part of the Residential Development. The remainder of the fee shall be paid before a certificate of occupancy is issued for any unit in the Residential Development.
 3. The fees collected shall be deposited in the Inclusionary Housing Fund.
 4. No certificate of occupancy shall be issued for any corresponding Unrestricted Units in a Residential Development unless fees required under this section have been paid in full to the City.
- C. Land Dedication. In lieu of building Inclusionary Units, a Developer may request to dedicate land to the City suitable for the construction of Inclusionary Units that the City Council reasonably determines to be equivalent or greater value than is produced by applying the City's in lieu fee to the Developer's inclusionary obligation and otherwise meets the following standards and requirements:
1. Marketable title to the site is transferred to the City, or an affordable housing developer approved by the City, prior to the commencement of construction of the Residential Development pursuant to an agreement between the Developer and the City and such agreement is in the best interest of the City.
 2. The site has a General Plan designation that authorizes residential uses and is zoned for Residential Development at a density to accommodate at least the number of otherwise required Inclusionary Units within the Residential Development, and conforms to City development standards.
 3. The site is suitable for development of the Inclusionary Units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition, or location of the site.
 4. Infrastructure to serve the dedicated site, including but not limited to streets and public utilities, must be available at the property line and have adequate capacity to serve the maximum allowable Residential Development pursuant to zoning regulations.
 5. Environmental review of the site has been completed for the presence of hazardous materials and geological review for the presence of geological hazards and all such hazards are or will be mitigated to the satisfaction of the City prior to acceptance of the

site by the City.

6. The City shall not be required to construct restricted income units on the site dedicated to the City, but may sell, transfer, lease, or otherwise dispose of the dedicated site. Any funds collected as the result of a sale, transfer, lease, or other disposition of sites dedicated to the City shall be deposited into the Inclusionary Housing Fund.

17.92.050 - Procedures.

- A. At the times and in accordance with the standards and procedures set forth herein, Developer shall:
 1. Submit an Inclusionary Housing Plan for approval by the Director, setting forth in detail the manner in which the provisions of this chapter will be implemented for the proposed Residential Development. If land dedication or off-site units are proposed, the Inclusionary Housing Plan shall include information necessary to establish site location, suitability, development, constraints, and the number of Inclusionary Units assigned pursuant to this chapter.
 2. Execute and cause to be recorded an Inclusionary Housing Agreement, unless Developer is complying with this chapter pursuant to Section 17.92.040.B. (in lieu fee) or Section 17.92.040.C. (land dedication).
- B. No Discretionary Approval shall be issued for all or any portion of a Residential Development subject to this chapter until the Developer has submitted an Inclusionary Housing Plan.
- C. No building permit shall be issued for the Residential Development, or any portion thereof, subject to this chapter unless the City Council has approved the Inclusionary Housing Plan and the Inclusionary Housing Agreement (if required) is recorded.
- D. No certificate of occupancy shall be issued for the Residential Development, or any portion thereof, subject to this chapter unless the approved Inclusionary Housing Plan has been fully implemented.
- E. The City Manager or designee may establish and amend policies for the implementation of this chapter.

17.92.060 - Standards.

- A. Inclusionary Units shall be reasonably dispersed throughout the Residential Development; shall be proportional, in number of bedrooms, to the Unrestricted Units. If the Residential Development offers a variety of unit plans with respect to design, materials and optional interior amenities, the Inclusionary Units shall be identical with the Residential Development's base-plan in terms of design, appearance, materials, finished quality and interior amenities. If multiple floor plans with the same number of bedrooms are proposed, the Inclusionary Units may be the units with the smaller floor plans.
- B. All Inclusionary Units in a Residential Development shall be constructed concurrently with or

prior to the construction of the Unrestricted Units. In the event the City approves a phased project, the Inclusionary Units required by this chapter shall be constructed and occupied in proportion to the number of units in each phase of the Residential Development. In no case shall an Affordable Housing Unit be the final dwelling unit issued a Certificate of Occupancy of a Residential Development or its approved phase(s).

