



# **AGENDA**

## **REGULAR MEETING**

\* \* \*

## **CLAYTON CITY COUNCIL**

\* \* \*

**TUESDAY, November 7, 2017**

**7:00 P.M.**

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

**Mayor:** Jim Diaz

**Vice Mayor:** Keith Haydon

### **Council Members**

Julie K. Pierce

David T. Shuey

Tuija Catalano

- 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 \***

**November 7, 2017**

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

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

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 October 17, 2017. ([View Here](#))
- (b) Approve the Financial Demands and Obligations of the City. ([View Here](#))
- (c) Approve the City’s Investment Portfolio Report for the 1<sup>st</sup> Quarter of FY 2017-18 ending September 30, 2017. ([View Here](#))
- (d) Adopt a Resolution acknowledging and implementing the state-mandated requirement of California Assembly Bill 1379 to increase the existing Certified Access Specialist fee from \$1.00 to \$4.00 on each City Business License, effective January 1, 2018 through December 31, 2023. ([View Here](#))
- (e) Approve a Third Amendment to a Tolling Agreement extending the limitations period to May 8, 2018 for the filing of a legal challenge by West Coast Homebuilders, Inc., concerning a final map for the Oak Creek Canyon residential subdivision project (SUBD.6826). ([View Here](#))

4. **RECOGNITIONS AND PRESENTATIONS**

- (a) Recognition of outgoing Chief of Police Chris Wenzel in appreciation for his professional law enforcement leadership and service to the Clayton community from November 2015 to November 2017.
- (b) Certificates of Recognition to public school students for exemplifying the “Do the Right Thing” character trait of “Respect” during the month of October 2017. ([View Here](#))
- (c) Recognition of a \$39,000 grant from Andeavor Foundation for the City’s purchase of a Citizen Emergency Response Team (CERT) trailer. ([View Here](#))

**5. REPORTS**

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

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

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

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

**7. PUBLIC HEARINGS**

- (a) Consider the Introduction and First Reading of Ordinance No. 479 amending Title 17 - Zoning of the Clayton Municipal Code for continuation of the local prohibition of outdoor cannabis cultivation for personal use, and to prohibit all commercial cannabis activities within the city except for cannabis deliveries originating outside of the city. ([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 and any modifications to the Ordinance, approve a motion to have the City Clerk read Ordinance No. 479 by title and number only and waive further reading; **5).** Upon completion of the City Clerk's reading, approve Ordinance No. 479 for Introduction with findings its adoption is not a project under CEQA and it will not have a significant adverse effect on the environment and is therefore categorically and statutorily exempt under CEQA.

## 7. **PUBLIC HEARINGS**

- (b) Consider the Introduction and First Reading of Ordinance No. 480 amending Chapter 17.36.075 of the Clayton Municipal Code to allow six-foot high fences to be located within the required exterior side setback or at the public right-of-way line. ([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 and any modifications to the Ordinance, approve a motion to have the City Clerk read Ordinance No. 480 by title and number only and waive further reading; **5).** Upon completion of the City Clerk's reading, approve Ordinance No. 480 for Introduction with the finding its adoption is exempt from the California Environmental Quality Act, pursuant to CEQA Guidelines Section 15303, Class 3 Categorical Exemption for construction of new small facilities or structures.

## 8. **ACTION ITEMS**

- (a) Consider the approval of an Exclusive Negotiation Agreement (ENA) between the City of Clayton and Fulcrum Development, LLC, to facilitate the City's processing and consideration of the developer's proposal to construct a senior care/memory care facility with limited ground-floor retail commercial establishments through eventual purchase and development of the City's 1.67 gross acres of unimproved real property located at 6005 Main Street (APN 118-560-010-1). ([View Here](#))  
(City Manager)

Staff recommendation: Following staff report and opportunity for public comment, that Council by motion approve the ENA and authorize the Mayor to sign on behalf of the City.

- (b) Consider the adoption a Resolution appointing Joseph Kreins as Interim Chief of Police as recommended by the City Manager, pursuant to California Government Code Section 21221(h). ([View Here](#))  
(City Manager)

Staff recommendation: Following staff report and opportunity for public comment, that Council by motion adopt the required Resolution.

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

**10. CLOSED SESSIONS**

- (a) *Government Code Section 54957*  
Public Employee Annual Performance Evaluation  
Position Title: City Manager
  
- (b) *Government Code Section 54957.6*  
Conference with Labor Negotiators  
Agency designated representatives: Mayor Diaz, Vice Mayor Haydon  
Unrepresented employee: City Manager

Report out from Closed Session: Mayor Diaz

**11. ADJOURNMENT**

The next regularly scheduled meeting of the City Council will be November 21, 2017.

# # # # #

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

Agenda Date: 11-07-2017

Agenda Item: 3a

TUESDAY, October 17, 2017

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

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

3. **CONSENT CALENDAR**

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

- (a) Approved the minutes of the City Council's regular meeting of October 3, 2017.
- (b) Approved the Financial Demands and Obligations of the City.
- (c) Approved a multi-year Agreement (60-month lease) with MailFinance (a Neopost USA Company) for an IN-610 postage equipment (City Hall replacement machine) with accompanying maintenance at a 5-year lease price of \$160.83 per month plus applicable sales taxes.
- (d) Approved the Master Cooperative Funding Agreement (12C.07) with the Contra Costa Transportation Authority (CCTA), required for the City's awarded Measure J "Transportation for Livable Communities" Program grant in the amount of \$252,000 for pedestrian safety improvements in the Clayton Town Center, and authorize the Mayor to sign the Agreement.
- (e) Approved a new Model Encroachment of Improvements within Public Right-of-Way Agreement for City use in certain circumstances involving private property hardscapes (e.g. fences, retaining walls) within City rights-of-way.

4. **RECOGNITIONS AND PRESENTATIONS**

- (a) Proclamation declaring November 1, 2017 as "Shelter in Place Education Day."

Mayor Diaz noted the issuance of the Proclamation and indicated staff will send it to the requestor as no representative was present.

**5. REPORTS**

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

Councilmember Catalano noted she attended the recent Contra Costa County Mayors' Conference held in Lafayette.

Councilmember Shuey had no report.

Councilmember Pierce attended the recent Contra Cosa County Mayors' Conference, several meetings of the Association of Bay Area Governments' meetings, the Regional Planning Committee meeting, several meetings of the Metropolitan Transportation Committee, and a Marsh Creek Trail meeting to discuss a proposed trail leading from the edge of Clayton to Brentwood.

Mayor Diaz attended the County Connection Board Operating Committee meeting, the recent Contra Costa County Mayors' Conference, and the Annual Chiefs Special Agents 24<sup>th</sup> Annual Law Enforcement appreciation luncheon whereat Clayton Chief of Police Chris Wenzel was among those recognized for outstanding achievements.

- (e) Other – None.

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

**7. PUBLIC HEARINGS – None.**

**8. ACTION ITEMS**

- (a) Presentation and approval of the City's audited Comprehensive Annual Financial Report (CAFR) for Fiscal Year ending June 30, 2017 by Cropper Accountancy Corporation, an independent Certified Public Accountant firm.  
(Finance Manager; and Mr. John Cropper, CPA)

Finance Manager Kevin Mizuno introduced the City's contract independent auditors, Mr. John Cropper and Mr. Bryce Rojas, who will provide a presentation summarizing the results of their audit and some financial year highlights. The City has received an "unmodified opinion" on its audited financial statements for the year ended June 30, 2017, which is the highest regarded financial audit opinion available. For the second year in a row the City will submit its Comprehensive Annual Financial Report (CAFR) to the Government Finance Officers Association (GFOA) for its opinion as to the City's financial disclosures and reporting. In the prior year the Finance Department issued a CAFR for the first year ever and took the drafting of the financial statements completely in house. After the independent "clean audit" opinion was rendered on the FY 2015-16

CAFR, that report was submitted to the GFOA which professional entity then issued the City its first-ever "Certificate of Achievement for Excellence in Financial Reporting" award. Staff's goal is to continue to prepare a CAFR annually for the auditors and submit it to the GFOA for recognition. Mr. Mizuno then introduced John Cropper partner of Cropper Accountancy to present the analysis of its review.

Mr. Cropper thanked the City Council for the opportunity to audit the City's financial records and performance and also noted Mr. Bryce Rojas next to him who assisted as senior lead on the analysis of Clayton's financial statements. Mr. Cropper presented a brief slideshow highlighting the audit results are an "unmodified audit opinion" with internal controls over financial reporting functioning well, with no material weaknesses, and no significant deficiencies identified. The Government Wide Net Position indicates City total assets are \$50.022 million with total liabilities of \$5.230 million, resulting in a net position of \$46.037 million. Mr. Cropper advised there was a net pension liability increase of \$820,000 last fiscal year raising the City's total pension liability to \$4.413 million; Capital Assets decreased by \$383,000 to \$30.534 million. Mr. Cropper briefly explained the Statement on Auditing Standards (SAS) 114 auditors communication is a required letter, and the Statement on Auditing Standards (SAS) 115 letter communicates observations on internal control related matters and is often referred to as the "management letter"; after review of the City's financial practices, his firm has issued no management letter for FY 2017 as there is no deficiency or weakness to note. With any audit there are always suggestions for improvement but his firm found nothing serious for the governing body to be informed of. Overall, Mr. Cropper noted the City Council should be very pleased with its financial status and accounting practices and the strength of the City's financial practices are displayed through its annual and total General Fund Reserve positions.

Councilmember Catalano requested further clarification as to why a management letter will not be produced by the auditors; in Clayton's case, it is really a positive statement by the auditors? Mr. Cropper confirmed it is a positive observation; typically, under the *Government Auditing Standards*, there is a requirement to issue a management letter if there is, for example, a journal entry made by the auditors that is material to the financial statements of the entity. If they recognize a risk, they then examine some of the internal controls that could reveal a material weakness that should be declared. Several significant deficiencies can add up a material misstatement. In Clayton, as a small city, there is typically present a struggle of segregation of financial duties; however, since Clayton cannot cure that segregation by employing more financial clerks due to limited resources and facility space, the auditors chose not to elaborate further on it this year since it has been noted in years past.

Mayor Diaz opened matter for public comments; no comments were offered.

**It was moved by Councilmember Catalano, seconded by Councilmember Shuey, to approve the CAFR of the City of Clayton for the Fiscal Year ending June 30, 2017. (Passed; 4-0 vote).**

- (b) Consider the Second Reading and Adoption of Ordinance No. 478 amending Chapter 15.09 of the *Clayton Municipal Code* to adopt the 2016 California Fire Code with changes, additions and deletions as allowed by State law.  
(Community Development Director)

Community Development Director Mindy Gentry presented the staff report noting this Ordinance was introduced at the City Council's meeting of October 3<sup>rd</sup>; there were no changes at that time and no changes have risen since that initial consideration.



Mayor Diaz opened matter for public comments; no comments were offered.

**It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to have the City Clerk read Ordinance No. 478, by title and number only and waive further reading. (Passed; 4-0 vote).**

The City Clerk read Ordinance No. 478 by title and number only.

**It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to adopt Ordinance No. 478 with the finding its adoption will not have a significant adverse effect on the environment and is therefore exempt under CEQA. (Passed; 4-0 vote).**

- (c) Consider the annual request of Mayor Diaz for the City to host seven (7) Wednesday Night Classic Car Shows with a DJ in the off-street City parking lot at 6099 Main Street plus adding the City's vacant dirt lot located at 6005 Main Street during selected dates in 2018, with all costs funded by private donations.  
(Mayor Diaz)

Mayor Diaz opened matter for public comments; no comments were offered.

**It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to approve the hosting of the seven (7) events on City properties as requested, conditioned on individual classic car owners signing waivers of liability on property damage for any claims against the City. (Passed; 4-0 vote).**

9. **COUNCIL ITEMS** – None.

10. **CLOSED SESSION** – None.

11. **ADJOURNMENT**– on call by Mayor Diaz, the City Council adjourned its meeting at 7:45 p.m.

The next regularly scheduled meeting of the City Council will be November 7, 2017.

# # # # #

Respectfully submitted,

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Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

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Jim Diaz, Mayor

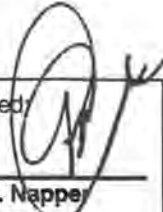
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Agenda Date 11/7/2017

Agenda Item: 3b

# STAFF REPORT

Approved:   
Gary A. Napper  
City Manager

TO: HONORABLE MAYOR AND COUNCILMEMBERS  
FROM: Kevin Mizuno, FINANCE MANAGER   
DATE: 11/07/2017  
SUBJECT: INVOICE SUMMARY

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## RECOMMENDATION:

Approve the following obligations:

11/03/2017	Cash Requirements	\$ 203,226.52
10/24/2017	ADP Payroll week 43, PPE 10/22/2017	\$ 89,292.60

**Total \$ 292,519.12**

### Attachments:

Cash Requirements Report dated 11/3/2017 (5 pages)  
ADP payroll report for week 43 (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	11/7/2017	11/7/2017	501735655	Payroll fees PPE 10/8/17	\$176.23	\$0.00		\$176.23
ADP, LLC	11/7/2017	11/7/2017	502548706	Payroll fees PPE 10/22/17	\$164.17	\$0.00		\$164.17
<i>Totals for ADP, LLC:</i>					<u>\$340.40</u>	<u>\$0.00</u>		<u>\$340.40</u>
<b>All City Management Services, Inc.</b>								
All City Management Services, Inc.	11/7/2017	11/7/2017	50799	School crossing guard services 9/24/17-10/7/17	\$554.10	\$0.00		\$554.10
<i>Totals for All City Management Services, Inc.:</i>					<u>\$554.10</u>	<u>\$0.00</u>		<u>\$554.10</u>
<b>American Fidelity Assurance Company</b>								
American Fidelity Assurance Company	11/7/2017	11/7/2017	B664536	Supplemental Insurance, October	\$356.61	\$0.00		\$356.61
<i>Totals for American Fidelity Assurance Company:</i>					<u>\$356.61</u>	<u>\$0.00</u>		<u>\$356.61</u>
<b>AT&amp;T (CalNet3)</b>								
AT&T (CalNet3)	11/7/2017	11/7/2017	10409647	Phone 9/22/17-10/21/17	\$1,651.83	\$0.00		\$1,651.83
<i>Totals for AT&amp;T (CalNet3):</i>					<u>\$1,651.83</u>	<u>\$0.00</u>		<u>\$1,651.83</u>
<b>Best Best &amp; Kreiger LLP</b>								
Best Best & Kreiger LLP	11/7/2017	11/7/2017	806721	Legal services for September	\$8,500.00	\$0.00		\$8,500.00
Best Best & Kreiger LLP	11/7/2017	11/7/2017	806727	Legal services for September	\$180.00	\$0.00		\$180.00
Best Best & Kreiger LLP	11/7/2017	11/7/2017	806728	Legal services for September	\$236.00	\$0.00		\$236.00
Best Best & Kreiger LLP	11/7/2017	11/7/2017	806729	Legal services for September	\$236.00	\$0.00		\$236.00
Best Best & Kreiger LLP	11/7/2017	11/7/2017	806730	Legal services for September	\$150.00	\$0.00		\$150.00
<i>Totals for Best Best &amp; Kreiger LLP:</i>					<u>\$9,302.00</u>	<u>\$0.00</u>		<u>\$9,302.00</u>
<b>Bye Bye Pool</b>								
Bye Bye Pool	11/7/2017	11/7/2017	CAP0253	C&D refund 378 Mt Sequoia PI	\$2,000.00	\$0.00		\$2,000.00
Bye Bye Pool	11/7/2017	11/7/2017	cap0253	Deposit refund for 378 Mt Sequoia	\$2,000.00	\$0.00		\$2,000.00
<i>Totals for Bye Bye Pool:</i>					<u>\$4,000.00</u>	<u>\$0.00</u>		<u>\$4,000.00</u>
<b>CalPERS Health</b>								
CalPERS Health	11/7/2017	11/7/2017	15096174	Medical for November	\$32,855.89	\$0.00		\$32,855.89
<i>Totals for CalPERS Health:</i>					<u>\$32,855.89</u>	<u>\$0.00</u>		<u>\$32,855.89</u>
<b>CalPERS Retirement</b>								
CalPERS Retirement	10/31/2017	10/31/2017	CC102417	CC Retirement ending 10/24/17	\$146.78	\$0.00		\$146.78
CalPERS Retirement	10/31/2017	10/31/2017	102217	Retirement PPE 10/22/17	\$15,045.02	\$0.00		\$15,045.02
<i>Totals for CalPERS Retirement:</i>					<u>\$15,191.80</u>	<u>\$0.00</u>		<u>\$15,191.80</u>
<b>City of Concord</b>								
City of Concord	11/7/2017	11/7/2017	61848	Vehicle maintenance for September	\$1,341.17	\$0.00		\$1,341.17
City of Concord	11/7/2017	11/7/2017	61815	Live scan service	\$76.00	\$0.00		\$76.00
City of Concord	11/7/2017	11/7/2017	62225	Live scans	\$228.00	\$0.00		\$228.00
<i>Totals for City of Concord:</i>					<u>\$1,645.17</u>	<u>\$0.00</u>		<u>\$1,645.17</u>
<b>Clean Street</b>								

## 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
Clean Street	11/7/2017	11/7/2017	88167	Street sweeping for October	\$4,500.00	\$0.00		\$4,500.00
<i>Totals for Clean Street:</i>					<i>\$4,500.00</i>	<i>\$0.00</i>		<i>\$4,500.00</i>
<b>Contra Costa County Sheriff - Forensic Svc Div (Lab)</b>								
Contra Costa County Sheriff - Forensic S	11/7/2017	11/7/2017	CLPD-317	Blood withdrawal services July-Sept 2017	\$315.00	\$0.00		\$315.00
<i>Totals for Contra Costa County Sheriff - Forensic Svc Div (Lab):</i>					<i>\$315.00</i>	<i>\$0.00</i>		<i>\$315.00</i>
<b>CR Fireline, Inc</b>								
CR Fireline, Inc	11/7/2017	11/7/2017	109846	CH Annual fire sprinkler inspection	\$375.00	\$0.00		\$375.00
CR Fireline, Inc	11/7/2017	11/7/2017	109858	EH Annual fire sprinkler inspection	\$375.00	\$0.00		\$375.00
CR Fireline, Inc	11/7/2017	11/7/2017	109845	Library Annual fire sprinkler inspection	\$375.00	\$0.00		\$375.00
<i>Totals for CR Fireline, Inc:</i>					<i>\$1,125.00</i>	<i>\$0.00</i>		<i>\$1,125.00</i>
<b>Dillon Electric Inc</b>								
Dillon Electric Inc	11/7/2017	11/7/2017	3579	Streetlight repairs	\$863.73	\$0.00		\$863.73
<i>Totals for Dillon Electric Inc:</i>					<i>\$863.73</i>	<i>\$0.00</i>		<i>\$863.73</i>
<b>Earth Star Electric</b>								
Earth Star Electric	11/7/2017	11/7/2017	110217	Refund for project cancellation	\$172.62	\$0.00		\$172.62
<i>Totals for Earth Star Electric:</i>					<i>\$172.62</i>	<i>\$0.00</i>		<i>\$172.62</i>
<b>Geoconsultants, Inc.</b>								
Geoconsultants, Inc.	11/7/2017	11/7/2017	18888	Well monitoring for September	\$1,546.50	\$0.00		\$1,546.50
Geoconsultants, Inc.	11/7/2017	11/7/2017	18885	Well monitoring for August	\$1,546.50	\$0.00		\$1,546.50
Geoconsultants, Inc.	11/7/2017	11/7/2017	18881	Well monitoring for July	\$1,546.50	\$0.00		\$1,546.50
<i>Totals for Geoconsultants, Inc.:</i>					<i>\$4,639.50</i>	<i>\$0.00</i>		<i>\$4,639.50</i>
<b>Globalstar LLC</b>								
Globalstar LLC	11/7/2017	11/7/2017	8814353	Sat phone 9/18/17-10/15/17	\$69.79	\$0.00		\$69.79
<i>Totals for Globalstar LLC:</i>					<i>\$69.79</i>	<i>\$0.00</i>		<i>\$69.79</i>
<b>Hammons Supply Company</b>								
Hammons Supply Company	11/7/2017	11/7/2017	99683	CH Janitorial supplies	\$925.60	\$0.00		\$925.60
Hammons Supply Company	11/7/2017	11/7/2017	99681	Library Janitorial supplies	\$193.42	\$0.00		\$193.42
Hammons Supply Company	11/7/2017	11/7/2017	99682	The Grove Janitorial supplies	\$375.48	\$0.00		\$375.48
<i>Totals for Hammons Supply Company:</i>					<i>\$1,494.50</i>	<i>\$0.00</i>		<i>\$1,494.50</i>
<b>Harris &amp; Associates, Inc.</b>								
Harris & Associates, Inc.	11/7/2017	11/7/2017	35747	Verna Wy services for September	\$3,910.00	\$0.00		\$3,910.00
<i>Totals for Harris &amp; Associates, Inc.:</i>					<i>\$3,910.00</i>	<i>\$0.00</i>		<i>\$3,910.00</i>
<b>Hitachi Data Systems Corp</b>								
Hitachi Data Systems Corp	11/7/2017	11/7/2017	7255171	Security camera hardware, software	\$34,263.77	\$0.00		\$34,263.77
<i>Totals for Hitachi Data Systems Corp:</i>					<i>\$34,263.77</i>	<i>\$0.00</i>		<i>\$34,263.77</i>
<b>HUB Inter of CA Ins Svc</b>								
HUB Inter of : Svc	11/7/2017	11/7/2017	Jul, Aug	Special ever ance for Jul, Aug 2017	\$207.58	\$0.00		\$207.58



## 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
Pond M Solutions	11/7/2017	11/7/2017	236	Fountain maintenance	\$650.00	\$0.00		\$650.00
				<i>Totals for Pond M Solutions:</i>	<i>\$650.00</i>	<i>\$0.00</i>		<i>\$650.00</i>
<b>Pursuit North</b>								
Pursuit North	11/7/2017	11/7/2017	2209573	Outfit car #1740	\$20,188.57	\$0.00		\$20,188.57
				<i>Totals for Pursuit North:</i>	<i>\$20,188.57</i>	<i>\$0.00</i>		<i>\$20,188.57</i>
<b>Raney Planning &amp; Management, Inc.</b>								
Raney Planning & Management, Inc.	11/7/2017	11/7/2017	1752E-1	Oak Creek Canyon, Noise Assessment, Sept L	\$6,532.99	\$0.00		\$6,532.99
				<i>Totals for Raney Planning &amp; Management, Inc.:</i>	<i>\$6,532.99</i>	<i>\$0.00</i>		<i>\$6,532.99</i>
<b>Reliable Automotive, LLC</b>								
Reliable Automotive, LLC	11/7/2017	11/7/2017	23794	Maintenance to 00' Ford F350	\$443.79	\$0.00		\$443.79
				<i>Totals for Reliable Automotive, LLC:</i>	<i>\$443.79</i>	<i>\$0.00</i>		<i>\$443.79</i>
<b>Riso Products of Sacramento</b>								
Riso Products of Sacramento	11/7/2017	11/7/2017	176303	Copier usage for 9/20/17-10/19/17	\$21.30	\$0.00		\$21.30
				<i>Totals for Riso Products of Sacramento:</i>	<i>\$21.30</i>	<i>\$0.00</i>		<i>\$21.30</i>
<b>Sprint Comm (PD)</b>								
Sprint Comm (PD)	10/31/2017	10/31/2017	703335311-190	Cell phones thru 9/25/17	\$2,058.96	\$0.00		\$2,058.96
				<i>Totals for Sprint Comm (PD):</i>	<i>\$2,058.96</i>	<i>\$0.00</i>		<i>\$2,058.96</i>
<b>Stericycle Inc</b>								
Stericycle Inc.	11/7/2017	11/7/2017	3004025172	Medical waste disposal	\$101.44	\$0.00		\$101.44
				<i>Totals for Stericycle Inc:</i>	<i>\$101.44</i>	<i>\$0.00</i>		<i>\$101.44</i>
<b>Turf Star, Inc.</b>								
Turf Star, Inc.	11/7/2017	11/7/2017	6993209-00	Irrigation parts	\$81.27	\$0.00		\$81.27
Turf Star, Inc.	11/7/2017	11/7/2017	6993209-01	Irrigation part	\$19.69	\$0.00		\$19.69
				<i>Totals for Turf Star, Inc.:</i>	<i>\$100.96</i>	<i>\$0.00</i>		<i>\$100.96</i>
<b>US Bank - Corp Pmt System CalCard</b>								
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Quill, Paper	\$198.31	\$0.00		\$198.31
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	CA Police Chiefs Assn, Western City, Jobs A	\$1,062.00	\$0.00		\$1,062.00
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Safeway	\$16.47	\$0.00		\$16.47
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Sams Club	\$44.90	\$0.00		\$44.90
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Adobe software	\$179.88	\$0.00		\$179.88
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Storage unit rent	\$127.00	\$0.00		\$127.00
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Fuel	\$595.75	\$0.00		\$595.75
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Fuel	\$311.35	\$0.00		\$311.35
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Fuel	\$28.57	\$0.00		\$28.57
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	OSH, supplies	\$24.23	\$0.00		\$24.23
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Staples, Amazon, Rex Lock	\$266.56	\$0.00		\$266.56
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	OSH, supplies	\$176.21	\$0.00		\$176.21
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	AutoZone	\$239.63	\$0.00		\$239.63
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	OSH, Librar	\$163.11	\$0.00		\$163.11

## 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	11/7/2017	11/7/2017	Stmt end 10/23/17	Fuel	\$53.30	\$0.00		\$53.30
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Fuel	\$85.00	\$0.00		\$85.00
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Fuel	\$987.67	\$0.00		\$987.67
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Vehicle Gas	\$227.59	\$0.00		\$227.59
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Vehicle Gas	\$128.69	\$0.00		\$128.69
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Vehicle Gas	\$396.26	\$0.00		\$396.26
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Safeway, food,drinks for OKT, Amazon	\$159.99	\$0.00		\$159.99
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	TLO Transunion	\$57.90	\$0.00		\$57.90
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Vehicle Gas	\$241.77	\$0.00		\$241.77
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Training class	\$350.00	\$0.00		\$350.00
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Training travel	\$513.08	\$0.00		\$513.08
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Vehicle Gas	\$228.65	\$0.00		\$228.65
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Image Sales	\$40.58	\$0.00		\$40.58
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Vehicle Gas	\$77.70	\$0.00		\$77.70
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Car washes, Auto Zone	\$217.59	\$0.00		\$217.59
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Vehicle Gas	\$280.80	\$0.00		\$280.80
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Vehicle Gas	\$469.73	\$0.00		\$469.73
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Office Supplies	\$132.06	\$0.00		\$132.06
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Vehicle Gas	\$32.30	\$0.00		\$32.30
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Midway USA	\$24.95	\$0.00		\$24.95
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Vehicle Gas	\$167.00	\$0.00		\$167.00
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	City of WC, Parking	\$2.00	\$0.00		\$2.00
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Vehicle Gas	\$235.10	\$0.00		\$235.10
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Vehicle Gas	\$93.74	\$0.00		\$93.74
US Bank - Corp Pmt System CalCard	11/7/2017	11/7/2017	Stmt end 10/23/17	Vehicle Gas	\$335.60	\$0.00		\$335.60
<i>Totals for US Bank - Corp Pmt System CalCard:</i>					<u>\$8,973.02</u>	<u>\$0.00</u>		<u>\$8,973.02</u>
<b>Verizon Wireless</b>								
Verizon Wireless	11/7/2017	11/7/2017	9793686257	Cell phones for September	\$144.32	\$0.00		\$144.32
<i>Totals for Verizon Wireless:</i>					<u>\$144.32</u>	<u>\$0.00</u>		<u>\$144.32</u>
<b>Workers.com</b>								
Workers.com	11/7/2017	11/7/2017	120158	Seasonal workers week end 10/1/17	\$1,988.99	\$0.00		\$1,988.99
Workers.com	11/7/2017	11/7/2017	120219	Seasonal workers week end 10/8/17	\$1,207.77	\$0.00		\$1,207.77
Workers.com	11/7/2017	11/7/2017	120282	Seasonal workers week end 10/15/17	\$1,537.88	\$0.00		\$1,537.88
<i>Totals for Workers.com:</i>					<u>\$4,734.64</u>	<u>\$0.00</u>		<u>\$4,734.64</u>
<b>GRAND TOTALS:</b>					<b>\$203,226.52</b>	<b>\$0.00</b>		<b>\$203,226.52</b>

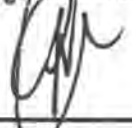






Agenda Date: 11-07-2017

Agenda Item: 3c

Approved:   
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Gary A. Napper  
City Manager

# STAFF REPORT

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: KEVIN MIZUNO, FINANCE MANAGER**

**DATE: SEPTEMBER 17, 2017**

**SUBJECT: INVESTMENT PORTFOLIO REPORT – FIRST QUARTER FY 2017-18**

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## RECOMMENDATION

It is recommended the City Council accept the City Investment Portfolio Report for the first quarter of fiscal year 2017-18 ending September 30, 2017.

## BACKGROUND

Pursuant to the section XIII of the City of Clayton Investment Policy, last revised on April 21, 2015, the Finance Manager is required to submit a quarterly investment report to the City Council. This quarterly report is also designed to meet the local agency reporting requirements outlined in *California Government Code* section 53646. The first quarter 2017-18 fiscal year report is provided herein.

## DISCUSSION

With the first quarter of the fiscal year completed, interest earnings for the General Fund is \$20,067, or 25.08% of forecasted interest revenues per the 2017-18 fiscal year adopted budget of \$80,000. City-wide investment earnings solely attributable to pooled investments (i.e. not related to cash with fiscal agents such as bond proceeds) through the first quarter of fiscal year 2017-18 totaled \$43,001. Approximately 1.66% of the current City Investment Portfolio is invested in Local Agency Investment Funds (LAIF). The LAIF quarterly apportionment rate hit a milestone this quarter at 1.07%, which is the first time the rate has been in excess of one percent since the quarter ending June 30, 2009, or over eight years ago. This quarter's apportionment rate represents an increase of 0.15% from a rate of 0.92% in the preceding quarter. Investments in certificates of deposit comprised approximately 88.17% of the City investment portfolio as of the quarter ended September 30, 2017 and were the highest yielding investment type with a collective weighted average interest rate of 1.68%. Approximately 4.48% of the Portfolio is made up of cash deposits and low interest bearing money market mutual funds available for normal operating cash flow purposes. Federal

Agency Notes, authorized by the revised April 21, 2015 investment policy, were the second highest yielding investment type making up approximately 5.69% of the portfolio with a weighted average interest rate of 1.50%. This continued small proportion of government agency notes in the Portfolio is due to several government agency note investments being called over the past two years following prior Fed announcements that “long-postponed interest rate growth will be addressed cautiously with any increases to come slowly, if at all”. Since then, the City’s investment strategy has shifted more heavily to non-callable certificates of deposit, where interest rates and other terms have been more favorable to the City. Eventually, the Portfolio’s proportional share of federal agency notes is expected to increase assuming federal interest rates continue to climb and the likelihood of government agency note calls is reduced.


The market value of the total investment portfolio was approximately \$12,284,763, which is \$13,087 (or 0.11%) lower than total carrying value as of September 30, 2017. The fair value is lower than the carrying value given the current environment of rising interest rates paired with the City’s Portfolio being primarily comprised of fixed income investments expected to be held to maturity. This consistent marginal difference demonstrates how the conservative nature of the City’s investment strategy mitigates the risk of the City incurring large unrealized losses in market declines. Simultaneously, given less risk being incurred, more predictable and modest investment returns will be realized following this same strategy.

In conclusion, for the first quarter ending September 30, 2017, the City of Clayton Investment Portfolio is being managed in accordance with the City’s investment policy. In addition, the City’s cash management program provides sufficient liquidity to meet the next six month’s expenditures. The attached City of Clayton Investment Holdings Summary – First Quarter of Fiscal Year 2017-18 (Attachment 1) provides additional analysis and the specific investment reporting criteria required by *California Government Code* section 53646.

### **FISCAL IMPACT**

The acceptance of this report has no direct fiscal impact to the City of Clayton.

