

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

TUESDAY, September 4, 2018

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:00 p.m. by Vice Mayor Shuey in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Vice Mayor Shuey and Councilmembers Catalano, Diaz and Pierce. Councilmembers absent: Mayor Haydon. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Assistant to the City Manager Laura Hoffmeister, Community Development Director Mindy Gentry, and City Clerk/HR Manager Janet Calderon.

2. **PLEDGE OF ALLEGIANCE** – led by Vice Mayor Shuey.

3. **CONSENT CALENDAR**
It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to approve the Consent Calendar as submitted. (Passed; 4-0 vote).
 - (a) Approved the minutes of the City Council’s regular meeting of August 21, 2018.
 - (b) Approved the Financial Demands and Obligations of the City.
 - (c) Approved the City’s Investment Portfolio Report for the 4th Quarter of Fiscal Year 2017-18 ending June 30, 2018.

4. **RECOGNITIONS AND PRESENTATIONS**
 - (a) Proclamation declaring September 17 – 23, 2018 as “U.S. Constitution Week.”

Vice Mayor Shuey read aloud the proclamation and then presented it to Lynda Ferguson, Chairperson for the local chapter of the Daughters of the American Revolution.
 - (b) Proclamation declaring September 2018 as “Suicide Prevention Awareness Month.”

Vice Mayor Shuey read aloud portions of the proclamation and instructed staff to send it to the requester as no one was present to receive it.
 - (c) Presentation by Republic Services (the City’s franchise solid waste/recycling collection and disposal company) regarding current trends in community recycling efforts coupled with upcoming state mandates for new recycling programs and the global problems with post-recycling secondary markets.
(Susan Hurl, Division Municipal Services Manager, Republic Services)

Assistant to the City Manager Laura Hoffmeister informed the public this is an item requested by the City Council at its Goals Setting Session held on January 30, 2018. In her role as the Assistant to the City Manager she serves as the City’s recycling waste reduction program manager ensuring the City meets its state-mandated recycling and

program implementation and compliance monitoring reports requirements. Ms. Hoffmeister then introduced Susan Hurl, Division Municipal Services Manager for Republic Services.

Ms. Hurl presented a slideshow providing the history and future of solid waste and recycling mandates including the future organics requirements for both residential and commercial services. Ms. Hurl advised in 1989 the Integrated Waste Management Act was introduced providing the first requirement for cities to have an absolute diversion rate. In 1995 the requirement was a 25% diversion rate followed by a 50% diversion rate in 2000 with an additional requirement to make a good faith effort; if a public agency did not make a good faith effort, the State or CalRecycle could fine a city up to \$10,000 per day. In 1995 Clayton started with an 18% diversion rate; in 2006 Clayton had a 49% diversion rate.

In 2007, the state decided it was too hard to explain and calculate the diversion rate so it switched to a per capita disposal rate. The goals of AB 939 remained relevant; the per capita disposal target rate is actually the 50% diversion rate for each city. From 2007 to 2016 the pounds-per-person-per-day target rate for the city of Clayton as determined by CalRecycle was 4.1 pounds-per-person-per-day. In 2007, Clayton hit 3.7; in 2016 Clayton dropped to 2.9 pounds-per-person-per-day. Clayton has done a great job with complying with AB 939, which is no easy task. She noted now that cities have largely complied with this state requirement, it decided to move the goal. Ms. Hurl noted she provides the City a monthly report with the tonnage Republic Services collects each month; it does not include self-haul as contractors may use other disposal sites. In 2007, Residential diversion was at 58% and in July 2018, Clayton is at 53% Residential.

For Clayton residential services, the City and Republic Services wanted to move residents out of the large 64 and 96 gallon trash containers as an encouragement to recycle. In 2003, Republic Services did some outreach and the rate structure was changed to make those carts a little more expensive. In 2017 Republic Services provided a residential newsletter outlining the economic and environmental benefits with downsizing the trash cart; a specific postcard was mailed to residents about downsizing and finally some significant movement resulted in getting more customers out of the 64 and 96 gallon carts and going with the 32 gallon cart.

Ms. Hurl remarked in Clayton there is so little commercial yet in 2011 the state enacted another law that every commercial business that produced 4 yards or more of garbage was required to have a mandatory recycling program. The City then adopted an ordinance and implemented that new program. Clayton has two multi-family complexes that fall into the AB431 category plus sixteen commercial; all are in current compliance. The diversion rate for the commercial sector is challenging in Clayton, therefore the next state-mandated program to generate more diversion is from organic wastes dealing with food waste.

