

MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL
TUESDAY, July 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, and Councilmembers Catalano, Diaz and Pierce. Councilmembers absent: Vice Mayor Shuey. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Community Development Director Mindy Gentry, City Engineer Scott Alman, and City Clerk/HR Manager Janet Brown.

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

3. **CONSENT CALENDAR**

It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to approve the Consent Calendar as submitted. (Passed; 4-0 vote).

- (a) Approved the minutes of the City Council’s regular meeting of June 19, 2018.
- (b) Approved the Financial Demands and Obligations of the City.
- (c) Adopted Resolution No. 28-2018 setting and levying real property tax assessments in FY 2018-19 for the Oak Street Permanent Road Division.
- (d) Adopted Resolution No. 29-2018 setting and levying real property tax assessments in FY 2018-19 for the High Street Permanent Road Division.
- (e) Adopted Resolution No. 30-2018 setting and levying real property tax assessments in FY 2018-19 for the Oak Street Sewer Assessment District.
- (f) Adopted Resolution No. 31-2018 setting and levying real property tax assessments in FY 2018-19 for the Lydia Lane Sewer Assessment District.
- (g) Adopted Resolution No. 32-2018 approving the Engineer’s Report and levying the annual assessments in FY 2018-19 on real properties for the operation and maintenance of residential street lights in the Street Lighting Assessment District, pursuant to Streets and Highways Code 18070 and CA Government Code 54954.6.
- (h) Adopted Resolution No. 33-2018 approving the City Master Fee Schedule for FY 2018-19 regarding certain fees for user-benefit municipal services and rental of City facilities.
- (i) Adopted Resolution No. 34-2018 authorizing the Clayton City Engineer to approve a Quality Assurance Program in compliance with Caltrans requirements for federally funded local transportation projects.
- (j) Adopted Resolution No. 35-2018 adjusting and approving pay rate schedules for certain temporary hourly wage positions within the City of Clayton’s employment organization.

- (k) Adopted Resolution No. 36-2018 approving agreement No. C1000205 with the California Franchise Tax Board renewing the City of Clayton's reciprocal agreement to exchange tax data specific to City business license information for mutual tax administration and collection purposes, and authorizing the City Manager to execute the agreement in behalf of the City.

4. RECOGNITIONS AND PRESENTATIONS – None.

5. REPORTS

- (a) Planning Commission
Commissioner A.J. Chippero indicated the Commission's agenda at its meeting of June 26, 2018 included the review of the FY 2018-19 Capital Improvement Program Projects for conformity with the Clayton General Plan. This action was unanimously approved
- (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 attended the Annual 4th of July parade and the Clayton Business and Community Association's Clayton BBQ Cook-Off Event.

Councilmember Julie Pierce attended the Metropolitan Transportation Commission and Associated Bay Area Governments Legislative Forum, the Contra Costa Transportation Authority Board meeting, the 2018 Installation Dinner hosted by East Bay Leadership Council, the Saturday Concerts in The Grove featuring Pride and Joy, several Metropolitan Transportation Committee meetings, the Annual 4th of July Parade and has been serving time on jury duty.

Councilmember Diaz attended the second Classic Car Show and DJ event in downtown Clayton, the Clayton Business and Community Association's General Membership meeting, the Annual 4th of July Parade, and the Clayton Business and Community Association's 9th Annual BBQ Cook-Off Event.

Mayor Haydon attended the County Connection Board meeting where new routes are being proposed, the East Contra Costa Habitat Conservancy meeting, the Clayton Business and Community Association's General Membership meeting, officiated at the Clayton Bocce Spring League Playoffs, attended the Annual 4th of July Parade, the Clayton Business and Community Association's BBQ Cook-Off Committee meeting, the County Connection Administrative/Finance Subcommittee meeting, the Contra Costa County Mayors' Conference hosted in Pittsburg, and the Clayton Business and Community Association's BBQ Cook-Off Event.

- (e) Other – None.

6. PUBLIC COMMENT ON NON - AGENDA ITEMS

Glenn Miller expressed his concern the Clayton Fountain is not operating on federal holidays and requested the City Council revisit the policy. Mr. Miller indicated he reached out to Mayor Haydon to inquire on the Clayton Fountain policy as the fountain was not

operating during Clayton's Annual Memorial Day event this year; in that instance there was a lack in City Hall communication in the need of its operation. Mayor Haydon had advised him the Clayton Fountain operating schedule is limited to certain days and City events. Mr. Miller did not understand why the City does not recognize all of the federal holidays. Mr. Miller asked that the Council reconsider the policy and a report on the basic operating agreements, developmental agreements during the construction and development of Oakhurst and current assessments, and the operating costs and who is paying for the operation of the Clayton Fountain during special events.