Respectively submitted,

  
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T. Kevin Mizuno, CPA  
Finance Manager

Attachment 1: City of Clayton Investment Holdings Summary – Fourth Quarter of Fiscal Year 2017-18  
(July 1, 2017 – September 30, 2017)

City of Cayton  
Investment Holdings Summary  
Quarter Ending: September 30, 2017

ATTACHMENT 1

Investment Account	Investment Type	Institution	CUSIP	Carrying Value	Rate	Current Yield	Settlement Date	Maturity Date	Market Value
Local Agency Investment Fund (LAIF)	Local Agency Pool	LAIF	n/a	204,034.55	1.07%	1.07%	n/a	n/a	203,839.10
UBS Financial Services Inc.	Cash	BS Bank Sa Deposit Account	n/a	-	0.00%	0.00%	n/a	n/a	-
	Money Market Fund	RMA Government Portfolio	n/a	5,094.96	0.01%	0.01%	n/a	n/a	5,094.96
	Certificate of Deposit	Capital One Bank, VA	140420FF9	99,000.00	1.35%	1.35%	10/1/14	10/2/17	99,000.99
	Certificate of Deposit	Dollar Bk, PA	25669QAM7	198,000.00	1.20%	1.20%	11/17/14	11/17/17	198,053.46
	Certificate of Deposit	Citibank, NA, SD	17312QF87	145,000.00	1.25%	1.25%	7/6/17	12/14/17	145,052.20
	Certificate of Deposit	Banco Santander, PR	059646RZ4	245,000.00	1.20%	1.20%	1/23/15	1/23/18	245,267.05
	Certificate of Deposit	Oriental B&T, PR	606184WU2	200,000.00	1.15%	1.15%	2/10/16	2/20/18	200,028.00
	Certificate of Deposit	First Bus Bk, WI	31938QK78	200,000.00	1.15%	1.15%	3/31/15	4/2/18	199,900.00
	Certificate of Deposit	American Exp Cent, UT	02587DPT9	100,000.00	1.70%	1.70%	7/5/13	7/5/18	100,013.00
	Certificate of Deposit	Compass Bank, AL	20451PAU0	150,000.00	1.55%	1.55%	7/10/13	7/10/18	150,198.00
	Certificate of Deposit	Goldman Sachs Bank, NY	38147JHW5	100,000.00	1.75%	1.74%	7/10/13	7/10/18	100,288.00
	Certificate of Deposit	Cit Bank, UT	17284CHW7	146,000.00	1.80%	1.79%	7/17/13	7/17/18	146,475.96
	Certificate of Deposit	First Financial NW, WA	32022MAC3	100,000.00	1.14%	1.15%	1/28/16	8/20/18	99,739.00
	Certificate of Deposit	Bank Baroda New York, NY	060624SQ2	247,000.00	2.05%	2.04%	10/18/13	10/18/18	248,106.56
	Certificate of Deposit	Sallie Mae Bank, UT	795450QS7	147,000.00	2.05%	2.04%	10/23/13	10/23/18	147,740.88
	Certificate of Deposit	American Express C, UT	02587DWJ3	100,000.00	2.00%	1.99%	11/28/14	11/28/18	100,454.00
	Certificate of Deposit	Sallie Mae Bank, UT	795450RT4	100,000.00	2.00%	1.99%	12/11/13	12/11/18	100,537.00
	Certificate of Deposit	Keybank NA, IN	49306SVY9	100,000.00	1.53%	1.54%	1/20/16	1/22/19	100,418.00
	Certificate of Deposit	Discover Bank, DE	254672CC6	150,000.00	1.60%	1.60%	1/28/15	1/28/19	150,054.00
	Certificate of Deposit	Preferred Bank, CA	740267BR4	197,000.00	1.20%	1.20%	3/9/16	3/29/19	196,523.26
	Certificate of Deposit	First Savings Bank, IN	33621LBV4	99,000.00	1.15%	1.16%	5/4/16	5/24/19	98,285.22
	Certificate of Deposit	UBS Bank, UT	90348JAS9	200,000.00	1.20%	1.21%	6/9/16	6/17/19	198,458.00
	Certificate of Deposit	Discover Bank, DE	254671ZE9	100,000.00	2.00%	1.99%	7/9/14	7/9/19	100,581.00
	Certificate of Deposit	Synchrony Bank, UT	87164XBQ8	100,000.00	2.05%	2.04%	7/11/14	7/11/19	100,581.00
	Certificate of Deposit	First Financial NW, WA	32022MAJ7	147,000.00	1.45%	1.49%	2/10/16	8/19/19	146,376.72
	Certificate of Deposit	Third Fed S&L Assn, OH	88413QAY4	200,000.00	1.50%	1.46%	2/19/15	8/19/19	201,502.00
	Certificate of Deposit	Park Natl Bk Newar, OH	700654AT3	240,000.00	2.15%	2.14%	9/12/14	9/12/19	241,420.80
	Certificate of Deposit	Gulf Coast B&T, LA	402194FB5	99,000.00	1.25%	1.27%	10/14/16	10/15/19	97,771.41
	Certificate of Deposit	GE Capital Bank UT	36162YF24	145,000.00	1.80%	1.78%	1/16/15	1/16/20	146,368.80
	Certificate of Deposit	Mercantile Comm Ban, FL	58733AEJ4	100,000.00	1.90%	1.89%	8/15/17	3/2/20	100,266.00
	Certificate of Deposit	BMW Bank NA, UT	05580AHL1	198,000.00	1.80%	1.80%	4/12/17	4/21/20	197,920.80
	Certificate of Deposit	Wells Fargo Bk Na Sd Us	949861TT4	197,000.00	1.25%	1.25%	4/30/15	4/30/20	196,950.75
	Certificate of Deposit	Washington Trust, RI	940637HXC2	99,000.00	1.45%	1.46%	11/18/16	5/18/20	98,031.78
	Certificate of Deposit	Comenity Bank, DE	981996XS5	100,000.00	2.30%	2.31%	6/30/15	7/1/20	99,587.00
	Certificate of Deposit	World's Foremost B, NE	915991RE5	200,000.00	2.30%	2.32%	8/6/15	8/6/20	198,574.00
	Certificate of Deposit	Merrick Bk, UT	59013JHE2	149,000.00	1.90%	1.90%	8/20/15	8/20/20	149,065.56
	Certificate of Deposit	JP Morgan Chase, OH	48125YZR3	200,000.00	1.25%	1.25%	1/26/16	2/10/21	200,068.00
	Certificate of Deposit	Synchrony Bank, UT	87164XLH7	94,000.00	1.70%	1.70%	2/25/16	3/4/21	93,853.36
	Certificate of Deposit	Barclays Bank, DE	06740KCC0	100,000.00	2.00%	2.00%	7/5/17	7/12/21	100,137.00
	Certificate of Deposit	Comenity Cap Bank UT	20033AUX2	245,000.00	2.00%	2.00%	7/13/17	7/16/21	245,335.65
	Certificate of Deposit	UBS Bank, UT	90348JAU4	50,000.00	1.50%	1.53%	7/20/16	7/20/21	49,059.50
	Certificate of Deposit	Synchrony Bank, UT	87164XNA0	50,000.00	1.45%	1.48%	7/22/16	7/22/21	49,040.50
	Certificate of Deposit	Medallion Bank, UT	58403BSC5	198,000.00	2.05%	2.05%	12/20/16	12/16/21	198,055.44
	Certificate of Deposit	Mercantile Comm Bank	58733ADT3	150,000.00	2.10%	2.10%	1/27/17	1/27/22	150,133.50
	Certificate of Deposit	Texas Exchange Bank, TX	88241TBD1	150,000.00	2.25%	2.25%	3/28/17	3/28/22	150,142.50
	Certificate of Deposit	First Bank Highland, IL	319141HNO	247,000.00	2.20%	2.21%	8/28/17	9/7/22	246,224.42
	Government Agency	FHLMC	3134G8VZ9	250,000.00	1.25%	1.26%	3/29/16	4/28/21	247,092.50
	Total UBS Financial Services Inc.			6,836,094.96					6,833,827.53

City of Clayton  
Investment Holdings Summary  
Quarter Ending: September 30, 2017

ATTACHMENT 1

Investment Account	Investment Type	Institution	GUSIP	Carrying Value	Rate	Current Yield	Settlement Date	Maturity Date	Market Value
Morgan Stanley	Money Market Fund	Morgan Stanley	n/a	250,573.44	0.01%	0.01%	n/a	n/a	250,573.44
	Certificate of Deposit	Investors Savings Bank, NJ	46176PDY8	100,000.00	1.20%	0.60%	3/26/15	3/26/18	99,980.00
	Certificate of Deposit	Bank of North Carolina, NC	06414QUC1	200,000.00	1.50%	0.87%	1/16/15	4/16/18	200,254.00
	Certificate of Deposit	Bank Leumi, NY	063248PQ6	100,000.00	1.05%	1.05%	5/23/16	6/15/18	99,778.00
	Certificate of Deposit	BMO Harris, IL	05581WHF5	197,000.00	1.05%	0.52%	6/23/16	6/22/18	196,535.08
	Certificate of Deposit	Compass Bank, AL	20451PMD5	100,000.00	1.50%	1.49%	6/30/15	7/2/18	100,100.00
	Certificate of Deposit	Mercantile Bank of Grand Rapids, MI	58740XYT1	147,000.00	1.65%	1.64%	8/14/13	8/14/18	147,662.97
	Certificate of Deposit	First Bank PR Santurce, PR	33767AUJ8	50,000.00	1.45%	1.45%	1/20/16	1/22/19	49,922.50
	Certificate of Deposit	Webster Bank, CT	94768NKJ2	100,000.00	1.35%	1.34%	1/20/16	1/28/19	100,274.00
	Certificate of Deposit	Homebank, NA	43738AFU5	200,000.00	1.50%	1.49%	3/30/15	3/29/19	200,642.00
	Certificate of Deposit	Ally Bank, UT	02006LZR7	100,000.00	1.20%	1.20%	4/14/16	4/15/19	99,646.00
	Certificate of Deposit	State Bank of India, ILL	856283YN0	198,000.00	1.65%	1.64%	5/28/15	5/28/19	198,013.86
	Certificate of Deposit	First Business Bank, WI	31938QL85	50,000.00	1.50%	1.50%	6/11/15	6/11/19	49,880.50
	Certificate of Deposit	Ally Bank, UT	02006LE66	148,000.00	1.25%	1.26%	6/23/16	6/24/19	146,814.52
	Certificate of Deposit	Barclays Bank, DE	06740KHK6	149,000.00	2.10%	2.08%	7/23/14	7/23/19	149,864.20
	Certificate of Deposit	American Express Bank FSB, UT	02587CAJ9	247,000.00	2.00%	1.99%	7/24/14	7/24/19	247,936.13
	Certificate of Deposit	BMW, UT	05580afa7	50,000.00	1.20%	1.21%	8/26/16	8/26/19	49,435.00
	Certificate of Deposit	Comenity Bank, DE	20099A7A9	100,000.00	2.10%	2.06%	8/27/14	8/27/19	101,616.00
	Certificate of Deposit	JPM, OH	48126KCP8	48,000.00	1.25%	1.26%	8/31/16	8/31/19	47,471.52
	Certificate of Deposit	Capital One Bank, VA	140420QR0	130,000.00	2.15%	2.13%	10/16/14	10/16/19	130,989.30
	Certificate of Deposit	State Bk India, NY	8562842P8	50,000.00	2.25%	2.22%	8/27/14	10/17/19	50,541.00
	Certificate of Deposit	The Privatebank & Trust Co., IL	74267GUL9	100,000.00	1.90%	1.88%	1/23/15	1/23/20	100,895.00
	Certificate of Deposit	American Express Centurion Bank, UT	02587DXE3	47,000.00	1.95%	1.94%	1/30/15	1/30/20	47,053.11
	Certificate of Deposit	Peoples United Bank, CT	71270QML7	151,000.00	1.75%	1.73%	3/4/15	3/4/20	151,902.98
	Certificate of Deposit	Everbank, FL	29976DVM7	200,000.00	1.75%	1.75%	3/30/15	3/30/20	199,740.00
	Certificate of Deposit	CIT Bank, UT	17284DBM3	50,000.00	1.98%	1.99%	6/3/15	6/3/20	50,207.50
	Certificate of Deposit	Capital One NA USA, VA (4297)	14042E4Y3	245,000.00	2.22%	2.23%	7/22/15	7/22/20	247,219.70
	Certificate of Deposit	Beneficial Mut, PA	08173QBT2	200,000.00	1.37%	1.37%	10/7/16	10/7/20	196,272.00
	Certificate of Deposit	Wells Fargo, SD	9497485W3	50,000.00	1.77%	1.77%	6/17/16	6/17/21	49,362.50
	Certificate of Deposit	1st Internet Bank Indianapolis, IN	32056CCP3	100,000.00	1.95%	1.95%	7/14/17	7/14/21	99,955.00
	Certificate of Deposit	Piast Bank PR Santurce, PR	33767A4K4	157,000.00	2.05%	2.04%	8/25/17	8/25/21	157,469.43
	Certificate of Deposit	Enerbank USA, UT	29266N3H8	50,000.00	1.48%	1.47%	8/26/16	8/26/21	49,022.00
	Certificate of Deposit	Privatebank, IL	74267GVM6	147,000.00	1.53%	1.52%	8/30/15	8/30/21	144,174.66
	Certificate of Deposit	Franklin Syn Bank, TN	35471TCV2	204,000.00	2.00%	2.00%	1/12/17	1/31/22	203,306.40
	Certificate of Deposit	Live Oak Banking, NC	538036CM4	97,000.00	2.25%	2.23%	4/7/17	4/7/22	97,468.51
	Government Agency	Federal Farm Credit Bank	3133EGEX9	200,000.00	1.67%	1.70%	6/9/16	6/14/21	195,688.00
	Government Agency	Federal Home Loan Bank	3130A8HH9	250,000.00	1.62%	1.65%	6/16/16	6/23/21	244,282.50
	<b>Total Morgan Stanley</b>			<b>4,962,573.44</b>					<b>4,951,949.31</b>
Bank of America (book balance)	Cash (checking account)	Bank of America		295,147.24	0.00%	0.00%	n/a	n/a	295,147.24

Broker / Institution	Carrying Value	Percentage of Portfolio	Weighted Average Yield to Maturity	W.A.M. (yrs)	Market Value
Local Agency Investment Fund (LAIF)	204,035	1.66%	1.07%	0.64	203,839
UBS Financial Services Inc.	6,836,095	55.59%	1.66%	2.35	6,833,828
Morgan Stanley	4,962,573	40.35%	1.60%	2.44	4,951,949
Bank of America (book balance)	295,147	2.40%	0.00%	0.00	295,147
<b>Total investment Portfolio</b>	<b>12,297,850</b>	<b>100.00%</b>			<b>12,284,763</b>
2017-18 Budgeted Interest - General Fund	\$	80,000			
2017-18 Actual Interest Revenue to date (7/1/17 - 9/30/17)	\$	20,067			
Percent of General Fund Budget Realized		25.08%			
Quarterly Weighted Average Annual Yield*		1.59%			
2017-18 Total Pooled Investment Income To Date (7/1/17 - 9/30/17)	\$	43,001			

I verify that this investment portfolio is in conformity with State laws and the City of Clayton's investment policy. The City's cash management program provides sufficient liquidity to meet the next six months' expenditures.

*T. Kevin Mizuno*  
Kevin Mizuno, Finance Manager  
10/17/17  
Date

*Hank Stratford*  
Hank Stratford, City Treasurer  
10/26/17  
Date

\*This calculation excludes the City's non-interest bearing pooled checking account with Bank of America



Agenda Date: 11-07-2017

Agenda Item: 3d

Approved:

Gary A. Napper  
City Manager

# STAFF REPORT

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: FINANCE MANAGER**

**DATE: NOVEMBER 7, 2017**

**SUBJECT: ADOPTION OF A RESOLUTION AKNOWLEDGING AND IMPLEMENTING THE STATE-MANDATED REQUIREMENTS OF CALIFORNIA ASSEMBLY BILL 1379 EFFECTIVE JANUARY 1, 2018**

## RECOMMENDATION

Adopt the attached Resolution acknowledging the Governor's passing of California Assembly Bill 1379 (AB-1379) on October 11, 2017 and implementing its provisions effective on January 1, 2018.

## BACKGROUND

On September 19, 2012 Governor Brown signed into law Senate Bill 1186 (SB-1186) which added a state fee of \$1 on any applicant for local business license or similar instrument or permit, or renewal thereof. The purpose of this fee, referred to as the "CASp" (certified access specialist) fee, is to increase disability access and compliance with construction-related accessibility requirements and to develop educational resources for businesses in order to facilitate compliance with federal and state disability laws, as specified. The CASp program was created with the intent of offering business and facility owners a resource consisting of individuals with the appropriate knowledge demonstrated through examination. Services rendered through CASp may include the review of facility plans and specification for compliance with state and federal accessibility laws, standards, codes, and regulations; investigation of a facility for compliance with state and federal accessibility laws, standards, codes, and regulations; conducting accessibility research, prepare accessibility reports, and/or conducting accessibility inspections; and issue inspection reports and disability access inspection certificates.

In accordance with the law, the City of Clayton adopted the provisions of SB-1186, and commencing on January 1, 2013, collected this fee on all business license applications and renewals. Thereafter, on a quarterly basis, 30% of CASp fee revenue collected has been remitted to the Division of the State Architect with the remaining 70% being retained for local CASp program compliance. Of the locally retained portion, 92.86% (65% of the total CASp

Subject: Adoption of a Resolution Acknowledging and Implementing the State-Mandated Provisions of California Assembly Bill 1379 Effective January 1, 2018  
Date: November 7, 2017  
Page: 2 of 4

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fees collected) is passed through to the Contra Costa County Department of Conservation and Development on a quarterly basis to execute the CASp program and comply with State-mandated reporting requirements. The remaining 7.14% of the locally retained portion (5% of the total CASp fees collected) is kept by the City to help defray the cost necessary to administer collection and distribution of the fee. The existing CASp fee program was set to sunset on December 31, 2018.

On October 11, 2017 Governor Brown signed into law California Assembly Bill 1379 (AB-1379) which removes the sunset for the previous CASp fee, establishing it as a permanent fee. AB-1379 also increases the fee to \$4 for the six-year timeframe January 1, 2018 through December 31, 2023, with it then reverting back to \$1 beginning January 1, 2024. During the six-year period of the increased fee, 90% of the fees collected are to be retained locally for program compliance with 10% to be remitted to the Division of the State Architect. Municipalities that do not issue a business license or equivalent instrument are ordered to collect the fee on all applications for building permits.

## **DISCUSSION**

According to the Bill's author, AB-1379 seeks to increase funding for the CASp Program in order to increase the availability of CASp services and improve compliance with state and federal construction-related accessibility standards. The increased resources will allow local building inspectors to have the training and skills to make certain businesses comply with state and federal access laws when reviewing building plans for new construction renovations. As California grows, and as construction increases, the funding of the CASp program must meet accessibility compliance needs.

Staff has reviewed the requirements of AB-1379 and analyzed the differences between the provisions of the new law to that of the former law established by SB-1186 to better understand the immediate impact. The following is a summary of the key changes that go into effect with the new CASp law established by AB-1379:

<b>Existing Law (SB-1186)</b>	<b>New Law (AB-1379)</b>
Effective date of January 1, 2013 with a sunset date of December 31, 2018.	Establishes the CASp fee as a permanent fee.
Established \$1 CASp fee on all business license applications and renewals.	Increases the CASp fee to \$4 on all business license applications and renewals for the six year period January 1, 2018 to December 31, 2023. Thereafter the fee reverts back to \$1.
CASp fee applied only to business license applications and renewals.	CASp fee applies to either: (1) all business license applications and renewals, or (2) to all new building permit applications in instances where business licenses are not collected.

Subject: Adoption of a Resolution Acknowledging and Implementing the State-Mandated Provisions of California Assembly Bill 1379 Effective January 1, 2018  
Date: November 7, 2017  
Page: 3 of 4

Required 30% of CASp fees collected to be remitted to the Division of the State Architect on a quarterly basis.	Will require 10% of CASp fees collected to be remitted to the Division of the State Architect on a quarterly basis. Reverts back to 30% after December 31, 2023.
Allowed 70% of CASp fees collected to be retained locally for program purposes.	Will allow 90% of CASp fees collected to be retained locally for program purposes. Reverts back to 70% after December 31, 2023.

According to the Senate Appropriations committee, state revenue to the Department of the State Architect would increase by approximately \$210,910 per year until December 31, 2013 through the adoption of this new law. In addition, it is expected the new temporary fee increase will result in additional revenues of approximately \$6 million per year at the local level (throughout California) until December 31, 2013.

In order to implement this new law, staff will work closely with the City's current business license administration software provider, HdL Software. Staff will ensure business license applications and the newly-implemented public online business license application and renewal resource is updated accordingly. Staff recommends the City continue to remit the local share of the collected CASp fees to the Contra Costa County Department of Conservation & Development as the amount of fees collected will not be sufficient to implement the CASp program requirements. Since the City contracts with the Contra Costa County Department of Conservation and Development for building inspection services and the issuance of building permits, the restricted-use revenue generated from the increased CASp fee will be best served there. The City does not currently administer a CASp program, and the costs to implement such would dwarf the trivial amount of fees collected. For the fiscal year ended June 30, 2017, the City of Clayton collected a total of only \$647 in CASp fees, of which approximately \$194 was remitted to the Division of the State Architect, approximately \$421 was remitted to the Contra Costa County Department of Conservation & Development, for local compliance purposes, and approximately \$32 was retained by the City to help defray the cost of CASp fee administration. Using consistent prior year figures as a base, the increased \$4 CASp fee would result in "locally available" restricted-use revenues of \$1,812.

Staff acknowledges the possibility that increases to the CASp fee imposed by AB-1379 may adversely impact the desire of some entities to apply for a business license to conduct business in the City. However, the increased CASp fee is a California State mandate and not collecting the increased fee amount would not only be illegal, but failure to comply could result in loss of state funding or other punitive actions against the City. Furthermore, if AB-1379 is successful in achieving its goal, there will be more resources available to assist California building owners and tenants with buildings open to the public with disability access law compliance, which is a serious and significant responsibility.

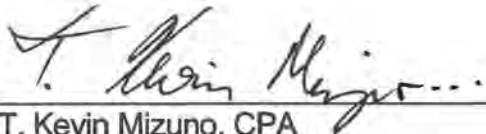
Subject: Adoption of a Resolution Acknowledging and Implementing the State-Mandated Provisions of California Assembly Bill 1379 Effective January 1, 2018  
Date: November 7, 2017  
Page: 4 of 4

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### **FISCAL IMPACT**

Although 95% of the CASp funds collected will be remitted to other regulatory agencies, 5% will continue to be retained locally to help defray the costs necessary to administer the CASp fee collection and distribution. The amount retained locally by the City is expected to be approximately \$130 in the current fiscal year ending June 30, 2018.

Respectively submitted,



T. Kevin Mizuno, CPA  
Finance Manager

Attachment:

Resolution \_\_-2017 [2 pp.]



**RESOLUTION NO. \_\_-2017**

**A RESOLUTION ACKNOWLEDGING AND IMPLEMENTING  
THE STATE-MANDATED REQUIREMENTS OF  
CALIFORNIA ASSEMBLY BILL 1379**

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

**WHEREAS**, on September 19, 2012 Governor Brown signed into law California Senate Bill 1186 (SB-1186) which added a Certified Access Specialist (CASp) state fee of \$1 on any applicant for local business license or similar instrument or permit, or renewal thereof; and

**WHEREAS**, the CASp fee established by the passing of SB-1186 was effective January 1, 2013 and was set to expire on December 31, 2018; and

**WHEREAS** the City of Clayton adopted the provisions of SB-1186 and commencing January 1, 2013 collected this CASp fee on all business license applications and renewals; and

**WHEREAS**, on a quarterly basis, 30% of CASp fee revenue collected was remitted to the Division of the State Architect and 70% was retained for local CASp program compliance; and

**WHEREAS**, of the locally retained portion, 92.86% (65% of the total CASp fees collected) was passed through to the Contra Costa County Department of Conservation and Development on a quarterly basis to execute the CASp program and comply with the various State-mandated reporting requirements; and

**WHEREAS**, the remaining 7.14% of the locally retained portion (5% of the total CASp fees collected) was kept by the City to help defray the cost necessary to administer collection and distribution of the fee; and

**WHEREAS**, on October 11, 2017 Governor Brown signed into law Assembly Bill 1379 (AB-1379) which effectively removes the sunset for the CASp fee, establishing it as a permanent fee; and

**WHEREAS**, AB-1379 increased the CASp fee to \$4 for the six year timeframe from January 1, 2018 through December 31, 2023, with the CASp fee then reverting back to \$1 beginning January 1, 2024; and

**WHEREAS**, during the six-year period of the increased \$4 CASp fee, 90% of the revenue collected is to be retained locally for program compliance with 10% being remitted to the Division of the State Architect; and

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of Clayton, California does hereby approve and order the following actions in accordance with California State mandate AB 1379:

1. Implement the collection of a \$4 CASp fee on all business license applications and business license renewals effective January 1, 2018; and
2. The remittance of 10% of all CASp fee revenue collected to the Division of the State Architect on a quarterly basis; and
3. The remittance of 90% of all CASp fee revenue collected, less the legally allowable retention amount to be retained for administrative costs of the City, to the Contra Costa County Department of Conservation and Development for local CASp program compliance purposes.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California, at a regular public meeting thereof held on the 7<sup>th</sup> day of November 2017 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CALIFORNIA

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By: Jim Diaz, Mayor

ATTEST:

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Janet Brown, City Clerk

**THIRD AMENDMENT  
TO  
TOLLING AGREEMENT EXTENDING  
THE LIMITATIONS PERIOD TO FILE A LEGAL CHALLENGE  
BY WEST COAST HOMEBUILDERS, INC.**

THIS THIRD AMENDMENT TO TOLLING AGREEMENT ("**Third Amendment**") shall be effective as of the 9<sup>th</sup> day of November, 2017 ("**Effective Date**"), by and between the **CITY OF CLAYTON**, a municipal corporation ("**City**"), and **WEST COAST HOME BUILDERS, INC.**, a California corporation ("**WCHB**"), with reference to the following facts:

**RECITALS**

**WHEREAS**, on May 11, 2016, City and WCHB entered into a Tolling Agreement Extending the Limitations Period to File a Legal Challenge, under which the parties agreed to toll the applicable statute of limitations in which WCHB was required to file an action challenging City's disapproval of the Final Map. On November 16, 2016, City and WCHB entered into a First Amendment extending the Waiver Period an additional one hundred eighty (180) days with such Waiver Period expiring on May 8, 2017. On May 3, 2017, City and WCHB entered into a Second Amendment extending the Waiver Period an additional one hundred eighty (180) days expiring on November 8, 2017 (collectively, the "**Agreement**").

**WHEREAS**, City and WCHB desire to amend the Agreement on each and all of the terms, provisions, and conditions contained herein.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing Recitals, as well as other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. All capitalized terms used herein, but not otherwise defined herein, shall have the meanings set forth in the Agreement.
2. The parties hereto agree that the Recitals set forth above are true and correct and are incorporated into this Third Amendment.
3. The parties hereto agree that the Waiver Period shall be extended an additional six (6) months from November 8, 2017. The Waiver Period shall now expire on May 8, 2018.
4. The Agreement, as modified by this Third Amendment, is hereby reaffirmed, ratified, and confirmed in its entirety. Except as modified by this Third Amendment, the terms and provisions of the Agreement shall remain unchanged. If there is any conflict between the terms of the Agreement and this Third Amendment, the terms and provisions of this Third Amendment shall control and prevail.

5. This Third Amendment, and the terms, covenants and conditions herein contained, shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, and assigns.

**IN WITNESS WHEREOF**, the parties have executed this Third Amendment as of the Effective Date.

**CITY OF CLAYTON,**  
a municipal corporation

**WEST COAST HOME BUILDERS, INC.,**  
a California corporation

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**PRESTON MARKS**  
for  
"Doing the Right Thing"  
at  
Mt. Diablo Elementary School  
by exemplifying great "Respect"  
October 2017

Agenda Date: 11-01-2017

Agenda Item: 4b

**ISABELLA MURILLO**  
for  
"Doing the Right Thing"  
at  
Mt. Diablo Elementary School  
by exemplifying great "Respect"  
October 2017

**NOELLANI GARCIA**  
for  
"Doing the Right Thing"  
at  
Diablo View Middle School  
by exemplifying great "Respect"  
October 2017



**DOMENIC VINES**  
for  
"Doing the Right Thing"  
at  
Diablo View Middle School  
by exemplifying great "Respect"  
October 2017

**ANDEAVOR FOUNDATION**  
for  
a \$39,000.00 grant  
to support Clayton's  
Citizen Emergency Response Team (CERT)  
emergency operations trailer purchase

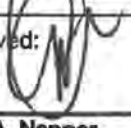
Agenda Date: 11-07-2017

Agenda Item: 4C




Agenda Date: 11-07-2017

Agenda Item: 7a

Approved:   
Gary A. Napper  
City Manager

# AGENDA REPORT

**TO: HONORABLE MAYOR AND COUNCIL MEMBERS**  
**FROM: MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR**   
**DATE: NOVEMBER 7, 2017**  
**SUBJECT: ORDINANCE ADDRESSING COMMERCIAL CANNABIS REGULATIONS**

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## **RECOMMENDATION**

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

1. Motion to have the City Clerk read Ordinance No. 479 by title and number only and waive further reading; and
2. Following the City Clerk's reading; by motion approve Ordinance No. 479 for Introduction to amend the Clayton Municipal Code Title 17 "Zoning" in order to continue to prohibit outdoor cannabis cultivation for personal use, and to prohibit all commercial cannabis activities except for cannabis deliveries originating outside of the City with the findings its adoption is not a project under CEQA and it will not have a significant adverse effect on the environment and is therefore categorically and statutorily exempt under CEQA (ZOA-10-16) (**Attachment 1**).

## **BACKGROUND**

On December 20, 2016, the City Council passed an Urgency Ordinance banning the personal outdoor cultivation of cannabis, which is limited to six plants per residence, in addition to a staff presentation requesting policy direction from the Council regarding Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") (**Attachment 2**). Following staff's presentation, the City Council provided policy direction to

staff to not regulate the indoor cultivation for the personal use of marijuana; add provisions in the Clayton Municipal Code to treat marijuana similarly to alcohol with no consumption in public; defer further marijuana-related issues into 2017 to allow more time for legal clarification; and lastly determine what actions neighboring jurisdictions have taken.

On October 3, 2017, staff followed up with a policy presentation to the City Council by providing updated information on cannabis regulations, a summary of the actions taken by surrounding jurisdictions, and recommendations regarding the affirmative regulation and prohibition of cannabis activities (**Attachment 3**). The City Council responded with policy direction to staff to prohibit all commercial cannabis activities (retail sales, commercial cultivation, distribution, testing, and manufacturing), except for deliveries originating outside of the city limits. This direction was based on concerns regarding the cannabis industry in California being new and is relatively untested; the State of California is lacking complete industry regulations; Clayton is a small city with limited resources to be on the forefront of these issues; security; and impacts to public safety.

On October 17, 2017, the Planning Commission recommended, 4-0 vote (one Commissioner absent), to the City Council adoption of the subject Ordinance (**Attachment 4**). The Commission agreed the prohibition of the commercial cannabis activities, with the exception of deliveries, was appropriate for Clayton.

For a more in depth overview on the regulation of cannabis at the federal, state, and local levels, see **Attachments 2 and 3**.

## **DISCUSSION**

The State of California will begin issuing a variety of license types, for the various aspects of the cannabis industry, to businesses on January 2, 2018. Clayton does not legally have to have an ordinance in place by January 1, 2018, but cities will only have sixty days to respond to the state once notified of an application to open a business in the jurisdiction. Further, under SB 94, if a local jurisdiction does not have an ordinance enacted to address the licensed activity, the state can unilaterally issue a license for that business. The State is only prohibited from issuing a license if the business activity would violate local ordinances and if there is no applicable ordinance, then there is no violation. Further, the City is required to submit any ordinances pertaining to the regulation or prohibition of cannabis to the State, thereby informing the licensing entities of local requirements and/or prohibitions.

Based on the policy direction provided by the City Council at its October 3, 2017 meeting, the proposed Ordinance prohibits the following activities for both medical and adult-use cannabis: retail sales, commercial cultivation, distribution, delivery, testing, manufacturing, and continues to prohibit the outdoor cultivation of cannabis for personal use.

The proposed Ordinance does affirmatively allow, but regulates, deliveries of both medical and adult-use cannabis originating outside of the city limits from licensed cannabis retailers, subject to the following restrictions:

- Only cannabis retailers that are licensed by the State may deliver to customers within the city of Clayton.
- All employees of a cannabis retailer making deliveries of cannabis or cannabis products will have to carry: 1) copy of the licensee's current state license, 2) a government-issued driver's license, 3) an employee identification card containing a name and picture, and 4) a City of Clayton business license.
- No cannabis can be stored in the city.
- All deliveries will require a signature and proof of identification; no porch drop-offs.
- Deliveries to physical residential addresses only.

#### **OTHER ISSUES**

The policy directions by the City Council at its meetings on December 20, 2016 and October 3, 2017 included amending the Clayton Municipal Code to restrict the use of cannabis to mimic that of alcohol, with no consumption in public. Given the short timeframe, between now and when the state will begin to issue licenses on January 2, 2018, staff will return to the City Council with an ordinance amending the Clayton Municipal Code regarding the smoking and ingesting of cannabis in public prior to the summer of 2018.

Lastly, any prohibition made by the City Council regarding cannabis uses can also be revised at a later date if there is a change of policy or if additional information arises.

#### **FISCAL IMPACTS**

Due to the increased enforcement and regulatory costs, the passage of Proposition 64 and the subject Ordinance will likely result in a nominal but undeterminable financial impact to the City pertaining to local law enforcement and business license regulations.