- C. Inclusionary Units shall be sold to Low and Moderate Income Households at a ratio established pursuant to a Resolution adopted by the City Council, and shall be provided at the applicable Affordable Housing Cost.
- D. The number of bedrooms must be the same as those in the Unrestricted Units, except that if the Unrestricted Units provide more than four (4) bedrooms, the Inclusionary Units need not provide more than four (4) bedrooms.
- E. Inclusionary Units shall prohibit subsequent rental occupancy, unless approved for hardship reasons by the City Manager or designee. Such hardship approval shall include provision for United States military personnel who are required to leave the country for active military duty.
- F. Prior the development of any units in a Residential Development, a deed restriction or other enforceable obligation approved by the City Attorney shall be recorded limiting the Developer and any successors, whenever an Inclusionary Unit is sold, to sell such unit to persons meeting the income eligibility requirements for Low and Moderate Income Households as applicable for a period of fifty-five (55) years.

17.92.070 - Enforcement.

- A. The provisions of this chapter shall apply to all Developers and their agents, successors and assigns proposing a Residential Development. All Inclusionary Units shall be sold in accordance with this chapter. It shall be a misdemeanor to violate any provision of this chapter. Without limiting the generality of the foregoing, it shall also be a misdemeanor for any person to sell or rent to another person an Inclusionary Unit under this chapter at a price exceeding the maximum allowed under this chapter or to sell an Inclusionary Unit to a Household not qualified under this chapter. It shall further be a misdemeanor for any person to provide false or materially incomplete information to the City or to a seller or lessor of an Inclusionary Unit to obtain occupancy of housing for which he or she is not eligible.
- B. Any individual who sells an Inclusionary Unit in violation of the provisions of this chapter shall be required to forfeit all monetary amounts so obtained. Recovered funds shall be deposited into the Inclusionary Housing Fund.
- C. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this chapter, including but not limited to: (1) actions to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval; (2) civil actions for injunctive relief or damages; (3) actions to recover from any

violator of this chapter civil fines, restitution to prevent unjust enrichment, and/or enforcement costs; and (4) any other action, civil or criminal, authorized by law or by any regulatory document, restriction, or agreement under this chapter.

- D. In any action to enforce this chapter or an Inclusionary Housing Agreement recorded hereunder, the City shall be entitled to recover its reasonable attorney's fees and costs.
- E. Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any person, owner, Developer or household from the requirements of this chapter.
- F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it would otherwise be entitled under law or equity.

17.92.080 - General Provisions.

- A. Inclusionary Housing Fund. There is hereby established a separate fund of the City, to be known as the Inclusionary Housing Fund. All monies collected pursuant to 17.92.040, 17.92.060 and 17.92.070 shall be deposited in the Inclusionary Housing Fund. Additional monies from other sources may be deposited in the Inclusionary Housing Fund. The monies deposited in the Inclusionary Housing Fund shall be subject to the following conditions:
 - 1. Monies deposited into the Inclusionary Housing Fund must be used to increase and improve the supply of housing affordable to Very Low, Low, and Moderate, Income Households in the City. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this section.
 - 2. The fund shall be administered, subject to the approval by the City Manager, by the Director of Community Development, or his or her designee, who may develop procedures to implement the purposes of the Inclusionary Housing Fund consistent with the requirements of this chapter and through the adopted budget of the City.
 - 3. Monies deposited in accordance with this section shall be used in accordance with the City's Housing Element, or subsequent plan adopted by the City Council to construct, rehabilitate, or subsidize affordable housing or assist other government entities, private organizations, or individuals to do so. Permissible uses include, but are not limited to, assistance to housing development corporations, equity participation loans, grants, pre-home ownership co-investment, pre-development loan funds, participation leases, or other public-private partnership arrangements. The Inclusionary Housing Fund may be used for the benefit of both rental and owner-occupied housing. In no case is the City obligated to actually construct affordable housing units on its own.
- B. Administrative Fees. The City Council may by Resolution establish reasonable fees and deposits, which shall fund the City's costs associated with the administration and monitoring of the Inclusionary Units and administration of the Inclusionary Housing Fund.
- C. Appeal. Within ten (10) calendar days after the date of any decision of the Director under this

chapter, an appeal may be filed with the City Clerk. Within ninety (90) calendar days of the request for an appeal is filed or a later time as agreed to by the appellant, the City Council shall consider the appeal. The City Council's decision shall be final.