Mayor Haydon asked City Manager Gary Napper for comments. City Manager Napper advised this matter started with the initial Blue Ribbon Committee in the Landscape District which ultimately evolved to the Citizens Advisory Committee. There were frequent discussions about the operation of the Clayton Fountain every day and as that committee worked with staff, the Committee felt the Fountain's daily operational cost to the Landscape District was prohibitive as other landscape projects needed funding, such as taking care of the landscaping, irrigation, etc. The original Operation Policy was approved by the City Council in April 2002, in a public setting. When a question was asked why not operate on certain dates, the City Council revisited the item on July 16, 2002 whereby the Council reaffirmed the operational dates listed in the Policy; it was later amended in February 2008 to add the Clayton Garden Club's tour weekend.

City Manager noted the dates that it operates are paid by taxpayers through the Landscape District Budget. However, included in the Operation Policy is the opportunity for private parties or other organizations, wishing to have the fountain on, may pay the listed operation costs for that day or weekend. He noted some of those federal holidays are religious holidays; there is in fact a separation of church and state. Mr. Napper recognizes those holidays as well and people may not like the answer but in order to allow, for example, the fountain to operate on specific religious holiday, it would then be necessary to allow the operation of the fountain on any holiday recognized by religious groups. Mr. Napper indicated that is the framework for the operational policy and he provided Mr. Miller with a copy of the Clayton Fountain Operation Policy.

Mr. Miller reiterated his request for review of the Clayton Fountain Policy as he does not feel the operation of the Clayton Fountain is a Landscape District resource, rather an Oakhurst Development Resource where taxes are continually being paid by its residents through assessments.

7. PUBLIC HEARINGS

- (a) Consider the Second Reading and Adoption of proposed City-initiated Ordinance No. 482 amending Chapter 6.04 to adopt by reference the Contra Costa County Animal Control Code, including County Ordinances Nos. 80-97 ("Revised Animal Control Ordinance"), 83-10 ("Animal Control Ordinance Amendments"), 85-23 ("Animal Services Contracting"), 87-74 ("Regulation of Dangerous Animals and Potentially Dangerous Animals"), 97-33 ("Penalty for Abandonment of Animal"), 2005-24 ("Dangerous Animals"), 2006-05 ("Amendment to Dangerous Animal Ordinance"), 2011-08 ("spaying and Neutering Dogs Impounded Dogs Prior to Release"), 2011-09 ("Microchipping Impounded Dogs and Cats Before Release"), 2016-02 ("Exemptions For Animal License Fees"), and 2017-12 ("Amendments to Division 416 (Animals) of the County Ordinance Code"), and Adopting Penalties therefor as provided in County Ordinance Nos. 97-33 and 2017-12 of Clayton Municipal Code for conformity with recent Contra Costa County animal control laws.

City Attorney Mala Subramanian noted at the meeting of June 19, 2018 the first reading of this Ordinance occurred and set this evening as the Public Hearing date for the Council to consider adopting the Ordinance by reference. Ms. Subramanian advised this item was properly noticed noting it involves several county ordinances related to animal control services contracted by the City through Contra Costa County Animal Control Services.

Mayor Haydon clarified animal control services in the city are provided by Contra Costa County; the intent of this Ordinance is to have local ordinances and enforcement that can be applied consistently throughout the region.

Mayor Haydon opened the Public Hearing for public comments.

Ann Stanaway, 1553 Haviland Place, applauds the City's consideration of amendments to Contra Costa County Animal Control Act. If adopted she finds anonymous reporting of code infractions can be abused by persons filing meritless claims by hiding malicious practices or hidden agendas. Ms. Stanaway prefers County Child Services reporting requirements as they collect confidential information for all complainants upon first contact; without such information criminal cases cannot be prosecuted; worse, law abiding citizens and their pets can be victimized for purely private gain, at the public's expense. The City must not support private gain from public resources. A member of the council found support for frivolous usage of certain services provided under the adoption of the Contra Costa County Animal Control Act would be in violation of their oath as the City's responsible manager of public resources.

Having no further public comments offered, Mayor Haydon closed the Public Hearing.

It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to have the City Clerk read Ordinance No. 482, by title and number only and waive further reading. (Passed; 4-0 vote).

The City Clerk read Ordinance No. 482 by title and number only.

It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to adopt Ordinance No. 482 with the finding the adoption does not constitute a project under CEQA this activity will not have a significant effect or physical change to the environment. (Passed; 4-0 vote).

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

Community Development Director Mindy Gentry provided background regarding issues with overcrowding and inmate recidivism which has been percolating for over a decade in the California prison system. In 2006, Governor Schwarzenegger declared a state of emergency regarding prisons as the inmate population was at an all-time high of more than 170,000 inmates. In May 2011, the United States Supreme Court determined California's overcrowded prisons were in violation of the Eighth Amendment's ban on cruel and unusual punishment. The decision mandated California to reduce its prison populations by more than 30,000 inmates within two years. The State Legislature chose to relocate a portion of its prison population to county facilities through the passage of Assembly Bill 109 that went into effect on October 1, 2011. AB 109 expands the role for

post-release supervision of these offenders by enacting a larger reliance on “community-based punishment” to reduce recidivism. California has one of the most expensive prison systems in the entire world with a cost of \$71,000 per year per inmate, expected to increase to \$80,000 per inmate per year beginning FY 2018-19. This paradigm shift from mass incarceration places a greater burden at the local level, and Clayton must be better prepared for anticipating these individuals within the community.