#### **ATTACHMENTS**

1. Ordinance 479 with Exhibit A [pp. 9]  
Exhibit A – Chapter 17.95 – Medical and Adult-Use Cannabis Regulations
2. Excerpt of the Staff Report and Minutes from December 20, 2016 City Council Meeting [pp. 17]
3. Excerpt of the Staff Report and Minutes from the October 3, 2017 City Council Meeting [pp. 10]
4. Excerpt of the Staff Report from the October 17, 2017 Planning Commission Meeting [pp. 8]

# ATTACHMENT 1

## ORDINANCE NO. 479

**AN ORDINANCE AMENDING SECTIONS 17.04.138, 17.36.080, 17.71.020 AND 17.71.030 OF THE CLAYTON MUNICIPAL CODE AND ADDING CHAPTER 17.95 ENTITLED “MEDICAL AND ADULT-USE CANNABIS REGULATIONS” TO CONTINUE TO PROHIBIT OUTDOOR CANNABIS CULTIVATION FOR PERSONAL USE, AND TO PROHIBIT ALL COMMERCIAL CANNABIS ACTIVITIES, AS DEFINED, EXCEPT FOR CANNABIS DELIVERIES ORIGINATING OUTSIDE OF THE CITY**

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

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

**WHEREAS**, voters of the State of California approved the Compassionate Use Act of 1996 (“CUA”) (codified as Health and Safety Code, § 11362.5 et seq.) to enable seriously ill Californians to legally possess, use, and cultivate marijuana for personal medical use free from prosecution under enumerated provisions of state law; and

**WHEREAS**, in 2003, the California Legislature adopted the Medical Marijuana Program Act (“MMP”) (codified as Health and Safety Code, § 11362.7 et seq.), which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under state law; and

**WHEREAS**, in 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that nothing in the CUA or MMP preempted cities’ authority to regulate or ban outright medical marijuana land uses; and

**WHEREAS**, in 2015, the California Legislature enacted the Medical Cannabis Regulation and Safety Act (MCRSA) which, for the first time in the State’s history, adopted comprehensive regulations and licensing for medical marijuana businesses; and

**WHEREAS**, in 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), which legalized the non-medical use of marijuana by adults over 21 years of age, and provides for state licensing of adult-use marijuana businesses; and

**WHEREAS**, Senate Bill 94 (“SB 94”), signed by the Governor on June 27, 2017 to take effect immediately, repealed the MCRSA, and amended AUMA to consolidate the state licensing scheme applicable to both medical and adult-use commercial cannabis activity under a new law entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA); and

**WHEREAS**, AUMA, as amended by MAUCRSA, recognizes, preserves and does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that regulate licensed cannabis businesses, including, but not limited to, completely prohibiting the establishment or operation of one or more types of businesses licensed under MAUCRSA within the local jurisdiction (Business and Professions Code, § 26200); and

**WHEREAS**, under the federal Controlled Substances Act (codified in 21 U.S.C. § 801 et seq.), the use, possession, and cultivation of marijuana/cannabis are unlawful and subject to federal prosecution without regard to a claimed medical need. As a result, access to banking services for commercial cannabis businesses remains limited; and

**WHEREAS**, commercial cannabis land uses pose certain threats to public health, safety, and welfare. In particular, cannabis businesses largely operate on a cash basis because of their inability to obtain banking services. This characteristic makes cannabis businesses unusually attractive for robbery, burglary, and other theft offenses; and

**WHEREAS**, permitting the establishment of commercial cannabis businesses within the city may increase cannabis consumption and availability within the city, and may increase youth exposure to and use of cannabis; and

**WHEREAS**, allowing cannabis deliveries from licensed cannabis retailers, microbusinesses, and licensed nonprofits that are physically located outside of city limits to retail customers within the city balances individuals' access to cannabis, particularly for medical use by seriously ill residents of Clayton, with the public health and safety concerns of the City posed by commercial cannabis businesses; and

**WHEREAS**, AUMA, as amended by MAUCRSA, legalizes cultivation of not more than six living cannabis plants by persons 21 years of age or older for personal use; and

**WHEREAS**, AUMA, as amended by MAUCRSA, provides that a city shall not completely prohibit personal cultivation of cannabis inside a private residence or inside an accessory structure to a private residence that is fully enclosed and secure, but that a city may completely prohibit personal cultivation of cannabis outdoors (Health and Safety Code, § 11362.2); and

**WHEREAS**, outdoor cannabis cultivation poses additional threats to public health, safety, and welfare, including strong odors, the risk of criminal activity due to the "attractive nuisance" characteristics of cannabis (which may be visible from neighboring properties or recognizable from public spaces due to odors), and the risk of fires and environmental degradation; and

**WHEREAS**, in accordance with Business and Professions Code, Section 26200, this ordinance effects zoning limitations that prohibit the physical establishment and operation of all commercial cannabis businesses within Clayton, including all commercial cultivators, manufacturers, testing laboratories, retailers, distributors and microbusinesses that are or will be licensed by the state of California pursuant to the MAUCRSA, with the exception that cannabis

retailers, microbusinesses, and licensed nonprofits legally established and located outside of the City of Clayton may provide delivery services to customers in Clayton, subject to the reasonable regulations stated herein.

**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. Amendment to Clayton Municipal Code Section 17.04.138.** Clayton Municipal Code Section 17.04.138 is hereby amended and restated to read in its entirety as follows:

**“17.04.138 Medical and Adult-Use Cannabis Uses.**

For purposes of this code, medical and adult-use cannabis uses and related terms shall be as defined in Section 17.95.010.”

**Section 3. Amendment to Clayton Municipal Code Section 17.36.080.** Clayton Municipal Code Section 17.36.080 is hereby amended and restated to read in its entirety as follows:

**“17.36.080 Prohibited Uses and Activities.** The following uses and activities are prohibited in all zoning districts:

- A. Any use or activity which is prohibited by local, regional, state, or federal law unless expressly and affirmatively authorized by this code.
- B. Outdoor cannabis cultivation. See Section 17.95.020.
- C. Commercial cannabis uses, as described in Section 17.95.030.
- D. Reserved.
- E. Reserved.
- F. Other uses or activities as may be determined by the Planning Commission to be of the same general character as those specifically prohibited.”

**Section 4. Amendment to Clayton Municipal Code Section 17.71.020.** Clayton Municipal Code Section 17.71.020, Subsection (B), related to the standards of approval for administrative review of home occupation permits, is hereby amended and restated to read in its entirety as follows:

“B. Standards of Approval. Home occupation permits approved by the Community Development Director shall meet the following standards at all times.

1. The home occupation shall be subordinate and incidental to the primary use of the dwelling unit for residential-purposes.
2. The home occupation shall be compatible with and not change the character of adjacent residential areas.



3. The dwelling unit shall be located in an Agricultural, Residential, or Planned Development (Residential) District.

4. The home occupation shall not use more than one (1) room, or twenty-five percent (25%) of the habitable floor area of the principle structure, whichever is greater. Garage areas and living areas within accessory structures and secondary dwelling units shall not be considered as part of the habitable floor area of the principal structure.

5. No persons shall be employed, except the applicant and members of the resident family, in the conduct of the home occupation.

6. There shall be no merchandise or services for sale, except that produced or made on the premises, and which can be shipped directly, electronically, or sold at another location.

7. There shall be no signage or exterior indication of the home occupation.

8. There shall be no outside display or storage of goods or materials.

9. The home occupation shall not create any noise, odor, dust, fumes, vibrations, electrical interference, or other interference with the residential use of adjacent areas.

10. There shall be no use of utilities or community facilities beyond that normal to the residential use of the property.

11. The home occupation shall not decrease the number or size of parking spaces below that needed to meet the minimum off-street parking requirements for the residence.

12. Delivery vehicles shall be limited to those types of vehicles, which typically make deliveries to residential neighborhoods, such as postal service, parcel deliveries, pickup trucks, and light vans. A maximum of four deliveries per day is allowed.

13. The home occupation shall not generate client/student traffic to the residence.

14. Any chemicals or hazardous materials used or stored on the property shall not exceed that associated with normal household activities or hobby uses.

15. Any use of materials or mechanical equipment shall not exceed that associated with normal household activities or hobby uses.

16. No home occupation permit may authorize or approve any commercial cannabis uses, as defined in Section 17.95.010, including but not limited to, the operation of a cannabis retailer, manufacturing of cannabis products, cannabis delivery service and/or the storage of cannabis in excess of those amounts permitted for personal use pursuant to Health and Safety Code Section 11362.1.”

All other provisions contained in Section 17.71.020 of the Clayton Municipal Code shall remain in full force and effect.

**Section 5. Amendment to Clayton Municipal Code Section 17.71.030.** Clayton Municipal Code Section 17.71.030, Subsection (B)(1), related to the standards of approval for Planning Commission review of home occupation permits, is hereby amended and restated to read in its entirety as follows:

“1. Standards listed in subsection 17.71.020.B.1 through 17.71.020.B.12 and 17.71.020.B.16.”

All other provisions contained in Section 17.71.030 of the Clayton Municipal Code shall remain in full force and effect.

**Section 6. Clayton Municipal Code Chapter 17.95 Adopted.** Clayton Municipal Code, Chapter 17.95, entitled "Medical and Adult-Use Cannabis Regulations" is hereby added and adopted as fully set forth in Exhibit "A" attached hereto and incorporated herein by reference.

**Section 7. CEQA.** This Ordinance is not a project within the meaning of Section 15378 and is exempt under Section 15061(b)(3) of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance prohibits commercial cannabis businesses and outdoor cannabis cultivation from establishing or occurring in the City and therefore will maintain the status quo. In addition, to the extent delivery services originating from outside city limits would be allowed subject to the regulations and discretionary review of the local jurisdiction where the retailer is physically established and state licensing requirements, this ordinance is exempt from environmental review pursuant to Business and Professions Code, Section 26055(h). Accordingly, the City Council finds that this Ordinance is categorically exempt and statutorily exempt from further CEQA review.

**Section 8. 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 9. 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 Sections 2 through 6 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, California, held on November 7, 2017.

Passed, adopted, and ordered posted by the City Council of the City of Clayton, California, at a regular public meeting thereof held on November 21, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Jim Diaz, 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 November 21, 2017.

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

## EXHIBIT "A"

### Chapter 17.95

### MEDICAL AND ADULT-USE CANNABIS REGULATIONS

#### Sections:

- 17.95.010 Definitions
- 17.95.020 Cultivation of Cannabis for Personal Use
- 17.95.030 Medical and Adult-Use Commercial Cannabis Uses

#### **17.95.010 Definitions.**

For purposes of this code, the following definitions shall apply.

- (A) "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. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also includes marijuana as defined by Section 11018 of the Health and Safety Code. Cannabis also includes "cannabis" as defined in Business and Professions Code, Section 26001, as may be amended from time to time.
- (B) "Cannabis cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- (C) "Cannabis delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a cannabis retailer of any technology platform that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.
- (D) "Cannabis distribution" means the procurement, sale, and transport of cannabis and cannabis products and any other activity allowed under the state distributor license(s), including, but not limited to, cannabis storage, quality control and collection of state cannabis taxes.
- (E) "Cannabis manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product. Cannabis manufacture includes the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.
- (F) "Cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or

concentrated cannabis and other ingredients. Cannabis products include “cannabis products” as defined in Business and Professions Code, Section 26001, as may be amended from time to time.

- (G) “Cannabis retailer” means a facility where cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale or conducts sales exclusively by delivery. For purposes of this code, the term “cannabis retailer” includes microbusinesses as well as nonprofits licensed under Business and Professions Code, Section 26070.5. For purposes of this code, “cannabis retailer” also includes medical cannabis dispensaries, patient collectives and cooperatives operating, or proposing to operate, pursuant to Health and Safety Code Sections 11362.5 and/or 11362.775, as may be amended.
- (H) “Cannabis testing laboratory” means a facility, entity, or site in the state that offers or performs tests of cannabis or cannabis products and that is both of the following:
  - (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state; and
  - (2) Licensed by the Bureau of Cannabis Control.
- (I) “Commercial cannabis uses” includes all cannabis cultivation, cannabis manufacture, cannabis distribution, cannabis testing laboratories, cannabis retailers, cannabis delivery, and sale of cannabis and/or cannabis products, whether intended for medical or adult-use, and whether or not such activities are carried out for profit. Commercial cannabis uses includes “commercial cannabis activity” as defined in Business and Professions Code, Section 26001, as may be amended from time to time, and includes any activity that requires a license from a state licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act, as may be amended from time to time. Commercial cannabis activity does not include possession or indoor cultivation of cannabis for personal use that is not sold and in strict accordance with Health and Safety Code, Section 11362.1 et seq.
- (J) “Indoor” means any location that is totally contained within a fully enclosed and secure private residence or accessory building located on the grounds of the private residence.
- (K) “Outdoor” means any location that is not totally contained within a fully enclosed and secure accessory building or primary residence.
- (L) “Private residence” means a house, an apartment unit, accessory dwelling unit, a mobile home, or other similar dwelling occupied for residential purposes.

**17.95.020 Cultivation of Cannabis for Personal Use.**

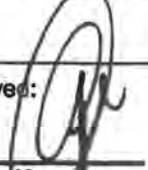
- A. Outdoor cultivation of cannabis, including cannabis cultivation for personal medical use, personal adult-use, or commercial purposes is prohibited in all zoning districts in the City of Clayton.

- B. The indoor cultivation of cannabis is prohibited except to the extent that state law permits the indoor cultivation of up to six marijuana plants for personal use per private residence. Persons engaging in indoor cultivation must comply with all state and local laws regarding fire safety, water use, electrical wiring, buildings, and indoor cultivation and personal use of cannabis.

**17.95.030 Medical and Adult-Use Commercial Cannabis Uses.**

- A. All commercial cannabis uses, as defined in Section 17.95.010, are prohibited from establishing or operating within the City of Clayton.
1. Exception for deliveries from licensed cannabis retailers. Cannabis retailers, whether medical or adult-use, are prohibited in the City; however, delivery of cannabis and cannabis products from cannabis retailers located outside of the City of Clayton is allowed, subject to the following restrictions:
    - a. Only cannabis retailers that are licensed under the applicable laws of the state of California to provide cannabis deliveries, including but not limited to, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Section 26000 et seq.), and operating in compliance with the applicable laws and regulations of the local jurisdiction in which the cannabis retailer is physically located may provide or provide for delivery of cannabis or cannabis products to customers in the City of Clayton.
    - b. All employees of a cannabis retailer delivering cannabis or cannabis products shall carry a copy of the licensee's current state license, a government-issued driver's license, an employee identification card containing a name and picture, and City of Clayton business license issued pursuant to Chapter 5.04 of this Code. Delivery drivers shall also carry a copy of the delivery request and the delivery request shall comply with state and federal law regarding the protection of confidential medical information.
    - c. No cannabis or cannabis products may be stored in the City.
    - d. All cannabis or cannabis products' deliveries require signature and proof of identification for the individual signing for it. Porch drop offs are not allowed.
    - e. Residential deliveries to a physical address only.



Approved:   
Gary A. Napper  
City Manager

# AGENDA REPORT

**TO: HONORABLE MAYOR AND COUNCIL MEMBERS**

**FROM: MALA SUBRAMANIAN, CITY ATTORNEY**  
**MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR *MG***

**DATE: DECEMBER 20, 2016**

**SUBJECT: DISCUSSION OF POTENTIAL RECREATIONAL MARIJUANA REGULATIONS – PROPOSITION 64**

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## **RECOMMENDATIONS**

It is recommended the City Council:

- 1a. Motion to have the City Clerk read the Urgency Ordinance No. 473 by title and number only and waive further reading; and
- 1b. Following the City Clerk’s reading; by motion adopt Urgency Ordinance No. 473 to prohibit the personal use of outdoor cultivation of marijuana (**Attachment 1**); and
2. Discuss and provide direction to staff on the various issues regarding the potential prohibition and/or regulation of recreational marijuana following the passage of Proposition 64.

## **BACKGROUND**

### ***CONTROLLED SUBSTANCES ACT***

In 1970, Congress passed the Controlled Substances Act (CSA), which is the federal government’s drug policy under which the manufacture, importation, possession, use and distribution of marijuana is illegal. According to the CSA, marijuana is classified as a Schedule 1 narcotic, which means it is defined as a drug with no currently accepted medical use and has a high potential for abuse.

*PROPOSITION 215: THE COMPASSIONATE CARE ACT*

In 1996 California voters passed Proposition 215 exempting patients and defined caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from criminal laws, which otherwise prohibit possession or cultivation of marijuana.

*COLE MEMO*

In 2009, the federal government announced it would effectively end the raids on distributors of marijuana. These marijuana enforcement guidelines were updated in June of 2011 and most recently in August of 2013, which are known as the Cole Memo. The Cole Memo issued updated guidelines to federal prosecutors concerning marijuana under the Controlled Substances Act and set the priorities of the Department of Justice. The Cole Memo essentially conveys that states that have legalized marijuana should have a robust regulatory system in place and demonstrate the willingness of enforcement of such regulations. Further, the Memo hints that prosecuting state legal marijuana enterprises are probably not an efficient use of federal resources.

This guidance regarding marijuana enforcement occurred under the Obama Administration and given a new administration with a possibly less lenient stance on marijuana usage will be taking office on January 20, 2017 this could possibly change the Department of Justice guidelines for state's that have legalized marijuana.

*MEDICAL MARIJUANA REGULATION AND SAFETY ACT (MMRSA)*

In September of 2015, the State of California passed three separate bills: AB 266, AB 243, and AB 643, which are collectively known as the Medical Marijuana Regulation and Safety Act (MMRSA). These bills effectively created a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical marijuana. While the law went into effect January 1, 2016, the state will not begin issuing licenses until January 1, 2018.

*PROPOSITION 64*

On November 8, 2016, voters approved Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"). The State of California passed Proposition 64 with 57.1% in favor. Locally, Contra Costa County voted 60.72% in favor and Clayton voted 53.8% in favor. AUMA legalized possession, transport, purchase, use, and transfer of recreational marijuana for individuals 21 years of age or older. Under AUMA, adults can possess up to 28.5 grams of marijuana, up to 8 grams of marijuana in the form of concentrated cannabis, which may be present in marijuana products such as edibles, and up to six living marijuana plants, and any marijuana produced by those plants. It would also legalize the cultivation of marijuana, marijuana delivery services, and recreational marijuana retail services. Proposition 64 took effect immediately following its passage and while some of these issues will not be in effect until January 1, 2018 when the State of California starts to issue licenses for the commercial sale, distribution, and cultivation of marijuana; there are



some aspects of the law that went into immediate effect such as the personal use and cultivation of marijuana.

AUMA allows for local control of marijuana uses. It allows local governments to:

- Ban all marijuana-related businesses outright, including marijuana dispensaries, delivery services, and any recreational marijuana retail services.
- Ban the outdoor cultivation of marijuana, unless the California Attorney General determines marijuana is no longer illegal under federal law (If marijuana is federally legalized, outdoor cultivation could be regulated, but not prohibited).
- Reasonably regulate indoor cultivation in private residences, but not ban it outright. AUMA would allow individuals to grow up to six marijuana plants in their home, and to possess all of the marijuana those plants provide.

#### ***EXISTING MARIJUANA REGULATIONS IN CLAYTON***

Currently, the City of Clayton laws referencing marijuana mostly pertain to medical purposes and the Municipal Code is silent on the recreational use of marijuana. Per Section 17.36.080 of the Clayton Municipal Code, the City has prohibited: medical marijuana dispensaries; testing laboratories; facilities that store or maintain marijuana as part of their operations; and outdoor cultivation or production of cannabis; and some indoor cultivation (**Attachment 2 and 3**). The CMC does allow for the indoor cultivation of medical marijuana within residential zones within a detached, fully enclosed and secure secondary structure or within a primary residential structure at a location inhabited by a qualified patient or primary caregiver. In March of 2016, the City Council allowed for the delivery of medical marijuana due to accessibility concerns for community patients.

Additionally, the regulation of medical and recreational marijuana does not have to be consistent with one another and can be regulated differently.

#### ***STATUS OF RECREATIONAL MARIJUANA IN NEIGHBORING JURISDICTIONS***

Since this issue is extremely new, staff researched the policies and status for recreational marijuana in neighboring jurisdictions:

- Concord – Ban on outdoor cultivation and is waiting on providing further direction until additional information is made available.
- Walnut Creek – Provided direction to staff to address the various issues, but have not acted on any aspects of Proposition 64 thus far.

#### **DISCUSSION**

Under AUMA, recreational use of marijuana is legal, as is recreational possession of marijuana and some level of indoor cultivation. Staff suggests the adoption of an Urgency Ordinance to ban the outdoor cultivation of marijuana, which is discussed in further detail below, as it is consistent with City Council previous action to ban the outdoor cultivation of

medicinal marijuana plants. In addition, staff is looking for direction from the City Council on the following policy issues: 1. Commercial retail sale; 2. Cultivation; 3. Delivery; 4. Testing; and 5. Personal use of marijuana. Based on the direction given regarding these policy issues, staff will return with additional information and proposed ordinances at a later date for Council consideration.

**ISSUE #1: OUTDOOR/INDOOR CULTIVATION FOR PERSONAL USE**

As stated previously, AUMA allows for the keeping of up to six marijuana plants for those over 21 years or older for personal use which can be cultivated either indoors or outdoors. Cities can regulate the cultivation of marijuana by banning or regulating the outdoor cultivation and "reasonably regulating" the indoor cultivation.

Given the City's Council's previous position prohibiting the outdoor cultivation of medical marijuana and staff's immediate concerns regarding the outdoor cultivation of recreational marijuana such as marijuana cultivation sites being clearly visible from public areas and easily accessible by the public, including youth and children; attraction to those looking to steal marijuana; the odorous nature of the plants; the potential for broader growth due to a larger space; and is less secure. Further, it is conceivable under the AUMA one could grow up to six plants in one's front yard unless local regulation prohibits it. These concerns raise an immediate threat to the public health, safety, and welfare in the City due to the negative effects created by the outdoor cultivation of marijuana. Due to these concerns and the Council's previous position on banning the outdoor cultivation of medical marijuana, staff is recommending the City Council adopt an Urgency Ordinance 473, pursuant to California Government Code Sections 36934, 36937, and 65858, placing an immediate ban on the outdoor cultivation of marijuana.

While AUMA allows for the prohibition of outdoor cultivation, local jurisdictions cannot prohibit the indoor cultivation but can "reasonably regulate". The Clayton Municipal Code allows for the indoor cultivation of medical marijuana but does not provide any regulations beyond those established by State law (**Attachment 2 and 3**).

- **POLICY QUESTION:** Does the City Council wish to reasonably regulate the indoor cultivation of marijuana? These regulations could range from a robust permitting system, including inspections by code enforcement, to a registration requirement system or no requirements beyond compliance with existing State law.

**ISSUE #2: INDOOR/OUTDOOR COMMERCIAL CULTIVATION**

Proposition 64 establishes a regulatory framework for commercial recreational marijuana operations. Local jurisdictions retain local land use and zoning authority over these operations; therefore jurisdictions may elect to allow or to prohibit the commercial outdoor and commercial indoor cultivation. A state license would be required for commercial indoor or outdoor cultivation of marijuana and the state would not issue a license unless the local jurisdiction permitted the operation of such business.

- **POLICY QUESTION:** Does the City Council wish to allow the indoor or outdoor commercial cultivation of marijuana?
- If the Council allows commercial cultivation; how does the Council foresee regulating these activities? These regulations could include a permit process, land use applications, security measures, and/or codified restrictions on locations and operating procedures.

**ISSUE #3: COMMERCIAL MARIJUANA ACTIVITIES**

Under AUMA, the creation of a variety of new commercial marijuana ventures, including recreational retail services, is forthcoming. The following is a list of possible commercial activities that could occur around recreational marijuana: commercial delivery, commercial manufacturing, commercial testing, and any commercial dispensaries or recreational retailers. This list is not comprehensive and there could conceivably be commercial recreational marijuana operations that have not been established or thought of yet. The City Council could ban all commercial uses or allow some or all of these commercial uses with appropriate regulations. Staff is seeking direction on the following policy issues:

- **POLICY QUESTIONS:** Allow or prohibit commercial marijuana activities within the City of Clayton?
- If the Council would allow the operation of commercial marijuana uses, identify which uses the Council would prohibit and which ones it would allow.
- If the Council allows commercial marijuana activities, please specify the general parameters of how the Council would like to regulate these activities. These regulations could include a permit process, land use applications, security measures, and/or codified restrictions on locations and operating procedures.
- If the Council wishes to allow commercial recreational marijuana uses does the Council wish to explore the fees and taxes to be imposed on these types of uses?
- Shall the City allow for recreational marijuana deliveries that begin or end within the City's boundaries? AUMA allows for the prohibition of deliveries but cannot prevent a delivery service from using public roads to pass through its jurisdiction. The City currently allows medical marijuana to be delivered in its municipal limits.

**ISSUE #4: REGULATION OF PERSONAL MARIJUANA USE LOCATIONS**

As indicated above, AUMA legalizes recreational use of marijuana. This means the City can no longer ban the use of marijuana by an individual in their own home. AUMA does not allow the smoking or ingesting of marijuana or marijuana products in any public place, absent local enabling legislation allowing use of marijuana or marijuana products in some public places. While AUMA does not define "public place," it does limit the smoking of marijuana to places where tobacco is permitted, which would be subject to the Clayton Municipal Code's smoking regulations (**Attachment 4**). Therefore anyone smoking in a blatantly public place without a local ordinance allowing so would be in violation of AUMA

and guilty of an infraction. However, the City's smoking ordinance does not explicitly mention marijuana. Note that medical marijuana is governed under a separate state statutory scheme and may be subject to different enforcement protocols. In addition, if the City Council opts to revise the smoking regulations to include marijuana, the Council may want to also expand the smoking ordinance to prohibit smoking in quasi-public spaces. These quasi-public spaces could include front yards, parking lots, and shopping centers.

- **POLICY QUESTION:** Does the City Council wish to modify the smoking ordinance to include marijuana?
- Does the Council wish to limit the scope of the allowable smoking locations?

### **OTHER ISSUES**

Since Proposition 64 is so new, the City Council may wish to consider waiting on providing policy directions to staff to see how legal interpretations may change over time. However, staff recommends at least acting on the outdoor cultivation aspect as this element is the most pressing issue. The other issues can wait to be addressed in 2017 because the State of California will not start issuing licenses for commercial operations until January 1, 2018.

Further, the City Council may want to delay direction and base its decision on what neighboring jurisdictions will adopt. For example if Concord allows commercial retail sales, this could negatively impact the City of Clayton from these uses but the City will not be privy to any of the associated revenue. Any decision made by the City Council can also be revised at a later date if there is a change of sentiment or if additional information arises.

### **OPTIONS**

The City Council can also consider the following options:

- 1) Not adopt Urgency Ordinance 473 prohibiting the outdoor cultivation of recreational marijuana. Should that be the City Council's preferred directive, a corollary question arises whether the City's current prohibition on outdoor cultivation for medicinal marijuana, presently in place, should be lifted by a subsequent ordinance at its next public meeting.
- 2) Adopt an Urgency Ordinance placing a temporary moratorium on the outdoor cultivation of recreational marijuana and direct staff to explore regulating the outdoor cultivation of both recreational and medical marijuana for personal use.

### **FISCAL IMPACTS**

Due to the increased enforcement and regulatory costs, the passage of Proposition 64 will likely result in a number of financial impacts to the City and depending on the direction of the City Council in response to Proposition 64 these costs may be more or less impactful.

If the City Council chooses to adopt an outdoor personal cultivation ban and/or regulations governing indoor/outdoor cultivation, such regulations will likely lead to an increase in administrative and code enforcement costs.

If the City Council adopts a commercial marijuana ban, such regulations will likely lead to an increase in administrative and enforcement costs. Alternatively, if the City Council adopts business regulations to govern marijuana businesses, such regulations will likely lead to an increase in administrative and enforcement costs, but may also lead to increased revenue due to the imposition of new business license fees and taxes. Any new taxes must be adopted pursuant to a vote of the electorate in accordance with Proposition 218. Furthermore, any general tax ballot measure would likely have to be consolidated with a regularly scheduled City Council election.

If the City Council chooses to adopt changes to the City's smoking regulations this could increase the costs of enforcement and regulation.

**ATTACHMENTS**

1. Urgency Ordinance 473 [pp. 5]
2. CMC Section 17.36.080 – Prohibited Uses and Activities [pp. 1]
3. CMC Section 17.04.138 – Medical Cannabis Uses [pp. 1]
4. CMC Section 8.14 – Regulation of Smoking [pp. 6]

**ATTACHMENT 1**

**ORDINANCE NO. 473**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON,  
CALIFORNIA, ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE  
SECTION 36937 ESTABLISHING A PROHIBITION ON THE OUTDOOR  
CULTIVATION OF MARIJUANA FOR PERSONAL USE**

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

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

**WHEREAS**, the City of Clayton, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

**WHEREAS**, on November 8, 2016, voters approved Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"); and

**WHEREAS**, the AUMA regulates, among other items, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age; and

**WHEREAS**, to regulate personal use of marijuana, the AUMA adds Section 11362.1 to the Health and Safety Code, which makes it "lawful under state and local law" for persons 21 years of age or older to "possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever" up to 28.5 grams of marijuana or not more than eight grams of marijuana in the form of concentrated cannabis contained in marijuana products; and

**WHEREAS**, the AUMA makes it lawful for those individuals to "possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants; and

**WHEREAS**, the AUMA makes it lawful for those individuals to smoke or ingest marijuana or marijuana products; and

**WHEREAS**, the AUMA authorizes cities to "reasonably regulate" without completely prohibiting cultivation of marijuana inside a private residence or inside an "accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure"; and

**WHEREAS**, the AUMA authorizes cities to completely prohibit outdoor cultivation on the grounds of a private residence, up to and until a "determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law"; and

**WHEREAS**, the outdoor cultivation of marijuana for personal use could be visible from public areas and easily accessible by the public, including youth and children; attracting those looking to steal marijuana; the plants are odorous; there is potential for broader growth; and the plants are less secure; and

**WHEREAS**, absent appropriate local regulation authorized by the AUMA, state regulations will control; and

**WHEREAS**, the "Medical Marijuana Regulation and Safety Act" ("MMRSA"), which took effect January 1, 2016, regulates use of marijuana for medical purposes; and

**WHEREAS**, the MMRSA contains a provision which provides that the State shall become the sole authority for regulation under certain parts of the Act unless local governments pass their own regulations; and

**WHEREAS**, in May 2013, the California Supreme Court held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal. 4th 729 (2013) that cities have the authority to regulate or ban outright medical marijuana land uses; and

**WHEREAS**, the California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

**WHEREAS**, under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

**WHEREAS**, based on the findings above the potential establishment of marijuana cultivation and other uses in the City without regulation poses a current and immediate threat to the public health, safety, and welfare in the City due to the negative land use and other impacts of such uses as described above; and

**WHEREAS**, California Government Code Section 36937 expressly authorizes the City Council to adopt by four-fifths (4/5) vote, an urgency ordinance which is necessary for the immediate protection of the public health, safety, and welfare; and

**WHEREAS**, the Clayton City Council has reviewed all written evidence and oral testimony presented to date on this matter.

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

**Section 1.** The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**Section 2.** The City Council hereby finds, determines, and declares that this Urgency Ordinance adopted pursuant to California Government Code Section 36937(b) is necessary because:

- A. Certain provisions of the AUMA became effective November 9, 2016, and contain provisions which allow for local governments to reasonably regulate or ban certain activities thereunder.
- B. There is a current and immediate threat to the public health, safety, and welfare of the City and its community, thereby necessitating the immediate enactment of this prohibition as an urgency ordinance in order to ensure that outdoor cultivation for personal use will not occur.

**Section 3. Urgent Need.** Based on the foregoing recitals and findings, all of which are deemed true and correct, this interim ordinance is urgently needed for the immediate preservation of the public health, safety, and welfare.

**Section 4. Amendment to Clayton Municipal Code Section 17.36.080.** Clayton Municipal Code Section 17.36.080 is hereby amended as follows:

Prohibited Uses and Activities. The following uses and activities in all zoning districts:

- (a) Any use or activity which is prohibited by local, regional, state, or federal law;
- (b) Establishment or operation of medical marijuana dispensaries, as defined in Section 17.04.138;
- (c) Outdoor cultivation or production of recreational marijuana for personal use or production of medical marijuana;
- (d) Indoor cultivation or production of medical marijuana, expecting medical marijuana cultivation or production in residential zones within a detached, fully enclosed and secure secondary structure or within a primary residential care giver as defined in Health and Safety Code section 11362.7; and
- (e) Other use or activities as may be determined by the Planning Commission to be of the same general character as those specifically prohibited.

**Section 5. Definitions.** For purposes of this ordinance, the following definitions shall apply:

- A. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
- B. "Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include:
  - i. Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code; or
  - ii. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.



- C. "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

**Section 6.** **Penalty for Violation.** No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this section. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory by this section, shall be a misdemeanor or an infraction, at the discretion of the City Attorney or the District Attorney. In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the provisions of this section is declared a public nuisance and may be abated as provided in Chapter 1.18 of this Municipal Code and/or under state law.

