



AGENDA

REGULAR JOINT MEETINGS

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CLAYTON CITY COUNCIL and OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT (GHAD)

* * *

TUESDAY, November 21, 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
- 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 21, 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 November 7, 2017.

[\(View Here\)](#)

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

(c) Confirm the Mayoral reappointment of Peggie Howell to the Board of Trustees for the Contra Costa Mosquito and Vector Control District as Clayton’s representative for the term of January 1, 2018 to January 1, 2020. [\(View Here\)](#)

(d) Approve a City letter opposing the proposed elimination of state and local tax deductions (SALT) being discussed and contained in Congressional Tax Reform Plans. [\(View Here\)](#)

(e) Deny a liability claim filed against the City by Ms. Raina Dennis regarding the death of her daughter, Maria Gaglione, and authorize the City Clerk to send the Notice of Rejection. [\(View Here\)](#)

(f) Deny a liability claim filed against the City by Mr. Michael Gaglione regarding the death of his daughter, Maria Gaglione, and authorize the City Clerk to send the Notice of Rejection. [\(View Here\)](#)

(g) Approve the City Council cancellation of its regularly scheduled Council meetings of December 19, 2017 and January 2, 2018. [\(View Here\)](#)

4. **RECOGNITIONS AND PRESENTATIONS**

(a) Proclamation declaring November 2017 as “Homeless Awareness Month”.

[\(View Here\)](#)

5. REPORTS

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

6. PUBLIC COMMENT ON NON - AGENDA ITEMS

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

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

7. PUBLIC HEARINGS – None.

8. ACTION ITEMS

- (a) Consider the Second Reading and Adoption 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).** Receive public comments; **3).** 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; **4).** Upon completion of the City Clerk's reading, by motion adopt Ordinance No. 479 with finding 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.

- (b) Consider the Second Reading and Adoption 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).** Receive public comments; **3).** 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; **4).** On completion of the City Clerk’s reading, by motion adopt Ordinance No. 480 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.

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

- 10. **CLOSED SESSION** – None.

- 11. **ADJOURNMENT**
The next regularly scheduled meeting of the City Council will be December 5, 2017.

#

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

Agenda Date: 11-21-2017

Agenda Item: 3a

TUESDAY, November 7, 2017

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:02 p.m. by Mayor Diaz in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Diaz, Vice Mayor Haydon and Councilmembers Catalano, Pierce, and Shuey (arrived at 7:16 p.m.). Councilmembers absent: None. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Community Development Director Mindy Gentry, and City Clerk/HR Manager Janet Brown.

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

3. **CONSENT CALENDAR**

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

- (a) Approved the minutes of the City Council's regular meeting of October 17, 2017.
- (b) Approved Financial Demands and Obligations of the City.
- (c) Approved the City's Investment Portfolio Report for the 1st Quarter of FY 2017-18 ending September 30, 2017.
- (d) Adopted Resolution No. 43-2017 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.
- (e) Approved 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).

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.

Mayor Diaz announced this is an item of City sadness but one of personal happiness for Police Chief Chris Wenzel, who has been with the City since November 2015 and is leaving Clayton employment for health and personal reasons. Mayor Diaz presented Chief Wenzel with an appreciation plaque for his valued and dedicated service to the Clayton community.

Chief Wenzel thanked the City Council for providing him the opportunity to serve the Clayton community. He then presented the City Council with a U.S.A. Flag flown over the National Capitol that was obtained from Congressman DeSaulnier's office. Chief Wenzel then gifted to the City a shadow box he had made displaying police officer patches from every city of Clayton in the United States. Chief Wenzel concluded his remarks by noting the Clayton Police Department has dedicated professionals on staff ready to serve and protect the Clayton community.

Vice Mayor Haydon, Councilmember Catalano, and City Manager Napper each thanked Chief Wenzel for his service to the Clayton community. Councilmember Pierce told Chief Wenzel he will be missed.

Dominic Aliano, on behalf of County Supervisor Karen Mitchoff, presented Chief Wenzel a certificate of appreciation for his services.

- (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.

Mayor Diaz and second grade teacher Amber Sharapata presented Certificates to students Preston Marks and Isabella Murillo.

[Councilmember Shuey arrived at 7:16 p.m.]

Mayor Diaz and Diablo View Middle School Principal Patti Bannister presented Certificates to students Noellani Garcia and Dominic Vines.

- (c) Recognition of a \$39,000 grant from Andeavor Foundation for the City's purchase of a Citizen Emergency Team (CERT) trailer.

Police Chief Wenzel provided Tom Lu, Refinery Manager from the Andeavor Foundation, with a City Certificate of Recognition for its very generous donation of grant monies to obtain a Citizen Emergency Response Team (CERT) trailer. Mr. Lu shared background information on the Foundation's purpose and mission, and Ms. Nicol Carranza, Government and Public Affairs Specialist, presented the City with an enlarged check symbolizing the \$39,000 grant donation for purchase of a Citizen Emergency Response Team (CERT) trailer.

5. REPORTS

- (a) Planning Commission – Commissioner Peter Cloven indicated the Commission's agenda at its meeting of October 24, 2017 included two (2) City-initiated Ordinances amending the Clayton Municipal Code to: 1. Allow six-foot high fences to be located within the required exterior side setback or at the public right-of-way line; and 2. 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 of Clayton. These items were unanimously approved by the four (4) Commissioners present.
- (b) Trails and Landscaping Committee – No meeting held.
- (c) City Manager/Staff – No report.

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

Councilmember Catalano attended the recent meeting of the East Contra Costa Habitat Conservancy as the City's alternate voting delegate, as Vice Mayor Haydon was unavailable to attend.

Councilmember Pierce attended a Contra Costa Transportation Authority meeting, the National Association of Regional Councils 2017 Board Retreat in San Antonio, Texas on behalf of the Association Bay Area Governments, several Metropolitan Transportation Committee meetings, the Cal Poly Alumni Celebration and Awards Dinner whereat Randell Iwasaki, Executive Director Contra Costa Transportation Authority, received the college's Sandra Gardebring Ogren Leadership Award in appreciation for his longtime professional mentoring of Cal Poly alumni and graduates.

Councilmember Shuey reported someone contacted him expressing interest in using the Keller House; if it is a viable interest, it will be formally presented to the City for consideration.

Vice Mayor Haydon attended the Clayton Business and Community Association's General Membership meeting, and the Clayton Bocce Summer League Finals.

Mayor Diaz attended a County Connection Board meeting, the East Bay League of California Cities meeting, the Mayors' Conference hosted by the City of Moraga, and a performance of the Clayton Theatre Company's production of "The 1940's Radio Hour" at Endeavor Hall.

- (e) Other – None.

6. PUBLIC COMMENT ON NON - AGENDA ITEMS

Claudia Crockett, Chaparral Springs, expressed her concerns of potential fire hazards based on the conditions located along Oakhurst Golf Course consisting of several dead trees, debris and garbage. Ms. Crockett had contacted the golf course several times; however, its staff has been unresponsive or has resigned. Ms. Crockett asked if the City could put pressure on the golf course to resolve the potential fire hazards.

John Barclay, employee of the Contra Costa Health Services Department and Director of Home and Community Based Service, Good Health and Case Management, provided information regarding the homeless population throughout Contra Costa County, and in the City of Clayton which by this year's count has 10 homeless 5 of which are "chronic." Mr. Barclay requested the City Council adopt a proclamation at its next regular meeting addressing this county-wide issue. He noted generally, 50% of the homeless population is children.

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.

Community Development Director Mindy Gentry presented the staff report noting the City Council previously directed staff to prohibit all commercial cannabis activities including retail sales, commercial cultivation, distribution, testing and manufacturing, and regulate deliveries of both cannabis and adult use cannabis that originating outside of the city limits. The proposed Ordinance does prohibit all the previously disclosed commercial activities pertaining to cannabis and includes regulations in place for delivery of these products. The regulations include all employees delivering cannabis will have to carry a copy of the licensee's current state license, a driver's license, an employee identification card, a City of Clayton business license and a copy of the delivery request. The Ordinance also states no cannabis can be stored in the city, all deliveries will require a signature and proof of identification, and deliveries to physical residential addresses only with no porch drop-offs allowed.

Councilmember Catalano inquired if there is a definition of "adult use"; is it imbedded in state legislation? Ms. Gentry advised it is contained within the State legislation which is 21 years of age.

Councilmember Catalano noted it is proposed all cannabis deliveries require signature and proof of identification; what is the reasoning behind that requirement? Ms. Gentry responded the concern is having someone over the age of 21 requesting the delivery and the delivery being made to that correct eligible individual to prevent a miss-delivery or unlawful receipt. Porch drop offs are not allowed to prevent someone from gaining access to the product who did not request it.

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

It was moved by Councilmember Pierce, seconded by Vice Mayor Haydon, 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 Councilmember Pierce, seconded by Vice Mayor Haydon, to approve Ordinance No. 479 for Introduction with the finding 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. (Passed; 5-0 vote).

- (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.

Community Development Director Mindy Gentry noted at the City Council meeting of October 3, 2017 policy direction was provided to staff to amend the Clayton Municipal Code to allow placement of six-foot high fences within the required exterior side setbacks or at the public right-of-way line. Currently, the Clayton Municipal Code allows fences on exterior side lots to be a maximum of 30 inches in height within 5 feet of the property line with a maximum of 6 feet in height in the remaining portion of the exterior side setback.

Staff views the current fencing regulations for exterior side setbacks as a questionable regulation because the residential property owner will either compromise its privacy by having a fence only 30 inches in height or must sacrifice usable private land in order to

have a six foot fence with added privacy. The required 5 foot set back from the property line creates a larger unusable area when coupled with the 5 foot setback of public right-of-way directly behind the sidewalk on the exterior side yard. She noted the City does not plant or maintain these adjacent public rights-of-way and it is left up to the property owner. If six-foot tall fences were allowed on the property line it would reduce the number of illegal fences throughout the city and the amount of space to be landscaped or left barren back of sidewalk to the fence.

Councilmember Pierce requested clarification: this Ordinance only deals with the location of the six-foot fence and not retaining walls or encroachments into public rights-of-way? Ms. Gentry responded that is correct, the discussion this evening is only on private fence locations.

Councilmember Catalano inquired if there is a different Municipal Code section pertaining to retaining walls and the addition of a fence so as not to create an overall fence exceeding 6 feet in height. Ms. Gentry advised that regulation is indeed addressed in a separate section of the Municipal Code.

Vice Mayor Haydon inquired if this Ordinance will resolve previous illegal fence violations. Ms. Gentry responded its passage will create less illegal violations within the city

Mayor Diaz opened the Public Hearing.

Mark Kelson, 29 Tiffin Court, expressed his concern the City's right-of-way is not always at 5 feet away from the curb; fences placed directly on the edge of the sidewalk impair pedestrian visibility. Ms. Gentry responded there are areas, for example, along Keller Ridge Drive where the fence is placed at the back edge of sidewalk but there is a green belt between back of curb and front edge of sidewalk to create space. She noted the public rights-of-way lines do indeed vary throughout the city and are location dependent.

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

It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to have the City Clerk read Ordinance No. 480, by title and number only and waive further reading. (Passed; 5-0 vote).

The City Clerk read Ordinance No. 480 by title and number only.

It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to approve Ordinance No. 480 for introduction with the finding 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. (Passed; 5-0 vote).

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).

City Manager Napper noted in April 2013 the City purchased an unimproved vacant parcel off Main Street, behind Clayton Community Church, from the Clayton Community Church for \$1 million in cash. The purchase was made for economic development purposes in the downtown center and shortly thereafter the City placed "For Sale" signs on the property. After approximately one year with no interests, the City invited proposals from commercial realty companies who could assist with marketing and listing that property for sale.

The City Council determined the best partnership would be with Transwestern, which has since been marketing that property for sale and development. The current zoning for the property is retail-commercial on the ground floor with mixed uses allowed on the second floor. Transwestern went to 650-700 retail establishments to see if anyone was interested in the Clayton opportunity. Unfortunately, there were not any responses for commercial retail. Transwestern did receive four (4) proposals in 2015 and 2016: two (2) for medium to higher residential uses on the entire property, and the other two (2) developers were interested in mixed uses having limited commercial retail with a senior care facility of assisted living or memory care facility as the primary use. Currently in this county there is a need for senior assisted living facilities.

