



# **AGENDA**

## **REGULAR MEETING**

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## **CLAYTON CITY COUNCIL**

\* \* \*

**TUESDAY, March 20, 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](http://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 \***

**March 20, 2018**

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

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

3. **CONSENT CALENDAR**

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

(a) Approve the minutes of the City Council’s regular meeting of March 6, 2018.

[\(View Here\)](#)

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

(c) Adopt a Resolution setting the City’s Equivalent Runoff Unit (ERU) real property parcel assessment levy in FY 2018-19 at current rates to pay for local storm water/clean water programs and services required by the unfunded federal and state-mandated National Pollution Discharge Elimination System (NPDES) Program (storm water pollution prevention). [\(View Here\)](#)

(d) Adopt a Resolution approving the City’s 2017 Annual Progress Report regarding its HCD-certified Housing Element. [\(View Here\)](#)

(e) Adopt a Resolution approving a Lease Agreement with the Clayton Historical Society for its continued use of City property for the Clayton Museum and exterior ground improvements. [\(View Here\)](#)

4. **RECOGNITIONS AND PRESENTATIONS** – None.

5. **REPORTS**

(a) Planning Commission – No meeting held.

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

(c) City Manager/Staff

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

(e) Other

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

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

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

**7. PUBLIC HEARING**

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

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

**8. ACTION ITEMS – None.**

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

**10. CLOSED SESSION – None.**

**11. ADJOURNMENT**

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

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

**TUESDAY, March 6, 2018**

**Agenda Date:** 3-20-2018

**Agenda Item:** 3a

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:00 p.m. by Mayor Haydon in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Haydon, Vice Mayor Shuey, and Councilmembers Catalano, Diaz and Pierce. Councilmembers absent: None. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Police Chief Elise Warren, Maintenance Supervisor Mark Janney, and City Clerk/HR Manager Janet Brown.

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

3. **CONSENT CALENDAR**

Mayor Haydon indicated a member of the public wished to speak on two Consent Calendar items.

Ann Stanaway, 1553 Haviland Place, noted Item 3(c) is an initiative much overdue and hopes the landscaping committee will be able to implement sustainable development policies in Clayton. She also commented about Item 3(d) as to how Clayton will actually keep its commitment that is inferred by this initiative given the City's lack of appetite to enforce public safety ordinances.

**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 February 20, 2018.
- (b) Approved the Financial Demands and Obligations of the City.
- (c) Adopted Resolution No. 6-2018 supporting Proposition 68 on the June 2018 statewide ballot: the "California Drought Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018."
- (d) Adopted Resolution No. 7-2018 supporting the "Reducing Crime and Keeping California Safe Act of 2018" ballot initiative.
- (e) Adopted Resolution No. 8-2018 appointing Ted Sudderth, Doris Ward, and William Wiggins to the Trails and Landscaping Citizens Advisory Committee for the terms of office to expire December 31, 2018.

Mayor Haydon noted on Item 3(a) there is a typo on page three (3) of the February 20, 2018 minutes; he also announced with the passage of Item 3(e) the Council just appointed three (3) new members to its Trails and Landscaping Committee: Ted Sudderth, Doris Ward, and William Wiggins.

#### 4. RECOGNITIONS AND PRESENTATIONS

- (a) Recognition of retiring Clayton Police Officer Allen White in appreciation for his local law enforcement services to the Clayton community from August 2000 through February 2018.

Mayor Haydon presented Allen White, former Clayton Police Officer, with a plaque in appreciation for his valued civic service to the Clayton community. Mayor Haydon also read the last dispatch on Officer White that went out on his last day of employment as he thought it was a very fitting tribute and he wanted to share it publicly. Mr. White remarked he was with the City over seventeen (17) years and has enjoyed his time and community aspect here. He looks forward to his next endeavor with Contra Costa County Animal Services.

- (b) Certificates of Recognition to Clayton Valley Charter High School students for exemplifying the "Do the Right Thing" character trait of "Kindness" during the months of November and December 2017.

Mayor Haydon and Clayton Valley Charter High School Academic Advisor (9<sup>th</sup> grade) Bob Ralston presented a Certificate to student Zack Storn. Mayor Haydon also gave him certificates of recognition from State Senator Steve Glazer and Assemblymember Tim Grayson offices. Student Henry Smith was not able to make the presentation this evening and the certificates were given to Mr. Ralston to give to him.

- (c) Certificates of Recognition to public school students for exemplifying the "Do the Right Thing" character trait of "Self-Discipline" during the months of January and February 2018.

Mayor Haydon and Mt. Diablo Elementary School Principal Dawn Edwards and third grade teacher Ms. Aimee Grispo presented a Certificate to student Delainey Brady.

Mayor Haydon and Diablo View Middle School Principal Patti Bannister and Ms. Laura Ploetz presented Certificates to students Alexander Akl and Laine Moraes.

Mayor Haydon and Clayton Valley Charter High School Academic Advisor (9<sup>th</sup> grade) Bob Ralston presented a Certificate to student Max Keil. Student Margret York was unable to attend this evening and Mr. Ralston took the Certificate to be given to her.

- (d) Issuance of a Proclamation declaring March 2018 as "American Red Cross Month" in the City of Clayton.

Mayor Haydon read and presented the proclamation to David Hofmann and Paul Adler from the local chapter of the American Red Cross. Mr. Hofmann provided some statistics specific to Contra Costa County Red Cross volunteers and their service hours to recent disasters in the region.

#### 5. REPORTS

- (a) Planning Commission – Commissioner Peter Cloven indicated the Commission's agenda at its meeting of February 27, 2018 included a Site Plan Review permit located at 121 Oak Court for the addition of approximately 1,080 square feet. This item was unanimously approved.

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

(c) City Manager/Staff –

City Manager Napper reported with the advance known departure of Officer White, a new police officer started this week. Officer Torrey Jarvis' employment keeps the Clayton Police force fully staffed.

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

Councilmember Catalano attended the Clayton Library Foundation's meeting and announced the upcoming Creekside Arts event taking place on March 23 through 25, 2018. Councilmember Catalano also announced she is Chair of the Clayton Business and Community Association Scholarship Committee noting student applications are available on the CBCA website and due by April 2, 2018.

Vice Mayor Shuey indicated "No Report".

Councilmember Pierce attended a tour of the North Bay fires aftermath with Metropolitan Transportation Commission; she also attended the California Transportation Foundation Awards, two Contra Costa Transportation Authority Board meetings, and four Metropolitan Transportation Commission's committee and Board meetings.

Councilmember Diaz attended the Contra Costa Fire Protection District's 51<sup>st</sup> Academy Graduation, and he announced the Clayton Business and Community Association's annual Art & Wine Festival scheduled for April 28 and 29, 2018.

Mayor Haydon attended the Clayton Business and Community Association's general membership meeting, the Contra Costa County Fire Protection District's 51<sup>st</sup> Academy Graduation, the Cub Scout Troop 262 Blue and Gold Banquet, the Contra Costa Habitat Conservancy Board meeting, the Contra Costa County Mayors' Conference, and was a judge at the annual Chili cook-off hosted by the Clayton Club Saloon.

(e) Other – None.

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

Tamara Steiner, Clayton Pioneer, announced the Clayton Cleans Up! Event will still be taking place on the Saturday of the week prior to Clayton Business and Community Association's annual Art and Wine event [April 21, 2018].

## **7. PUBLIC HEARINGS – None.**

## **8. ACTION ITEMS**

- (a) Consider an independent safety inspection report on the existing North Valley Park playground and surrounding areas, and provide direction to staff regarding the extent of improvements to the park's resilient play surface, new playground apparatus, sheltered picnic canopies, and shade trees. (ref. North Valley Park Rehabilitation Project - CIP No. 10442)  
(Maintenance Supervisor)

Maintenance Supervisor Mark Janney presented the staff report noting at the City Council meeting of January 16, staff was directed to provide more research on a few items:

a. Determine through independent inspection if the existing North Valley Park playground equipment still has useful life and if so, could replacement equipment still be purchased or repaired as needed.

He noted staff hired Borrecco/Kilian & Associates to conduct an independent inspection of the existing equipment and play area. After inspection Mr. Kilian provided a written report noting entanglement issues on three slides, various cracking, various protrusions, corrosion, apparatus steps that are not evenly spaced creating hazards, and ADA issues. Staff contacted Miracle, the manufacturer of the existing equipment, and found parts can be retrofitted; however, a concern is once the deteriorated rubber play surface is removed for replacement, the underlying play equipment metal supports may have corrosion which would necessitate replacement. It is Mr. Kilian's professional independent opinion to replace the entire play structure now with new equipment as replacement parts can be equally as expensive.

b. A cost estimate to install sunshade sails over the playground equipment.

Staff requested estimates for the installation of a sunshade sail and responding quotes ranged between \$43,000 to \$48,000, including the sunshade structure, freight, engineering and installation. The sunshade structure is rated at 90 mph winds.

c. Is there a nearby park that could be visited with the proposed playground installed, as shown in the third option presented to the City Council at its January 16 meeting.

Staff contacted the sales representative for playground option 3 and found this was a design rendering that was created for a client; however the company has no records if it was ever built and installed.

d. Installation of shade structures over the two existing picnic tables similar to those at Clayton Community Park, and shade trees.

Mr. Janney advised new playground equipment and picnic shade structures would be \$140,000 - \$186,400. There could also be an additional expense of \$8,000 to \$15,000 to address ADA access concerns noted in the inspection report. There is \$59,000 earmarked for tree plantings that may be used for the twenty to twenty five shade trees to be planted at North Valley Park.

Vice Mayor Shuey inquired if there is any piece of the existing equipment that is in need of replacement? Mr. Janney responded the three (3) slides and the decking where the stairs vary in height are in need of replacement. Vice Mayor Shuey asked if there have been any complaints about the condition of the existing equipment. Mr. Janney responded not to his knowledge.

City Manager Gary Napper added in the inspection findings there are entanglement issues and overlapping spill zone concerns with the current placement of the existing slides. Mr. Janney concurred and commented if two kids were using each slide at the same time, there could be a collision in the current spill zone.

Councilmember Pierce commented it appears from the report the sunshade structure is made of fabric and mounted on four (4) posts; she asked if there was any thought given to the installation of an all-weather metal shade structure instead of the fabric?

Mr. Janney responded he did not price out a metal shade structure over the play equipment but believed the costs of engineering and installation would be similar.

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

Vice Mayor Shuey expressed disagreement with the inspector's report regarding the spill zones at the slides as it was compliant when it was installed. He acknowledged the rubber play surface is in need of replacement; but now, because we are government and have a safety inspection report, the play structure also needs replacement. He preferred Option 2 as it is closest to the original design. He further advised he is no longer interested in the sunshade structure as it is too expensive.

Councilmember Pierce added the cost to replace the play structure will more than likely be less than retrofitting pieces together; she also preferred playground structure Option 2. She indicated it would be ideal to install some fast-growing shade trees near the play structure to sooner offer shade.

Councilmember Catalano inquired on the life expectancy of new rubber play surface, and expressed preference for playground structure Option 2. Mr. Janney responded new play surface lasts approximately 8-10 years.

City Manager Napper commented during the last twenty-five (25) years since the North Valley play equipment was manufactured, safety codes have changed regarding playground structures.

**It was moved by Councilmember Pierce, seconded by Councilmember Diaz, to authorize the scope of improvements at North Valley Park to consist of Option 2 playground equipment, replacement of the rubber play surface, the addition of shade structures over the two (2) existing picnic areas, and the addition of fast-growing trees near the play structure. (Passed; 5-0 vote).**

- (b) Consider a proposal by Clayton Valley Little League (CVLL) for a partnership with the City involving designation of Clayton Community Park as its home fields to include CVLL in-kind maintenance, in-park storage, and a permanent batting cage location.  
(Vice Mayor Shuey)

Vice Mayor Shuey announced at this point he will be recusing himself upon the advice of legal counsel. He doesn't think there is actual conflict, however he will work with the City Attorney to obtain an FPPC ruling in that regard to make sure prior to going through the process which he believed with result in allowing his participation; if he can't; it can muck up the works. Vice Mayor Shuey noted members of the Clayton Valley Little League Board are present this evening to provide the presentation.

City Attorney Subramanian clarified this recusal is because Vice Mayor Shuey is on the Clayton Valley Little League Board of Directors and this item may result in a future agreement with the Little League.

[Vice Mayor Shuey left the Council Chambers at 8:03 p.m.]

Joe Knapp, President of Clayton Valley Little League's Board of Directors, proposed a potential opportunity for the City of Clayton and Clayton Valley Little League to work together to improve Community Park for its home fields. He noted a number of alternative options they had been exploring became exhausted, such as the Cemex Quarry, and Clayton Valley Charter High School has become unavailable for use by



Clayton Valley Little League. They are in search of, and looking into turning Clayton Community Park into its home fields. Currently, Clayton Valley Little League is unable to host All Stars or Tournament of Champions events as it does not have a home field. Mr. Knapp displayed a PowerPoint picture indicating potential improvements that could be completed in phases, with the most important one on Clayton Community Park Field 1 of moving home plate backwards by 20 feet, closer to the backstop, to allow the addition of two additional baseball fields on Field 1, and add two new T-Ball fields on Clayton Community Park Field 4.

Mayor Haydon inquired if this potential project has been broken down into phases yet? Mr. Knapp advised the phases have not been broken down yet as this is just a proposal to see if the City Council would be interested in pursuing a partnership.

Mr. Knapp noted the addition of a snack shack on Field 1 could be a great source of income for the League, plus the addition of two batting cages by adding a fence which could be funded by Clayton Valley Little League and used during practice for individuals. The addition of lighting is also proposed on Clayton Community Park Fields 2 and 3. Mr. Knapp acknowledged Fields 2 and 3 are also being used by soccer but believed the proposed improvements would not interfere with one another.

Councilmember Catalano noted the soccer league no longer use the fields, however private groups are. Mr. Knapp confirmed that is correct as the condition of the fields have been a problem with the ground squirrels. Councilmember Catalano inquired on who the property owner is of Field 4? City Manager Napper responded the City owns most of Field 4 with a narrow section closest to the gymnasium under the ownership of Mt. Diablo Unified School District.

Mr. Knapp further advised the need of additional parking stalls on the asphalt located on the park's drive.

Mayor Haydon inquired on the type of partnership Clayton Valley Little League is seeking with the City? Mr. Knapp responded it would create more people coming to the City during All Stars games and Tournament of Champions; having them come to our park facility creates revenue opportunities for the downtown businesses. CVLL would diligently help maintain the fields by filling in potholes and take better care of that space.

Mayor Haydon further inquired if they were looking for the City to fund or assist with the actual construction or redesign of the fields and then the League would take over maintenance? Mr. Knapp indicated they would not be able to take over sole maintenance of the fields but give it attention by assisting with its maintenance.

Councilmember Catalano mentioned another group has been fundraising at the elementary school to install a track, soccer field and is unsure if they are also looking into baseball or softball fields. Mr. Knapp advised he is also involved in that group and advised the baseball field will still be there however the synthetic turf originally proposed is going to traditional grass.

Councilmember Catalano stated the proposed elementary school ballfields still does not seem to be enough for CVLL's needs. Mr. Knapp indicated the elementary school field would be in conjunction with Clayton Community Park and there may be an additional need of using Highlands Elementary School fields as well to house six different baseball divisions, three softball divisions, and close to 600 kids to accommodate practice and game times. He added Antioch has an awesome facility with scorekeeper booths.

Mayor Haydon asked if the Little League is able to assist with funding. Mr. Knapp advised the Little League has been fundraising and have some funds available that can be used toward this purpose. He estimated the cost to re-design Field 1 would be somewhere around \$200,000.

Mr. Knapp continued his presentation noting additional storage is needed and thought with the construction of scorekeeper's booths there could be storage space underneath the elevated platform, thereby eliminating the old Knapp Boxes currently being used.

Councilmember Catalano inquired what is the primary season of baseball/softball? Mr. Knapp responded the season typically begins in January and goes until June or July.

Councilmember Pierce understands there is an issue in needing to find additional storage and the need to move the containers currently being used for storage from their current location for use by the Little League. Councilmember Pierce indicated she walked the park today looking for site opportunities, and understands the need for the scorekeepers' booth as long as it is done aesthetically well. Councilmember Pierce found on Field 2 near the dugout and end of the infield area there is an existing foul ball fence and she suggested a storage container could be placed there with cladding the steel containers by enclosing them in a way that fits into the surroundings.

Councilmember Catalano inquired on the wild boars that have been on the upper fields in years past and if any thought went into doing something to prevent this from occurring in the future? Councilmember Pierce added that is a risk as we have experienced wild boars can get through and around fences.

City Manager Napper noted there are logistical issues needing to be determined. The City obtained quotes a few years ago to re-do Clayton Community Park Field 1 with turf and at that time the quote was approximately \$100,000 just to replace the existing grass; when skinning turf to re-configure infields irrigation lines will also need reconfiguration; installation of a retaining wall would need to be installed along the proposed additional parking area due to adjacent hillside slope; and consideration also needs to revolve around the Fair Play Act for field access by both men and woman.

City Manager Napper understands this proposal is to occur in phases but deal points are needed and it sounds like Little League prefers to assist the City to do this; he thinks some phases and functions could be introduced more easily than others. Consideration also needs to be determined what the financial partnership might be or quid pro quo might be, such as CVLL maintenance of what: are there expectations, if more fields are skinned, what about extra infield dirt and other things? Does it mean CVLL is looking for higher levels of field maintenance services from the City through this proposal? Or will the new fields bring that differential to the table? Is there any expectant offset in City rental fees for the improved fields? First off, the City needs some written deal points to get an idea of what Little League has in mind. Secondly, does the City Council want staff to work with Clayton Valley Little League, in addition to that of a sub-committee appointed of Councilmembers involved to watch and guide this a little bit? Community Park is the public's fields and as the elected officials did it wish to assist in guiding this proposal, as a sounding board and to resolve differences in viewpoints?

Mayor Haydon opened the item to public comment.

Allen Lampo asked if the three main fields that Little League wants to work on, pushing one back twenty feet, how is that going to affect its current use by Diablo View Middle School? Will it affect them negatively? Mr. Knapp responded it should not affect the

fields' current use as Field 1 will be used by the senior division but is currently configured more like a major league field.

Mike Lauricella, Clayton Valley Little League, added the League needs these types of ballfields; he has been around the other leagues in the District 4 region, which region includes Oakland to Brentwood, and they have excellent fields. Some of the local economy will benefit as beginning in June to the end of July, as District 4 hosts a district wide Tournament of Champions and All Star games and home fields of all the leagues hosts games which brings people from all around to these home fields and gives them the opportunity to see what Clayton can provide.

Councilmember Pierce commented the proposal of Clayton Valley Little League is a great opportunity and vision for Clayton Community Park; with the help of a Council Sub-Committee, city manager, maintenance and engineering, this vision could be viable.

**It was moved by Councilmember Pierce, seconded by Councilmember Diaz, to authorize the formation of a Council sub-committee of Councilmember Pierce and Councilmember Catalano to work with Clayton Valley Little League and City staff on the vision of Clayton Community Park. (Passed; 4-0 vote).**

9. **COUNCIL ITEMS** – None.

10. **CLOSED SESSION** – None.

11. **ADJOURNMENT**– on call by Mayor Haydon, the City Council adjourned its meeting at 8:38 p.m.

The next regularly scheduled meeting of the City Council will be March 20, 2018.

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Respectfully submitted,

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Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

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Keith Haydon, Mayor

# # # # #




Agenda Date: 3/20/18

Agenda Item: 3b

# STAFF REPORT


TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: Kevin Mizuno, FINANCE MANAGER 

DATE: 3/20/18

SUBJECT: INVOICE SUMMARY

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Approved: 

Gary A. Napper  
City Manager

## RECOMMENDATION:

Approve the following Invoices:

Cash Requirements Report dated 3/16/18	\$123,034.49
ADP Payroll, week 11, PPE 3/11/18	\$100,053.74
<b>Total</b>	<b>\$223,088.23</b>

### Attachments:

Cash Requirements reports, dated 3/16/18 (5 pages)

ADP Payroll reports, week 11 (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
<b>ADP, LLC</b>								
ADP, LLC	3/20/2018	3/20/2018	510268235	Payroll fees PPE 2/25/18	\$152.11	\$0.00		\$152.11
				<i>Totals for ADP, LLC:</i>	<u>\$152.11</u>	<u>\$0.00</u>		<u>\$152.11</u>
<b>All City Management Services, Inc.</b>								
All City Management Services, Inc.	3/20/2018	3/20/2018	53351	School crossing guard services 2/11-2/14/18	\$443.28	\$0.00		\$443.28
				<i>Totals for All City Management Services, Inc.:</i>	<u>\$443.28</u>	<u>\$0.00</u>		<u>\$443.28</u>
<b>American Fidelity Assurance Company</b>								
American Fidelity Assurance Company	3/20/2018	3/20/2018	B713340	Supplemental Insurance for February	\$392.16	\$0.00		\$392.16
American Fidelity Assurance Company	3/20/2018	3/20/2018	2000217A	FSA, PPE 2/25/18	\$511.14	\$0.00		\$511.14
				<i>Totals for American Fidelity Assurance Company:</i>	<u>\$903.30</u>	<u>\$0.00</u>		<u>\$903.30</u>
<b>Authorize.net</b>								
Authorize.net	3/20/2018	3/20/2018	02/18	Online credit card gateway fee for February	\$26.20	\$0.00		\$26.20
Authorize.net	3/20/2018	3/20/2018	01/18	Online credit card gateway fee for January	\$26.05	\$0.00		\$26.05
				<i>Totals for Authorize.net:</i>	<u>\$52.25</u>	<u>\$0.00</u>		<u>\$52.25</u>
<b>CalPERS Retirement</b>								
CalPERS Retirement	3/20/2018	3/20/2018	CC032418	CC Retirement ending 3/24/18	\$146.78	\$0.00		\$146.78
CalPERS Retirement	3/20/2018	3/20/2018	031118	Retirement PPE 3/11/18	\$14,702.68	\$0.00		\$14,702.68
				<i>Totals for CalPERS Retirement:</i>	<u>\$14,849.46</u>	<u>\$0.00</u>		<u>\$14,849.46</u>
<b>Caltronics Business Systems, Inc</b>								
Caltronics Business Systems, Inc	3/20/2018	3/20/2018	2462568	Copier contract overage for February	\$280.82	\$0.00		\$280.82
				<i>Totals for Caltronics Business Systems, Inc:</i>	<u>\$280.82</u>	<u>\$0.00</u>		<u>\$280.82</u>
<b>CCWD</b>								
CCWD	3/20/2018	3/20/2018	1 Series	Water 1/14/18-3/1/18	\$8,630.36	\$0.00		\$8,630.36
				<i>Totals for CCWD:</i>	<u>\$8,630.36</u>	<u>\$0.00</u>		<u>\$8,630.36</u>
<b>City of Concord</b>								
City of Concord	3/20/2018	3/20/2018	64527	Dispatch services for January	\$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>
<b>Comcast</b>								
Comcast	3/20/2018	3/20/2018	030118	Internet 3/10/18-4/9/18	\$386.08	\$0.00		\$386.08
				<i>Totals for Comcast:</i>	<u>\$386.08</u>	<u>\$0.00</u>		<u>\$386.08</u>
<b>Concord Uniforms</b>								
Concord Uniforms	3/20/2018	3/20/2018	13540	Holster for Chief	\$184.82	\$0.00		\$184.82
Concord Uniforms	3/20/2018	3/20/2018	13569	Uniform, Officer	\$458.44	\$0.00		\$458.44
Concord Uniforms	3/20/2018	3/20/2018	13581	Firearm magazine pouch	\$49.97	\$0.00		\$49.97
				<i>Totals for Concord Uniforms:</i>	<u>\$693.23</u>	<u>\$0.00</u>		<u>\$693.23</u>
<b>Contra Costa County Police Chiefs' Assoc.</b>								
Contra Costa County Police Chiefs' Ass	3/20/2018	3/20/2018	2018	CCC Chiefs' Luncheon	\$70.00	\$0.00		\$70.00