**Section 7.** **Authority.** This urgency ordinance is enacted pursuant to the authority conferred upon the City Council of the City of Clayton by Government Code Section 36937, and therefore shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council.

**Section 8.** **CEQA.** This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Contra Costa in accordance with CEQA Guidelines.

**Section 9.** **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 10.** **Custodian of Records.** The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk's office located at 6000 Heritage Trail, Clayton, CA 94517. The custodian of these records is the City Clerk.

**Section 11.** **Restatement of Existing Law.** Neither the adoption of this ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter or relating to the enumeration of permitted uses under the City's zoning code, shall be construed as

restatements and continuations, and not as new enactments.

**Section 12. Certification.** The City Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular public meeting thereof held on December 20, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Jim Diaz, 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 December 20, 2016.

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

Historic Places= pursuant to Government Code Section 65852.3(b). (Ord. 425, 2009).

**17.36.080 Prohibited Uses and Activities.** The following uses and activities are prohibited in all zoning districts;

- (a) Any use or activity which is prohibited by local, regional, state, or federal law;
- (b) Establishment or operation of medical marijuana dispensaries, as defined in Section 17.04.138;
- (c) Outdoor cultivation or production of medical marijuana;
- (d) Indoor cultivation or production of medical marijuana, excepting medical marijuana cultivation or production in residential zones within a detached, fully-enclosed and secure secondary structure or within a primary residential structure at a location legally inhabited by a qualified patient or primary caregiver as defined in Health and Safety Code section 11362.7; and
- (e) Other use or activities as may be determined by the Planning Commission to be of the same general character as those specifically prohibited. (Ordinance No. 448, 2013)

**17.36.082 Emergency Shelters Standards.**

Emergency shelters are only permitted in the Public Facilities (PF) zoning district subject to the development standards of the zone. In accordance with the authority granted to cities under State law (SB-2; 2007), emergency shelters must also meet the following objective development and management standards:

- A. An emergency shelter building shall be located a minimum distance of at least 300 feet from any residential use building or public or private K-12 school.
- B. An emergency shelter shall be located a minimum distance of at least 300 feet from another emergency shelter.
- C. The maximum number of beds or persons permitted to be served nightly by the facility shall not exceed ten (10).
- D. The maximum length of stay by an individual shall not exceed one hundred and eighty (180) consecutive days in a consecutive 12-month period.
- E. Off-street parking shall be provided in the ratio of one (1) space for every three (3) beds, plus one (1) parking space for each staff member on the largest shift. Provisions for bicycle parking shall also be made.
- F. An on-site interior client intake and waiting area shall be provided that is at least 200 square feet in area. A client intake and waiting area less than 200 square feet in size may be considered if it can be demonstrated the size of the intake and waiting area is sufficient to accommodate the demand.
- G. On-site parking lot lighting and security lighting shall be provided in accordance with City standards.
- H. Laundry and Refuse areas. The plan shall include provisions for indoor laundry facilities and an exterior enclosed refuse area.
- I. An operational plan shall be provided prior to the issuance of a Certificate of Occupancy or commencement of use, for the review and approval of the Community Development Director. At a minimum the plan shall contain provisions addressing the

# ATTACHMENT - 2

- D. "Rear lot line" means the lot line not intersecting a front lot line which is most distant from and most closely parallel to the front lot line. A lot bounded by only three lot lines will not have a rear lot line. (Ord 375, 2004)
- E. "Side lot line" means any lot line which is not a front or rear lot line. (Ord 375, 2004)

**17.04.136 Lot, Through.** "Through lot" means a lot, other than a corner lot, having frontage on two parallel, or approximately parallel streets (or vehicular access easements). (Ord 375, 2004)

**17.04.137 Manufactured Home.** A Manufactured Home@ means a single-family dwelling transportable in one or more sections constructed to a federally preemptive standard (Ord. 425, 2009).

**17.04.138 Medical Cannabis Uses.** A facility or location where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5 (Proposition 215). (Ordinance No. 448, 2013)

A. "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. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972.

B. "Cannabis dispensary" means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, wither individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of retail sale.

C. "Cannabis manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis products or labels or relabels its container.

D. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

E. "Testing laboratory" means a facility, entity, or site in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in the medical cannabis industry in the state; and

(2) Registered with the State Department of Public Health. (Ordinance No. 461, 2016)

**17.04.139 Mixed Use.** A Mixed Use@ means properties on which various uses, such as residential, commercial, or institutional, are combined in a single building or on a single site

Max Kahn, Northgate High School student, added our nation is led by egregious levels of income inequality, specifically in the Bay Area; it is imperative Congress act in any way to reduce and curtail gaps between the “haves and the have nots” in our society. Like Portland, Senator DeSaulnier proposed a similar measure when he was in the California State Senate with a corporate tax imposed based on a CEO earning over 100 times the amount of the median salary of the average worker. He would like to see the City of Clayton curtail the inequality of income in its community and do the same.

## 7. PUBLIC HEARINGS

- (a) Public Hearing to consider the adoption of Urgency Ordinance No. 473 to prohibit outdoor cultivation of recreational marijuana plants, and discussion of various local policy issues arising from the California voters’ passage of Prop 64 regarding local regulation of legal recreational marijuana.

[Councilmember David Shuey arrived – 7:14 p.m.]

Community Development Director Mindy Gentry advised she would summarize prevailing federal, state and local laws on this subject before addressing the local policy questions. She provided background regarding marijuana regulation per federal law: in 1970 Congress passed the Controlled Substances Act declaring marijuana as a Schedule 1 narcotic, defined as a drug with no currently accepted medical use and has a high potential for abuse. That Act declares the manufacture, importation, possession, use and distribution of marijuana is illegal. In 2013, the U.S. Department of Justice under the Obama Administration issued a memo providing guidance on marijuana enforcement; with the recent Presidential Election, this DOJ enforcement abeyance may change under new administration taking place January 20, 2017.

Ms. Gentry noted in 1996 voters passed state law entitled the Compassionate Care Act (Prop 215) allowing patients and caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from prosecution under criminal laws, which otherwise prohibit possession or cultivation of marijuana. In 2015 three bills were passed by State legislation to license the commercial cultivation, manufacture, retail sale, transport, distribution and delivery of medical marijuana but with no licenses to be issued until January 1, 2018.

Ms. Gentry advised Clayton’s Municipal Code addresses medical marijuana regulation but is silent on recreational/personal use. The Code does prohibit outdoor cultivation, dispensaries, and testing facilities, however, it allows limited indoor cultivation for patients and caregivers under physician orders and medical marijuana deliveries due to concerns with patient access.

Ms. Gentry added State Proposition 64 recently passed with Clayton voting 53.8% in favor; effective immediately, personal use and personal cultivation is allowed but no issuance of commercial licensing until January 1, 2018. The legalization allows possession, transport, purchase, use and transfer for those 21 years of age or older with no more than 28.5 grams or 8 grams in concentrate and cultivation of up to six plants for personal use. Proposition 64 further allows some local control in the areas of banning marijuana-related commercial businesses, all outdoor cultivation, and for regulation of indoor cultivation in private residences without banning it outright.

Ms. Gentry reviewed the recommended policy option for Council to adopt an Urgency Ordinance to place a similar ban on outdoor personal-use cultivation due to concerns of the plants being seen from public areas which would attract easy access by the public, including youth and children, possible theft and odor and broader growth due to larger

spaces, and the plants being less secure. These concerns raise an immediate threat to public safety and health and are negative effects of allowing outdoor cultivation.

Ms. Gentry concluded her presentation with policy questions to the City Council to consider regarding local regulations on Indoor/Outdoor Cultivation, Commercial Marijuana Activities, Regulation of Personal Marijuana Use locations and other issues, and with options to wait and see if the legal interpretations change over time or see what other neighboring jurisdictions adopt before embarking on local policies.

Mayor Diaz opened the Public Hearing for public comment.

Dylan Kupsh recommended the City Council not regulate indoor cultivation of marijuana as it is private property and the government should not interfere within private property as the smell will not affect surrounding neighbors.

Max Kahn considers it obscene to regulate the indoor cultivation of marijuana and thinks the police force and City resources could be better used in other areas.

Mayor Diaz closed the Public Hearing.

Councilmember Shuey offered he does not feel that indoor cultivation needs regulation and he would like the smoking of marijuana to be included within Clayton's smoking policy.

Vice Mayor Haydon would like to allow the indoor cultivation of marijuana for personal use without regulation by City staff. He also had some concerns on the smoking restrictions in regards to workers and patrons who are required to go outside to smoke tobacco; he is hesitant to allow the smoking of marijuana in those same places as cigarettes. Vice Mayor Haydon preferred marijuana restrictions be included under the City's alcohol ordinances; alcohol cannot be consumed out in public or on public streets, and he would like further staff research as this is a brand new law that has just been passed.

Councilmember Catalano inquired on commercial sales as a state license is required which will not be issued until January 2018, and asked what happens in the interim with other cities that allow medical dispensaries: are they able to sell recreational marijuana prior to January 1, 2018? Ms. Gentry responded the passage of Prop 64 left medical marijuana regulations in place for which state-issued commercial licenses are slated for issuance in January 2018. Currently there is a ban on marijuana dispensaries in the City of Clayton; if someone were to come into the city to open a dispensary, the City would rely on the Municipal Code which states it is still against federal law and therefore issuance of a local City business license to operate in town would be unlawful.

Councilmember Catalano asked since Prop 64 passed it still allows local jurisdictions to do some regulation; in terms of the cities enacting some regulation based on health and safety, is that allowed within the Adult Use of Marijuana Act? Acting City Attorney Katy Wisinski advised the City is authorized to regulate or ban outdoor cultivation or personal marijuana use and if the City opts to ban, it that is fine; if the City opts to regulate it in some fashion then it becomes a land-use decision and we would apply the same land-use principles as are used with any other proposed use.

Councilmember Catalano indicated she is in favor of the outdoor cultivation ban and would like to explore this item further in 2017 so far as brick and mortar sales in commercial sites.

Mayor Diaz wished to wait and see what develops following the passage of Prop 64; he has heard some surrounding communities who authorized commercial marijuana sales have had some problems as it is presently a federal illegal matter. Those businesses must operate on a cash-only basis as banks cannot accept monetary transactions from

these types of businesses without jeopardizing its FDIC standing. Cash-only businesses also become enhanced targets for ensuing criminal activities.

City Manager Napper added the only item for immediate attention this evening is the Urgency Ordinance as it would be difficult at this time for a police officer to differentiate between marijuana plants for medical or personal use. The remainder of the policy items raised by staff can wait for a full City Council to discuss in the new year.

**It was moved by Vice Mayor Haydon, seconded by Councilmember Shuey, to have the City Clerk read Urgency Ordinance No. 473 by title and number only and waive further reading. (Passed; 4-0 vote).**

The City Clerk read Urgency Ordinance No. 473 by title and number only.

**It was moved by Vice Mayor Haydon, seconded by Councilmember Shuey, to adopt Urgency Ordinance No. 473 with the finding the action does not constitute a project under CEQA. (Passed; 4-0 vote).**

## 8. ACTION ITEMS

- (a) Consider the Second Reading and Adoption of Ordinance No. 471 amending the Clayton Zoning Map from Agricultural District (A) to Planned Development District (PD) for 2.77 Acres that comprise the St. John's Church/Southbrook Drive Mixed Use Planned Development Project.

Community Development Director Mindy Gentry provided a brief background including the subject Ordinance's introduction back on December 6, 2016 to rezone the 2.77-acre St. John's Episcopal Church/Southbrook Drive Mixed Use Planned Development project site from Agricultural District (A) to Planned Development District (PD). No changes were made to the introduced Ordinance, the approval of a corresponding general plan amendment, rezone, and lot split for two single-family homes.

Mayor Diaz opened the item for Public Comment on this item; no comments were offered and Mayor Diaz then closed Public Comment.

**It was moved by Vice Mayor Haydon, seconded by Councilmember Shuey, to have the City Clerk read Ordinance No. 471, by title and number only and waive further reading. (Passed; 4-0 vote).**

The City Clerk read Ordinance No. 471 by title and number only.

[Maintenance Supervisor John Johnston arrived – 7:42 p.m.]

**It was moved by Vice Mayor Haydon, seconded by Councilmember Shuey, to adopt Ordinance No. 471 with the finding the project will not have a significant effect on the environment as outlined in the City Council-adopted St. John's Church/Southbrook Drive Mixed Use Planned Development Project Final Initial Study/Mitigated Negative Declaration (IS/MND). (Passed; 4-0 vote).**

- (b) Continued consideration of a proposal to share the cost for installation of fencing and related field improvements and storage by Clayton Valley Little League (CVLL) involving permanently fixed outfield baseball fence on Sports Field No. 3 at Clayton Community Park.

# ATTACHMENT 3

Agenda Date: 10-03-2017

Agenda Item: 8.0



## AGENDA REPORT

**TO:** HONORABLE MAYOR AND COUNCIL MEMBERS

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

**DATE:** OCTOBER 3, 2017

**SUBJECT:** CONTINUED DISCUSSION OF LOCAL CANNABIS REGULATIONS – PROPOSITION 64 AND SB 94

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### RECOMMENDATION

It is recommended the City Council discuss and provide direction on the various staff recommendations regarding the potential prohibition and/or regulation of medical and adult use cannabis following the passage of Proposition 64 and SB 94.

### BACKGROUND

On December 20, 2016, the City Council passed an Urgency Ordinance banning the personal outdoor cultivation of cannabis, which is limited to six plants per residence, and staff made a presentation requesting direction from the Council regarding Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") (Attachment 1). Following staff's presentation, the City Council provided direction to staff to not regulate the indoor cultivation for the personal use of marijuana; add provisions in the Clayton Municipal Code to treat marijuana similarly to alcohol with no consumption in public; further address marijuana in 2017 to allow more time for legal clarification; and lastly determine what actions neighboring jurisdictions have taken. Staff is now bringing this discussion back to the City Council with updated information on recent legislation and the status of cannabis in neighboring jurisdictions. Following, the Council's direction, staff will draft the appropriate ordinance, which is recommended to be enacted prior to the State issuing licenses on January 2, 2018.



For a more in depth overview on the regulation of cannabis at the federal, state, and local levels, see **Attachment 1**.

## **LEGISLATION UPDATE**

### ***FEDERAL ENFORCEMENT – COLE MEMO***

To date, Congress has not made any changes to the federal Controlled Substances Act; however a bill has been introduced to change marijuana from a Schedule I narcotic to another controlled substances schedule. The bill is currently at the committee level. Further, the Trump Administration and Attorney General Jeff Sessions have not made any changes at the federal level in regards to cannabis enforcement and the Cole Memo issued by Attorney General James M. Cole during the Obama Administration is still relevant. The Cole Memo essentially conveys that states that have legalized marijuana should have a robust regulatory system in place and demonstrate the willingness of enforcement of such regulations. Further, the Memo hints that prosecuting state legal marijuana enterprises are probably not an efficient use of federal resources. Attorney General Sessions has been an avowed opponent to marijuana legalization and his office has commented publicly about cannabis reform; however the Trump Administration has not yet decided whether to reverse the Cole Memo.

### ***SB 94 AND AB 133 – MAUCRSA***

On June 26, 2017, Governor Brown signed into law SB 94 – Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), a budget trailer bill that made significant changes to the regulatory scheme of cannabis. The new law combines the medical and adult use of cannabis systems into one licensing structure with the same regulatory framework governing both medical and adult use facilities. Many of the regulations have not changed but the highlights of the bill include:

- Cities still retain full regulatory authority over ALL commercial cannabis businesses – both medical and adult use, which includes the ability to ban;
- Deliveries can still be regulated/prohibited;
- Cities must allow indoor cultivation for personal use, but it can be reasonably regulated (six plants per residence, not per person);
- Commercial indoor and outdoor cultivation can still be banned;
- Anticipated recall of medical marijuana regulations with State regulations requiring to be updated to reflect the most recent changes in SB 94;
- Emergency regulations at the State level for both medical and adult use are expected to be released in November 2017;
- Sales tax on medical cannabis is still prohibited, but to qualify, the purchaser must have a state-approved, County-issued ID card;
- Vertical integration is now allowed, except for testing due to possible conflicts of interest. An example of vertical integration could be a business model including onsite cultivation and retail sales; and

- The state cannot issue a license if it is in violation of local ordinances. Therefore, the best local practice is to either clearly deny the use or to have a regulatory structure in place. Moratoriums on cannabis related uses may not be valid from the state's point of view due to them being temporary in nature.

AB 133 was signed into law by Governor Brown on September 16, 2017, which made a few technical fixes or changes to MAUCRSA. The most notable changes eliminated the requirement that potential licenses have separate and distinct premises and the bill increased the amount of possession of concentrated cannabis from 4 to 8 grams.

#### ***EXISTING MARIJUANA REGULATIONS IN CLAYTON***

Currently, the City of Clayton laws referencing marijuana mostly pertain to medical purposes and the Municipal Code is silent on the recreational use or adult use of marijuana. Per Section 17.36.080 of the Clayton Municipal Code, the City has prohibited: medical marijuana dispensaries; testing laboratories; facilities that store or maintain marijuana as part of their operations; and outdoor cultivation or production of cannabis; and some indoor cultivation (Attachment 2 and 3). The CMC does allow for the indoor cultivation of medical marijuana within residential zones within a detached, fully enclosed and secure secondary structure or within a primary residential structure at a location inhabited by a qualified patient or primary caregiver. In March of 2016, the City Council did not prohibit the delivery of medical marijuana due to accessibility concerns for community patients.

#### ***STATUS OF RECREATIONAL CANNABIS IN NEIGHBORING JURISDICTIONS***

The policies and status for recreational marijuana in neighboring jurisdictions are as follows:

- Antioch, Brentwood, Pittsburg, and Danville – These cities have City Council banned the sale, cultivation, and deliveries of both medical and adult use cannabis.
- Concord – On July 25, 2017, the City of Concord adopted an ordinance that allows delivery of medical cannabis to qualified patients and primary caregivers by dispensaries located outside of Concord upon registration with the Concord Police Department. City Council has directed staff to draft an ordinance for a complete prohibition and ban on both the sale and cultivation of medical and adult use cannabis, except for deliveries for medical cannabis. The Concord City Council has publicly stated that the issue will be revisited when additional information is made available and the State has fully addressed the regulations.
- Contra Costa County – Directed staff to prepare a permanent ordinance to prohibit all commercial uses and prohibit personal cultivation except for indoor grows until an ordinance to regulate the cultivation, delivery, manufacturing, and dispensing of medical and recreational cannabis is completed. Also directed staff to research and develop land use and health ordinances with recommendations of zoning districts and the appropriate types of industries (cultivation, distribution, manufacturing, testing, retail sales).

- Martinez – The City Council held a workshop regarding the regulation of cannabis on September 6, 2017; however no formal decisions have been made.
- Orinda – The City Council enacted an ordinance banning all commercial cannabis land uses and outdoor cultivation of cannabis.
- Pleasant Hill – The Planning Commission has recommended to the City Council to allow retail medical cannabis subject to a Use Permit and to prohibit all other cannabis related commercial activities including adult use retail facilities. The Council will be conducting a public hearing on October 2, 2017 to consider the Planning Commission's recommendations.
- Walnut Creek – A moratorium for all commercial cannabis activities and outdoor cultivation was passed by the City Council on April 4, 2017 and in May 2017, the City Council directed staff to return in the fourth quarter of 2017 with information regarding the state regulatory environment; the financial consequences of adopting various components; the perspective of the business community, in regards to commercial and retail sales; additional information on personal cultivation, commercial, wholesale operations and retail sales; and additional information regarding what is occurring in the surrounding communities. Nothing has been presented to the City Council as of the writing of this staff report.

## **DISCUSSION**

Under AUMA and MAUCRSA, medical and recreational use and possession of cannabis is legal and is now under the same regulatory framework at the state level. The State of California will begin issuing a variety of license types, for the various aspects of the industry, to cannabis businesses on January 2, 2018. Clayton does not legally have to have an ordinance in place by January 1, 2018, but cities will only have sixty days to respond to the state once notified of an application to open a business in the jurisdiction. Further, under SB 94, if a local jurisdiction does not have an ordinance enacted to address the licensed activity, the state can unilaterally issue a license for that business. The State is only prohibited from issuing a license if the business activity would violate local ordinances and if there is no applicable ordinance, then there is no violation. One city is already in litigation after denying an adult use cannabis business based on an ordinance that banned medical cannabis only, and was silent on adult use.

The local regulation of medical and recreational cannabis does not have to be consistent with one another and can be regulated differently; however staff is recommending the Clayton Municipal Code (CMC) be amended in such a manner that thoroughly addresses both medical and adult use cannabis. This recommendation is based on the legal direction that if the CMC does not explicitly address or is silent on the matter it could be interpreted that the City allows all types of cannabis uses within the jurisdiction or the City could be legally challenged for denying a permit if an ordinance does not cover the activity. The challenge may or may not have merit, but it would mean litigation costs for the City regardless. Additionally, a moratorium may not be valid from the state's point of view because it is not a permanent or a bona fide ordinance fully addressing cannabis. The state

will be looking to local jurisdictions to determine if cannabis uses are allowed and it is recommended the City has an ordinance that affirmatively regulates or affirmatively prohibits commercial cannabis businesses.

Given the aforementioned, staff is looking for direction from the City Council on recommendations on the following policy issues for both medical and adult use cannabis: 1) retail sales; 2) commercial cultivation; 3) distribution 4) delivery; 5) testing; and 6) manufacturing. Based on the direction given regarding staff's recommendations, a proposed ordinance will be brought back to the Council at a later date for consideration for enactment prior to January 2, 2018.

### ***RETAIL SALES***

Following the passage of MAUCRSA, vertical integration is now allowed within the cannabis industry, except for testing due to a conflict of interest, but was previously prohibited under AUMA. Therefore, retail sales could mean a variety of different scenarios, considering vertical integration is allowed. A retail location could have a traditional storefront and a delivery component; operate as a non-storefront location (i.e. closed to the public), such as warehouses making deliveries; or operate a "microbusiness" with a combination of licensed activities. The City has the ability through its local police powers to be as stringent or as flexible as it desires within the bound of state law regarding what it will allow or prohibit as it pertains to cannabis. For example, the City could allow medical retail cannabis only and prohibit adult use or the City could prohibit or allow both.

Staff does have concerns: the cannabis industry is new and untested; the State of California is lacking complete industry regulations; and Clayton is a small city with limited resources to be on the forefront of these issues. Staff's recommends a prohibition, which would allow time to see how these areas evolve and the City could readjust its ordinances at a later date.

**STAFF RECOMMENDATION:** Prohibit all retail cannabis, both medical and adult use.

### ***INDOOR/OUTDOOR COMMERCIAL CULTIVATION***

While Clayton does not have large areas of land dedicated to agricultural uses or industrial buildings that could be utilized for the indoor cultivation of cannabis, there are still opportunities where commercial cultivation could conceivably be proposed. The aforementioned legal recommendation regarding having an ordinance that affirmatively prohibits or affirmatively regulates coupled with staff's previous concerns regarding the untested waters of this new industry, staff is advising that commercial cultivation should be addressed in an ordinance. Staff does have concerns regarding security and impacts to public safety if commercial cultivation were to occur within Clayton.

**STAFF RECOMMENDATION:** Prohibit both the indoor and outdoor commercial cultivation of medical and adult use cannabis.

It should be noted, the City Council, at its December 20, 2016, meeting prohibited the outdoor cultivation of cannabis for personal use; however, State law allows indoor cultivation that local jurisdictions must allow, but can reasonably regulate, which is limited to six plants per residence.

### ***DISTRIBUTION***

Again, Clayton does not have land use designations or existing facilities that are typically used or zoned for the warehousing and the distribution of products, but there could still be available opportunities for this type of use. Distributors of cannabis cannot deliver directly to consumers, they can only distribute from licensee to licensee and perform the transport, verify quality control, and collection of the state tax; however this has become more ambiguous after the passage of SB 94, which allows for vertical integration. Local jurisdictions have the discretion to determine if the use is appropriate; however cannot prohibit the use of local roads and streets. Again, staff has concerns regarding security and impacts to public safety.

**STAFF RECOMMENDATION:** Prohibit the distribution and warehousing of medical and adult use cannabis.

### ***DELIVERY***

At the state level, deliveries are no longer a separately licensed activity. Instead, delivery services would fall under the state retailer license. Whether or not the City decides to allow a delivery service to set up its headquarters in Clayton (see discussion of retail sales, above), the City may choose whether to allow cannabis deliveries originating from licensed retailers located outside the jurisdiction. The CMC currently does not prohibit the delivery of medical cannabis; however the Code is silent on issue. The City Council, at its March 15, 2016, did not prohibit, but did not expressly allow for, deliveries of medical cannabis. The City Council did express concern regarding patient accessibility to medical cannabis and were supportive of the allowing deliveries that did not originate in the municipal limits, but changes to the ordinance to expressly allow deliveries were not made. Given the City Council's historical support of medical cannabis deliveries originating outside the jurisdiction, this should be clearly stated as allowable within the Municipal Code to remove any ambiguity regarding allowable or prohibited uses and activities.

The City Council's support of medical cannabis raises the question of allowing deliveries of adult use cannabis by licensed facilities that originate outside of the municipal limits. Proposition 64 received 53.8% support of the voters in Clayton. Adult use cannabis deliveries would provide access to a product that the majority of Clayton voters supported and would not have the same impacts and permanence that retail storefront could create. If Council enacted an Ordinance to allow deliveries, it could be easily be modified in the future without nonconforming land uses (e.g. no grandfathering). In this case, the City would not need to pass a ballot measure to generate some tax revenue as the delivery businesses that would deliver to consumers within the city limits would be covered under the existing

business license tax provisions, CMC Section 5.04; however a ballot measure would need to be passed to collect any new type of excise or use tax.

**STAFF RECOMMENDATION:** Allow deliveries of medical and adult use cannabis that originate outside of the municipal limits and send letters to all businesses serving the City of Clayton indicating they need to apply for a business license in order to conduct business within the City.

### **TESTING**

Cannabis testing is a key component for all cannabis businesses because all are subjected to this requirement. Testing will determine the purity, potency, concentration, and cannabinoid ratios. Some of the state regulations include verified methods of sampling, ISO/IEC 17025 accreditation, destruction of the remains of sample cannabis, and disposal of waste byproducts resulting from their operations. From a land use perspective, testing can be located in an office or lab type environment; however staff has concerns regarding odors and safety due to the storage and keeping of cannabis products within the business location.

**STAFF RECOMMENDATION:** Prohibit cannabis testing facilities for both medical and adult use cannabis.

### **MANUFACTURING**

The manufacturing component of the cannabis industry is probably the widest ranging component due to the vast business types. Manufacturing would include, but are not limited to, bakeries, extraction facilities, and the creation of personal products such as lotions and salves. These facilities could range from large facilities to home-based businesses. Manufacturing is also governed by AB 2679, which codified a legal form of extraction which includes regulations such as the use of a solvent-less process or non-flammable, non-toxic solvents, closed loop system, and equipment certified by a licensed engineer as safe. While some of these manufacturing processes maybe benign, some could require extensive oversight and regulation due to their extraction techniques. As stated earlier, due to the newness of the cannabis industry, staff has concerns about allowing manufacturing to occur within Clayton.

**STAFF RECOMMENDATION:** Prohibit all cannabis manufacturing, including extraction, for both medical and adult use cannabis products.

### **OTHER ISSUES**

If the Council is interested in allowing any cannabis uses in the future, staff would recommend placing a tax measure on the ballot to provide the opportunity for additional tax revenue to address any enforcement issues related to cannabis as well as to create a financial benefit to the City for the provision of facilities and services. Additionally, if the Council decides to allow these uses, staff would recommend, in addition to the ballot

measure, a robust regulatory system in place such as land use permits, buffers from sensitive uses, and review of security plans, amongst others.

The direction by the City Council at its meeting on December 20, 2016 included amending the Clayton Municipal Code to restrict the use of cannabis to mimic that of alcohol, with no consumption in public. Given the short timeframe, between now and when the state will begin to issue licenses on January 2, 2018, staff is recommending the aforementioned issues regarding cannabis be addressed by the City prior to licenses being issued by the State and staff will return to the City Council with an ordinance amending the Clayton Municipal Code regarding the smoking and ingesting of cannabis in public at a later date.

State law, Health & Safety Code, section 11632.3, already contains some limitations public consumption including, but not limited to:

- 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.

Lastly, any prohibition made by the City Council regarding cannabis uses can also be revised at a later date if there is a change of sentiment or if additional information arises.

### **FISCAL IMPACTS**

Due to the increased enforcement and regulatory costs, the passage of Proposition 64 will likely result in a number of financial impacts to the City and depending on the direction of the City Council in response to the adult use of cannabis, these costs may be more or less impactful.

If the City Council adopts business regulations to govern cannabis businesses, such regulations will likely lead to an increase in administrative and enforcement costs, but may also lead to increased revenue due to the imposition of new business license fees and taxes. Any new taxes must be adopted pursuant to a vote of the electorate in accordance with Proposition 218. Furthermore, any general tax ballot measure would likely have to be consolidated with a regularly scheduled City Council election.

### **ATTACHMENTS**

1. Excerpt of the Staff Report and Minutes from December 20, 2016 City Council Meeting [pp. 10]
2. CMC Section 17.36.080 – Prohibited Uses and Activities [pp. 1]
3. CMC Section 17.04.138 – Medical Cannabis Uses [pp. 1]

Ms. Gentry added, wooden fences need to be moved 10 feet from the back of sidewalk to be compliant in the *Clayton Municipal Code* as the Code requires it to be 5 feet from the property line and in this case the property line is 5 feet behind the sidewalk.

Mayor Diaz closed public comments.

By general consensus, City Council provided direction to staff to create a revocable encroachment agreement with indemnification language to protect the city, including appropriate insurance for the encroaching structures; to draft an ordinance to allow a six-foot fence at the property line for exterior side lots, with all other current requirements to remain; to pursue code enforcement cases if the City is aware a violation; and to conduct a public education effort regarding the regulations for the construction of fences.

- (b) Discussion of staff recommendations for various local policy issues arising from the California voters' passage of Proposition 64 and the State legislature's passage of SB 94 – the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) regarding local regulation of cannabis.  
(Community Development Director)

Community Development Director Mindy Gentry provided a brief background noting on December 20, 2016 the City Council passed an Urgency Ordinance banning the personal outdoor cultivation of cannabis and staff requested direction regarding Proposition 64 - the Control, Regulation, and Tax of Adult Use of Marijuana Act (AUMA). The City Council directed staff to not regulate the indoor cultivation for the personal use of marijuana; add provisions to the Clayton Municipal Code to treat marijuana similarly to alcohol with no consumption allowed in public; further address marijuana in 2017 to allow more time for legal clarification and to determine what actions neighboring jurisdictions have taken.

Ms. Gentry noted there have been no changes to the federal Controlled Substances Act; however a bill has been introduced to change marijuana from a Schedule I narcotic to another controlled substances schedule. On June 26, 2017, Governor Brown signed into law SB 94 – Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA); combining the medical and adult use of cannabis systems into one licensing structure with the same regulatory framework governing both medical and adult use facilities. The most notable change is vertical integration is now allowed, as it pertains to cannabis businesses. On September 16, 2017, AB 133 was signed into law noting technical fixes or changes to MAUCRSA.

Ms. Gentry noted Clayton's local regulations mostly pertain to medical purposes with the *Clayton Municipal Code* being silent on the recreational or adult use of marijuana. The City of Clayton has prohibited medical marijuana dispensaries; testing laboratories; facilities that store or maintain marijuana as part of their operations; and outdoor cultivation or production of cannabis; and some indoor cultivation. The City Council did not prohibit the delivery of medical marijuana due to accessibility concerns for patients within the community.

Ms. Gentry further noted the neighboring communities of Antioch, Brentwood, Pittsburg, Danville, and Orinda have banned all commercial cannabis businesses for both medical and adult use. The City of Concord has directed staff to draft an ordinance to put a ban in place; however will revisit the issue once more clarity has been provided by the State. Contra Costa County has prepared a permanent ordinance to prohibit all commercial uses until an ordinance to fully regulate all aspects of cannabis is completed. The City of Pleasant Hill Planning Commission has recommended to its City Council to allow retail medical cannabis. The City of Walnut Creek has placed a moratorium for all



commercial cannabis, however their staff will be returning in the next two months with additional information for its City Council to consider and provide further direction to its staff.

Ms. Gentry advised the City of Clayton is not required to have an ordinance in place by January 1, 2018, however cities only have sixty days to respond to the State once notified of an application to open a business in the jurisdiction. Further, under SB 94, if a local jurisdiction does not have an ordinance enacted to address the licensed activity, the State can unilaterally issue a license for that business. The State is only prohibited from issuing a license if the business would violate local ordinances. If there is not an applicable local ordinance, then there is no violation. The local regulation of medical and recreational cannabis does not have to be consistent with one another; however staff is recommending the Clayton Municipal Code be amended to thoroughly address both medical and adult use cannabis. If it only addresses one area it can create an interpretation issue that could be legally challenged for denying a permit if an ordinance does not cover the activity.