In July 2016 the City approved an Exclusive Negotiation Agreement with Pacific Union Land Investors, LLC, for its eventual purchase and development of a senior/memory care facility with some minor retail. Pacific Union offered \$1.62 million for the City's land and both parties agreed the proposed project could be enhanced if they were able to obtain the adjoining property for sale and owned by the Clayton Community Church. Unfortunately, the timing was not right for the church and despite examining a stand-alone facility on just the City's land, Pacific Union Land Investors eventually informed the City in early summer 2017 it would not be filing a land use application for the project concept.

Transwestern went back out into the commercial market in 2017 to find other developers interested in the property with the concept of senior care facilities with some retail development on the ground floor. The City Council's Economic Development Sub-Committee then met with two prospective developers: Vesta Development Company, and Fulcrum Development, LLC. After series of negotiations with both parties, Fulcrum Development presented the most viable project proposal for consideration of land use development as a senior assisted-living and memory care facility with some limited commercial retail on the ground floor. The purchase price of the land is \$1.9 million.

City Manager Napper indicated Fulcrum Development, LLC is in the business of developing and operating assisted living and memory care facilities. Currently it has two (2) similar operating facilities located in Fairfield and Vacaville, and three (3) developments in various stages located in Vallejo, San Ramon, and Bakersfield. It also has contracts for similar facilities under contract in Los Gatos, El Dorado Hills, Sausalito, and San Jose. Mr. Napper emphasized an Exclusive Negotiation Agreement is not a binding agreement on the City to ultimately sell its property or approve the use. The approval of the ENA allows the project review process to move forward under specific guidelines and processes. Mr. Napper shared a PowerPoint noting the ENA deal points and timetables.

Vice Mayor Haydon noted the prescribed three hundred (300) days after the filing of the full application but asked if it could be completed prior to three hundred (300) days? City Manager Napper responded it could take up to three hundred (300) days as this project will require a CEQA review and public hearings. The proposed ENA allows for worse-case scenarios; by not inserting too short of a time periods the process avoids delays for formal City Council time extensions at its regular public meeting schedule.

Councilmember Pierce suggested, assuming the ENA is agreed to tonight, by mid-May 2018 we could expect to receive a full application packet with sometime around March 2019 the land use entitlement process would be complete. Mr. Napper responded "yes"; the negotiated time frame with the developer included holiday downtimes and sufficient allowances for it to complete their due diligence to prepare its packet.

Councilmember Pierce recalled approximately one (1) year for construction, making the opening early 2020 or before? Mr. Napper advised that is correct; he added Fulcrum is very eager and excited to start this project as there is a market in this area with current senior facilities full and have waiting lists.

Councilmember Catalano inquired about the annual carrying costs on the property? Mr. Napper advised it is approximately \$8,000 per year to pay for all the special tax assessments on the land. While public property is exempt from paying assessed valuation property tax, a public entity is not exempt from payment of annual special parcel taxes approved by voters.

Councilmember Catalano noted the ENA indicates it will be approximately five hundred (500) days until the City Council is in a position to approve a project. Is there any need or potential use for any other thresholds, for example commencement of CEQA review or any foreseeable informational hearing for the Planning Commission? City Manager Napper responded those milestones were not addressed as those targets are not within the control of Fulcrum but rather City staff internally. Normally the City would not want an exclusive negotiation agreement to make those types of staffing promises with the limited amount of Community Development staffing levels that we have. There are other land use projects and tasks that the Community Development Department will be handling concurrently.

Mayor Diaz opened the item to public comment.

Ed Del Beccaro, Transwestern, added Fulcrum took to heart the architecture rendering critiques by the Council Sub-Committee and it will change the project's design, add some retail on Main Street, and square off the street frontage on Main Street.

No further comments were offered. Mayor Diaz then closed public comments.

It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to approve the Exclusive Negotiation Agreement (ENA) between the City of Clayton and Fulcrum Development, LLC and authorize the Mayor to sign on behalf of the City. (Passed; 5-0 vote).

- (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).
(City Manager)

City Manager Napper advised Chief Wenzel will be leaving the City on November 13, as noted earlier this evening and the position is currently under recruitment to fill the vacancy. The City received seven (7) applications, with five (5) candidates selected for the initial interview process.

Since an immediate vacancy will occur in the position of Police Chief, Mr. Joseph Kreins expressed interest in filling the vacancy until the City hires a permanent Police Chief. Mr. Kreins brings eight (8) years' experience as the City of Novato's Police Chief, Police Chief of Vallejo and Sausalito, and Interim Novato Police Chief, P.O.S.T. Executive

Certification, and is well respected in his field. Mr. Kreins is also a CalPERS Annuitant and it is that fact, under recent Public Employee Pension Reform Act laws, which require the City Council to approve this interim hiring via a public agenda item. The required Resolution officially approves the hiring by the city manager and makes the finding that the employment of this CalPERS annuitant is essential to the conduct of business to the City and its police operations. Mr. Napper added that by CalPERS' laws, Mr. Kreins cannot be paid an hourly rate any higher than that salary of the permanent police chief (\$60.85/hour), and no other employment benefits are allowed.

Mr. Kreins introduced himself to the City Council and noted he looks forward to the opportunity to serve the Clayton community.

It was moved by Councilmember Pierce, seconded by Vice Mayor Haydon, to adopt Resolution No. 44-2017 appointing Joseph Kreins as Interim Chief of Police pursuant to California Government Code Section 21221(h). (Passed; 5-0 vote).

9. **COUNCIL ITEMS** – None.

10. **CLOSED SESSION**

Mayor Diaz announced the City Council will adjourn into Closed Session (8:38 pm) for the following noticed items:

- (a) *Government Code Section 54957*
Public Employee Annual Performance Evaluation
Position Title: City Manager

City Manager Gary Napper left the meeting at 9:29 p.m.

- (b) *Government Code Section 54957.6*
Conference with Labor Negotiators
Agency designated representatives: Mayor Diaz, Vice Mayor Haydon
Unrepresented employee: City Manager

9:42 p.m. **Report out of Closed Session**

Mayor Diaz reported the City Council received information from staff and provided policy directions to its labor negotiators. However, there is no public action to report.

11. **ADJOURNMENT**– on call by Mayor Diaz, the City Council adjourned its meeting at 9:42 p.m.

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

#

Respectfully submitted,

Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

Jim Diaz, Mayor

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Agenda Date 11/21/2017

Agenda Item: 3b

STAFF REPORT

Approved: 

Gary A. Napper
City Manager

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: Kevin Mizuno, FINANCE MANAGER 
DATE: 11/21/2017
SUBJECT: INVOICE SUMMARY

RECOMMENDATION:

Approve the following obligations:

11/17/2017	Cash Requirements	\$ 156,948.14
11/07/2017	ADP Payroll week 45, PPE 11/5/2017	\$ 102,136.86

Total \$ 259,085.00

Attachments:

Cash Requirements Report dated 11/17/2017 (5 pages)
ADP payroll report for week 45 (1 page)

City of Clayton Cash Requirements Report

<u>Vendor Name</u>	<u>Due Date</u>	<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Invoice Description</u>	<u>Invoice Balance</u>	<u>Potential Discount</u>	<u>Discount Expires On</u>	<u>Net Amount Due</u>
ADP, LLC								
ADP, LLC	11/21/2017	11/21/2017	503365788	Payroll fees PPE 11/5/17	\$174.51	\$0.00		\$174.51
<i>Totals for ADP, LLC:</i>					<u>\$174.51</u>	<u>\$0.00</u>		<u>\$174.51</u>
All City Management Services, Inc.								
All City Management Services, Inc.	11/21/2017	11/21/2017	51033	School crossing guard services 10/8/17-10/21/	\$443.28	\$0.00		\$443.28
<i>Totals for All City Management Services, Inc.:</i>					<u>\$443.28</u>	<u>\$0.00</u>		<u>\$443.28</u>
Aqua Dream Pools								
Aqua Dream Pools	11/21/2017	11/21/2017	CAP0240	Deposit refund for 645 Mt Duncan	\$1,904.55	\$0.00		\$1,904.55
<i>Totals for Aqua Dream Pools:</i>					<u>\$1,904.55</u>	<u>\$0.00</u>		<u>\$1,904.55</u>
Authorize.net								
Authorize.net	11/21/2017	11/21/2017	October 2017	Online gateway credit card fee for October	\$15.50	\$0.00		\$15.50
<i>Totals for Authorize.net:</i>					<u>\$15.50</u>	<u>\$0.00</u>		<u>\$15.50</u>
Bay Area Barricade Serv.								
Bay Area Barricade Serv.	11/21/2017	11/21/2017	0350276-IN	LED bulbs	\$205.68	\$0.00		\$205.68
<i>Totals for Bay Area Barricade Serv.:</i>					<u>\$205.68</u>	<u>\$0.00</u>		<u>\$205.68</u>
Bay Area News Group East Bay (CCT)								
Bay Area News Group East Bay (CCT)	11/21/2017	11/21/2017	0001087242	Legal ads for October	\$663.92	\$0.00		\$663.92
<i>Totals for Bay Area News Group East Bay (CCT):</i>					<u>\$663.92</u>	<u>\$0.00</u>		<u>\$663.92</u>
Best Best & Kreiger LLP								
Best Best & Kreiger LLP	11/21/2017	11/21/2017	808501	Legal services for October	\$8,500.00	\$0.00		\$8,500.00
Best Best & Kreiger LLP	11/21/2017	11/21/2017	808346	Legal services for October	\$135.00	\$0.00		\$135.00
Best Best & Kreiger LLP	11/21/2017	11/21/2017	808357	Legal services for October	\$147.50	\$0.00		\$147.50
Best Best & Kreiger LLP	11/21/2017	11/21/2017	808358	Legal services for October	\$1,182.50	\$0.00		\$1,182.50
<i>Totals for Best Best & Kreiger LLP:</i>					<u>\$9,965.00</u>	<u>\$0.00</u>		<u>\$9,965.00</u>
Burkett's Pool Plastering, Inc								
Burkett's Pool Plastering, Inc	11/21/2017	11/21/2017	8078	Deposit refund for 11 Capistrano Ct	\$452.27	\$0.00		\$452.27
<i>Totals for Burkett's Pool Plastering, Inc:</i>					<u>\$452.27</u>	<u>\$0.00</u>		<u>\$452.27</u>
CA Department of Justice								
CA Department of Justice	11/21/2017	11/21/2017	268160	Fingerprinting	\$59.00	\$0.00		\$59.00
<i>Totals for CA Department of Justice:</i>					<u>\$59.00</u>	<u>\$0.00</u>		<u>\$59.00</u>
CalPERS Retirement								
CalPERS Retirement	11/21/2017	11/21/2017	110517	Retirement PPE 11/5/17	\$15,077.38	\$0.00		\$15,077.38
<i>Totals for CalPERS Retirement:</i>					<u>\$15,077.38</u>	<u>\$0.00</u>		<u>\$15,077.38</u>
Caltronics Business Systems, Inc								
Caltronics Business Systems, Inc	11/21/2017	11/21/2017	2380680	Copier contract overage for October	\$366.97	\$0.00		\$366.97
<i>Totals for Caltronics Business Systems, Inc:</i>					<u>\$366.97</u>	<u>\$0.00</u>		<u>\$366.97</u>