## City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<i>Totals for Contra Costa County Police Chiefs' Assoc.:</i>					\$70.00	\$0.00		\$70.00
<b>Crop Production Svcs</b>								
Crop Production Svcs	3/20/2018	3/20/2018	35092382	Lawn seed	\$1,450.55	\$0.00		\$1,450.55
<i>Totals for Crop Production Svcs:</i>					\$1,450.55	\$0.00		\$1,450.55
<b>CSI Forensic Supply</b>								
CSI Forensic Supply	3/20/2018	3/20/2018	59322A	Handgun boxes	\$36.81	\$0.00		\$36.81
<i>Totals for CSI Forensic Supply:</i>					\$36.81	\$0.00		\$36.81
<b>Digital Services</b>								
Digital Services	3/20/2018	3/20/2018	11103	IT services 1/12/18-3/1/18	\$1,664.66	\$0.00		\$1,664.66
<i>Totals for Digital Services:</i>					\$1,664.66	\$0.00		\$1,664.66
<b>Dillon Electric Inc</b>								
Dillon Electric Inc	3/20/2018	3/20/2018	3634	Streetlight bulb replacement 1/24/18	\$461.43	\$0.00		\$461.43
Dillon Electric Inc	3/20/2018	3/20/2018	3650	Streetlight bulb replacement 3/9/18	\$564.22	\$0.00		\$564.22
Dillon Electric Inc	3/20/2018	3/20/2018	3640	Streetlight bulb replacement 2/9/18	\$535.80	\$0.00		\$535.80
<i>Totals for Dillon Electric Inc:</i>					\$1,561.45	\$0.00		\$1,561.45
<b>Express Services, Inc</b>								
Express Services, Inc	3/20/2018	3/20/2018	20274684	PD Office temp week end 3/4/18	\$633.12	\$0.00		\$633.12
Express Services, Inc	3/20/2018	3/20/2018	20237695	PD Office temp week end 2/25/18	\$422.08	\$0.00		\$422.08
<i>Totals for Express Services, Inc:</i>					\$1,055.20	\$0.00		\$1,055.20
<b>G.N. Henley, Inc</b>								
G.N. Henley, Inc	3/20/2018	3/20/2018	18-29	Oakhurst GHAD V-ditch repairs	\$19,870.12	\$0.00		\$19,870.12
G.N. Henley, Inc	3/20/2018	3/20/2018	18-23	Pavement repair @ El Portal Dr	\$5,500.00	\$0.00		\$5,500.00
<i>Totals for G.N. Henley, Inc:</i>					\$25,370.12	\$0.00		\$25,370.12
<b>Harris &amp; Associates, Inc.</b>								
Harris & Associates, Inc.	3/20/2018	3/20/2018	37115	Engineering services for February	\$190.00	\$0.00		\$190.00
Harris & Associates, Inc.	3/20/2018	3/20/2018	37114	Engineering services for February	\$17,007.50	\$0.00		\$17,007.50
Harris & Associates, Inc.	3/20/2018	3/20/2018	37113	Engineering services for February	\$4,940.00	\$0.00		\$4,940.00
<i>Totals for Harris &amp; Associates, Inc.:</i>					\$22,137.50	\$0.00		\$22,137.50
<b>iPayment</b>								
iPayment	3/20/2018	3/20/2018	02/18	Bankcard fee for February	\$152.20	\$0.00		\$152.20
iPayment	3/20/2018	3/20/2018	02/18	Online bankcard fee for February	\$56.64	\$0.00		\$56.64
<i>Totals for iPayment:</i>					\$208.84	\$0.00		\$208.84
<b>LarryLogic Productions</b>								
LarryLogic Productions	3/20/2018	3/20/2018	1717	City Council meeting production 3/6/18	\$390.00	\$0.00		\$390.00
<i>Totals for LarryLogic Productions:</i>					\$390.00	\$0.00		\$390.00
<b>Legal Defense Fund</b>								
Legal Defense F	3/20/2018	3/20/2018	238842	Dues 4/1/18	\$13.50	\$0.00		\$13.50



## 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
Sprint Comm (PD)	3/20/2018	3/20/2018	703335311-195	Cell phones 1/26/18-2/25/18	\$633.23	\$0.00		\$633.23
				<i>Totals for Sprint Comm (PD):</i>	<i>\$633.23</i>	<i>\$0.00</i>		<i>\$633.23</i>
<b>Staples Advantage</b>								
Staples Advantage	3/20/2018	3/20/2018	8048974266	Office supplies for February	\$57.95	\$0.00		\$57.95
				<i>Totals for Staples Advantage:</i>	<i>\$57.95</i>	<i>\$0.00</i>		<i>\$57.95</i>
<b>Turf Star, Inc.</b>								
Turf Star, Inc.	3/20/2018	3/20/2018	7006082-00	Landscape tool parts	\$48.01	\$0.00		\$48.01
				<i>Totals for Turf Star, Inc.:</i>	<i>\$48.01</i>	<i>\$0.00</i>		<i>\$48.01</i>
<b>US Bank - Corp Pmt System CalCard</b>								
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Storage unit rent	\$139.00	\$0.00		\$139.00
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Recruitment PD Clerk	\$104.99	\$0.00		\$104.99
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Office supplies	\$338.38	\$0.00		\$338.38
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Parking, CalPERS training	\$12.00	\$0.00		\$12.00
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Employee recognition luncheon	\$404.48	\$0.00		\$404.48
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	City Council meeting food	\$25.27	\$0.00		\$25.27
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Chairs for PD	\$2,274.33	\$0.00		\$2,274.33
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Plaque for Interim chief	\$63.62	\$0.00		\$63.62
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Name plate for new chief	\$76.34	\$0.00		\$76.34
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Parking, CalPERS training	\$12.00	\$0.00		\$12.00
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Fuel	\$325.00	\$0.00		\$325.00
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Fuel	\$111.52	\$0.00		\$111.52
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Fuel	\$170.00	\$0.00		\$170.00
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Tires	\$514.36	\$0.00		\$514.36
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Fuel	\$44.10	\$0.00		\$44.10
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	OSH, Amazon - Landscape supplies	\$214.36	\$0.00		\$214.36
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Fuel	\$287.37	\$0.00		\$287.37
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	OSH, Home Depot - Landscape supplies	\$188.76	\$0.00		\$188.76
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Autozone	\$10.86	\$0.00		\$10.86
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Fuel	\$544.03	\$0.00		\$544.03
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Vehicle Gas	\$330.22	\$0.00		\$330.22
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Training Meals	\$75.57	\$0.00		\$75.57
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Vehicle Gas	\$306.88	\$0.00		\$306.88
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Vehicle Gas	\$455.71	\$0.00		\$455.71
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Vehicle Gas	\$104.98	\$0.00		\$104.98
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Hotel, training	\$274.21	\$0.00		\$274.21
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Transunion.	\$70.50	\$0.00		\$70.50
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Image sales	\$39.31	\$0.00		\$39.31
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Meals	\$89.75	\$0.00		\$89.75
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Vehicle Gas	\$426.61	\$0.00		\$426.61
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Amazon, HC Warehouse, LA Police Gear	\$645.96	\$0.00		\$645.96
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Autozone	\$57.63	\$0.00		\$57.63
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Vehicle Gas	\$344.60	\$0.00		\$344.60
US Bank - Cor System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Vehicle Gas	\$487.41	\$0.00		\$487.41



## City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Office supplies	\$358.01	\$0.00		\$358.01
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Police Chiefs' Conference	\$955.71	\$0.00		\$955.71
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Vehicle Gas	\$30.02	\$0.00		\$30.02
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Vehicle Gas	\$134.41	\$0.00		\$134.41
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Vehicle Gas	\$265.66	\$0.00		\$265.66
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Car washes	\$77.94	\$0.00		\$77.94
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Vehicle Gas	\$48.05	\$0.00		\$48.05
US Bank - Corp Pmt System CalCard	3/20/2018	3/20/2018	Stmt end 2/22/18	Vehicle Gas	\$456.36	\$0.00		\$456.36
<i>Totals for US Bank - Corp Pmt System CalCard:</i>					<i>\$11,896.27</i>	<i>\$0.00</i>		<i>\$11,896.27</i>
<b>Verizon Wireless</b>								
Verizon Wireless	3/20/2018	3/20/2018	9802657279	Cell phones 2/2/18-3/1/18	\$84.08	\$0.00		\$84.08
<i>Totals for Verizon Wireless:</i>					<i>\$84.08</i>	<i>\$0.00</i>		<i>\$84.08</i>
<b>Western Exterminator</b>								
Western Exterminator	3/20/2018	3/20/2018	5840520	Pest control for February	\$385.50	\$0.00		\$385.50
<i>Totals for Western Exterminator:</i>					<i>\$385.50</i>	<i>\$0.00</i>		<i>\$385.50</i>
<b>Workers.com</b>								
Workers.com	3/20/2018	3/20/2018	121506	Seasonal workers week end 2/25/18	\$4,101.02	\$0.00		\$4,101.02
<i>Totals for Workers.com:</i>					<i>\$4,101.02</i>	<i>\$0.00</i>		<i>\$4,101.02</i>
<b>GRAND TOTALS:</b>					<b>\$123,034.49</b>	<b>\$0.00</b>		<b>\$123,034.49</b>






Agenda Date: 3-20-2018

Agenda Item: 3c

Approved:

Gary A. Napper  
City Manager

# STAFF REPORT

**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** Laura Hoffmeister, Assist. to the City Manager   
**DATE:** March 20, 2018  
**SUBJECT:** Establishing 2018-2019 ERU Assessment Rate for Federal and State Mandated National Pollution Discharge Elimination System (NPDES) Program (Storm Water Pollution Prevention)

## RECOMMENDATION

Staff recommends the City Council adopt the attached Resolution, Establishing the Rate Per Equivalent Run off Unit (ERU) for FY 2018-19 and requesting the Contra Costa County Flood Control and Water Conservation District to adopt an Annual Parcel Assessment for Drainage and Maintenance and the National Pollutant Discharge Elimination System (NPDES) Program, maintaining the current ERU Rate at \$29.00 per single-family parcel.

## BACKGROUND

The 1987 Reauthorization of the Federal Clean Water Act, as well as similar State legislation, required local agencies to obtain a NPDES Permit for discharging the contents of municipal storm drainage water conveyance systems. As implemented and enforced by the State through the Regional Water Quality Control Board (San Francisco Bay Area Region), this permitting effort is intended to improve water quality in the Delta and San Francisco Bay Estuary System, protect endangered species, and safeguard public waters and waterways for continued economic, recreation and health purposes. Stormwater runoff pollution has been identified as a significant impact on water quality and wildlife in the Bay Area by the State and Federal Governments. During wet weather, large amounts of pollutants, such as oil and grease from automobiles, heavy metals from vehicle exhaust and brake pads, such as copper and lead, pesticides, herbicides and fertilizers from lawns and gardens, soil erosion, and biological material enter the storm drain system and ultimately empty, untreated, into creeks, waterways, the Delta and the Bay.

The City participates and obtained its joint NPDES permit from the SF Regional Water Quality Control Board via the Contra Costa Clean Water Program whose participants include the cities within the County, the County and the Flood Control District. The City of Clayton has participated since its inception in September 1993. The SF Regional Water Quality Control Board issued the 4<sup>th</sup> five-year permit in November 18, 2015, covering FY 2015/16 – 2019/20. This permit, called the Municipal Regional Permit 2.0 (MRP 2.0), covers many counties and cities in the Bay Area. MRP 2.0 permit allows the City and other jurisdictions to utilize the storm water drainage system for the discharges into creeks that ultimately drain into the bay. This joint participation allows for the program management and permit process costs to be kept to a minimum through economies of scale and local and regional collaboration, at a fraction of the cost of doing it alone. The program provides for a regional approach to stormwater pollution control, regional monitoring, public education and outreach, technical support and training, special studies and NPDES permit administration requirements.

As part of its permit conditions, Clayton is required to implement a comprehensive Stormwater Management Plan (SWMP). The SWMP includes public participation and inter-governmental coordination designed to reduce the discharge of pollutants into the storm drainage system to the maximum extent practicable through the required implementation of 500 plus Best Management Practices and other requirements (about 350 pages long with an annual report checklist that is 100 pages in length), or BMPs as they are commonly referred. (For comparison: in 1993 first there were 12 BMPs, about 5 pages in length, all related to municipal maintenance activities such as drainage inlet cleaning and v-ditch cleaning. In 1997 there were 257 BMP's covering 40 pages. In FY 03-04 c3 amendments – an additional 75 pages were added to the permit by the Regional Board, requiring increased regulation and monitoring activities for development/construction controls, municipal maintenance, public education and outreach, illicit discharge and inspection, and documentation and reporting. In 2009 the document grew to 300 pages with 216 requirements). In 2016 the issuance of the new permit MRP 2.0 added more requirements emphasizing elimination of litter from waterways, retrofitting existing drainage inlets and systems to flow to bio planters or landscape areas, i.e.: "Green Infrastructure". (The next permit is planned for issuance in 2020-2021 and will likely contain even more unfunded mandates.)

The cost of meeting the obligations of the increased requirements contained in the MRP 2.0 will begin to exceed City revenues received from the ERU. The annual estimated shortfall for FY17-18 is expected to be \$75,337 which will be able to be covered by the Stormwater Reserve Fund balance. Although difficult to fully identify all future additional costs at this point, staff has identified the minimum estimated cost impacts by the new regulations to the City could further outpace revenues. Some new items required by MRP 2.0 include more elimination of litter going into storm drains; more monitoring and reporting on our storm drain inlets trash capture devices (which capture litter before going to the creek), and "green infrastructure" which sets forth standards for cities to redirect their existing storm drainage water into landscape areas; reduction of PCB contained in caulk and joint compounds (structures built between 1950 and 1980); and having cities regulate certain demolition and tenant improvements similar to that now done for asbestos and lead paint for homes and businesses through the planning and building permit process. In January 2018 the City Council authorized \$50,000 from FY 16-17 General Fund excess monies to go toward the mandatory Green Infrastructure Plan that permittees must develop and submit in October 2019.

### **AUGMENTED FUNDING DENIED**

When the program was originally established in 1993, the rate cap for the current parcel fee in Clayton was set by the City Council at \$29/ERU. Because other members of the Clean Water Program also have the same issues (costs exceeding available revenue available from the ERU rate) a cost/revenue analysis was undertaken by the Contra Costa Clean Water Program to evaluate possible additional funding mechanisms for the added requirements of the MRP. The Clean Water Program attempted three times the pursuit of legislation to add stormwater to the definitions of other utilities such as sewer and water and was not successful in receiving needed legislative support, and there is no support by the governor and his staff. It was after these state wide attempts were fruitless, our straining local funding and the continuing increased requirements by state regulating agencies that led to the 2012 Prop 218 property owner vote for a new parcel fee. The new second revenue measure did not pass. Local revenues for stormwater quality protection have been level since 2000—while compliance costs continue to increase. Additional state legislation is being pursued to establish a process to allow for future local voter consideration of new stormwater revenues. However, in order to continue to receive the City's existing current ERU rate of \$29 per single family parcel (the same amount levied since FY1999/2000) it must be levied. Failure to levy this fee would result in the City need to consider use of its General Fund, and/or a local city specific revenue measure since the regional Prop 218 measure did not receive sufficient voter support for passage.

### **DISCUSSION**

Staff currently participates, as is required by the Program agreement and state permit, on the Clean Water Program's Development Construction Controls/Green Infrastructure Committee, Administration Committee,

and Management Committee; and as needed in the Monitoring and Inspection Committee, and the GIS workgroup. City staff typically attends and participates in 4-5 meetings per month.

One of the largest components of the unfunded mandates was the trash load analysis and reduction program that cities had to undertake. This provision required cities to reduce their trash pollution load by 40% by 2014, and completely eliminate (100% reduction) by 2020. The City of Clayton installed 25 trash capture devices and has reduced its trash load to the 100% level at this time, about 5 years before the deadline. The trash capture devices and their installation were covered through ABAG grants that the City Maintenance staff received. However there are not any new funds to address the mandated studies and documentation that cities must file as part of its Annual Report to the State. They include mandatory maintenance items such as clearing of trash along specific areas of creeks and drainage inlets; the quantification of the materials collected; enforcement action (issuance of citations) to individuals for pollution runoff; creeks and waterways testing, mapping, monitoring and of all creeks and all outfalls to creeks, and specific on-going litter removal down to the size of a cigarette butt of litter on certain distance of creek segments and the cleaning of drainage inlets (we currently do public inlets only). The reporting format requires cities to use computer data base for mapping, reporting and monitoring information and transmitting electronically to the SF Regional Water Board where they will post to a public accessible web site. The Clean Water Program is establishing a cloud based GIS mapping project where we will have access to GIS data base, therefore at this time there is not a need to undertake an individual city effort to comply with this permit requirement. MRP 2.0 permit also requires increased and/or enhanced inspections to commercial businesses. The City contracts with Central Contra Costa Sanitary District to perform these inspections, as it has the special training needed to undertake and most of the businesses are restaurant businesses which it already periodically inspects. The permit also requires all maintenance staff and city contractors that apply herbicides or pesticides to be certified in Integrated Pest Management Practices (IPM), and Bay Friendly Certified, and for cities to have local IMP management plans and/or ordinances. The City has in the past obtained compliance by ensuring that one of its Maintenance Supervisors is trained. Due to recent maintenance supervisor staffing changes another maintenance staff member will need to become IPM Bay Friendly Certified. The City's outside noxious weed abatement contractor (Envirotech) and building pesticide contractor (Western Exterminator) are all Bay Friendly Trained and Certified applicators.

Another on-going issue is litigation. Certain third-party interest groups have repeatedly brought legal action against the EPA, State and Regional Agencies, the cities, county, and our Clean Water Program. These court actions have in the past increased costs for legal defense and added to the program requirement standards issued by the State, or as a result of judicial decisions. The Environmental organizations did file two years ago an appeal with the State on the MRP 2.0. This appeal is currently working its way through the process. To minimize the potential future legal costs the group program costs have included encumbrances of some group Program funds for this appeal purpose. To date Save the Bay has been closely monitoring the Trash Load Analysis and Action Plans. They are concerned that cities' plans may not be aggressive enough to reduce trash pollution to meet the permit requirement time frames. However recent analysis and report by SF Regional Water Board Staff noted that most all cities are or will be in compliance with trash load reduction requirements. A more recent development is the Environmental Organizations interest in Green Infrastructure, as this area is more complicated, costly and takes longer to achieve than the trash load reduction requirements. Recent changes at the Federal level in the EPA will not lessen permit requirements or actions mandated to the cities as state legislation and through the voter approved State Clean Water Act, directed by the SF Regional Water Quality Control Board, are the governing authorities.

Overall the City's total costs are comprised of two components, one consisting of the pro rata share of group costs based upon population. The other is the management and maintenance activities undertaken by the City and its contracts with others for required activity implementation and monitoring and reporting. All program staff and permittees (cities and county) have been and continue to make strong efforts to control costs at the program level. However, funds for the MRP 2.0 permit, technical and legal work, education and outreach, implementation of programs to address recent pollutants of concerns (PCB, Mercury, Lead, Nickel etc.), ongoing trash load reduction management, green infrastructure analysis/implementation, enforcement

compliance enforcement for construction site practices, and commercial operations, have increased these State unfunded mandate costs on cities and counties.

### **ASSESSMENT AND PROGRAM BUDGET**

Due to the implementation by the Program of unfunded mandate permit requirements by the SF Regional Board, the Group's Clean Water Program Budget increased 15% (\$400,000) in FY 17-18. In FY 2018-19 the Group program costs are \$3.06 million, about the same as last year. For the last few years and through 2021 increased costs are being addressed by Program reserve carry over or encumbrances of this year's funds to help reduce or smooth out increases; thus minimizing the impact (reduction) in return to source funds.

For FY 18-19 the City of Clayton's pro rata share of the Programs cost is .99% apx., (\$30,299) which is \$167 less than last year. Future costs increases and lack of Program carry over funding in the next few years will result in ongoing Programs Costs budget increases, which will result in less return to source funds to undertake the added local city permit requirements. At this time it is expected the decrease in return to source funds is likely to occur in 2019-20.

It is currently estimated that for FY 18-19 the gross revenues from Clayton's assessment will total approximately \$126,298. Of this \$30,299 is allocated to the Clean Water Program administration and group expenses; \$3,800 to the County Auditor for costs related to assessment collection; \$8,000 to the Sanitary District for commercial inspection, monitoring and municipal requested call out inspections; \$3,000 to the District for fiscal and assessment area management, \$3,000 for program reserve, and \$10,000 for our annual state discharge permit fee. Thus, the remaining funds available to the City, for all other activities are approximately \$68,199 an increase of \$167 over this fiscal year 2017-18 budget (note: since 2005 there will have been a decrease of almost \$34,000 in annual return to source funds due to increased state unfunded mandate permit requirements which have been undertaken by the Program). Approximately fifty-five percent of the City's funds are directly spent on labor costs of maintenance activities required by the program, such as storm drain inspection and cleaning, creek clearing; responding to spill calls; the remaining is divided between equipment and materials; monitoring and inspection; and management and reporting. For fiscal year 17-18 (this fiscal year) it is projected that \$75,377 may be needed from the Stormwater Reserve Fund. Any future FY shortfalls are anticipated to be covered by the City's Stormwater Fund reserves. Thereafter, if additional revenues are needed, the City must default to consider use of its General Fund, and/or a local city specific revenue measure since the regional Prop 218 measure did not receive enough support for passage.

To continue the local revenue source necessary to fund the unfunded mandates by federal and state government regulations, the City annually authorizes the Contra Costa Board of Supervisors to direct the Contra Costa Flood Control and Water Conservation District to establish a storm water utility area for the City and to impose benefit assessments on all applicable parcels within the City of Clayton. This item is the annual consideration to request the local assessment levy which provides funding to the Federal and State Clean Water program mandates which the City must undertake and participate in according to Federal and State law. **Staff recommends no increase to the rate for FY 2018-19; it will be the same rate as the last eighteen fiscal years, which is \$29.00 per ERU.**

Since the City is not exceeding the current rate cap and not increasing the levy rate, voter approval requirement of Prop. 218 process does not apply. A single family detached dwelling is typically one ERU; homes on lots 20,000 sq. ft. or larger are allocated 1.7 ERU's; attached homes (e.g., townhomes and duets) are 0.7 ERU. This formula is the same throughout all Contra Costa communities and all cities and the County funds their NPDES costs through the ERU assessments.