In response to AB 109, the County Board of Supervisors adopted the Contra Costa County Realignment Implementation Plan; to provide a system of alternatives to post-conviction incarceration, to not overburden the County’s detention facilities. According to the County’s *Public Safety Realignment Report for FY 16/17* the County has focused on formalizing partnerships between law enforcement agencies, health and social service agencies, and AB 109-contracted community based organizations. Clayton staff reached out to Contra Costa County Sheriff’s Office and to its Office of Reentry and Justice for additional information where currently there are five (5) active parolees reporting addresses in Clayton under juvenile supervision, court supervision and traditional probation. No individuals under AB 109 are reporting an address in Clayton. The Office of Reentry and Justice reported the County does not directly operate any residential homes for parolees and are relying on community-based program operators for the provision of services and housing; advising there are several private organizations that run homes for the parolee/probationer population “under the radar since communal housing is not required to report its existence to anyone.” The proposed Ordinance would prevent these private organizations from being established undetected while simultaneously restricting their location and regulating conditions for operation as well as require these private organizations to apply for a City use permit.

On May 22, 2018 the Planning Commission held a Public Hearing recommending the City Council deny the proposed Ordinance which accepting such action would result in the City Council not adopting the proposed Ordinance and maintaining the status quo of allowing such homes in any residential district. Over twenty (20) speakers addressed the Planning Commission with comments such as: the City should ban parolee housing outright, slow the implementation of the regulation of parolee homes, consideration should be given to increasing buffers, and adoption of the proposed Ordinance would be inviting parolees to locate in Clayton.

The current Municipal Code is silent and does not address parolee homes; under present conditions if an organization, individual, and/or State grantee sought to locate a parolee home in the city of Clayton, the use would be permitted by right, meaning it would be able to locate in any residential area of Clayton without a buffer between it and sensitive uses and would not be subject to any regulations or controls beyond those of a typical residential use. On August 5, 2016 the City received an email inquiry from a non-profit County contractor/grantee searching for a community to house a facility where a use permit would not be required to operate a transitional housing program to assist individuals that have been previously incarcerated as part of the Contra Costa County Reentry Program. This inquiry prompted City staff and the City Council to adopt a temporary moratorium, allowed by state law, to prevent any parolee homes from establishing within Clayton; this moratorium is set to expire on October 3, 2018 and cannot be extended under state law. The proposed Ordinance for consideration appropriately restricts and regulates these types of land uses.

Ms. Gentry noted that even though staff received an inquiry in August 2016, currently there are no requests or applications for parolee homes that have been submitted for consideration or are pending upon the expiration of the moratorium. The operator that originally inquired on the parolee homes subsequently opened such a facility in Pittsburg. Should the moratorium expire without a regulatory ordinance in place, there is no foreseen immediate risk that staff is currently aware of; however, there could be long term risk if the City Council does not take action restricting and regulating this land use.

Clayton does not have any inherent control over how the State and County manages correctional and rehabilitative services; however it does control and maintains its land use authority. The shift to decrease incarceration, the flux and fluidity regarding correctional services raised concerns about the City's vulnerability for the possible placement of parolee homes. Inherently in Clayton, there are a low number of parolees with a Clayton address, lack of convenient access to public transit, lack of rehabilitative services and programs to assist with reentry, high cost of housing, and high rates of owner-occupied housing. Ms. Gentry briefly compared the neighboring jurisdictions of Pleasant Hill, Walnut Creek, Danville, Lafayette, Concord, Oakley, Pittsburg, and Antioch noting how each has addressed parolee homes. In most cases, the City's proposed Ordinance would be more restrictive than currently found in those cities.

Ms. Gentry noted the proposed City ordinance would allow parolee housing in the six designated areas of Multifamily Low Density, Multifamily Medium Density, and Multifamily High Density, subject to a City use permit, requiring a public hearing with review and consideration by the Planning Commission. Multifamily housing projects with 25 units or less would be limited to one parolee housing unit, whereas multifamily housing projects with more than 25 units would be limited to two parolee homes. Parolee homes would be prohibited from locating within 500' of a daycare, school, library, park, hospital, group home, or a business licensed for the on- or off-sale of alcoholic beverages, or emergency shelters. Additionally, parolee homes could not locate within 1,000' of another parolee home and requires 24-hour onsite supervision.

Ms. Gentry presented three alternatives for the Councils consideration: 1. regulate parolee housing as proposed in the Ordinance; 2. take no action allowing parolee homes to locate in any residential district without any regulation; 3. outright ban parolee housing in Clayton. Staff has recommended the first alternative to restrict and regulate parolee housing to specific land use designations and subject to a City conditional use permit. Ms. Gentry noted Ms. Patty Grant from the Contra Costa County Sheriff's Office is available for specific questions the Council may have regarding the County's custody program and its implementation of AB 109.

Councilmember Catalano stated the City is currently and effectively regulating parolee housing by having enacted a moratorium Ordinance by the Government Code noted in the staff report. Councilmember Catalano noted the code establishes time limits and asked why we cannot just adopt another moratorium Ordinance or have we exhausted the time limits? Ms. Gentry advised the moratorium time limits have been exhausted and will automatically expire on October 3, 2018.