In 2014, state legislation AB 332 requires Californians to do what it can to halt climate change. In 2016, AB 1826 now required businesses that generate 8 cubic yards of organic waste to implement an organic wastes program; the state subsequently lowered the program threshold to 4 cubic yards. In 2019, the state requirement will change to 4 cubic yards of solid waste, and it is highly likely this requirement may be furthered lowered to two cubic feet of solid waste. In 2016, Clayton had zero businesses matching the organics requirement; in 2017 there is only one business: Clayton Station. After meeting with CalRecycle staff it was proposed to add a residential organics program at the same time as the commercial program to obtain greater diversion rates. CalRecycle thought this City proposal was a reasonable request and it was granted. Organics is defined as food waste, green waste, landscape, pruning, nonhazardous wood and food soiled paper. In the definition of organics, nonhazardous wood waste includes pallets.

Additional law in 2014 addressed the use of alternate daily cover (ADC); this is the practice of Republic Services using green waste to cover the garbage at its landfill every night. It had been considered by CalRecycle to be a beneficial re-use. However, now the State of California has decided it does not want green waste covering the garbage any longer since it fills up the landfills. Instead, green waste is to be composted. The City has two choices: compost all green waste or allow the green waste to continue for use as ADC at the landfill but it will then be calculated as trash disposal, which means about 2,000 tons per year will become “trash” and it will probably push the City well below the 50% landfill diversion rate.

Yet another state mandate, SB 1383, involves a short-lived climate pollutants organic waste methane emissions reduction plan associated with the State of California’s goals to impact climate change; it requires an additional 50% reduction to the level of statewide disposal of organic wastes from Year 2014 to Year 2020.

Further, by 2032 the State wants standardization in the color of solid waste collection containers; black will be trash, blue will be recycling, green will be organics, and container labels must be standardized as well beginning in 2022 for new residential. The state will expect quarterly audits with the expectation each city will adopt strict enforcement ordinances and all those audits will be documented and recorded. The state will also expect a program in local separate collection of textiles, defined by the state as anything made of thread, yarn, fabric or cloth – not mattresses or furniture.

And finally, to complicate recycling matters China recently decided to clean up its environment and has dramatically changed the acceptable contamination levels of recyclable materials it will import from 3% down to 0.5%. Part of the problem is “lightweighting” of the material; many eligible recycling products have gotten lighter in weight (e.g. water bottles) and in the U.S.’s eagerness to recycle we are now recycling more volume. In terms of prices, the national average for mixed paper in 2016 was \$75.00 per ton but currently has dropped to \$5.00 per ton. One of the downsides from China’s actions is small recyclers like Pacific Rim out of Benicia went out of business because it could not afford the additional equipment or the manpower needed to continue operations at that higher level of decontamination. In 2018 it closed their operation. Currently, recyclable materials are transported to Newby Island Resource and Recovery in San Jose; it is one of the largest in the country. The impact of the China Sword has slow down processing speeds on the separation lines to be able to pull out any contaminates, adding additional people to the sort line and hiring more people to do self-inspections. Republic Services has actively been exploring other recycling markets to Malaysia, Indonesia, Vietnam, and India; yet as Republic Services is doing it, so is every other company in the United States and Europe looking for alternative markets for recyclables. China imposed a tariff of 25%. CalRecycle is trying to figure out how to obtain domestic markets for all the recycling materials it has created with AB 939, AB 341, AB 1826 and SB 1383 so that cities can comply.

Councilmember Catalano noted in Clayton 44% of the residents have the 32 gallon trash containers and 7% have 20 gallon containers but that still leaves 49% of our residents with a 64 or 96 gallon container. What is the biggest incentive for people to switch into a smaller container, is it the rate or advertising awareness? Ms. Hurl responded it is a combination of people being aware; and there is a big price difference between the 32 and 64 gallon containers. Still, she had a friend who lived here who would not go to a smaller container because she wanted the larger container for special occasions; in Ms. Hurl’s mind, that is what the free cleanups are for as a part of the Clayton services.

Councilmember Catalano also inquired about the way we recycle, as a lot of European countries actually recycle more; perhaps neighborhood communities should have additional containers beyond the three carts to support more residential organic recycling, for example. Ms. Hurl advised Clayton residents are able to obtain an

additional recycling cart or a larger recycling cart, at no additional charge. Ms. Hurl noted residential compost collections are now occurring in neighboring communities such as Martinez, Orinda, Moraga, Lafayette, Walnut Creek and Pleasant Hill to meet the new state laws. It requires a change in habits.

Councilmember Diaz asked if “diversion” means getting rid of things? Ms. Hurl responded “diversion” in this context means sending something somewhere else that is not a landfill.

Councilmember Diaz asked if the three containers are weighed separately? Ms. Hurl advised each truck is weighed at the transfer station where recycled materials are loaded onto a long transfer trailer; there is a tariff in the truck indicating how much the truck weighs empty and from that difference we get the weight of the recyclables. The numbers from Republic Services are provided to the County; the County then submits the numbers as a whole to the state for all the cities in Contra Costa County. However, under new state law, facilities like Keller Canyon Landfill will report those numbers directly to CalRecycle.