D. Waiver.

1. Notwithstanding any other provision of this chapter, the requirements of this chapter may be waived, adjusted, or reduced if a Developer shows, based on substantial evidence, that there is no reasonable relationship between the impact of a proposed Residential Development and the requirements of this chapter, or that applying the requirements of this chapter would take property in violation of the United States or California Constitutions.
2. Any request for a waiver, adjustment, or reduction under this section shall be submitted to the City concurrently with the Affordable Housing Plan required by Section 17.92.050. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.
3. The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and at the same time as the Affordable Housing Plan, and is subject to the appeal process in subsection C. above.
4. In making a determination on an application for waiver, adjustment, or reduction, the Developer shall bear the burden of presenting substantial evidence to support the claim. The City may assume each of the following when applicable:
 - a. That the Developer will provide the most economical Inclusionary Units feasible, meeting the requirements of this chapter and any implementing regulations.
 - b. That the Developer is likely to obtain housing subsidies when such funds are reasonably available.
5. The waiver, adjustment or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this section.

(Ord. 464, 2016)



AB-1505 Land use: zoning regulations. (2017-2018)

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Date Published: 09/29/2017 09:00 PM

Assembly Bill No. 1505

CHAPTER 376

An act to amend Section 65850 of, and to add Section 65850.01 to, the Government Code, relating to land use.

[Approved by Governor September 29, 2017. Filed with Secretary of State September 29, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1505, Bloom. Land use: zoning regulations.

The Planning and Zoning Law authorizes the legislative body of any county or city to adopt ordinances regulating zoning within its jurisdiction, as specified.

This bill would additionally authorize the legislative body of any county or city to adopt ordinances to require, as a condition of development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, moderate-income, lower income, very low income, or extremely low income households or by persons and families of low or moderate income, as specified, and would declare the intent of the Legislature in adding this provision.

This bill would also authorize the Department of Housing and Community Development, within 10 years of the adoption or amendment of an ordinance by a county or city after September 15, 2017, that requires as a condition of the development of residential rental units that more than 15% of the total number of units rented in the development be affordable to, and occupied by, households at 80% or less of the area median income, to review that ordinance if the county or city meets specified conditions. The bill would authorize the department to request, and require that the county or city provide, evidence that the ordinance does not unduly constrain the production of housing by submitting an economic feasibility study that meets specified standards. If the department finds that economic feasibility study does not meet these standards, or if the county or city fails to submit the study within 180 days, the bill would require the county or city to limit any requirement to provide rental units in a development affordable to households at 80% or less of the area median income to no more than 15% of the total number of units in the development. The bill would require the department to report any findings made pursuant to these provisions to the Legislature. The bill would also declare that these provisions regarding department review of certain land use ordinances address a matter of statewide concern.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65850 of the Government Code is amended to read:

65850. The legislative body of any county or city may, pursuant to this chapter, adopt ordinances that do any of the following:

(a) Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes.

(b) Regulate signs and billboards.

(c) Regulate all of the following:

(1) The location, height, bulk, number of stories, and size of buildings and structures.

(2) The size and use of lots, yards, courts, and other open spaces.

(3) The percentage of a lot which may be occupied by a building or structure.

(4) The intensity of land use.

(d) Establish requirements for offstreet parking and loading.

(e) Establish and maintain building setback lines.

(f) Create civic districts around civic centers, public parks, public buildings, or public grounds, and establish regulations for those civic districts.

(g) Require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code. The ordinance shall provide alternative means of compliance that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.

