



AGENDA

REGULAR MEETING

* * *

CLAYTON CITY COUNCIL

* * *

TUESDAY, May 1, 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 ***

May 1, 2018

1. **CALL TO ORDER AND ROLL CALL** – Mayor Haydon.

2. **PLEDGE OF ALLEGIANCE** – 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 17, 2018. ([View Here](#))
- (b) Approve the Financial Demands and Obligations of the City. ([View Here](#))
- (c) Authorize the initiation of the internal City process for state-mandated biennial review of the City's Conflict of Interest Code. ([View Here](#))
- (d) Authorize a City letter to Governor Brown and state legislators supporting a coalition of California's fire services' request for \$100 million in FY 2018-19 State Budget funds to the Office of Emergency Services (OES) to pre-position and strengthen swifter disaster response teams. ([View Here](#))

4. **RECOGNITIONS AND PRESENTATIONS**

- (a) Certificates of Recognition to public school students selected for exemplifying the "Do the Right Thing" character trait of "Integrity" during March - April 2018. ([View Here](#))

5. **REPORTS**

- (a) Planning Commission – Commissioner William Gall.
- (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 – None.

8. ACTION ITEMS

- (a) Consider the Second Reading and Adoption of Ordinance No. 481 amending Chapter 8.14 (Regulation of Smoking) of the *Clayton Municipal Code*.
(Community Development Director) ([View Here](#))

Staff recommendations: **1).** Receive the staff presentation; **2).** Receive public comments; **3).** Following City Council discussion, approve a motion to have the City Clerk read Ordinance No. 481 by title and number only and waive further reading; **4).** On completion of the City Clerk's reading, by motion adopt Ordinance No. 481 with the finding its adoption will not have a significant adverse effect on the environment and is therefore exempt under CEQA.

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 May 15, 2018.

#

MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL

Agenda Date: 5-01-2018

Agenda Item: 3a

TUESDAY, April 17, 2018

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, Vice Mayor Shuey and Councilmembers Catalano, Diaz and Pierce. Councilmembers absent: None. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Community Development Director Mindy Gentry, and City Clerk/HR Manager Janet Brown.

Mayor Haydon announced local Boy Scout Troop 262, Mt. Diablo Silverado Council, will present the colors and lead the Pledge of Allegiance.

2. **PLEDGE OF ALLEGIANCE** – Led by Scouts from Troop 262, Mt. Diablo Silverado Council, Boy Scouts of America.

3. **CONSENT CALENDAR**

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

- (a) Approved the minutes of the City Council's regular meeting of April 3, 2018.
- (b) Approved the Financial Demands and Obligations of the City.
- (c) Adopted Resolution No. 13-2018 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).
- (d) Approved 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).

4. **RECOGNITIONS AND PRESENTATIONS**

- (a) Presentation of its Annual Report for 2017 by Joyce Atkinson, President of the Clayton Community Library Foundation.

Joyce Atkinson, immediate past President of the Clayton Library Foundation, presented the 2017 Annual Report of the Clayton Community Library Foundation highlighting: 4,034.25 hours of in-library service hours provided by volunteers for daily needs and special events, valued at \$114,814.75; Boy Scout Troop 484 assistance with physical tasks; Clayton Valley Garden Club maintenance of flower boxes and garden areas; the twenty-second Birthday Celebration of the Clayton Community Library; local second grade classes visited the library and 93 students received their first library cards; Clayton Community Library Foundation generated income of \$42,980.99 from a variety of sources in 2017; the Foundation provided a \$2,000.00 donation to the City to assist in

funding the extra Sunday operation hours of the Library paid by the City. Ms. Atkinson also introduced Jeanne Boyd, President of the Clayton Community Library Foundation.

Members of the City Council expressed their appreciation for the wonderful works by the Clayton Community Library Foundation supporting the operation and existence of the library.

- (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.

Mayor Haydon read the Proclamation declaring the week of April 16 – 22, 2018 as "Clayton Community Library Volunteer Recognition Week" and presented it to Jeanne Boyd, Clayton Library Foundation President, who then thanked the City Council, community and volunteers for their continued support.

Mayor Keith Haydon and Jeanne Boyd Clayton Library Foundation President, assisted Mayor Haydon in the presentation of Certificates of Recognition to "Library Volunteers of the Year 2018" Joan Chesterman, Ray Dod and Elaine Grab (not present), honoring their many hours of service to the Clayton Community Library.

- (c) Kickoff of Clayton's Certified Farmers' Market for 2018
"Opening Day" is Saturday, May 12th
(9:00 am – 1:00 pm, each Saturday through September 22, in the Main Street public and KinderCare's parking lots, except for the Saturdays July 14th, and September 1st when the Rib Cook-Off and Labor Day Derby are held.)
(Shawn Lipetzky, Regional Manager, Pacific Coast Farmers' Market Association)

Shawn Lipetzky, Regional Manager, summarized a PowerPoint presentation its 2017 Pacific Coast Farmers' Market Annual Report for Clayton's certified farmers' market and highlighted upcoming attractions for the 2018 season.

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

Several Boy Scouts from Troop 262, Mt. Diablo Silverado Council, provided verbal reports on the amount and extent of scouting within the city of Clayton. Various Scouts offered brief presentations about the history, ranks, activities and volunteer service hours provided by Scouts to the Clayton community. The City Council was presented with a plaque denoting 5,594 community hours expended on Eagle Scout and Service Projects for this community during 2014 - 2017.

5. **REPORTS**

- (a) Planning Commission – No meeting held.
- (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 Catalano indicated "No Report".

Vice Mayor Shuey indicated "No Report".

Councilmember Pierce attended six Metropolitan Transportation Committee meetings, the Contra Costa Transportation Authority Board meeting, the Regional Planning meeting, two Contra Costa Transportation Authority administrative committee meetings, and the Mayors Conference hosted by El Cerrito. Councilmember Pierce also noted Concerts in The Grove has sixteen (16) sponsors currently, consisting of local businesses and patrons. She also announced to raise a little more money, concert attendees can donate \$200.00 for the season and receive a hat to show their sponsorship at the upcoming concerts.

Mayor Haydon attended the East Contra Costa Habitat Conservancy in partnership with East Bay Regional Park District tour of Roddy Ranch, the County Connection Finance Subcommittee meeting, and attended the Clayton Community Library Foundation Used Book Sale.

Councilmember Diaz noted he attended Catholics at Work program featuring a presentation by Rev. Patrick J. Conroy, SJ also Chaplain to the U.S. House of Representatives, the Travis Credit Union "Free Shred" day, the Clayton Business and Community Association Art & Wine Festival committee meeting with the event scheduled for April 28 and 29.

Councilmember Pierce added she also attended a Regional Leadership class in San Ramon and provided details regarding the upcoming "Clayton Cleans Up!" event taking place on Saturday, April 21st from 9:00 am to Noon; meet in the City Hall courtyard for sign-ins, area assignments and trash bags. Councilmember Pierce advised there will be a social BBQ sponsored by the *Clayton Pioneer* at the conclusion of the event for the volunteers.

(e) Other – None.

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

7. **PUBLIC HEARINGS**

(a) Continued Public Hearing (from the March 20, 2018 City Council meeting) 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 Mindy Gentry advised this item is revisiting the ordinance to amend the smoking regulations. During the March 20th City Council meeting the City Council expressed concerns the proposed amendments could have unintended consequences of severely restricting smoking in the Town Center; and clarifications to definitions of a bar and a dining area, as well as multi-unit residence were needed. As requested by Councilmember Pierce, City staff has prepared a map showing the prohibited areas in the ordinance presented at the March 20th Public Hearing: leaving private property, parking lots (excluding KinderCare), empty lots and single family homes, the only place where smoking would be permitted. Due to the

proposed smoking restrictions in the Town Center having unintended consequence of being restrictive, staff developed three options for City Council consideration:

1. Adopt the Ordinance as currently drafted, which includes a variety of changes that were addressed at the meeting of March 20th:
 - A. Clarifying that "dining area" does not include a "bar".
 - B. Specifying a "multi-unit residence" includes a townhome.
 - C. Widening the scope of who is responsible for designating a smoking area.
 - D. Inclusion of specific locations where smoking would be permissible.
 - E. Adding a violation of any cannabis uses be charged as an infraction in compliance with State law.

The benefit of the proposed ordinance would be the reduction of secondhand smoke exposure, thereby improving public health. The drawback would be the placement of burden onto business and property owners regarding whether or not they want to permit smokers on their property and/or establish a designated smoking area for smokers that may or may not patronize their business.

2. Modify the Ordinance to exempt public sidewalks except for a 25 foot buffer around The Grove park.

The benefit would be a provision of a public space where smokers can locate. The drawback would be exposure to secondhand smoke for pedestrians and consumers as well as youth walking/biking into the Town Center from Mt. Diablo Elementary School or other trails.