5. REPORTS

- (a) Planning Commission
Chairman Bassam Altwal indicated the Commission’s agenda at its meeting of August 28, 2018 included approval of a Parcel Map to subdivide an existing 1.47-acre lot into three parcels located at 500 Douglas Road. This item was conditionally approved unanimously.
- (b) Trails and Landscaping Committee – No meeting held.
- (c) City Manager/Staff – No Report.
- (d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

Councilmember Diaz attended the Classic Car Show and DJ event in downtown Clayton, the Clayton Valley Charter High School meet and greet for its new Executive Director, Jim Scheible, the Kops for Kids 20th Annual Golf Classic, the Clayton Business and Community Association’s General Membership meeting, the Saturday Concerts in The Grove series, and the 15th Annual Labor Day Derby.

Councilmember Julie Pierce attended the Concert in The Grove, which collected its second largest audience donation this season.

Councilmember Catalano announced the Clayton Business and Community Association’s Oktoberfest event still needs volunteers

Vice Mayor Shuey attended and MC’d the 15th Annual Labor Day Derby event.

- (e) Other – Introduction of City Council candidates (present at the meeting).

Vice Mayor Shuey noted that during city elections it is City Council Policy that candidates for City Council are allowed 3 minutes to introduce themselves and share a few remarks at City Council meetings if they are in attendance and wish to do so.

Jeff Wan stated is an active CPA in private industry, treasurer for his HOA, an East Bay native, and Clayton resident for the past nine (9) years. Mr. Wan said he is running to preserve the charm of Clayton and preserve events such as Concerts in the park,

Oktoberfest and 4th of July parade, with an effort to keeping Clayton safe. Mr. Wan indicated he was motivated to run for City Council after years of reading the downtown's misadventures and feels at some point the Council has lost its way. If elected it would be Mr. Wan's privilege to represent his neighbors and community in keeping Clayton a great place to live and raise a family. Mr. Wan thinks we can do better and it is time for a change.

Brian Buddell believes a change is necessary as the current Council has lost its way and its lack of communication with the public. He advocates an email newsletter to anyone who wants to subscribe and to maintain a Facebook page to the extent possible regarding any important issue that might concern the citizens of Clayton. Mr. Buddell then read an excerpt of the Brown Act: "*The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.*" Mr. Buddell advised this Council has failed the Brown Act; as a councilmember the community will have his ear, the community will have his voice, and as a councilmember Mr. Buddell will have the community's back.

David Shuey advised he has been involved in Clayton city politics for twenty years to help steward the city and make it the city that attracted Mr. Wan and Mr. Buddell. Mr. Shuey indicated he has faithfully executed those duties, has listened to the public, and has made the decisions that were correct for the City as a whole, not a vocal minority. It is important that we have people that listen and carefully consider all facets of the risks and benefits of actions, noting over the years he has been one of those who has fought when we should and fought the state and the county over mandates that were presented. We also need to make lemonade out of the lemons they are giving us because sometimes it is not a fight we could win. He goes by "Shoe" and has a wife and five children; three of them adopted: two from China and one from Ukraine. He has been a volunteer for youth sports for almost 2 decades as a coach and leader; was on the City Community Services Commission and was chair of the Downtown Park Design Committee assisting with its design. He has been a part of the City Council for over 16 years and hopes the citizens will re-elect him for another term as he has faithfully served the community as he has done to date.

(e) Other – None.

6. PUBLIC COMMENT ON NON - AGENDA ITEMS

H. Abraham Wilson introduced himself as a candidate for the Contra Costa Community College Board Ward IV, San Ramon, Danville, Clayton, part of Antioch and Brentwood. Mr. Wilson advised education has always been a part of his life as both of his parents were educators. If given the honor to serve, he will strive to improve the educational opportunities of the students of Contra Costa Community College. Some of the areas he is focused on are vocational opportunities, closer relationships with the business community, and continue to support a new program he started, Veterans Small Business Management called "boot camp", and provide childcare to give the opportunity for woman to attend college classes. Students are concerned with having the very basics, understanding why they are there and how to go through the college; protect academic advisors and enhance funds for education. He plans to work with the staff to improve relationships with students by making sure the staff is also taken care of. Mr. Wilson provided his background as a civic and community member and various awards received being most proud of the State Music Educators' Legislator of the Year Award,

the first time it was given to someone outside of Sacramento. He was also a co-founder of East Bay Regional Communication Systems for public safety interoperability.

Peter Cloven, 739 Black Point Place, also serving as a City Planning Commissioner, advised he has been watching the serious turmoil on social media for several weeks now. In 2014 Mr. Cloven noted he received a postcard regarding the proposed Silver Oak Development, a three story development with a low income housing element. With a group of people in the neighborhood he hired a geotechnical engineer, a hydrologist, and as an environmental engineer himself, the neighbors fought the environmental impact report put together by the environmental company hired on behalf of the developer. As a result of that, Mr. Cloven began attending Planning Commission meetings and saw how they listened to our thoughts and that project has still today not come to fruition. Mr. Cloven wanted to get involved; at that time he was like the residents in attendance here and he decided to become a Planning Commissioner which involved an interview process; he was asked why he wanted to be on the Planning Commission, and he replied to keep Clayton as it is. The City Council was very thorough in the interview process and in his last 5 years of being on the Planning Commission he has the expertise in changing the agenda items presented prior to going to the City Council with recommendations from City staff. Mr. Cloven appreciates that process and hopes the people who present applications to the City appreciate it as well. Mr. Cloven appreciates the work of the City Council and acknowledges the hard work they have to go through. There are no back room deals; the public needs to understand the Council is doing the best it can with the information they have in front of them and Mr. Cloven appreciates that.