Ms. Gentry concluded that staff was seeking direction from Council on retail sales; indoor/outdoor cultivation; distribution; adult use delivery; testing; and manufacturing.

Councilmember Catalano inquired on the prohibition of the regulation of personal indoor cultivation and asked about the regulation of outdoor cultivation should this be included?

Ms. Gentry advised back in December 2016 the City Council passed an urgency ordinance prohibiting the outdoor grow for personal use, and staff was not recommending any change. Personal indoor is allowed under SB 94 up to 6 plants per home – not per person.

Councilmember Catalano inquired on the issuance of Home Occupancy permits in regards to the edibles and resale. Should this also be included?

Ms. Gentry advised the City Council could provide further direction on this as there is a cottage food industry that has special state regulations; however, further research would need to be done. Staff is recommending a blanket prohibition of any home based cannabis businesses.

Vice Mayor Haydon inquired on the definition of commercial cultivation?

Ms. Gentry noted commercial cultivation is anything beyond the six (6) allowable plants per residence as defined in the State law.

Mayor Diaz opened matter for public comments; no comments were offered.

By general consensus, City Council provided direction to staff to prepare an ordinance that would prohibit the retail sales of cannabis; testing laboratories; manufacturing; distribution facilities, any businesses that store or maintain cannabis as part of their operations; and outdoor cultivation or production of cannabis. The City Council directed staff to allow delivery of adult use cannabis to a residence from a location outside of the City. The adult use delivery would be consistent with the current allowable medical delivery.

9. **COUNCIL ITEMS** – None.


10. **CLOSED SESSION** – None.

# ATTACHMENT 4

## PLANNING COMMISSION STAFF REPORT

**Meeting Date:** October 24, 2017

**Item Number:** 5.b.

**From:** Mindy Gentry   
Community Development Director

**Subject:** Ordinance Addressing Medical and Adult-Use Cannabis Regulations

**Applicant:** City of Clayton

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### REQUEST

The City of Clayton is requesting a public hearing to consider a City-initiated Ordinance amending Title 17 "Zoning" of the Clayton Municipal Code in order to continue to prohibit outdoor cannabis cultivation for personal use, and to prohibit all commercial cannabis activities except for cannabis deliveries originating outside of the City (ZOA-10-16) (Attachment A).

### PROJECT INFORMATION

**Location:** Citywide

**Environmental:** This Ordinance is not a project within the meaning of Section 15378 and is exempt under Section 15061(b)(3) of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. In addition, to the extent delivery services originating from outside city limits would be allowed subject to the regulations and discretionary review of the local jurisdiction where the retailer is physically established and state licensing requirements, this Ordinance is exempt from environmental review pursuant to Business and Professions Code, Section 26055(h). Accordingly, this Ordinance is categorically exempt and statutorily exempt from further CEQA review.

**Public Notice:** On October 13, 2017, a public hearing notice was published in the Contra Costa Times and a public hearing notice was posted at designated locations in the City.

### BACKGROUND

Following the passage of Proposition 64 – the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA), staff requested policy direction from the City Council at its December 20, 2016 and October 3, 2017 meetings (Attachments B and C). The direction from the City Council to staff was to prohibit all commercial cannabis uses, except for deliveries of medical and adult-use cannabis originating outside of the city limits. The City Council expressed concerns about allowing these types of uses not only due to concerns over public safety, but also due to the lack of complete industry regulations from the State of California as well as the new and untested nature of commercial cannabis businesses.

### **FEDERAL ENFORCEMENT - CONTROLLED SUBSTANCES ACT AND THE COLE MEMO**

In 1970, Congress passed the Controlled Substances Act (CSA), which is the federal government's drug policy under which the use, manufacture, importation, possession, and distribution of marijuana is illegal. According to the CSA, marijuana is classified as a Schedule 1 narcotic, which means it is defined as a drug with no currently accepted medical use and has a high potential for abuse. On January 27, 2017, a bill, H.R. 715, was introduced to change marijuana from a Schedule I narcotic to another controlled substances schedule. The bill is currently at the committee level.

Further, the Trump Administration and Attorney General Jeff Sessions have not made any changes at the federal level in regards to cannabis enforcement and the Cole Memo issued by Attorney General James M. Cole during the Obama Administration is still relevant. The Cole Memo essentially conveys that states that have legalized marijuana should have a robust regulatory system in place and demonstrate the willingness of enforcement of such regulations. Further, the Memo hints that prosecuting state legal marijuana enterprises are probably not an efficient use of federal resources. Attorney General Sessions has been an avowed opponent to marijuana legalization and his office has commented publicly about cannabis reform; however the Trump Administration has not yet decided whether to reverse the direction provided by Cole Memo.

### **PROPOSITION 64 AND MAUCRSA**

On November 8, 2016, voters approved Proposition 64 – the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA). The State of California passed Proposition 64 with 57.1% in favor. Locally, Contra Costa County voted 60.72% in favor and Clayton voted 53.8% in favor. AUMA legalized possession, transport, purchase, use, and transfer of recreational marijuana for individuals 21 years of age or older. Proposition 64 took effect immediately following its passage; however, some of these issues will not be in effect until January 1, 2018 when the State of California starts to issue licenses for the commercial sale, distribution, and cultivation of marijuana. Some aspects of the law that went into immediate effect were the personal use and cultivation of cannabis.

On June 26, 2017, Governor Brown signed into law Senate Bill (SB) 94 – Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), a budget trailer bill that made significant changes to the regulatory scheme of cannabis. The new law, SB 94 (MAUCRSA), amended AUMA by combining the medical and adult-use of cannabis systems into one licensing structure with the same regulatory framework governing both medical and adult-use facilities.

Some of the highlights of AUMA, as amended by MAUCRSA, are as follows:

- Cities retain full regulatory authority over ALL commercial cannabis businesses – both medical and adult-use, which includes the ability to ban;
- Cities must allow indoor cultivation for personal use, but it can be reasonably regulated (six plants per residence);
- Emergency regulations at the state level for both medical and adult-use are expected to be released in November 2017;
- Sales tax on medical cannabis is prohibited, but to qualify, the purchaser must have a State-approved, County-issued identification card;
- The State cannot issue a license if it is in violation of local ordinances; and
- Adults can possess up to 28.5 grams of marijuana, up to 8 grams of marijuana in the form of concentrated cannabis, which may be present in cannabis products such as edibles.

### **EXISTING MARIJUANA REGULATIONS IN CLAYTON**

Currently, the City of Clayton laws referencing marijuana mostly pertain to medical purposes and the Municipal Code is silent on the recreational or adult-use of marijuana. Per Section 17.36.080 of the

Clayton Municipal Code (CMC), the City has prohibited: medical marijuana dispensaries; testing laboratories; facilities that store or maintain marijuana as part of their operations; and outdoor cultivation or production of cannabis; and some indoor cultivation (**Attachment D and E**). The CMC allows for the indoor cultivation of medical marijuana within residential zones within a detached, fully enclosed and secure secondary structure or within a primary residential structure at a location inhabited by a qualified patient or primary caregiver. In March of 2016, the City Council allowed for the delivery of medical marijuana due to accessibility concerns for community patients.

For a more in depth overview on the regulation of cannabis at the federal, State, and local levels, see **Attachments B and C**.

On December 20, 2016, the City Council passed an Urgency Ordinance prohibiting the outdoor cultivation of cannabis for personal use due to concerns for public safety because it could be visible from public areas and easily accessible to youth and children; attracting those looking to steal cannabis; the odorous nature of the plants; potential for broader growth; and the plants being less secure.

### **DISCUSSION**

The State of California will begin issuing a variety of license types, for the various aspects of the industry, to cannabis businesses on January 2, 2018. Clayton does not legally have to have an ordinance in place by January 1, 2018, but cities will only have sixty days to respond to the State once notified of an application to open a business in the jurisdiction. Further, under SB 94, if a local jurisdiction does not have an ordinance enacted to address the licensed activity, the State can unilaterally issue a license for that business. The State is only prohibited from issuing a license if the business activity would violate local ordinances and, if there is no applicable ordinance, then there is no violation.

The local regulation of medical and adult-use cannabis does not have to be consistent with one another and can be regulated differently; however, staff is recommending the CMC be amended in such a manner that thoroughly addresses both medical and adult-use cannabis. This recommendation is based on the legal direction that, if the CMC does not explicitly address or is silent on the matter, it could be interpreted that the City allows all types of cannabis uses within the jurisdiction or the City could be legally challenged for denying a permit if an ordinance does not cover the activity. The challenge may or may not have merit, but it would mean litigation costs for the City regardless. Additionally, a moratorium may not be valid from the State's point of view because it is not a permanent or a bona fide ordinance fully addressing cannabis. The State will be looking to local jurisdictions to determine if cannabis uses are allowed and it is recommended the City establishes an ordinance that affirmatively regulates or affirmatively prohibits commercial cannabis businesses.

Based on the direction received from the City Council, the proposed Ordinance continues the prohibition on outdoor cultivation for personal use and bans all commercial cannabis activities except for deliveries originating outside of the city limits. The commercial activities include retail sales, indoor/outdoor cultivation, distribution, testing, and manufacturing. The City Council recommendations were based on concerns regarding security and public safety as well as a lack of complete industry regulations from the State of California as well as the new and untested nature of commercial cannabis businesses.

### **RETAIL SALES**

Retail sales could mean a variety of different scenarios, considering vertical integration is allowed. A retail location could have a traditional storefront and a delivery component; operate as a non-storefront location (i.e. closed to the public), such as warehouses making deliveries; or operate a "microbusiness" with a combination of licensed activities. The City has the ability through its local police powers to be as stringent or as flexible as it desires within the bound of State law regarding what it will allow or prohibit

as it pertains to cannabis. For example, the City could allow medical retail cannabis only and prohibit adult use or the City could prohibit or allow both.

**CITY COUNCIL DIRECTION:** Prohibit all retail cannabis, both medical and adult-use.

#### ***INDOOR/OUTDOOR COMMERCIAL CULTIVATION***

While Clayton does not have large areas of land dedicated to agricultural uses or industrial buildings that could be utilized for the indoor cultivation of cannabis, there are still opportunities where commercial cultivation could conceivably be proposed.

**CITY COUNCIL DIRECTION:** Prohibit both the indoor and outdoor commercial cultivation of medical and adult-use cannabis.

It should be noted, the City Council, at its December 20, 2016, meeting prohibited the outdoor cultivation of cannabis for personal use; however, State law allows indoor cultivation that local jurisdictions must allow, but can reasonably regulate, which is limited to six plants per residence. The proposed Ordinance continues the prohibition on outdoor cultivation for personal use and, per the City Council's direction, does not further regulate the indoor cultivation beyond compliance with State law.

#### ***DISTRIBUTION***

Again, Clayton does not have land use designations or existing facilities that are typically used or zoned for the warehousing and the distribution of products, but there could still be available opportunities for this type of use. Distributors of cannabis cannot deliver directly to consumers; they can only distribute from licensee to licensee and perform the transport, verify quality control, and collect the State tax; however, this has become more ambiguous after the passage of SB 94, which allows for vertical integration.

**CITY COUNCIL DIRECTION:** Prohibit the distribution and warehousing of medical and adult-use cannabis.

#### ***DELIVERY***

At the State level, deliveries are no longer a separately licensed activity. Instead, delivery services would fall under the State retailer license. The CMC currently does not prohibit the delivery of medical cannabis; however, the Code is silent on this issue. The City Council, at its March 15, 2016 meeting, did not prohibit, but did not expressly allow for, deliveries of medical cannabis. The City Council did express concern regarding patient accessibility to medical cannabis and were supportive of allowing deliveries that did not originate in the municipal limits, but changes to the Ordinance to expressly allow deliveries were not made. Given the City Council's historical support of medical cannabis deliveries originating outside the jurisdiction, the proposed Ordinance now clearly indicates that deliveries originating outside of the City limits are allowable within the Municipal Code and any ambiguity regarding allowable or prohibited uses and activities were removed.

Proposition 64 received 53.8% support of the voters in Clayton and adult-use cannabis deliveries would provide access to a product that the majority of Clayton voters supported and would not have the same impacts and permanence that a retail storefront could create. Allowing deliveries could easily be modified in the future without residual nonconforming land uses (e.g. no grandfathering).

**CITY COUNCIL DIRECTION:** Allow deliveries of medical and adult-use cannabis that originate outside of the municipal limits.

The proposed Ordinance would allow deliveries for both medical and adult-use cannabis originating outside of the city limits from licensed cannabis retailers; subject to the following restrictions:

- All employees of a cannabis retailer making deliveries of cannabis or cannabis products will have to carry: 1) copy of the licensee's current state license, 2) a government-issued driver's license, 3) an employee identification card containing a name and picture, and 4) a City of Clayton business license.
- No cannabis can be stored in the City.
- All deliveries will require a signature and proof of identification; no porch drop-offs.
- Deliveries to physical residential addresses only.

### **TESTING**

Cannabis testing is a key component for all cannabis businesses because all are subjected to this requirement. Testing will determine the purity, potency, concentration, and cannabinoid ratios. Some of the State regulations include verified methods of sampling, ISO/IEC 17025 accreditation, destruction of the remains of sample cannabis, and disposal of waste byproducts resulting from their operations. From a land use perspective, testing can be located in an office or lab type environment.

**CITY COUNCIL DIRECTION:** Prohibit cannabis testing facilities for both medical and adult-use cannabis.

### **MANUFACTURING**

The manufacturing component of the cannabis industry is probably the widest ranging component due to the vast business types. Manufacturing would include, but are not limited to, bakeries, extraction facilities, and the creation of personal products such as lotions and salves. These facilities could range from large facilities to home-based businesses. Manufacturing is also governed by AB 2679, which codified a legal form of extraction that includes regulations such as the use of a solvent-less process or non-flammable, non-toxic solvents as well as a closed loop system and equipment certified by a licensed engineer as being safe. While some of these manufacturing processes may be benign, some could require extensive oversight and regulation due to their extraction techniques.

**CITY COUNCIL DIRECTION:** Prohibit all cannabis manufacturing, including extraction, for both medical and adult-use cannabis products.

### **RECOMMENDATION**

Staff recommends that the Planning Commission consider all information provided and submitted, take and consider all public testimony, and, if determined to be appropriate, adopt Resolution No. 05-17, recommending City Council approval of an Ordinance in order to continue to prohibit outdoor cannabis cultivation for personal use, and to prohibit all commercial cannabis activities except for cannabis deliveries originating outside of the City (**Attachment A**).

### **ATTACHMENTS**

- A. Planning Commission Resolution No. 05-17, with attachment:  
Exhibit 1 – Draft Ordinance Regulating Medical and Adult-Use Cannabis
- B. Excerpt of the City Council Staff Report and Minutes from December 20, 2016
- C. Excerpt of the City Council Staff Report and Minutes from October 3, 2017
- D. CMC Section 17.04.138 – Medical Cannabis Uses
- E. CMC Section 17.36.080 – Prohibited Uses and Activities

## ATTACHMENT A

CITY OF CLAYTON  
PLANNING COMMISSION  
RESOLUTION NO. 05-17

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**RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE AMENDING TITLE 17 "ZONING" OF THE CLAYTON MUNICIPAL CODE IN ORDER TO CONTINUE TO PROHIBIT OUTDOOR CANNABIS CULTIVATION FOR PERSONAL USE, AND TO PROHIBIT ALL COMMERCIAL CANNABIS ACTIVITIES EXCEPT FOR CANNABIS DELIVERIES ORIGINATING OUTSIDE OF THE CITY (ZOA-10-16)**

**WHEREAS**, voters of the State of California approved the Compassionate Use Act of 1996 ("CUA") (codified as Health and Safety Code, § 11362.5 et seq.) to enable seriously ill Californians to legally possess, use, and cultivate marijuana for personal medical use free from prosecution under enumerated provisions of state law; and

**WHEREAS**, in 2003, the California Legislature adopted the Medical Marijuana Program Act ("MMP") (codified as Health and Safety Code, § 11362.7 et seq.), which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under state law; and

**WHEREAS**, in 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that nothing in the CUA or MMP preempted cities' authority to regulate or ban outright medical marijuana land uses; and

**WHEREAS**, in 2015, the California Legislature enacted the Medical Cannabis Regulation and Safety Act (MCRSA) which, for the first time in the State's history, adopted comprehensive regulations and licensing for medical marijuana businesses; and

**WHEREAS**, in 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), which legalized the non-medical use of marijuana by adults over 21 years of age, and provides for state licensing of adult-use marijuana businesses; and

**WHEREAS**, Senate Bill 94 ("SB 94"), signed by the Governor on June 27, 2017 to take effect immediately, repealed the MCRSA, and amended AUMA to consolidate the state licensing scheme applicable to both medical and adult-use commercial cannabis activity under a new law entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA); and

**WHEREAS**, AUMA, as amended by MAUCRSA, recognizes, preserves and does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that regulate licensed cannabis businesses, including, but not limited to, completely prohibiting the establishment or operation of one or more types of businesses licensed under MAUCRSA within the local jurisdiction (Business and Professions Code, § 26200); and

**WHEREAS**, under the federal Controlled Substances Act (codified in 21 U.S.C. § 801 et seq.), the use, possession, and cultivation of marijuana/cannabis are unlawful and subject to federal prosecution without regard to a claimed medical need. As a result, access to banking services for commercial cannabis businesses remains limited; and

**WHEREAS**, commercial cannabis land uses pose certain threats to public health, safety, and welfare. In particular, cannabis businesses largely operate on a cash basis because of their inability to obtain banking services. This characteristic makes cannabis businesses unusually attractive for robbery, burglary, and other theft offenses; and

**WHEREAS**, permitting the establishment of commercial cannabis businesses within the City may increase cannabis consumption and availability within the City, and may increase youth exposure to and use of cannabis; and

**WHEREAS**, allowing cannabis deliveries from licensed cannabis retailers, microbusinesses, and licensed nonprofits that are physically located outside of the City limits to retail customers within the City balances individuals' access to cannabis, particularly for medical use by seriously ill residents of Clayton, with the public health and safety concerns of the City posed by commercial cannabis businesses; and

**WHEREAS**, AUMA, as amended by MAUCRSA, legalizes cultivation of not more than six living cannabis plants by persons 21 years of age or older for personal use; and

**WHEREAS**, AUMA, as amended by MAUCRSA, provides that a city shall not completely prohibit personal cultivation of cannabis inside a private residence or inside an accessory structure to a private residence that is fully enclosed and secure, but that a city may completely prohibit personal cultivation of cannabis outdoors (Health and Safety Code, § 11362.2); and

**WHEREAS**, outdoor cannabis cultivation poses additional threats to public health, safety, and welfare, including strong odors, the risk of criminal activity due to the "attractive nuisance" characteristics of cannabis (which may be visible from neighboring properties or recognizable from public spaces due to odors), and the risk of fires and environmental degradation; and

**WHEREAS**, in accordance with Section 26200 of the Business and Professions Code, this Ordinance effects zoning limitations that prohibit the physical establishment and operation of all commercial cannabis businesses within Clayton, including all commercial cultivators, manufacturers, testing laboratories, retailers, distributors, and microbusinesses that are or will be licensed by the State of California pursuant to the MAUCRSA, with the exception that cannabis retailers, microbusinesses, and licensed nonprofits legally established and located outside of the City of Clayton may provide delivery services to customers in Clayton, subject to the reasonable regulations stated herein; and

**WHEREAS**, this Ordinance is not a project within the meaning of Section 15378 and is exempt under Section 15061(b)(3) of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. In addition, to the extent delivery services originating from outside City limits would be allowed subject to the regulations and discretionary review of the local jurisdiction where the retailer is physically established and state licensing requirements, this Ordinance is exempt from environmental review pursuant to Section 26055(h) of the Business and Professions Code. Accordingly, this Ordinance is categorically exempt and statutorily exempt from further CEQA review; and

**WHEREAS**, proper notice of this public hearing was given in all respects as required by law; and



**WHEREAS**, on October 24, 2017, the Clayton Planning Commission held a duly-noticed public hearing on the matter, and received and considered testimony, both oral and documentary, and recommended approval to the City Council of the proposed Ordinance to amend the Clayton Municipal Code to continue to prohibit outdoor cannabis cultivation for personal use, and to prohibit all commercial cannabis activities except for cannabis deliveries originating outside of the City; and

**WHEREAS**, the Planning Commission has determined that the proposed amendments to the Clayton Municipal Code do not conflict with and are in general conformance with the City of Clayton General Plan.

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the City of Clayton, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby recommend City Council approval of the proposed Ordinance to amend the Clayton Municipal Code to continue to prohibit outdoor cannabis cultivation for personal use, and to prohibit all commercial cannabis activities except for cannabis deliveries originating outside of the City, attached hereto as Exhibit 1 and incorporated herein by this reference.

**PASSED AND ADOPTED** by the Planning Commission of the City of Clayton at a regular meeting on the 24<sup>th</sup> day of October, 2017.

APPROVED:

ATTEST:

\_\_\_\_\_  
Carl Wolfe  
Chair

\_\_\_\_\_  
Mindy Gentry  
Community Development Director

**ATTACHMENTS**


Exhibit 1 – Draft Ordinance Regulating Medical and Adult-Use Cannabis with an Exhibit:

A: Chapter 17.95 – Medical and Adult-Use Cannabis Regulations



Agenda Date: 11-07-2017

Agenda Item: 7b

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

# AGENDA REPORT

**TO: HONORABLE MAYOR AND COUNCIL MEMBERS**  
**FROM: MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR** *MG*  
**DATE: NOVEMBER 7, 2017**  
**SUBJECT: ORDINANCE AMENDING FENCING STANDARDS (ZOA-06-17)**

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## RECOMMENDATION

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

1. Motion to have the City Clerk read Ordinance No. 480 by title and number only and waive further reading; and
2. Following the City Clerk's reading; by motion approve Ordinance No. 480 for Introduction to amend the Clayton Municipal Code to allow six-foot tall fences to be located within the required exterior side setback or at the public right-of-way line with the finding its adoption is exempt from the California Environmental Quality Act, pursuant to CEQA Guidelines Section 15303, Class 3 Categorical Exemption for construction of new small facilities or structures (ZOA-06-17) (**Attachment 1**).

## BACKGROUND AND DISCUSSION

At its meeting on October 3, 2017, the City Council directed staff to draft an Ordinance to amend the Clayton Municipal Code (CMC) in order to allow the placement of a privately-owned six-foot tall fence within the required exterior side setback or at the public right-of-way line (**Attachment 2**). This policy issue arose after City staff initiated two code enforcement

cases because property owners had placed private retaining walls and fences within the public right-of-way and exceeded the allowable heights for fences.

The CMC currently allows private fences on an exterior side lot line to be a maximum of 30 inches in height within five feet of the property line and a maximum of six feet in height in the remaining portion of the exterior side setback (**Attachment 3**). Prior to 2004, the CMC had ambiguous language regarding exterior side yard fencing regulations but, at that time, the regulations were being interpreted to restrict fences located on an exterior side yard to a maximum height of thirty (30) inches within ten (10) feet of the property line and then up to six (6) feet in height for the remainder of the setback (**Attachment 4**). As part of an omnibus cleanup in 2004, the City Council amended the CMC to the existing regulations; however, staff could not find documentation explaining the reasoning for the change beyond the direction provided by the Planning Commission to staff to clarify the fencing requirements for exterior sides (**Attachment 5**).

Staff sees the current fencing regulations for exterior side setbacks as a potential issue because a residential property owner either compromises privacy by having a fence only 30 inches in height at the exterior side property line or must sacrifice usable land in order to have a six-foot fence. Further, the presently-required five-foot setback from the property line creates a larger "no-man's land" when coupled with the approximate five (5) foot public right-of-way directly behind the sidewalk on the exterior side yard. The typical location of the public right-of-way line in the majority of neighborhoods extends to approximately five feet from the back of sidewalk; however the public right-of-way does vary throughout the City depending on the location.

As with most cities, this City does not maintain landscaping planted within public rights-of-way adjoining residential properties and neighborhood streets, and its care is left up to or is the responsibility of the adjacent property owner; depending on a property owner's personal preferences, he/she may or may not plant and/or maintain such landscaping. If six-foot tall fences were allowed to be located within the required exterior side setback or at a public right-of-way line, that action could produce an added aesthetic benefit by reducing the amount of space to be randomly landscaped between the back of sidewalk and fence. Further, there are numerous instances in Clayton currently where fences are located on the property line or the public right-of-way line on the exterior side setback (**Attachment 6**). By amending the Code it would not only create a smaller landscape area or "no-man's land", but it would also allow property owners to enjoy the full breadth of one's property as well as reduce the number of illegal fences throughout the City.

On October 24, 2017, the Planning Commission recommended, 4-0 vote (one Commissioner absent), to the City Council adoption of the subject Ordinance (**Attachment 7**). The Commission recognized the amendment to the fencing regulations would be beneficial to property owners by allowing more useable space without having to sacrifice privacy on exterior side lots as well as result in more existing fences being in compliance with the Clayton Municipal Code.

## **FISCAL IMPACTS**

The adoption of this Ordinance would not have a fiscal impact on the City beyond a nominal reduction in staff time to address code enforcement cases for exterior side lot fences because more fences would be in compliance with the CMC.

## **ATTACHMENTS**

1. Ordinance 480 [pp. 3]
2. Excerpt of the Staff Report and Minutes from the October 3, 2017 City Council Meeting [pp. 11]
3. Clayton Municipal Code Section 17.36.075 – Fencing Standards [pp. 2]
4. 2004 Clayton Municipal Code Section 17.36.075 – Fencing Standards [pp. 1]
5. Excerpt of Staff Report from the January 6, 2004 City Council Meeting and Minutes from the January 13, 2004 Joint City Council and Planning Commission Meeting [pp. 8]
6. Examples of Existing Fences at the Public Right-of-Way [pp. 3]
7. Excerpt of Staff Report from the October 24, 2017 Planning Commission Meeting [pp. 2]

# ATTACHMENT 1

## ORDINANCE NO. 480

### AN ORDINANCE AMENDING CHAPTER 17.36.075 OF THE CLAYTON MUNICIPAL CODE TO ALLOW SIX-FOOT HIGH FENCES TO BE LOCATED WITHIN THE REQUIRED EXTERIOR SIDE SETBACK OR AT THE PUBLIC RIGHT-OF-WAY LINE

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

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

WHEREAS, the City wishes to amend its fencing standards for exterior side setbacks to provide property owners of corner lots with additional useable side yard area while not compromising privacy as well as to minimize the distance between the back of sidewalk and the fence line; and

WHEREAS, the Planning Commission on October 24, 2017 held a duly-noticed public hearing on the matter and recommended approval to the City Council; and

WHEREAS, proper notice of this public hearing was given in all respects as required by law; and

WHEREAS, the Clayton City Council has reviewed all written evidence and oral testimony presented to date on this matter.

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

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

**Section 2.** Amendment to Clayton Municipal Code Section 17.36.075.C. Clayton Municipal Code Section 17.36.075.C is hereby amended to read in its entirety as follows:

C. Exterior Side Setbacks. Fences shall not exceed a maximum height of six (6) feet and may be placed within the required exterior side setback or at the public right-of-way line.

**Section 3.** CEQA. The City Council hereby determines this Ordinance is exempt from review under the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000 et seq.). Pursuant to State CEQA Guidelines section 15303 (14 Cal. Code Regs., § 15303), this Ordinance is covered by the Class 3 CEQA Categorical Exemption for construction of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The adoption of this Ordinance will result in six-foot high fences to be located in the required exterior side setback or at the public right-of-way line. The City Council hereby directs the City

Manager or his designee to prepare and file a Notice of Exemption within five business days following adoption of this Ordinance.

**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 of 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. Conflicting Ordinances Repealed.** Any Ordinance or part thereof, or regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this Ordinance.

**Section 6. 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 codified 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, California held on November 7, 2017.

Passed, adopted, and ordered posted by the City Council of the City of Clayton, California at a regular public meeting thereof held on November 21, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Jim Diaz, 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 introduced at a regular public meeting of the City Council of the City of Clayton, California held on November 7, 2017 and was duly adopted, passed, and ordered posted at a regular public meeting of said City Council held on November 21, 2017.

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



## AGENDA REPORT

**TO:** HONORABLE MAYOR AND COUNCIL MEMBERS

**FROM:** SCOTT ALMAN, CITY ENGINEER  
MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR *MG*

**DATE:** OCTOBER 3, 2017

**SUBJECT:** POLICY DISCUSSION OF ENCROCHMENTS INTO THE PUBLIC RIGHT-OF-WAY AND FENCE LOCATIONS FOR EXTERIOR SIDE SETBACKS

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### RECOMMENDATION

It is recommended the City Council discuss and provide direction to staff on structures encroaching into the public right-of-way and fencing regulations for exterior side setbacks.

### BACKGROUND

In the month of September 2017, City staff initiated two code enforcement cases regarding the construction of retaining walls and fencing in the public right-of-way and without building permits. One case consisted of a stacking block retaining wall, with a six-foot wooden fence on top of the wall, located on a corner lot at the intersection of Mountaire Parkway and Mt. Wilson Way, more specifically at 199 Mountaire Parkway (**Attachment 1**). The retaining wall and fence, built in the public right-of-way, run parallel to Mt. Wilson Way, along the side yard of the residence, and perpendicular to Mountaire Parkway.

The public right-of-way, which is reserved for streets, sidewalks, utilities, streetlights, etcetera, on Mt. Wilson Way is fifty-six (56) feet in width, which places the side yard property line for the residence at 199 Mountaire Parkway approximately five (5) feet six (6) inches behind the back of the sidewalk. Prior to the construction of the retaining wall, the side yard fence was located well into the subject property and there was a slight slope between the back of the sidewalk and the fence (**Attachment 2**). The property owner has not only constructed the retaining wall in the public right-of-way, but has also placed fill in the side



yard and in the public right-of-way to level out the slope and increase the size of his/her rear and side yards on property belonging to the City. The existing construction and design has allowed a homeowner to receive a private benefit from public land by allowing the encroachment into the public right-of-way.

Depending on the City Council's direction on this issue, there are a couple of options for consideration to achieve compliance. The first option would be to have the property owner remove the retaining wall from the public right-of-way and relocate it to the property line. If this option were selected, then the six-foot fence would then be required to be located five feet from the property line as required by the Clayton Municipal Code (CMC). This would result a five (5) foot six (6) inch area of public right-of-way between the back of sidewalk and the retaining wall and a five foot separation between the retaining wall and the fence. Staff is also seeking direction from the City Council regarding the placement of fences along exterior side yards, which will be discussed in further detail below.

A second option is to allow the existing encroachment of the retaining wall into the right-of-way to remain and if the Council decides this is acceptable; staff would urge the Council to consider placing conditions on the encroachment in order to best protect the City. These protections could include, but are not limited to, recording a document indemnifying the City of Clayton, requiring insurance in perpetuity, and the encroachment is revocable. These protections will also be discussed in further detail below. In this scenario, the six-foot fence would still be required to be located five (5) feet from the property line, creating a large separation between the retaining wall and the fence, approximately 8.5 feet. The retaining wall would be located approximately two feet behind the walk and then there would be eight feet between the fence and retaining wall.

In both of these options for compliance, it requires the placement of the six-foot fence to be at least five feet from the property line in conformance with the Clayton Municipal Code. Staff has concerns regarding the fence placement from the exterior side property line being so far back and would like to seek direction from the Council to consider amending the Clayton Municipal Code to allow exterior side yard fences to be located on the property line. However, the CMC would still require fences to be placed three feet from retaining walls in order to not have them be counted as one structure. This issue is also discussed in more detail below.

The second code enforcement case consists of a wood retaining wall, with a fence on top of the wall, located on the corner of El Molino Drive and Wright Court, more specifically at 401 Wright Court. This case is very similar to 199 Mountaire Parkway in that the retaining wall and fence are located on a corner lot and are encroaching into the public right-of-way (**Attachment 3**). The property owner in this case has moved the retaining wall and fence into the public right-of-way for similar reasons, to level out the slope in the backyard (**Attachment 4**). The options above in regards to compliance would be the same with this particular case as well.

The structures at 199 Mountaire Parkway and 401 Wright Court would both require building permits as they are currently constructed. The contractors for both structures never made contact with the City to apply for a building permit; therefore staff was unable to provide direction about the City's regulations and prevent these structures from occurring within the public right-of-way and with their current design. The block wall at 199 Mountaire Parkway is over three (3) feet in height and will require a building permit regardless if it is required to be relocated to the property line. At 401 Wright Court, if the fence is relocated to the appropriate distance on the exterior side lot then a building permit in this instance would not be required because the fence does not exceed seven (7) feet in height and the retaining wall does not exceed three (3) feet in height.

## **DISCUSSION**

### ***ISSUE #1: ENCROACHMENT INTO THE PUBLIC RIGHT-OF-WAY***

Local government's public rights-of-way are an oft-forgotten asset that form the infrastructure backbone and skeleton of the city. Through this interconnected right-of-way network flows domestic water; information and communications; vehicular, pedestrian, and bicycle traffic; commerce; public safety and assistance; waste collection and disposal; as well as many other unseen facilities and pipelines that support the community's day-to-day lives, through the provision of fuel for our vehicles. These public rights-of-way also provide the opportunity for new or the expansion of existing necessary services when required.