SEC. 2. Section 65850.01 is added to the Government Code, to read:

65850.01. (a) The Department of Housing and Community Development, hereafter referred to as "the department" in this section, shall have the authority to review an ordinance adopted or amended by a county or city after September 15, 2017, that requires as a condition of the development of residential rental units that more than 15 percent of the total number of units rented in a development be affordable to, and occupied by, households at 80 percent or less of the area median income if either of the following apply:

(1) The county or city has failed to meet at least 75 percent of its share of the regional housing need allocated pursuant to Sections 65584.04, 65584.05, and 65584.06, as applicable for the above-moderate income category specified in Section 50093 of the Health and Safety Code, prorated based on the length of time within the planning period pursuant to paragraph (1) of subdivision (f) of Section 65588, over at least a five-year period. This determination shall be made based on the annual housing element report submitted to the department pursuant to paragraph (2) of subdivision (a) of Section 65400.

(2) The department finds that the jurisdiction has not submitted the annual housing element report as required by paragraph (2) of subdivision (a) of Section 65400 for at least two consecutive years.

(b) Based on a finding pursuant to subdivision (a), the department may request, and the county or city shall provide, evidence that the ordinance does not unduly constrain the production of housing by submitting an economic feasibility study. The county or city shall submit the study within 180 days from receipt of the department's request. The department's review of the feasibility study shall be limited to determining whether or not the study meets the following standards:

(1) A qualified entity with demonstrated expertise preparing economic feasibility studies prepared the study.

(2) If the economic feasibility study is prepared after September 15, 2017, the county or city has made the economic feasibility study available for at least 30 days on its Internet Web site. After 30 days, the county or city shall include consideration of the economic feasibility study on the agenda for a regularly scheduled meeting of the legislative body of the county or city prior to consideration and approval. This paragraph applies when an economic feasibility study is completed at the request of the department or prepared in connection with the ordinance.

(3) The study methodology followed best professional practices and was sufficiently rigorous to allow an assessment of whether the rental inclusionary requirement, in combination with other factors that influence feasibility, is economically feasible.

(c) If the economic feasibility study requested pursuant to subdivision (b) has not been submitted to the department within 180 days, the jurisdiction shall limit any requirement to provide rental units in a development affordable to households at 80 percent of the area median income to no more than 15 percent of the total number of units in a development until an economic feasibility study has been submitted to the department and the department makes a finding that the study meets the standards specified in paragraphs (1), (3), and, if applicable, (2), of subdivision (b).

(d) (1) Within 90 days of submission, the department shall make a finding as to whether or not the economic feasibility study meets the standards specified in paragraphs (1), (3), and, if applicable, (2), of subdivision (b).

(2) If the department finds that the jurisdiction's economic feasibility study does not meet the standards in paragraphs (1), (3), and, if applicable, (2), of subdivision (b), the jurisdiction shall have the right to appeal the decision to the Director of Housing and Community Development or his or her designee. The director or his or her designee shall issue a final decision within 90 days of the department's receipt of the appeal unless extended by mutual agreement of the jurisdiction and the department.

(3) If in its final decision the department finds that jurisdiction's economic feasibility study does not meet the standards in paragraphs (1), (3), and, if applicable, (2), of subdivision (b), the jurisdiction shall limit any requirement to provide rental units in a development affordable to households at 80 percent of the area median income to no more than 15 percent of the total number of units in a development until such time as the jurisdiction submits an economic feasibility study that supports the ordinance under review and the department issues a finding that the study meets the standards in paragraphs (1), (3), and, if applicable, (2), of subdivision (b).

(e) The department shall not request to review an economic feasibility study for an ordinance more than 10 years from the date of adoption or amendment of the ordinance, whichever is later.

(f) The department shall annually report any findings made pursuant to this section to the Legislature. The report required by this subdivision shall be submitted in compliance with Section 9795.

(g) The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section shall apply to an ordinance proposed or adopted by any city, including a charter city.

SEC. 3. The Legislature finds and declares all of the following:

(a) Inclusionary housing ordinances have provided quality affordable housing to over 80,000 Californians, including the production of an estimated 30,000 units of affordable housing in the last decade alone.

(b) Since the 1970s, over 170 jurisdictions have enacted inclusionary housing ordinances to meet their affordable housing needs.

(c) While many of these local programs have been in place for decades, a 2009 appellate court decision has created uncertainty and confusion for local governments regarding the use of this tool to ensure the inclusion of affordable rental units in residential developments.