Brian Buddell spoke about censorship occurring; over the past two weeks there has been a one-sided attack on free speech in this city, a lot of negative comments have gone away because people who apparently do not like the fact that Mr. Wan and himself are running for City Council seem to have power as threads have been deleted on Nextdoor. People have been banned; five of his supporters have been banned from Nextdoor from speaking. Interestingly enough, he was just informed that during his candidate speech this meeting's live feed went down, but guess what - it came back on when Mr. Shuey was speaking. But surely it was a technical difficulty, right Mr. Shuey? Mr. Shuey, if you would debate him on the issues or challenge the issues, that's the way it's supposed to be. Mr. Shuey does not get to stifle three minutes of free speech, or stifle the other side, that's exactly the problem occurring here. It should not matter if someone has lived here three years or three months or three decades. Everybody should have a voice in this community. Not stifled by a club or association because of a lot volunteer hours or happen to have power over the AV feed. Censorship needs to be addressed. It's not right and needs to be corrected.

Jim Gamble added as Mr. Shuey and Ms. Pierce have social media accounts on Nextdoor, they have gotten very chatty all of a sudden and now members of the public cannot speak or rebut or anything else for a limited time. It's interesting - its right at this key time that goes on during this election and the only way we have anyway to speak about anything now is at these meetings and also through a lawn sign which is pretty neutering. There are things going on behind the scenes, this is not Clayton as we know it, it's more like Clayton Place. More will be coming.

7. PUBLIC HEARINGS – None.

8. ACTION ITEMS

- (a) Consider the Second Reading and Adoption of proposed Ordinance No. 483 amending Title 17 – Zoning of the Clayton Municipal Code to restrict and regulate parolee homes in the following General Plan designations: Multifamily Low Density (MLD), Multifamily Medium Density (MMD), and Multifamily High Density (MHD), subject to a conditional use permit.

Community Development Director Mindy Gentry advised the City Council first considered this item on July 17, 2018 whereat the Council expanded the public noticing requirements to 500' to match the buffer difference between sensitive uses. The Council also requested maps from staff showing a 750' and a 1,000' buffer zone in order to better understand the specific details and the effects of a larger buffer distance. At its subsequent meeting on August 21, 2018 the City Council voted to expand the buffer to 1,000' as well as increase the public notification to that distance, with publication in a local newspaper and on the City's website. These changes were made and are reflected in the Ordinance presented this evening. She clarified the purpose and focus of the various maps previously presented are not a part of the Ordinance but were drafted for legal purposes to determine a defacto ban would not exist if there were an expansion of the buffer distance from sensitive use sites. She noted the location of sensitive use sites will morph and change over time as businesses turn over and other sensitive uses, such as a licensed daycare and licensed group homes, come into play as well as leave neighborhoods. The maps focused on the Town Center, only reflect a snapshot in time and also did not drill down to specific properties. It is critical to note the implementation of the Ordinance is fluid and that it would take all sensitive use sites within the proposed 1,000' buffer into consideration at the time an application is received by the City. If a parolee home operator came to the City with an application, staff would consider at that time if that application meets the ordinance requirements. If additional uses move into an area that were not in existence at the time of adoption of this proposed ordinance, there could be a possibility the City may be faced with a defacto ban; it may have to consider future modifications to provide additional locations in order to prevent a ban which has been deemed legally indefensible if challenged.

Vice Mayor Shuey opened Public Comment.

Brian Buddell, commended the City Council in expanding the buffer to 1,000', however he doesn't feel the buffer is far enough. Under the proposed Ordinance there are two areas, Keller Ridge and Shell Lane, completely unprotected; that is unacceptable. Although he does not reside in those areas, he has friends that live there, his kids have friends that live there, and his kids play there so as far as he is concerned, this affects him too. Leaving them open to the possibility of not having the same regulations that protect his home or other homes in Clayton is unacceptable. He understands the concern of litigation and the costs, but somethings are just plain worth it and the safety of our children, the safety of our citizens is one of those things. Somebody could get raped, mugged, and he would want to know which of the council members would be willing to talk to that mother or father of the son or daughter who may have gotten raped, robbed or killed and say, *"We're really sorry but on the plus side we saved a lot of money and we didn't get sued."* That is not a conversation he would want to ever have to make as a councilmember. Mr. Buddell commended Councilmember Diaz at the last meeting being the only voice to stand up as there was not have enough information and a need to explore other options. Mr. Buddell understood the time constraint but that is a self-created problem too; having to redo this Ordinance is going to open the City up to exact same litigation feared. Protect Keller Ridge and Shell Lane, and consider those private parks.