### **FISCAL IMPACT**

Although a Federal and State Mandated program, cities do not receive any revenues from the Federal and State governments to offset or cover the mandated requirements. Consequently, the Stormwater Utility Rate and Assessment areas were established in 1993 by the County and the Cities to develop a funding source to cover the costs of the Federal and State mandates.

The recommended assessment for FY 2018-19 is the same rate that is currently in place. Should the City not authorize the Flood Control District to establish and collect the annual assessments, the City still has the financial and legal responsibility to perform the Permit requirements but would not receive the apx. \$126,298 generated by the annual assessment. Mandated activities would need funding from another source, such as the General Fund. Given the high level of commitment of the General Fund to other City programs and projects, prior state "takes" of local funds, loss of redevelopment funds, the recent economic downturn, and fixed cost impacts to the General Fund, these NPDES costs, if paid for by the General Fund, would adversely impact other services and operations the City currently provides to the community. It must be noted here the Regional Water Quality Control Board and several case laws consistently declare clean storm water are of the utmost state priority and public agencies have been given the tools (i.e.: local taxing authority) to generate additional revenues for these purposes by garnering local voter approval to tax themselves more for this mandate.

Additional implementation measures such as that needed for monitoring and maintenance of new Stormwater facilities required under our mandated permit and installed as part of new construction within Clayton (C-3), have been addressed by the City Council to provide for methods that are self supported by the new development such as Benefit Assessment Districts or Homeowners Associations or combination thereof, or other approach that would not financially impact the city and its general funds. This Council-directed policy minimizes potential impacts to the under-funded Stormwater fund or the City's General Fund for the permanent new development installed specific requirements to meet the new state regulations. However not covered by these are the general overall reporting, enforcement action and trash reduction action plans, commercial inspections, monitoring enhancements required by the regional board are reasons that the current assessment fee should be continued.

### **CONCLUSION**

To continue the same revenue source required to fund the state mandated activities the City annually authorizes the Contra Costa Board of Supervisors to direct the Contra Costa Flood Control and Water Conservation District to impose annual benefit assessments on all applicable parcels within the City of Clayton. The attached Resolution would maintain the current Stormwater Utility Rate assessment of \$29.00 per ERU for FY 2018-19.

### **Attachments:**

- Proposed ERU Resolution for FY 2018-2019
- Clean Water Program Budget costs and cost sharing formula FY 2018-19
- Stormwater Fund 216 Budget Information
- Stormwater Budget History and Forecast

**RESOLUTION NO. \_\_-2018**

**A RESOLUTION ESTABLISHING THE RATE PER EQUIVILANT RUN-OFF UNIT (ERU) FOR FY 2018-2019 AND REQUESTING THE CONTRA COSTA FLOOD CONTROL AND WATER CONSERVATION DISTRICT TO ADOPT AN ANNUAL PARCEL ASSESSMENT FOR DRAINAGE MAINTENANCE AND THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

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

**WHEREAS**, under the Federal Water Quality Act [33 U.S.C. Section 1342 (p)], certain municipal stormwater discharges require a permit from the appropriate federal or state authorities pursuant to the National Pollutant Discharge Elimination System (NPDES) program; and

**WHEREAS**, the City of Clayton, in conjunction with other affected jurisdictions within Contra Costa County, applied to the State Regional Water Quality Control Board and received a Joint NPDES Permit which requires the implementation of a Storm Water Management Plan and Best Management Practices to minimize or eliminate pollutants from entering stormwaters; and

**WHEREAS**, Assembly Bill 2768 ( West's Water Code Appendix, Section 63-12 and 63-12.9) authorizes the Contra Costa County Flood Control and Water Conservation District (District) to establish Stormwater Utility Areas (SUA) and to levy annual benefit assessments for the purpose of carrying our activities required under the NPDES program; and

**WHEREAS**, it is the intent of the City to utilize funds received from its Stormwater Utility Area (SUA) for implementation of the NPDES program and local drainage maintenance activities; and

**WHEREAS**, at the request of the City, the Contra Costa County Flood Control District and Water Conservation District (District) has completed the process for the formation of a SUA, including the adoption of the Stormwater Utility Assessment Drainage Ordinance No. 93-47; and

**WHEREAS**, the SUA and Program Group Costs payment agreement between the City and the District requires that the City of Clayton annually, by May 1, determine its rate to be assigned to a single ERU for the forthcoming fiscal year; and



**WHEREAS**, the City Council adopted Resolution 9-93, which established the range of the annual assessment to be imposed by the District within the storm water utility area not to exceed \$29 per ERU; and

**WHEREAS**, the City of Clayton has operated at its maximum \$29 per ERU rate since FY 1999-2000 (the last eighteen fiscal years) and this same rate is proposed again for FY 2018-2019.

**NOW, THEREFORE, BE IT RESOLVED** the City Council of Clayton, California does hereby determine that its real property assessment rate to be assigned to a single ERU for FY 2018-2019 shall be set and assessed at \$29.00; and

**BE IT FURTHER RESOLVED**, the City Council of Clayton, California, does hereby request the Contra Costa Flood Control and Water Conservation District to adopt the SUA levies in Clayton based on the above established rate.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Clayton, California at a regular public meeting of thereof held on March 20, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The City Council of Clayton, CA

\_\_\_\_\_  
Keith Haydon, Mayor

ATTEST:

\_\_\_\_\_  
Janet Brown, City Clerk

I hereby certify that the foregoing resolution was duly and regularly passed by the City Council of the City of Clayton at a regular public meeting held on March 20, 2018.

\_\_\_\_\_  
Janet Brown, City Clerk

*Reso erurate18-19*

**CONTRA COSTA CLEAN WATER PROGRAM  
GROUP COSTS ALLOCATION METHODOLOGY  
FOR FISCAL YEAR 2018/19**

City/County/State	Population January 1, 2016	Population January 1, 2017 <sup>(1)</sup>	Percent Change	Prorata % of Program Cost <sup>(2)</sup>	Cost <sup>(3)</sup> Allocation
<b>CONTRA COSTA COUNTY</b>	<b>1,126,824</b>	<b>1,139,513</b>	<b>1.13%</b>		<b>\$ 3,059,693</b>
ANTIOCH	113,495	114,241	0.66%	10.03%	\$ 306,747
BRENTWOOD	59,058	61,055	3.38%	5.36%	\$ 163,938
CLAYTON	11,262	11,284	0.20%	0.99%	\$ 30,299
CONCORD	128,280	128,370	0.07%	11.27%	\$ 344,685
DANVILLE	43,287	43,355	0.16%	3.80%	\$ 116,412
EL CERRITO	24,490	24,600	0.45%	2.16%	\$ 66,053
HERCULES	24,909	25,675	3.08%	2.25%	\$ 68,940
LAFAYETTE	25,041	25,199	0.63%	2.21%	\$ 67,662
MARTINEZ	37,224	37,658	1.17%	3.30%	\$ 101,115
MORAGA	16,581	16,676	0.57%	1.46%	\$ 44,777
OAKLEY	40,327	41,199	2.16%	3.62%	\$ 110,623
ORINDA	18,838	18,935	0.51%	1.66%	\$ 50,842
PINOLE	18,827	18,975	0.79%	1.67%	\$ 50,950
PITTSBURG	68,133	69,818	2.47%	6.13%	\$ 187,468
PLEASANT HILL	34,232	34,657	1.24%	3.04%	\$ 93,057
RICHMOND	110,886	111,785	0.81%	9.81%	\$ 300,153
SAN PABLO	30,972	31,053	0.26%	2.73%	\$ 83,380
SAN RAMON	78,729	80,550	2.31%	7.07%	\$ 216,284
WALNUT CREEK	70,340	70,974	0.90%	6.23%	\$ 190,571
UNINCORP. COUNTY	171,913	173,454	0.90%	15.22%	\$ 465,739
				100.00%	\$ 3,059,693

- Population estimate based on State of California Department of Finance (E-1) City/County projections- January 1, 2016 and 2017. Figures are updated in May of each year.
- Percentages based on prorata of population.
- Cost Allocation amounts are the prorata portion of the FY 2018/19 Group Program Budget, which includes contingency.

City of Clayton  
Stormwater Fund 216  
Budget 17-18

Account Number	Account Name	2015-16 Actual	2016-17 Actual	2017-18 Budget
7111	Salaries/Regular	30,317	25,213	28,420
7112	Temporary Help	5,618	12,905	9,840
7218	LTD Insurance	228	230	500
7220	PERS Retirement	11,331	3,135	3,280
7221	PERS Retirement - Unfunded Liability	-	2,025	3,430
7231	Workers Comp Insurance	1,977	2,089	1,610
7232	Unemployment Insurance	613	320	660
7233	FICA Taxes	923	476	1,170
7246	Benefit Insurance	4,592	5,561	6,310
7311	General Supplies	4,685	1,862	9,000
7341	Buildings/Grounds Maintenance	-	-	10,500
7343	Vehicle Maintenance	-	1,078	3,000
7344	Vehicle Gas, Oil, and Supplies	-	929	2,300
7373	Education and Training	-	-	500
7389	Misc. Expenses	165	16	-
7409	Street Sweeping Services	42,000	41,125	46,400
7411	Professional Services Retainer (Legal)	386	-	-
7412	Engineering Services	1,159	1,163	2,000
7419	Other Prof. Services	18,791	8,493	24,810
7481	State Regional Annual Discharge Fee	6,869	8,980	10,000
7486	CERF Charges/Depreciation	-	2,900	3,200
7520	Project/Program Costs - Outreach	54	800	2,000
8101	Fund Admin - Transfer to GF	34,944	35,890	37,247
<b>Total Expenditures</b>		<b>164,652</b>	<b>155,190</b>	<b>206,177</b>
	Stormwater Assessment ERU Gross	127,145	126,327	126,298
	NPDES Group Program costs	(25,842)	(26,872)	(30,466)
	Commercial Insp by Central San	(3,944)	(8,578)	(8,000)
	Flood Control Dist Fiscal Mgmt Cost	(2,358)	(2,995)	(3,000)
	County Auditor/Controller Costs	(3,638)	(3,796)	(3,800)
	Mandatory Retention	(3,000)	(3,000)	(3,000)
4602	<i>Net Assessment Revenue</i>	88,363	81,086	78,032
4603	Stormwater O & M Annual Fee	2,376	4,060	4,060
5324	Street Sweeping Fees	38,550	38,660	46,400
5601	Interest	1,390	1,228	1,300
5606	Unrealized Inv. Gain/Loss	824	(1,226)	-
6007	Transfer from Landscape Maintenance Fund	912	1,008	1,008
<b>Total Revenue</b>		<b>132,415</b>	<b>124,816</b>	<b>130,800</b>
<b>(Decrease) in Fund Balance</b>		<b>(32,237)</b>	<b>(30,374)</b>	<b>(75,377)</b>
<b>Beginning Fund Balance</b>		<b>153,840</b>	<b>121,603</b>	<b>91,229</b>
<b>Ending Fund Balance</b>		<b>121,603</b>	<b>91,229</b>	<b>15,852</b>

**City of Clayton  
Budget Message  
Special Revenue Funds**

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**G. Stormwater Fund - No. 216**

This account manages the special parcel tax (labeled "ERUs" for Equivalent Runoff Units) levied locally to assist the City in compliance with unfunded State-mandated regulations through our National Pollution Discharge Elimination System (NPDES) Permit. It has been confirmed by case law (previously challenged and lost by southern California cities) that Regional Water Quality Control Boards do indeed have authority to levy unfunded mandates against pollution discharges (cities and counties) by virtue of the federal Clean Water Act and the California Porter-Cologne Water Quality Control Act.

By previous Council action long ago, this real property tax levy was maximized at its allowable cap in year 2000 currently netting the City \$82,473 for local use in FY 2017-18. In reality, the parcel tax generates higher gross revenues (\$127,145). However, the following purposes snag portions of the City's local levy before ever touching our local coffers:

Contra Costa [Cities] Clean Water Program	\$	26,872	
Commercial Building Inspections by Sanitary District		8,000	
County Auditor-Controller Administrative Fee		3,800	
Reserve Fund for the Clean Water Program		3,000	
Flood Control District Management Expense		3,000	
<b>Total Revenue Offsets:</b>		<u>\$ 44,672</u>	35.28%

In addition the City must pay an annual NPDES Regional Discharger Fee to the State projected to be approximately \$10,000, further dipping into the local assessment levied for the City.

**City of Clayton  
Budget Message  
Special Revenue Funds**

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The City's 5-year Stormwater Permit (MRP) is issued by the San Francisco Regional Water Quality Control Board. Public agencies, including Clayton, are now under requirements to elevate enforcement, monitoring measures, and treatment projects each year to ensure cleaner stormwaters. This permit, called MRP 2.0, was reissued in November 2015. The permit contains additional and enhanced requirements for cities such as: managing litter that can get into its drainage and creeks from private commercial properties; PCB and Mercury pollutant testing/monitoring; maintenance and enforcement activities; "green infrastructure" which would set forth standards for cities to redirect existing storm drainage water from streets, sidewalks and parking lots and buildings into landscape areas; and enhanced IPM policies, practices and mandatory training and certifications. These additional permit terms will continue to impact the Stormwater fund's equity. As other cities in the state are experiencing similar funding constraints, legislation has been introduced and approved by the Senate (SB 231) which would amend and clarify existing state laws to specifically include stormwater treatment and stormwater harvest and reuse being subject to majority protest. Majority protest is currently explicitly allowed for water and sewer treatment and conveyance. If approved by the State Assembly and signed into law, this amendment would allow increased fees or assessments for mandated stormwater to be voted on locally or regionally by majority protest, consistent with the method currently allowed for sewer and water treatment and conveyance which are also subject to Water Board unfunded mandate permit requirements.

MRP 2.0 requires information to be disclosed by June 30, 2017 to elected officials of the Green Infrastructure (GI) requirements. MRP 2.0 defines GI as *"Infrastructure that uses vegetation, soils, and natural processes to manage water and create healthier urban environments..., green infrastructure refers to stormwater management systems that mimic nature by soaking up and storing water."* GI is designed to capture and reduce existing PCB including background levels, and Mercury. The second objective of GI is to recharge runoff into the ground creating more filtering and more natural infiltration into creeks and waterways. The permit mandates that retrofitting existing impervious surfaces with Green Infrastructure be evaluated, analyzed, planned for, costed and reported on.

The GI has two main elements to be implemented:

- Preparation of a Green Infrastructure Plan for the inclusion of bioswale/landscape planter (LID) drainage design into existing storm drain infrastructure, including streets, roads, storm drains, etc.
- Early implementation of Green Infrastructure Projects Green Infrastructure Plan

**City of Clayton  
Budget Message  
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The Green Infrastructure Plan requirements and deadlines are:

- Prepare a framework or workplan to be approved by the Permittee's governing body or city manager, and submitted to the SF Regional Board with its 2016-17 Annual Report in October 2017.
- Prepare and show estimated costs/budget for a Green Infrastructure Plan and submit it to the SF Regional Water Board with the 2019 Annual Report.

The permit requires that beginning with the 2015-16 Annual Report, and annually thereafter, each Permittee review current infrastructure (capital improvement) projects, prepare a list of infrastructure projects planned for implementation that have potential for green infrastructure measures, possible potential, or no potential, and submit that list with each Annual Report, including:

*... a summary of how each public infrastructure project with green infrastructure potential will include green infrastructure measures to the maximum extent practical during the permit term. For any public infrastructure project where implementation of green infrastructure measures is not practicable, submit a brief description for the project and the reasons green infrastructure measures were impracticable to implement.*

City staff reviewed and compiled a list of its Council approved CIP budget projects and submitted its initial list with its 2015-16 Annual Report. Additional analysis and detail information and plans to implement this list and subsequent annual updates, is required under the permit over the next two years from 2017 to 2019. City staff has constituted its working group also required under the permit. The working group consists of the Stormwater Manager/Asst. to the City Manager, City Engineer, and Community Development Director.

The Green Infrastructure Plans are intended to describe how each jurisdiction will, in the coming decades, shift their impervious surfaces and storm drain infrastructure from gray, or conventional, storm drain infrastructure where runoff flows directly into the storm drain and then to creeks and the Bay, to a more resilient, sustainable system that slows runoff by dispersing it to vegetated areas, harvests and uses runoff, promotes infiltration and evapotranspiration, and uses bioretention to detain, retain, and treat stormwater.

Cities will also be tasked to review and update as necessary their standard engineering designs and planning policies/ordinances to incorporate Green Infrastructure. The Contra Costa Clean Water Program (CCCWP) will provide guidance to cities for reviewing capital improvement programs and projects, identifying green infrastructure potential, advancing planning and design of potential green infrastructure features, and documenting decisions regarding implementation of green infrastructure.

**City of Clayton  
Budget Message  
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As noted previously, the current permit contains mandated trash reduction requirements which are met through the implementation of the full trash capture devices. Our City has installed and maintains 25 devices in its four Trash Management Areas. Through this effort we have been able to achieve 100% reduction in trash load baseline, and permit compliance. The City of Clayton is one of only a few cities to have already achieved this goal. However, recent refinements by the SF Regional Water Board to this requirement may mandate the installation and maintenance of additional full trash capture devices to remain in compliance.

The new permit also requires the use of GIS for database mapping and public viewing availability. The Clean Water Program has begun the establishment of a cloud-based GIS mapping program as a group funded effort for all cities. Each city will have its own section for stormwater mapping with the ability to have additional data layers as it desires. Therefore no additional City funds are needed at this time for GIS program.

Such permit conditions necessitate ever-increasing expenditures which will eventually consume current levy revenues. Initial staff analyses reveal an additional \$225,000 to \$515,000 in annual costs could someday impact the City's fiscal operations for this state-mandated purpose alone. Currently under Proposition 218 increases in the levied rates require voter approval. The failure of the Clean Water Coalition's Proposition 218 ballot in FY 2012-13 to raise levy revenues turned aside a potential \$93,700 for use in meeting state unfunded mandates for cleaner stormwaters. Since the City reached its parcel levy cap 17 years ago there have been approximately 512 additional permit requirements mandated by the SF Regional Water Board with no increase in revenue to offset the associated costs, thus resulting in the reduction of the City's Stormwater fund's reserves.

In the FY 2017-18 budget, the City's stormwater costs under the permit regulations are projected to exceed available revenues by approximately \$70,936, although the close of FY 2016-17 is expected to incur a lesser annual deficit of **\$49,664**. Fortunately at the moment there is estimated to be a reserve balance of approximately **\$71,939** at the start of FY 2017-18 in this restricted-use special revenue fund, which is sufficient to cover the projected FY 2017-18 annual shortfall. The erosion of the Stormwater fund's reserve balance over past several years is directly a result of added permit requirements imposed by the Regional Board starting in 1996 (referred to as "C-3 amendments"), MRP 1.0 (issued in 2010), and the current MRP 2.0 (issued in November 2015). All of these were statutory "unfunded mandates."

Labor-related expenditures from this Fund in FY 2017-18 (\$55,220) cover public works' labor for the City's municipal storm drain system, annual debris clearance of creeks and V-ditches, and proactive measures for the prevention of pollutants into these waters, which ultimately emerge into the San Francisco - Oakland Bay. Educational materials

**City of Clayton  
Budget Message  
Special Revenue Funds**

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and supplies are also part of the Stormwater fund's budget, along with our membership in the Contra Costa County Clean Water Program. Recoverable expenses include that portion of City staff time when working on clean water issues, programs, while Regional Water Quality Control Board directives target specific programs (e.g. "diaper" inserts in storm drain inlets) and local enforcement (e.g. fines). City administrative staff (Assistant to the City Manager) expends an inordinate portion of time (approximately one-third or more) engaged in the management, administration and implementation of this federal and state mandated program for cleaner runoff waters. As such, the proposed budgeted transfer of \$37,247 to the City's General Fund to partially offset this incurred staff time is reasonable and essential.

As noted previously, the fund is projected to open FY 2018 with approximately \$71,939 in reserves, and projects a year-end fund balance of \$1,003 on June 30, 2018, a 98.6% loss in reserves. At this rate, the Stormwater fund will become depleted during or immediately following FY 2018-19 as feared, with the only sources of discretionary funds to patch the mandated gap are General Fund operational monies or use of General Fund reserves. Absent a new or increased funding source, the first course of action would likely result in either a reduction of permit compliance potentially resulting in non-compliance and triggering SF Regional Board action of fines of up to \$10,000 per day, reduction in other non-mandated city services, or use of city general fund reserves.

The monthly street sweeping contract totaling an estimated \$46,400 in FY 2017-18 is paid through this fund as a program component of cleaner stormwater from street gutters. To clarify a common misconception, public streets and gutters are swept monthly to mitigate roadway pollutants from entering the storm drain system, not for street aesthetics or as the substitute broom for an abutting property owner's sweeping/clearance of leaves and debris from the curbs of one's property. Offsetting revenue is tendered by real property owners through their trash bills which is projected to be an equal and offsetting \$46,400. This offsetting revenue estimate could potentially be lower due to the revolving number of vacant homes in Clayton (closed accounts) as well as various delinquent and non-paying accounts slicing away at the revenue stream.

Required annual expenditures are absorbed in this fund for engineering services (\$2,000) and other professional services (\$24,810). Necessary engineering services will assist in providing the City's response to the state-mandate to perform additional drainage/green infrastructure analysis, evaluation and annual reporting of our mapped "trash management areas", and PCB analysis. The other professional services line item captures costs associated with state-mandated programs involving drainage inlet insert cleanings (\$10,000), drainage inlet confined space cleaning (\$10,000), and drainage inlet inspections and reports (\$3,000) and bio-swale inspections and reports for City properties (\$1,500). New private construction activities and newer private



**City of Clayton  
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developments with on-site stormwater treatment have been addressed by the City Council to provide methods that are self-supported or cost recovery through the City charges for fees and services, homeowners association and/or benefit assessment districts, and therefore do not impact the Stormwater fund or the City's General Fund.

## City NPDES Budget History and Forecast

FY 1998-1999 Budget (Total Group Program Budget \$1,525,451): (ERU: \$24.50) (final yr of 5yr permit:)

ERU gross revenue est.	\$ 104,851
NPDES Group Program costs:	\$ 17,243
County Auditor/Controller Costs:	\$ 3,334
City Return To Source Funds:	\$ 84,274
Commercial Inspection by Central Sanitary Dist:	\$ 4,205
Flood Control Dist. Fiscal Management Costs:	\$ 3,000
Amount available to Clayton for City NPDES costs:	\$ 73,735

FY 1999-2000 Budget (Total Group Program Budget \$1,491,054): (ERU \$29) \*New 5-yr permit and added req.