3. Allow smoking to occur on public property in a specifically designated area defined by the City Council at a future date. Staff determined the most probable location as a portion of the Clayton Corral.

The benefit would be limiting or eliminating exposure to secondhand smoke; thereby improving public health as well as not exposing pedestrians or consumers within the Town Center as well as the youth passing through. The drawback providing only limited public locations for smoking.

Ms. Gentry stated the City received a letter that identified concerns about maintaining the right to smoke in townhomes. The City Council did not direct staff to incorporate any of those concerns, which were also voiced at the March 20th Public Hearing, into the proposed Ordinance. Therefore staff's position remains the same due to the possibility of secondhand smoke still infringing on others. However, staff has provided a clarification in the proposed Ordinance to include townhomes as well as adding any units that share a common wall within the definition of a multi-unit residence.

Councilmember Pierce inquired if options could be combined to some extent? Ms. Gentry advised the council can combine options.

Councilmember Pierce inquired on option 3, an area was outlined in blue in the Clayton Corral and asked why not make Black Diamond Plaza eligible as a smoking area? Ms. Gentry advised that could be a possibility, however there is a walkway to the downtown area and there are trails and picnic tables directly adjacent to Black Diamond Plaza.

Councilmember Pierce was thinking of that area in particular during the Concerts as it is a simple walk across Marsh Creek Road; generally the restrooms are located in the lower corner next to a trail. It seems the more convenient the smoking area is located

especially during the Concerts, and some people are already smoking in that area which is a little more attractive with a place to sit and not banishing them to the weeds. Maybe that area is less restrictive at least during the Concerts. Councilmember Pierce believes if the area is not that simple, there will be a lot of complaints and violations. She also understands during the Art & Wine Festival that is an area of packaged food/beverage sales leaving virtually no area to smoke. Councilmember Pierce suggested combining option 1 with option 3 designating a smoking area. Ms. Gentry confirmed option 3 assumes the designation of a smoking area.

Mayor Haydon advised he also interpreted a combination of options are available and can be slightly modified. Ms. Gentry confirmed the ordinance would stay as it currently proposed with insertion of the language within the ordinance depending on the option selected by the City Council including limitation of times and events.

Councilmember Diaz noted his concerns about the Black Diamond Plaza/Corral area, where concerts attendees that smoke would be forced to cross the street on Marsh Creek Road, and asked if there will be a crossing guard available based on the amount of traffic that goes through that intersection. Councilmember Diaz noted he has observed only 6-8 concert attendees go over by a tree during the concerts to smoke with the smoke generally blowing across the street and not into the crowd. He has also seen others smoke on Center Street near the parking spaces. Is there a way to make/designate an area around The Grove park as a smoking area during the Concerts? Ms. Gentry advised that City Council could take such action, however the proposed ordinance includes a 25 foot buffer, as smoke typically travels 23 feet, a 25 foot buffer is a threshold that would allow an area clear of any smoke.

Councilmember Catalano requested clarification on unenclosed dining areas and explain areas such as Moresi's and Skipolini's? Ms. Gentry advised smoking would be prohibited at Moresi's, Skipolioni's and Ed's Mudville, however smoking would be allowed at the Clayton Club.

Mayor Haydon opened the Public Hearing.

William Colin, representing the Contra Costa Tobacco Prevention Coalition, wanted to thank the City Council for its consideration of a proposed ordinance reducing secondhand smoke. He further noted that there has been research indicating secondhand smoke has been classified as a toxic air contaminant by the California Air Resource Board with no safe level of exposure even an occasional cigarette or exposure by secondhand smoke is harmful. Mr. Colin suggested the addition of new devices like "jewel type" vaping devices which targets the young community; even school teachers cannot detect those types of devices as students can easily hide and they do not smoke. Mr. Colin explained that these devices do contain a lot of chemicals that can be harmful and hazardous to people. Mr. Colin noted approximately 90% of Contra Costa County residents do not smoke. Over 6,000 people die each year in Contra Costa County for smoking related disease, costing the County over \$343 billion not including second hand smoke.

Steve Barton, owner of the Clayton Club, indicated a need for an Ordinance that is clear and has easy enforcement. Mr. Barton is in support of option 2 that exempts sidewalks and provides some area downtown for smoking so it doesn't leave the Clayton Club the only place smoking is permitted. If they can't smoke walking down the sidewalk, they will step into one of the private properties and loiter. Mr. Barton is unable to permit loitering in his parking lot and supports an Ordinance that would provide greater exemptions and clearly direct those to a location that permits smoking and does not result in private property owners being impacted to try and enforce. Mr. Barton would also like to know his responsibility with active versus passive enforcement: Can he can

put signs up and advise where smoking is allowed? Does the ordinance assume that the business owner would have to run people off if smoking is occurring on the sidewalk in front of his building? Is it assumed that the back parking lot also needs to be monitored to determine if an infraction is taking place? Mr. Barton hopes that he could post signs that prescribe what the ordinance reads are simple and clear to his patrons that would be sufficient, as he does not want to interpret the rule for them.

Dan Peddycord, Public Health Director for Contra Costa County, wanted to thank the Council in considering options to strengthen the City of Clayton's smoking ordinance and prohibitions. This last March the County adopted its own multi-use residence ban on smoking to include townhomes and condominiums. Earlier in the year, the County addressed 14 separate issues related to smoking, such as banning the sale of tobacco in pharmacies, putting a cap to the number of tobacco retailers, banning flavored tobacco and many of the new emerging tobacco products that have come onto the market for sale. The tobacco industry is working overtime to figure out ways to go around state and local policies. It is really through the work and efforts of the cities and counties around the nation that today we can say cancers related to tobacco are going down." Tobacco is still the number one leading preventable cause of death. Tobacco is not easy to quit, and is extremely addictive. Mr. Peddycord noted he doesn't think smokers like smoking. Statistics show over 70% of smokers wish they never started with 90% saying they do not want their children to smoke. Smokers recognize the harms of smoking, but because of the nicotine in smoking products, it is one of the planets most addictive products we allow humans to use. That's why cities and counties are passing ordinances like this. Regardless of the Councils decision, regardless of the options chosen, it is a step in the right direction.

Howard Geller noted the options presented need a lot of work with consideration to the business' that are downtown struggling, to the festivals that bring tens of thousands of people to the community, to the downtown Concerts that attract thousands of people every other week in the Summer. If the area at the Corral became the designated smoking area, it happens to be the same place the porta-potties are placed for the Concert season and doesn't think that is a good area for smoking. Mr. Geller noted he is at the concerts all the time and often has difficulty trying to educate the public on various park rules as he is not a police officer with a badge or gun. Rules are always trying to be enforced that are unenforceable and it is unknown if there have been complaints presented to the city in regards to smoking in the downtown. It seems that rules are created without any consideration of who and how to enforce, and suggested this be thought out and made clear and easy to implement.

With no other public members wishing to comment, Mayor Haydon then closed the Public Hearing.

Vice Mayor Shuey clarified in addition to the Clayton Club, other areas in the downtown include Moresi's, Ed's Mudville, La Vernada and other restaurants that can chose to designate a smoking area? Ms. Gentry advised the designated areas at each of those locations would be the parking lot, only if the business wanted to so designate.

Vice Mayor Shuey agrees with those who are sensitive to smoke, especially during the Concerts, however does not find it a problem. He would like to start with the least intrusive option, as our police are already extended to more important things then enforcing cigarettes. Vice Mayor Shuey stated he would like to allow smoking on the sidewalks, and see if that becomes a problem, as can always refine in the future if there is a problem.

Mayor Haydon clarified Option 2 seems to be the least intrusive including the addition to allow smoking on the sidewalks around The Grove park during concerts.

Councilmember Catalano prefers some regulations in a realistic way for those who smoke and wondered about the area near the tot lot located at The Grove park. If smoking is allowed on the sidewalk, is there any other reason why you couldn't smoke in the area next to the tot lot? Ms. Gentry advised State law is currently written that public sidewalks adjacent to tot lots or playgrounds are exempt; smoking could occur adjacent to the tot lot.

City Manager Gary Napper added the current City code does not allow smoking at public parks.

Councilmember Pierce added based on the comments made she is inclined to go with Option 2 and strike the area about The Grove park. In her experience she has not encountered any inconsiderate attendee of the events in the downtown, and they usually move to not infringe smoke onto others. Councilmember Pierce finds the cannabis smoke more offensive at the concerts and is concerned about the other devices where users have become addicted quickly. Ms. Gentry added there is a definition of electronic smoking devices and referred to 8.14.030 (g) also noting State law incorporated electronic smoking devices during a major overhaul of the tobacco legislation in 2016.