Jeff Wan feels the City Council mishandled the issue of parolee housing in two significant ways: the first was in its effort to avoid litigation it has taken actions that weakens its position if there ever were actual litigation. The second way parole housing was mishandled by the City Council is in its failure to perform sufficient due diligence. The Supreme Court has repeatedly held animus at such groups is an unconstitutional basis in making law. So promoting the safety of the city would actually be eliminating its position used for law, making comments including those from Councilmember Pierce as quoted in the August 25 article in the East Bay Times where she says, *"I want to make it as ugly a process as it can possibly be so they go anywhere but Clayton. I'm going to count on everyone to come to those publicly noticed meetings for parolee housing and raise holy hell to drive them out."* It makes him wonder if Councilmember Pierce was provided guidance on how to properly craft law that avoids unconstitutional animus because her comments here do not reflect that. The Supreme Court stated in *USDA vs. Moreno*, *"... if the constitutional conception of equal protection of the laws mean anything it must at the very least mean the bare desire to harm a politically unpopular group cannot constitute a legitimate governmental interest."*

Mr. Wan remarked it would be wise for Councilmember Pierce to avoid the appearance of unconstitutional animus and focus on a legitimate interest in the City of Clayton by regulating parolee housing. Regarding the lack of due diligence the Ordinance appears that by removing a defacto ban off the table and instead narrowing the available parts of the City to two areas, if there were a park or daycare or other sensitive use in those two areas, which the Council is apparently ignorant if one exists, then that area would be ruled out and the City would be faced with the ban it is trying to avoid on the backs of those residing in the lower cost areas with young families and retirees. Specifically related to the level of diligence, can the Council clarify why they did not address the matter of parolee housing within the two years before the moratorium were set to expire? Was external counsel engaged to counsel in any capacity at any time? Has the City Attorney considered any potential litigation on the matter of first impression? Why did the attorney conclude first at the meeting July 17 that 500' was the most restrictive, then at the August 21 meeting concluded 1,000' was the most restrictive buffer defensible? What was the rational in excluding private parks when the type of sensitive uses includes private schools? Mr. Wan noted the Hesperia matter Councilmember Catalano raised in the August 21 report; was the City Attorney aware of the matter prior to Councilmember Catalano bringing it up? The scrambling around at the last minute could have been avoided by Council seeking input of the residents in time to craft legislation that is actually defensible and done its diligence properly.

Richard Haile asked the City Council to not make the mistake the proposed ordinance provides by not providing any real permanent protection in Clayton. The state's parole laws require prisoners be released into the community of their last legal address; logically, the largest most legally definition that satisfies this statute would be zip code. By stating community in the statute, the state presumes something smaller than the entire state and its counties are not typically referenced in U.S. addresses that leave us with zip codes. On that basis, the county should follow state law by release in the community only parolees whose previous addresses were in our community or zip code.

Second, Clayton's Home Occupation Permit Form in its second compliance assessments asks will the home occupation be compatible with or not change the character of the adjacent residential areas? That's a tough one. Isn't that exactly what a home occupation questions the principal should be the same and the disruption to the neighborhood were no more profound? Recognition of this fact should illuminate the Conditional Permit, a criteria by minimizing the potential impact of group homes does the following as a recently-passed smoking ordinance bans smoking within multi-family housing dwelling units, and its neighbors may be loath to complain directly to a parolee, the owner/operator of any group homes must be legally responsible for compliance. Said

compliance not being limited to mandatory installation of environmental monitoring devices, use permits shall be revocable for cause after some reasonable number of violations within some defensible time period. Further to obtain a permit, or business license for group home, the group home's sounds transmission class and impact installation class, as they impinge on adjacent units must satisfy the state building codes and confirmed by field tests. Such construction quality is rare. Clayton is a quiet town; many sounds easily masked by big cities' background noise would be clearly audible and potentially disturbing in Clayton.

Ann Stanaway, 1553 Haviland Place, said as she sees it, there are two layers of bureaucracy standing between the citizens of incorporated Clayton and any parolees granted residence in our community, an undermanned and ineffective county and a City Hall that bases ordinance enforcement on political patronage result in unfilled promises, and the winners in all this are the attorneys, losers the citizens, and what really strikes her is this was not supposed to be suicide prevention awareness month yet you may be presiding over a town that is committing suicide.