City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
David Cartago & Charmaine Kennedy								
David Cartago & Charmaine Kennedy	11/21/2017	11/21/2017	8036	Deposit refund for 1026 Oak St #206	\$500.00	\$0.00		\$500.00
<i>Totals for David Cartago & Charmaine Kennedy:</i>					<u>\$500.00</u>	<u>\$0.00</u>		<u>\$500.00</u>
CCWD								
CCWD	11/21/2017	11/21/2017	E Series	Water/Irrigation 9/14/17-11/9/17	\$43,630.92	\$0.00		\$43,630.92
<i>Totals for CCWD:</i>					<u>\$43,630.92</u>	<u>\$0.00</u>		<u>\$43,630.92</u>
City of Concord								
City of Concord	11/21/2017	11/21/2017	62240	Emergency call-out for storm, Diamond Terr	\$503.61	\$0.00		\$503.61
City of Concord	11/21/2017	11/21/2017	62279	Business cards for Rodriguez	\$76.82	\$0.00		\$76.82
City of Concord	11/21/2017	11/21/2017	62280	CAFR printing	\$369.79	\$0.00		\$369.79
City of Concord	11/21/2017	11/21/2017	62229	Dispatch services for October	\$20,089.50	\$0.00		\$20,089.50
City of Concord	11/21/2017	11/21/2017	62252	Vehicle maintenance for October	\$1,831.41	\$0.00		\$1,831.41
<i>Totals for City of Concord:</i>					<u>\$22,871.13</u>	<u>\$0.00</u>		<u>\$22,871.13</u>
Clayton Valley Medical Group								
Clayton Valley Medical Group	11/21/2017	11/21/2017	8089	Deposit refund for CV Medical Group	\$500.00	\$0.00		\$500.00
<i>Totals for Clayton Valley Medical Group:</i>					<u>\$500.00</u>	<u>\$0.00</u>		<u>\$500.00</u>
Comcast								
Comcast	11/21/2017	11/21/2017	November	Internet for 11/10/17-12-9/17	\$386.08	\$0.00		\$386.08
<i>Totals for Comcast:</i>					<u>\$386.08</u>	<u>\$0.00</u>		<u>\$386.08</u>
Concord Garden Equipment								
Concord Garden Equipment	11/21/2017	11/21/2017	553502	Repair chainsaw	\$80.83	\$0.00		\$80.83
Concord Garden Equipment	11/21/2017	11/21/2017	553501	Sharpen hedge trimmer	\$55.00	\$0.00		\$55.00
Concord Garden Equipment	11/21/2017	11/21/2017	553500	Sharpen hedge trimmer	\$55.00	\$0.00		\$55.00
Concord Garden Equipment	11/21/2017	11/21/2017	553192	Repair hedger	\$136.80	\$0.00		\$136.80
<i>Totals for Concord Garden Equipment:</i>					<u>\$327.63</u>	<u>\$0.00</u>		<u>\$327.63</u>
Contra Costa County Mayors' Conference								
Contra Costa County Mayors' Conferenc	11/21/2017	11/21/2017	MC	Annual assessment for Mayors Conference 20	\$1,596.00	\$0.00		\$1,596.00
<i>Totals for Contra Costa County Mayors' Conference:</i>					<u>\$1,596.00</u>	<u>\$0.00</u>		<u>\$1,596.00</u>
Contra Costa County Office of the Sheriff								
Contra Costa County Office of the Sheri	11/21/2017	11/21/2017	110117	Custom frame	\$179.71	\$0.00		\$179.71
<i>Totals for Contra Costa County Office of the Sheriff:</i>					<u>\$179.71</u>	<u>\$0.00</u>		<u>\$179.71</u>
Contra Costa County Office of Sheriff (CCNET)								
Contra Costa County Office of Sheriff (11/21/2017	11/21/2017	17-2629	Plate for Kennel	\$28.24	\$0.00		\$28.24
<i>Totals for Contra Costa County Office of Sheriff (CCNET):</i>					<u>\$28.24</u>	<u>\$0.00</u>		<u>\$28.24</u>
Contra Costa County Sheriff - Forensic Svc Div (Lab)								
Contra Costa County Sheriff - Forensic S	11/21/2017	11/21/2017	CLPD-1709	Toxicology for September	\$900.00	\$0.00		\$900.00
Contra Costa County Sheriff - Forensic S	11/21/2017	11/21/2017	CLPD-1708	Blood tests for August	\$2,497.50	\$0.00		\$2,497.50

City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<i>Totals for Contra Costa County Sheriff - Forensic Svc Div (Lab):</i>					\$3,397.50	\$0.00		\$3,397.50
Crop Production Svcs								
Crop Production Svcs	11/21/2017	11/21/2017	34588271	Lawn seed, fertilizer	\$2,867.54	\$0.00		\$2,867.54
<i>Totals for Crop Production Svcs:</i>					\$2,867.54	\$0.00		\$2,867.54
Dillon Electric Inc								
Dillon Electric Inc	11/21/2017	11/21/2017	3593	Street light maintenance	\$1,226.22	\$0.00		\$1,226.22
<i>Totals for Dillon Electric Inc:</i>					\$1,226.22	\$0.00		\$1,226.22
East Contra Costa County Habitat Conservancy								
East Contra Costa County Habitat Conse	11/21/2017	11/21/2017	DIF00010	Verna Wy Pass-thru HCP fees	\$14,418.43	\$0.00		\$14,418.43
<i>Totals for East Contra Costa County Habitat Conservancy:</i>					\$14,418.43	\$0.00		\$14,418.43
Geoconsultants, Inc.								
Geoconsultants, Inc.	11/21/2017	11/21/2017	18899	Well monitoring for October	\$1,546.50	\$0.00		\$1,546.50
<i>Totals for Geoconsultants, Inc.:</i>					\$1,546.50	\$0.00		\$1,546.50
Jose Gomez								
Jose Gomez	11/21/2017	11/21/2017	CAP0241	Deposit refund for 645 Mt Duncan	\$2,000.00	\$0.00		\$2,000.00
<i>Totals for Jose Gomez:</i>					\$2,000.00	\$0.00		\$2,000.00
Health Care Dental Trust								
Health Care Dental Trust	11/21/2017	11/21/2017	234576	Dental for December	\$2,856.42	\$0.00		\$2,856.42
<i>Totals for Health Care Dental Trust:</i>					\$2,856.42	\$0.00		\$2,856.42
iPayment								
iPayment	11/21/2017	11/21/2017	October 2017	Online CC Fee for October	\$28.77	\$0.00		\$28.77
iPayment	11/21/2017	11/21/2017	October 2017	Bankcard fees for October	\$43.35	\$0.00		\$43.35
<i>Totals for iPayment:</i>					\$72.12	\$0.00		\$72.12
LarryLogic Productions								
LarryLogic Productions	11/21/2017	11/21/2017	1694	City council meeting production 11/7/17	\$390.00	\$0.00		\$390.00
<i>Totals for LarryLogic Productions:</i>					\$390.00	\$0.00		\$390.00
Mark Scott Construction								
Mark Scott Construction	11/21/2017	11/21/2017	CAP0238	Deposit refund for 216 Fleming	\$500.00	\$0.00		\$500.00
<i>Totals for Mark Scott Construction:</i>					\$500.00	\$0.00		\$500.00
Marken Mechanical Services Inc								
Marken Mechanical Services Inc	11/21/2017	11/21/2017	5011	Adjust air damper for City Hall	\$185.00	\$0.00		\$185.00
Marken Mechanical Services Inc	11/21/2017	11/21/2017	4986	EH HVAC Maintenance for Ocotber	\$259.50	\$0.00		\$259.50
<i>Totals for Marken Mechanical Services Inc:</i>					\$444.50	\$0.00		\$444.50
Morgan Fence Company, Inc								
Morgan Fence Company, Inc	11/21/2017	11/21/2017	0462	Deposit refund for 1001 Peacock Creek Dr	\$500.00	\$0.00		\$500.00
<i>Totals for Morgan Fence Company, Inc:</i>					\$500.00	\$0.00		\$500.00

City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Neopost (add postage)								
Neopost (add postage)	11/21/2017	11/21/2017	111617	Postage added 11/16/17	\$300.00	\$0.00		\$300.00
				<i>Totals for Neopost (add postage):</i>	<u>\$300.00</u>	<u>\$0.00</u>		<u>\$300.00</u>
Neopost Northwest								
Neopost Northwest	11/21/2017	11/21/2017	N6839933	Postal machine contract 12/7/17-1/6/18	\$180.23	\$0.00		\$180.23
				<i>Totals for Neopost Northwest:</i>	<u>\$180.23</u>	<u>\$0.00</u>		<u>\$180.23</u>
Pacific Telemanagement Svc								
Pacific Telemanagement Svc	11/21/2017	11/21/2017	951014	Courtyard payphone for November	\$73.00	\$0.00		\$73.00
				<i>Totals for Pacific Telemanagement Svc:</i>	<u>\$73.00</u>	<u>\$0.00</u>		<u>\$73.00</u>
Palazzo Kitchens and Baths, Inc								
Palazzo Kitchens and Baths, Inc	11/21/2017	11/21/2017	CAP0136	Deposit refund for 1237 Buckeye Terrace	\$500.00	\$0.00		\$500.00
				<i>Totals for Palazzo Kitchens and Baths, Inc:</i>	<u>\$500.00</u>	<u>\$0.00</u>		<u>\$500.00</u>
Raney Planning & Management, Inc.								
Raney Planning & Management, Inc.	11/21/2017	11/21/2017	1752E-2	Project management for October	\$575.00	\$0.00		\$575.00
				<i>Totals for Raney Planning & Management, Inc.:</i>	<u>\$575.00</u>	<u>\$0.00</u>		<u>\$575.00</u>
Riso Products of Sacramento								
Riso Products of Sacramento	11/21/2017	11/21/2017	176680	Copier lease # 8 of 60	\$106.09	\$0.00		\$106.09
				<i>Totals for Riso Products of Sacramento:</i>	<u>\$106.09</u>	<u>\$0.00</u>		<u>\$106.09</u>
Roto-Rooter Sewer/Drain Service								
Roto-Rooter Sewer/Drain Service	11/21/2017	11/21/2017	J-1631-17	Vac truck for Stormwater usage	\$4,270.00	\$0.00		\$4,270.00
Roto-Rooter Sewer/Drain Service	11/21/2017	11/21/2017	CAP0236	Deposit refund for 5110 Keller Ridge	\$500.00	\$0.00		\$500.00
				<i>Totals for Roto-Rooter Sewer/Drain Service:</i>	<u>\$4,770.00</u>	<u>\$0.00</u>		<u>\$4,770.00</u>
Sprint Comm (PD)								
Sprint Comm (PD)	11/21/2017	11/21/2017	703335311-191	Cell phones for 9/26/17-10/25/17	\$212.30	\$0.00		\$212.30
				<i>Totals for Sprint Comm (PD):</i>	<u>\$212.30</u>	<u>\$0.00</u>		<u>\$212.30</u>
Staples Advantage								
Staples Advantage	11/21/2017	11/21/2017	8047150518	Office supplies for October	\$42.04	\$0.00		\$42.04
				<i>Totals for Staples Advantage:</i>	<u>\$42.04</u>	<u>\$0.00</u>		<u>\$42.04</u>
Tipperary Construction								
Tipperary Construction	11/21/2017	11/21/2017	CAP0207	Deposit refund for 226 Bigelow St	\$1,809.10	\$0.00		\$1,809.10
				<i>Totals for Tipperary Construction:</i>	<u>\$1,809.10</u>	<u>\$0.00</u>		<u>\$1,809.10</u>
Turf Star, Inc.								
Turf Star, Inc.	11/21/2017	11/21/2017	6994703-00	Irrigation parts	\$44.18	\$0.00		\$44.18
				<i>Totals for Turf Star, Inc.:</i>	<u>\$44.18</u>	<u>\$0.00</u>		<u>\$44.18</u>
Tyris Corp								
Tyris Corp	11/21/2017	11/21/2017	CAP0199	Deposit refund 133 Easley Dr	\$1,809.11	\$0.00		\$1,809.11

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
<i>Totals for Tyris Corp:</i>					<i>\$1,809.11</i>	<i>\$0.00</i>		<i>\$1,809.11</i>
Valmont Industries								
Valmont Industries	11/21/2017	11/21/2017	CD2121828	Replacement light pole, property damage repa	\$1,796.95	\$0.00		\$1,796.95
<i>Totals for Valmont Industries:</i>					<i>\$1,796.95</i>	<i>\$0.00</i>		<i>\$1,796.95</i>
Waraner Brothers Tree Service								
Waraner Brothers Tree Service	11/21/2017	11/21/2017	13996	Prune Sycamores @ Marsh Creek near Strana	\$2,880.00	\$0.00		\$2,880.00
Waraner Brothers Tree Service	11/21/2017	11/21/2017	13994	Prune Ash trees @ Clayton Rd, remove dead T	\$4,680.00	\$0.00		\$4,680.00
Waraner Brothers Tree Service	11/21/2017	11/21/2017	13995	Creek cleanup, dead trees and debris	\$3,560.00	\$0.00		\$3,560.00
<i>Totals for Waraner Brothers Tree Service:</i>					<i>\$11,120.00</i>	<i>\$0.00</i>		<i>\$11,120.00</i>
Workers.com								
Workers.com	11/21/2017	11/21/2017	120341	Seasonal workers week end 10/22/17	\$1,804.45	\$0.00		\$1,804.45
Workers.com	11/21/2017	11/21/2017	120405	Seasonal workers week end 10/29/17	\$2,101.77	\$0.00		\$2,101.77
<i>Totals for Workers.com:</i>					<i>\$3,906.22</i>	<i>\$0.00</i>		<i>\$3,906.22</i>
Zee Medical Company								
Zee Medical Company	11/21/2017	11/21/2017	724602679	Restock, organize First aid cabinet	\$136.92	\$0.00		\$136.92
<i>Totals for Zee Medical Company:</i>					<i>\$136.92</i>	<i>\$0.00</i>		<i>\$136.92</i>
GRAND TOTALS:					\$156,948.14	\$0.00		\$156,948.14



Agenda Date: 11-21-2017

Agenda Item: 3c

Approved:

Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: JANET BROWN, CITY CLERK

DATE: NOVEMBER 21, 2017

SUBJECT: Confirm Mayoral Reappointment of Peggie Howell to the Board of Trustees Contra Costa Mosquito and Vector Control District as Clayton's representative for the term January 1, 2018 to January 1, 2020.