The public rights-of-way are considered to be a planning tool and a "savings account" to help ensure the City is prepared for the future. As local governmental requirements increase in magnitude and difficulty, and as public demands for increased connectivity and data consumption continue to grow, there is an ever increasing request for space to be able to construct the infrastructure required to satisfy these increased requirements and demands.

When rights-of-way are required as a condition of development entitlement, they are intended to not only fulfill the current needs imposed by that development but also future needs that may come with increased demands from both the public and governmental oversight agencies.

Local governments, including Clayton, are currently faced with, or will be faced with in the near future, two such demands for additional space within the City's existing rights-of-way. The public demand for data and wireless connectivity has been steadily rising as more business is being conducted online as well as the change in entertainment consumption from cable to internet or wireless based. In order to meet those demands, requests are being made of the City and will continue to be made for the foreseeable future to provide additional underground space for the placement of fiber optic, and other communications related facilities. These demands have already begun with wireless companies such as Zayo and Mobilitie requesting space in the public right-of-way and it is anticipated more of these requests will be forthcoming due to bills such as SB 649, which if signed into law, will make it easier for wireless telecommunication facilities to be placed in the public right-of-

way. These requests are a cause for concern as more linear facilities are being placed into the limitedly available right-of-way.

Additionally, the ever increasing requirements of the Regional Water Quality Control Board (RWQCB) through the City's Municipal Regional Stormwater Permit for green infrastructure and the treatment of stormwater from city streets are becoming very onerous and the only real opportunity available to meet these ever-increasing requirements is within the City's existing rights-of-way. The requirement for the treatment of stormwater from city streets is starting to become prevalent with new developments and will more than likely become an eventuality for all streets as cities repave them and as indicated above, the stormwater treatment facilities will have to be located in the public right-of-way.

By allowing private structures to be constructed within public rights-of-way, the City could be severely limiting its ability to prepare for the future and could be pushing this issue off onto future generations instead of preventing them from occurring now. The City does have the ability through the Clayton Municipal Code (CMC Section 12.04.360) to require the owner of any encroachments that necessitate removal, relocation, or abandonment to be done so at the cost of the owner (**Attachment 5**). While, the City does have this option, it raises a myriad of possible logistical matters for a city with limited staff and resources. These issues include additional timing on a necessary City project due to the relocation of these structures, additional paperwork to memorialize the encroachment, as well as coordination with the property owner on the construction and removal of these structures, amongst others. Further, if the property owner does not have the funds to remove these structures, then the City is in the position of removing them, outlying public funds to do so, and then recouping those costs at a later date by placing a lien the property.

Given the aforementioned issues, staff is strongly recommending any further unauthorized encroachments into the City's rights-of-way not be tolerated and require them to be removed or alternatively require a recorded document with conditions to best protect the City.

If City Council desires to permit non-typical encroachments within the City's rights-of-way, the City Engineer recommends, at a minimum, the following conditions of approval to be enacted for each encroachment:

1. The permitted encroachment is only allowed under a revocable permit at the sole discretion of the City;
2. The permittee, its successors and assigns shall be solely liable and responsible for the encroachment and its maintenance in perpetuity;
3. The permittee indemnifies the City, in perpetuity, for the encroachment and any liability arising from the encroachment;
4. The permittee provides liability insurance naming the City as an additional insured on the policy covering the encroachment;
5. All costs for the removal of the encroachment shall be borne solely by permittee;

6. All City costs and expenses incurred due to management and/or removal of the encroachment shall be compensated, in full, to the City and may become a lien on the permittee's adjacent property.

**POLICY QUESTIONS:** Does the City Council want to allow encroachments into the public right-of-way?

If so, what conditions, if any, does the City Council want to impose on these encroachments to best protect the City?

### **ISSUE #2: EXTERIOR SIDE SETBACK FENCING REGULATIONS**

The Clayton Municipal Code currently allows fences on an exterior side lot line to be a maximum of 30 inches in height within five feet of the property line and a maximum of six feet in height in the remaining portion of the exterior side setback (**Attachment 6**). Prior to 2004, the CMC had ambiguous language regarding exterior side fencing regulations, but was being interpreted to restrict fences on an exterior side at a maximum height of thirty (30) inches within ten (10) feet of the property line and then up to six feet in height for the remainder of the setback. As part of an omnibus cleanup in 2004, the City Council amended the CMC to the existing regulations; however staff could not find documentation explaining the reasoning for the change beyond the direction provided to staff to clarify the fencing requirements for exterior sides.

Staff sees the current fencing regulations for exterior side lots as a potential issue because a residential property owner either compromises privacy by having a fence only 30 inches in height at the exterior side property line or has to sacrifice usable land in order to have a six-foot fence. Further, the required five-foot setback from the property line creates a larger "no-man's land" when coupled with the approximate five (5) foot public right-of-way directly behind the sidewalk on the exterior side yard. The City of Clayton does not maintain landscaping within the public right-of-way and it is left up to or is the responsibility of the property owner and depending on property owner, he/she may or may not maintain the landscaping. If six-foot fences were allowed to be located on the property line, it would then reduce the amount of space to be landscaped between the back of sidewalk and fence. Further, there are numerous instances in Clayton currently where fences are located on the property line on exterior side lot (**Attachment 7**). By amending the code it would not only create a smaller landscape area or "no-man's land", but it would also allow property owners to enjoy the full breadth of their property as well as reduce the number of illegal or legal non-conforming fences around the City.

A good example showing the discrepancy of fence locations is along El Molino Drive where there are fences encroaching in the public right-of-way, fences along the property lines, and fences meeting the current Municipal Code requirements, which are located five from the property line (**Attachment 8**). Staff is recommending the City Council consider changing the Clayton Municipal Code to allow exterior side yard fences to be located on the property

line as long as they are not located in the front setback or create a visual obstacle by encroaching into the intersection's sight triangle.

**POLICY QUESTION:** Does the City Council want staff to research and analyze allowing exterior side setback fences at the property line?

***ISSUE #3: CODE ENFORCEMENT***

While attempting to achieve compliance with the two aforementioned code enforcement cases, it became apparent to staff that this issue of unauthorized encroachments into the public right-of-way was much more prevalent than these two occurrences. **Attachment 9** only shows a small representative sample of the countless number of unauthorized encroachments into the public right-of-way. Staff is seeking direction from the City Council on how to approach these violations to achieve compliance.

Historically, Code Enforcement has been reactive to complaints from the community and not proactively seeking out violations. This issue has raised the question, since the City has initiated the two aforementioned cases and the City is now aware of the existing encroachments, should the City be seeking compliance from the all the property owners that have unauthorized encroachments? Some the issues that arise are the allocation of staff time and resources, which are already limited, to address this wide spread issue as well as fairness of enforcement. The enforcement of the two subject properties raises the question of, should the others that are in violation also be compelled to comply?

The City is not required to enforce its Municipal Code and courts have recognized that due to limited resources, some violations of a city's ordinance will go uncited and that absent deliberate or intentional discrimination, such selective enforcement is legal. Alternatively, the City could enforce prospectively on either a proactive or reactionary basis; however it raises the question of staff trying to determine the when the construction of these structures occurred unless the structure is currently under construction.

**POLICY QUESTIONS:** Does the City Council want Code Enforcement to be proactive and seek compliance for all unauthorized encroachments into the public right-of-way?

Or, does the Council want to City staff to enforce prospectively and is that enforcement proactive or reactive?

***ISSUE #4: PUBLIC EDUCATION***

Lastly, to help circumvent these unauthorized encroachments from becoming code enforcement cases, a public education effort to help get the word out to the community would be beneficial. Currently, the City's fencing requirements are located in the Citizen's Guide and within the Clayton Municipal Code. Other possibilities would be mailing out

notifications to Homeowners Associations and fencing contractors, posting on the City's website, and an article in the Clayton Pioneer.

### **FISCAL IMPACTS**

The Council's direction regarding these issues would dictate and determine the costs. To address all of the unauthorized encroachments would take a significant, but unknown, amount of staff time and those costs would only be recoverable if the property owner sought a City permit to keep the unauthorized encroachment. However, there may be long term financial benefits to addressing the issue now, rather than undertaking the issue when it becomes a problem in the future.

There would be staff time associated with amending the Municipal Code pertaining to fence locations along the exterior side lot line.

Depending on the level of public education effort put forward, would determine the costs. The notification of the HOAs would be nominal, but notification of fencing contractors, which would not necessarily be include, could be more intensive.

### **ATTACHMENTS**

1. 199 Mountaire Parkway Current Photos [3 pp.]
2. 199 Mountaire Parkway 2011 Google Street View [3 pp.]
3. 401 Wright Court Current Photos [3 pp.]
4. 401 Wright Court 2011 Google Street View [3 pp.]
5. Clayton Municipal Code Section 12.04 – Street Encroachments [12 pp.]
6. Clayton Municipal Code Section 17.36.075 – Fencing Standards [3 pp.]
7. Fences at Exterior Side Property Line [2 pp.]
8. Fences along El Molino Drive [4 pp.]
9. Pictures of Encroachments into the Public Right-of-Way [14 pp.]

homes or service providers or if these uses were to be located near sensitive uses such as parks or schools. The County's Community Supervision Program, including parolee homes are not defined in the Clayton Municipal Code.

Councilmember Catalano inquired on when it is anticipated for this item to be brought back to City Council?

Ms. Gentry advised this item will be brought back in spring 2018 for City Council consideration.

Mayor Diaz asked if there has been any interest in anyone wanting to open up a Parolee residence?

Ms. Gentry advised there was one inquiry back in November 2016, however there has not been any other interest or follow up from that provider or any other providers.

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

**It was moved by Vice Mayor Haydon, seconded by Councilmember Pierce, to have the City Clerk read Ordinance No. 479, by title and number only and waive further reading. (Passed; 5-0 vote).**

The City Clerk read Ordinance No. 479 by title and number only.

**It was moved by Vice Mayor Haydon, seconded by Councilmember Pierce, to approve Ordinance No. 479 for introduction with findings the Ordinance is not subject to the California Environmental Quality Act because this activity is not considered to be a project and it can be seen with certainty that it will not have a significant effect or physical change to the environment. (Passed; 5-0 vote).**

## **8. ACTION ITEMS**

- (a) Policy discussion of encroachments into the public right-of-way and fence locations for exterior side setbacks.  
(Community Development Director)

Community Development Director Mindy Gentry noted in the month of September city staff initiated two code enforcement cases regarding the construction of retaining walls and fencing in the public right-of-way and were constructed without building permits. The right-of-way at 199 Mountaire Parkway is approximately 5 feet 6 inches from the back of the sidewalk; the unpermitted retaining wall that was constructed is approximately 2 feet from the back of the sidewalk and exceeds 36 inches in height, requiring a building permit. A wooden fence was also placed on top of the retaining wall, exceeding the six foot total height requirement, wall plus fence, and the fence does not comply with the setback requirement of 5 feet from the property line.

Ms. Gentry noted the second code enforcement case is located at 401 Wright Court with a violation of a fence located on top of a retaining wall with total height exceeding the six foot height requirement; violation of setback location requirements; the wall and fence are located within the public right-of-way; and was constructed without building permits.

Ms. Gentry noted the components of these two cases have brought to light violations occurring citywide with discussion needed to address encroachments into the public

right-of-way; exterior side setback fencing regulations; code enforcement and public education.

Ms. Gentry advised when right-of-way is determined; it is based on current and possible future needs that may come with increased demands from both the public and governmental oversight agencies. Locally, Clayton may be faced with two such demands for additional space for data and wireless connectivity and from the Regional Water Control Board for storm water treatment of the city streets. By allowing private structures to be constructed within the public rights-of-way, the City could be severely limiting its ability to prepare for the future and could be pushing this issue off onto future generations rather preventing them now. The city does have the ability to require the owner of any encroachments that necessitate removal, relocation, or abandonment to be done so at the cost of the owner. However, this option raises possible logistical matters, including limited staffing and resources, adverse impacts to timing on necessary City projects due to enforcing relocation of these structures, additional paperwork to memorialize the encroachment as well as coordination with the property owners on the construction and removal of these structures.

Ms. Gentry advised the second issue is the exterior side setback fencing regulations, which currently allow a maximum of 30 inches in height within five feet of the property line and a maximum of six feet in height in the remaining portion of the exterior side setback. Staff opines the current fencing regulations for exterior side lots compromises privacy or sacrifices usable land in order to have a six foot fence. The City of Clayton does not maintain landscaping within the public right of way and is the responsibility of the property owner. If six foot fences were allowed on the property line, it would reduce the amount of space to be landscaped between the back of sidewalk and the fence. On neighborhood streets, the different placement of the fences can create an inconsistent visual appearance.

Ms. Gentry noted the third issue of code enforcement being reactive to complaints from the community and not proactively seeking out violations. Currently, staff time and resources are limited to address this community wide issue and also brings the question of fairness of enforcement. The City is not required to enforce its Municipal Code as courts have recognized due to limited resources, some violations of a city's ordinance will go uncited and that absent deliberate or intentional discrimination, such selective enforcement is legal.

Ms. Gentry concluded with the fourth issue, a Public Education effort to help get the word out to the community, which would be beneficial. Although fencing requirements are currently addressed in the Citizen's Guide and within the *Clayton Municipal Code* both available at City Hall, Library and on the city's website, more outreach could be done. A notification could be prepared for Homeowners Associations, fencing contractors, the homepage of the city's website and an article in the *Clayton Pioneer*.

Councilmember Shuey inquired in the event if the City allows a known problem, that was not properly constructed and a utility requires access to the public right-of-way, what is the potential impact on the city and the property owner at that time the utility needs to get into that space?

Ms. Gentry advised within the *Clayton Municipal Code* the city has the ability to remove any authorized or unauthorized structures for utilities to have access. The property owner would first be notified, if they are uncooperative to remove those structures, the City has the ability to remove the structures and place a lien on the property to recover the public funds used for the removal.



Councilmember Catalano inquired if the public right-of-way width is typically more than the concrete portion? Is it obvious to a resident where their property line is located?

Ms. Gentry advised there is not a set distance and this distance varies in certain parts of the community, in some areas there is a monolithic sidewalk and some that are detached. Typically, there are 6 inches of curb and 5 feet of sidewalk and usually 5 feet of public right-of-way behind the sidewalk; however for a property owner to obtain an accurate location of their property lines, they must hire a surveyor to mark them out.

Councilmember Pierce added the property line locations behind the sidewalk or curb if no sidewalks vary in each subdivision based on the location of public utilities. Councilmember Pierce requested clarification if a permit is required and had been requested prior to construction, would these requirements have been provided to homeowner or contractor.

Ms. Gentry advised if permits were sought prior to construction, the City would provide the regulations and information to the applicant, on the two cases presented this evening, they would not have been approved as they would not have met the requirements for height and location.

Mayor Diaz opened matter for public comments.

Robert Brenneman, a neighbor of 199 Mountaire Parkway, advised the retaining wall and fence is aesthetically very pleasing, prior to the retaining wall, there were overgrown junipers and difficult to see when leaving the driveway. The visibility has improved and would like to see the project continue.

Greg Roberts, a neighbor of 199 Mountaire Parkway, who also represents the contractor who installed the retaining wall and current improvements, believed the retaining was less than the height requiring a building permit. The current wall is just over 3 feet tall, built to the manufacturers specifications, compacted layers, base rock, drainage system, and anchored to the hillside, making it structurally sound.

Councilmember Shuey inquired on how Mr. Roberts thought the structure met regulations?

Mr. Roberts advised as he understood in most jurisdictions, a retaining wall is allowable up to 4 feet without a permit.

Councilmember Shuey inquired on who the contractor is on this project?

Mr. Roberts advised Viking Pavers constructed the retaining wall and is doing the current work in the backyard.

Mrs. Kalt advised A & J Fencing built and installed the fencing on top of the retaining wall.

Councilmember Pierce inquired if A & J Fencing currently holds a Clayton Business License?

Ms. Gentry advised A & J Fencing currently does not have a Clayton Business License and has been notified several times by the City that a business license is required to perform work in the City of Clayton. Ms. Gentry advised shortly after the stop work order was issued, Viking Pavers obtained a Clayton Business License.

Mr. Roberts advised the retaining wall was constructed over a year ago and the second phase of the project recently started for a patio.

Aaron Kalt, 199 Mountaire Parkway, added there will be an addition of a gate to the fence, setback approximately one foot to close off the backyard with the remaining installation of the pavers, AstroTurf, and drought tolerant landscape. Mr. Kalt advised he and his wife moved into the residence about 4 years ago and found the junipers to be an eyesore to the neighborhood and wanted to make improvements. Mr. Kalt spoke to neighbors about the improvements they wanted to make and then presented them to the Homeowners Association for approval. Once the improvements were approved, Mr. Kalt hired the most reputable contractors in the area for construction of the project; thinking he was going about the project appropriately.

Mayor Diaz, a former Dana Hills resident, inquired if the Homeowners Association provided any feedback on this project?

Mr. Kalt advised that the Homeowners Association provided favorable feedback on the removal of the junipers and making the property visually appealing. On May 26, 2016 Mr. Kalt received a letter from the Homeowners Association approving his plans.

Councilmember Shuey requested to review the letter Mr. Kalt received from the Home Owners Association.

Councilmember Catalano noticed a fire hydrant located on the corner of the property and inquired if there is sufficient accessibility to it by the Fire Department if it were needed in an emergency.

Mr. Kalt advised an adjacent neighbor had a fire about 6 months ago and this particular fire hydrant was used to put out the roof fire with no known issues.

City Engineer Scott Allman added Contra Costa Fire Protection was contacted regarding the clearance around the fire hydrant and was advised a three-foot minimum clearance is required and this property looks to meet the requirements.

Councilmember Shuey advised the approval from the Homeowners Association notes that Mr. Kalt is responsible to obtain the necessary permits and building inspection services required from the City for this project.

Mr. Kalt advised he assumed the contractors he hired would obtain the necessary permits needed. Mr. Kalt would like fair and equitable treatment in regards to retaining walls that are already in place and is willing to go through the necessary steps to rectify the situation and complete the project.

Councilmember Pierce advised the City Council is not ruling on his particular property, but is establishing a policy for current and future structure violations and how to protect the public right-of-way of the City and for the installation of future utilities and Regional Water Control Board needs.

Councilmember Shuey added this issue has come up before and the contractors Mr. Kalt hired had an obligation to inform Mr. Kalt of the requirements needed to complete his project. Mr. Shuey advised a policy decision on encroachments needs to be made for consistency purposes throughout the community and if the desire is to allow encroachments, there needs to be indemnification to protect the city that can be prepared by the City staff and the City Attorney.

Ms. Gentry added, wooden fences need to be moved 10 feet from the back of sidewalk to be compliant in the *Clayton Municipal Code* as the Code requires it to be 5 feet from the property line and in this case the property line is 5 feet behind the sidewalk.

Mayor Diaz closed public comments.

By general consensus, City Council provided direction to staff to create a revocable encroachment agreement with indemnification language to protect the city, including appropriate insurance for the encroaching structures; to draft an ordinance to allow a six-foot fence at the property line for exterior side lots, with all other current requirements to remain; to pursue code enforcement cases if the City is aware a violation; and to conduct a public education effort regarding the regulations for the construction of fences.

- (b) Discussion of staff recommendations for various local policy issues arising from the California voters' passage of Proposition 64 and the State legislature's passage of SB 94 – the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) regarding local regulation of cannabis.  
(Community Development Director)

Community Development Director Mindy Gentry provided a brief background noting on December 20, 2016 the City Council passed an Urgency Ordinance banning the personal outdoor cultivation of cannabis and staff requested direction regarding Proposition 64 - the Control, Regulation, and Tax of Adult Use of Marijuana Act (AUMA). The City Council directed staff to not regulate the indoor cultivation for the personal use of marijuana; add provisions to the Clayton Municipal Code to treat marijuana similarly to alcohol with no consumption allowed in public; further address marijuana in 2017 to allow more time for legal clarification and to determine what actions neighboring jurisdictions have taken.

Ms. Gentry noted there have been no changes to the federal Controlled Substances Act; however a bill has been introduced to change marijuana from a Schedule I narcotic to another controlled substances schedule. On June 26, 2017, Governor Brown signed into law SB 94 – Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA); combining the medical and adult use of cannabis systems into one licensing structure with the same regulatory framework governing both medical and adult use facilities. The most notable change is vertical integration is now allowed, as it pertains to cannabis businesses. On September 16, 2017, AB 133 was signed into law noting technical fixes or changes to MAUCRSA.

Ms. Gentry noted Clayton's local regulations mostly pertain to medical purposes with the *Clayton Municipal Code* being silent on the recreational or adult use of marijuana. The City of Clayton has prohibited medical marijuana dispensaries; testing laboratories; facilities that store or maintain marijuana as part of their operations; and outdoor cultivation or production of cannabis; and some indoor cultivation. The City Council did not prohibit the delivery of medical marijuana due to accessibility concerns for patients within the community.

Ms. Gentry further noted the neighboring communities of Antioch, Brentwood, Pittsburg, Danville, and Orinda have banned all commercial cannabis businesses for both medical and adult use. The City of Concord has directed staff to draft an ordinance to put a ban in place; however will revisit the issue once more clarity has been provided by the State. Contra Costa County has prepared a permanent ordinance to prohibit all commercial uses until an ordinance to fully regulate all aspects of cannabis is completed. The City of Pleasant Hill Planning Commission has recommended to its City Council to allow retail medical cannabis. The City of Walnut Creek has placed a moratorium for all

## 17.36.075 - Fencing Standards.

Fencing shall conform to the following standards:

- A. Front Setbacks. Fences shall not exceed a maximum height of thirty (30) inches within ten (10) feet of the front property line and a maximum height of six (6) feet in the remaining portion of the front setback.
- B. Interior Side Setbacks and Rear Setbacks. Fences shall not exceed a maximum height of six (6) feet on the interior side and rear property lines or anywhere within the interior side and rear setbacks.
- C. Exterior Side Setbacks. Fences shall not exceed a maximum height of thirty (30) inches within five (5) feet of the exterior side property line and a maximum height of six (6) feet in the remaining portion of the exterior side setback.
- D. Corner Lots. Fences on corner lots shall conform with the restrictions on sight obstructions at intersections provided in Chapter 12.08.
- E. Driveways. Fences shall not exceed a maximum height of thirty (30) inches on either side of a driveway within the triangular areas formed by the edge of the driveway, the property line, and a line joining points on each of these twelve (12) feet from their intersection.
- F. Main Building Area. Fences shall not exceed a maximum height of eight (8) feet within an area in which a main building is permitted.
- G. Measurement. The height of fences shall be the average height of an eight-foot length of fence, measured from the lower of either the lowest adjacent ground level or the top of the footing of any retaining walls located within three (3) feet.
- H. Safety Fences. Safety fences and railings required by the Uniform Building Code are excluded from the height standards of this section.
- I. Barbed Wire. Barbed wire or other sharp materials shall not be used as a fencing material except on lands where agricultural grazing is actively conducted or where a use permit has been approved by the Planning Commission.
- J. Hazardous Locations. In no case shall any fence be located so as to cause a hazard to the movement of vehicles or pedestrians.
- K. Height Exceptions. The Director may issue an administrative use permit to allow a fence up to seven (7) feet in height in a rear setback or side setback of a lot in residential district. The Director may impose such conditions as the Director deems appropriate to mitigate any visual or other adverse impacts of the fence, including, but not limited to, requirements with respect to the height, design, and materials of the fence and landscape screening. Applications for an administrative use permit under this subsection shall be filed with the Director on such form as

the Director prescribes, and shall be accompanied by a processing fee in such amount as established from time to time by resolution of the City Council. Prior to granting the administrative use permit, the applicant shall demonstrate and the Director shall find that:

1. The issuance of such a permit is reasonably necessary by reason of unusual or special circumstances or conditions relating to the property, for the preservation of valuable property rights or the full use and enjoyment of the property;
2. The fence will not create a safety hazard to pedestrians or vehicular traffic;
3. The fence will not unreasonably interfere with access by police, fire, and emergency service personnel;
4. The appearance of the fence is compatible with the scale, mass, design, and appearance of other existing buildings and structures in the neighborhood;
5. The orientation and location of the fence is in proper relation to the physical characteristics of the property and neighborhood;
6. The applicant has obtained the written consent of the adjacent property owner, unless the fence is adjacent to public right-of-way, in which case written consent is not necessary; and
7. The fence will be of sound construction.

(Ord. 178, 1978; Ord. 197, 1979; Ord. 375, 2004)

## ATTACHMENT 4

17.36.075 Fencing requirements. Property and decorative fencing, walls, hedges, screen planting and shrubbery shall conform to the following standards:

A. Height Limitations.

1. Back Yards and Side Yards. Fences and walls shall not exceed a maximum of six feet high on rear and interior side property lines or anywhere within rear and interior side setback areas.
2. Front Yards and Street Side Yards. Fences and walls shall not exceed a maximum of thirty inches (30") high within ten feet of the front property line and a maximum of six feet (6') high within the remaining portion of the front yard. (see Figure 2)
3. Corner Lots. Fences, walls, shrubs and hedges on corner lots shall conform to the provisions of Chapter 12.08.
4. Driveways. Fences, walls, shrubs and hedges shall not exceed a maximum of thirty inches high on either side of a driveway within the triangular areas formed by the edge of the driveway, the property line, and a line joining points of each of these twelve feet from their intersection (See Figure 1 attached to and made a part of the Ordinance codified in this section and on file in the office of the City Clerk).
5. Main Building Area. Fences and walls may not exceed a maximum of eight feet high within an area in which a building is permitted.
6. How Measured. The height of fences, walls, shrubs and hedges shall be measured from ground level in accordance with direction in Exhibit A of Chapter 12.08.
7. Hazardous Locations. In no case shall any fence, wall, shrub or hedge be located so as to cause a hazard to the movement of vehicles or pedestrians.

**Agricultural Structures and Activities (Section 17.16.130)**

The wording of Section 17.16.130 regarding agricultural structures and activities was awkward and unclear. The Planning Commission and staff recommend the following modifications.

**17.16.130 Equestrian or Agricultural Livestock Structures** ~~Section 17.16.130 R-40-H~~  
 Any barn, stable, or shelter for equestrian or agricultural livestock shall be set back not less than one hundred ~~(100)~~ feet from the front property line and shall be not less than fifty ~~(50)~~ feet from any side or rear property line. Fenced pasture, paddocks, or other enclosed equestrian or agricultural livestock areas shall not be located nearer than ten ~~(10)~~ feet to any property line or nearest edge of street pavement ~~or lot line~~. If the ~~rear~~ rear property line of any interior lot abuts permanently uninhabited land, equestrian riding areas either public or private, ~~in the rear yard, the side of the rear yard setback may be reduced to fifteen~~ ~~(15)~~ feet.

**Building Height in PAO District (Section 17.32.040)**

The building height regulations in Section 17.32.040 for the Professional Administrative Office (PAO) District are awkward and more restrictive than those for comparable districts. The Planning Commission and staff recommend the regulations be modified to as listed below. This would allow building heights in the PAO District to be comparable to those in the Multiple Family (MR) Residential District.

**17.32.040 Building Height.** No building or structure permitted in the P-A-O district shall exceed two and one-half stories or thirty-five ~~(35)~~ feet in height; ~~except where an interior side yard abuts the rear yard of a single family residential district, in which case there shall be a one-story height limit except that when the PAO district abuts any single family residential district then the building height maximum of the portion of the PAO district being within fifty~~ ~~(50) feet of the abutting single family residential district shall be twenty~~ ~~(20) feet.~~

**Fencing Standards (Section 17.36.075)**

Application of the fencing standards in Section 17.36.075 has brought to light several problematic issues that the Commission and staff have sought to address. These issues include:

- The height standards for fences in exterior side setbacks (a.k.a., street sides yards of corner lots);
- The height standards for fences within the rear or side setbacks (a.k.a., rear yard or side yard);
- Measurement of fence heights in areas outside of the “clear vision” area on corner lots;
- Inclusion of nearby retaining walls in the calculation of fence height;
- Clarification of the types of buildings referenced in subsection 17.36.075.A.5 (e.g., detached buildings, accessory buildings);
- Regulation of safety fences and railings installed pursuant to the Uniform Building Code;
- Regulation of barbed wire fences

As part of the discussion of these issues, Mayor Laurence submitted the attached letter to the Planning Commission (see **Exhibit B** on following page) which identifies several questions and considerations regarding fence heights, decorative latticework, and administrative approval of increased fence heights. Police Chief Peterson provided the attached memoranda (see **Exhibits C and D** on following pages) which address fence heights relative to the physical testing standards for police officers, ability of officers to observe break-ins and burglaries, and ability of officers to disengage the gate latches.

In light of these concerns, the Planning Commission and staff took the following actions with regard to the fencing standards.

#### Fence Heights Along Exterior Side Setbacks

The Commission directed staff to clarify the fencing requirements in exterior side setbacks. Staff conducted a brief field review of the location of fences in R-10 and R-12 neighborhoods. From this field review it appears that on approximately 2/3 of the lots, six-foot privacy fences along the exterior side setbacks have been constructed approximately 10 feet from the exterior side property line. On the remaining 1/3 of the lots, fences have been constructed approximately 5 feet from the exterior side property line. Therefore in order to avoid creating a large number of non-conforming exterior side setback privacy fences, the Commission determined that the fencing requirements be amended to stipulate that within 5 feet of the exterior side property line, fences can only be 30 inches high. Between 5 feet from the exterior side property line and the remainder of the exterior side setback, the fence can be up to 6 feet high. An option to require 6-foot fences to be setback 10 feet from the exterior side property line was not endorsed by the Commission.

#### Fence Height Exceptions

The current fence standards allow fences along rear and interior side property lines to be six feet high. This is the standard fence height allowed along rear and interior side property lines in most California communities and is consistent with the Police Department's concerns noted in Chief Peterson's memo. Six feet also affords adequate privacy for adjacent homeowners in most situations. The primary exception is the situation diagrammed in Example B of **Exhibit E** (on following page) where the property line is at the toe of the slope. This situation occurs infrequently, as the property line is typically at the top of the slope, as shown in Example A.

The Planning Commission determined that a procedure should be established which would allow staff to approve fences which exceed six feet in height. Since the Commission expressed interest in retaining six feet as the "standard" height for fences in recognition of the public safety concerns expressed by Police Chief Peterson, the criteria to be used by staff closely define the situations in which a fence up to seven feet in height would be allowed.

#### Measurement of Fence Height

The current wording of the fence standards does not allow any portion of a fence to exceed six feet in height. The Commission determined that wording should be added which would allow fence heights to be averaged over the typical 8-foot distance between fence posts. This would address situations where a fence on a slope "stair steps" down the slope instead of gradually



descending down the slope. Staff noted that this methodology complicates the measurement process by introducing a calculation into the fence height determination. The current wording is a more straight forward regulation that fences shall not exceed six feet and hence is easier to apply.

### Retaining Walls

Frequently retaining walls are constructed near or as part of fences. The County Building Inspection Department, in administering the *Uniform Building Code* under contract with the City, requires a building permit if a retaining wall:

- Is higher than three feet;
- Supports a slope which exceeds 1:2; or
- Supports a fence within three feet of the back of the wall.

Based upon past staff interpretation and practice since the early 1990's, retaining walls in the vicinity of a fence have been included as part of the fence height calculation. **Exhibit E** provides examples of height calculations for different slope, fence, and retaining wall combinations. These height calculations are consistent with the definition of "Fence" and the application of the *Uniform Building Code* by the Building Inspection Department. Wording is included in subsection 17.36.075.G to clarify that retaining walls within three feet of a fence are included as part of the fence height calculation. This language avoids situations where a six-foot fence is located within one or two feet of a three-foot high retaining wall, effectively creating a nine-foot barrier.

### Barbed Wire

The City currently has no regulations regarding the use of barbed wire, except the *Town Center Specific Plan* guidelines which do not allow "open wire" fences. Wording is included to prohibit barbed wire except on lands where agricultural grazing is actively conducted or where a use permit has been approved by the Planning Commission.

### Safety Fences

The *Uniform Building Code* requires fences around pools to be five feet high. The Building Inspection Department enforces the five-foot requirement on all building permits within the City. Wording is included which excludes safety fences and railings required by the *Uniform Building Code* from the height standards. This clarification ensures that safety fences around pools will be constructed in accordance with the *Uniform Building Code* requirements.

### Conclusion

The Planning Commission and staff recommend the revision of the Fencing Standards as listed below. The illustrative diagram (see **Exhibit F** on following page) will be included in the *Zoning Ordinance*, but not adopted.

## MINUTES

### CLAYTON CITY COUNCIL AND CLAYTON PLANNING COMMISSION

TUESDAY, January 13, 2004

1. **CALL TO ORDER AND ROLL CALL**

The meeting was called to order at 7:00 p.m. by Mayor Pierce and Planning Commission Chair Haydon in the Library Community Room, 6125 Clayton Road, Clayton, CA.