Councilmember Pierce understands the City of Concord and the City of Walnut Creek have banned smoking in their entire downtown, but Clayton is not Walnut Creek or Concord and do not have the foot traffic that they do. There is already enough to enforce during Clayton's events and do not have the resources to enforce an extensive area. Option 2 is the best choice with the addition of smoking allowed on the sidewalk around The Grove park.

Mayor Haydon clarified option 1 is to clean up the regulation based on previous council direction, option 2 allows smoking on the sidewalks and eliminates the 25' buffer around The Grove park; with the intention if smoking becomes an issue then the item can come back to the City Council for reconsideration.

Councilmember Diaz indicated he used to smoke and is concerned about secondhand smoke, however in the past 11 years of the Concerts in The Grove recalls receiving 1 compliant regarding smoking.

It was moved by Vice Mayor Shuey, seconded by Councilmember Pierce, to have the City Clerk read Ordinance No. 481, with amendment to allow smoking on public sidewalks and to remove the 25 foot buffer around The Grove park, by title and number only and waive further reading. (Passed; 5-0 vote).

The City Clerk read Ordinance No. 481 by title and number only.

It was moved by Councilmember Pierce, seconded by Vice Mayor Shuey, to approve Ordinance No. 481 for Introduction with the finding amending Chapter 8.14 (Regulation of Smoking) of the Clayton Municipal Code does not constitute a project under CEQA. (Passed; 5-0 vote).

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)

Community Development Director Mindy Gentry presented the staff report noting in August 2016 the City Council adopted an inclusionary housing Ordinance for home ownership and for-sale units only, with the current threshold requiring 10% of the units to be affordable for projects containing ten or more units. The Ordinance precluded rental units due to State law and the outcomes of two specific court cases, *Palmer/Sixth Street Properties v. Los Angeles* and *California Building Industry Association v. City of San Jose*. The *Palmer/Sixth Street Properties v. City of Los Angeles* determined cities may no longer require developers to construct affordable housing units. The court had concluded inclusionary housing ordinances conflicted with and were preempted by vacancy decontrol provisions of the Costa-Hawkins Rental Housing Act; which allows residential landlords to set the initial rents. The *California Building Industry v. City of San Jose* resulted in a determination that inclusionary housing ordinances do not constitute an unjust taking of property. The court's decision allowed jurisdictions to adopt inclusionary housing ordinances but only for homeownership development projects due to the *Palmer v. City of Los Angeles* still being relevant.

Ms. Gentry stated on September 29, 2017 Governor Brown signed into law AB1505, also known as the "Palmer Fix". This law restores the authority to cities and counties to require the inclusion of affordable housing in new rental housing projects, thereby superseding the court decision in the Palmer case. AB1505 also requires alternative means of compliance such as off-site development, an in lieu fee, land dedication, acquisition or rehab of units.

Ms. Gentry noted the City's housing element contains a policy requiring projects with ten or more units to develop an affordable housing plan, requiring 10% or more of the units to be built or created as affordable housing. 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 one of the city's housing elements implementation measures. In light of the City previously adopting an inclusionary housing ordinance in compliance with the Housing Element and the passage of AB1505, it raises a policy question: Does the City Council wish to expand the City's Inclusionary Housing Ordinance to incorporate new rental housing projects as allowed for by AB1505? If so, would this apply to all rental housing units as defined by HCD, including assisted living units?

Ms. Gentry identified proposed projects that would be immediately impacted should the City Council include assisted living units: Clayton Senior Housing project on old Marsh Creek/High Street, and Grand Oak Assisted Living Facility and Memory Care project on Main Street. The Clayton Senior Housing project has been deemed complete by staff for processing, however, the project does not have vested rights, therefore the proposed Ordinance would be applicable to the project. This project is requesting a 35% Density Bonus as allowed under State law and Clayton Municipal Code; with seven units dedicated to very-low income households. In *Latinos Unidos v. County of Napa* it clarified jurisdictions are required to count the units granted under the Density Bonus to also be counted toward the inclusionary housing unit requirements. This means the Clayton Senior Housing project will be meeting the inclusionary housing requirements by default. The project proposing 7 very-low income units as required by the Density Bonus law and as the current inclusionary housing Ordinance is written, the project would be required to produce 5.9 units.

Ms. Gentry added unless directed differently by the City Council, the proposed inclusionary housing ordinance would include rental housing and apply to all housing types counted by HCD defined as a house, apartment, mobile home, a group of rooms, or a single room occupied as separate living quarters are those that live separately from any other individuals in the building and which have direct access from outside the building through a common wall. More specifically, HCDs counting of senior housing includes individual units that would allow eating and living separately from the broader community but does not include beds or quarters in an institution or hospital. For example and confirmed by HCD, assisted living units would count as housing units but the memory care units would not be included as those units do not have the amenities for separate eating and living, such as a kitchen area. This determination would have an impact on the proposed Grand Oak Assisted Living Facility and Memory Care on the city-owned parcel in the Town Center. Staff supports applying the HCD definition of "housing unit" due to the definition 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 AB1505 provides HCD the authority to review jurisdictions inclusionary housing ordinance, if the jurisdiction requires, as a condition of development, more than 15% of the total number of units to be affordable to households at 80% or less of the area median income. From staff's perspective, HCD's threshold 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 economic hardship to meet the City's current and proposed inclusionary housing requirements.

Ms. Gentry noted the City received a letter from the Building Industry Association encouraging Clayton to provide all residential developers a by-right in-lieu fee option and grandfather residential development projects currently in the city's application pipeline. Staff is recommending the City retain control over the provision of affordable housing units and decide if they should be constructed on-site or if an alternative such as a payment in-lieu-of fee would be appropriate. This would minimize the City collecting in-lieu fees, thereby removing the burden of constructing affordable housing from the city and placing it onto developers.

Mayor Haydon opened the item to public comments; no comments were offered.

Councilmember Catalano indicated Clayton is subject to RHNA requirements to produce a certain amount of affordable housing and housing element obligations. We support and participate in affordable housing production and it is a good reminder that when we talk about affordable housing that the levels of the area median income are helping teachers and public employees. By not doing this I think we are engineering the type of housing that is built in Clayton by steering toward rental housing away from ownership housing. As noted by Ms. Gentry, current projects are not going to have to do anything additional.

Councilmember Pierce added higher inclusionary standards really costs more for a developer as the cost of land, materials, the labor, is expensive and soon the majority of the housing is subsidized and drives up the median price. If Clayton had redevelopment funding and had another means it would be helpful, but Clayton does not. Councilmember Pierce wants to be as accommodating as possible, working with developers who are willing to come to Clayton. While Clayton needs more affordable housing, Clayton needs more housing overall in order to drive the price down. It seems that HCD has finally made the decision that assisted living units actually count. Ms. Gentry advised she personally called HCD to confirm that assisted living units do count.

Councilmember Pierce inquired if Clayton was able to count the units located in Diamond Terrace? Ms. Gentry advised the individual she spoke with if there is a separate eating and living area away from a common area then it counted.

Mayor Haydon understood this proposed ordinance will bring the city into compliance to include rentals and not have a negative impact on the proposed developments official submitted.

It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to 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. (Passed; 5-0 vote).

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

10. **CLOSED SESSION**

Mayor Haydon announced the City Council will adjourn into Closed Session for the following noticed items (8:47 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 (9:18 p.m.)

Mayor Haydon reported the City Council received information from and provided direction 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 9:18 p.m.