RECOMMENDATION

By minute motion confirm Mayor Diaz's reappointment of Peggie Howell to the serve as the City of Clayton representative on the Board of Trustees of the Contra Costa Mosquito and Vector Control District.

BACKGROUND

Staff received a written notification from the Contra Costa Mosquito & Vector Control District that the term of Clayton Trustee Peggie Howell will expire on December 31, 2017.

Staff contacted Peggie Howell to confirm her continued interest in serving on the Board of Trustees for the Contra Costa Mosquito and Vector Control District. Ms. Howell has served as Clayton's representative since January 2008, with no break in service. Ms. Howell was provided the option of a two or four year term; her preference is to continue as Clayton's representative for a two-year term. Peggie has been attending the board meetings regularly and is currently serving as President on the Board of Trustees.

The next Mosquito and Vector Control Board meeting is scheduled in January 2018.

FISCAL IMPACT

None.

Attachment: Letter from Contra Costa Mosquito Vector Control District (2 pages)



November 1, 2017

Received

NOV 08 2017

City of Clayton

Janet Brown, City Clerk
City of Clayton
6000 Heritage Trail
Clayton, CA 94517

SUBJECT: REQUEST FOR TRUSTEE REAPPOINTMENT

Dear Janet:

This letter is to inform you that the term of Trustee Peggie Howell will expire on December 31, 2017.

Trustees can be appointed for a two or four year term. They serve without compensation, but are allowed limited expenses for actual travel in connection with meetings or business of the Board (see enclosed position description). The Board meets bi-monthly on the second Monday night of the month, and occasionally it may be necessary to hold a special board meeting. Trustees also serve on committees which regularly meet between board meetings. All meetings are held at the District office: 155 Mason Circle, Concord, California.

Please note each member of the Board appointed from a governing body of a city shall be an elector of the city from which he/she is appointed, and a resident of the city which is in the District (California Health & Safety Code, Section 2242).

Please notify our office in writing when an appointment has been made.

Sincerely,

Natalie Jones
Administrative Secretary

cc: Peggie Howell

Protecting Public Health Since 1927

BOARD OF TRUSTEES

President PEGGIE HOWELL Clayton • Vice President WARREN CLAYTON Pinole • Secretary H. RICHARD MANK El Cerrito • Antioch LOLA ODUNLAMI
Brentwood Vacant • Concord PERRY CARLSTON • Contra Costa County JIM PINCKNEY, CHRIS COWEN & DARRYL YOUNG • Danville RANDALL DIAMOND
Hercules Vacant • Lafayette JAMES FITZSIMMONS • Martinez DANIEL PELLEGRINI • Moraga ROBERT LUCACHER • Oakley MICHAEL KRIEG • Orinda DIANE WOLCOTT
Pittsburg RICHARD AINSLEY, PhD • Pleasant Hill RICHARD MEANS • Richmond SOHEILA BANA, PhD • San Pablo Vacant • San Ramon PETER PAY • Walnut Creek JAMES MURRAY



155 Mason Circle
Concord, CA 94520
phone (925) 685-9301
fax (925) 685-0266
www.contracostamosquito.com

BOARD OF TRUSTEES

- TERM:*** First term: Two years
Additional terms: Two or four years
- IN LIEU OF EXPENSES:*** \$100.00 per month is paid to each Trustee, if they attend a meeting, regardless of the number of meetings attended.
- QUALIFICATIONS:*** Must be a Contra Costa County taxpayer and at least the voting age of 18 with an interest in any of the following areas: public health, public policy, wetlands, farming, community education, finance, personnel or land development.
- DUTIES:*** Board of Trustees meet the second Monday evening of every other month. Committees meet approximately twice a month or as needed.
- HOW TO APPLY:*** Contact your city clerk for an application for openings within your city. For positions with the county at large or those in unincorporated areas, contact the county clerk of the Board of Supervisors.

Protecting Public Health Since 1927

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Pittsburg RICHARD AINSLEY, PhD • Pleasant Hill RICHARD MEANS • Richmond SOHEILA BANA, PhD • San Pablo Vacant • San Ramon PETER PAY • Walnut Creek JAMES MURRAY



Agenda Date: 11-21-2017

Agenda Item: 3d

Approved:

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY MANAGER

DATE: 21 NOVEMBER 2017

SUBJECT: APPROVE CITY LETTER IN OPPOSITION TO STATE AND LOCAL TAX DEDUCTION ELIMINATIONS (SALT) IN ANY CONGRESSIONAL TAX REFORM PROPOSAL

RECOMMENDATION

Following presentation and opportunity for public comment, it is recommended the City Council authorize Mayor Diaz to sign the proposed letters to the City's congressional representatives indicating its opposition to any proposal to eliminate existing state and local tax deductions (SALT) contained in a congressional tax reform bill.

BACKGROUND

After receipt attendance at a meeting of the National Association of Regional Councils (NARC) in San Antonio, Council Member Pierce requested of City staff to place on an agenda the City Council's consideration of a City letter opposing congressional intent to eliminate the existing state and local tax deductions (on one's income tax return) in national discussion of a tax reform bill.

Attached are proposed City letters to U.S. Senators Dianne Feinstein and Kamala Harris, and to U.S. Representative Mark DeSaulnier outlining the City Council's recommended stance on this federal policy issue. Attached is information on the harm to taxpayers, homeowners, and the local economy in Clayton prepared by the League of CA Cities (ref. Attachment 1), and a recent article from the *Business Insider* (Nov. 2, 2017) regarding the subject matter.

FISCAL IMPACT

According to the most recent data available (2015), 44.08% of tax filers in the Clayton zip code of 94517 claimed the SALT deduction ("married filing jointly) with an average dollar amount of \$22,888. According to League of CA Cities' data, 6.1 million California taxpayers claimed the SALT deduction (2015) with the average amount at \$18,000. Elimination of the SALT deduction would cause tightened household budgets to be less inclined to support local tax propositions for enhancement of local and area public services.

Attachments: 1. Draft City letters [3 pp.]
2. League of CA Cities information [3 pp.]
3. *Business Insider* article [3 pp.]
4. CA Department of Finance letter to CA Congressional Delegation [3 pp.]



ATTACHMENT 1

COMMUNITY
DEVELOPMENT (925) 673-7340
ENGINEERING (925) 363-7433

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

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

November 22, 2017

The Honorable Dianne Feinstein
United States Senate, CA
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Feinstein:

As Congress works to develop a tax reform proposal, the Clayton City Council voted to strongly urge you to maintain the deductibility of state and local taxes in any comprehensive tax reform legislation. For more than a century the state and local tax deduction has allowed American taxpayers to claim one's city property, sales and in some cases income taxes, which reliance has given local governments the financial flexibility to meet our residents' needs.

In Clayton's congressional district, approximately 44.08% of our tax filers claim the state and local income tax deduction, and the average dollar amount taken by those with a tax status of "married filing jointly" is \$22,888 (Clayton zip code of 94517; 2015 data). This deduction prevents many American taxpayers from being taxed twice on the same income by deducting paid state and local taxes from federal income tax. SALT also allows cities like Clayton to seek local tax propositions that enable us to make infrastructure investments, maintain public landscapes, trails and parks, and protect our communities and men and women in uniform.

We recognize the federal tax code is convoluted and in need of simplification, yet we also know that double taxing American families and having the federal government pressuring cities to lower taxes are not the ways to pay for it. Reform cannot strip tax exemptions that many of our middle-class families rely on and Washington cannot deny cities the flexibility to raise the revenues needed to meet our communities' needs.

Coupled with the declining federal support in cities, eliminating the SALT deduction would only further strain already-stressed budgets. Cities work within a balanced budget system; fiscal responsibility is expected and delivered. Daily, local leaders are required to respond to the citizens we serve. With limited resources and funds, changes such as SALT deduction eliminations upset the intergovernmental balance between entities and can have dire fiscal consequences for cities and our residents.

We respectfully implore you: any effort to offset tax revenue lost on the back of municipal governments should be rejected and we urge you to preserve the deductibility of state and local taxes.

Sincerely,

Jim Diaz
Mayor

DRAFT



COMMUNITY
DEVELOPMENT (925) 673-7340
ENGINEERING (925) 363-7433

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

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

November 22, 2017

The Honorable Kamala Harris
United States Senate, CA
112 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Harris:

As Congress works to develop a tax reform proposal, the Clayton City Council voted to strongly urge you to maintain the deductibility of state and local taxes in any comprehensive tax reform legislation. For more than a century the state and local tax deduction has allowed American taxpayers to claim one's city property, sales and in some cases income taxes, which reliance has given local governments the financial flexibility to meet our residents' needs.

In Clayton's congressional district, approximately 44.08% of our tax filers claim the state and local income tax deduction, and the average dollar amount taken by those with a tax status of "married filing jointly" is \$22,888 (Clayton zip code of 94517; 2015 data). This deduction prevents many American taxpayers from being taxed twice on the same income by deducting paid state and local taxes from federal income tax. SALT also allows cities like Clayton to seek local tax propositions that enable us to make infrastructure investments, maintain public landscapes, trails and parks, and protect our communities and men and women in uniform.

We recognize the federal tax code is convoluted and in need of simplification, yet we also know that double taxing American families and having the federal government pressuring cities to lower taxes are not the ways to pay for it. Reform cannot strip tax exemptions that many of our middle-class families rely on and Washington cannot deny cities the flexibility to raise the revenues needed to meet our communities' needs.

Coupled with the declining federal support in cities, eliminating the SALT deduction would only further strain already-stressed budgets. Cities work within a balanced budget system; fiscal responsibility is expected and delivered. Daily, local leaders are required to respond to the citizens we serve. With limited resources and funds, changes such as SALT deduction eliminations upset the intergovernmental balance between entities and can have dire fiscal consequences for cities and our residents.

We respectfully implore you: any effort to offset tax revenue lost on the back of municipal governments should be rejected and we urge you to preserve the deductibility of state and local taxes.

Sincerely,

Jim Diaz
Mayor

DRAFT



COMMUNITY
DEVELOPMENT (925) 673-7340
ENGINEERING (925) 363-7433

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

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

November 22, 2017

The Honorable Mark DeSaulnier
United States House of Representatives, CA 11th District
115 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman DeSaulnier:

As Congress works to develop a tax reform proposal, the Clayton City Council voted to strongly urge you to maintain the deductibility of state and local taxes in any comprehensive tax reform legislation. For more than a century the state and local tax deduction has allowed American taxpayers to claim one's city property, sales and in some cases income taxes, which reliance has given local governments the financial flexibility to meet our residents' needs.

In Clayton's congressional district, approximately 44.08% of our tax filers claim the state and local income tax deduction, and the average dollar amount taken by those with a tax status of "married filing jointly" is \$22,888 (Clayton zip code of 94517; 2015 data). This deduction prevents many American taxpayers from being taxed twice on the same income by deducting paid state and local taxes from federal income tax. SALT also allows cities like Clayton to seek local tax propositions that enable us to make infrastructure investments, maintain public landscapes, trails and parks, and protect our communities and men and women in uniform.