Marianne Callahan indicates she is here to call upon Councilmembers to call upon their angels and join her in speaking out against hate speech when you hear it. Ms. Callahan understands the City Council needs to count on the safety of its residents when making decisions, there is undoubtedly a need to identify sensitive uses in the area and the impacts of parolee housing and listen carefully, but she objects to a painting of all parolees with broad brush as unwanted people that need to be driven out. She is offended at a staff report stating Clayton as an "affluent community and should investigate how to suppress parolee housing." It happens in a lot of families and it happened in hers. Thank goodness that after her family members paid their time they were welcomed back into the community and with the help of transitional housing are now contributing and productive members of society. It's her understanding that such rehabilitation is the goal of our justice system, not public shaming and banishment. There is a place to lay shame, not on our fellow citizens who have made mistakes, paid their time and are looking for a chance for redemption. But the shame belongs right here, in these Council chambers with people that allow fear and hate speech to make them coward and bend. She recommended encouraging fearful residents to visit similar homes in other communities and to meet the people living there. Don't put Clayton on the map for being the most restrictive community. The sort of language she is hearing around this issue should not be a point of pride. It is an ugly and disgraceful display of fear and arrogance and she suggested this issue be used for reflection of our shared values and to further consider how we can safely assist our brothers and sisters back into the fold.

Barbara Halperin, 5118 Keller Ridge Drive, noted the recent discussions of parolee housing and allowing parolees to live in Clayton is not surprising of the considerable controversy. In this day and age it is natural and responsible to want to feel safe and secure in our homes and neighborhoods, that is why we lock our doors and windows, have security systems and sometimes neighborhood watch groups. But in reality we are a community of families, friends and neighbors and we cannot lock out everyone and everything. So where should someone live who has paid their debt to society and has been thoroughly vetted? Does no one deserve a second chance? Is it better to shun and ostracize someone rather than provide them a chance to move forward in a positive direction? If someone has made a mistake and served their punishment, must they be scorned and deprived of any sense of worth or dignity forever? When does the punishment end? There is someone in this room whose son was incarcerated during a non-violent occupied protest in Oakland. After serving his sentence he has been accepted by Yale and is in a master's degree program; what could a better outcome be than that? One of our most basic needs is a roof over our head. She found it incredibly disturbing for a Councilmember to say she wanted to make it as ugly as possible, an

ugly a process it could be so they go anywhere but Clayton. It was really painful to hear that. Locking someone out of a community leaves no room for anything else, no room for everything, your church and other faiths teach compassion and forgiveness and giving someone a second chance and always heartened, uplifted by the dozens of responses on the Nextdoor website when someone needs help with a pet. Can we at the very least show the same humanity to other human beings?

Fred Fuld commented he is here to make solutions. Like most citizens in Clayton against the government funded parolee housing and not to those parolees that are already here, he came up with three possible solutions that may not be viable but thought should be presented. The first one: the City Council should contact a surplus line insurance company, Lloyds of London, and inquire on the cost of a \$1 million or \$ 2 million policy to cover the city in the event of any lawsuit relating to banning all government funded parolee housing for the next five years. Option two: go ahead and set the 500' or 1,000' buffer but then create an application fee of \$50,000 for parolee housing; once approved, its fee is \$250,000 per year to maintain it in the event the county is stupid enough to waste the taxpayers' money on this. Under the worst case scenario at least we would have the funds to hire one or two additional police officers and get some sort of financial benefit out of this. The third option, which may be the cheapest for the neighborhoods that are targeted that do not have a home owners association, they should establish a home owners association and create simple CC&Rs that say no government sponsored or funded parolee housing is allowed.

Donte Blue, Contra Costa County Reentry and Justice, wanted to make himself available to answer any questions regarding safety and realignment concerning the County's programs and how they operate. Mr. Blue provided facts as there were a number of misrepresentations in the Staff Report in a light that is not consistent with the goals of County. The idea is about rehabilitation, in fact there is a recent public policy report in terms of public safety and realignment, Contra Costa County is the only county of those surveyed that reduced the level of individuals going back into custody through the programs the County operates. In terms of parolee housing, the type of parolee most affected is a misdemeanor crime or court probation which includes driving on a suspended license; because of the way this was written it's called parolee which also includes anyone on provision. When he was approached on how housing works, in terms of our programs, truthfully they don't house anybody just in communities, all of our housing are tied to sober living environments; all tied to somebody who is going through some type of treatment. In fact the program that started this is Ms. Shirley's; she runs a therapeutic community and it is very difficult to get into her program. In fact in the last year there were 13 referrals to her program; after screening only 3 people qualified. She takes people who are ready and committed to the change she is talking about. When we talk about sober living housing, the truth of the matter is this legislation is not going to address any of that; it's already in the state law saying that this body can't even legislate if it is 6 people or less living in a therapeutic environment going towards substance use, all the housing we use restores that. So his point here is: when you ask these questions on what are you trying to do, are you going to accomplish that? And when you look at the fact of this housing that we use for parolees is actually related to sober living housing, the City has not moved the needle at all. How can we ensure our community is more safe is a better way to go rather than trying to ban people and not coming back to see if you actually accomplished what you were trying to do?