Councilmember Catalano referred to the staff report that at this time staff does not have any pending applications or requests that would be waiting for the expiration of the moratorium ordinance. Absent any action by the City Council this evening after October 3rd, an application would not be required for parolee housing and the use would be permitted in Clayton? Ms. Gentry responded yes, essentially it could be permitted as the Municipal Code does not address parolee housing as it is considered any other type of residential use and not reviewed any differently.

Councilmember Catalano inquired if the City decided to ban parolee housing in Clayton would it put the City at risk of a lawsuit and if so what is the likelihood the City would prevail? City Attorney Mala Subramanian advised it would be a case of first impression; as noted in the written and verbal staff report there is a real reason why most cities dealing with this issue are regulating it and not banning it. Ms. Subramanian stated it is strongly defensible to regulate parolee housing as proposed in the Ordinance regarding public health, safety, and welfare issues and secondary impacts of parolee housing; however banning it would put the City of Clayton in a very difficult position to defend it.

Councilmember Catalano noted in 2016 the voters were able to vote on this issue in Proposition 57 - allowing certain types of felons to be considered parolees, and she was curious how Clayton as a city voted on this particular matter. As a city we voted in favor of Prop 57 with 3,740 "yes" votes and 2,607 "no" votes. Is there any possibility on the horizon that would reverse this trend in the State by it building more prisons, or is this becoming more of an issue? Ms. Gentry advised the research that has been conducted and through conversations with the Contra Costa County Sheriff's Office, the trend is going toward decreasing mass incarceration and going towards community-based supervision. There is a Senate bill currently in committee at the State legislature to eliminate any bail requirements; if they meet the criteria they will be awaiting pre-trial in the community rather than in county jail.

Councilmember Catalano stated the proposed Ordinance is to require any parolee home considering locating to Clayton must first obtain a conditional use permit and she inquired on the notification aspect of the process. Ms. Gentry advised if a community based organization submitted an application to the City for consideration of a parolee home and this proposed ordinance was in effect, City staff would analyze if the application could meet the findings located in the Municipal Code; if so, notification to all of the property owners within a 300' radius that surround the target property would occur; the proposed use would then be considered before the Planning Commission with notification in a newspaper of general circulation, and posting on the City's three posting boards. The Planning Commission has the ability to add additional conditions of approval and hear public comment; however its decision is always appealable to the City Council.

City Manager Napper added in addition to regulating the front end of a conditional use permit, those conditions have to stay in place and the operator must meet those conditions or a conditional use permit is subject to revocation due to violations.

Councilmember Diaz noted as a member of the League of California Cities Public Safety Policy Committee, every quarter legislators continually bring bills forward to increase the Realignment Act, and each time the Public Safety Policy Committee recommends the League and its cities vote against it. Councilmember Diaz requested clarification specifically to Clayton regarding the five (5) active parolees currently in Clayton: it was also stated there a number of them who have not listed their address in Clayton? Ms. Gentry clarified there are currently five (5) parolees who live within the city of Clayton; however none of them fall under the umbrella of AB 109. The Sheriff's Office of Reentry and Justice has stated they do not have numbers for those who are on probation by jurisdiction.

Councilmember Pierce commented if the Council chooses to take no action, there could be a home established next door to any one of us and we would never know it until there is a problem. Councilmember Pierce would rather know about it in advance and discourage the use through transparency by providing lots of notice about a process going forward so any prospective home operator can hear from the public when it wants to make its application. This community wants to protect itself by knowing what is going on in the community.

Mayor Haydon clarified currently the City is protected per the adopted moratorium Ordinance however it is due to expire on October 3. If the City Council chooses to take no action, then parolee homes can establish in Clayton with no required notification to the City. The second option would be to prohibit parolee homes all together. Mayor Haydon clarified that no city in Contra Costa County has decided to prohibit parolee homes all together. Mayor Haydon stated those are the two extremes. The remaining option would be to adopt restrictions to maintain control. Since the Planning Commission's review, the buffer zone for public notification increased from 300' to 500'; Mayor Haydon asked why wasn't a larger buffer zone been considered to 800' or 1,000'?

Ms. Gentry advised the further expansion of the buffer could result in a ban through exclusion; there could be limited or no possibilities of a location, effectively constituting a ban.

City Attorney Mala Subramanian added if the buffer zone was expanded it would become a de facto ban, creating no options for an operator to have a location in Clayton.

Councilmember Pierce inquired if a 300' notice distance is standard? Ms. Gentry advised the 300' notice is a standard part of the Municipal Code's land use noticing. Councilmember Pierce inquired on the ramifications if the public notification zone was expanded for this use, or would that be discriminatory? City Attorney Mala Subramanian advised the City could choose to provide notice beyond the 300' distance. Councilmember Pierce advised notices would also appear on the City's website through agenda posting, with the option of additional noticing through a page on the website if we wanted to.