ERU gross revenue est.	\$125,196
NPDES Group Program costs:	\$ 18,995
County Auditor/Controller Costs:	\$ 3,500
City Return to Source Funds:	\$102,753
Commercial Inspection by Central Sanitary Dist:	\$ 2,100
Flood Control Dist. Fiscal Management Costs:	\$ 3,000
Amount available to Clayton for City NPDES costs:	\$ 94,153

FY 2000-2001 Budget (Total Group Program Budget \$1,773,242): (ERU \$29) \* lawsuits filed

ERU gross revenue est.	\$129,522
NPDES Group Program costs:	\$ 18,875
County Auditor/Controller Costs:	\$ 3,500
City Return to Source Funds:	\$107,140
Commercial Inspection by Central Sanitary Dist:	\$ 2,172
Flood Control Dist. Fiscal Management Costs:	\$ 3,000
State Regional Annual Discharge Permit Fee	\$ 1,500
Amount available to Clayton for City NPDES costs:	\$ 96,968

FY 2001-2002 Budget (Total Group Program Budget \$1,648,735): (ERU \$29) \*legal costs and technical costs for permit amendment hearings

ERU gross revenue est.	\$129,737
NPDES Group Program costs:	\$ 23,940
County Auditor/Controller Costs:	\$ 3,540
City Return to Source Funds:	\$102,266
Commercial Inspection by Central Sanitary Dist:	\$ 2,240
Flood Control Dist. Fiscal Management Costs:	\$ 3,000
State Regional Annual Discharge Permit Fee	\$ 2,000
Amount available to Clayton for City NPDES costs:	\$ 95,026

FY 2002-2003 Budget (Total Group Program Budget \$2,258,541): (ERU \$29) \*legal costs and technical costs for permit amendment hearings

ERU gross revenue est.	\$131,915
NPDES Group Program costs:	\$ 26,238
County Auditor/Controller Costs:	\$ 3,550
City Return to Source Funds:	\$102,127
Commercial Inspection by Central Sanitary Dist:	\$ 2,600
Flood Control Dist. Fiscal Management Costs:	\$ 3,000
State Regional Annual Discharge Permit Fee	\$ 4,000
Amount available to Clayton for City NPDES costs:	\$ 92,527

FY 2003-2004 (Total Group Program Budget \$2,670,929): (ERU \$29) \*C-3 permit amendments/legal costs

ERU gross revenue est.	\$128,492	related to lawsuits
NPDES Group Program costs:	\$ 33,843	
County Auditor/Controller Costs:	\$ 3,550	
City Return to Source Funds:	\$ 91,099	
Commercial Inspection by Central Sanitary Dist:	\$ 3,000	
Flood Control Dist. Fiscal Management Costs:	\$ 3,000	
State Regional Annual Discharge Permit Fee	\$ 4,000	
Amount available to Clayton for City NPDES costs:	\$ 81,099	

FY 2004-2005 (Total Group Program Budget \$2,320,572): (ERU \$29) \*amended 5-year permit by SFRWQCB

ERU gross revenue est.	\$129,420	
NPDES Group Program costs:	\$ 11,843	
County Auditor/Controller Costs:	\$ 3,600	
City Return to Source Funds:	\$ 113,977	
Commercial Inspection by Central Sanitary Dist:	\$ 3,000	
Flood Control Dist. Fiscal Management Costs:	\$ 3,000	
State Regional Annual Discharge Permit Fee	\$ 5,000	
Amount available to Clayton for City NPDES costs:	\$ 102,977	

FY 2005-2006 (Total Group Program Budget \$2,320,572): (ERU \$29) \* implementation of new C-3 permit 1 ac amendments

ERU gross revenue est.	\$126,362	
NPDES Group Program costs:	\$ 11,749	
County Auditor/Controller Costs:	\$ 3,680	
City Return to Source Funds:	\$ 110,933	
Commercial Inspection by Central Sanitary Dist:	\$ 5,000	
Flood Control Dist. Fiscal Management Costs:	\$ 3,000	
State Regional Annual Discharge Permit Fee	\$ 5,400	
Amount available to Clayton for City NPDES costs:	\$ 97,533	

FY 2006-2007 (Total Group Program Budget \$2,867,625): (ERU \$29) \* implementation of new C-3 permit 10K sq ft. amendments; new permit issuance and future revenue study.

ERU gross revenue est.	\$126,313	
NPDES Group Program costs:	\$ 26,204	
County Auditor/Controller Costs:	\$ 3,800	
City Return to Source Funds:	\$ 96,309	
Commercial Inspection by Central Sanitary Dist:	\$ 5,000	
Flood Control Dist. Fiscal Management Costs:	\$ 3,000	
State Regional Annual Discharge Permit Fee	\$ 5,400	
Amount available to Clayton for City NPDES costs:	\$ 82,909	

FY 2007-2008 (Total Group Program Budget \$3,200,422): (ERU \$29) \* on-going implementation of new C-3 permit 10K sq ft. amendments; draft new permit issuance and future revenue study

ERU gross revenue est.	\$126,843	
NPDES Group Program costs:	\$ 31,800	
County Auditor/Controller Costs:	\$ 3,800	
City Return to Source Funds:	\$ 91,243	
Commercial Inspection by Central Sanitary Dist:	\$ 2,000	
Flood Control Dist. Fiscal Management Costs:	\$ 3,000	
State Regional Annual Discharge Permit Fee	\$ 5,400	
Amount available to Clayton for City NPDES costs:	\$ 80,843	

FY 2008-2009 (Total Group Program Budget \$4,200,422): (ERU \$29) \* on-going implementation of C-3 ; rev draft new permit regs, hearings on new MRP – cost impact and revenue study

ERU gross revenue est.	\$127,055
NPDES Group Program costs:	\$ 44,520
County Auditor/Controller Costs:	\$ 3,800
City Return to Source Funds:	\$ 78,735
Commercial Inspection by Central Sanitary Dist:	\$ 3,915
Flood Control Dist. Fiscal Management Costs:	\$ 3,000
State Regional Annual Discharge Permit Fee	\$ 5,400
Amount available to Clayton for City NPDES costs:	\$ 66,420

FY 2009-2010 (Total Group Program Budget \$4,000,000): (ERU \$29) \* new permit issued Dec 2009 (MRP 1.0) new permit regs, hearings on new MRP – cost impact and revenue study

ERU gross revenue est.	\$127,013
NPDES Group Program costs:	\$ 41,017
County Auditor/Controller Costs:	\$ 3,800
City Return to Source Funds:	\$ 82,196
Commercial Inspection by Central Sanitary Dist:	\$ 3,402
Flood Control Dist. Fiscal Management Costs:	\$ 3,000
State Regional Annual Discharge Permit Fee	\$ 5,400
Amount available to Clayton for City NPDES costs:	\$ 70,396

FY 2010-2011 (Total Group Program Budget \$2,250,079): (ERU \$29) \* MRP 1.0 fist year; cost impact and revenue study

ERU gross revenue est.	\$127,034
NPDES Group Program costs:	\$ 23,052
County Auditor/Controller Costs:	\$ 3,800
City Return to Source Funds:	\$ 100,182
Commercial Inspection by Central Sanitary Dist:	\$ 4,165
Flood Control Dist. Fiscal Management Costs:	\$ 3,000
State Regional Annual Discharge Permit Fee	\$ 5,400
Amount available to Clayton for City NPDES costs:	\$ 87,617

FY 2011-2012 (Total Group Program Budget \$2,497,856): (ERU \$29) \* MRP 1.0 second year costs trash baseline loading and reduction plans

ERU gross revenue est.	\$126,626
NPDES Group Program costs:	\$ 25,517
County Auditor/Controller Costs:	\$ 3,800
City Return to Source Funds:	\$ 97,309
Commercial Inspection by Central Sanitary Dist:	\$ 4,500
Flood Control Dist. Fiscal Management Costs:	\$ 3,000
State Regional Annual Discharge Permit Fee	\$ 7,279
Amount available to Clayton for City NPDES costs:	\$ 82,530

FY 2012-2013 (Total Group Program Budget \$2,528,966): (ERU \$29) \* MRP 1.0 reqs third year costs – trash reduction plan; plans for install of drain inlet screens; enhanced commercial business inspection

ERU gross revenue est.	\$126,615	
NPDES Group Program costs:	\$ 26,203	
County Auditor/Controller Costs:	\$ 3,800	
City Return to Source Funds:		\$ 96,612
Commercial Inspection by Central Sanitary Dist:	\$ 8,000	
Flood Control Dist. Fiscal Management Costs:	\$ 3,000	
State Regional Annual Discharge Permit Fee	\$ 7,279	
Amount available to Clayton for City NPDES costs:		\$ 78,333

FY 2013-2014 (Total Group Program Budget \$2,447,293): (ERU \$29) \* MRP 1.0 reqs fourth year costs – trash reduction collection; installation of all draining inlet screens; begin collection of material at drainage inlets screens; enhanced commercial -business inspection

ERU gross revenue est.	\$126,308	
NPDES Group Program costs:	\$ 25,265	
County Auditor/Controller Costs:	\$ 3,800	
City min req. Reserve to Program	\$ 3,000	
City Return to Source Funds:		\$ 94,949
Commercial Inspection by Central Sanitary Dist:	\$ 8,000	
Flood Control Dist. Fiscal Management Costs:	\$ 3,000	
State Regional Annual Discharge Permit Fee	\$ 7,279	
Amount available to Clayton for City NPDES costs:		\$ 75,974

FY 2014-2015 (Total Group Program Budget \$2,447,293): (ERU \$29) \* MRP 1.0 reqs fifth year costs – trash reduction collection from drainage inlets; quantification of materials collected; enhanced commercial -business inspection

ERU gross revenue est.	\$124,144	
NPDES Group Program costs:	\$ 25,842	
County Auditor/Controller Costs:	\$ 3,800	
City share program reserve:	\$ 3,000	
City Return to Source Funds:		\$ 91,502
Commercial Inspection by Central Sanitary Dist:	\$ 8,000	
Flood Control Dist. Fiscal Management Costs:	\$ 3,000	
State Regional Annual Discharge Permit Fee	\$ 9,279	
Amount available to Clayton for City NPDES costs:		\$ 71,223

FY 2015-2016 (Total Group Program Budget \$ 2,579,223): (ERU \$29) \* new MRP issued (MRP 2.0)

ERU gross revenue est.	\$127,184	
NPDES Group Program costs:	\$ 26,575	
County Auditor/Controller Costs:	\$ 3,800	
City share program reserve:	\$ 3,000	
City Return to Source Funds:		\$ 90,809
Commercial Inspection by Central Sanitary Dist:	\$ 8,000	
Flood Control Dist. Fiscal Management Costs:	\$ 3,000	
State Regional Annual Discharge Permit Fee	\$ 10,000	
Amount available to Clayton for City NPDES costs:		\$ 69,809

FY 2016-2017 (Total Group Program Budget \$3,649,621- program reserve \$1,024,105 = \$ 2,625,516): (ERU \$29)

\* MRP 2.0 reqs first year costs-  
initial work mercury reduction & GIS

ERU gross revenue est.	\$126,327	
NPDES Group Program costs:	\$ 26,872	
County Auditor/Controller Costs:	\$ 3,800	
City share program reserve:	\$ 3,000	
City Return to Source Funds:		\$ 92,655
Commercial Inspection by Central Sanitary Dist:		\$ 8,000
Flood Control Dist. Fiscal Management Costs:		\$ 3,000
State Regional Annual Discharge Permit Fee		\$ 10,000
Amount available to Clayton for City NPDES costs:		\$ 71,655

FY 2017-2018 (Total Group Program Budget \$4,281,987 – program reserve \$1,229,055 = \$3,052,932): (ERU \$29)

\* MRP 2.0 reqs. second year costs-  
PCB reductions, GIS, trash load  
reduction, green infrastructure

ERU gross revenue est.	\$126,298	
NPDES Group Program costs:	\$ 30,466	
County Auditor/Controller Costs:	\$ 3,800	
City share program reserve:	\$ 3,000	
City Return to Source Funds:		\$ 89,032
Commercial Inspection by Central Sanitary Dist:		\$ 8,000
Flood Control Dist. Fiscal Management Costs:		\$ 3,000
State Regional Annual Discharge Permit Fee		\$ 10,000
Amount available to Clayton for City NPDES costs:		\$ 68,032

**Proposed:**

FY 2018-2019 (Total Group Program Budget \$4,288,161 – program reserve \$1,228,468 = \$3,059,693): (ERU \$29)

\* MRP 2.0 reqs. third year costs-  
PCB reductions, GIS, trash load  
reduction, green infrastructure

ERU gross revenue est.	\$126,298	
NPDES Group Program costs:	\$ 30,299	
County Auditor/Controller Costs:	\$ 3,800	
City share program reserve:	\$ 3,000	
City Return to Source Funds:		\$ 89,199
Commercial Inspection by Central Sanitary Dist:		\$ 8,000
Flood Control Dist. Fiscal Management Costs:		\$ 3,000
State Regional Annual Discharge Permit Fee		\$ 10,000
Amount available to Clayton for City NPDES costs:		\$ 68,199

**Forecast:**

FY 2019-2020 (Total Group Program Budget \$3,637,198 – program reserve \$100,000 = \$3,537,198): (ERU \$29)

\* MRP 2.0 reqs. fourth year costs -  
PCB reductions, GIS, trash load  
reduction, green infrastructure [last  
year of program reserve use to  
offset program annual program  
costs]

ERU gross revenue est.	\$126,298	
NPDES Group Program costs:	\$ 35,371	
County Auditor/Controller Costs:	\$ 3,800	
City share program reserve:	\$ 3,000	
City Return to Source Funds:		\$ 84,127
Commercial Inspection by Central Sanitary Dist:		\$ 8,000
Flood Control Dist. Fiscal Management Costs:		\$ 3,000
State Regional Annual Discharge Permit Fee		\$ 10,000
Amount available to Clayton for City NPDES costs:		\$ 63,127

FY 2020-2021 (Total Group Program Budget \$4,254,272): (ERU \$29) \* MRP 2.0 reqs. Fifth year costs - PCB reductions, GIS, trash load reduction, green infrastructure [program reserves completed in FY 19-20]

ERU gross revenue est.	\$126,298	
NPDES Group Program costs:	\$ 42,542	
County Auditor/Controller Costs:	\$ 3,900	
City share program reserve:	\$ 3,000	
City Return to Source Funds:		\$ 76,856
Commercial Inspection by Central Sanitary Dist:		\$ 8,000
Flood Control Dist. Fiscal Management Costs:		\$ 3,000
State Regional Annual Discharge Permit Fee		\$ 10,000
Amount available to Clayton for City NPDES costs:		\$ 55,856

FY 2021-2022 (Total Group Program Budget \$4,200,000): (ERU \$29) \* MRP 3.0 Unknown added or modified permit requirements assuming all prior permit reqs. continue and no new additional permit reqs added that increase program or costs [ no program reserves available for offset ]

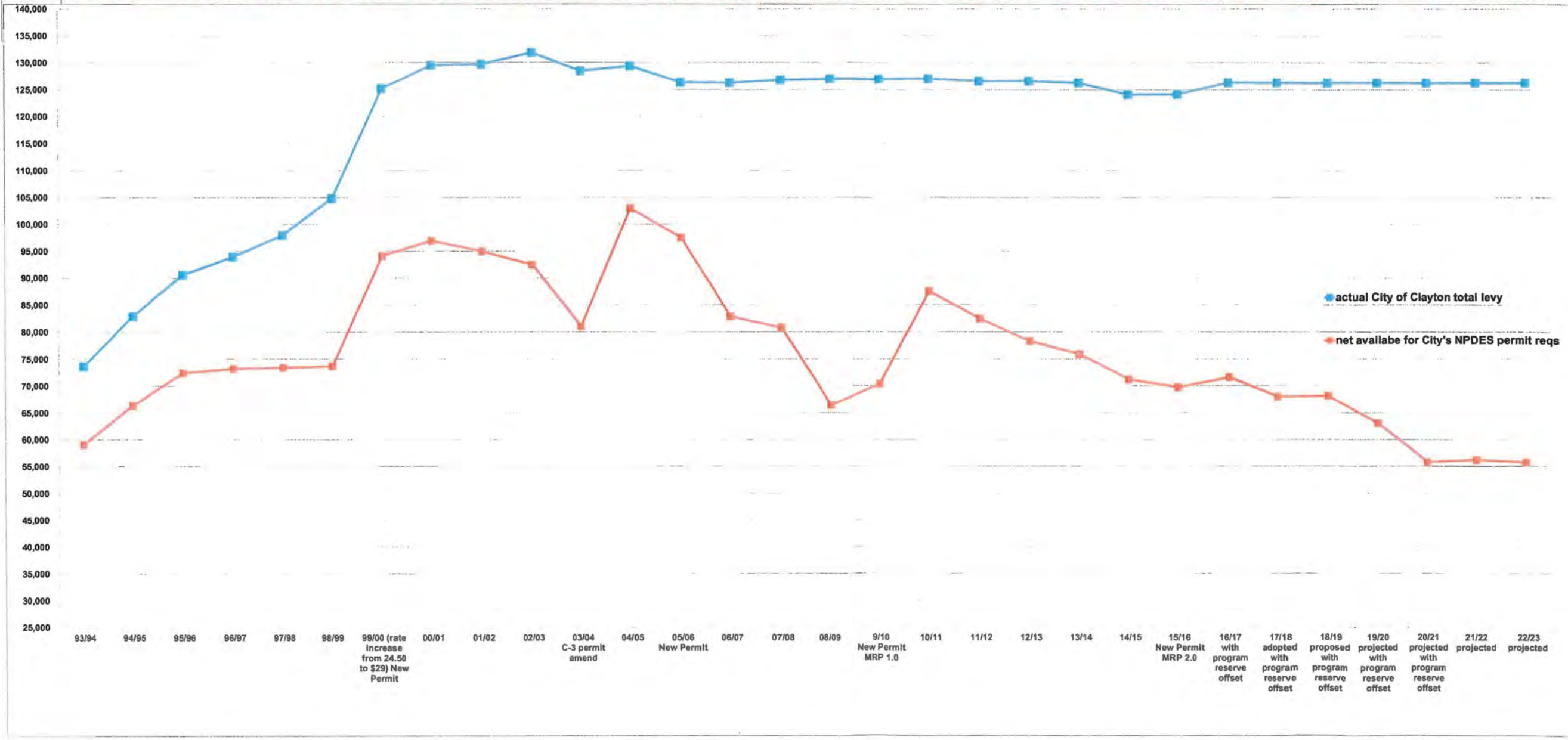
ERU gross revenue est.	\$126,298	
NPDES Group Program costs:	\$ 42,000	
County Auditor/Controller Costs:	\$ 4,000	
City share program reserve:	\$ 3,000	
City Return to Source Funds:		\$ 77,298
Commercial Inspection by Central Sanitary Dist:		\$ 8,000
Flood Control Dist. Fiscal Management Costs:		\$ 3,000
State Regional Annual Discharge Permit Fee		\$ 10,000
Amount available to Clayton for City NPDES costs:		\$ 56,298

FY 2022-2023 (Total Group Program Budget \$4,250,000): (ERU \$29) \* MRP 3.0 year 2 Unknown added or modified permit requirements assuming all prior permit reqs. continue and no new additional permit reqs added that increase program or costs [ no program reserves available for offset ]

ERU gross revenue est.	\$126,298	
NPDES Group Program costs:	\$ 42,500	
County Auditor/Controller Costs:	\$ 4,000	
City share program reserve:	\$ 3,000	
City Return to Source Funds:		\$ 76,798
Commercial Inspection by Central Sanitary Dist:		\$ 8,000
Flood Control Dist. Fiscal Management Costs:		\$ 3,000
State Regional Annual Discharge Permit Fee		\$ 10,000
Amount available to Clayton for City NPDES costs:		\$ 55,798

**Contra Costa Clean Water Program  
City of Clayton ERU levy history**

Fiscal Year	93/94	94/95	95/96	96/97	97/98	98/99	99/00 (rate increase from 24.50 to \$29) New Permit	00/01	01/02	02/03	03/04 C-3 permit amend	04/05	05/06 New Permit	06/07	07/08	08/09	9/10 New Permit MRP 1.0	10/11	11/12	12/13	13/14	14/15	15/16 New Permit MRP 2.0	16/17 with program reserve offset	17/18 adopted with program reserve offset	18/19 proposed with program reserve offset	19/20 projected with program reserve offset	20/21 projected with program reserve offset	21/22 projected	22/23 projected	
actual City of Clayton total levy	73,716	82,956	90,644	93,993	97,994	104,851	125,196	129,522	129,737	131,915	128,492	129,420	126,362	126,313	126,843	127,055	127,013	127,034	126,626	126,615	126,308	124,144	124,184	126,327	126,298	126,298	126,298	126,298	126,298	126,298	126,298
net available for City's NPDES permit reqs	59,158	66,407	72,465	73,265	73,470	73,735	94,135	96,968	95,026	92,527	81,099	102,977	97,533	82,909	80,843	66,420	70,396	87,617	82,530	78,333	75,964	71,223	69,809	71,655	68,032	68,199	63,127	55,856	56,298	55,798	







Agenda Date: 3-20-2018

Agenda Item: 3d

Approved:

Gary A. Napper  
City Manager

# STAFF REPORT

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**  
**FROM: MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR**  
**DATE: MARCH 20, 2018**  
**SUBJECT: 2017 HOUSING ELEMENT ANNUAL PROGRESS REPORT (CDD-02-18).**

## **RECOMMENDATION**

Staff recommends the City Council adopt the attached Resolution approving the City's 2017 Housing Element Annual Progress Report (APR) and direct staff to file the report with the State Department of Housing and Community Development (HCD).

## **BACKGROUND**

Government Code Section 65400 requires each governing body (City Council or Board of Supervisors) to prepare an annual report on the status and progress in implementing the jurisdiction's Housing Element using forms and definitions adopted by the HCD.

HCD uses the APR as a tool to facilitate implementation of a community's Housing Element as well as for the tracking and monitoring of progress in addressing housing needs and goals. The APR includes information on the jurisdiction's progress to address its Regional Housing Needs Allocation (RHNA), including the number of housing units permitted by income level, the status of programs in the Housing Element, and efforts to remove government constraints. HCD may also use submittal of the report as one of its threshold requirements to qualify for certain State grants or program funds.

It should be noted AB 879, which was signed into law on September 19, 2017 as part of the California Housing Package, requires new information to be reported in the Housing Element Annual Progress Reports; however HCD has stated the new requirements will not impact the 2017 APRs. The new data requirements will commence with the 2018 APRs, which are due April 2019.

## **DISCUSSION**

The APR for the City of Clayton covers the reporting period of January 1, 2017 to December 31, 2017. The 2017 APR reflects one secondary unit, which is classified as a low-income unit, was issued a building permit for construction during this reporting period. This unit is

classified as low-income because the inherent nature of secondary units is they are typically less in cost and tend to be affordable for low-income households. The APR also reports eight above moderate income units, which comprises the six-lot Verna Way Subdivision project, located at the southern terminus of Lydia Lane, and the two-lot subdivision St. John's Mixed Use Planned Development project, located on Southbrook Drive.