John Kranci, Coyote Circle, remarked he is adamantly imposed to any type of parolee housing in Clayton. Mr. Kranci inquired on the park issue, what is the difference between private parks and public parks? In his 48 years in law enforcement he has never seen anything good come out of putting parolees in a private community like this. And he is really upset that Keller Ridge is and Shell Lane was singled out as the only place to place parolees. As a resident here, that is what he could afford at the time along with

young families, retirees, single people; and now we have to contend possibly with convicted felons coming into our neighborhood? We have small children, babies, adolescents, and does not think this is a good area.

Marci Longchamps, Coyote Circle, noted she is here this evening against the wishes of her children, family and friends. They have seen the deterioration of her physical and emotion health since the discussion of parolee housing first came before the City of Clayton and despite being bullied and scapegoated and even suspended on Nextdoor for expressing her beliefs and opinions, she continues on. From the very beginning Ms. Longchamps vested her firm opinion there should be no parolees housing anywhere in Clayton. And now that the Council has targeted her street, this fight has become very personal. Mr. Diaz spoke with her earlier today and she thanked him for keeping his promise; unfortunately, the Council has to have something in place prior to October 4, 2018, otherwise parolees can come and live anywhere in Clayton without notice to the City. There is an issue of a private playground versus a public playground - is the safety of her children, her grandson and all of the children that play at this park just as important as the children that play anywhere else in Clayton? Mr. Diaz says there hasn't been an application submitted but how does he or anyone else for that matter know that won't happen tomorrow; is she supposed to feel safe here? Can she trust the Council to keep her safe?

Barbara Vogt, Coyote, Circle, added her concerns about not including community parks, and a remark from Councilmember Pierce if a landlord submitted an application that we should attend the hearing and fight it; she asked if all of the councilmembers would be at the hearing? Ms. Vogt agrees that we need to give people a second chance and does not understand why single family homes are not included? Ms. Vogt is offended her neighborhood is considered low cost housing.

Joanne Lederman, Keller Ridge Drive, believes the Ordinance should be applied citywide with appropriate buffers in place with all parks considered sensitive areas. Of all the offensive things she heard at the last meeting, Councilmember Pierce wanted to make this as ugly and restrictive as possible and then expect those of us that live in the neighborhood to come out and fight. Ms. Lederman will not fight against parolees coming back into the community - they have a right to do that. It is unfair and discriminatory that the Council has made a certain group in this community not full citizens with full protections leaving them open to parolee housing that isn't particularly appropriate in small condos. Do the right thing and have the Ordinance made effective to the entire community.

Galina Milman added any parolee that will be living in Clayton is going to be stuck in 3.7 sq. miles wondering what to do; it may create extracurricular activities for those parolees not involved in healthy normal environment where unfortunate things happen. We keep forgetting our neighboring cities are larger than 3.7 sq. miles.

Molly Melesavan, Coyote Circle, loves the small town feel of Clayton and she felt it would be a really safe place to raise a family. Ms. Melesavan is extremely concerned and upset the proposed Ordinance is concentrated to her neighborhood. She really enjoys walking around her neighborhood and in the future looks forward to walking the baby around and when the baby is a little older taking he or she to her neighborhood park. Which understands is not being considered a sensitive area. She now worries if she and her children will be safe to play in that park.

Cameron Holeman, Coyote Circle, chose Clayton for its small town country feel where everyone knows each other, family and friends. Mr. Holeman enjoys the small town 4th of July parade, the derby, car shows, and Oktoberfest where everybody is a member of the community. Mr. Holeman opposes parolee housing. He works in environmental health

and asked the Council to reconsideration the idea of sensitive areas as well as what is considered a park. AB 617 (California EPA, California Department of Public Health) has quite a variety of subjects on sensitive areas as well as Title 8 CCR California OSHA Code. Mr. Holeman requested the Council reconsider and to conduct more research and further define sensitive areas.

Jim Gamble referred to Councilmember Pierce's remark of raising holy hell, noting that is what people are trying to do. Mr. Gamble suggested earlier larger buffer zones to protect all of our citizens and the Council would not have pushed it to 1,000' if not for them. Mr. Gamble stated is aware there are some parolee success stories, but this is not a town that we try these things in and hope they work because most of the time they don't work as we have seen the recidivism rate on parolees and how many times they are incarcerated again.

Frank Gavidia, 104 Gold Rush Court, added some of the crimes that are eligible under AB 109 that could come back to the community are meth, PCP use, brandishing a firearm on a vehicle, grand theft of various kinds, cruelty to an animal, threats against witnesses, removal of an officers firearm while resisting arrest. This is just a part of the list from AB 109, part of the legislation we are supposed to fear that the ACLU is going to sue the City. People come here to raise their children and just don't want this here.

Jackie Harty, Shell Lane, walks her children to school every day and was nervous last week because there was a homeless man in town at the bottom of the creek. She walks everywhere in town; they moved to Shell Lane so she could walk everywhere and socialize that way. Ms. Harty walked here tonight because Clayton is safe, however she is concerned if parolee housing comes into her neighborhood it will not be safe. She has had felons and alcoholics in her family. The first week she was in Clayton, her mail including checks, was stolen. Although her neighborhood just installed locking mailboxes she feels it will not stop anyone because she can stick her hand in and pull out the mail. It is safe to walk now, but is it going to be safe to walk to the library and back home at night? Ms. Harty added her home value is probably going to decline as a real estate agent advised her it will have to be disclosed that if she sell her house that the home is zoned for parolee housing. Ms. Harty stated if are going to have parolee housing in Clayton, it should be everywhere.