Clayton City Council – All Councilmembers were present.

Clayton Planning Commission – All Planning Commissioners were present.

Staff – City Manager, City Clerk, Community Development Director, City Attorney

2. **PLEDGE OF ALLEGIANCE TO THE FLAG**

3. **PUBLIC COMMENT** - None.

4. **PUBLIC HEARINGS**

- (a) *Continued Public Hearing on proposed ordinance amending, adding and deleting various land use regulation chapters and sections of the Clayton Municipal Code including: sign regulation enforcement, recreational vehicle storage, zoning definitions, fencing standards, residential floor area regulations, administrative discretion, etc. (ZOA 01-03 and 03-03) (Community Development Director)*

Community Development Director Graves gave a summary of the proposed amendments.

Councilmember Laurence said the Police Department's concerns are primarily fences over 6 feet at the front of the house, since Police would like to be able to reach over the fence and unlatch the gate.

City Manager Napper clarified the Police Chief would prefer the fence height to be 6 feet all the way around properties. Sometimes when a fence is above 6 feet in the rear yard, it requires the officer to go back to the front where the fence is 6 feet or below.

Planning Commissioner Miller said fences higher than 6 feet or 6 feet fences sitting on a 3-foot retaining wall puts the police officer in a dangerous situation.

Councilmember Laurence asked if a property owner could store items right next to the fence.

The Community Development Director said if the property owner has a solid 6-foot fence, the proposed changes allow items to be stored next to the fence. If the property owner does not have a solid 6-foot fence, items have to be stored at least 50 feet from the front property line and 25-feet from the rear and side property lines.

Mayor Pierce asked about planned developments versus straight zoning. All the regulations listed refer to specific zoning districts. For many Planned Developments, particularly those with smaller lot sizes, the proposed setbacks do not apply. There may be a development where even a small accessory structure building could not be constructed. She thought that perhaps a distinction needed to be made between the small accessory buildings (e.g. garden sheds) from larger buildings (e.g. cabanas)

Community Development Director Graves said when the individual Planned Developments are originally approved they typically established their own setbacks. According to the Uniform Building Code, a garden shed which is 120 sq. ft. or less; does not require a building permit; must be offset from the property line by 3 feet, unless it has a 1-hour fire rated wall; and must be less than 10 feet high.

Vice Mayor Manning had a concern that most of the accessory buildings in Clayton would be out of compliance. He walked through Easley Estates and found at least 25 accessory buildings will not meet the standards.

Councilmember Laurence wanted the standards to create a standard of safety, as well as aesthetically pleasing, but felt some of the standards might be too strict. He suggested the setback for an accessory building be 10 feet behind the front corner of the house.

Planning Commissioner Miller said the Planning Commission is only concerned with larger accessory buildings, with no intention of reviewing accessory buildings of 120 sq. ft. or less.

Mayor Pierce felt the difference between major accessory structures and small accessory buildings needs to be defined.

Councilmember Shuey handed out a landscaping plan for a property in Vintage Clayton. He asked if this landscaping plan had been reviewed by the Planning Commission or only staff. He asked if the arbor with the wall fountain would fall under the requirements for an accessory structure? If so, there is a problem because it is not 65 feet from the front property line. He asked what happens if a property owner constructs an accessory structure that does not require a building permit right next to the fence. He asked if the property owner could apply for a variance?

Community Development Director Graves said the arbor be subject to the requirements for accessory structures because it is 8 feet high. Variances are granted if the property topography or lot size does not allow the construction of the accessory structure within the regulations. He indicated the 65-foot setback has been in the Municipal Code for many years. The Commission and staff did not address the value of the 65-foot setback since they were looking at minimizing the number of changes to the Municipal Code.

Planning Commissioner Haydon said the Commission also looked at issues that the Commission has dealt with in the past. If an issue has never come up, then the Commission felt they should leave well enough alone.

Mayor Pierce requested staff to bring back language stating the setback for accessory structures should be ten feet behind the front corner of the house closest to the accessory structure and eliminate 12-foot distance from the principal structure. She said lots are getting smaller and smaller and people want to utilize the most of their property. She felt most people would not cram it accessory structures right next to the principal building unless they had to.

Planning Commissioner Miller said the consensus of the Planning Commission was to leave the 12-foot setback alone. The Commission felt the 12-foot setback was a reasonable distance to protect people's views.

Planning Commissioner Haydon said the idea was to keep detached buildings separate or have the buildings attached. The Commission did not want a solid wall of homes along a street.

There was discussion on how much separation there should be between the principal building and than accessory building. If the lot is large enough, then how close should the structure be and not be within the rear setback. If the lot is small then should the building be allowed to be constructed next to the fence and/or next to the principal building?

Mayor Pierce reopened the continued public hearing

### Public Comments

Jason Barnes, 1470 Lydia Lane, had a question of the 20-foot exterior setback. He purchased the property in June with the intention of constructing an out building within the large side setback. Staff informed him the Planning Commission was reviewing the side setbacks and the side setbacks would probably be increased to 20 feet from 10 feet. The reasoning behind this change is to maintain an open and airy atmosphere. He wanted to know why, when 24 other homes in the area have 3 feet side setbacks. He has no neighbors on one side and is not on a main through fare.

Councilmember Walcutt asked if he would be able to get a variance.

Community Development Director Graves said if legal findings could be made the variance would be approved.

The Council suggested Mr. Barnes apply for a variance.

Steve Thomas, 7 Atchinson Stage Place, submitted a letter addressing his concerns: 1) definition of yard versus setback; 2) requirements for accessory buildings and structures; 3) livestock structures and areas (R-40H); 4) definition of slope; 5) open storage; and 6) building footprint.

Councilmember Laurence mentioned a home on Padera Court that built a new fence constructed on top of an existing retaining wall, which made the fence higher than 6 feet from the ground. A neighbor complained and the city investigated and determined the fence needed to be corrected. Couldn't there be a process that would allow a 6-foot fence to be built on top of the retaining wall.

Community Development Director Graves said the proposed ordinance includes a process, which allows staff to approve fence heights up to 7 feet including the retaining wall, if it meets certain criteria including written approval of the neighbor.

Councilmember Laurence asked if the number could be 9 feet.

Planning Commissioner Miller said if the number is set at 9, then the Commission would have no means to keep the height to 7 feet.

Vice Mayor Manning suggested leaving the number at 7 and if someone wants the height to 9 feet, they could apply for a variance and/or appeal to the City Council.

Councilmember Shuey asked who determines whether an application is reviewed and approved by the Planning Commission or staff. If the application is administratively approved, is there a check and balance process to protect the applicant.

City Manager Napper said the Commission could have a policy that the Community Development Director notifies the Planning Commission, by way of listing on their agenda, what has been administratively approved.

In response to Thomas letter it was the consensus of the Council to leave the ordinance as drafted, except for the changes listed below.

- Add language which exempts accessory buildings less than 120 sq. ft. and less than 10 feet high.
- Accessory buildings must be at least 5 feet from the main building
- If the accessory building is within 3 feet of the property line, it has to be at least 12 feet from the main building.
- Include language "unless the Planning Commission determines a wider distance is needed between the principal building and accessory building.
- Mention of vehicular access easement and emergency vehicle access needs to be consistent throughout the ordinance.

- Attachment 4, Page 21, Section B.4, add "six foot" solid fence
- Attachment 2, Page 10, line12, change B2 – to read "antennas will ~~not be constructed in front or side yard (setback), but shall~~ - be constructed to the rear of the residence....

**It was moved by Vice Mayor Manning, seconded by Councilmember Shuey to continue the public hearing to February 3, 2004 City Council/Planning Commission joint meeting starting at 6:00 p.m. (5-0)**

- (b) *Continued Public Hearing on proposed ordinance amending, adding, and deleting various chapters and sections of the Clayton Municipal Code including adding a new chapter entitled "Second Dwelling Units", various zoning definitions, etc. (ZOA 02-03) (Community Development Director)*

Mayor Pierce reopened the continued public hearing. There were no public speakers.

**It was moved by Vice Mayor Manning, seconded by Councilmember Walcutt to continue the public hearing to February 17, 2004 City Council/Planning Commission joint meeting starting at 6:00 p.m. (5-0)**

5. **ADJOURN** – the meeting adjourned at 10:00 p.m.

Respectfully submitted,

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Rhonda Basore, City Clerk

Approved by Clayton City Council:

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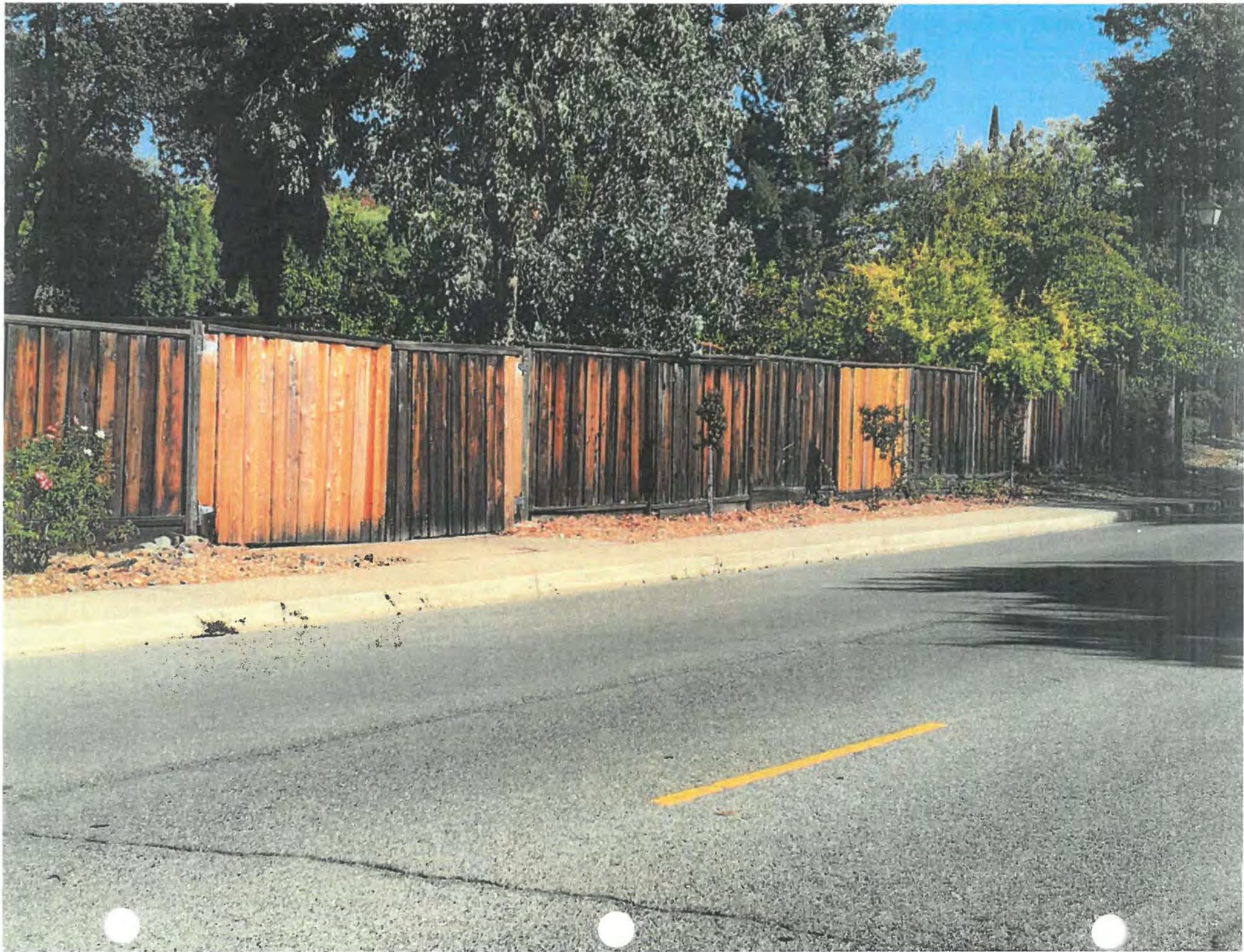
Julie K. Pierce, Mayor

**ATTACHMENT 6**










# ATTACHMENT 7

## PLANNING COMMISSION STAFF REPORT

**Meeting Date:** October 24, 2017

**Item Number:** 5.a

**From:** Mindy Gentry   
Community Development Director

**Subject:** Ordinance Amending the Fencing Standards (ZOA-06-17)

**Applicant:** City of Clayton

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### REQUEST

The City of Clayton is requesting a public hearing to consider a City-initiated Ordinance to amend the Clayton Municipal Code to allow six-foot fences to be located within the required exterior side setback or at the public right-of-way line (ZOA-06-17) (Attachment A).

### PROJECT INFORMATION

**Location:** Citywide

**Environmental:** This Ordinance is exempt from review under the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000 et seq.). Pursuant to State CEQA Guidelines section 15303 (14 Cal. Code Regs., § 15303), this Ordinance is covered by the Class 3 CEQA Categorical Exemption for construction of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

**Public Notice:** On October 13, 2017, a public hearing notice was published in the Contra Costa Times and a public hearing notice was posted at designated locations in the City.

### BACKGROUND AND DISCUSSION

The Clayton Municipal Code (CMC) currently allows fences on an exterior side lot line to be a maximum of 30 inches in height within five feet of the property line and a maximum of six feet in height in the remaining portion of the exterior side setback (Attachment B). Prior to 2004, the CMC had ambiguous language regarding exterior side yard fencing regulations but, at that time, the regulations were being interpreted to restrict fences located on an exterior side yard to a maximum height of thirty (30) inches within ten (10) feet of the property line and then up to six (6) feet in height for the remainder of the setback (Attachment C). As part of an omnibus cleanup in 2004, the City Council amended the CMC to the existing regulations; however, staff could not find documentation explaining the reasoning for the change beyond the direction provided by the Planning Commission to staff to clarify the fencing requirements for exterior sides (Attachment D).

Staff sees the current fencing regulations for exterior side setbacks as a potential issue because a residential property owner either compromises privacy by having a fence only 30 inches in height at the exterior side property line or has to sacrifice usable land in order to have a six-foot fence. Further, the required five-foot setback from the property line creates a larger “no-man’s land” when coupled with the approximate five (5) foot public right-of-way directly behind the sidewalk on the exterior side yard. The typical location of the public right-of-way in the majority of neighborhoods is approximately five feet from the back of sidewalk; however the public right-of-way does vary throughout the City depending on the location.

The City of Clayton does not maintain landscaping within the public right-of-way and it is left up to or is the responsibility of the property owner and depending on property owner, he/she may or may not maintain the landscaping. If six-foot fences were allowed to be located within the required exterior side setback or at the public right-of-way line, it would then reduce the amount of space to be landscaped between the back of sidewalk and fence. Further, there are numerous instances in Clayton currently where fences are located on the property line or the public right-of-way line on the exterior side setback (**Attachment E**). By amending the Code it would not only create a smaller landscape area or “no-man’s land”, but it would also allow property owners to enjoy the full breadth of their property as well as reduce the number of illegal or legal non-conforming fences throughout the City.

This issue regarding fence placement came to light after City staff had initiated two code enforcement cases for retaining walls and fences placed in the public right-of-way. As staff started to research and look into these issues of encroachments and fence placement, it became clear there was an issue that needed to be addressed and staff sought policy direction from the City Council. At its meeting on October 3, 2017, the City Council directed staff to draft an Ordinance to amend the Code in order to consider allowing the placement of a six-foot fence within the required exterior side setback or at the public right-of-way line (**Attachment F**).

#### **RECOMMENDATION**

Staff recommends that the Planning Commission consider all information provided and submitted, take and consider all public testimony, and, if determined to be appropriate, adopt Resolution 06-17, recommending City Council approval of an Ordinance to allow six-foot fences to be placed at the property line or at the public right-of-way line for exterior side setbacks (**Attachment A**).

#### **ATTACHMENTS**

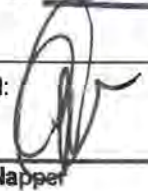
- A. Planning Commission Resolution 06-17, with attachment:  
Exhibit A – Draft Ordinance Amending the Fencing Standards
- B. Clayton Municipal Code Section 17.36.075 – Fencing Standards
- C. 2004 Clayton Municipal Code Section 17.36.075 – Fencing Standards
- D. Excerpt of Staff Report from the January 6, 2004 City Council Meeting and Minutes from the January 13, 2004 Joint City Council and Planning Commission Meeting
- E. Examples of Existing Fences at the Exterior Side Setback
- F. Excerpt of Staff Report and Minutes from the October 3, 2017 City Council Meeting



Agenda Date: 11-07-2017

Agenda Item: 8a

Approved:

  
Gary A. Napper  
City Manager

# AGENDA REPORT

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: CITY MANAGER**

**DATE: 07 NOVEMBER 2017**

**SUBJECT: APPROVAL OF EXCLUSIVE NEGOTIATION AGREEMENT (ENA) WITH FULCRUM DEVELOPMENT, LLC, FOR PROSPECTIVE SALE AND DEVELOPMENT OF CITY-OWNED VACANT PROPERTY IN THE CLAYTON TOWN CENTER**

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## **RECOMMENDATION**

Following staff presentation and receipt of public comments, it is recommended the City Council by motion approve an Exclusive Negotiation Agreement (ENA) with Fulcrum Development, LLC, and authorize the Mayor to sign the ENA on behalf of the City.

## **BACKGROUND**

In April 2013 the City purchased from the Clayton Community Church an unimproved vacant parcel having a portion of frontage on Main Street. The parcel is approximately 1.67 acres in size (APN 118-560-010-1), has been assigned the street address of 6005 Main Street, and enjoys high visibility from Clayton Road. The City paid \$1 million cash for the land plus its share of escrow costs.

After approximately one (1) year spent self-advertising its newly-acquired property with unsuccessful interest or sale, the City solicited proposals from several commercial realty companies to list and market the property for development purpose. At its public meeting of 01 April 2014, the City Council unanimously approved an agreement with Transwestern Property Company West (Mr. Edward Del Beccaro, Managing Director) to outreach to numerous retail commercial companies and prospective developers. That Exclusive Sales Listing Agreement with Transwestern remains effective through 01 January 2018.

In various and continuing reports and updates to the City Council, Transwestern presented the City's "opportunity" properties to approximately 650-700 distinct retailers pushing the existing Town Center Specific Plan's designation of commercial retail only on the ground floor. After the predominant response by the retail market of "not interested," the City Council held a public meeting on 05 May 2015 to discuss broadening the City's entertainment of other land uses on the property as the prevailing development market might bear.

### **COMMERCIAL MARKET RESPONSE**

During that course of time since May 2015, the City did receive one (1) vague inquiry from a fast-food chain restaurant potentially interested in discussing the property but only if the City would allow new ingress and egress off adjacent Clayton Road, in both directions (i.e. north and south, necessitating a new traffic signal). Other than that query, no company or development firm expressed interest in purchasing the property for the sole use as commercial retail. Lack of density, both in population and building mass, along with being a small town, geographic setting, relatively low traffic volumes, and low housing density were variables that shied developers away from this Clayton opportunity. While most Claytonians enjoy the quaintness and nostalgia of our city, those same factors that make Clayton so attractive for quality of life purposes severely detract from its appeal and viability as a commercial retail market. It is often acknowledged the business of Clayton is residential.

However, during the 2015-2016 Transwestern did produce no less than four (4) proposals from proven development companies interested in the economics of the land for different uses. Two (2) of the developers submitted purchase offers with proposals for medium density residential uses, while the other two (2) developers presented bids involving mixed uses of commercial retail combined with a senior care facility. After lengthy and thoughtful evaluation of the various options, each company's construction experiences, and the land price, the City Council determined it wished to launch its land use development and eventual sale of the public land by working with Pacific Union Land Company, LLC (Danville, CA).

In July 2016 the City Council approved an Exclusive Negotiation Agreement (ENA) with its preferred developer, Pacific Union Land Investors, LLC ("PULI"), which company then vigorously pursued a project development for a senior care facility with some retail commercial stores that would involve not only the City's vacant property but also adjacent land for sale owned by the Clayton Community Church. On 07 March 2017, following unsuccessful overtures to obtain mutually-beneficial terms and conditions with the church, PULI sought and received a new ENA with the City to pursue development of its project solely on the City's downtown land with a land purchase price of \$1.7 million.

Shortly thereafter following its further due diligence, PULI informed the City it would not be filing a land use application for the project concept. Both parties agreed to terminate the ENA and further relationship. Transwestern, the City's commercial broker, then presented the City with two additional qualified developers (Fulcrum Development, LLC; Avesta Development Group). During the summer and early fall of 2017, City staff, its commercial broker, and two members of the City Council (constituting its Downtown Economic Development Sub-Committee) met on numerous occasions with representatives of each development firm to discuss, consider, and negotiate various terms and conditions for the sale and subsequent development of the City's downtown property. Those meetings have now culminated in a proposed Exclusive Negotiation Agreement (ENA) with Fulcrum Development, LLC.

### **FULCRUM DEVELOPMENT, LLC**

Fulcrum Real Estate Development and Chronograph Properties are partners in the development and operations of assisted living and memory care communities. They are long term owners of several facilities and its primary focus is on senior housing. Fulcrum's principals include Mr. David Ford with over 40 years in real estate and development (responsible for over \$12 billion in assets within the western region), Mr. Steve Ring with over 35 years in the development business responsible for over \$16 billion in assets and 27 million square feet in the Bay Area, and Mr. Jason Reyes with over 15 years of experience in the actual operation of senior-living facilities in the Bay Area.

Fulcrum Development, LLC, has two (2) similar senior living/memory care facilities operating in nearby Fairfield, CA (dba Rockville Terrace) and in Vacaville, CA (dba Cornerstone Assisted Living), and is in the process of developing three (3) other senior living communities in Vallejo, CA (dba The Lodge at Glen Cove), in San Ramon, CA (dba San Ramon Memory Care), and in Bakersfield, CA (dba Bakersfield Senior Village). Furthermore, Fulcrum has additional senior living communities under contract in Los Gatos, El Dorado Hills, Sausalito, and San Jose. The principals and decision-makers of Fulcrum are based in northern California, the company retains title to the underlying real estate, and its operators have won "best" awards from the senior-living community industry for its levels of senior care.

### **EXCLUSIVE NEGOTIATION AGREEMENT (ENA)**

Before any development company will invest its monies to secure City land use entitlements and construction permits, it will universally want to lock-down the terms and conditions of the land acquisition. Conversely, the City, as selling party, wishes to stipulate the basics of its processes regarding the developer's progress and time tables for ultimate sale and transfer of land title to the buyer. In this particular situation, the City is as interested in the price it receives for the public's land as it is to obtain written assurances the developer will not simply land bank the property. The City's primary objective is to foster private construction in anchoring the west end of its downtown through a viable commercial operation contributing to the ever-increasing economic viability of its Town Center.

An ENA provides the initial roadmap for development consideration which ultimately results in a Disposition and Development Agreement (DDA) that accompanies the land use application/proposed project for public review. Change in title ownership of the land is not accomplished by this ENA transaction but occurs only when Fulcrum Development's project proposal has been fully vetted, subjected to public review/input, and receives approval by the City Council in a public meeting. Should those milestones be achieved, title to the land as approved ensues when Fulcrum is ready to pull its approved building permits. As envisioned in the attached ENA, that process time period can range from twelve (12) to twenty-four (24) months.

However, the ENA is the prelude to the development partnership now forged for the private land title and improvement of the vacant parcel to include some limited commercial retail establishments on the ground floor along with the primary land use of a senior care/memory care facility on Main Street.

As prescribed in the ENA, the agreed-upon sale price for the City property is \$1.9 million. The following deal points outline the basic tenets of the recommended ENA:

- a. Fulcrum must make a good faith deposit of \$15,000 cash with the City within 5 days after the ENA is signed.
- b. Fulcrum has ninety (90) days from the date the ENA is signed to tender its Pre-Application Packet to City Community Development Department for its initial review.
- c. After the Community Development Department responds to the Pre-Application materials by a non-binding Preliminary Analysis Letter, Fulcrum then has another ninety (90) days within which to hold a minimum of two (2) Community Meetings with the public and interested stakeholders to unveil its Proposed Project, receive and respond to public input, and then file its Full Application Packet with the Clayton Community Development Department.

That time period can be administratively extended once for an additional thirty (30) days.

- d. At the time of filing its Full Application, Fulcrum must submit an additional good faith cash deposit of \$20,000 to the City (total deposit now \$35,000). Fulcrum must further file a time and materials check in an amount determined at that time by City staff for the payment of all staff time, expenses, and consultant work associated with processing the proposed land use application/project. That deposit account must be stay solvent and replenished by Fulcrum in additional monetary increments as determined by City staff.
- e. There is a prescribed three hundred (300) days after the filing of the Full Application for the internal processing and subsequent required public hearings at the Planning Commission and City Council levels to consider the Proposed Project. That time period may also be extended administratively by two (2), thirty (30) day increments beyond which any further time extension must be approved by the City Council at a public meeting.
- f. During the 300 days period noted above, the City and the Developer negotiate and finalize the terms and conditions of a Disposition and Development Agreement (DDA), which transactional document accompanies the land use application and is subject to public review and input.
- g. Should the City Council ultimately deny the Proposed Project, Fulcrum is reimbursed its full good faith deposit of \$35,000.
- h. Should Fulcrum withdraw its pursuit after the filing of its Full Application, the City retains \$20,000 of the good faith deposit and returns the remainder (\$15,000) to Fulcrum.
- i. Should the Proposed Project be approved by the City Council, the full good faith deposit of \$35,000 is applied to Fulcrum's purchase price of \$1.9 million for the City's land.

It is important to note the ENA does not result in the actual sale of the City's real property at this point nor does Fulcrum now own the land. It does indicate the clear intentions of both parties to move forward with all the typical development steps involving submittal of a land use application to the City with its incumbent environmental and public review processes, including noticed public hearings before the City Planning Commission and ultimate consideration by the City Council. Based on the intended land uses, that process will also involve an amendment to the City's General Plan pertaining to the underlying real property of the Proposed Project.

### **FISCAL IMPACT**

The City purchased the 1.67 gross acres of downtown vacant land in 2013 for a sale price of \$1 million plus associated escrow fees and legal expenses. To date, the City has \$1.062 million invested in the land, including holding and carrying costs (e.g. applicable and annual special property tax assessments) incurred prior to and during the intervening 4.5 year time period.

The negotiated sale price of the City property is \$1.9 million.

The Developer is solely responsible for payment of all City staff time and related expenses (e.g. CEQA consultant, etc.) for the review, analysis, and consideration of its Proposed Project.

- Attachments:
1. Exclusive Negotiation Agreement (ENA) [8 pp.]
  2. Profile of Fulcrum Development, LLC [25 pp.]



EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Clayton, a municipal corporation (the "City"), and Fulcrum Development, LLC, a California limited liability corporation ("Developer"), on the terms and provisions set forth below.

THE CITY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

**100. NEGOTIATIONS**

**101. Good Faith Negotiations**

The City and Developer, acknowledging that time is of the essence, agree during the Extended Negotiation Period set forth below to negotiate diligently and in good faith to prepare a Disposition and Development Agreement (the "DDA") to be considered for final execution between the City and Developer, in the manner set forth herein, with respect to the sale of certain real property located at 6005 Main Street, Clayton, California, also known as APN 118-560-010-1 (the "Property"). The Property is shown on the "Map of the Property," attached hereto as Exhibit A and incorporated herein by reference. The Property is comprised of certain unimproved real property currently owned by the City and to be conveyed to Developer pursuant to the terms of the DDA. The City agrees, for the periods and on the conditions set forth below, not to negotiate with any other person or entity regarding the sale of the Property or any portion thereof.

The Property is currently undeveloped and the City desires to consider selling the Property to be developed by Developer with a senior care/memory care facility including limited ground-floor commercial retail establishments and related uses (the "Proposed Project"). The City and Developer desire to engage in negotiations for the sale and development of the Property in accordance with the City and Developer's desired uses for the Property.

**102. Duration of this Agreement**

Developer shall have until the date that is ninety (90) days following the Effective Date of this Agreement to conduct its preliminary feasibility and due diligence analyses of the proposed land use and purchase transaction contemplated herein (the "Pre-Application Period").

If upon expiration of the Pre-Application Period, Developer has not submitted a Pre-Application, as defined below, to the City to develop the Property with a senior care/memory care facility including limited ground-floor commercial retail establishments and related uses (i.e., Proposed Project), then this Agreement shall automatically terminate unless this Agreement has been mutually extended in writing by the City Manager and Developer for an additional thirty (30) days..

For the purposes herein, Developer's required submission of a Pre-Application shall include at a minimum: Site/Development Plan, Preliminary Building Elevations, Circulation Plan, Floor Plan, Conceptual Landscape Plan, and Project Narrative. The following

City form must be submitted, along with an initial City time and materials deposit of Two Thousand Five Hundred Dollars and No Cents (\$2,500.00) toward payment of subsequent and applicable City-processing fees: a City Community Development General Application Form (collectively, the "Pre-Application Packet").

If said Pre-Application Packet is so submitted by Developer to the City on or before expiration of the Pre-Application Period, then this Agreement and the Pre-Application Period herein shall be extended without further action for an additional ninety (90) days from the date of the City's written response to the Developer's Pre-Application Packet in the form of a non-binding preliminary analysis letter to the Developer (the "Extended Pre-Application Period").

During the Extended Pre-Application Period the Developer shall hold a minimum of two (2) advertised community meetings using a City-provided facility for the purpose of sharing and discussing its Proposed Project with members of the public and interested shareholders. The Extended Pre-Application Period may be extended once by a time period of thirty (30) days at the discretion of the City Manager based on written request of the Developer demonstrating circumstances beyond the Developer's control.

On or before the expiration of the Extended Pre-Application Period, the Developer must then submit a Full Application Packet to the City, which shall include at a minimum a Site Plan, Floor Plan, Building Elevations, Landscape Plan, Stormwater Plan, Floodplain Development Application, Title Report, Environmental Constraints Map, Soils/Geotechnical Report, Arborist Report, Utility Plan, Residential Density Analysis, Community Facilities Plan, Open Space Plan/Standards, Mail labels and envelopes with a 300 feet radius map, and a Letter of Project Explanation. The Full Application Packet filed by the Developer shall include its submittal of a City General Plan Amendment Application, a Specific Plan Amendment Application, and a Development Plan Permit Application, along with an additional City time and materials deposit in an amount determined by City at that time for payment of further City-processing fees and expenses, which said actions commence the "Full Application Period."

The parties acknowledge that supporting documents, reports and attachments beyond those initially required by the City to deem the application complete may be required to be submitted during the Full Application Period, in order to adequately process a complete Application. A good faith effort shall be made by Developer to provide these supporting documents, reports and attachments in a timely manner if determined to be necessary by the City during the processing of the Application. The Developer has three hundred (300) days from the date of submittal of its Full Application Packet to process the City entitlements and associated public hearings. The Full Application Packet processing time period may be extended in writing by the City Manager and the Developer for an additional two (2) thirty (30) day time extensions, beyond which point any such time extension of this Agreement can only be approved by the City Council at a public meeting.

Upon the Full Application being deemed complete by the City ("Application"), the City shall take all steps legally necessary to: (1) negotiate and prepare the terms and conditions of the proposed DDA; (2) take the actions necessary to ultimately authorize the City

to enter into the DDA, including but not limited to completion of compliance with the California Environmental Quality Act; and (3) publicly consider and approve the DDA for execution by the City and Developer concurrent with the Application. In the event the City has taken these required steps but has not denied or approved the Application by the end of the Full Application Period, including any approved time extensions, the City Council and Developer may consider other reasonable requests for additional extensions of the Full Application Period.

## **200. DEPOSIT AND SALE OF THE PROPERTY**

Within five (5) business days after the Effective Date of this Agreement, Developer will deposit Fifteen Thousand Dollars and No Cents (\$15,000.00) with the City ("Deposit"). When Developer submits the Full Application on or before the expiration of the Extended Pre-Application Period, the Developer shall deposit with the City an additional Twenty Thousand Dollars and No Cents (\$20,000.00) with its Full Application Packet, for a total Deposit of Thirty-Five Thousand Dollars and No Cents (\$35,000.00).

If Developer does not submit its Full Application on or before the expiration of the Extended Pre-Application Period, then the Deposit (\$15,000.00) shall be returned to Developer by the City within thirty (30) days and neither party shall thereafter have any obligations to or rights against the other hereunder.

Should the City Council not publicly approve the DDA and the Application for execution after the filing of the Full Application, the full Deposit (Thirty-Five Thousand Dollars and No Cents; \$35,000.00) shall be returned to Developer by the City within thirty (30) days and neither party shall thereafter have any obligations to or rights against the other hereunder.

Should the City Council publicly approve the DDA and the Application for execution, the full Deposit (\$35,000.00) shall be applied as a credit against the purchase price of the Property.