Mayor Haydon inquired if the City Council chooses not to take action, and it was discovered that a parolee home was established, would the Council be allowed after the fact take action on that house and restrict or prohibit it after they have moved into the community? Ms. Gentry advised if the parolee home is established, it would be grandfathered in; the City would have no recourse or legal grounds to remove it from the community.

Mayor Haydon opened the Public Hearing for public comments.

Nancy Ahern, expressed many questions including is this a building being constructed or is the City buying someone's property to house parolees? She wondered the effect of property values on properties located around a parolee home; if this action is State or County mandated; and does the Marsh Creek Detention Center count for something?

Ms. Gentry responded the likelihood of a community organization or non-profit building something from the ground up is highly unlikely to occur as limited funds are granted by the county or state to a nonprofit; more than likely, they would probably try to locate in an existing structure. Ms. Gentry advised the Marsh Creek Detention Center is located in unincorporated Contra Costa County and not within the boundaries of the City. Mayor Haydon commented we are trying to protect what is within the city limits of Clayton. Ms. Ahern advised she is getting a lot of inaccurate information, and was told the Council was voting to have parolee housing in Clayton. Ms. Ahern noted we already have parolees in Clayton; if we safeguard ourselves then we cannot pull them out. Ms. Gentry added the City cannot regulate how the County or the State manages correctional rehabilitation services; parolees will always be a part of the community; however the City does retain control over its land uses and can prevent parolee homes from establishing anywhere without any controls. Ms. Ahern asked for confirmation the only way a parolee home would come to Clayton then would be through a rental or to build? Ms. Gentry advised if someone purchases a home in the proposed district or rents out a house or ground-up development in those designated areas would be the only way a parolee home could come to Clayton, and then by submitting a use permit application for review by the City Planning Commission.

Glenn Miller, inquired on the number of units allowed and asked how many areas are zoned with 25 units in Clayton? Ms. Gentry advised there are two locations; one would be prohibited because of the 500' buffer, and the other location is behind the U.S. Post Office, limited to two parolee homes as they cannot be located within 1,000' of one another. Mr. Miller also inquired in regards to money it would be prohibitive for someone to come in as an organization to build a parolee home, and if that person decided to sell that home, would the house in perpetuity become a parolee housing unit or does the conditional use permit go away with the sale of the property? Ms. Gentry advised if such

a house was not backfilled with another parolee home operation and someone from the community purchased that home, then it would be 6 months the use permit would be applicable to that piece of property. If it were to lapse beyond the six months then it would no longer operate as a parolee home and must go through the public application and review process again. Mayor Haydon advised it is not a proposal; it is to address someone coming forth and asking for approval.

City Manager Gary Napper added all the concerns Mr. Miller just shared would be in place and spread throughout the entire city in any residential district if we do nothing.

Mr. Miller referred back to his time on the City Planning Commission and found it virtually impossible to approve these types of units. He suggested go back to the drawing board and see if you can come up with a larger buffer zone or use 65 units before a development could be considered.

John Kramci, 3001 Coyote Circle, personally has not seen anything positive come out of parolee housing or to reduce recidivism; they usually go back, there is no control of who comes to the property to visit regardless of what their parole states even when they can't associate with other convicted felons. Please remember: a parolee by definition is a convicted felon. Mr. Kramci's partner, Marci Longchamps, wanted to be here tonight but was unable due to a medical procedure. Mr. Kramci then read her note: *"I wanted to speak so badly tonight, unfortunately my health prevented me from being here. I am a retired school teacher and a nana to my 2 year old grandson. I strongly oppose any proposal that allows parolee housing into our community and I will stand firm in opposing any measures or proposals that encourage passage of this kind of thing. Our children, the elderly, all of us need to be protected and feel safe in our precious town of Clayton and especially in our own homes. As I sat in the doctor's office today, I read one of the sayings posted on the wall. I found it to be somewhat relevant tonight. It said 'The purpose of life is to be useful, to be responsible, to be compassionate, it is above all to matter to count and stand for something to have made some difference'. It is my hope that I have made a difference to you tonight. Please do the right thing and listen to your constituents and hear what we have to say. And let me shout out to everyone that has written to me in support and kindness. This is what our Clayton is all about, and it goes on to say I will see you all at the next Planning Commission meeting as well as the next City Council meeting."*

Frank Gavidia, 104 Gold Rush Court, indicated the City could still end up in court by the ACLU; if they think the City is being discriminatory they are going to challenge the Ordinance. Mr. Gavidia had a Form 990 4(e) by the nonprofit that contacted the City; it does not have a large budget or the resources to come out here and rent a property. Mr. Gavidia does not know of anyone willing to rent their house to a bunch of parolees or an organization who will have a bunch of parolees. The email received by the City from the nonprofit specifically stated they wanted to come to Clayton without a use permit, so they want to operate under the radar. Clayton is a small town that does not have the resources or the space to have to deal with this problem. Mr. Gavidia suggested an outright ban like the two cities that were listed in the staff report.