(d) It is the intent of the Legislature to reaffirm the authority of local jurisdictions to include within these inclusionary housing ordinances requirements related to the provision of rental units.

(e) The Legislature declares its intent in adding subdivision (g) to Section 65850 of the Government Code, pursuant to Section 1 of this act, to supersede the holding and dicta in the court decision of *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 to the extent that the decision conflicts with a local jurisdiction's authority to impose inclusionary housing ordinances pursuant to subdivision (g) of Section 65850 of the Government Code, as added pursuant to Section 1 of this act.

(f) In no case is it the intent of the Legislature in adding subdivision (g) to Section 65850 of the Government Code, pursuant to Section 1 of this act, to enlarge, diminish, or modify in any way the existing authority of local jurisdictions to establish, as a condition of development, inclusionary housing requirements, beyond reaffirming their applicability to rental units.

(g) This act does not modify or in any way change or affect the authority of local jurisdictions to require, as a condition of the development of residential units, that the development include a certain percentage of residential for-sale units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households.

(h) It is the Intent of the Legislature to reaffirm that existing law requires that the action of any legislative body of any city, county, or city and county to adopt a new inclusionary housing ordinance be taken openly and that their deliberations be conducted openly consistent with the requirements of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(i) Except as provided in subdivision (e), in no case is it the intent of the Legislature in adding subdivision (g) to Section 65850 of the Government Code, pursuant to Section 1 of this act, to enlarge, diminish, or modify in any way the existing rights of an owner of residential real property under Sections 1954.50 to 1954.535, inclusive, of the Civil Code and Sections 7060 to 7060.7, inclusive, of the Government Code.

8.0 GOALS AND POLICIES

Adequate Sites and New Construction

GOAL I Provide for adequate sites and promote the development of new housing to accommodate Clayton's fair share housing allocation.

POLICY I.1 The City shall designate and zone sufficient land to accommodate Clayton's projected fair share housing allocation as determined by the Association of Bay Area Governments.

Implementation Measure I.1.1. To ensure that adequate sites are available through the planning period to meet the City's Regional Housing Needs Allocation (RHNA), the City will continue to maintain an inventory of sites available and appropriate for residential development for households at all income levels. In keeping with state "no net loss" provisions (Government Code Section 65863), if development projects are approved at densities lower than anticipated in the sites inventory, the City will evaluate the availability of sites appropriate for lower-income housing and, if necessary, shall rezone sufficient sites to accommodate the RHNA.

Responsibility: Community Development Department

Time Frame: Ongoing, as development projects are proposed.

Funding: General Fund

Implementation Measure I.1.2. The City will amend the Multi-Family High Density (MHD) General Plan land use designation or otherwise amend the General Plan and/or Zoning Ordinance as needed to meet state requirements specific to sites rezoned to accommodate the City's lower-income RHNA from the 2007–2014 planning period, specifically to allow multi-family housing by-right on these sites at a minimum density of 20 units per acre.

The City's 2007–2014 Housing Element identified a shortfall of land that provided for residential development at a density deemed appropriate for affordable housing to accommodate 84 units to meet the extremely low-, very low-, and low-income RHNA. State law (Government Code Section 65583.2(h) and (i)) requires that land rezoned or redesignated to meet a shortfall meet the following criteria:

- Require a minimum density of at least 20 units per acre.
- Accommodate at least 16 units per site.
- Allow multi-family housing by-right (without a use permit).

- At least 50 percent of rezoned sites must be designated for residential uses only.

In 2012, the City in good faith established the Multi-Family High Density General Plan Land Use and Zoning District designations and made specified General Plan Map and Zoning Map changes in an attempt to accommodate the City's lower-income RHNA shortfall from the 2007–2014 planning period. The City was advised by HCD that these efforts fell short of state law; therefore, the City's land use regulations will be appropriately revised to comply with the above stated criteria..

Responsibility: City Council, Planning Commission, Community Development Department

Time Frame: By January 31, 2016.

Funding: General Fund

POLICY I.2 The City shall actively support and participate in the development of extremely low-, very low-, low-, and moderate-income housing to meet Clayton's fair share housing allocation. To this end, the City shall help facilitate the provision of affordable housing through the granting of regulatory concessions and available financial assistance.