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Coupled with the declining federal support in cities, eliminating the SALT deduction would only further strain already-stressed budgets. Cities work within a balanced budget system; fiscal responsibility is expected and delivered. Daily, local leaders are required to respond to the citizens we serve. With limited resources and funds, changes such as SALT deduction eliminations upset the intergovernmental balance between entities and can have dire fiscal consequences for cities and our residents.

We respectfully implore you: any effort to offset tax revenue lost on the back of municipal governments should be rejected and we urge you to preserve the deductibility of state and local taxes.

Sincerely,

Jim Diaz
Mayor

DRAFT

[Home](#) > [News](#) > [Press Releases](#) > [2017](#) > Coalition of Local Governments, Economic Development Leaders, Schools and Realtors Urge California C

League Contact: Eva Spiegel, (916) 658-8228

CSAC Contact: Gregg Fishman, (916) 327-7500 ext 516

CALED Contact: Gurbax Sahota, (916) 448-8252 ext 15

CSBA Contact: Troy Flint, (916) 669-3246

CAR Contact: Matt Roberts, (213) 739-8284

Nov. 9, 2017

FOR IMMEDIATE RELEASE

Coalition of Local Governments, Economic Development Leaders, Schools and Realtors Urge California Congressional Delegation to Reject Tax Reforms that Harm Taxpayers, Homeowners and the Economy

California Would be one of the States to Lose the Most from Proposed Reforms

Sacramento – The associations representing California's local governments, economic development leaders, schools and realtors urge the California congressional delegation to protect the State and Local Tax deduction and a key economic development tool at risk under the Tax Cuts and Jobs Act in its current form.

The SALT deduction makes the cost of living more affordable in states like California. Eliminating the deduction for state and local income taxes and capping the local property tax deduction at \$10,000 would hurt hard-working California families and only add to the housing affordability crisis in the state by eliminating a key incentive for homeownership. In 2015, 6.1 million California taxpayers claimed the SALT deduction with the average deduction at around \$18,000.

The SALT deduction has been an integral component of the federal tax code since its creation in 1913 and was one of the six deductions allowed under the original tax code. **Eliminating or capping federal deductibility for state and local property, sales and income taxes would represent double taxation and would upset the carefully balanced fiscal federalism that has existed since the permanent creation of the federal income tax over 100 years ago.**

Tax-exempt Private Activity Bonds (PABs) are an important tool for state and local governments to help finance major public projects, including transportation and water infrastructure, affordable

housing construction, schools — all of which are essential for job growth, healthy economies, safe communities and the nation's economy. Eliminating PABs' tax-exempt status would drive up the costs of borrowing for these projects by 25–35 percent and be a disincentive to spurring private sector investment in our communities.

Given the impact on California families and our economy, we respectfully urge the California congressional delegation to oppose eliminating or capping the SALT deduction or removing the exemption on PABs as part of any tax reform proposal.

Quotes from coalition leaders:

Carolyn Coleman, Executive Director, League of California Cities®: “Hard working California tax payers and our communities would be harmed by the current proposal. We hope that California’s congressional delegation hears this message and takes swift action to reject any proposals that would cause people to pay taxes on their income twice, would destabilize key incentives for homeownership and increase borrowing costs for state and local governments to finance projects that benefit our communities.”

Matt Cate, Executive Director, California State Association of Counties:

“California Counties are increasingly concerned with several provisions in the House tax reform package. The narrowing of the SALT deduction alone would impact county resources and their ability to meet the service needs of the public. The additional changes to infrastructure financing tools, including the taxable status of Private Activity Bonds (PABs) and the ability to advance refund municipal bonds, will fundamentally harm the way counties do business on behalf of our residents.”

Gurbax Sahota, President and CEO, California Association for Local Economic Development:

“The current tax proposal eliminates Private Activity Bonds — eliminating an important economic development financing tool California uses to fund manufacturing expansion, health care facilities, affordable housing, schools, nonprofits, and other economic development projects. Combined with a repeal of advance refunding bonds, this will absolutely impact our ability to attract investment to future projects like these, as well as our ability to create and retain jobs in these areas. These provisions are bad for California and our residents.”

Vernon M. Billy, CEO and Executive Director, California School Boards Association:

“We urge the California delegation to act on behalf of the taxpayers in California who would be hurt by the elimination of the SALT deduction, including the talented school employees who work in our schools educating and training students. Eliminating the deduction has the same impact as raising property, income and sales taxes in every congressional district in our state. By effectively raising property taxes, the deduction also makes local school bonds more expensive, complicating our efforts to build and repair schools and provide students with the resources needed for a high-quality

21st-century education.”

Steve White, President, California Association of REALTORS®:

“The move by Congress to eliminate state and local tax deductions essentially levies a double tax on California, this and other attacks on real estate tax incentives removes the tax benefits for people to buy homes and raises taxes on hundreds of thousands of Californians. Homeownership has and continues to be the best way for families to grow wealth and increase the middle class. Congress should look at ways to incentivize and increase homeownership rates, not increase taxes on families wanting to buy a home.”

Established in 1898, the League of California Cities is a nonprofit statewide association that advocates for cities with the state and federal governments and provides education and training services to elected and appointed city officials.

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BUSINESS INSIDER

A part of the new GOP tax plan will be a tough sell for Republicans in New Jersey, New York, and California



ELENA HOLODNY
NOV. 2, 2017, 11:09 AM



Rep. Paul Ryan at an event on May 16, 2014.

Reuters

- **The House GOP unveiled its massive tax reform bill Thursday.**
- **One of the biggest hangups for Republicans in states like New York, New Jersey, and New York has been the proposed elimination of the state and local tax (SALT) deduction, which allows people to deduct those taxes from their federal bill.**
- **House Ways and Means Committee Chair Kevin Brady said Tuesday the GOP reached a deal that would allow people to deduct state and local property taxes up to \$10,000 but not income or sales taxes.**

The Trump administration and congressional Republicans took a step forward in their attempt to overhaul the US tax code on Thursday by releasing legislation proposing sweeping changes.

The "Tax Cuts and Jobs Act" will include a broad set of proposed changes to the corporate and individual tax system, building off a nine-page framework the White House and congressional Republican leaders dropped in September.

Among the details of the new bill emerging Thursday morning is a proposed elimination of the state and local tax (SALT) deduction, which is a benefit that allows people to deduct those taxes from their federal bill. House Ways and Means Committee Chair Kevin Brady said Tuesday the GOP reached a deal that would allow people to deduct state and local property taxes up to \$10,000 but not income or sales taxes.

While most House Republicans are in favor of getting rid of the SALT deduction, this proposal is likely to be one of the biggest hangups for those House Republicans in states like New York, New Jersey, and California, which could prove to be an obstacle to the bill's passage.

AVERAGE STATE AND LOCAL TAX DEDUCTION

\$0-1,000 \$1-2,000 \$2-3,000 \$3-4,000 \$4-25,000



SOURCE: Tax Foundation

BUSINESS INSIDER

Big wealthy urban counties have large SALT deductions on average.

Andy Kiersz/Business Insider

The two largest beneficiaries of the SALT deduction are higher earners and states with a lot of high-income residents, according to the Tax Policy Center.

Most of the claimants that benefit from the deduction live in traditionally Democratic states like California and New York. The Committee for a Responsible Federal Budget found that New York and California receive about 30.5% of the total benefits from the SALT deduction.

52 congressional districts held by Republicans registered above-average use of the SALT deduction in 2015, according to data from the Internal Revenue Service cited by Bloomberg. Those include a number of districts in New York, New Jersey, California, and an Illinois district of Representative Peter Roskam, the chairman of a key panel on tax policy.

Some Republican House members in those states have already spoken out. Congressman Lee Zeldin (R-NY) said he's a "No" on the bill in its current form, citing the proposal to eliminate the SALT deduction.

Congressman Tom MacArthur (R-NJ), meanwhile, went on Fox Business on Wednesday to defend keeping the property tax deduction.

Check out of the full run down on the "Tax Cuts and Jobs Act" here.

×



**DEPARTMENT OF
FINANCE**
OFFICE OF THE DIRECTOR

ATTACHMENT 4

EDMUND G. BROWN JR. • GOVERNOR

STATE CAPITOL • ROOM 1145 • SACRAMENTO CA • 95814-4998 • WWW.DOF.CA.GOV

November 9, 2017

California Congressional Delegation
Washington, D.C. 20515

Dear Members of the California Congressional Delegation:

As the Governor's chief fiscal advisor, I write to express the Administration's significant concerns with several provisions currently contained in H.R. 1 measure now under consideration before the Ways and Means Committee.

Removing the state and local tax (SALT) deductions while capping the property tax deduction at \$10,000—Over 6 million California tax returns – one of every three – claim SALT deductions, including millions of middle-income households that may not benefit from the increased standard deduction. While allowing up to a \$10,000 deduction on property taxes provides some offset, only one-fourth of the state and local tax deduction consists of property taxes paid. The average deduction for state and local income taxes alone is nearly \$16,000 per return, while state and local property taxes average less than \$6,000 per return.

Reducing the cap on the mortgage interest deduction to \$500,000 (\$250,000 single)—This change will increase the cost of homeownership for many middle-class Californians. Given the high cost of housing in the state, mortgages for many mid-level homes are significantly above these caps, particularly the \$250,000 cap for single filers. More than 4 million California tax returns claim the mortgage interest deduction at an average of over \$12,000 per return.

Elimination of the interest exclusion for Private Activity Bonds (PABs)—This will remove an important tool used by the Low Income Housing Tax Credit program to construct affordable housing, which was used to fund nearly 20,000 affordable housing units in 2016.

The state's Infrastructure and Economic Development Bank (iBank) has issued Private Activity Bonds in support of museums, schools, performing arts centers, charitable organizations and research institutes throughout the state. Elimination of Private Activity Bonds would greatly increase borrowing costs for such borrowers resulting in the delay, downsizing or outright abandonment of these socially beneficial projects and the people and jobs who depend on them.

Further, this would hurt California veterans by ending bond issuances that help around 1,000 veterans buy a home every year. This program has been around since at least World War II. It serves veterans that would not otherwise qualify for private financing, while maintaining foreclosure rates of less than 0.25 percent.

Repeal of Casualty Loss Deduction—Last month's devastating wildfires in northern California have alone caused billions of dollars in losses, with more than 10,000 homes damaged and over 4,700 more destroyed. For this and other disasters to come, it is important to maintain the casualty loss deduction as a way of providing relief to the victims of casualty losses both large and small. The repeal of the casualty loss deduction starting in 2018 under H.R. 1 is an unnecessary step that will only compound the difficulty for the many thousands of Californians who either are or will be struggling to recover from devastating losses.

Negative Impacts on Education—Multiple provisions now in H.R. 1 negatively impact the cost of education for both students and educators, including the elimination of the student loan interest deduction, imposing a new tax on tuition waivers, elimination or reduction of various tax credits, and a new tax on net investment income of private colleges and universities if their endowments exceed \$250,000 per full-time student. In total, all of the changes to education provisions will raise taxes on Americans by over \$60 billion over ten years, which indicates a negative impact on California of at least \$7 billion.

Unfavorable treatment of children and families— The new \$300 Family Flexibility Credit for the tax filer, their spouse, and for non-child dependents is temporary and expires in 2023. While it provides a tax benefit for many low-income families in the first four years, its expiration leads to those same families having much smaller net tax cuts or overall tax increases in 2023 and beyond. In addition, unlike the current dependent exemptions it is intended to replace, there is no indexing of the Child Tax Credit, which leads to its positive impact eroding over time.

Also, requiring a Social Security number for the refundable portion of the child tax credit punishes working undocumented immigrants in California who file their tax returns using a Taxpayer Identification Number. More than \$3.4 billion in federal refundable child tax credits were claimed by Californians in 2015, and a portion of those would have been undocumented immigrants filing with a Taxpayer Identification Number

Overall tax cuts for the wealthy—Lower tax rates on business income will disproportionately benefit higher-income individuals who are more likely to have income from limited liability companies, S corporations, or partnerships. Further, the repeal of the estate tax will disproportionately benefit the wealthy. The estate tax would be fully repealed for deaths after December 31, 2023 and there would be no change to the basis step-up rule that currently revalues appreciated capital assets at market value at the time of death. As a result, wealthy people would be able to simply hold on to assets until they die, pass the assets on to their heirs, and all the increase in the value of the asset during the wealthy person's life will not be taxed. Removing the tax on inherited wealth without also repealing the basis step-up rule leads to increasing inequality. The Joint Committee on Taxation analysis shows that for 2027, the highest-income Americans – less than three-tenths of one percent of taxpayers – will realize almost one-third of the total benefits.