Mayor Haydon inquired of staff on which two cities outright banned parolee housing? Ms. Gentry advised the two cities were Newport Beach in 2008, and the City of Colton limited it to one parolee in the room and boarding requirements. No city in Contra Costa County has outright banned parolee housing. City Manager Napper added those cities banned them before the Realignment Act.

Brian Buddell, expressed his concerns with the City Council trying to take the easy way out, at the expense of the safety and concerns of citizens of Clayton. Mr. Buddell recently read in the *Clayton Pioneer* the City of Clayton has enough reserves to operate 4 years without collecting any taxes. Mr. Buddell referred to Council Member Diaz's

recommendation of 1,000' buffer; why isn't that being considered? Mr. Buddell expects the safety of the city he resides in to be paramount; whether that's putting a senior center downtown, parolee housing, or anything else.

James Gamble, Prospector Place, inquired if costs were included for added police protection that is going to be needed or additional calls to these properties potentially and what is the clerical cost overhead that is going to be added to the City for this? Ms. Gentry responded there will be no direct fiscal impacts; it would be implementation of the Ordinance and as of right now they can locate anywhere without any notification to the City.

Mr. Gamble then asked if Ms. Gentry personally worked on the Antioch regulations while employed there? Ms. Gentry advised a different staff member worked on the regulations in Antioch. Mr. Gamble asked if Ms. Gentry called the police on people who showed up for the Fulcrum informational meeting when there were no chairs in the room? Ms. Gentry advised the police officers were asked to be in attendance due to a creditable threat that was given to the developers so the police were not called by her or anyone except they were in attendance to ensure safety. Mr. Gamble inquired if he came down to City Hall can he obtain that information? Ms. Gentry advised if it is a matter of public record, then yes.

Ms. Subramanian advised Mayor Haydon she didn't feel this discussion is on the agenda and encouraged him to move on.

Bob Scrosati, 5181 Keller Ridge Drive, advised he used to live across the street from a local nonprofit state facility that housed four people who were incapable of handling their own lives. Although there were some regulations placed on that property by the state, inspections occurred on both the inside and outside of the home. Mr. Scrosati questioned the frequency of the County to perform inspections on these types of properties and on the education or training requirements a supervisor has on the regulation of a parolee? Mr. Scrosati prefers Option 1, but would like to know who has been trained to control these parolees and has consideration been made to duplexes and condos as they are occupied by young families with children.

Linda Cruz, 359 Chardonnay Circle, expressed her opposition to parolees coming to Clayton and she like the community as is. Ms. Cruz asked for a definition of multifamily low density, multifamily medium density; are those choices we want to put in the regulations? Ms. Gentry advised those are the General Plan designations that would be allowable subject to a use permit, and the rest of the city would be a prohibition.

Steve White, Morgan Territory Road, worked with parolees and as a retired police officer, the change of certain housing definitions caught his attention. Changes made to the General Plan could get Clayton in line with potential restrictive parolee realignment. Contra Costa County recently backed out of housing ICE inmates, so more parolees will be housed in the county.

Dena Stephens, Morningside Drive, resides next to a house that had someone living there with an ankle bracelet, a known drug dealer, known to the City, known to the police. Ms. Stephens expressed concerns of parolees having multiple friends that are probably not nice people. Clayton already has a limited police force of three (3) at the most on duty? Mr. Napper confirmed the deployment of the Police Department is three (3) per shift. Ms. Stephens thinks this is inadequate.

Rick Martin, 93 El Portal Place, indicated the reason he relocated to Clayton was because of similar problems in Walnut Creek where care homes located into neighborhoods; by state law, they are considered private homes. Mr. Martin inquired if a parolee has one of these homes is it considered a private home and not a business and

how many would be allowed in a home? Ms. Gentry advised they would be located in a residential unit; two (2) per bedroom, based on the California Building Code allowance for occupancy. Mr. Martin stated the idea of no one able to afford these houses will come as a surprise as they can divide up a house by creating more bedrooms and bathrooms depending on how many parolees they want to house. This is why he moved to Clayton.

(Unidentified speaker). His family relocated to Clayton from Antioch because it got so bad there. The speaker indicated if the government is imposing this the City should outright ban it and if challenged, fight it. If the other two cities in California outright ban it and got under it, then Clayton can too.

Ann Stanaway suggested an outright ban for now and if challenged and too costly for the City to defend, revoke the ban and put in regulations.

Councilmember Catalano went over the proposed options: Option 2, to do nothing, we have a moratorium expiring October 3rd; we do nothing, parolee housing would be allowed anywhere, without any notice or process. Option 3 to ban it: she personally thinks that would be an invitation for a lawsuit risking City monies and resources, our budget is not that large. Option 1 to regulate: there are ways regulations can be very permissive, or they can be very restrictive as the staff is proposing by the requirement of a conditional use permit limited to only certain zoning districts.