The City did experience a substantial number of residential home improvement and energy efficiency projects, consisting of solar power systems, swimming pools, accessory buildings, window replacements, heating and air-conditioning units, bathroom and kitchen remodels and home additions.

2017 was the City's third full year of the current Housing Element cycle and the City has taken various steps during these three years to implement the approved programs of the adopted and certified 2015-2023 Housing Element. The City's 2015-2023 Housing Element contains 25 Implementation Measures or programs with an associated timeframe for the City to put these Implementation Measures into effect during the eight year Housing Element cycle. Many of the 25 Implementation Measures are ongoing or annual efforts undertaken by staff; however some of the implementation measures require action from the City Council. Due to the City's Council's actions during the 2015, 2016, and 2017 reporting periods and City staff's continuing fulfillment of the annual and ongoing tasks set forth as required in the Implementation Measures, the City has nearly completed its requirements for the 2015-2023 Housing Element cycle. The last remaining task requiring feedback from the City Council will be the consideration of the establishment of a green building program beyond the requirements of the CalGreen Tier 1 standards (Implementation Measure V.1.2). City staff will be bringing this matter to the City Council for direction during the 2018 reporting period.

#### **FISCAL IMPACT**

Nominal costs associated with staff time and printing costs will be associated with filing this report.

#### **ATTACHMENTS**

1. Resolution Approving the 2017 Housing Element Annual Progress Report with APR Attached [13 pp.]

# ATTACHMENT 1

RESOLUTION NO. \_\_\_\_- 2018

## A RESOLUTION APPROVING THE CITY OF CLAYTON 2017 HOUSING ELEMENT ANNUAL PROGRESS REPORT

THE CITY COUNCIL  
City of Clayton, California

**WHEREAS**, Government Code Section 65400 requires the City Council of Clayton, California to prepare an annual report on its status and progress in implementing the City's Housing Element using forms and definitions adopted by the California Department of Housing and Community Development; and

**WHEREAS**, the proposed 2017 Housing Element Annual Progress Report includes information on the City of Clayton's progress in addressing its assigned Regional Housing Needs Allocations (RHNA), including the number of housing units permitted by income level, the status of programs in the Housing Element, and efforts to remove government constraints for the reporting period; and

**WHEREAS**, at a public meeting held on March 20, 2018, the Clayton City Council did consider the City's proposed Annual Progress Report for 2017 and all other public comments and discussion, and did determine the Annual Progress Report was correct and factual and therefore satisfactory for approval by Resolution, said Resolution to become effective immediately upon its passage and adoption.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of Clayton, California does hereby approve its 2017 Housing Element Annual Progress Report, a copy of which is attached hereto labeled as Attachment A and incorporated herein as if fully set forth, and does herewith authorize it to be filed with the State of California Department of Housing and Community Development.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held on the 20<sup>th</sup> day of March 2018 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

---

KEITH HAYDON, Mayor

ATTEST:

---

JANET BROWN, City Clerk

Attachment:

A. 2017 Housing Element Annual Progress Report

**ANNUAL ELEMENT PROGRESS REPORT**  
***Housing Element Implementation***  
(CCR Title 25 §6202 )

Jurisdiction CLAYTON  
Reporting Period 01/01/2017 - 12/31/2017

Pursuant to GC 65400 local governments must provide by April 1 of each year the annual report for the previous calendar year to the legislative body, the Office of Planning and Research (OPR), and the Department of Housing and Community Development (HCD). By checking the "Final" button and clicking the "Submit" button, you have submitted the housing portion of your annual report to HCD only. Once finalized, the report will no longer be available for editing.

The report must be printed and submitted along with your general plan report directly to OPR at the address listed below:

**Governor's Office of Planning and Research  
P.O. Box 3044  
Sacramento, CA 95812-3044**

**ANNUAL ELEMENT PROGRESS REPORT**  
***Housing Element Implementation***  
 (CCR Title 25 §6202 )

Jurisdiction CLAYTON  
 Reporting Period 01/01/2017 - 12/31/2017

**Table A**

**Annual Building Activity Report Summary - New Construction**  
**Very Low-, Low-, and Mixed-Income Multifamily Projects**

Housing Development Information									Housing with Financial Assistance and/or Deed Restrictions		Housing without Financial Assistance or Deed Restrictions
1	2	3	4				5	5a	6	7	8
Project Identifier (may be APN No., project name or address)	Unit Category	Tenure R=Renter O=Owner	Affordability by Household Incomes				Total Units per Project	Est. # Infill Units*	Assistance Programs for Each Development	Deed Restricted Units	Note below the number of units determined to be affordable without financial or deed restrictions and attach an explanation how the jurisdiction determined the units were affordable. Refer to instructions.
			Very Low-Income	Low-Income	Moderate-Income	Above Moderate-Income			See Instructions	See Instructions	
1031 Mitchell Canyon Drive	SU	Renter	0	1	0	0	1	1		0	This unit is a second unit, therefore by its inherent nature is considered to be low-income due to the lower cost rent associated with these type of units.
<b>(9) Total of Moderate and Above Moderate from Table A3</b>					0	8					
<b>(10) Total by Income Table A/A3</b>			0	1	0	8					
<b>(11) Total Extremely Low-Income Units</b> * Note: These fields are voluntary			0								

**ANNUAL ELEMENT PROGRESS REPORT**  
***Housing Element Implementation***  
 (CCR Title 25 §6202 )

**Jurisdiction**      CLAYTON  
**Reporting Period**    01/01/2017    -    12/31/2017

**Table A2**  
**Annual Building Activity Report Summary - Units Rehabilitated, Preserved and Acquired pursuant to GC Section 65583.1(c)(1)**

Please note: Units may only be credited to the table below when a jurisdiction has included a program in its housing element to rehabilitate, preserve or acquire units to accommodate a portion of its RHNA which meet the specific criteria as outlined in GC Section 65583.1(c)(1)

Activity Type	Affordability by Household Incomes				(4) The Description should adequately document how each unit complies with subsection (c)(7) of Government Code Section 65583.1
	Extremely Low-Income*	Very Low-Income	Low-Income	TOTAL UNITS	
(1) Rehabilitation Activity	0	0	0	0	
(2) Preservation of Units At-Risk	0	0	0	0	
(3) Acquisition of Units	0	0	0	0	
(5) Total Units by Income	0	0	0	0	

\* Note: This field is voluntary

**ANNUAL ELEMENT PROGRESS REPORT**  
***Housing Element Implementation***  
 (CCR Title 25 §6202 )

Jurisdiction CLAYTON  
 Reporting Period 01/01/2017 - 12/31/2017

**Table A3**  
**Annual building Activity Report Summary for Above Moderate-Income Units**  
**(not including those units reported on Table A)**

	1. Single Family	2. 2 - 4 Units	3. 5+ Units	4. Second Unit	5. Mobile Homes	6. Total	7. Number of infill units*
No. of Units Permitted for <b>Moderate</b>	0	0	0	0	0	0	0
No. of Units Permitted for <b>Above Moderate</b>	8	0	0	0	0	8	8

\* Note: This field is voluntary



**ANNUAL ELEMENT PROGRESS REPORT**  
**Housing Element Implementation**  
 (CCR Title 25 §6202 )

**Jurisdiction**            CLAYTON  
**Reporting Period**    01/01/2017    -    12/31/2017

**Table B**  
**Regional Housing Needs Allocation Progress**  
**Permitted Units Issued by Affordability**

Enter Calendar Year starting with the first year of the RHNA allocation period. See Example.												Total Units to Date (all years)	Total Remaining RHNA by Income Level
Income Level	RHNA Allocation by Income Level	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9			
Very Low	Deed Restricted	51	0	0	0	0	0	0	0	0	0	0	51
	Non-Restricted		0	0	0	0	0	0	0	0	0		
Low	Deed Restricted	25	0	0	0	0	0	0	0	0	0	2	23
	Non-Restricted		0	1	1	0	0	0	0	0	0		
Moderate		31	0	0	0	0	0	0	0	0	0	0	31
Above Moderate		34	0	0	8	0	0	0	0	0	-	8	26
Total RHNA by COG. Enter allocation number:		141											
Total Units ▶ ▶ ▶			0	1	9	0	0	0	0	0	0	10	131
Remaining Need for RHNA Period ▶ ▶ ▶ ▶ ▶													

Note: units serving extremely low-income households are included in the very low-income permitted units totals.

**ANNUAL ELEMENT PROGRESS REPORT**  
***Housing Element Implementation***  
 (CCR Title 25 §6202 )

**Jurisdiction**            CLAYTON  
**Reporting Period**    01/01/2017    -    12/31/2017

**Table C**  
**Program Implementation Status**

Program Description (By Housing Element Program Names)	<b>Housing Programs Progress Report - Government Code Section 65583.</b> Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element.		
Name of Program	Objective	Timeframe in H.E.	Status of Program Implementation
Implementation Measure IV.3.1	The City shall continue to distribute public information brochures on reasonable accommodations for disabled persons and enforcement programs of the California Fair Employment and Housing Council.	December 31, 2023	The City currently distributes and will continue to distribute public information brochures on reasonable accommodations for disabled persons and enforcement programs.
Implementation Measure IV.3.2	The City will continue to implement its universal design ordinance and continue to distribute its brochure on universal design standards, resources for design, and compliance with City requirements.	December 31, 2023	The City continues to implement its universal design ordinance as projects come forward as well as continues to distribute brochures on universal design.
Implementation Measure V.1.1	The City shall continue to provide energy conservation brochures at City Hall and the Clayton Community Library.	December 31, 2023	The City provides and will continue to provide energy conservation brochures at City Hall and at the Clayton Community Library.
Implementation Measure V.1.2	The City will review and consider possible amendments to the General Plan, Zoning Ordinance, and related policy and	December 31, 2017	The City supports and will continue to support energy conservation by encouraging Green Building in both new development and remodels. City staff is aware of this implementation measure and will be bringing this issue for

	regulatory documents to improve energy conservation beyond CalGreen Tier 1 standards.		consideration before the City Council in the next reporting period.
Implementation Measure V.1.3	The City will explore home energy and water efficiency improvement financing opportunities available through PACE programs, such as HERO or Figtree PACE.	December 31, 2023	The City has opted into three different PACE programs HERO, Figtree, and CaliforniaFirst.
Implementation Measure VI.1.1	The City shall continue to support responsible state legislation which allows municipalities to enter into equitable agreements with other entities to transfer and financially participate in the provision of fair-share housing units closer to transportation centers and work centers outside the city limits, while retaining full credit for transferred units.	December 31, 2023	The City supports and will continue to support responsible state legislation which allows municipalities to enter into equitable agreements with other entities to transfer and financially participate in the provision of fair-share housing units closer to transportation centers and work centers outside the city limits, while retaining full credit for transferred units.
Implementation Measure VI.1.2	The City shall continue to participate in regional efforts addressing housing, employment, and transportation.	December 31, 2023	The City participates in regional efforts addressing housing, employment, and transportation issues by being involved in ABAG's Plan Bay Area process and TRANSPAC (regional transportation planning committee for central Contra Costa).
Implementation Measure VI.1.3	The City shall continue cooperation with the regional/countywide housing task force.	December 31, 2023	The City cooperates and will continue to cooperate with the regional/countywide housing task force.
Implementation Measure VI.1.4	The City shall continue to work with the Association of Bay Area Governments on FOCUS program implementation.	December 31, 2023	The City shall continue to work with ABAG on program implementation for FOCUS. The City supports and encourages infill development, housing near transit centers, and a jobs and housing balance.
Implementation Measure I.1.1.	To ensure adequate available sites to meet the City's RHNA, the City will maintain an inventory of sites available and appropriate for residential development for households at all income levels.	December 31, 2023	The City continues to maintain adequate sites available and appropriate for residential development for households at all income levels.
Implementation Measure I.1.2	The City will amend the Multi-Family High Density (MHD) General Plan land use designation or otherwise amend the General Plan and/or Zoning Ordinance as needed to meet state requirements specific to sites rezoned to accommodate	January 31, 2016	The City Council approved a General Plan amendment on July 19, 2016 changing the allowable density in Multi-Family High Density (MHD) from 15.1 to 20 units per acre to 20 units per acre. On August 16, 2016, the City Council passed and adopted an Ordinance requiring multifamily housing types to meet the minimum density limits as set forth in the General Plan. The above was the last action required by the City to meet State law (GC Section 65583.2(h))

	the City's lower-income RHNA from 2007-2014 planning period, specifically to allow multi-family housing by-right on these sites at a minimum density of 20 units per acre.		and (l)).
Implementation Measure I.2.1	For residential projects of 10 or more units, developers will be required to develop an Affordable Housing Plan that requires a minimum of 10% of the units to be built or created as affordable housing units.	December 31, 2023	On August 16, 2016, the City Council passed and adopted an inclusionary housing ordinance, which provided the details of the Affordable Housing Plan as identified in Implementation Measure I.2.1. This ordinance requires that 10% of the units for ownership residential projects containing 10 or more units to be established as affordable housing units.
Implementation Measure I.3.1	The City shall continue to promote the development of second dwelling units and will aim to approve two second dwelling units a year.	December 31, 2023	The City continues to promote second dwelling units and provides informational handouts. One second dwelling unit was issued a building permit during the 2017 reporting period.
Implementation Measure I.4.1	Encourage development of mixed-use projects in the Town Center, the City has adopted the Specific Plan which details policy direction, standards, and guidelines that encourage mixed-use and second-story residential. The City will promote development opportunities in the Town Center. The City will facilitate the development of at least one mixed-use project within the planning period.	December 31, 2023	The City continues to promote and encourage mixed-use development in the Town Center through the availability of the Specific Plan and discussions with potential developers. The Town Center Specific Plan is available at City offices as well as on the City's website.
Implementation Measure II.1.1	Work with housing providers to address special housing needs for seniors, large families, female-headed households, single-parent households with children, persons with disabilities and developmental disabilities, farmworkers, and homeless individuals and families. The City will aim to work with housing providers on at least one project serving a special needs group during the planning period.	December 31, 2023	The City continues to discuss special needs populations with housing providers.
Implementation Measure II.1.2	The City shall amend the Zoning Ordinance to specifically allow employee housing for six or fewer residents as a permitted use in residential zoning	December 31, 2015	On August 16, 2016, the City Council adopted and passed an ordinance specifically allowing employee housing for six or fewer residents as a permitted use in residential zoning districts, in compliance with Health and Safety Code Section 17021.5.

	districts.		
Implementation Measure II.1.3	The City shall amend the Zoning Ordinance to allow transitional and supportive housing in the Limited Commercial (LC) zoning district as a residential use subject only to the requirements of other residential uses in this district in compliance with Senate Bill 2 (2007).	One to two years after HE adoption	On August 16, 2016, the City Council passed and adopted an ordinance allowing transitional and supportive housing in the Limited Commercial (LC) zoning district subject only to the requirements of other residential uses in this district.
Implementation Measure II.2.1	City shall authorize regulatory incentives and concessions for development projects that include extremely low-, very low-, and low-income households and special needs groups including disabled and developmental disabled persons. These incentives and concessions include flexibility in development standards, reduction or deferral of certain development fees, priority application processing, and density bonus. The City will aim to facilitate the development of at least one affordable or special needs project during the planning period.	December 31, 2023	The City's Zoning Ordinance allows for flexibility in standards as well as a density bonus for affordable housing developments. The City will also continue to consider regulatory incentives and concessions such as a reduction or deferral in certain development fees and priority application processing. An affordable or special needs project was not built during this reporting year.
Implementation Measure II.2.2	City shall monitor the impact of development fees and consider waiving or deferring fees for affordable housing projects, if and when funding is available.	December 31, 2023	The City continues to monitor the impact of development fees and will consider waiving or deferring fees if there is funding available.
Implementation Measure III.1.1	City shall continue to refer interested persons to the Contra Costa County's Mortgage Credit Certificate Program, the Mortgage Revenue Bond Program, and the Owner-Occupied Housing Rehabilitation Program. The City will continue to disseminate information regarding Contra Costa Housing Authority's Lower-Income Rental Assistance Program and Aftercare Certificates as information becomes available.	December 31, 2023	The City continues to promote assistance for first-time home buyers and lower-income renters by referring inquires to County programs and by disseminating information as it becomes available.
Implementation Measure III.1.2	City shall seek funding to develop and	December 31,	The City explored funding sources such as CallHome and HOME and did not

	implement a down payment assistance program for first-time home buyers by working with the County or by developing its own program that can be used with the Mortgage Credit Certificate Program, new inclusionary units or alone.	2023	find any funding sources available for this use. The City will continue to seek funding in order to implement a down payment assistance program for first time home buyers.
Implementation Measure III.1.3	The City shall review potential funding opportunities through the County HOME program and apply for funding for applicable projects when development opportunities arise.	December 31, 2023	The City did not have any eligible projects.
Implementation Measure III.2.1	The City will continue to maintain and annually update the inventory of affordable housing projects and identify those that may be at-risk of converting to market rate in the future.	December 31, 2023	The City continues to maintain and annually update the inventory of affordable housing, which includes the time frame of affordability expiration. Annual reports from the privately owned affordable housing units are required to be submitted to the City.
Implementation Measure IV.1.1	The City shall review its Zoning Ordinance, policies, and practices to ensure compliance with fair housing laws.	December 31, 2023	The City continually reviews its Zoning Ordinance, policies, and practices to ensure compliance with fair housing laws. The City makes updates and changes when necessary to ensure compliance.
Implementation Measure IV.2.1	The City will provide information on proposed affordable housing projects to the public through the City's public hearing process in the form of study sessions, public hearings, and public meetings.	December 31, 2023	The City ensures the public is notified for any City hearings on development projects, including affordable housing projects. For any hearings, a notice would be placed in a local newspaper of general circulation and the property owners within a 300' radius would be notified.

**ANNUAL ELEMENT PROGRESS REPORT**  
***Housing Element Implementation***  
(CCR Title 25 §6202 )

**Jurisdiction** CLAYTON  
**Reporting Period** 01/01/2017 - 12/31/2017

**General Comments:**



Agenda Date: 3-20-2018

Agenda Item: 3e

Approved:

Gary A. Napper  
City Manager

# STAFF REPORT

**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** Laura Hoffmeister, Assist. to the City Manager  
**DATE:** March 20, 2018  
**SUBJECT:** A Resolution Approving a Lease Agreement with the Clayton Historical Society for its continued use of City owned property for the Clayton Museum and Garden Plaza located at 6101 Main Street

## RECOMMENDATION

Staff recommends the City Council adopt the attached Resolution, authorizing the City Manager to execute the Lease Agreement on behalf of the City of Clayton with the Clayton Historical Society for its continued use of City owned property for the Clayton Museum and Garden Plaza located at 6101 Main Street.

## BACKGROUND

The Clayton Historical Society, a 501 c3 non-profit corporation, was founded in 1974 to research, collect, record, preserve, display, borrow, share, and interpret local history information and memorabilia, and to promote understanding of Clayton origins and development to the public. Its volunteers finance, maintain and operate the non-profit Clayton Historical Museum and Garden as the major local history resource for students, writers, genealogical researchers, city and county needs, developers, businesses, existing and new residents, and visitors including many from other states and countries. It locates, records, inventories, publicizes and marks historic sites, buildings and natural features. The Society operates the Clayton Museum in Joel Clayton's farmhouse, and a garden area with exterior exhibits that emphasize the local history and memorabilia of the Clayton area, which is made available to the public. In addition to maintaining regular museum hours, the Society hosts student classes and special tours and opens the Museum upon request. The Society has developed a "twinning" bond with the City of Clayton's founder and namesake, (Joel Clayton's) birth town, Bugsworth, England.

In 1976, the City of Clayton and the Clayton Historical Society a 501 c(3) organization, entered into a 10-year lease ("Permissive Use Agreement") to allow the location of the Joel Clayton home for a public history museum and associated improvements on City property located at 6101 Main Street in Clayton's Town Center (APN 119-011-004). In 1978 the Clayton Historical Society officially opened to the public the doors of the Clayton Museum building. Museum Building, Garden Plaza, and ancillary exhibits resides on City-owned property. The Clayton Historical Society maintains these improvements which include the buildings and grounds as well as the collections of historic artifacts, antiques, photos and other items dating from Native American habitation to present day.



Subject: Resolution Authorizing the City Manager to Execute a Lease Agreement on behalf of the City with the Clayton Historical Society for its continued use of City owned property located at 6101 Main Street for the Clayton Museum and Garden Plaza

Date: March 20, 2018

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In 1986 the City of Clayton granted a one-year extension to the agreement to consider if it would be necessary for the Museum building to be relocated in order to re-establish Morris Street extension for vehicles as part of the Town Center planning process; or incorporate the Museum building as a part of the area planned for the Library, DiMartini Building, and the Keller House area. From 1987 through 1997 city staff and the community were involved in the planning for the area containing the current Library, Keller House, and DiMartini Building and the Town Center Specific Plan. The relocation of the Museum was not included in the final plans for either and therefore remained at its present location.

In 2014 during the review for the Museum Garden Plaza it was determined that the agreement for the present location at 6101 Main Street was never further extended nor a new agreement entered into. As a condition of approval for the Garden Plaza improvements, staff was instructed to review the original Museum/Historical Society lease and/or use agreement for this City-owned property to determine if it warranted any refreshing as to understandings of improvements ownership, maintenance, repair, liability, and removal should the City Council ever decide to sell the underlying real property, and to return any recommended lease modifications or understandings to the City Council for its consideration and formal acceptance.

#### **DISCUSSION**

Staff has conducted its review of the prior documents, meeting minutes and correspondence and determined that a new lease agreement is appropriate and necessary, and has generated it for formal approval attached to the Resolution as Exhibit A. The purpose is for continuing to allow the improvements and the continued of operation and maintenance of the Clayton Museum Building and Garden in accordance with Use Permit No. 52-76-89 (Museum Building and exterior exhibits display) approved by the Planning Commission on January 27, 1976; and Resolution 14-2014 (Museum Garden and exterior display improvements) approved by the City Council on May 20, 2014.

Staff provided the major terms of the proposed lease with the Clayton Historical Society President, Mike Wendorf, who reviewed it with the CHS Board. Mr. Wendorf provided a follow up email that they had no objection with the proposed terms. These terms were then included in a new comprehensive Lease Agreement document prepared by the City Attorney office and is attached to the Resolution as Exhibit A.

The following are the major terms of the Lease Agreement:

- The term of this Agreement shall commence on the effective date contained herein and may be terminated by either Party with six (6) months advance written notice to the other Party.
- The Leased Premises are leased to the Lessee for the sum of ten dollars (\$10.00) per year during the Term of this Agreement ("Lease Payments"). Lease Payments shall be paid in full in advance on a decennial (every 10 years) basis with first payment due July 1, 2018.