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

#

Respectfully submitted,

Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

Keith Haydon, Mayor

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Agenda Date: 05/01/18

Agenda Item: 3b

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: Kevin Mizuno, FINANCE MANAGER

DATE: 05/01/18

SUBJECT: INVOICE SUMMARY

Approved:

Gary A. Napper
City Manager

RECOMMENDATION:

Approve the following:

Cash Requirements Report dated 4/27/18	\$215,790.14
ADP Payroll, week 17, PPE 4/24/18	\$80,779.07
Total	\$296,569.21

Attachments:

Cash Requirements reports, dated 4/27/18 (5 pages)

ADP Payroll reports, week 17 (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	5/1/2018	5/1/2018	512618534	Payroll fees PPE 4/8/18	\$165.90	\$0.00		\$165.90
				<i>Totals for ADP, LLC:</i>	<u>\$165.90</u>	<u>\$0.00</u>		<u>\$165.90</u>
All City Management Services, Inc.								
All City Management Services, Inc.	5/1/2018	5/1/2018	54182	School crossing guard services 3/25/18-4/7/18	\$221.64	\$0.00		\$221.64
				<i>Totals for All City Management Services, Inc.:</i>	<u>\$221.64</u>	<u>\$0.00</u>		<u>\$221.64</u>
American Fidelity Assurance Company								
American Fidelity Assurance Company	5/1/2018	5/1/2018	B737183	Supplemental insurance for April	\$392.16	\$0.00		\$392.16
				<i>Totals for American Fidelity Assurance Company:</i>	<u>\$392.16</u>	<u>\$0.00</u>		<u>\$392.16</u>
ASCAP								
ASCAP	5/1/2018	5/1/2018	100004959790	Music license fee 5/1/18-4/30/18	\$352.33	\$0.00		\$352.33
				<i>Totals for ASCAP:</i>	<u>\$352.33</u>	<u>\$0.00</u>		<u>\$352.33</u>
AT&T (CalNet3)								
AT&T (CalNet3)	5/1/2018	5/1/2018	11243686	Phones 3/22/18-4/21/18	\$1,653.13	\$0.00		\$1,653.13
				<i>Totals for AT&T (CalNet3):</i>	<u>\$1,653.13</u>	<u>\$0.00</u>		<u>\$1,653.13</u>
Best Best & Kreiger LLP								
Best Best & Kreiger LLP	5/1/2018	5/1/2018	819537	Legal services for March	\$8,500.00	\$0.00		\$8,500.00
Best Best & Kreiger LLP	5/1/2018	5/1/2018	819538	Legal services for March	\$622.00	\$0.00		\$622.00
				<i>Totals for Best Best & Kreiger LLP:</i>	<u>\$9,122.00</u>	<u>\$0.00</u>		<u>\$9,122.00</u>
BMI (Broadcast Music Inc)								
BMI (Broadcast Music Inc)	5/1/2018	5/1/2018	31736887	Music license fee 4/1/18-3/31/19	\$349.00	\$0.00		\$349.00
				<i>Totals for BMI (Broadcast Music Inc):</i>	<u>\$349.00</u>	<u>\$0.00</u>		<u>\$349.00</u>
CalPERS Health								
CalPERS Health	5/1/2018	5/1/2018	15269057	Medical for May	\$31,051.35	\$0.00		\$31,051.35
				<i>Totals for CalPERS Health:</i>	<u>\$31,051.35</u>	<u>\$0.00</u>		<u>\$31,051.35</u>
CalPERS Retirement								
CalPERS Retirement	5/1/2018	5/1/2018	042218	Retirement PPE 4/22/18	\$14,411.07	\$0.00		\$14,411.07
CalPERS Retirement	5/1/2018	5/1/2018	CC042418	CC Retirement ending 4/24/18	\$146.78	\$0.00		\$146.78
				<i>Totals for CalPERS Retirement:</i>	<u>\$14,557.85</u>	<u>\$0.00</u>		<u>\$14,557.85</u>
Caltronics Business Systems, Inc								
Caltronics Business Systems, Inc	5/1/2018	5/1/2018	2486049	Balance remainder copier usage for March	\$16.04	\$0.00		\$16.04
				<i>Totals for Caltronics Business Systems, Inc:</i>	<u>\$16.04</u>	<u>\$0.00</u>		<u>\$16.04</u>
Robert P Cedro								
Robert P Cedro	5/1/2018	5/1/2018	091518	Concert 9/15/18, East Bay Mudd	\$1,900.00	\$0.00		\$1,900.00
				<i>Totals for Robert P Cedro:</i>	<u>\$1,900.00</u>	<u>\$0.00</u>		<u>\$1,900.00</u>
Peter Charbonneau								

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
Peter Charbonneau	5/1/2018	5/1/2018	CAP0246	Deposit refund for 2 Regency Dr	\$832.96	\$0.00		\$832.96
				<i>Totals for Peter Charbonneau:</i>	<u>\$832.96</u>	<u>\$0.00</u>		<u>\$832.96</u>
City of Concord								
City of Concord	5/1/2018	5/1/2018	64927	Dispatch services for February	\$20,089.50	\$0.00		\$20,089.50
				<i>Totals for City of Concord:</i>	<u>\$20,089.50</u>	<u>\$0.00</u>		<u>\$20,089.50</u>
Concord Trailer World & Sport								
Concord Trailer World & Sport	5/1/2018	5/1/2018	790750	Service to Polaris ATV	\$242.22	\$0.00		\$242.22
Concord Trailer World & Sport	5/1/2018	5/1/2018	791059	Service to Polaris ATV 6x6	\$329.38	\$0.00		\$329.38
				<i>Totals for Concord Trailer World & Sport:</i>	<u>\$571.60</u>	<u>\$0.00</u>		<u>\$571.60</u>
Contra Costa County Public Works Dept								
Contra Costa County Public Works Dept	5/1/2018	5/1/2018	701612	Traffic signal maintenance for March	\$2,928.16	\$0.00		\$2,928.16
				<i>Totals for Contra Costa County Public Works Dept:</i>	<u>\$2,928.16</u>	<u>\$0.00</u>		<u>\$2,928.16</u>
Contra Costa County Sheriff - Forensic Svc Div (Lab)								
Contra Costa County Sheriff - Forensic S	5/1/2018	5/1/2018	CLPD1803	Alcohol testing for March	\$200.00	\$0.00		\$200.00
				<i>Totals for Contra Costa County Sheriff - Forensic Svc Div (Lab):</i>	<u>\$200.00</u>	<u>\$0.00</u>		<u>\$200.00</u>
CR Fireline, Inc								
CR Fireline, Inc	5/1/2018	5/1/2018	111264	Library qtrly fire sprinkler inspection	\$175.00	\$0.00		\$175.00
CR Fireline, Inc	5/1/2018	5/1/2018	111265	EH qtrly fire sprinkler inspection	\$175.00	\$0.00		\$175.00
CR Fireline, Inc	5/1/2018	5/1/2018	111266	CH qtrly fire sprinkler inspection	\$175.00	\$0.00		\$175.00
				<i>Totals for CR Fireline, Inc:</i>	<u>\$525.00</u>	<u>\$0.00</u>		<u>\$525.00</u>
Dillon Electric Inc								
Dillon Electric Inc	5/1/2018	5/1/2018	3667	Streetlight repairs 4/16/18	\$864.82	\$0.00		\$864.82
				<i>Totals for Dillon Electric Inc:</i>	<u>\$864.82</u>	<u>\$0.00</u>		<u>\$864.82</u>
Diseno Group								
Diseno Group	5/1/2018	5/1/2018	0169	HVAC replacement inspections	\$1,800.00	\$0.00		\$1,800.00
				<i>Totals for Diseno Group:</i>	<u>\$1,800.00</u>	<u>\$0.00</u>		<u>\$1,800.00</u>
Weston Dishman								
Weston Dishman	5/1/2018	5/1/2018	040618	Cancellation of EH rental 10/26/18	\$475.00	\$0.00		\$475.00
				<i>Totals for Weston Dishman:</i>	<u>\$475.00</u>	<u>\$0.00</u>		<u>\$475.00</u>
Express Services, Inc								
Express Services, Inc	5/1/2018	5/1/2018	20463442	Temp services week end 4/15/18	\$1,618.48	\$0.00		\$1,618.48
Express Services, Inc	5/1/2018	5/1/2018	20432181	Temp services week end 4/8/18	\$782.67	\$0.00		\$782.67
				<i>Totals for Express Services, Inc:</i>	<u>\$2,401.15</u>	<u>\$0.00</u>		<u>\$2,401.15</u>
Fred Freeman								
Fred Freeman	5/1/2018	5/1/2018	051218	Concert 5/12/18, Plan B	\$800.00	\$0.00		\$800.00
				<i>Totals for Fred Freeman:</i>	<u>\$800.00</u>	<u>\$0.00</u>		<u>\$800.00</u>