Councilmember Diaz stated he believes in second chances, however not in this instance. His primary responsibility to represent the community is public safety for the community and all of the residents in Clayton, and he will not suggest wasting resources to challenge the state or the federal governments with their unlimited resources to come after Clayton if we choose to ban it, not regulate it or do nothing. Councilmember Diaz also confirmed our Police Department operates three people per day per shift; he noted recently around the corner of Kirker Pass and Oakhurst Drive there were ten (10) police cars due to a recent armed robbery at the Togos Restaurant in Concord. Guess who caught the robber? It wasn't the Concord Police Department; it was our eyes and diligent Clayton police officers who were on duty; they not only recovered the money, they took in custody of that individual, his rifle, and his bullets. If we do allow parolees, most likely other parolees will visit, increasing the probability that something negative can happen in this City. Councilmember Diaz would like to take some action on the buffer zone, whether it is 300', 500', 1,000' or 1,500'; he supports revamping of this characteristic to make it a little more challenging, protecting the Clayton community.

Brian Buddell said he does not feel Councilmember Diaz is representing Clayton's values, needs or safety, and his position as a public official is to do what the public tells him to do; the people want a ban, test a ban.

Councilmember Pierce advised parolee housing can be a lucrative business for somebody, understanding there is a subsidiary of \$1,200.00 per person housed in these homes. When this moratorium expires a parolee home can establish in Clayton without any notification to the City. She also wanted to correct a couple of statements: one was the City has four (4) years of budget reserves; that is incorrect, the City has one (1) year of budget reserve which is a little over \$5 million, which goes nowhere when one is fighting a lawsuit. In speaking with a great number of people regarding these proposed regulations, it was understood such regulations would protect Clayton. AB 109 is now state law, the County is implementing it, and they are contracting with non-profit and for-profit agencies looking for locations. City staff was alerted two (2) years ago before our temporary moratorium went into place, many of these groups want to avoid any type of public permitting process so they can fly under the radar to locate their facilities. Currently our Clayton Municipal Code does not define parolee homes at all. The Clayton

Municipal Code allows group homes of six (6) or less anywhere in the community without a permit or notice; including senior care homes and small daycare homes. The City does not even know they exist unless there is a complaint. Without a specific definition in our code, parolee homes would be considered a generic group home, a generic residential use. Councilmember Pierce advised by passing this Ordinance, we get regulation of where these types of homes can be located with a very public transparent process including a use permit, and a broad public notice to the entire community published in the newspaper, mailed directly to neighbors, requirement of a public hearing, the ability to add appropriate conditions for community safety and the opportunity for residents to comment at those hearings.

Mayor Haydon addressed concerns many have shared as there is a community-wide interest in banning or limiting parolee housing in Clayton. The proposed ordinance addresses a control on parolee housing in Clayton. With no regulation Clayton would likely become a place for parolee homes to locate. He thinks regulation is the best protection of Clayton.

It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to modify Ordinance No. 483 to amend the notice requirements from 300' to 500', and to have the City Clerk read Ordinance No 483 by title and number only and waive further reading. (Passed; 4-0 vote).

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

It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to approve for Introduction the amended Ordinance No. 483 with the finding its adoption is not a project under CEQA and it will not have a significant adverse effect on the environment and therefore is exempt under CEQA. (Passed; 4-0 vote).

The City Council further requested City staff provide maps at its next public meeting to illustrate additional buffer distances of 750' and 1,000' from designated sensitive use sites.

8. ACTION ITEMS

- (a) City Council discussion of its vacant opportunities for Clayton citizens to serve on various regional advisory committees/commissions.

City Manager Napper noted Mayor Haydon requested this agenda item and he advised there are several positions on regional boards to which the City is entitled to have representation. Mr. Napper remarked here seems to be some chronic difficulty with citizens applying for those volunteer positions. In the Staff Report it is indicated there is a vacancy on the Central Contra Costa Transit Advisory Committee County Connection (CCCTA); vacant since 2011, this position prefers someone interested in public transportation, preferably one that has used public transportation or has been rider. The second position is to represent Clayton on the Contra Costa Transportation Authority (CCTA) Advisory Committee; vacant since 2013, this position allows representation from every city in the county, including the County. This particular position receives reimbursement for mileage to and from its meeting. The final vacancy just occurred due to the recent resignation of Joyce Atkinson as the City's long-time representative on the County Library Commission; the Commission is requesting a replacement from Clayton to serve. The requirements for each position are that a person be at least 18 years old, and a resident of City from where the appointment is made. He noted volunteerism is always a difficult matter, especially without a stipend or compensation.

Mayor Haydon advised he wanted to address this need in an upcoming Mayor's Column in the local newspaper as a reminder of these types of opportunities. Currently, opportunities are posted on bulletin boards and announced at City Council meetings. Mayor Haydon would like to expand outreach efforts to generate more interest so we can have Clayton represented on these regional committees and he would like to continue mentioning these opportunities at City Council meetings.

Councilmember Pierce suggested reaching out to any of the groups the Council is a member of who have volunteers that do things. It doesn't seem like merely advertising the opportunities in the newspaper is generating interest.

Mayor Haydon indicated there are many volunteers in clubs around town and often those are the people who are active in community activities and he encouraged their membership to consider a position on a regional committee.

Councilmember Catalano advised she sits on the monthly Clayton Community Library Foundation Board meetings and has mentioned multiple times if anyone would be interested in serving, even on County Library Commission. Recently one (1) citizen expressed interest to her in one of the transportation committees and she will follow up with that citizen.