Subject: Resolution Authorizing the City Manager to Execute a Lease Agreement on behalf of the City with the Clayton Historical Society for its continued use of City owned property located at 6101 Main Street for the Clayton Museum and Garden Plaza

Date: March 20, 2018

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- During the six (6) month time period of termination of the Agreement the Lessee shall be responsible for, at Lessee's sole cost, the removal and/or relocation of all improvements, including but not limited to buildings, exhibits, and garden improvements. Should Lessee fail to remove all such improvements within the six (6) month termination period, every unremoved improvement or structure shall immediately become the property of the City of Clayton, together with all improvements incidental thereto, and the City shall have full right and sole discretion to dispose as allowed by law.
- Lessee is solely responsible for and shall pay any levied possessory interest tax or any other taxes imposed against the Lessee or the Leased Premises for Lessee's use of the Leased Premises per this Agreement.
- Lessee is solely responsible for and agrees to pay for any and all utility, telephone, internet costs and maintenance services associated with the Leased Premises
- Lessee is solely responsible for and agrees to maintain the Leased Premises in a clean, orderly, and safe manner at all times during the Term and shall adhere to all applicable federal, state, and local laws for its use.
- City shall have no obligation to maintain any improvements made upon its property. All maintenance obligations are that of the Lessee.
- Lessee shall procure and maintain appropriate levels of insurance for Lessee's use of the Leased Premises at limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury, and property damage; tractor exhibit area a minimum of \$5 million General Liability per occurrence for bodily injury. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit. Insurance shall name the City of Clayton its officers and employees as additional insured as a Policy Endorsement, without offset to the City's insurance policies.
- Lessee shall not initiate or make any alterations, additions or other improvements to the Building or premises ("Improvements") without prior written consent of the Lessor, which approval may be withheld in the Lessor's sole and absolute discretion.
- Lessee is aware of the City's requirements to comply with California Labor Code Section 1720 , et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If applicable, when Improvements are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Lessee agrees to fully

Subject: Resolution Authorizing the City Manager to Execute a Lease Agreement on behalf of the City with the Clayton Historical Society for its continued use of City owned property located at 6101 Main Street for the Clayton Museum and Garden Plaza

Date: March 20, 2018  
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comply with such Prevailing Wage Laws and any other laws applicable to the Improvements. In addition to its other obligations under this Agreement, Lessee shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **FISCAL IMPACT**

There is no fiscal impact to the City. The Lease Agreement calls for payment of \$10 a year lease paid in advance for a ten year period, beginning July 1<sup>st</sup>. This will result in a nominal positive financial impact to the City in exchange for the use of its public property.

### **CONCLUSION**

To continue the use of public property a new Lease Agreement is necessary. The proposed lease agreement is comprehensive, does not have any specific expiration clause, but allows each party to terminate with six month written notification; identifies maintenance, insurance responsibility, as well as modest lease payment in recognition public benefit provided by the Clayton Historical Society Museum and Garden Plaza.

### **Attachments:**

1. Resolution
2. Proposed Lease
3. Location Information
4. CHS President email

*chs lease with city ccsrr*

**RESOLUTION NO. -2018**

**A RESOLUTION APPROVING A LEASE AGREEMENT WITH THE CLAYTON HISTORICAL SOCIETY FOR ITS CONTINUED USE OF CITY-OWNED PROPERTY FOR THE CLAYTON MUSEUM AND GARDEN PLAZA LOCATED AT 6101 MAIN STREET**

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

**WHEREAS**, the City of Clayton and the Clayton Historical Society, a 501 c(3) organization, entered into a 10-year lease in 1976, ("Permissive Use Agreement"), to allow the location of the Joel Keller Home for a public history museum and associated improvements on City property located at 6101 Main Street in Clayton's Town Center (APN 119-011-004); and

**WHEREAS**, in 1978, the Clayton Historical Society officially opened to the public the doors of the Clayton Museum building; and

**WHEREAS**, the Museum Building, Garden Plaza, and ancillary exhibits resides on City-owned property and the Clayton Historical Society maintains these improvements which include collections of local historic artifacts, antiques, photos and other items dating back from Native American habitation to present day; and

**WHEREAS**, in 1986 the City of Clayton granted a one-year extension in order to consider if it would be necessary for the Museum building to be relocated in order to re-establish Morris Street extension for vehicles as part of the Town Center planning process, or incorporate the Museum building as a part of the area planned for the Library, DiMartini Building, and the Keller House; and

**WHEREAS**, beginning in 1987 and continuing through 1997 City staff and the community were involved in the planning for the area containing the current Library, Keller House, and DiMartini Building; the relocation of the Museum was not included in the final plans and therefore remained at its present location; and

**WHEREAS**, in 2014 during the review for the Museum Garden Plaza it was determined the agreement for the present location at 6101 Main Street was not further extended nor a new agreement entered into; and

**WHEREAS**, as a condition of approval in 2014 for the Garden Plaza improvements, staff was instructed to review the original Museum/Historical Society lease and/or use agreement for this City-owned property to determine if it warrants any refreshing as to understandings of improvements ownership, maintenance, repair, liability, and removal should the City Council ever decide to sell the underlying real property, and to return any recommended lease modifications or understandings to the City Council for its consideration and formal acceptance; and

**WHEREAS**, staff has conducted the above review and determined that a new lease agreement is appropriate and necessary, and has generated it for formal approval, attached as Exhibit A.

**NOW, THEREFORE, BE IT RESOLVED** the City Council of Clayton, California does hereby approve the proposed lease and authorizes its City Manager to execute the Lease Agreement on behalf of the City.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held on March 20, 2018 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

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Keith Haydon, Mayor

ATTEST

---

Janet Brown, City Clerk

I hereby certify that the foregoing resolution was duly adopted and passed by the City Council of Clayton, California at a regular public meeting thereof held on March 20, 2018.

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Janet Brown, City Clerk

**LEASE AGREEMENT**

**between**

**CITY OF CLAYTON**  
**a California municipal corporation**

**AND**

**Clayton Historical Society**  
**a California 501(c)3 non-profit corporation**

**1. Parties and Date.**

This Lease Agreement ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2018 (the "Effective Date"), by and between the City of Clayton ("City" or "Lessor"), a California municipal corporation, with its principal place of business at 6000 Heritage Trail, Clayton, California, 94517, and the Clayton Historical Society ("Lessee"), a 501(c)3 non-profit corporation, with its principal mailing address at P.O. Box 94, Clayton California, 94517. The City and Lessee are sometimes herein referred to individually as "Party" and collectively as "Parties."

**2. Recitals.**

**2.1 City Property as Leased Premises.**

City is the owner of the real property commonly known as Clayton Historical Museum and Garden, located at 6101 Main Street, Clayton California, (Assessor's Parcel Number- APN: 119-011-004 ("Leased Premises"), which is more particularly described and depicted in Exhibit "A" and its attachments, which are all attached hereto and incorporated herein by this reference.

**2.2 Purpose of Agreement.**

City desires to lease to Lessee, and Lessee desires to lease from City, the Leased Premises for due and adequate consideration, the receipt and sufficiency of which are acknowledged by the Parties and further described and set forth in this Agreement. The purpose is for the placement of improvements and the continued of operation and maintenance of the Clayton Museum Building and Garden in accordance with Use Permit No. 52-76-89 (Museum Building and exterior exhibits display) approved by the Planning Commission on January 27, 1976; and Resolution 14-2014 (Museum Garden and exterior display improvements) approved by the City Council on May 20, 2014.

**2.3 Description of Public Benefit**

The Clayton Historical Society, a 501 c3 non- profit corporation, was founded in 1974 to research, collect, record, preserve, display, borrow, share, and interpret local history information and memorabilia, and to promote understanding of Clayton origins and development to the public. Its volunteers finance, maintain and operate the non-profit Clayton Historical Museum and Garden as the major local history resource for students, writers, genealogical researchers, city and county needs, developers, businesses, existing and new residents, and visitors including many from other states and countries. It locates, records, inventories, publicizes and marks historic sites, buildings and natural features.

The Society operates the Clayton Museum in Joel Clayton's farmhouse, and garden area with exterior exhibits that emphasize the local history and memorabilia of the Clayton area, which is made available to the public. In addition to maintaining regular museum hours, the Society hosts student classes and special tours and opens the Museum upon request. The Society has developed a "twinning" bond with the City of Clayton's founder and namesake, Joel Clayton, and his birth town, Bugsworth, England.

### **3. Terms.**

#### **3.1 Description of Leased Premises.**

City hereby leases to Lessee, and Lessee leases from City, on the terms and conditions set forth in this Agreement, the Leased Premises, which generally consists of the following areas, which are more specifically described and depicted in Exhibit "A" hereto and its attachments:

6101 Main Street, Clayton California

Assessor's Parcel Number (APN): 119-011-004

#### **3.2 Term.**

The term of this Agreement shall commence on the effective date contained herein and may be terminated by either Party with six (6) months advance written notice to the other Party.

#### **3.3 Lease Payment.**

The Leased Premises are leased to the Lessee for the sum of ten dollars (\$10.00) per year during the Term of this Agreement ("Lease Payments"). Lease Payments shall be paid in full in advance on a decennial (every 10 years) basis with first payment due July 1, 2018 as shown payment schedule Exhibit B. Payments received after July 10<sup>th</sup> will be considered past due and be assessed a 25% late fee

#### **3.4 Use.**

The Lessee shall be deemed to have accepted the Leased Premises as being in good condition. The Leased Premises are leased to Lessee solely for the purpose of operating the Clayton Museum Building and Garden in accordance with Use Permit No. 52-76-89 (Museum Building and exterior exhibits display) approved by the Planning Commission on January 27, 1976; and Resolution 14-2014 (Museum Garden and exterior display improvements) approved by the City Council on May 20, 2014.

#### **3.5 Termination; Removal of Improvements.**

The Lessee shall be deemed to have accepted the Leased Premises as being in good condition for the above stated uses. Except as otherwise provided herein, Lessee or City may terminate this Agreement at any time after giving six (6) months prior written notice to the other party. The Lessee shall, upon the termination or default or abandonment of the Agreement term, surrender the Leased Premises in as good condition. During the six (6) month termination time period, or after default or abandonment, the Lessee shall be responsible for, at Lessee's sole cost, the removal and/or relocation of all improvements, including but not limited to buildings, exhibits, and garden improvements. Should Lessee fail to remove all such improvements within a six (6) month time period after notice of termination, default, or abandonment, every unremoved improvements or structures shall immediately become the property of the City of Clayton, together with all improvements incidental thereto, and the City shall have full right and sole discretion to dispose or reuse as allowed by law.



### **3.6 Reasonable Access to Leased Premises.**

City and its agents shall have the right at all reasonable times to enter the Leased Premises to:

- a. Inspect the Leased Premises to ensure Lessee is complying with the terms of the lease.
- b. Access for surveys or other matters related to City needs.
- c. Serve, post, and keep posted notices required by law or that City considers necessary for the protection of the City or the Leased Premises.

### **3.7 Hours of Operation.**

The Lessee shall not open the leased premises to the public earlier than 8:00 a.m. and no later than 10:00 p.m. without prior written City approval, Sunday through Saturday. Lessee may seek City approval to be open to the public earlier or later for Special Events.

### **3.8 Lessee's Obligations**

#### **3.8.1 Improvements**

**3.8.1.2 Procedures for Improvements.** Lessee shall not make any initiate or make any alterations, additions or other improvements to the Building or premises ("Improvements"), without prior written consent of the Lessor, which approval may be withheld in the Lessor's sole and absolute discretion.

**3.8.1.3** Lessee is aware of the City's requirements to comply with California Labor Code Section 1720 , et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If applicable, when Improvements are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Lessee agrees to fully comply with such Prevailing Wage Laws and any other laws applicable to the Improvements. In addition to its other obligations under this Agreement, Lessee shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

#### **3.8.2 Lawful Operation.**

From the Effective Date, Lessee shall meet all local, county, state, and federal guidelines for administering any of Lessee's programs and for using the Leased Premises as allowed per this Agreement. Lessee shall operate "the Clayton Museum and Gardens" at the Leased Premises in accordance with all applicable federal, state, and City laws and regulations, and this Agreement.

### **3.8.3 Payment of Taxes.**

Lessee is solely responsible for and agrees to pay any levied possessory interest tax or any other taxes imposed against the Lessee or the Leased Premises for Lessee's use of the Leased Premises per this Agreement.

### **3.8.4 Utilities and Janitorial Services.**

Lessee is solely responsible for and agrees to pay for any and all utility, telephone, internet and maintenance services associated with the Leased Premises.

### **3.8.5 Signage.**

Lessee shall provide, at its own cost and expense, signage in a manner consistent with all applicable local laws, rules and regulations.

### **3.8.6 Damage Reporting**

Lessee shall immediately report to Lessor and damage to property of the Leased Premises.

### **3.8.7 Maintain Clean, Safe Environment.**

Lessee is solely responsible for and agrees to maintain the Leased Premises in a clean, orderly, and safe manner at all times during the term of this Agreement and shall adhere to all applicable federal, state, and local laws for its use.

## **3.9 City Obligations - Maintenance and Repair.**

City shall have no obligation to maintain any improvements made upon its property. All maintenance obligations are that of the Lessee.

## **3.10 Insurance.**

Lessee shall procure and maintain appropriate levels of insurance for Lessee's use of the Leased Premises at limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury, and property damage; tractor exhibit area a minimum of \$5 million General Liability per occurrence for bodily injury. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit. Insurance shall name the City of Clayton its officers and employees as additional insured as a Policy Endorsement, without offset to the City's insurance policies.

## **3.11 No Joint Venture or Partnership.**

City and Lessee shall not, by virtue of this Agreement, in any way or for any reason, be deemed to be or have become a partner of the other in the conduct of its business or otherwise, or a joint venture.

### **3.12 Independent Contractor.**

Neither Lessee, nor any of its agents, volunteers, employees, invitees, licensees, or guests shall constitute employees of the City.

### **3.13 Violations.**

Lessee shall not engage in, or permit or authorize any of Lessee's employees, agents, licensees, invitees, or guests to engage in any activity which constitutes a violation of any applicable state, federal, or local law, ordinance, rule, or regulation.

### **3.15 Indemnity.**

Lessee shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and, agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Lessee, its officials, officers, employees, agents (including any person or entity chosen or allowed by Lessee to operate on the Leased Premises), consultants and contractors arising out of or in connection with this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. Lessee shall defend, at Lessee's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its directors, officials, officers, employees, agents or volunteers. Lessee shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action, or other legal proceeding. Lessee shall reimburse City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Lessee's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents, or volunteers.

### **3.16 Default or Abandonment by Lessee; Waiver**

**3.16.1** Lessee shall be deemed to be in material default of this Agreement if during the term of this Agreement Lessee shall have not performed any of its material obligations under this Agreement, and shall have failed to remedy any such default within a period of time of not less than 30 days after written notice is given to Lessee by the City.

**3.16.2** In the event of any of the above-described material defaults, the City shall have the right to:

**3.16.2.1** Re-enter the Leased Premises, at the City's option, without further demand or notice, and eject Lessee in possession of the Leased Premises therefrom; and

**3.16.2.2** Re-let the Leased Premises for the account of Lessee upon such terms and conditions as the City shall deem advisable.

**3.16.3** The waiver by the City of any material default by Lessee of any term, covenant or condition hereof shall not be effective unless made in writing and shall not operate as a waiver of any subsequent default of the same or any other term, covenant or condition hereof.

**3.17 Assignment/Sublease.**

Lessee shall not either voluntarily or by operation of laws, assign, sell, encumber, pledge or otherwise transfer all or any part of Lessee's leasehold estate hereunder, or permit the Leased Premises to be occupied by anyone other than Lessee or Lessee's employees or agents, or sublet the Leased Premises or any portion thereof, without City's prior written consent in each instance.

**3.18 Severability.**

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and shall not be affected, impaired, or invalidated thereby.

**3.19 Attorneys' Fees.**

In case either Party brings an action to enforce any term or condition of this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees as determined by the court, and all other costs and expenses related to such action.

**3.20 Waivers.**

The waiver by either Party of the breach of any provision of this Agreement shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

**3.21 Binding on Successors.**

This Agreement shall apply to and be binding upon the heirs, successors in interest, executors, administrators, and assigns of the respective Parties hereto. The terms Lessee, City, Party, and Parties shall include the heirs, successors in interest, executors, administrators, assigns, agents, employees, officers, or officials of such party or parties hereto.

**3.22 Captions.**

The various headings contained herein and the grouping of the provisions of this Agreement into separate paragraphs are for the purpose of convenience only, and shall not be considered in interpreting the provisions of this Agreement.

**3.23 Notices.**

Any and all notices which are required under the terms and conditions of this Agreement or which either City or Lessee desire to serve upon the other, shall be in writing and, unless otherwise noted herein, shall be deemed served when delivered personally or faxed, or when deposited in the United States mail, postage prepaid, return receipt requested, addressed as follows:

**CITY:**

City of Clayton  
Attn: City Manager  
6000 Heritage Trail  
Clayton, CA 94517

**LESSEE:**

Clayton Historical Society  
Attn: President  
P. O. Box 94  
Clayton, CA 94517

Any notice so given shall be considered served on the other Party five (5) days after deposit in the U.S. mail, first class postage prepaid, return receipt requested, and addressed to the Party at its applicable address. Actual notice, including by fax, shall be deemed adequate notice on the date actual notice occurred regardless of the method of service.

**3.24 Governing Law.**

This Agreement, and the rights and obligations of the Parties, shall be governed and interpreted in accordance with the laws of the State of California. Venue shall be in Contra Costa County, California.

**3.25 Entire Agreement.**

This Agreement, along with any exhibits and attachments attached hereto and incorporated herein by reference, constitutes the entire agreement between the City and the Lessee relative to the Leased Premises, and may only be modified by mutual consent of the Parties in writing.

**3.26 Authority to Enter Agreement.**

Lessee has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

**3.27 Counterparts.**

This Agreement may be signed in counterparts, each of which shall constitute an original.

**SIGNATURE PAGE TO THE  
LEASE AGREEMENT BETWEEN  
THE CITY OF CLAYTON AND**

\_\_\_\_\_  
IN WITNESS WHEREOF, the Parties hereby execute this Agreement and make it effective as of the Effective Date.

**CITY:**  
CITY OF CLAYTON,  
a California municipal corporation

By: \_\_\_\_\_  
Gary A. Napper  
City Manager

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Janet Brown  
City Clerk

**APPROVED AS TO LEGAL FORM:**

\_\_\_\_\_  
Best, Best & Krieger LLP  
City Attorney

**LESSEE:**  
Clayton Historical Society,  
a California nonprofit corporation

By: \_\_\_\_\_  
Michael Wendorf  
President

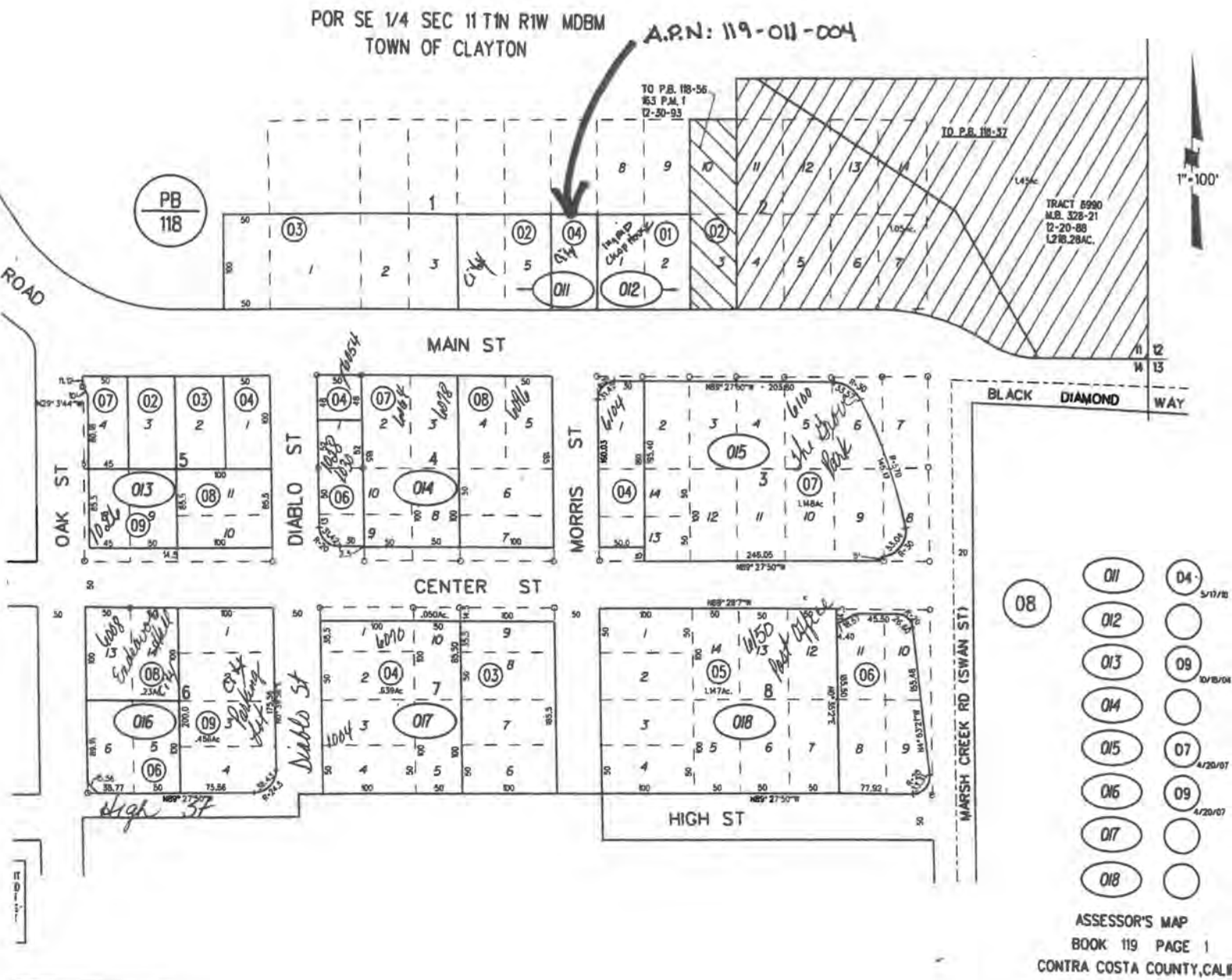
Date: \_\_\_\_\_

**EXHIBIT "A"**

**DESCRIPTION OF LEASED PREMISES**

**6101 Main Street Clayton, California**

**Assessor's Parcel Number (APN): 119-011-004**



**EXHIBIT "B"**  
**FEE SCHEDULE**

The Leased Premises are leased to the Lessee for the sum of ten (10) dollars per year during the Term of this Agreement. Lease Payments shall be paid in full in advance on a decennial (10 year basis) as shown in the schedule below. Payments received after July 10<sup>th</sup> will be considered past due and be assessed a 25% late fee.