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
Globalstar LLC								
Globalstar LLC	5/1/2018	5/1/2018	9262177	Sat phone 3/16/18-4/15/18	\$86.84	\$0.00		\$86.84
				<i>Totals for Globalstar LLC:</i>	<u>\$86.84</u>	<u>\$0.00</u>		<u>\$86.84</u>
Go Media Marketing								
Go Media Marketing	5/1/2018	5/1/2018	072118	Concert 7/21/18, Southern Comfort	\$1,400.00	\$0.00		\$1,400.00
				<i>Totals for Go Media Marketing:</i>	<u>\$1,400.00</u>	<u>\$0.00</u>		<u>\$1,400.00</u>
Harris & Associates, Inc.								
Harris & Associates, Inc.	5/1/2018	5/1/2018	37391	Engineering fees (Verna Wy) for March	\$1,840.00	\$0.00		\$1,840.00
Harris & Associates, Inc.	5/1/2018	5/1/2018	37389	Engineering inspections for March	\$4,180.00	\$0.00		\$4,180.00
Harris & Associates, Inc.	5/1/2018	5/1/2018	37393	Engineering service for March	\$9,585.00	\$0.00		\$9,585.00
Harris & Associates, Inc.	5/1/2018	5/1/2018	37390	Engineering CIP services for March	\$36,780.00	\$0.00		\$36,780.00
				<i>Totals for Harris & Associates, Inc.:</i>	<u>\$52,385.00</u>	<u>\$0.00</u>		<u>\$52,385.00</u>
Health Care Dental Trust								
Health Care Dental Trust	5/1/2018	5/1/2018	242645	Dental for May	\$2,140.11	\$0.00		\$2,140.11
				<i>Totals for Health Care Dental Trust:</i>	<u>\$2,140.11</u>	<u>\$0.00</u>		<u>\$2,140.11</u>
HIP Entertainment, LLC								
HIP Entertainment, LLC	5/1/2018	5/1/2018	060918	Concert 6/9/18, Take 2	\$2,500.00	\$0.00		\$2,500.00
HIP Entertainment, LLC	5/1/2018	5/1/2018	081818	Concert 8/18/18, Apple 2	\$1,250.00	\$0.00		\$1,250.00
				<i>Totals for HIP Entertainment, LLC:</i>	<u>\$3,750.00</u>	<u>\$0.00</u>		<u>\$3,750.00</u>
David Hosley								
David Hosley	5/1/2018	5/1/2018	080418	Concert 8/4/18, Diamond Dave	\$2,000.00	\$0.00		\$2,000.00
				<i>Totals for David Hosley:</i>	<u>\$2,000.00</u>	<u>\$0.00</u>		<u>\$2,000.00</u>
J&R Floor Services								
J&R Floor Services	5/1/2018	5/1/2018	Three 2018	Janitorial services for April	\$4,910.00	\$0.00		\$4,910.00
				<i>Totals for J&R Floor Services:</i>	<u>\$4,910.00</u>	<u>\$0.00</u>		<u>\$4,910.00</u>
Ron A Jamison								
Ron A Jamison	5/1/2018	5/1/2018	090118	Concert 9/1/18, Steal n Chicago	\$2,500.00	\$0.00		\$2,500.00
				<i>Totals for Ron A Jamison:</i>	<u>\$2,500.00</u>	<u>\$0.00</u>		<u>\$2,500.00</u>
Robert P Jensen								
Robert P Jensen	5/1/2018	5/1/2018	BP48-18	C&D refund for 5587 Southbrook Dr	\$2,000.00	\$0.00		\$2,000.00
				<i>Totals for Robert P Jensen:</i>	<u>\$2,000.00</u>	<u>\$0.00</u>		<u>\$2,000.00</u>
Ken Joiret								
Ken Joiret	5/1/2018	5/1/2018	091518	Concert sound 9/15/18	\$750.00	\$0.00		\$750.00
Ken Joiret	5/1/2018	5/1/2018	090618	Mayors' Conference sound 9/6/18	\$200.00	\$0.00		\$200.00
Ken Joiret	5/1/2018	5/1/2018	090118	Concert sound 9/1/18	\$750.00	\$0.00		\$750.00
Ken Joiret	5/1/2018	5/1/2018	081818	Concert sound 8/18/18	\$750.00	\$0.00		\$750.00
Ken Joiret	5/1/2018	5/1/2018	080418	Concert sound 8/4/18	\$750.00	\$0.00		\$750.00

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
Ken Joiret	5/1/2018	5/1/2018	072118	Concert sound 7/21/18	\$750.00	\$0.00		\$750.00
Ken Joiret	5/1/2018	5/1/2018	070418	Sound, 4th of July Parade	\$800.00	\$0.00		\$800.00
Ken Joiret	5/1/2018	5/1/2018	070718	Concert sound 7/7/18	\$750.00	\$0.00		\$750.00
Ken Joiret	5/1/2018	5/1/2018	062318	Concert sound 6/23/18	\$750.00	\$0.00		\$750.00
Ken Joiret	5/1/2018	5/1/2018	060918	Concert sound 6/9/18	\$750.00	\$0.00		\$750.00
Ken Joiret	5/1/2018	5/1/2018	051218	Concert sound 5/12/18	\$750.00	\$0.00		\$750.00
Ken Joiret	5/1/2018	5/1/2018	052618	Concert sound 5/26/18	\$750.00	\$0.00		\$750.00
<i>Totals for Ken Joiret:</i>					<u>\$8,500.00</u>	<u>\$0.00</u>		<u>\$8,500.00</u>
LarryLogic Productions								
LarryLogic Productions	5/1/2018	5/1/2018	1725	City council meeting production 4/17/18	\$390.00	\$0.00		\$390.00
<i>Totals for LarryLogic Productions:</i>					<u>\$390.00</u>	<u>\$0.00</u>		<u>\$390.00</u>
MPA								
MPA	5/1/2018	5/1/2018	ES-1803	Suppl. Vehicle damage policy prem. FY 18	\$92.66	\$0.00		\$92.66
MPA	5/1/2018	5/1/2018	May 18	Life/LTD for May	\$2,058.35	\$0.00		\$2,058.35
<i>Totals for MPA:</i>					<u>\$2,151.01</u>	<u>\$0.00</u>		<u>\$2,151.01</u>
Neopost Northwest								
Neopost Northwest	5/1/2018	5/1/2018	N7101753	Postage meter lease 2/16/18-5/15/18	\$510.81	\$0.00		\$510.81
<i>Totals for Neopost Northwest:</i>					<u>\$510.81</u>	<u>\$0.00</u>		<u>\$510.81</u>
PG&E								
PG&E	5/1/2018	5/1/2018	042218	Energy 3/21/18-4/19/18	\$3,196.95	\$0.00		\$3,196.95
<i>Totals for PG&E:</i>					<u>\$3,196.95</u>	<u>\$0.00</u>		<u>\$3,196.95</u>
Pond M Solutions								
Pond M Solutions	5/1/2018	5/1/2018	327	Fountain maintenance	\$650.00	\$0.00		\$650.00
<i>Totals for Pond M Solutions:</i>					<u>\$650.00</u>	<u>\$0.00</u>		<u>\$650.00</u>
Adam M Pound								
Adam M Pound	5/1/2018	5/1/2018	CAP0270	C&D refund for 1378 Yosemite Cir	\$2,000.00	\$0.00		\$2,000.00
<i>Totals for Adam M Pound:</i>					<u>\$2,000.00</u>	<u>\$0.00</u>		<u>\$2,000.00</u>
Pride & Joy								
Pride & Joy	5/1/2018	5/1/2018	070718	Concert 7/7/18, Pride & Joy	\$2,800.00	\$0.00		\$2,800.00
<i>Totals for Pride & Joy:</i>					<u>\$2,800.00</u>	<u>\$0.00</u>		<u>\$2,800.00</u>
Riso Products of Sacramento								
Riso Products of Sacramento	5/1/2018	5/1/2018	181749	Copier lease #13 of 60	\$106.09	\$0.00		\$106.09
<i>Totals for Riso Products of Sacramento:</i>					<u>\$106.09</u>	<u>\$0.00</u>		<u>\$106.09</u>
Staples Advantage								
Staples Advantage	5/1/2018	5/1/2018	8049436439	Office supplies for March	\$321.80	\$0.00		\$321.80
<i>Totals for Staples Advantage:</i>					<u>\$321.80</u>	<u>\$0.00</u>		<u>\$321.80</u>
Stericycle Inc								