Implementation Measure I.2.1. For residential projects of 10 or more units, developers will be required to develop an Affordable Housing Plan that requires a minimum of 10 % of the units to be built or created as affordable housing units. The City has established the following guidelines to provide direction for the review of Affordable Housing Plans associated with individual development projects and to provide direction for the preparation of an Affordable Housing Plan.

The plan shall be approved in conjunction with the earliest stage of project entitlement, typically with the City Council approval of the development agreement or other primary land use entitlement.

The Affordable Housing Plan shall specify and include the following:

- The number of dwelling units that will be developed as affordable to very low-, low-, moderate-, and above moderate-income households shall be a minimum of 10% of the total project. The number of affordable units shall be rounded up to a whole number. It is the City's desire that at least 5 percent of all project units be built as very low-income housing units and at least 5 percent of all project units be built as low-income housing units.
- The number of affordable ownership and rental units to be produced. Such split shall be approved by the City Council based on housing needs, market

conditions, and other relevant factors. The split of ownership and rental units shall be addressed within the plan for each individual project.

- Program options within project-specific Affordable Housing Plans may include, but are not limited to, the following:
 - Actual production (on-site or off-site) of affordable units (including ownership and rental opportunities in the form of corner units, halfplexes, duplexes, cottages, creative alternative housing products, etc.).
 - Land dedication (on-site and off-site).
 - Payment of in-lieu fees.
- The timing for completion of affordable housing obligations. For projects proposing to construct affordable housing units, the City generally supports construction of affordable dwellings concurrent with the construction of market-rate housing when feasible. For projects providing alternative contributions (land dedication, funds, etc.), timing of such contributions shall be identified in the plan, with the expectation that the City will pursue construction of affordable units generally concurrent with construction of project market-rate housing.
- At the City Council's discretion, land or other contributions provided by developers as specified within project Affordable Housing Plans may be utilized to augment City efforts and the efforts of its nonprofit partners to provide affordable housing opportunities to all income levels throughout the community. The City will pursue supplemental funding to allow affordability to households earning less than 50 percent of area median income.
- In order to ensure the production and preservation of housing affordable to the City's workforce, no productive, reasonable program or incentive option will be excluded from consideration within project-specific Affordable Housing Plans. Possible incentives may include, but are not limited to:
 - Density bonuses
 - Fee waivers or deferrals (as reasonably available)
 - Expedited processing/priority processing
 - Reduced parking standards
 - Technical assistance with accessing funding

- Modifications to development standards (on a case-by-case basis)

Responsibility: City Council, Planning Commission, Community Development Department

Time Frame: Ongoing, as projects of 10 or more units are processed through the Community Development Department. The City will monitor the implementation of this program to ensure that it does not cause a constraint to the development of housing in the City of Clayton and will make necessary revisions to the program if needed to avoid such a constraint.

Funding: General Fund

POLICY I.3 The City shall encourage the development of second dwelling units on new and existing single-family-zoned lots.

Implementation Measure I.3.1. The City shall continue to promote the development of second dwelling units by publicizing information in the general application packet and posting information on the City's website. The City will aim to approve two second dwelling units per year during the planning period.

Responsibility: Community Development Department

Time Frame: Ongoing, 2015–2023

Funding: General Fund

POLICY I.4 The City shall aggressively promote mixed-use or second-story residential units above commercial uses in the Town Center.

Implementation Measure I.4.1. To encourage development of mixed-use projects in the Town Center, the City has adopted the Clayton Town Center Specific Plan which provides detailed policy direction, standards, and guidelines that encourage mixed-use and second-story residential development. The City will continue to promote development opportunities in the Town Center, circulate a development handbook that describes the permitting process for mixed-use projects, and offer incentives such as density bonuses to incentivize mixed-use projects. The City will aim to facilitate the development of at least one mixed-use project within the planning period.

Responsibility: City Council, Planning Commission, Community Development Department

Time Frame: Annually and upon receiving development inquiries for mixed-use development.

Funding: General Fund