<b>PAYMENT SCHEDULE</b>	<b>PAYMENT DUE DATE</b>
<b>July 1, 2018 – June 30, 2028: \$100.00</b>	July 1, 2018
<b>July 1, 2028- June, 2038: \$100.00</b>	July 1, 2028
<b>July 1, 2038- June, 2048: \$100.00</b>	July 1, 2038
<b>July 1, 2048- June, 2058: \$100.00</b>	July 1, 2048



6101 Main Street – Clayton Historical Society Museum and Garden Improvements Location Map



## Laura Hoffmeister

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**From:** Mike Wendorf <mike\_wendorf@yahoo.com>  
**Sent:** Wednesday, March 14, 2018 11:10 AM  
**To:** Laura Hoffmeister  
**Subject:** Re: CHS and City deal terms for a new lease

I have reviewed the terms of the new lease agreement for the Clayton Historical Society and have no objections.

Thank you.

Michael Wendorf  
President  
Clayton Historical Society  
925-381-9837

On Tuesday, March 13, 2018, 3:25:08 PM PDT, Laura Hoffmeister <lhoffmeister@ci.clayton.ca.us> wrote:

The current lease expired in the 1980's it was to have been redone but at that time the city was working on the Library and City Hall site area and there was thought to maybe incorporate the Joel Keller house to that area, it was not included and the city got involved and in the planning of the Library and renovation of DeMartini building for city hall, and with later staff changes seemed to never have been followed up with a new lease and forgotten

about.

So here are the main proposed deal terms for a new lease: I would need to wrap the lease up this Friday for scheduled action by the City Council at their March 20 meeting.

The term of this Agreement shall commence on the effective date contained herein and may be terminated by either Party with six (6) months advance written notice to the other Party.

The Leased Premises are leased to the Lessee for the sum of ten dollars (\$10.00) per year during the Term of this Agreement ("Lease Payments"). Lease Payments shall be paid in full in advance on a decennial (every 10 years) basis with first payment due July 1, 2018.

During the six (6) month time period of termination of the Agreement the Lessee shall be responsible for, at Lessee's sole cost, the removal and/or relocation of all improvements, including but not limited to buildings, exhibits, and garden improvements. Should Lessee fail to remove all such improvements within the six (6) month termination period, every unremoved improvement or structure shall immediately become the property of the City of Clayton, together with all improvements incidental thereto, and the City shall have full right and sole discretion to dispose as allowed by law.

Lessee is solely responsible for and shall pay any levied possessory interest tax or any other taxes imposed against the Lessee or the Leased Premises for Lessee's use of the Leased Premises per this Agreement.

Lessee is solely responsible for and agrees to pay for any and all utility, telephone, internet costs and maintenance services associated with the Leased Premises

Lessee is solely responsible for and agrees to maintain the Leased Premises in a clean, orderly, and safe manner at all times during the Term and shall adhere to all applicable federal, state, and local laws for its use.

City shall have no obligation to maintain any improvements made upon its property. All maintenance obligations are that of the Lessee.

Lessee shall procure and maintain appropriate levels of insurance for Lessee's use of the Leased Premises at limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury, and property damage; tractor exhibit area a minimum of \$5 million General Liability per occurrence for bodily injury. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit. Insurance shall name the City of Clayton its officers and employees as additional insured as a Policy Endorsement, without offset to the City's insurance policies.

Lessee shall not initiate or make any alterations, additions or other improvements to the Building or premises ("Improvements") without prior written consent of the Lessor, which approval may be withheld in the Lessor's sole and absolute discretion.

Lessee is aware of the City's requirements to comply with California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If applicable, when Improvements are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Lessee agrees to fully comply with such Prevailing Wage Laws and any other laws applicable to the Improvements. In addition to its other obligations under this Agreement, Lessee shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

Laura Hoffmeister

Assistant to the City Manager

City of Clayton

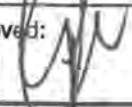
6000 Heritage Trail

Clayton, CA 94517



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** *MKS*

**DATE: MARCH 20, 2018**

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

## RECOMMENDATION

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

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

## BACKGROUND AND DISCUSSION

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

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

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

### **DISCUSSION**

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

The major issues incorporated into the Ordinance are as follows:

#### ***Definition of Public Place***

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

#### ***Smoking in City Facilities***

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

#### ***Prohibition of Smoking***

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

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

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

### ***Multifamily Housing***

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

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

### ***Cannabis***

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

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

### ***Enforcement and Penalties***

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

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

### **ENVIRONMENTAL**

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

### **FISCAL IMPACTS**

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

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

### **ATTACHMENTS**

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

**ATTACHMENT 1**

**ORDINANCE NO. 481**

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Keith Haydon, Mayor

ATTEST

\_\_\_\_\_  
Janet Brown, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

\_\_\_\_\_  
Malathy Subramanian, City Attorney

\_\_\_\_\_  
Gary A. Napper, City Manager

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

\_\_\_\_\_  
Janet Brown, City Clerk

## EXHIBIT A

### Chapter 8.14 - REGULATION OF SMOKING

#### Sections:

8.14.010 - Reserved.

8.14.020 - Purpose.

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

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

8.14.030 - Definitions.

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

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

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

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

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

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

8.14.040 - Regulation of Smoking in City Facilities.

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

8.14.050 - Prohibition of Smoking.

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

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

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

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

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

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

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

#### 8.14.070 – Multi-unit Residences Required Lease Terms.

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



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

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

#### 8.14.080 - Posting and Notice Requirements.

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

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

#### 8.14.090 - Vending Machines.

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

#### 8.14.100 - Distribution of Free Samples and Coupons.

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

#### 8.14.110 - Out of Package Sales.

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

#### 8.14.120 – Enforcement.

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

#### 8.14.130 - Penalties.

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

8.14.140 - Non-Retaliation.

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

8.14.150 - Other Applicable Laws.

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

**Chapter 8.14 - REGULATION OF SMOKING****Sections:****8.14.010 - Findings.**

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

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

(Ord. 295, § 1, 1992)

**8.14.020 - Purpose.**

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

(Ord. 295, § 1, 1992)

**8.14.030 - Definitions.**

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

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

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

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

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

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

(Ord. 295, § 1, 1992; Ord. 307, 1993)

#### 8.14.040 - Regulation of Smoking in City-Owned Facilities.

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

(Ord. 295, § 1, 1992; Ord. 307, 1993)

#### 8.14.050 - Prohibition of Smoking.

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

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

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

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

(Ord. 295, § 1, 1992; Ord. 307, 1993)

#### 8.14.060 - Regulation of Smoking in Places of Employment.

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

(Ord. 295, § 1, 1992)

#### 8.14.070 - Optional Smoking Areas.

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

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

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

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

(Ord. 295, § 1, 1992)

#### 8.14.080 - Posting Requirements.

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

(Ord. 295, § 1, 1992)

#### 8.14.090 - Vending Machines.

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

(Ord. 295, § 1, 1992)

#### 8.14.100 - Distribution of Free Samples and Coupons.

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



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

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

(Ord. 295, § 1, 1992)

#### 8.14.110 - Out of Package Sales.

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

(Ord. 295, § 1, 1992)

#### 8.14.120 - Enforcement.

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

(Ord. 295, § 1, 1992)

#### 8.14.130 - Penalties.

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

(Ord. 295, § 1, 1992)

8.14.140 - Non-Retaliation.

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

(Ord. 295, § 1, 1992)

8.14.150 - Other Applicable Laws.

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

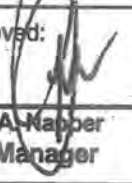
(Ord. 295, § 1, 1992)

# ATTACHMENT 3



Agenda Date: 2-20-2018

Agenda Item: 8a

Approved:   
Gary A. Naber  
City Manager

## AGENDA REPORT

**TO: HONORABLE MAYOR AND COUNCIL MEMBERS**

**FROM: MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR** *MG*

**DATE: FEBRUARY 20, 2018**

**SUBJECT: DISCUSSION OF SMOKING REGULATIONS**

### RECOMMENDATION

It is recommended the City Council discuss and provide direction on the various staff recommendations regarding an update to the City's smoking regulations.

### BACKGROUND

On December 5, 2017, the City Council addressed the issues associated with the State of California's legalization of adult-use cannabis (Proposition 64) by adopting an Ordinance prohibiting all commercial cannabis uses within the City, except for the delivery of cannabis and cannabis products originating outside of the city limits. It also banned the personal outdoor cultivation of cannabis.

As part of the discussion regarding the regulation of cannabis, the City Council provided direction to staff to bring back an update to the City's smoking ordinance in order to more thoroughly address the smoking and ingesting of cannabis. Current State law, Health and Safety Code, section 11362.3, contains limitations on public consumption of cannabis including, but not limited to the following prohibitions:

- Smoking and ingesting cannabis or cannabis products in a public place;
- Smoking cannabis or cannabis products in a location where smoking tobacco is prohibited; and
- Smoking cannabis or cannabis products within 1,000 feet of a school, day care center, or youth center while children are present (except in or upon the grounds of a

private residence and only if such smoking is not detectable by others on the grounds of the school, day care center, or youth center while children are present) or upon the grounds of a school, day care center, or youth center while children are present.

While State law attempts to address the appropriate locations for the use of cannabis to some degree, it also contains vague language such as the smoking of cannabis or cannabis products in a location where smoking tobacco is prohibited. The ambiguity of the State law language prompted staff to look at the City's current smoking ordinance to determine if there were any changes that should be considered not only to address the smoking and ingesting of cannabis, but also to consider shifting prevailing sentiments towards tobacco use as well as to address any health concerns that may not have been day lighted when the City's smoking ordinance was last updated.

The City's smoking ordinance was last updated in 1993 (**Attachment 1**) and since that time there have been significant changes to State law regarding tobacco use, 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. Further, the American Lung Association recently gave Clayton an overall grade of a "D" as it pertains to tobacco control (**Attachment 2**).

#### *Secondhand Smoke Health Concerns*

It has been proven that secondhand smoke leads to numerous health issues in both children and adults. The California Air Resources Board has also declared secondhand smoke as a toxic air contaminant and a report from the U.S. Surgeon General indicates there is no risk-free level of exposure to secondhand smoke. Further, Stanford University researchers conducted an in-depth study on how smoking affects air quality at sidewalk cafes, park benches, and other outdoor locations. The Stanford researchers concluded that a non-smoker sitting a few feet downwind from a smoldering cigarette is likely to be exposed to substantial levels of contaminated air for brief periods of time.

In addition, while there is not a voluminous amount of research yet on the effects of secondhand smoke produced from electronic smoking devices as compared to the research on secondhand smoke from cigarettes/cannabis, there are studies being published finding that vaping worsens indoor air quality and that products contain harmful chemicals for both the person directly ingesting the tobacco/cannabis as well as for those exposed to the secondhand vapor or aerosol.

#### **POLICY QUESTIONS AND DISCUSSION**

State law prohibits the smoking of tobacco, including electronic smoking devices, in many locations and circumstances; however over the last ten years local jurisdictions, in compliance with State law, have been enacting more stringent laws to address a myriad of complaints and health concerns received from their respective communities. Since the City's smoking ordinance has not been updated since 1993, staff seeks policy direction from

the Clayton City Council on the topics below in order to appropriately revise our local Ordinance and to determine if a more stringent smoking ordinance should be drafted for consideration to address health and community concerns related to the smoking and/or ingesting of tobacco and/or cannabis.

***POLICY QUESTION 1: SHOULD THE CITY FURTHER REGULATE TOBACCO AND CANNABIS PRODUCTS THAT DO NOT CREATE VAPOR OR SMOKE?***

The City Council not only has the authority to further regulate the smoking of tobacco and cannabis products but it can also regulate the use of other tobacco and cannabis products that do not produce smoke or vapor. These types of products would include, but are not limited to, chewing tobacco, snuff, or edibles.

**STAFF RECOMMENDATION:** Given these products do not produce an involuntary impact like secondhand smoke or vapor and that State law also currently prohibits the ingesting of cannabis and cannabis products in a public place, staff suggests these products not be further regulated.

***POLICY QUESTION 2: SHOULD THE CITY FURTHER REGULATE SMOKING AT PLACES OF EMPLOYMENT?***

California Labor Code Section 6404.5 prohibits smoking in most indoor workplaces, but exempts the following:

- 1) Twenty percent (20%) of guestroom accommodations in a hotel, motel, or similar transient lodging establishment.
- 2) Retail or wholesale tobacco shops and private smokers' lounges.
- 3) Cabs of trucks, or tractors, if nonsmoking employees are not present.
- 4) Theatrical production sites, if smoking is integral part of the story.
- 5) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.
- 6) Private residences, except for private residences licensed as family day care homes where smoking is prohibited pursuant to the California Health and Safety Code Section 1596.795.
- 7) Patient smoking areas in long-term health facilities.

**STAFF RECOMMENDATION:** Prohibit the smoking of all places exempted by the State except for retail or wholesale tobacco establishments with a private smokers' lounge as defined in the California Labor Code. Staff would further recommend restricting this exemption by not allowing the sale of food and drink, or allow such products to be consumed onsite; prohibiting minors from entering the store at all times; and the tobacco store must be an independent freestanding building unattached to any other building, establishment, or use.

**POLICY QUESTION 3: SHOULD THE CITY REGULATE SMOKING IN MULTIFAMILY RESIDENTIAL USES?**

Due to smoke migrating from neighboring apartments or condominium through cracks in shared walls, vents, and open windows and involuntarily subjecting others to secondhand, jurisdictions have routinely adopted ordinances to prohibit the smoking in not only the common areas of all multifamily residences, but also all units within multi-unit residences. As of April 2017, the American Lung Association has documented 51 California jurisdictions having adopted strong ordinances for smoke-free housing with the majority of those 51 jurisdictions requiring 100 percent of the units to be smoke-free (**Attachment 3**). Another 39 jurisdictions have smoke-free policies that cover common areas and those that require disclosure in lease and rental agreements.

**STAFF RECOMMENDATION:** Prohibit the smoking in the enclosed and unenclosed common areas of multifamily residences and within the units of all multifamily residences, including balconies and patios. Staff recommends a threshold of two or more units, including condominiums, be established due to the sharing of common walls and the impacts of secondhand smoke. However, staff proposes allowing landlords to designate outdoor smoking areas a reasonable distance away from any doors or operable windows in compliance with state and federal laws regarding changes to the terms of a lease or rental agreement. Such designated smoking areas would be subject to appropriate criteria as having a clearly marked perimeter and identified by the appropriate signage. Lastly, staff recommends these restrictions be effective immediately for any new multifamily development projects and provide a one-year timeframe for these regulations to be phased in for existing multifamily residential units. These regulations would also be required to be disclosed in the lease or rental agreement.

It should be noted, these proposed 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 public. Oddly, the growing of cannabis for personal use and edible cannabis products would still be permissible within multifamily residential units.

**POLICY QUESTION 4: SHOULD THE CITY REGULATE SMOKING IN UNENCLOSED SPACES?**

- 1) The current Ordinance prohibits smoking in City parks, open space, and trails, which staff proposes to remain in effect; however additional policy questions arise to determine if the Council wants to further restrict smoking in public unenclosed spaces beyond State law. For example, smoking within 25 feet of a playground (park or recreational area specifically design for use by children that has play equipment installed) or tot lot sandbox area (a public park designated for use by children under

five years of age) is prohibited; however the law does not apply to public sidewalks. The City Council may want to further restrict smoking in the Town Center by establishing a 25 foot buffer around The Grove Park because it is conceivable someone could be smoking within 25 feet of the playground at The Grove Park by standing on the sidewalk on Center Street and exposing children and youth to secondhand smoke. This also raises a similar issue during the Concerts at The Grove, where secondhand smoke can drift from the sidewalk into the park. It should be noted, a person may have to move nearly 23 feet away from the source of the smoke to be completely free from exposure to secondhand smoke.

- 2) Other places for the City Council to consider the prohibition of smoking would be at all outdoor public events such as parades, concerts, and festivals (4<sup>th</sup> of July parade, Oktoberfest, Art & Wine, etc.) as well as recreational areas, such as swimming pools, ball fields, and gymnasiums. Please note state law already prohibits smoking, including the use of electronic smoking devices, within 25 feet of the common commerce area of a certified farmers' market.
- 3) Staff also seeks direction from the City Council on the prohibition of smoking at unenclosed dining areas. Some restaurants in the Town Center already prohibit smoking on the dining patios; however this restriction could be enforceable and memorialized in the Clayton Municipal Code (CMC).
- 4) Lastly, should a reasonable smoking distance be required from any doorway, window, opening, crack, or vent into an enclosed area in which smoking is prohibited? This buffer zone would minimize smoking entering into an enclosed area where smoking is prohibited as well as minimize those exiting or entering an enclosed area from being exposed to secondhand smoke.

**STAFF RECOMMENDATIONS:** 1) Establish a 25-foot smoking prohibition around the exterior perimeter of The Grove Park to eliminate or reduce children and youth exposure to secondhand smoke. 2) Prohibit smoking at outdoor public events and recreational areas, except for private recreational areas not open to the public, including golf courses, to the extent as permitted by state law. 3) Prohibit smoking in unenclosed dining areas, except for private restaurants not open to the public. 4) Establish a 25-foot buffer zone from any doorway, window, opening, crack, or vent into an enclosed area where smoking is prohibited.

***POLICY QUESTION 5: WHAT LEVEL OF PENALTY SHOULD BE APPLIED FOR VIOLATIONS?***

The City Council has the authority within the proposed Ordinance to determine the level of penalty for violations of the proposed regulations. The penalty could be considered an infraction or a misdemeanor, or it could be drafted as a "wobbler" with the level of penalty at the discretion of the enforcing officer. Section 36900 of the California Government Code

requires municipalities to have the same amount for infractions: first violation is \$100; second violation within the same year is \$200; and a fine not exceeding \$500 for each additional violation of the same ordinance in the same year; however a misdemeanor allows a higher fine ceiling at \$1,000. Another option for consideration would be allowing private citizens to obtain an injunction against individuals or businesses for repeat violations of the ordinance.

**STAFF RECOMMENDATION:** Staff recommends allowing the penalty to be a wobbler between an infraction and a misdemeanor, thereby allowing the police officer to make the determination in regards to the penalty depending on the situation. Further, language allowing a private citizen to obtain an injunction against individuals or businesses for repeat violations of the ordinance would provide additional enforcement, but at no real additional expense to the City.

### **CANNABIS**

As indicated earlier in the staff report, the California Health and Safety Code prohibits the smoking and ingesting of cannabis or cannabis products in a public place; in a location where smoking tobacco is prohibited; and within 1,000 feet of a school, day care center, or youth center while children are present. A concern from staff is that State law does not provide a definition of "public place". Until further guidance is provided by the State, it would be prudent to include the applicable definition of "public place" in the CMC.

**STAFF RECOMMENDATION:** It is recommended the Council direct staff to include a definition of "public place" in the Ordinance for clarity and enforcement purposes. Also, given the high level of restrictions at the State level and depending on direction to staff regarding the smoking Ordinance, staff is merely recommending reiterating state law as it pertains to the consumption of cannabis and cannabis products and further specify cannabis is not allowed on any City property.

### ***ISSUES CONSIDERED BUT NOT INCORPORATED BY STAFF***

- 1) Staff considered a prohibition on smoking in all of the Clayton Town Center area to encourage pedestrian-friendly policies to support the City's goal of an attractive and vibrant downtown, similar to the prohibition established in downtown Walnut Creek. After further consideration, this was ultimately not recommended due to its restrictive nature and possible economic impacts to downtown businesses.
- 2) Another consideration was only applying the prohibition of smoking to the common areas of multifamily residences; however after considering that smoking is not a constitutional right and the health risks associated with secondhand smoke, staff felt it was more appropriate to prohibit smoking in all multifamily residential units and adjacent outdoor spaces. Additionally, staff felt that only requiring the disclosure of smoking policies within a lease or rental agreement did not go far enough to eliminate the exposure to secondhand smoke, particularly since there is a housing



supply shortage in the State of California, which could further limit the choice of those looking for a place to live.

- 3) In regards to enforcement, City staff considered recommending allowing the city to file a civil action for any violation seeking a monetary fine, injunctive relief, or nuisance abatement. Given the costs associated with filing a civil action, staff did not believe it was prudent to make this recommendation. Another option considered, but not recommended, was to declare violations of the ordinance constitute a nuisance, but the corresponding level of evidence required makes it hard to prove and the other recommended enforcement mechanisms would adequate to manage violations.

### **FISCAL IMPACTS**

The City Council's policy direction will determine whether the costs will be more or less impactful. It is anticipated there will be more costs initially for enforcement and public education and outreach after the passage of the proposed Ordinance; however once the CMC requirements have been circulated and understood by the general public, it is anticipated enforcement and education costs would decrease. There could also be an initial investment in signage costs to ensure public areas are appropriately signed. For example, the no-smoking perimeter around The Grove Park recommended by staff will necessitate the placement of "No Smoking" signs on the perimeter street light poles.

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

### **ATTACHMENTS**

1. CMC Section 8.14 [pp. 7]
2. American Lung Association Tobacco Control Grades [pp. 1]
3. American Lung Association Matrix of Strong Local 2017 Smoke-free Multifamily Housing [pp. 6]

## Chapter 8.14 - REGULATION OF SMO...

## Sections:

## 8.14.010 - Findings.

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

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

(Ord. 295, § 1, 1992)

## 8.14.020 - Purpose.

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

(Ord. 295, § 1, 1992)

## 8.14.030 - Definitions.

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

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

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

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

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

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

(Ord. 295, § 1, 1992; Ord. 307, 1993)

#### 8.14.040 - Regulation of Smoking in City-Owned Facilities.

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

(Ord. 295, § 1, 1992; Ord. 307, 1993)

#### 8.14.050 - Prohibition of Smoking.

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

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

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

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

(Ord. 295, § 1, 1992; Ord. 307, 1993)

#### 8.14.060 - Regulation of Smoking in Places of Employment.

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

(Ord. 295, § 1, 1992)

#### 8.14.070 - Optional Smoking Areas.

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

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

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

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

(Ord. 295, § 1, 1992)

#### 8.14.080 - Posting Requirements.

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

(Ord. 295, § 1, 1992)

#### 8.14.090 - Vending Machines.

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

(Ord. 295, § 1, 1992)

#### 8.14.100 - Distribution of Free Samples and Coupons.

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

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

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

(Ord. 295, § 1, 1992)

#### 8.14.110 - Out of Package Sales.

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

(Ord. 295, § 1, 1992)

#### 8.14.120 - Enforcement.

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

(Ord. 295, § 1, 1992)

#### 8.14.130 - Penalties.

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

(Ord. 295, § 1, 1992)

8.14.140 - Non-Retaliation.

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

(Ord. 295, § 1, 1992)

8.14.150 - Other Applicable Laws.