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
Stericycle Inc	5/1/2018	5/1/2018	3004236873	Medical waste disposal	\$106.18	\$0.00		\$106.18
				<i>Totals for Stericycle Inc:</i>	<i>\$106.18</i>	<i>\$0.00</i>		<i>\$106.18</i>
Swan Entertainment								
Swan Entertainment	5/1/2018	5/1/2018	052618	Concert 5/26/18, The Big Band Beat	\$2,000.00	\$0.00		\$2,000.00
				<i>Totals for Swan Entertainment:</i>	<i>\$2,000.00</i>	<i>\$0.00</i>		<i>\$2,000.00</i>
The Fundamentals								
The Fundamentals	5/1/2018	5/1/2018	062318	Concert 6/23/18, The Fundamentals	\$1,800.00	\$0.00		\$1,800.00
				<i>Totals for The Fundamentals:</i>	<i>\$1,800.00</i>	<i>\$0.00</i>		<i>\$1,800.00</i>
Total Imaging Solutions, LLC								
Total Imaging Solutions, LLC	5/1/2018	5/1/2018	11062	Microfiche reader	\$8,014.60	\$0.00		\$8,014.60
				<i>Totals for Total Imaging Solutions, LLC:</i>	<i>\$8,014.60</i>	<i>\$0.00</i>		<i>\$8,014.60</i>
Warner Brothers Tree Service								
Warner Brothers Tree Service	5/1/2018	5/1/2018	14209	Diablo Creek Trail, Eucalyptus tree removal,	\$9,333.33	\$0.00		\$9,333.33
				<i>Totals for Warner Brothers Tree Service:</i>	<i>\$9,333.33</i>	<i>\$0.00</i>		<i>\$9,333.33</i>
Wells Fargo Bank Bank (Bond Debt Service)								
Wells Fargo Bank Bank (Bond Debt Se	5/1/2018	5/1/2018	CLAY 02032018	Lydia Lane BAD debt service	\$4,749.75	\$0.00		\$4,749.75
				<i>Totals for Wells Fargo Bank Bank (Bond Debt Service):</i>	<i>\$4,749.75</i>	<i>\$0.00</i>		<i>\$4,749.75</i>
Michelle Wojack								
Michelle Wojack	5/1/2018	5/1/2018	CC042142	CCP cancellation for 4/16/18	\$179.00	\$0.00		\$179.00
				<i>Totals for Michelle Wojack:</i>	<i>\$179.00</i>	<i>\$0.00</i>		<i>\$179.00</i>
Workers.com								
Workers.com	5/1/2018	5/1/2018	121816	Seasonal workers week end 4/8/18	\$2,848.17	\$0.00		\$2,848.17
Workers.com	5/1/2018	5/1/2018	121857	Seasonal workers week end 4/15/18	\$3,690.91	\$0.00		\$3,690.91
				<i>Totals for Workers.com:</i>	<i>\$6,539.08</i>	<i>\$0.00</i>		<i>\$6,539.08</i>
GRAND TOTALS:					\$215,790.14	\$0.00		\$215,790.14



Agenda Date: 5-01-2018

Agenda Item: 3c

Approved:

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: Janet Brown, City Clerk

DATE: May 1, 2018

SUBJECT: Biennial Review of Conflict of Interest Code

RECOMMENDATION

By minute motion, direct the City Clerk to review Clayton's Conflict of Interest Code and submit a notice to the City Council no later than October 1, 2018 indicating whether or not amendments are required or that no amendments are necessary.

BACKGROUND

The Political Reform Act requires every local government agency to review its conflict of interest code biennially to determine if it is accurate or, alternatively, that the code must be amended. Once the determination has been made, a notice must be submitted to the Code Reviewing Body (City Council) no later than October 1 of even-numbered years.

Therefore, the City Council must, no later than July 1, 2018, officially instruct its city organization to review its code and submit a notice to the City Council that either amendments are required or that no amendments are necessary. This action constitutes the initiation of the procedure required by State law.

FISCAL IMPACT

None.



Agenda Date: 5-01-2018

Agenda Item: 3d

COMMUNITY
DEVELOPMENT (925) 673-7340
ENGINEERING (925) 969-8181

6000 HERITAGE TRAIL • CLAYTON, CALIFORNIA 94517-1250
TELEPHONE (925) 673-7300 FAX (925) 672-4917

City Council
KEITH HAYDON, MAYOR
DAVID T. SHUEY, VICE MAYOR
TUJIA CATALANO, COUNCILMEMBER
JIM DIAZ, COUNCILMEMBER
JULIE K. PIERCE, COUNCILMEMBER

May 2, 2018

The Honorable Bob Wieckowski
Chair, State Senate Budget & Fiscal Review
Subcommittee No. 2 on Resources,
Environmental Protection, Energy &
Transportation
State Capitol, Room 4085
Sacramento, CA 95814
Via Fax: 916.651-4910

The Honorable Richard Roth
Chair, State Senate Budget & Fiscal Review
Subcommittee No. 4 on State Administration
& General Government
State Capitol, Room 4034
Sacramento, CA 95814
Via Fax: 916.651-4931

The Honorable Richard Bloom
Chair, State Assembly Budget Subcommittee
No. 3 on Resources & Transportation
State Capitol, Room 2003
Sacramento, CA 95814
Via Fax: 916.319-2150

The Honorable Shirley Weber
Chair, State Assembly Budget Subcommittee
No. 5 on Public Safety
State Capitol, Room 3123
Sacramento, CA 95814
Via Fax: 916.319-2179

RE: State Budget Funding to Strengthen Disaster Response
Notice of Support

Dear Governor Brown:

At its public meeting held on May 1, 2018, the City of Clayton wholeheartedly supported the compelling request from California fire chiefs, firefighters, the League of CA Cities and others for \$100 million in State Budget funding for the Office of Emergency Services to make our communities safer from natural disasters.

Like you, public safety is one of local government's top priorities. The threat of catastrophic natural disasters in our communities has never been greater. Last year, we saw the deadliest and most destructive disasters in California's history. Our city is surrounded by open space, hills, state park and Mt. Diablo, making wildland fire with its associated casualties and property loss an ever-present daily danger in the Clayton Valley community.

Our local and statewide disaster response system is reacting too slowly to prevent these disasters from turning into catastrophes. We need hundreds - sometimes thousands - of firefighters and other first responders on the scene quickly to save lives and property.

The only effective way to combat these worsening disasters is to get more first responders, engines and equipment there before they strike. Firefighters have access to weather information predictions when a disaster will most likely strike, but they need better communication tools and more equipment to act on this information. Also, local fire agencies need state funding to compensate them when sending resources to another community.

California's fire service leaders have a plan to step up their attack on natural disasters. For these reasons, the City Council of Clayton respectfully requests you provide them the funding they need to make our communities safer.

Sincerely,

Keith Haydon
Mayor

cc: Governor Jerry Brown, Via Fax: 916.558-3177
State Senator Steve Glazer, 7th District, Via Fax: 916.651-4907
State Assemblymember Tim Grayson, 14th District, Via Fax: 916.319-2114
Joanne Roy, Consultant, State Senate Budget & Fiscal Review Sub. Committee #2,
joanne.roy@sen.ca.gov
Renita Polk, Consultant, State Senate Budget & Fiscal Review Sub. Committee #4,
renita.polk@sen.ca.gov
Susan Chan, Consultant, Assembly Budget Sub. #3, Susan.Chan@asm.ca.gov
Jennifer Kim, Assembly Budget Sub. #5, Jennifer.Kim@asm.ca.gov
Sam Caygill, Regional Public Affairs Manager, League of CA Cities scaygill@cacities.org
Meg Desmond, League of California Cities, cityletters@cacities.org

Gary Napper

Subject: Message from Fire Chief Jeff Carman
Attachments: ACTION ALERT Fire Budget Request.docx; ACTION ALERT Fire Budget Request.pdf; SAMPLE_City Support fire response funding.docx; RiSC_QA_FINAL.pdf; RiSC_Fact-Sheet-FINAL.pdf

Subject: Message from Fire Chief Jeff Carman

Greetings-

I hope this email finds you all well.

For the last several months, the fire service across California has been actively lobbying the Governor to provide additional funding to make improvements to our Master Mutual Aid (MMA) system.

Our current MMA is a reactive system, meaning it is utilized only after an incident occurs and grows beyond the capabilities of local resources. The current system is 70 years old and was designed to move emergency resources from neighboring agencies into an emergency scene in 12-24 hours.

In today's environment, as we saw in the North Bay Fires and the Thomas Fire in Ventura County, we need resources immediately. In the North Bay Fires, the first arriving Incident Commanders immediately ordered 50 strike teams to assist them, and those resources took days to assemble and arrive at the scene. To add to the issue, many fire agencies simply don't have enough resources to send to other jurisdictions, so over 11,000 resource orders went unfilled last year alone.

The fire service is asking the Governor for \$100 million to provide funding to pre-assemble strike teams and other resources ahead of climate driven events. Our predictive services have become so advanced that we often know 48-72 hours in advance when flooding rains or red-flag weather will arrive. We believe that pre-assembling resources to be ready to respond when an incident is still small will save millions of dollars and lives across our state.

I would ask that you visit the website of our coalition at <http://www.d-risc.org/> and see what we are doing. Please take a look at the attachments from the League of Cities which is part of our coalition, and if you feel it is appropriate, please send a letter of support to the appropriate legislator.

As your fire chief, I will tell you that the ability to "pre-position" fire apparatus ahead of climate driven events will positively impact our county. We have very high fire danger in many of our areas and our fire agencies remain under-resourced. The ability to have additional resources when incidents are still small will make a huge difference on the outcome of fire incidents in this county.

Please let me know if you have any questions or if you would like additional information on this program. Thanks, in advance, for your assistance.