Prioritizes corporations over individuals—The net benefits of H.R. 1 are weighted heavily towards corporations, with the significant cut in the corporate tax rate coupled with the removal of relatively few corporate tax breaks. Instead, many deductions and tax credits taken by lower- and middle income households are either reduced or eliminated. A November 3 Joint Committee on Taxation analysis indicates that more than half of the tax cut goes to corporations while about one-third goes to businesses that pass through income to individuals.

Massive expansion of the deficit by at least \$1.7 trillion over ten years—Deficit-financed tax cuts are not likely to lead to significant growth effects because the negative economic effects of the debt would crowd out investment. Further, fiscal stimulus at this point in the business cycle – with the economy at full employment, corporate profit margins at all-time highs, and corporate cash balances at all-time highs – is unlikely to lead to significant growth above what would have occurred in the absence of these changes.

California Congressional Delegation
November 9, 2017
Page 3

If you need any additional information on any of these subjects, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Cohen", followed by a stylized flourish.

Michael Cohen
Director, California Department of Finance

cc: Governor Edmund G. Brown Jr.



Agenda Date: 11-21-2017

Agenda Item: 3e

Approved:

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: Janet Brown, City Clerk

DATE: November 21, 2017

SUBJECT: REJECTION OF LIABILITY CLAIM FILED BY RAINA DENNIS FOR THE ALLEGED WRONGFUL DEATH OF HER DAUGHTER MARIA GAGLIONE.

RECOMMENDATION

Approve the denial of liability claim against the City filed by Raina Dennis, mother of decedent Maria Gaglione, for alleged wrongful death damages reportedly occurring on May 13, 2017.

BACKGROUND

On November 2, 2017 the City received a liability claim filed by Ms. Raina Dennis, represented by Deborah Barron, related to Ms. Gaglione's death. The City is self insured for general liability purpose and the Municipal Pooling Authority of Northern California administers the self-insured program. On November 2, 2017 this liability claim was transmitted to the Municipal Pooling Authority for processing and investigation.

Liability adjustors for the Municipal Pooling Authority reviewed the claim. Following its review the Municipal Pooling Authority has advised the City to deny the claim and issue a notice of rejection to the claimant.

FISCAL IMPACT

None.

Attachment: Copy of Claim (1 page)

CLAIM PRESENTED TO THE CITY OF CLAYTON

*Please read the instructions on the back before completing.

Reserve for Filing Stamp

Received

NOV 02 2017

City of Clayton

City Claim #

1. Claimant's Name: (PLEASE PRINT)

Raina Dennis

Claimant's Address:

(mother of deceased Maria Baylone)
708 SW I Street

City, State, Zip:

Grant Pass, Or. 97526

Day Phone: (540) 446-6049

Even Phone: ()

2. When did the damage or injury occur?

Month:

May

Day:

13

Year:

2017

Time:

a.m.

p.m.

1542 hours

3. At which location did the damage or injury occur?

2 Davi Ave. Pittsburg, CA

Police Report #

17-2401

4. What happened and why is the City responsible?

See attachment

Name and position of responsible City Employee(s), if known:

Clayton PD Officers Thomas Starick & Allen Pike

and unknown DOES

5. What damage or injury occurred?

Blunt force chest injury resulting in death from
motor vehicle accident in high speed police chase -
wrongful death - loss of companionship, care, comfort, society,
Love, moral support, financial assistance, ect...

6. Claim amount (only if less than \$10,000):

If the amount exceeds \$10,000, please check (X) the court of appropriate jurisdiction:

 Municipal Court (claims up to \$25,000)

 X Superior Court (claims over \$25,000)

7. How did you arrive at the amount claimed? Please attach documentation:

8. I declare under penalty of perjury under the laws of the State of California that the following information is true and correct, and that this declaration was executed on November 2, 2017 at Sacramento, CA.

Signature of Claimant or Representative's Signature

9. Official Notices and Correspondence

If represented by an insurance company or an attorney, please provide the information requested below.

Name and Capacity: (PLEASE PRINT)

Deborah Barron

Address:

1387 Garden Hwy #100

City, State, Zip:

Sacramento, CA 95833

Daytime Telephone:

(916) 486-1712

Evening Phone:

707 315-9507



Agenda Date: 11-21-2017

Agenda Item: 3F

Approved:

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: Janet Brown, City Clerk

DATE: November 21, 2017

SUBJECT: REJECTION OF LIABILITY CLAIM FILED BY MICHAEL GAGLIONE FOR THE ALLEGED WRONGFUL DEATH OF HIS DAUGHTER MARIA GAGLIONE.

RECOMMENDATION

Approve the denial of liability claim against the City filed by Michael Gaglione, father of decedent Maria Gaglione, for alleged wrongful death damages reportedly occurring on May 13, 2017.

BACKGROUND

On November 13, 2017 the City received a liability claim filed by Mr. Michael Gaglione, represented by Tab Mitchell, related to Ms. Gaglione's death. The City is self insured for general liability purpose and the Municipal Pooling Authority of Northern California administers the self-insured program. On November 13, 2017 this liability claim was transmitted to the Municipal Pooling Authority for processing and investigation.

Liability adjustors for the Municipal Pooling Authority reviewed the claim. Following its review the Municipal Pooling Authority has advised the City to deny the claim and issue a notice of rejection to the claimant.

FISCAL IMPACT

None.

Attachment: Copy of Claim (1 page)

CLAIM PRESENTED TO THE CITY OF CLAYTON

*Please read the instructions on the back before completing.

Reserve for Filing Stamp

Received

NOV 18 2017

City of Clayton

1. Claimant's Name: (PLEASE PRINT) <u>Michael Gaglione</u>	City Claim #
Claimant's Address: <u>1688 Pine St, Unit # E-710</u>	
City, State, Zip: <u>San Francisco, CA 94109</u>	
Day Phone: <u>415 913-9845</u> Eve Phone: () _____	

2. When did the damage or injury occur?
 Month: May Day: 13 Year: 2017 Time: 3:30 a.m. (p.m.)

3. At which location did the damage or injury occur?
Myrtle Dr, approximately 404 ft. West of Hayes Rd, City of Concord, CA, County of Contra Costa
 Police Report # 9320-2017-10079 (CHP)

4. What happened and why is the City responsible?
 a. Negligent Clayton Police Dept. pursuit resulting in vehicular crash and wrongful death of Maria Gaglione, Decedent. (See attached 11/7/17 Notice of Claim).
 Name and position of responsible City Employee(s), if known:
 b. A Pike, Clayton Police Department (ID # C048 Badge #10).

5. What damage or injury occurred?
Death of Maria Gaglione, Decedent, the daughter of Claimant herein, Michael Gaglione. For more particular information, please see attached 11/7/17 Notice of Claim previously served on the City of Clayton, CA.

6. Claim amount (only if less than \$10,000):
 If the amount exceeds \$10,000, please check (X) the court of appropriate jurisdiction:
 _____ Municipal Court (claims up to \$25,000) Superior Court (claims over \$25,000)

7. How did you arrive at the amount claimed? Please attach documentation.
Wrongful death claim/action. See previous 11/7/17 Notice of Claim for more specific information.

8. I declare under penalty of perjury under the laws of the State of California that the following information is true and correct, and that this declaration was executed on 11/10 2017 at Hollister, CA.
Tab Mitchell
 Signature of Claimant or Representative's Signature

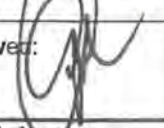
9. Official Notices and Correspondence
 If represented by an insurance company or an attorney, please provide the information requested below.
 Name and Capacity: (PLEASE PRINT) TAB MITCHELL
 Address: Mitchell Law Firm - 390 Fifth Street
 City, State, Zip: Hollister, CA 95023
 Daytime Telephone: 831 638-6100 Evening Phone: 831 524-0871



Agenda Date: 11-21-2017

Agenda Item: 3g

Approved:


Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY MANAGER

DATE: 21 NOVEMBER 2017

**SUBJECT: CANCELLATION OF DECEMBER 19, 2017 AND JANUARY 2, 2018
CITY COUNCIL MEETINGS**

RECOMMENDATION

It is recommended the City Council, by minute motion, cancel its regular public meetings scheduled to be held on Tuesday, 19 December 2017 and Tuesday, 02 January 2018.

BACKGROUND

Section 2.04.010 of the *Clayton Municipal Code* specifies that regular meetings of the Clayton City Council shall be held on the first and third Tuesdays of each and every month. Application of this Code section to the upcoming 2017 holiday calendar means the second City Council meeting on 19 December 2017 is within seven (7) days of Christmas and the first City Council meeting in January 2018 will fall on Tuesday, January 2nd following a long New Year's weekend.

In years past the City Council has frequently canceled its first meeting in January of each year due to its proximity to New Year's Eve and Day. Recently, Clayton City Hall has also been closed by employee preference (i.e., using accrued personal paid leave time) during the week in which the Christmas holiday falls (this year: Monday, December 25th through Friday, December 30th). Neighboring cities' operations are often closed that week as well.

Per labor agreements, City employees are off work on Monday, December 25th and Monday, January 1st; sworn police officers receive holiday in-lieu pay/time as opposed to closing municipal police operations. With City Hall employees electing to take the Christmas week off, it is nearly impossible or impractical to prepare staff reports and an Agenda Packet for release on Friday, December 30th for a January 2nd City Council meeting. Further, the cancellation of the January 2nd meeting facilitates personal holiday and travel plans of any members of the Clayton City Council and key City staff.

SUGGESTED CANCELLATION OF DECEMBER 19TH MEETING

In evaluating the flow and tracking of agenda items for the remainder of the 2017 calendar year and for the 02 January 2018 meeting, as of this writing the only agenda item scheduled for placement on the December 19th agenda is the annual determination of City Council ad-hoc committee assignments or reassignments by the new mayor. Pushing out further, after discussions with management staff at the last weekly staff meeting it appears no critical or required action items are planned to hit on the December 19th or the January 2nd City Council meetings. The December 5th meeting will include several presentations in addition to the City's annual AB 1600 report on development impact fees' dispositions, and the Council's selection of its next mayor and vice mayor from within its current membership.

Given the relative absence of agenda items to conduct pressing City business, it seems there is little reason to unnecessarily hold a City Council meeting on December 19th. The new mayor's assignments of ad-hoc committee positions would take place at the second meeting in January 2018 (Tuesday, January 16th) and the current assignments would remain active until that time.

To provide optimum notice of meeting cancellation to interested members of the public and to our community as well as to arrange scheduling of agenda matters for the January 16th City Council meeting, the matter has been placed on this Agenda for advance notice, consideration, and action.

FISCAL IMPACT

There is no direct financial impact to the City for its cancellation of City Council meetings, except nominal savings of expenses incurred in the preparation, publication and holding of a Council meeting (e.g. staff time, paper and copying expenses, meeting room utilities, contractor video taping of the meeting for live streaming and cable television replay).

City Hall and its operations will reopen during normal business hours on Tuesday, January 2nd.

If necessity or an emergency arises between canceled meetings, a special Council meeting may always be called by the Mayor with proper notice to members of the City Council, the press, and with fully-required public postings of the Agenda.