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

(Ord. 295, § 1, 1992)





**Contra Costa County**

	Antioch	Brentwood	Clayton	Concord	Danville	El Cerrito	Hercules	Lafayette	Martinez	Moraga	Oakley	Orinda	Pinole	Pittsburg	Pleasant Hill	Richmond	San Pablo	San Ramon	Walnut Creek	Contra Costa County Unincorporated
<b>Overall Tobacco Control Grade</b>	F	F	D	C	C	A	F	C	C	F	C	D	C	F	C	A	D	C	B	A
<b>TOTAL POINTS</b>	0	0	2	6	6	13	0	7	6	0	6	3	7	1	5	13	4	7	8	11
<b>Smokefree Outdoor Air</b>	F	F	D	C	D	A	F	A	A	F	A	B	A	D	B	A	F	A	A	A
Dining	0	0	0	2	0	4	0	4	4	0	4	4	4	0	2	4	0	4	4	4
Entryways	0	0	0	0	0	4	0	4	4	0	4	4	4	0	3	4	0	4	4	4
Public Events	0	0	0	2	0	4	0	4	4	0	4	4	4	0	3	4	0	4	0	4
Recreation Areas	0	0	4	2	4	4	0	4	4	0	4	4	4	4	4	4	0	4	4	4
Service Areas	0	0	0	2	0	4	0	4	4	0	4	0	4	0	4	4	0	4	4	4
Sidewalks	0	0	0	1	0	1	0	1	0	0	0	0	0	0	1	0	0	0	1	0
Worksites	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	1	0
<b>TOTAL POINTS</b>	0	0	4	9	4	22	0	21	21	0	20	16	20	4	17	20	0	20	18	20
<b>Smokefree Housing</b>	F	F	F	F	A	A	F	B	C	F	C	F	C	F	C	A	F	C	A	C
Nonsmoking Apartments	0	0	0	0	4	4	0	2	0	0	1	0	1	0	1	4	0	0	4	1
Nonsmoking Condominiums	0	0	0	0	4	4	0	2	0	0	1	0	1	0	0	4	0	0	4	1
Nonsmoking Common Areas	0	0	0	0	4	4	0	4	4	0	4	0	4	0	4	4	0	4	4	4
<b>TOTAL POINTS</b>	0	0	0	0	12	12	0	8	4	0	6	0	6	0	5	12	0	4	12	6
<b>Reducing Sales of Tobacco Products</b>	F	F	D	A	D	A	F	F	F	F	F	F	F	F	F	A	A	D	F	A
Tobacco Retailer Licensing	0	0	1	4	1	4	0	0	0	0	0	0	0	0	0	4	4	1	0	4
<b>TOTAL POINTS</b>	0	0	1	4	1	4	0	0	0	0	0	0	0	0	0	4	4	1	0	4
<b>Emerging Issues Bonus Points</b>																				
Emerging Products Definition - <i>Secondhand Smoke</i>	0	0	0	1	1	1	0	0	0	0	1	0	0	1	1	1	0	0	1	1
Emerging Products Definition - <i>Licensing</i>	0	0	0	1	0	1	0	0	0	0	0	0	1	0	1	1	0	0	0	1
Retailer Location Restrictions	1	0	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Sale of Tobacco Products in Pharmacies	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Flavored Tobacco Products	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Minimum Pack Size of Cigars	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
<b>TOTAL POINTS</b>	1	0	0	2	1	5	0	0	0	0	1	0	1	2	2	3	0	0	1	6

ATTACHMENT 2

Overall Tobacco Control Grade  
A: 11-12 D: 2-4  
B: 8-10 F: 0-1  
C: 5-7

Determined by grades and points from other three categories  
A: 4 C: 2 F: 0  
B: 3 D: 1

Smokefree Outdoor Air Grade  
A: 18+ D: 3-7  
B: 13-17 F: 0-2  
C: 8-12

Smokefree Housing Grade  
A: 10+ D: 1-3  
B: 7-9 F: 0  
C: 4-6

Reducing Sales of Tobacco Products Grade  
A: 4 D: 1  
B: 3 F: 0  
C: 2

# Matrix of Strong Local Smokefree Multi-Unit Housing



**April 2017**

Cities and counties in California have led the way on many secondhand smoke issues throughout the years by passing groundbreaking local ordinances to restrict smoking in certain areas. On the issue of smokefree housing, California's communities are once again paving the way. Secondhand smoke exposure in multi-unit housing is a serious health threat because secondhand smoke drifts into housing units from neighboring units, balconies, patios and common areas. The most effective way to address this problem is to pass a strong policy that prohibits smoking in at least 75% of new and existing units in multi-unit housing. As local regulation of multi-unit housing has grown considerably stronger over the last few years, we have more accurately tailored this list to highlight the most health-protective policies being passed that are effectively improving the public health of those living in these environments.

There are 51 jurisdictions in California that have adopted a strong ordinance that prohibits smoking in multi-unit housing, with fourteen new policies passed since the last update (September 2015). The table on the following pages lists policy and enforcement provisions of smokefree housing ordinances and provides policy details for each of the 51 jurisdictions. This table makes it easier to learn more about and understand in detail these ordinances, as well as provides guidance on the types of issues that need to be addressed by other communities working on a smokefree housing ordinance.

More information about all smokefree housing policies regardless of strength can be found in the Center's Local California Smokefree Housing Policies: Detailed Analysis, which contains the full details on the policy and enforcement provisions in each smokefree housing ordinance. These documents and other smokefree housing documents are all available on the Center's website, [www.Center4TobaccoPolicy.org/smokefree-multi-unit-housing/](http://www.Center4TobaccoPolicy.org/smokefree-multi-unit-housing/).

ATTACHMENT 3

## Breakdown of Smokefree Housing Units Ordinances

	POLICY PROVISIONS						ENFORCEMENT PROVISIONS				
	Date Passed/ Population	Percentage & Minimum # of Units	Implementation	Grandfathering	Includes condominiums	Includes electronic cigarettes	Nuisance	Eviction provisions for the landlord	Enforced by tenant	Enforced by public	Violations
Novato	January 2017 54,749	100% 2 units	Existing: 1 year New: 30 days		Yes	Yes	Yes		X		Civil fines starting at \$250
Palo Alto	January 2017 68,207	100% 2 units	Existing: 1 year New: 1 year		Yes	Yes	Yes		X		Infraction with fines starting at \$100
San Bruno	November 2016 45,360	100% 2 units	Existing: 15 months New: Immediately		Yes	Yes	Yes	X	X		Misdemeanor or infraction with fines starting at \$100/ subject to civil action
Belvedere	October 2016 2,162	100% 2 units	Existing: 13 months New: 1 month		Yes	No	No		X		Infraction with fines starting at \$100
Brisbane	October 2016 4,699	100% 2 units	7 months		Yes	Yes	Yes		X		Misdemeanor or infraction with fines starting at \$100
Saratoga	August 2016 30,219	100% 2 units	1 month		Not listed	Yes	Yes				Infraction with fines starting at \$100
Los Gatos	May 2016 31,376	100% 2 units	Existing: 1 year New: 1 month		Yes	Yes	Yes		X		Infraction with fines starting at \$100
Sunnyvale	February 2016 148,372	100% 2 units	7 months		Yes	Yes	No	X	X	X	Misdemeanor or infraction with fines starting at \$100/ subject to civil action
El Monte	January 2016 113,885	100% 3 units	Existing: 7 months New: Immediately		Yes	Yes	Yes	X	X	X	In accordance with the municipal code
Danville	November 2015 42,865	100% 3 units	6 months		Yes	Yes	No	X	X		Infraction with fines starting at \$100
Mill Valley	October 2015 14,880	100% 2 units	Existing: 1 year New: 1 month		Yes	Yes	Yes		X		In accordance with the municipal code

## Breakdown of Smokefree Housing Units Ordinances

POLICY PROVISIONS							ENFORCEMENT PROVISIONS				
	Date Passed/ Population	Percentage & Minimum # of Units	Implementation	Grandfathering	Includes condominiums	Includes electronic cigarettes	Nuisance	Eviction provisions for the landlord	Enforced by tenant	Enforced by public	Violations
Manhattan Beach	October 2015 35,297	100% 3 units	30 months		Yes	Yes	No			X	Misdemeanor or infraction with fines starting at \$100/ subject to civil action
San Mateo	October 2015 102,659	100% 2 units	1 month		Yes	Yes	Yes			X	Misdemeanor or infraction with fines starting at \$100
Cotati	October 2015 7,153	100% 2 units	15 months		Yes	Yes	Yes	X	X	X	Misdemeanor or infraction with fines starting at \$100/ subject to civil action
Burlingame	July 2015 29,724	100% 2 units	180 days		X		X				Infraction w/fines starting at \$100, civil and criminal penalties
Santa Rosa	June 2015 175,667	100% 2 units	Existing: 1 year New: Immediately		X	X	X			X	Infraction w/fines starting at \$100, civil and criminal penalties
San Anselmo	December 2014 12,867	100% 2 units	Existing: 1 year New: 180 days		X	X	X		X	X	Infraction w/fines starting at \$250, civil and criminal penalties
Foster City	December 2014 33,201	100% 2 units	Existing: 1 year New: Immediately		X	X	X		X	X	Infraction w/fines starting at \$250
Culver City	October 2014 40,448	100% 2 units	Existing: 18 months New: Immediately		X		X		X	X	Infraction w/fines starting at \$100, civil and criminal penalties
San Mateo County	October 2014 65,201	100% 2 units	Existing: 14 months New 6 months		X	X	X		X		Infraction w/fines starting at \$100 and criminal penalties
El Cerrito	September 2014 24,378	100% 2 units	Existing: 1 year* New: Immediately		X	X			X	X	Infraction w/fines starting at \$100, civil and criminal penalties
Corte Madera	May 2014 9,344	100%* 2 units	Existing: 1 year New: Immediately		X	X	X		X	X	Infraction w/fines starting at \$100/civil and criminal penalties

\*Corte Madera: For existing units, provides option where landlord may designate fewer than 100% units as nonsmoking units, but no less than 80%.

## Breakdown of Smokefree Housing Units Ordinances

POLICY PROVISIONS							ENFORCEMENT PROVISIONS				
	Date Passed/ Population	Percentage & Minimum # of Units	Implementation	Grandfathering	Includes condominiums	Includes electronic cigarettes	Nuisance	Eviction provisions for the landlord	Enforced by tenant	Enforced by public	Violations
Berkeley	December 2013 119,915	100% 2 units	4 months		X	X				X	Infraction w/fines starting at \$100/civil and criminal penalties
Lafayette	October 2013 24,924	New: 100% 3 units	New: Immediately	X	X						Infraction with fines starting at \$100
Walnut Creek	October 2013 70,018	100% 2 units	4 Months		X	X	X		X	X	Infraction with a \$100 fine/subject to civil action
Glendale	May 2013 201,668	New: 100% 2 units	New: 1 month	X	X	X	X			X	Infraction with fines starting at \$100
Petaluma	January 2013 60,375	100% 2 units	Existing: 1 year New: 7 months		X	X	X		X		In accordance with the municipal code
Daly City	October 2012 109,139	100% 2 units	Existing: 14 months New: Immediately			X	X		X		Infraction with fines starting at \$100/ subject to civil action/ in accordance to municipal code
Santa Monica	October 2012 93,640	100% 2 units	Existing: 180 days New: Immediately	X	X	X				X	N/A
San Rafael	October 2012 60,582	100% 3 units	Existing: 1 year New: 180 days		X				X		In accordance with the municipal code
Sausalito	August 2012 7,217	Existing: 80% New: 100% 2 units	Existing: 14 months New: Immediately		X		X		X		In accordance with the citation schedule in the municipal code
Huntington Park	April 2012 59,718	Existing: 80% New: 100% 2 units	Existing: 14 months New: 1 month		X	X	X		X	X	Civil penalties of \$250 - \$1000/ subject to civil action
Marin County	May 2012 68,572	Existing: 85% New: 100% 2 units	Existing: 12 months New: Immediately		X	X	X		X	X	Infraction with fines starting at \$100

## Breakdown of Smokefree Housing Units Ordinances

POLICY PROVISIONS							ENFORCEMENT PROVISIONS				
	Date Passed/ Population	Percentage & Minimum # of Units	Implementation	Grandfathering	Includes condominiums	Includes electronic cigarettes	Nuisance	Eviction provisions for the landlord	Enforced by tenant	Enforced by public	Violations
Alameda	November 2011 79,277	100% 2 units	Existing: 14 months New: Immediately		X				X	X	Infraction with fines starting at \$100/ subject to civil action
Baldwin Park	November 2011 74,738	Existing: 80% New: 100% 2 units	Existing: 3 years New: 6 months		X	X	X		X	X	Infraction with fines starting at \$500
Compton	October 2011 101,226	100% 3 units	Existing: 14 months New: Immediately		X	X			X	X	Infraction with a fine of \$100
Sonoma County	September 2011 150,814	100% 2 units	Existing: 14 months New: 5 months		X						Infraction with fines starting at \$100/ subject to civil action
Tiburon	July 2011 9,503	100% 4 units	Existing: 35 months New: Immediately			X			X	X	Infraction with a fine up to \$100
Pasadena	July 2011 141,023	100% 2 units	Existing: 18 months New: Immediately		X						In accordance with the citation schedule in the municipal code
Dublin	July 2011 (orig. Dec 2008) 57,349	75% 16 units	25 months			X	X		X	X	Infraction with fine starting at \$100
Fairfax	May 2011 7,426	75% 4 units	14 months		X		X		X	X	In accordance with the town code/ Requires written warning
Larkspur	April 2011 12,455	Existing: 80% New: 100% 2 units	Existing: 13 months New: Immediately		X		X		X	X	Infraction with a fine of \$100/subject to civil enforcement
Union City	November 2010 72,952	100% 2 units	Existing: 14 months New: Immediately			X	X		X	X	Infraction with a fine of \$100/subject to civil action
Santa Clara County	November 2010 87,352	100% 2 units	Existing: 14 months New: Immediately		X	X			X		Infraction with fines starting at \$100/ subject to civil action
Contra Costa County	October 2010 171,122	New: 100% 4 units	New: 15 months	N/A	X	X		X			In accordance with the municipal code

## Breakdown of Smokefree Housing Units Ordinances

	POLICY PROVISIONS						ENFORCEMENT PROVISIONS				
	Date Passed/ Population	Percentage & Minimum # of Units	Implementation	Grandfathering	Includes condominiums	Includes electronic cigarettes	Nuisance	Eviction provisions for the landlord	Enforced by tenant	Enforced by public	Violations
Sebastopol	August 2010 7,527	100% 2 units	14 months		X	X	X		X	X	Infraction with fine of \$100
South Pasadena	August 2010 26,028	Existing: 80%	3 Years		X	X	X		X	X	Infraction with fine of \$100
Pinole	April 2010 18,739	New: 100% 2 units	Immediately	N/A	X						Infraction with fines starting at \$100
Richmond	July 2009 110,378	100% 2 units	Existing: 17 months New: Immediately		X				X	X	\$100 fine
Calabasas	January 2008 24,263	80% 2 units	4 years	X		X	X	X	X	X	Misdemeanor or infraction/subject to civil action
Belmont	October 2007 27,834	100% 2 units	14 months		X		X		X		Infraction subject to a \$100 penalty/civil action

He further noted "no action" is recommended on other significant restricted-use funds at mid-year. Mr. Mizuno concluded his staff report advising several Capital Improvements Projects are in progress including the El Molino Sewer Project, the Keller Ridge Collector Street Repave Project, the El Portal Drive Restoration Project, the 2018 Neighborhood Streets Repave Project, and the Pine Hollow Road Restoration Project.

Mayor Haydon thanked Finance Manager Mizuno for his comprehensive report and then opened the Public Hearing item for public comments. No comments were offered and Mayor Haydon closed the Public Hearing.

Councilmember Pierce thanked staff for its diligence and in keeping a healthy reserve enabling the City to continue General Fund operations for a full year should a disaster to occur. Mayor Haydon noted he attended the Mid-Year review of the Budget at the Council Budget Sub-Committee meeting and Mr. Mizuno provides an excellent description of how we arrived at the current mid-year point with overall excess operating funds still available even with the recommended Mid-Year adjustments.

**It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to adopt Resolution No. 5-2018 amending the Annual Operating Budget of the City of Clayton for the 2017-2018 Fiscal Year commencing July 1, 2017. (Passed; 4-0 vote).**

## **8. ACTION ITEMS**

- (a) Discussion and policy directions regarding the City's existing and proposed no-smoking regulations in public places to comprehensively address smoking and consumption of cannabis, and vaping.  
(Community Development Director)

Community Development Director Mindy Gentry presented the staff report noting during the process of addressing policy issues associated with adult-use of cannabis, the City Council requested staff examine the City's existing no smoking regulations to address new state laws on the smoking and ingesting of cannabis. Current state law does contain limitations on the public consumption of cannabis; however, some existing Municipal Code language is vague so direction has been given to prohibit the smoking of cannabis in same locations where smoking tobacco is also prohibited. Ms. Gentry noted the City's smoking ordinance was last updated in 1993, and since that time there have been significant changes to state law regarding tobacco use and consumption, and societal shifts in acceptable behavior as it pertains to secondhand smoke. For example, state law prohibits the smoking of tobacco, including electronic cigarettes, in many locations; however, many local jurisdictions are enacting more stringent laws to address complaints and health concerns received from their communities.

Ms. Gentry then presented a series of Policy Questions for City Council to provide direction to staff regarding the preferred content of an updated No Smoking ordinance:

- a. Should the City further regulate tobacco and cannabis products that do not create vapor or smoke? Staff does not recommend this action.
- b. Should the City further regulate smoking at places of employment? Staff recommends smoking be prohibited in all places exempted by the state except retail or wholesale tobacco establishments with a private smokers' lounge, and establish codified operational and location regulations including no minors, no food or drink available and it must be a standalone building.



c. Should the City regulate smoking in multifamily residential uses? Staff recommends smoking prohibited in enclosed and unenclosed common areas or multifamily residences and within the units of all multifamily residences, including balconies and patios and allow designated smoking areas with a threshold established at two or more units.

d. Should the City regulate smoking in unenclosed spaces? Staff recommends establishment of a 25 feet buffer around The Grove park for concerns with the drifting of secondhand smoke; also prohibit smoking at all outdoor public events, including but not limited to the 4<sup>th</sup> of July parade, the Art & Wine festival, and Oktoberfest; prohibit smoking at unenclosed dining areas; and the establishment of a reasonable smoking distance from any doorway, window, opening, etc.

e. Staff seeks Council input on what level of penalty should be applied for the no smoking violations? Staff recommends allow the penalty to be a "wobbler" between an infraction and a misdemeanor, thereby allowing situational law enforcement discretion; and also allow private citizens to obtain an injunction against individuals or businesses for repeat violations.

f. Ms. Gentry advised state law does not allow the smoking or ingesting of cannabis in a public place, but fails to define "public place". Staff recommends adding a definition of "public place" within the local ordinance for clarity and enforcement purposes, and specify cannabis is not allowed on any City real property.

Vice Mayor Shuey asked if a private citizen wanted to obtain an injunction, would this allow private individuals to go through the court system to obtain. Ms. Gentry and City Attorney Subramanian each advised that is the correct process.

Vice Mayor Shuey also inquired on cannabis not being allowed in public places; is that just for the smoking of it or also ingested? Ms. Gentry advised state law includes both the prohibition of cannabis smoking and ingesting in public, following the same prohibition for the consumption of alcohol in public. Vice Mayor Shuey questioned then why is alcohol consumption allowed in public every other weekend at The Concerts in The Grove? City Manager Napper responded that public alcohol consumption is allowed by the City's Special Use Permit for review and approval for its use in a public park.

Vice Mayor Shuey then inquired if the City would allow ingestible cannabis as well by permit? City Manager Napper advised presently, the City does not have an edible cannabis use permit.

Councilmember Catalano commented since Clayton does not have a lot of multifamily residences, would residences in the Oakhurst and Black Diamond areas that share a common wall be prohibited from smoking in their own unit? Ms. Gentry advised that is correct, that proposal is recommended due to the health dangers of secondhand smoke.

Councilmember Catalano advised the current ordinance prohibits smoking in City parks; is The Grove not considered a City park or are we considering creation of a buffer around it of 25 feet? Ms. Gentry advised currently, someone could smoke on the sidewalk adjacent to the tot lot at The Grove Park and that secondhand smoke could drift into the park and impact children and adults playing in the park. City Manager Napper added the tot lot in The Grove Park is adjacent to the public sidewalk, whereas in other City parks the tot lot is further removed from the public sidewalks.

Councilmember Pierce inquired on notification methods to current and future tenants of multifamily establishments? Ms. Gentry advised a legal notice could be placed in local newspapers of the City Council's action, and then subsequent code enforcement would be a reactionary civil complaint. Councilmember Pierce inquired if the City would enforce a civil complaint? Ms. Gentry advise the City Police Department would enforce if there is a report of violation.

City Manager Napper commented we have not moved fully to the implementation phase of the Ordinance yet and staff would reach out to some of the other communities that have gone through this process to determine appropriate outreach. Perhaps, he suggested, should there be an HOA that had units with shared walls the City could inform the HOA; or if there is an associated property manager holding a City business license, the City could send a letter to that property management company along with a notice with the City business license application.

Councilmember Pierce wondered about the proposed buffer around The Grove Park; Clayton was one of the first in the county to add a no-smoking ordinance in the parks. During Concerts in The Grove, a lot of people ignore the fact there is no smoking allowed in local parks and they gather around the sidewalks while some go across the street in front of the U.S. Post Office; the proposed buffer seems to mean smokers must then go across the street which gets them closer to another establishment, or would they just move to the private parking lot of Village Market where it would not be regulated? Ms. Gentry advised the buffer would still apply for public or private property if it is within 25 feet of the downtown park.

Councilmember Pierce inquired on the policy question on a "reasonable smoking distance" from open doors and windows; is that intended for just the downtown or citywide? Ms. Gentry clarified that would be citywide. Councilmember Pierce noted this would effectively prohibit smoking anywhere within the downtown area and it would be difficult for any of our restaurants to have a designated smoking area without placing that area in front of another business. City Manager Napper responded that question is exactly the reason staff brought this subject to the City Council in advance to establish, via the policy checklist, what content and prohibitions are desired in a revised No Smoking Ordinance such that when staff writes the ordinance for Council consideration, these provisions would already be somewhat addressed and be more comfortable in receiving public input.

Mayor Haydon inquired on regulation of smoking at places of employment in private residences and how that is defined. Ms. Gentry responded private residence businesses require a City-issued home occupation permit; if the home-occupied business has no employees working within the residence, then the prohibition would not apply. Should the home occupation have employees in addition to the owner, the no smoking provisions would then be applicable.

Mayor Haydon opened the item for Public Comment; no comments were offered.

Vice Mayor Shuey remarked he is comfortable with staff's recommendations except for the prohibition for a reasonable distance from establishments having doors and windows that could or would be open. He further recommended a 6, 9 or 12 month City review to determine if there were any infractions or misdemeanors issued.

Councilmember Pierce suggested when this local no-smoking law is introduced to the public we need to encourage people to be neighborly and talk to each other about their concerns. City Manager Napper inquired whether there is any merit, once the draft ordinance is prepared by staff, that it be mailed to local business owners and condo/townhome associations in advance of the Public Hearing and invite them to the meeting? The City Council concurred with that idea to be proactive on outreach of the proposed update to the City's No Smoking regulations.

General policy directions as noted were provided to staff on this subject.

## **9. COUNCIL ITEMS**