Councilmember Diaz advised he has tried to solicit some citizens to help without any luck.

Mayor Haydon opened up the subject for public comment.

Ann Stanaway advised she has not been approached to volunteer and does not require a stipend or anything. Ms. Stanaway noted she has volunteered for many things since she was ten years old.

Alex Restall, Stranahan Circle, suggested flyers distributed at KinderCare or local businesses, advertisement on the Nextdoor website, or local Mom's groups, for example, the Mt. Diablo Mothers Club.

Mayor Haydon advised the City Council will continue with its outreach and take these suggestions into consideration.

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

Mayor Haydon requested the Clayton Fountain Operation Policy be brought to a future meeting for review. Councilmember Catalano also expressed interest in a review of the Clayton Fountain Operation Policy.

10. RECESS THE CITY COUNCIL MEETING - Mayor Haydon recessed the City Council meeting at 9:33 p.m.
(until after the conclusion of the Oakhurst Geological Hazard Abatement District meeting)

11. RECONVENE THE CITY COUNCIL MEETING – Mayor Haydon reconvened the City Council meeting at 9:37 p.m.

12. CLOSED SESSION

Brian Buddell raised point of order regarding the Government Code section as the Closed Session requirement is for a prior open and public comment of the hearing. Mr. Buddell is not aware of any such occurrence and he objects as a citizen to the session being closed as it would be a violation of the stated Government Code.

Attorney Mala Subramanian advised this noticed is on the agenda to discuss; this is the matter before Council which involves the listed properties located on Oak Street.

Mr. Buddell advised the Government Code section under which this session is being closed actually requires a prior open and public hearing for it to be discussed before this can be closed and if it hasn't happened this session cannot be closed by statute. Mr. Buddell then read Government Code Section 54956.8, *"Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease. However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate."*

City Attorney Subramanian indicated this agenda meets those Government Code requirements prior to going into closed session. She noted the Agenda included the description of the property, 1005 and 1007 Oak Street with the appropriate APNs, lists the City's negotiators and in addition it lists the negotiating parties that are interested in purchasing the property, and the matter restricted to the terms of price and terms of payment.

Mr. Buddell remarked with all due respect, counsel, it does not require public disclosure, it requires a prior hearing; it is a statutory requirement that cannot be avoided by listing the names on the agenda. Mr. Buddell continued his objection to closed session of this hearing and going forward he will consider legal action against the City if it continues and will also move to block any negotiations and sale of the property that come out of this Closed Session. Mr. Buddell provided two options: 1. Open this session as Government Code states before it may be closed; or 2. Place it on a future agenda after an open and public hearing is held. Mr. Buddell expressed he does not write the laws, the City is supposed to follow them.

Mayor Haydon then read the listed Closed Session title and description.

Mr. Buddell, advised his objection remains on the record and reserves his rights to pursue legal action on behalf of himself and other residents of Clayton should the sale go forward; without prior public knowledge of what this is about, it may be a great thing, if in Closed Session it is not known.

Ms. Subramanian clarified the Government Code Section that was cited does not require a public hearing, it just requires the Council in an open and public session to identify the negotiators, the real property and the persons with whom the negotiations will occur with. Mr. Napper added the City Council in Closed Session can discuss the item but the City Council cannot bind itself or the City in Closed Session. If the Council were to instruct its negotiators as to a certain price or a certain payment, that instruction would

then have to come back at a subsequent public meeting that is noticed to the public in open session.

City Attorney Subramanian advised the purpose of a closed session is to direct its negotiators on the price and terms of payment without notifying the other party what interests or your caps or thresholds are. Since you are not negotiating publicly with the other party present, again it is limited to price and terms of payment in closed session. Any subsequent action to potentially sell the property would have to be done in a noticed open session setting.

Mayor Haydon announced the City Council will adjourn into Closed Session for the following noticed items (9:43 p.m.):

- (a) Government Code Section 54956.8, Conference with Real Property Negotiator.

- 1. Real Properties: 1005 and 1007 Oak Street, Clayton, CA
(APNs 119-050-034, 119-050-008, and 119-050-009)

Instructions to City Negotiators: City Manager Gary Napper and Mr. Edward Del Beccaro, Managing Director, Transwestern, regarding price and terms of payment.

Negotiating Parties: Mr. Michael Paez, The Kase Group (Investment Real Estate, Lafayette) representing Luis Munoz.

Report Out From Closed Session (10:20 p.m.)

Mayor Haydon stated there is no reportable action.

- 13. **ADJOURNMENT**– on call by Mayor Haydon, the City Council adjourned its meeting at 10:21 p.m.

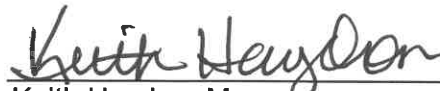
The City Council of August 7, 2018 has been canceled.
The next regularly scheduled meeting of the City Council will be August 21, 2018.

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Respectfully submitted,

Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL



Keith Haydon, Mayor

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