December 2017

December 2017						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5 City Council Meeting	6	7 CCC Mayors' Conference – Pleasant Hill	8	9
10	11	12 Planning Commission Meeting	13	14	15	16
17	18	19 City Council Meeting	20	21	22	23
24	25 Christmas – City Hall Closed	26 Planning Commission Meeting	27	28	29	30
31						

◀ Dec 2017

January 2018

Feb 2018 ▶

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1 New Year's Day – City Hall Closed	2 City Council Meeting	3	4	5	6
7	8	9 Planning Commission Meeting	10	11 CCC Mayors' Conference - Brentwood	12	13
14	15 Martin Luther King Jr. - City Hall Closed	16 City Council Meeting	17	18	19	20
21	22	23 Planning Commission Meeting	24	25	26	27
28	29	30	31			

declaring

Agenda Date: 11-21-2017

November 2017

Agenda Item: 4a

as

"Homelessness Awareness Month"

WHEREAS, the month of November is recognized as Homelessness Awareness Month in the United States; and

WHEREAS, the purpose of the proclamation is to educate the public and advocate with and on behalf of people experiencing homelessness about the many reasons people are homeless including the shortage of affordable housing in Contra Costa County; and to encourage support for homeless assistance service providers as well as community service opportunities for students and school service organizations; and

WHEREAS, there are many organizations committed to sheltering, providing supportive services and basic resources to people experiencing homelessness including Anka Behavioral Health, Bi Bett, Berkeley Food and Housing Project, Bay Area Rescue Mission, Catholic Charities, Contra Costa Health Services, Contra Costa Interfaith Housing, Contra Costa Crisis Center, Greater Richmond Interfaith Program, Housing Authority of Contra Costa, Lifelong Medical Care, Monument Crisis Center, Northern California Family Center, Resources for Community Development, Satellite Affordable Housing Associates, SHELTER, Inc., STAND! For Families Free of Violence, Trinity Center, and Winter Nights; and

WHEREAS, the City of Clayton recognizes that homelessness continues to be a serious problem for many individuals and families in Contra Costa; and

WHEREAS, 6,105 persons in Contra Costa accessed homeless services in Contra Costa in FY 16-17; and

WHEREAS, 640 families, including 746 minors accessed homeless services in Contra Costa in FY 16-17; and

WHEREAS, 86% of homeless veterans in Contra Costa have been homeless for 12 months or more; and

WHEREAS, 80% of people experiencing homelessness in Contra Costa lost their housing in Contra Costa; and

WHEREAS, Contra Costa has the shelter capacity to meet only 41% of the need for single adults; and

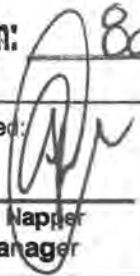
WHEREAS, a report by California Housing Partnership in 2017 found that Contra Costa County needs over 30,000 more affordable rental homes to meet the needs of its lowest income renters; and

NOW THEREFORE, I, Jim Diaz, Mayor, on behalf of the Clayton City Council, do hereby proclaim November 2017 as "Homelessness Awareness Month" and encourages all citizens to recognize that thousands of people in Contra Costa do not have housing and need support from citizens, and private/public nonprofit service entities.




Agenda Date: 11-21-2017

Agenda Item: 8a

Approved: 
Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR 

DATE: NOVEMBER 21, 2017

SUBJECT: SECOND READING AND ADOPTION OF AN ORDINANCE ADDRESSING COMMERCIAL CANNABIS REGULATIONS

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 adopt Ordinance No. 479 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

At its meeting on October 17, 2017, the City Council introduced the subject ordinance, which proposes to amend the Clayton Municipal Code (CMC) 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 2**). No changes were made to the Ordinance at the November 7, 2017 hearing.

ENVIRONMENTAL

This Ordinance is not considered to be a project within the meaning of Section 15378 and is exempt under Section 15061(b)(3) of the California Environmental Quality Act (CEQA) because it has not potential for resulting in a physical change to the environment, directly or indirectly. This Ordinance is also exempt pursuant to Business and Professions Code, Section 26055(h); therefore this Ordinance is both statutorily and categorically exempt from CEQA.

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 the November 7, 2017 City Council Meeting [pp. 30]

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.

ATTACHMENT 2

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

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]



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

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]

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, excepting 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

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.

Agenda Date: 10-03-2017

Agenda Item: 8b



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

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.

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

Councilmember Catalano attended the recent meeting of the East Contra Costa Habitat Conservancy as the City's alternate voting delegate, as Vice Mayor Haydon was unavailable to attend.

Councilmember Pierce attended a Contra Costa Transportation Authority meeting, the National Association of Regional Councils 2017 Board Retreat in San Antonio, Texas on behalf of the Association Bay Area Governments, several Metropolitan Transportation Committee meetings, the Cal Poly Alumni Celebration and Awards Dinner whereat Randell Iwasaki, Executive Director Contra Costa Transportation Authority, received the college's Sandra Gardebring Ogren Leadership Award in appreciation for his longtime professional mentoring of Cal Poly alumni and graduates.

Councilmember Shuey reported someone contacted him expressing interest in using the Keller House; if it is a viable interest, it will be formally presented to the City for consideration.

Vice Mayor Haydon attended the Clayton Business and Community Association's General Membership meeting, and the Clayton Bocce Summer League Finals.

Mayor Diaz attended a County Connection Board meeting, the East Bay League of California Cities meeting, the Mayors' Conference hosted by the City of Moraga, and a performance of the Clayton Theatre Company's production of "The 1940's Radio Hour" at Endeavor Hall.

- (e) Other – None.

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

Claudia Crockett, Chaparral Springs, expressed her concerns of potential fire hazards based on the conditions located along Oakhurst Golf Course consisting of several dead trees, debris and garbage. Ms. Crockett had contacted the golf course several times; however, its staff has been unresponsive or has resigned. Ms. Crockett asked if the City could put pressure on the golf course to resolve the potential fire hazards.

John Barclay, employee of the Contra Costa Health Services Department and Director of Home and Community Based Service, Good Health and Case Management, provided information regarding the homeless population throughout Contra Costa County, and in the City of Clayton which by this year's count has 10 homeless 5 of which are "chronic." Mr. Barclay requested the City Council adopt a proclamation at its next regular meeting addressing this county-wide issue. He noted generally, 50% of the homeless population is children.

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.

Community Development Director Mindy Gentry presented the staff report noting the City Council previously directed staff to prohibit all commercial cannabis activities including retail sales, commercial cultivation, distribution, testing and manufacturing, and regulate deliveries of both cannabis and adult use cannabis that originating outside of the city limits. The proposed Ordinance does prohibit all the previously disclosed commercial activities pertaining to cannabis and includes regulations in place for delivery of these products. The regulations include all employees delivering cannabis will have to carry a copy of the licensee's current state license, a driver's license, an employee identification card, a City of Clayton business license and a copy of the delivery request. The Ordinance also states no cannabis can be stored in the city, all deliveries will require a signature and proof of identification, and deliveries to physical residential addresses only with no porch drop-offs allowed.

Councilmember Catalano inquired if there is a definition of "adult use"; is it imbedded in state legislation? Ms. Gentry advised it is contained within the State legislation which is 21 years of age.

Councilmember Catalano noted it is proposed all cannabis deliveries require signature and proof of identification; what is the reasoning behind that requirement? Ms. Gentry responded the concern is having someone over the age of 21 requesting the delivery and the delivery being made to that correct eligible individual to prevent a miss-delivery or unlawful receipt. Porch drop offs are not allowed to prevent someone from gaining access to the product who did not request it.

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

It was moved by Councilmember Pierce, seconded by Vice Mayor Haydon, 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 Councilmember Pierce, seconded by Vice Mayor Haydon, to approve Ordinance No. 479 for Introduction with the finding 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. (Passed; 5-0 vote).

- (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.

Community Development Director Mindy Gentry noted at the City Council meeting of October 3, 2017 policy direction was provided to staff to amend the Clayton Municipal Code to allow placement of six-foot high fences within the required exterior side setbacks or at the public right-of-way line. Currently, the Clayton Municipal Code allows fences on exterior side lots to be a maximum of 30 inches in height within 5 feet of the property line with a maximum of 6 feet in height in the remaining portion of the exterior side setback.

Staff views the current fencing regulations for exterior side setbacks as a questionable regulation because the residential property owner will either compromise its privacy by having a fence only 30 inches in height or must sacrifice usable private land in order to



Approved: 
Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS
FROM: MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR *MG*
DATE: NOVEMBER 21, 2017
SUBJECT: SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING THE FENCING STANDARDS (ZOA-06-17)

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 a Second Reading of Ordinance No. 480 by title and number only and waive further reading; and
2. Following the City Clerk's reading; by motion adopt Ordinance No. 480 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

At its meeting on November 7, 2017, the City Council introduced the subject ordinance, which proposes 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**). No changes were made to the Ordinance at the October 17, 2017 hearing.

ENVIRONMENTAL

This Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15303 under 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 to the exterior of the structure.

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 November 7, 2017 City Council Meeting [pp. 33]

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



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)

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.

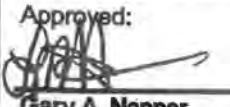
FISCAL IMPACTS

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]



Approved:

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

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

DATE: OCTOBER 3, 2017

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

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 all the property owners that have unauthorized encroachments? Some of 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 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 Homeowners 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~~. If the ~~rear~~ property line of any interior lot abuts permanently uninhabited land, equestrian riding areas either public or private, ~~the rear yard setback may be reduced to fifteen~~ ~~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.~~ ~~When the P-A-O district abuts any single family residential district, the building height maximum in the portion of the P-A-O district bordering the (30) feet of the adjoining 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 diagramed 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 foot 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,