Vice Mayor Shuey closed public comment.

Councilmember Pierce apologized for her poor choice of words and lack of decorum at the last City Council meeting as it was a very long meeting. She had a family member in the hospital at great risk and was on her last nerve. She said some things she regrets but does not regret letting the community know that she does not think it's appropriate to have parolee housing in Clayton if there is a way to avoid it. Councilmember Pierce believes the County has passed the buck to the City because the state passed the buck to the County, but the County's plan as far as she understands is not even complete yet. When this bill was passed it was made really clear in the legislation we had the opportunity to have two one (1) year moratoriums allowing the City time to get an ordinance together, in the absence of very strong guidance from our County to figure out how best to protect Clayton. In 2016 an applicant wanted to go someplace where there was not a use permit application process. We are trying to look out for the community by writing the Ordinance as narrowly as we possibly can to put these in areas that are least advantageous to those folks wanting to come to Clayton. Yes everybody needs a second chance if they've earned it. The County chose not to build another jail; rather it chose to go to early release programs and inflict these folks who may not be ready onto the local community. The proposed Ordinance is not perfect, but if we can get it passed this evening Clayton will have something in place before the moratorium ends. At a later

time, the Ordinance can be amended to make it stronger or better. This issue was not addressed sooner as we were waiting on the County to make up its mind.

Councilmember Diaz thanked everyone for their input and wanted further review to consider other alternatives or expand the buffer zone. Councilmember Diaz requested further definitions of private parks and the possible inclusion of them in the Ordinance in the future. He also finds it hard to believe that Clayton Police are not patrolling the areas; reports indicate a number of persons are stopped at the entryways of Clayton with the assistance of the camera system that captures the license plate of everyone. We have extremely vigilant police officers who protect our safety every day.

Councilmember Catalano added most neighboring cities are regulated for such housing and are capable of regulating in a reasonable manner that is legally defensible. Councilmember Catalano addressed the cost factor of litigation given the City's budget is a concern; it is not the only concern and she would like to explore potential outcomes of litigation and would pursue litigation if there was possibility of a win. If we lose a legal challenge, our ordinance is struck down. The City not only loses its money but the ability to enforce or regulate. This is not a desirable outcome. Today the City received a letter received from California Renters Legal Advocacy Education Fund (CaRLA) to inform "... *the city of Clayton they have an obligation to abide by all relevant state and federal laws when evaluating the proposal to restrict and regulate parolee homes, including the Fair Housing Act, the Eight Amendment and the Fourteenth Amendment of the U.S. Constitution. Ordinance 483 is a blatant attempt at outright banning parolees from the city of Clayton.*" Today she is in favor of an Ordinance that is not a ban or defacto ban.

Vice Mayor Shuey added if we were to win, the state would merely change the rules and remove our right to do anything. We are making the best of a bad situation by having reasonable legislation to permit and make sure we can put as much notice and ability to control the environment. Vice Mayor Shuey understands this proposed Ordinance is personal for those in the two outlined opportunity sites. We are taking a mandate from the state that is funneled through the County, trying to regulate it and provide the citizens with reasonable regulations and permitting. It is not a perfect solution. We had people on the other side of this argument tonight; we are listening to both sides to minimize the safety risks, follow the law and regulate a situation.

Councilmember Pierce added the property owner will be required to sign off on the Use Permit. Councilmember Pierce wrote a letter to about five hundred (500) constituents and heard back from over one hundred (100) who wanted regulation, not an outright ban; overwhelmingly, many said they prefer to have a ban but understand that isn't the wisest way to go; and a handful less than ten (10) said they wanted a ban.

It was moved by Councilmember Catalano, seconded by Councilmember Pierce, to have the City Clerk read Ordinance No 483 by title and number only and waive further reading. (Passed; 4-0 vote).

The City Clerk read Ordinance No. 483 by title and number only.

It was moved by Councilmember Catalano, seconded by Councilmember Pierce, to adopt Ordinance No. 483 with the finding its adoption is not subject to the California Environmental Quality Act because CEQA only applies to projects which have the potential for causing a significant effect on the environment and this activity is not considered to be a project and can be seen with certainty that it will not have a significant effect or physical change to the Environment. (Passed; 4-0).

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

10. **CLOSED SESSION** - None.

11. **ADJOURNMENT**– on call by Vice Mayor Shuey, the City Council adjourned its meeting at 9:33 p.m.

The next regularly scheduled meeting of the City Council is September 18, 2018.

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Respectfully submitted,

Janet Calderon, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

Keith Haydon, Mayor

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