Jeff

Jeff Carman, Fire Chief
Contra Costa County Fire Protection District
4005 Port Chicago Highway
Concord, CA. 94520
jcarm@cccfd.org
(925) 941-3300 Ext. 1200
(925) 890-1100 cell



FACT SHEET

Budget Augmentation Request of \$100 Million For Expanding Mutual Aid System

A coalition of California's fire service – including fire chiefs and firefighters at the local and state level – is requesting a \$100 million augmentation to the FY 2018-19 State Budget to enable the Governor's Office of Emergency Services (OES) to accomplish the following goals:

- Reimburse local governments for the cost of pre-positioning firefighters and equipment in advance of identifiable risks under the California Mutual Aid System
- Upgrade emergency communications and resource dispatching capabilities

In 2017, California saw the largest, most destructive and costliest wildfires in the state's history. They were caused by extreme weather conditions attributable to climate change. As the threat of catastrophic wildfires becomes more severe, the ability to have firefighters, apparatus and equipment available and ready to respond immediately to fire threats is essential to preventing the loss of life and property.

The state budget proposal to spend an additional \$100 million for disaster readiness is supported by recommendations made in 2003 by the Governor's Blue Ribbon Commission, which was convened in the wake of major wildfires in San Diego, to enhance local firefighting capabilities. Their recommendations have been updated several times since then, but they have consistently included proposals to modernize the Mutual Aid System, giving OES and local governments the resources and capability needed to enable first responders to aggressively attack emerging fires and other threats in the first minutes and hours of their destructive paths.

California's Mutual Aid System was created in 1950 to allow local fire agencies to come to the aid of surrounding jurisdictions when fires and other disaster threats are too large for local resources to handle effectively. The system, managed by OES and cited as a national model, has proven to be an effective and efficient means of fighting fires and responding to other large-scale disasters. But it was designed primarily as a reactive response to disasters. This proposed budget augmentation would expand the system's capabilities to be proactive as well.

The mega fires of 2017 brought to light the need for more resources in the face of more extreme weather conditions. More than 35,600 mutual aid requests were made last year, of which 11,000 (31 percent) went unfilled. The Mutual Aid System, as effective as it has been, needs to be proactive as well as reactive. Instead of waiting for an incident to occur and then organizing resources, changing conditions mandate that firefighting resources be placed on standby where and when weather conditions pose the greatest risks of fire and other natural disasters. This policy solution is called "pre-positioning."

Pre-positioning provides the best – and in many instances the only – means of attacking fires with enough equipment and staffing in the initial minutes and hours necessary to prevent them from spreading and becoming catastrophic events.

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It is important to note two facts:

- Local governments may be reimbursed by the state and federal government for responding to major events. Approximately 80 percent of the resources deployed for disaster response are provided by local government fire agencies.
- In September 2017, \$25 million was appropriated for OES to reimburse local government fire agencies to assist surrounding fire departments for pre-positioning under the Mutual Aid System. By this spring, a mechanism is expected to be in place for the first time to reimburse local governments for pre-positioning.

Gov. Brown has proposed another \$25 million effective July 1, 2018 for the purchase of 106 fire engines identified as a critical need by OES, including \$1.4 million for fleet maintenance and staff support. These engines will meet a critical need, considering the fact that 55 percent of mutual aid request for engines went unfilled last year.

FY 2018-2019 budget request:

- \$87 million would reimburse local governments for costs to pre-position resources in high-risk areas prior to the onset of extreme weather conditions (wind, heavy rain and “red flag” fire conditions). These funds would allow for additional strike teams to quickly attack fires in high-risk areas to prevent them from becoming catastrophic fires. Strike teams are comprised of five (5) engines, 20 firefighters and one (1) strike team leader. Mobilizing a strike team costs local governments approximately \$50,000 per day.
- \$13 million would pay for improved communications technologies to allow more efficient and effective resource deployment.
 - Local government engines would be equipped with a GPS-linked communications system called Automatic Vehicle Location (AVL), a system already being installed in state-owned equipment operated by both OES and the California Department of Forestry and Fire Protection. Use of the AVL system ensures the efficient mutual aid dispatching of strike teams closest to a disaster.
 - The Resource Ordering and Status System would be replaced with a state-of-the-art system for requesting and managing resources for these large-scale emergencies.
 - Funds would be available to bring in additional OES and local government personnel to staff regional dispatch centers.

Funds would go toward improved technologies for alerting individuals and communities of approaching threats.



QUESTIONS AND ANSWERS

Budget Request for \$100 million to Strengthen Disaster Readiness

- Q. Why is the fire service asking the state to provide \$100 million for disaster readiness and response?**
- A.** Disasters like wildfires and floods are becoming more frequent and more severe. California’s “fire season” is now year-round. Extended droughts, heavier rains and stronger winds are contributing to a “new normal” of increased threats to community safety. If we are going to better protect lives and property from these difficult new threats, our approach to fighting natural disasters must change. We must be much more “proactive” rather than merely be “reactive.” We can no longer wait for fires or other climate-driven disasters to occur before dispatching first responders and equipment. We now have the tools to better predict where fires, extreme winds, flooding and mudslides are most likely to occur during extreme weather conditions. We must have the resources to put strike teams in place before disasters strike, when they are small and adequate defenses can be established around populated neighborhoods.
- Q. What’s wrong with California’s current approach to disaster response?**
- A.** For nearly 70 years, California has used a “Mutual Aid System” that allows local fire agencies throughout the state to share resources (combined with state and federal agencies) during large-scale disasters. This system ensures that the bigger a disaster gets, the more personnel and equipment can be sent to help. The problem is that it takes hours and sometimes days to mobilize these resources after a disaster has already started. Early intervention during a disaster is the key to saving lives and protecting property. As an example, when a fire ignites in dry conditions and heavy winds, it can spread quickly – by as much as an acre per second. Unless fire strike teams are nearby and can attack the fire immediately, that is too fast to contain and prevent fires from jumping to neighborhoods, as occurred during the fire siege of October 2017.
- Q. What’s the solution?**
- A.** The solution to increasing disaster threats is to send more dispatch workers, vehicles and firefighters into a community before disaster strikes – a strategy called “pre-positioning.” This strategy includes the ability of local fire agencies to have more of their own equipment and personnel at the ready and call in advance help from neighboring fire districts and state agencies. Pre-positioning would also include bolstering the staffing in the local emergency communications centers to manage the increased call volume and requests for resources from first responders in the field during these disasters. Building up resources in advance ensures that when disaster strikes, the response is both immediate and adequate to protect lives and property.

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Q. Why can't local fire agencies do pre-positioning now?

A. Although some limited pre-positioning happens today, there are two barriers to its widespread use – lack of money and outdated systems. Today, local fire agencies only get reimbursed if they are sent to help on a disaster that's already happening. In other words, the sending agency won't be reimbursed for providing help in advance. In September 2017, \$25 million was appropriated for OES to reimburse local government fire agencies for pre-positioning under the Mutual Aid System. By this spring, a mechanism is expected to be in place for the first time to reimburse local governments for pre-positioning. Moreover, the Mutual Aid System is not set up to use "predictive tools" like weather alerts to deploy more dispatch workers, firefighters and equipment before disaster strikes.

Q. How can we predict when and where disaster will strike?

A. National Weather Service alerts of approaching hot temperatures or high winds can be combined with data about soil conditions, overgrown or dead vegetation, electricity infrastructure and other information. In addition to understanding the local conditions, advanced data tools can inform safety workers how many resources (people and equipment) are available and nearby to help in a potential disaster and what type of resources will be needed for a given event.

Q. How would the \$100 million be used?

A. Chiefs for local fire agencies have proposed budgeting \$87 million for the Governor's Office of Emergency Services to use, as needed, to reimburse costs for pre-positioning personnel and equipment in communities that are preparing for disaster. In addition, \$13 million is proposed for improved communications technology and communications center support to modernize the Mutual Aid System. These expenditures would be in addition to funding that Governor Brown has proposed to add 106 state-owned fire engines to the Mutual Aid System.

Q. Is \$100 million enough to protect communities from disasters? One-time or ongoing?

A. Deploying firefighters to every extreme weather alert would cost many hundreds of millions of dollars. Fire chiefs across California believe \$100 million would fund critical updates to modernize the Mutual Aid System and provide an initial pool of money to begin amassing multiple fire agencies in advance of when and where fires or floods are predicted. Given the growth of extreme weather conditions, the fire chiefs believe that California needs to make an annual, ongoing commitment to pre-positioning.

Q. How much money can we save with pre-positioning?

A. It is estimated that the disaster response costs for the October-December 2017 fires is \$1.8 billion. This does not include the nearly \$12 billion in losses claimed on insurance policies. Although it is unknown how many lives, homes or money might be saved by pre-positioning, what is widely recognized is that the state needs to enhance its mutual aid capabilities and create a more nimble and proactive Mutual Aid System that will result in fewer lives lost and less property damage.