Should the Developer either arbitrarily withdraw the Application and/or does not execute the DDA or the Application's related permit entitlements without a reasonable cause, City shall receive and keep the Twenty Thousand Dollars and No Cents (\$20,000.00) of the Deposit and it shall then be deemed nonrefundable. The City shall return the balance of the Deposit (\$15,000.00) to the Developer within thirty (30) days and neither party shall have any further rights against or liability to the other under this Agreement. "Reasonable cause" as defined in this section shall be limited to a requirement imposed by the City that materially negatively impacts the economics of the project, as demonstrated quantitatively to the City by Developer-submitted pro-formas, which condition or requirement is imposed by the Planning Commission and/or City Council and was not included in City staff's recommendation and/or staff report to the Planning Commission and/or City Council.

The full and only purchase price and/or other consideration to be paid by Developer for the Property under the DDA shall be One Million Nine Hundred Thousand Dollars and No Cents (\$1,900, 000.00) and shall be payable in cash at close of escrow. Such purchase price and/or other consideration is based upon such factors as the fair market value of the property, market

conditions, and condition of the improvements, risks of the City, and risks of Developer, and said purchase price shall be included in the DDA for final approval by the City Council after the associated public hearing as required by law.

**300. DEVELOPER**

**301. Office of Developer**

The principal office of Developer is 336 Bon Air Center, Ste. 354, Greenbrae, CA 94914.

**302. Principal Representative(s) of Developer**

The principal representative of Developer for purposes of negotiating the DDA is as follows: David Ford, President ("Representative").

**303. Full Disclosure**

Prior to its execution of the DDA, Developer shall have made all requested disclosures to the City of its principals, officers, major stockholders, major partners, joint venturers, key managerial employees and other associates. Any significant change in the principals, associates, Representative, development manager, professional and directly-involved managerial employees of Developer shall be subject to the written approval of the City Manager. Notwithstanding the foregoing, Developer reserves the right at its discretion to join and associate with other entities in joint ventures, partnerships or otherwise for the purpose of developing the Property, provided that Developer retains common management and major ownership interest and control of such entities and remains fully responsible to the City hereunder.

**400. DEVELOPER'S FINANCIAL CAPACITY**

**401. Financial Ability**

Prior to execution of the DDA, Developer shall submit to the City Manager satisfactory evidence of its ability to finance and complete the acquisition and development of the Property and fulfill the operation of the anticipated improvements to the Property as set forth in the DDA and Proposed Project conditions of approval.

**402. Full Disclosure**

Developer will be required to make and maintain full disclosure to the City of its methods of financing to be used in the acquisition of the Property.

**500. CITY'S RESPONSIBILITIES**

**501. Environmental Documents**

The City shall be responsible for conducting any review it deems necessary and appropriate under the California Environmental Quality Act. Any costs, fees and charges associated with the requirements of the California Environmental Quality Act shall be paid by Developer.

**502. City Council Public Hearing**

A DDA resulting from the negotiations hereunder shall become effective only after and if the DDA has been considered and approved by the City Council at a public hearing called for such purpose concurrent with its consideration of the Application.

**600. LIMITATIONS OF THIS AGREEMENT**

By its execution of this Agreement, the City is not committing itself to or agreeing to undertake: (1) approval of the Application or a DDA; (2) disposition of land to Developer; or (3) any other acts or activities requiring the subsequent independent exercise of discretion by the City or any agency or department thereof.

This Agreement does not constitute a disposition of the Property by the City or exercise of control over the Property by the Developer. Execution of this Agreement by the City is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by the City Council as to any Disposition and Development Agreement and all Application proceedings and decisions in connection therewith.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above ("Effective Date").

\_\_\_\_\_, 2017

"CITY"

The City of Clayton, a municipal corporation

By \_\_\_\_\_  
Jim Diaz, Mayor

10/31, 2017

"DEVELOPER"

Fulcrum Development

a California limited liability corporation

By: 

Printed Name and Title:

DAVID FORD President

By: 

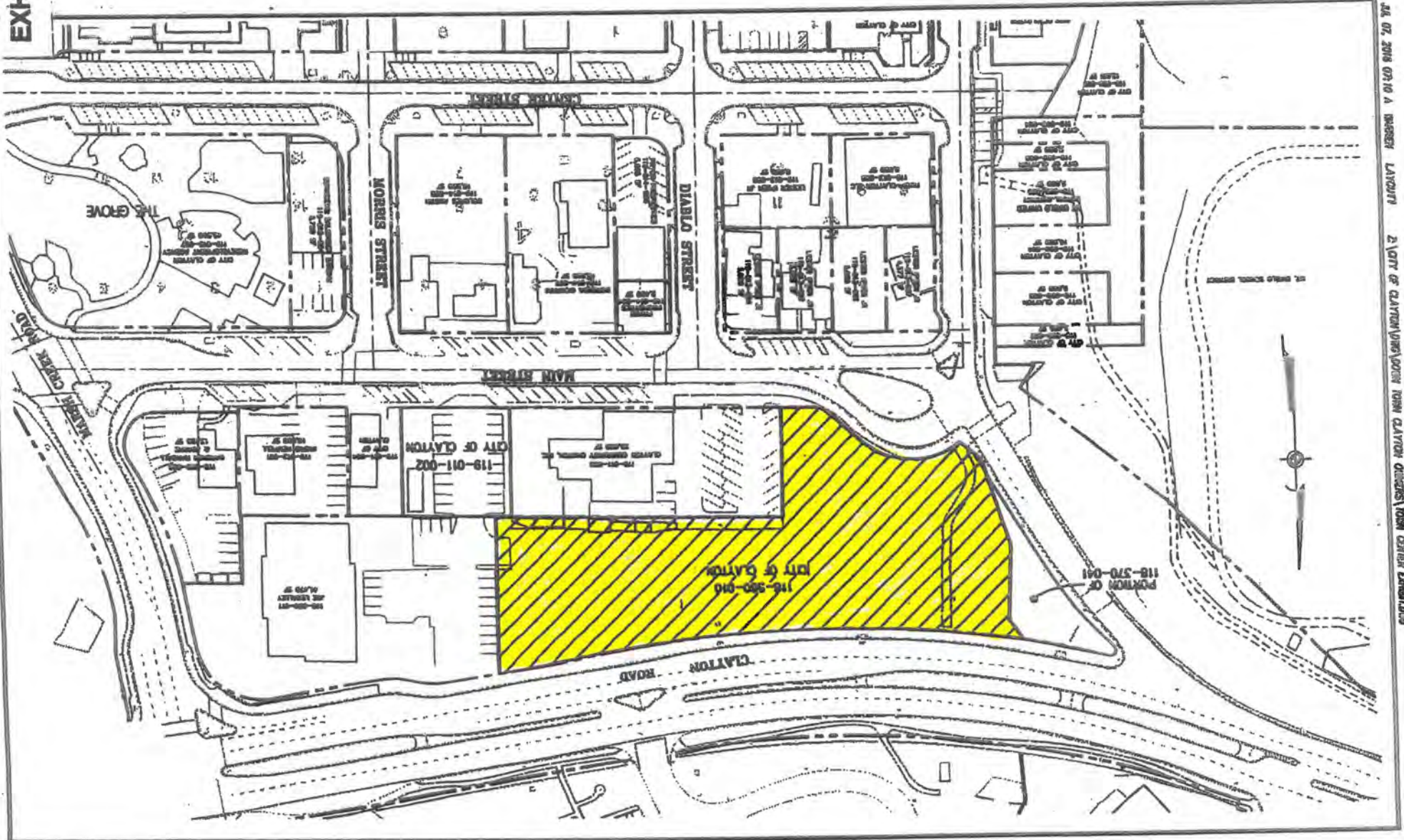
Printed Name and Title:

SEVEN RINK SENIOR EXECUTIVE VP  
AUTHORIZED SIGNATURE

EXHIBIT A

MAP OF THE PROPERTY

[To Be Inserted]





What We  
Believe In!



Bringing a higher quality of life to  
the senior residents and  
communities we serve.

## Who We Are



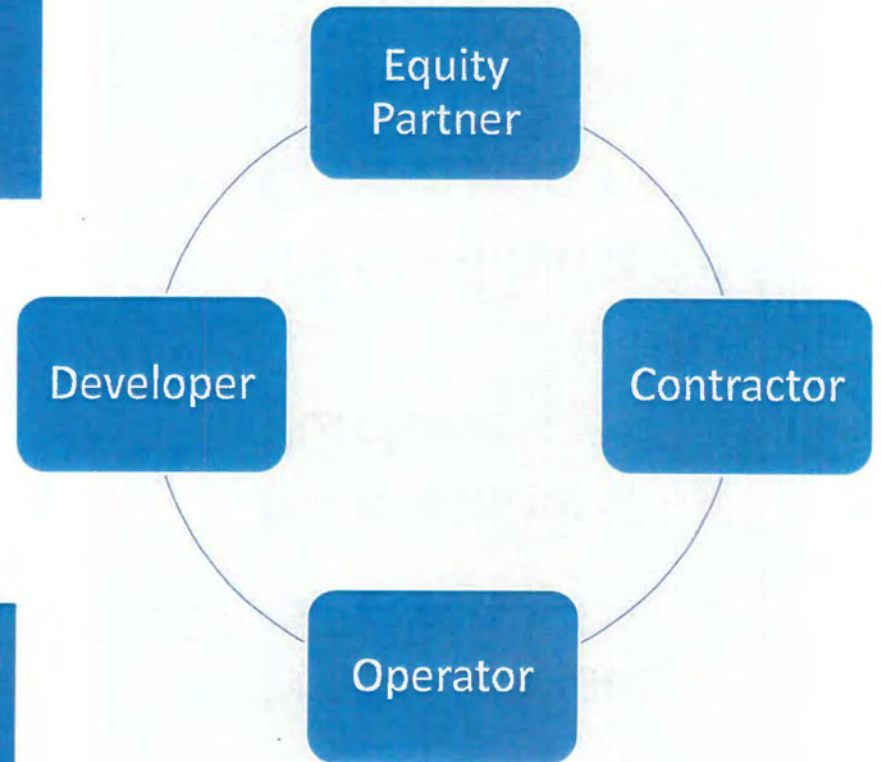
Fulcrum Real Estate Development and Chronograph Properties are partners in the development and operations of assisted living and memory care communities.

We both bring strengths that include site acquisition, obtaining entitlements, permitting, construction and continued operations.

**We are long term owners.**

**Our sole focus is senior housing.**

# Integrated Approach



Equity and  
Financing

**MEYER**<sup>®</sup>  
CORPORATION

Equity In Place

No Qualifying for  
Purchase

No Qualifying for  
Construction Loan




# Development Experience





David Ford – over 40 years experience in real estate and development. Responsible for over \$12B in assets within the Western Region.

Steve Ring – over 35 years experience in real estate and development. Responsible for over \$16B in assets and 27M square feet in Bay Area.



Jason Reyes – over 15 years experience in senior living operations and development in the Bay Area.



# Operations Experience

Jason Reyes – over 15 years experience in senior living operations and development in the Bay Area.



Chronograph Properties started as a family based operations in the Solano County region and has expanded throughout the Bay Area. Chronograph Properties has a regional management team with an average of 30 years experience in the industry.

# Construction Experience

BLUE MOUNTAIN  
ENTERPRISES

Blue Mountain Enterprises – established in 1982 and based in Solano County is a renowned contractor specializing in Senior Living, Multi-Family, Single-Family, HVAC and other Construction Services. Pacing over \$217M in revenue for 2017.

BME is a wholly owned subsidiary of Meyer Corporation ([www.meyer.com](http://www.meyer.com)). A 100 year old company with \$1 billion revenue in 2016. Second largest manufacture and distributor of pots & pans in the WORLD.



## Advantages of Local Presence

Current with Local Planning and  
Development Standards

Long History of Working With  
Local Vendors and Consultants

Long Term Relationships with  
Architects, Project Managers,  
Contractors

Helped Develop California Green  
Codes, Title 24 and Sustainability

Access to Nearby Staffing and  
Resources

Recent and Current History of  
Local Construction



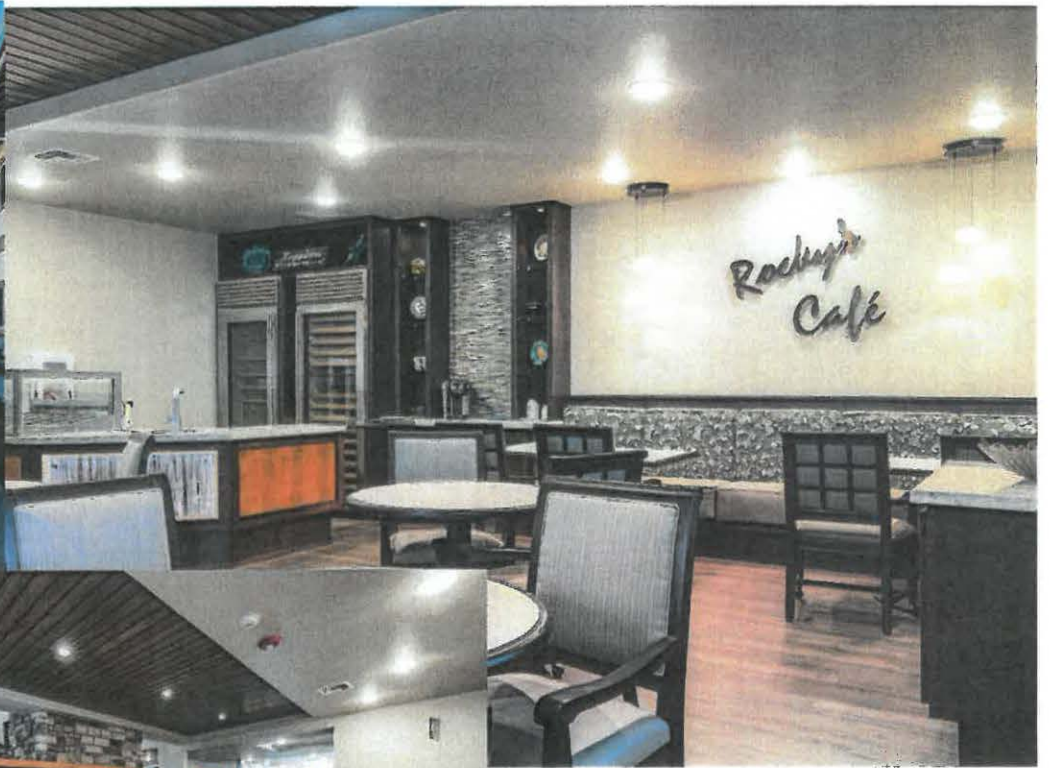
# Operating Communities



Rockville Terrace  
4625 Mangels Blvd., Fairfield CA 94534  
148 Total Units -112 Assisted Living, 36 Memory Care  
Opened September 2016  
82% occupied



Rockville Terrace



Rockville Terrace

# Operating Communities

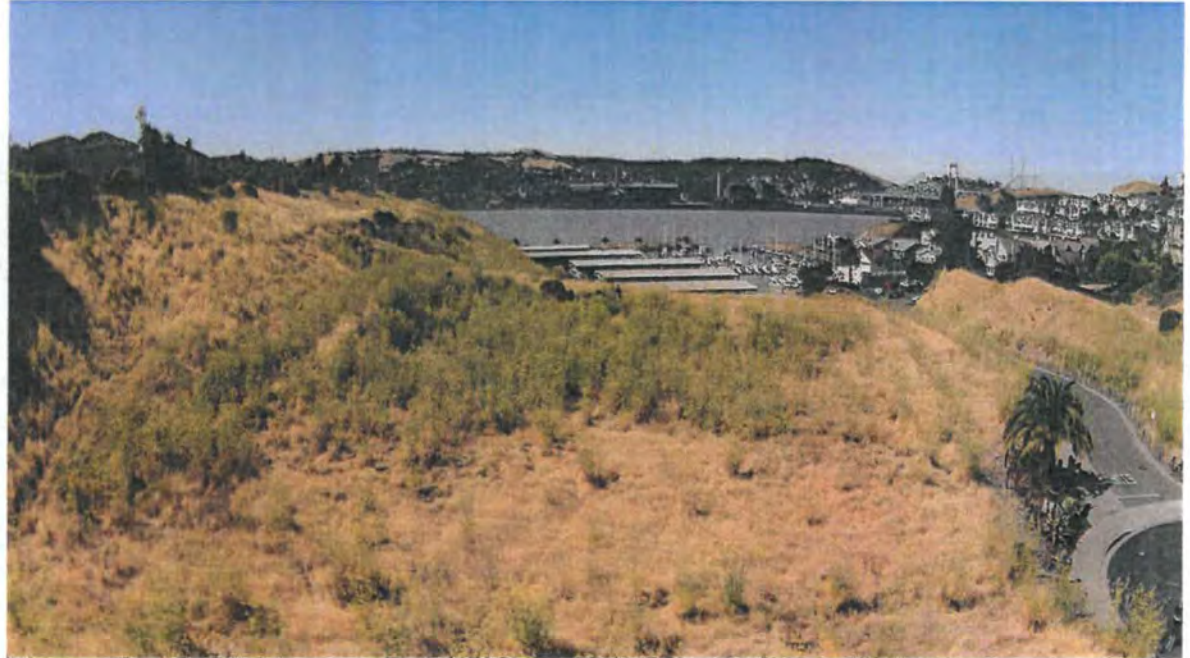
Cornerstone Assisted Living  
40 Orange Tree Circle, Vacaville CA 95687  
112 Total Units – Assisted Living Only  
Opened September 2014  
98% occupied



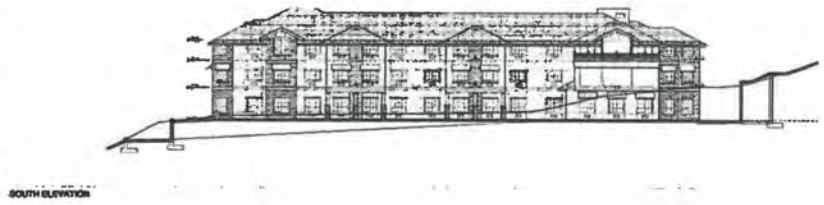


Cornerstone Assisted Living

# Communities Under Development



The Lodge at Glen Cove  
Glen Cove Marina Road, Vallejo CA  
Proposed 111,000 square feet - 140 Total Units  
Projected Opening Date – Spring 2019



The Lodge at Glen Cove



A. North Elevation



B. East Elevation

THE LODGE AT GLEN COVE  
RESIDENCES

# Communities Under Development



San Ramon Memory Care  
19001 San Ramon Valley Blvd, San Ramon, CA  
Proposed 25,000 square feet – 50 Units  
Projected Opening Date – Spring 2019





San Ramon Memory Care



# Communities Under Development



Bakersfield Senior Village  
5151 Knudsen Drive, Bakersfield, CA  
Proposed 37,000 square feet – 68 Units  
Projected Opening Date – Summer 2018



Bakersfield Senior Village

# Communities Under Construction



Cornerstone Memory Care  
80 Orange Tree Circle, Vacaville CA 95687  
50 Memory Care Units  
Projected Opening – February 2018

Community  
Sites  
Under Contract



Los Gatos CA

El Dorado Hills CA

Sausalito CA

San Jose CA

# Our Observations of Downtown Clayton



Sense of Small Town Community.

Limited Neighborhood Based Retail.

Bocci Courts and West End of downtown draws residents on warm evening and weekends.

Bike/walking path connects the City offices and Library to Main Street.

Currently, the subject parcel is used for overflow parking for events such as the City Christmas Tree Lighting.

# A Vision for Downtown Clayton



**Keep the Small Town Feeling.**

**Bring residents Downtown and invigorate the community during hours other than evenings and weekends.**

**Maintain a low traffic impact and create a walkable community.**

**Reinvigorate the bike/walking path so residents can use the library and City offices.**

**Create an outside sitting area for Clayton residents to enjoy. Patio tables and chairs and beverages.**

# Our Vision for The Grand Oak



Bringing needed assistance to over 100 Clayton senior citizens

Utilizing the walkability paths to the library or parks and trails that surround Main Street

Add additional retail to the area such as coffee and baked goods that will attract Clayton residents to mingle or stay downtown under patio umbrellas and tables.

Community based events at the *Grand Oak*.

Integrate more seniors into events and programs in Clayton.



# Advantages of Our Team



Principals/Decision Markers are Northern California Based.

Nearly 100 Combined Years of Experience within the Bay Area.

Integrated Approach has Equity and Debt in Place from Day One.

Long Term Relationships with Local Architects, Project Managers, Contractors.

Accessibility to Nearby Staff & Resources.

"Best of" Awards For Level of Care in multiple communities.

**Long-Term Holder of Real Estate.**

**Solely Focused on Senior Housing.**



Agenda Date: 11-07-2017

Agenda Item: 8b

# STAFF REPORT

Approved:

Gary A. Napper  
City Manager

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: Gary Napper, City Manager**

**DATE: November 7, 2017**

**SUBJECT: Adopt a Resolution Appointing Joseph Kreins as Interim Chief of Police, pursuant to California Government Code Section 21221(h)**

## **BACKGROUND**

The Clayton chief of police position will become vacant on the pending resignation of Police Chief Chris Wenzel, effective November 13, 2017. State law provides that cities which are part of the CalPERS retirement system (such as Clayton) can appoint CalPERS retirees (annuitants) to fill vacant positions (for example: a chief of police or a city manager) when needed on an interim basis. This practice allows cities to obtain the services of experienced professionals to manage key municipal operations during the period while an open recruitment is underway to fill the vacant position.

## **DISCUSSION**

Mr. Joseph Kreins, who has extensive local law enforcement management experience, including eight years as Novato Police Chief (2004-2012) and Interim Novato Police Chief (August 2016 – February 2017), has met with our city manager and there is mutual agreement for him to serve as our Interim Police Chief. Chief Kreins will perform the full range of chief of police duties as set forth in the City's job description for this position.

Although the chief of police is appointed and supervised by the City Manager, recent state law (enacted as part of the CalPERS' retirement system reforms) requires the associated City Council make the appointment of CalPERS retirees to interim management positions such as this chief of police situation. The new CalPERS appointment process does not modify the Municipal Code provisions regarding who makes the selection or to whom the interim chief of police reports.

The terms of this at-will appointment are as follows:

1. Appointment Date: November 13, 2017
2. Work Schedule: Full time (regularly 40 hours per week)
3. Duration of Appointment: Up to May 7, 2018 (note: state law requires specific end date)
4. Hourly Pay Rate: \$60.85 (top step of Police Chief monthly pay range ÷ 173.333)
5. Benefits: None

Under additional CalPERS regulations, a CalPERS annuitant (Mr. Kreins is one) cannot work for a CalPERS agency (like Clayton) for more than 960 hours per fiscal year or the annuitant risks retirement status and the employing public agency incurs pension contribution liabilities. The calculated duration of Chief Kreins' interim appointment should provide sufficient time to complete the recruitment and selection process and is the date beyond which the imposed time limit cannot exceed. Further, the CalPERS state law reforms do not allow an annuitant to serve twice in the same capacity in the same public agency on an interim basis.

**RECOMMENDATION**

Adopt the attached Resolution appointing Joseph Kreins as Clayton's interim Chief of Police until May 7, 2018.

**FISCAL IMPACT**

Since the position is being filled on an interim basis and no benefits are provided, there will be monetary savings in the budgeted salary and benefit accounts for the permanent position to cover the cost of this appointment.

Attachments: Resolution – 2 pages  
Resume - 4 pages

**RESOLUTION NO. - 2017**

**A RESOLUTION APPOINTING JOSEPH KREINS AS INTERIM CHIEF OF POLICE  
PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 21221(h)**

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

**WHEREAS**, the Clayton City Manager interviewed and selected Mr. Joseph Kreins as a qualified and experienced law enforcement executive to serve in the interim vacant position of Chief of Police for the City of Clayton, commencing November 13, 2017, subject to CalPERS' associated laws that require the local governing body to adopt a Resolution making the official appointment of a CalPERS retired annuitant for necessity; and

**WHEREAS**, this interim vacancy and appointment need arose due to the voluntary resignation of the City's current Chief of Police, Chris Wenzel; Mr. Kreins is presently a retired annuitant of the California Public Employees Retirement System ("CalPERS") and CA Government Code, Section 21221(h) allows the interim employment of a CalPERS annuitant provided such employment of the retired individual shall only be made once by the respective public agency to the specific position and in this instance it must end on or before May 7, 2018 due to a 960 hours interim employment work restriction per fiscal year in CalPERS public agencies; and

**WHEREAS**, compensation paid to employed CalPERS retirees in such circumstances cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333, to determine the hourly rate; and

**WHEREAS**, the current maximum base salary for the Clayton chief of police position is \$10,550 per month with an hourly rate equivalent of \$60.87, and the minimum base salary for said City position is \$8,680 per month with an hourly rate equivalent of \$50.08; and

**WHEREAS**, the negotiated hourly rate to be paid to Joseph Kreins has been set at \$60.85; and

**WHEREAS**, Joseph Kreins has not and will not receive any other employment benefits, incentives, compensation in lieu of benefits or other form of compensation in addition to this hourly pay rate;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of Clayton, California, does hereby appoint Joseph Kreins, a CalPERS retired annuitant as described herein, to the position of Interim Clayton Chief of Police, and does herein find this appointment is necessary to fill the critically necessary position of Chief of Police for the City of Clayton commencing November 13, 2017, recognizing Mr. Joseph Kreins possesses specialized skills required by the City for performance in this position.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held the 7<sup>th</sup> day of November 2017 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Jim Diaz, Mayor

ATTEST:

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

## Resume

### **Joseph M. Kreins**

**Experience:** Thirty-eight years of progressive leadership, management and law enforcement experience, including serving the past 17 years as the Chief of Police in the cities of Vallejo, Novato, Sausalito, Benicia and Winters California:

- 2015 - Present POST Team Building Workshop Facilitator/Presenter
- 2010 - Present Leadership, Management and Law Enforcement Consultant – Kreins Consulting
- 2017 - 2017 Consultant – City of Novato
- 2016 – 2017 Interim Chief of Police – City of Novato
- 2015 - 2016 Interim Chief of Police – City of Winters
- 2015 - 2016 Public Safety Consultant – Special Advisor – Management Partners
- 2014 - 2015 Interim Chief of Police – City of Benicia
- 2012 - 2014 Chief of Police – City of Vallejo, California
- 2011 - 2012 Law Enforcement/Safety Consultant – Sonoma-Marin Area Rail Transit
- 2004 - 2012 Chief of Police – City of Novato, California
- 2003 - 2004 Chief of Police/Assistant City Manager – City of Sausalito, California  
Responsible for Police, Fire, Information Technology and Parking Services
- 2001 - 2003 Chief of Police – Sausalito Police Department
- 1998 - 2001 Lieutenant/District Commander – Concord, CA Police Department
- 1996 - 1998 Sergeant assigned to Youth Services Bureau - Investigations – Concord PD
- 1995 - 1996 Sergeant assigned to the Field Operations Division – Concord PD
- 1992 - 1995 Public Information Officer – Media Liaison, Chief Adjutant - assigned to the Office of the Chief of Police – Concord PD
- 1991 - 1992 Corporal – Field Training Officer, assigned to Field Operations – Concord PD
- 1990 - 1991 DARE Officer, assigned to Youth Services – Concord Police Department
- 1985 - 1990 Police Officer – Concord Police Department
- 1980 - 1985 Police Officer, Corporal, Field Training Officer, Acting Sergeant – Sausalito PD

**Education:** Golden Gate University, Bachelor of Arts, Human Relations Management  
Magna cum laude - 1990  
Diablo Valley College, Associate of Arts, Liberal Arts - 1984

**Credentials:** POST Executive Certificate - 2003  
All POST Certificates, Basic, Supervisory, Management, Executive – 1981-2003

**Teaching:** Police/Media Relations and Crisis Communications – POST Supervisors School,  
POST Basic Academy, California State Training Institute (CSTI)  
Community Policing/Problem Solving – Leadership and Management -  
POST Supervisors School, POST Basic Academy,  
Advanced Officer and Leadership Training – Multiple Subjects - Concord, Sausalito,  
Novato, Vallejo, and Benicia Police Departments  
Role Development for First-Line Supervisors - POST Executive Development Course

### **Key Leadership/Management Experience:**

- Executive Management
- Organization Analysis - Organization Development
- Media Relations – Crisis Communications – Community Outreach
- Leadership and Management Training - Team Building Facilitation
- Emergency Management and Emergency Operations
- Operations Improvement and Efficiency
- Strategic, Business and Succession Planning
- Performance Management – Process Improvement
- Financial Planning and Budgeting
- Recruitment at all levels of the Law Enforcement Organization
- Technology Implementation – Law Enforcement Systems

### **Training: 3000+ hours of Law Enforcement, Management and Leadership Training**

- FBI Law Enforcement Executive Development Course
- Senior Management Institute for Policing (SMIP) – Boston University – Sponsored by the Police Executive Research Forum (PERF)
- Legal Update Seminars – Personnel Law Review
- POST - Executive Development Course
- POST - Management Course
- POST – Role of the Police Chief Course
- POST – Chief/City Manager Team Building Workshop
- FBI Law Enforcement Leadership and Executive Development Training
- Numerous Management/Leadership Seminars through IACP, PERF, FBI, CPCA and CPOA
- Disaster Preparedness and Emergency Management Training
- Anti-Terrorism Training
- Crowd Control – Special Events Training
- Special Events Management
- Community Policing – Supervising the Problem-Solving Process
- Community Strategies Against Hate Crimes
- Crisis Communication and the Media
- Investigation of Officer Involved Fatal Incidents
- Behavioral Analysis – Interview & Interrogation
- Disaster Preparedness – Hazardous Materials Training
- Risk Management – Civil Liability - Safety Assessment Training
- Chamber of Commerce - Leadership Programs

### **Affiliations:**

- International Association of Chiefs of Police (IACP)
- California Police Chiefs Association – Board of Directors
- Solano County Law Enforcement Association – Past President
- Marin County Police Chiefs Association – Past President
- Police Executive Research Forum (PERF)
- California Peace Officers Association (CPOA)
- Rotary Clubs of Concord, Sausalito, Novato - Board of Directors
- Marin Emergency Radio Authority (MERA) - Board of Directors
- Marin County Major Crimes Task Force – Board of Directors
- Mt. Diablo YMCA – Board of Directors

**Professional/Personal References:** Available upon request

## **BIOGRAPHY - JOSEPH M. KREINS – POLICE CHIEF - CONSULTANT – OCTOBER 2017**

Chief Joseph Kreins has 37 years of law enforcement experience. His expertise includes the full range of policing disciplines based on experience in several small and medium-sized cities.

Chief Kreins has developed expertise on best practices in policing, organization and command structures, community outreach programs and media relations, emergency operations, advanced officer training, law enforcement technology systems and volunteer programs. He served as the first-ever Public Information Officer/Media Relations Coordinator with the Concord Police Department.

Chief Kreins began his career as a police officer with the City of Sausalito in 1980. He was then hired by the Concord Police Department in 1985 and rose through the ranks, completing his tenure with Concord as a lieutenant/district commander. In 2001, he was appointed chief of police for the Sausalito Police Department. Two years later he was promoted to assistant city manager, along with his position of police chief. In 2004, he was appointed chief of police for the City of Novato, a community of approximately 55,000. He led that department until 2012 when he was recruited to serve as chief of police for the City of Vallejo, a community of 115,000.

He provided leadership in Vallejo during a critical period, following that city's emergence from bankruptcy. During that time police staffing levels were significantly reduced due to financial challenges and there were serious concerns about crime in Vallejo.

Chief Kreins recently worked as an organizational consultant for the City of Novato. He has also served as the Interim Chief of Police for the Cities of Vallejo, Benicia, Winters and again in Novato. He also works as a Public Safety Consultant with expertise in organizational management and is a POST Certified Team Building Workshop (TBW) Presenter. Chief Kreins facilitated two (2) POST Team Building Workshops in 2015 for the Visalia Police Department and the Central Marin Police Authority and also completed an Organizational Audit of the CMPA. He facilitated TBW's for the Winters, Avenal and San Leandro Police Departments in 2017.

Chief Kreins holds a Bachelor of Arts Degree in human relations management from Golden Gate University (magna cum laude). He holds all public safety certificates from the California Peace Officer Standards Training (POST), including a certificate in executive management. He has completed the Federal Bureau of Investigation Law Enforcement Executive and Leadership Development programs and the Senior Management Institute for Policing, sponsored by the Police Executive Research Forum.

Chief Kreins has attended many legal update seminars, and numerous management and leadership seminars through the International Association of Chiefs of Police, Police Executive Research Forum, Federal Bureau of Investigation and California Police Chiefs Association.



Chief Kreins is a member of the International Association of Chiefs of Police (IACP), has served on the board of directors for the California Police Chiefs Association, and was president of the Solano County Law Enforcement Association and Marin County Police Chiefs Association.

Chief Kreins is a member of the California Police Chiefs Association, Police Executive Research Forum and California Peace Officers Association (CPOA). He served on the board of directors of the Marin Emergency Radio Authority, and the Marin County Major Crimes Task Force.

Chief Kreins has held leadership positions in Rotary International and the Mt. Diablo YMCA. He has taught a variety of basic and executive level courses including disaster preparedness, police-media relations, crisis communications, community-policing/problem solving, strategic planning, leadership principles for supervisors and managers; and also developing first line supervisors within the law enforcement agency.