ACTION ALERT!!
**Direct Resources in Budget to
Modernization of Emergency Preparedness Assets**
STATE BUDGET REQUEST

BACKGROUND:

With the release of the May Revise just weeks away, the League is part of an effort to urge Gov. Jerry Brown to prioritize additional funding for fire prevention and mutual aid support in his proposed FY 2018–19 budget. This budget request is a cost effective investment that can save lives, structures and reduce the cost of disaster response.

California no longer has a traditional fire season that spikes in the highest heat of the summer and early fall. As last year's October and December destructive and costly wildfires illustrate, extreme fire conditions has become a year-round concern. This ongoing danger has led the newly-formed [Disaster Readiness for Safer Communities](#) (DRISC), which the League of California Cities is a part of, to mobilize and urge the Governor to include an additional \$100 million for the Office of Emergency Services (OES) to assist local agencies prepare for and respond to fire emergencies.

The costs of responding to extreme disasters are staggering. A single mega fire exceed over \$100 in response costs. The California Department of Forestry and Fire Prevention (CAL FIRE) estimates that it spent \$700 million fighting fires, which was twice the amount of its allocated budget.

In 2017, over 35,600 requests were made, of which 11,000, or 35 percent, were unfilled. Firefighting leaders need additional support to implement what is known as "pre-positioning," which enables firefighting resources (equipment and first responders) to be on standby where and when weather conditions pose the greatest fire risk. Pre-positioning firefighting resources allows responders to attack and control fires quickly and aggressively, helping them save lives and homes.

WHY DO WE NEED TO ASK FOR MORE FUNDING IN THE BUDGET?

DRISC is requesting \$100 million to enable OES to accomplish two main goals:

- Reimburse local governments for the cost of pre-positioning firefighters and equipment in advance of identifiable risks under the California Mutual Aid System.
 - \$87 million would reimburse local governments for costs to pre-position resources in high-risk areas prior to the onset of extreme weather conditions (wind, heavy rain and "red flag" fire conditions). These funds would allow for additional strike teams to quickly attack fires in high risk areas to prevent them from becoming catastrophic fires. Strike teams are comprised of five (5) engines, 20 firefighters and one (1) strike team leader. Mobilizing a strike team costs local governments approximately \$50,000 per day.
- Upgrade emergency communications and resource dispatching capabilities.
 - \$13 million would pay for improved communications technologies to allow more efficient and effective resource deployment.
 - Local government engines would be equipped with a GPS-linked communications system called Automatic Vehicle Location (AVL), a system already being installed in state-owned equipment operated by both OES and the

California Department of Forestry and Fire Protection. Use of the AVL system ensures the efficient mutual aid dispatching of strike teams closest to a disaster.

- The Resource Ordering and Status System would be replaced with a state-of-the-art system for requesting and managing resources for these large-scale emergencies.
- Funds would be available to bring in additional OES and local government personnel to staff regional dispatch centers.

ACTION

The California State Budget negotiations began in January and a balanced budget must be passed by midnight on Friday, June 15, 2018. Cities should do the follow as soon as possible:

- 1) Send a city letter of support (sample attached) or you may use the DRisC website's [Take Action](#) feature, which provides an online letter submission portal to ask lawmakers to support this budget request.
- 2) Submit a letter to your local newspaper to call for this budget request, which will improve disaster response. Sample letter is available on the [coalition website](#).
- 3) If you have an Assembly Member or Senator on one of the committees below, please urge their support of this critical funding by sending them a letter of city support or calling your legislator.

ASSEMBLY BUDGET SUBCOMMITTEE NO. 3 ON RESOURCES AND TRANSPORTATION

Member	District	Party	Room	Phone	Fax
Bloom, Richard (Chair)	50	D	2003	916 319 2050	916 319 2150
Fong, Vince	34	R	4144	916 319 2034	916 319 2134
Garcia, Cristina	58	D	2013	916 319 2058	916 319 2158
Mullin, Kevin	22	D	3160	916 319 2022	916 319 2122
Patterson, Jim	23	R	3132	916 319 2023	916 319 2123

ASSEMBLY BUDGET SUBCOMMITTEE NO. 5 ON PUBLIC SAFETY

Member	District	Party	Room	Phone	Fax
Jones-Sawyer, Reginald	59	D	2117	916 319 2059	916 319 2159
Lackey, Tom	36	R	2174	916 319 2036	916 319 2136
Melendez, Melissa	67	R	5128	916 319 2067	916 319 2167
Stone, Mark	29	D	3146	916 319 2029	916 319 2129
Weber, Shirley (Chair)	79	D	3123	916 319 2079	916 319 2179

SENATE BUDGET AND FISCAL REVIEW SUBCOMMITTEE NO. 2 ON RESOURCES, ENVIRONMENTAL PROTECTION, ENERGY AND TRANS.

Member	District	Party	Room	Phone	Fax
McGuire, Mike	2	D	5061	916 651 4002	916 651 4902
Nielsen, Jim	4	R	2068	916 651 4004	916 651 4904

<u>Stern, Henry</u>	27	D	3070	916 651 4027	916 651 4927
<u>Wieckowski, Bob</u> (Chair)	10	D	4085	916 651 4010	916 651 4910
SENATE BUDGET AND FISCAL REVIEW SUBCOMMITTEE NO. 4 ON STATE ADMINISTRATION AND GENERAL GOVERNMENT					
Member	District	Party	Room	Phone	Fax
<u>Glazer, Steve</u>	7	D	4072	916 651 4007	916 651 4907
<u>Roth, Richard</u> (Chair)	31	D	4034	916 651 4031	916 651 4931
<u>Wilk, Scott</u>	21	R	4090	916 651 4021	916 651 4921

Talking Points

- Getting help to a disaster in a few hours is no longer enough to protect communities. We need help in the initial minutes of a disaster.
- Waiting for a disaster to strike is no longer an acceptable strategy. We can save lives and protect communities by pre-positioning firefighters and equipment in areas where high risks are predicted.
- \$100 million in funding is needed to allow local fire agencies to employ pre-positioning as a disaster readiness strategy and to equip them with the 21st century tools they need to get in front of fast-moving fires and other disasters.

Agenda Date: 5-01-2018

Agenda Item: 4a

MADISON BAUTISTA
for
"Doing the Right Thing"
at
Mt. Diablo Elementary School
by exemplifying great "Integrity"
March and April 2018

LOGAN GONZALES
for
"Doing the Right Thing"
at
Diablo View Middle School
by exemplifying great "Integrity"
March and April 2018

LILY WILCOX
for
"Doing the Right Thing"
at
Diablo View Middle School
by exemplifying great "Integrity"
March and April 2018

COLIN COX
for
"Doing the Right Thing"
at
Clayton Valley Charter High School
by *exemplifying great "Integrity"*
March and April 2018

RITA MOHAMMED-EWAZ

for

"Doing the Right Thing"

at

Clayton Valley Charter High School


by exemplifying great "Integrity"

March and April 2018



Agenda Date: 5-01-2018


Agenda Item: 8a

Approved: 

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR 

DATE: MAY 1, 2018

SUBJECT: SECOND READING AND ADOPTION 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, allow and consider all public testimony, and if determined to be appropriate, take the following actions:

1. Motion to have Ordinance No. 481 read by title and number only and waive further reading; and
2. Following the City Clerk's reading, by motion adopt Ordinance No. 481 to amend the Clayton Municipal Code Chapter 8.14 (Regulation of Smoking) with the finding this action does not constitute a project under CEQA (ZOA-01-18) (**Attachment 1**).

BACKGROUND

At its meeting on April 17, 2018, the City Council introduced the subject Ordinance, which proposes to update and amend the smoking regulations contained in the Clayton Municipal Code (CMC) to address cannabis uses, prohibit smoking in multi-unit residences, and to address changes in the smoking/tobacco industry, amongst others (**Attachment 2**). The City Council revised the staff-proposed Ordinance at its April 17, 2018 hearing by removing

a 25 foot no smoking buffer around The Grove Park and to allow smoking on public sidewalks citywide.

ENVIRONMENTAL

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 the public health hazard of exposure to second hand smoke and offering greater protection to indoor and outdoor air quality.

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.

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

ATTACHMENTS

1. Ordinance 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 April 17, 2018 City Council Meeting [pp. 23]

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 with the exception of 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.

- 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. On public sidewalks, unless otherwise prohibited by this chapter (e.g. unenclosed service areas).
- 3. Inside private, detached single-family residences except private residences used as child care facilities or health care facilities.
- 4. Inside an accessory dwelling unit that is attached to or detached from a detached single-family residence.
- 5. 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.



Approved: 
Gary A. Wapper
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.

Agenda Date: 3-20-2018

Agenda Item: 7a



Approved: 
Gary A. Napper
City Manager

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 3
Proposed "No Smoking" Areas