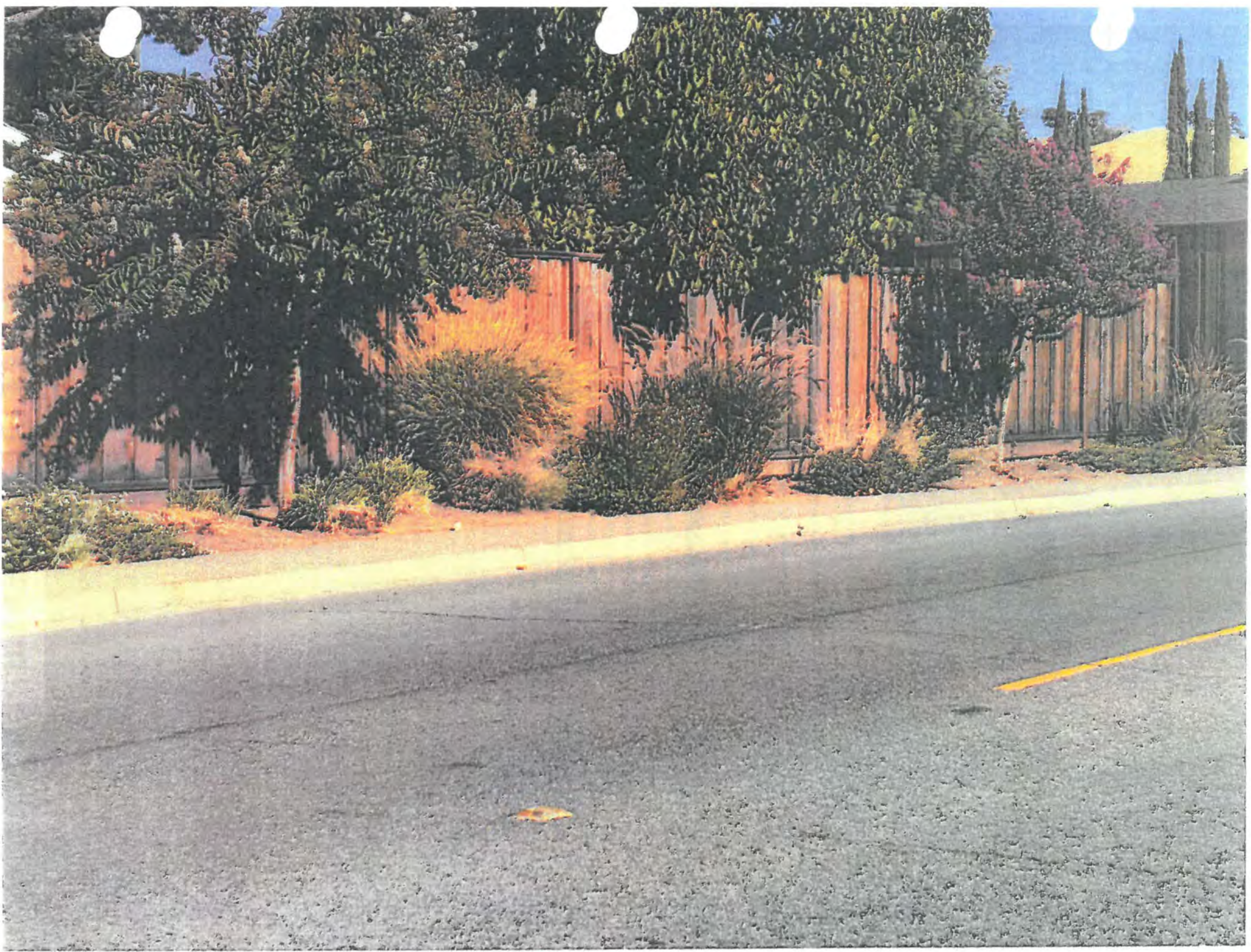
Rhonda Basore, City Clerk

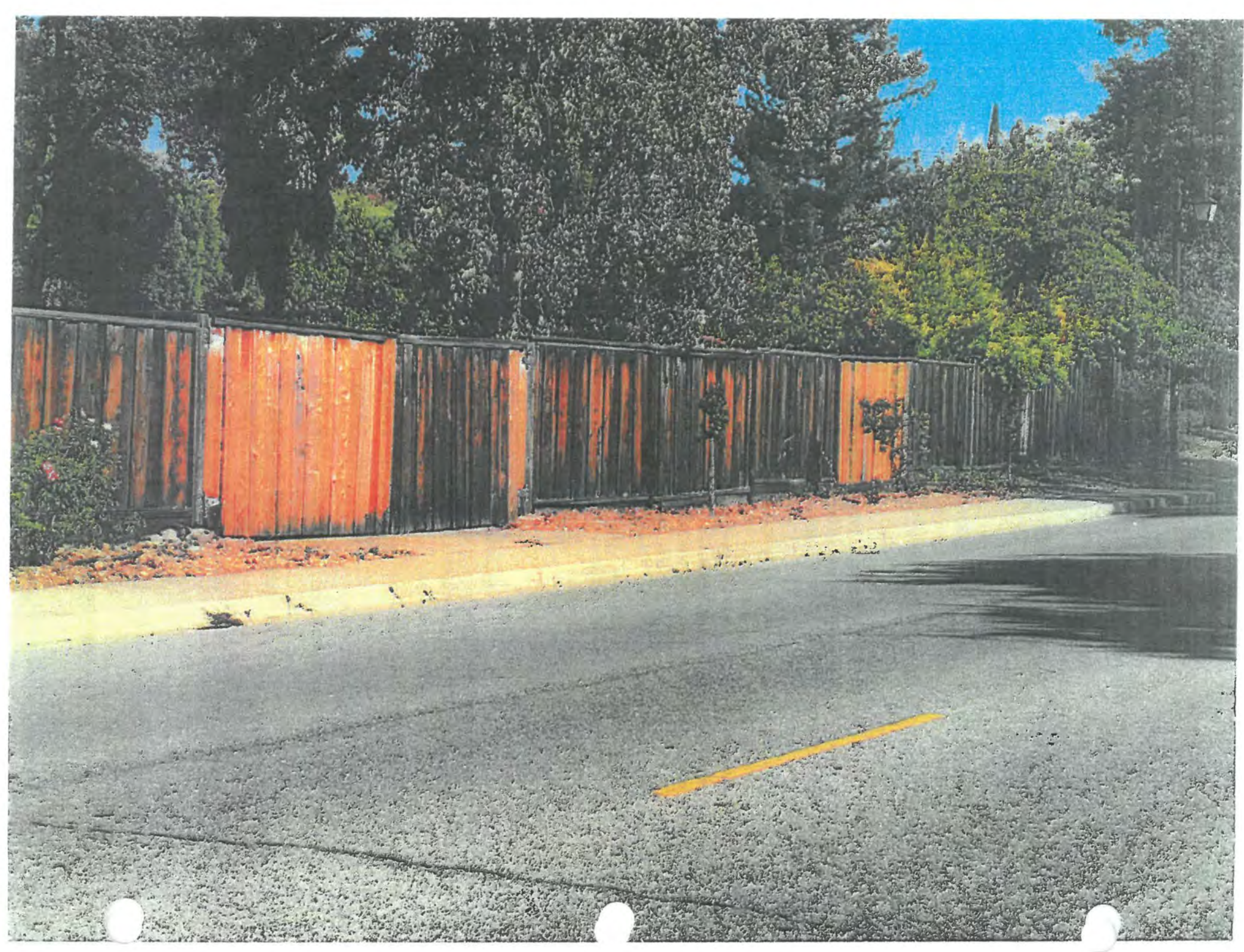
Approved by Clayton City Council:

Julie K. Pierce, Mayor

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ATTACHMENT 7

PLANNING COMMISSION STAFF REPORT

Meeting Date: October 24, 2017

Item Number: 5.a

From: Mindy Gentry *Mindy Gentry*
Community Development Director

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

Applicant: City of Clayton

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

Community Development Director Mindy Gentry presented the staff report noting the City Council previously directed staff to prohibit all commercial cannabis activities including retail sales, commercial cultivation, distribution, testing and manufacturing, and regulate deliveries of both cannabis and adult use cannabis that originating outside of the city limits. The proposed Ordinance does prohibit all the previously disclosed commercial activities pertaining to cannabis and includes regulations in place for delivery of these products. The regulations include all employees delivering cannabis will have to carry a copy of the licensee's current state license, a driver's license, an employee identification card, a City of Clayton business license and a copy of the delivery request. The Ordinance also states no cannabis can be stored in the city, all deliveries will require a signature and proof of identification, and deliveries to physical residential addresses only with no porch drop-offs allowed.

Councilmember Catalano inquired if there is a definition of "adult use"; is it imbedded in state legislation? Ms. Gentry advised it is contained within the State legislation which is 21 years of age.

Councilmember Catalano noted it is proposed all cannabis deliveries require signature and proof of identification; what is the reasoning behind that requirement? Ms. Gentry responded the concern is having someone over the age of 21 requesting the delivery and the delivery being made to that correct eligible individual to prevent a miss-delivery or unlawful receipt. Porch drop offs are not allowed to prevent someone from gaining access to the product who did not request it.

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

It was moved by Councilmember Pierce, seconded by Vice Mayor Haydon, 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 Councilmember Pierce, seconded by Vice Mayor Haydon, to approve Ordinance No. 479 for Introduction with the finding 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. (Passed; 5-0 vote).

- (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.

Community Development Director Mindy Gentry noted at the City Council meeting of October 3, 2017 policy direction was provided to staff to amend the Clayton Municipal Code to allow placement of six-foot high fences within the required exterior side setbacks or at the public right-of-way line. Currently, the Clayton Municipal Code allows fences on exterior side lots to be a maximum of 30 inches in height within 5 feet of the property line with a maximum of 6 feet in height in the remaining portion of the exterior side setback.

Staff views the current fencing regulations for exterior side setbacks as a questionable regulation because the residential property owner will either compromise its privacy by having a fence only 30 inches in height or must sacrifice usable private land in order to

have a six foot fence with added privacy. The required 5 foot set back from the property line creates a larger unusable area when coupled with the 5 foot setback of public right-of-way directly behind the sidewalk on the exterior side yard. She noted the City does not plant or maintain these adjacent public rights-of-way and it is left up to the property owner. If six-foot tall fences were allowed on the property line it would reduce the number of illegal fences throughout the city and the amount of space to be landscaped or left barren back of sidewalk to the fence.

Councilmember Pierce requested clarification: this Ordinance only deals with the location of the six-foot fence and not retaining walls or encroachments into public rights-of-way? Ms. Gentry responded that is correct, the discussion this evening is only on private fence locations.

Councilmember Catalano inquired if there is a different Municipal Code section pertaining to retaining walls and the addition of a fence so as not to create an overall fence exceeding 6 feet in height. Ms. Gentry advised that regulation is indeed addressed in a separate section of the Municipal Code.

Vice Mayor Haydon inquired if this Ordinance will resolve previous illegal fence violations. Ms. Gentry responded its passage will create less illegal violations within the city

Mayor Diaz opened the Public Hearing.

Mark Kelson, 29 Tiffin Court, expressed his concern the City's right-of-way is not always at 5 feet away from the curb; fences placed directly on the edge of the sidewalk impair pedestrian visibility. Ms. Gentry responded there are areas, for example, along Keller Ridge Drive where the fence is placed at the back edge of sidewalk but there is a green belt between back of curb and front edge of sidewalk to create space. She noted the public rights-of-way lines do indeed vary throughout the city and are location dependent.

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

It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to have the City Clerk read Ordinance No. 480, by title and number only and waive further reading. (Passed; 5-0 vote).

The City Clerk read Ordinance No. 480 by title and number only.

It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to approve Ordinance No. 480 for Introduction with the finding 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. (Passed; 5-0 vote).

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).

*** OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT ***
November 21, 2017

1. CALL TO ORDER AND ROLL CALL – Chairman Shuey.

2. PUBLIC COMMENTS

Members of the public may address the District Board of Directors on items within the Board'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 Secretary. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Chair's discretion. When one's name is called or you are recognized by the Chair 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 Board 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 Board.

3. CONSENT CALENDAR

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

(a) Information Only – No Action Requested.

1. Submittal of a report by Berlogar-Stevens & Associates dated August 24, 2017 regarding its findings from recent monitoring and inspection of inclinometers and surface improvements along Pebble Beach Drive in the Peacock Creek Subdivison. ([View Here](#))

(b) Approve the Board of Directors' minutes for its regular meeting on August 1, 2017 and its special meeting of August 14, 2017. ([View Here](#))

(c) Approve the award of a low-quote contract to G.N. Henley, Inc. in the amount of \$19,750 for repair of concrete V-ditches at various locations in the District hills, approve the allocation of \$35,000 from the Presley GHAD Settlement Fund (No. 213) to underwrite the contract and pay for subsequent V-ditch repairs as necessary, and amend the FY 2017-18 GHAD Budget accordingly. ([View Here](#))

(d) Approve the award of a geotechnical consultant contract to Berlogar, Stevens and Associates in the amount of \$10,800 for slope monitoring and field reporting services at Kelok Way. ([View Here](#))

4. **PUBLIC HEARING** – None.

5. **ACTION ITEMS** – None.

6. **BOARD ITEMS** – limited to requests and directives for future meetings.

7. **ADJOURNMENT**

The next meeting of the GHAD Board of Directors will be scheduled as needed.

#

Agenda Date: 11-21-2017

Agenda Item: 3a GHAD

GHAD STAFF REPORT

INFORMATION ONLY

TO: HONORABLE CHAIRPERSON AND BOARDMEMBERS

FROM: SCOTT ALMAN, DISTRICT MANAGER

DATE: NOVEMBER 21, 2017

SUBJECT: SUBMITTAL OF A REPORT BY BERLOGAR STEVENS & ASSOCIATES (BSA) DATED AUGUST 24, 2017 REGARDING THE MONITORING AND INSPECTION OF INCLINOMETERS AND SURFACE IMPROVEMENTS ALONG PEBBLE BEACH DRIVE IN THE PEACOCK CREEK SUBDIVISION

RECOMMENDATION

Accept and file this annual report from BSA regarding the inclinometers and surface improvements along Pebble Beach Drive in the Peacock Creek Subdivision

BACKGROUND

In 2007 two slope inclinometers (SI-1 and SI-2) were installed in the open space slope below lots 59 – 61 on Pebble Beach Drive in the Peacock Creek Subdivision. The baseline reading of the inclinometers was taken in February of 2007 and then the first in a series of readings taken in March 2007. Since the baseline and initial readings in 2007, additional readings have been taken in:

- July and October of 2007,
- January, February, May, August and October Of 2008,
- February, May, August and November of 2009,
- February 2010,
- August 2014,
- June 2016, and
- August 2017.

Sometime between the February 25, 2010 inclinometer reading and the attempted reading on August 29, 2014, the casing of inclinometer SI-2 pinched off at a depth of approximately 71.0 feet prohibiting further readings being taken between 71.0 feet and 125.0 feet in depth. The past three readings and reports have only been available to a depth of 71 feet. There is no current data available between 71.0 feet and 125.0 feet.

In addition to the inclinometer readings, BSA walks the V-ditches in the open space slope and walks Pebble Beach Drive looking for visual evidence in the form of cracking or crack spreading that would show geotechnical movement in the slope since the previous inspection(s) had been performed.

SUMMARY

Slope Inclinometers

SI-1 plotting suggests that no significant movement has occurred since the last readings were taken in June 2016.

SI-2 casing has pinched at a depth of 71 feet. Therefore, BSA was unable to take readings between 71 feet and 125 feet in depth. To process the data collected in the upper 70 feet, BSA used the prior readings taken February 25, 2010 for depths of 71 to 125 feet to provide a data set for plotting purposes. While the plotting suggests that the upper 70 feet has not internally moved significantly since the last readings taken in June 2016, it is not possible to determine if the upper 70 feet has moved differentially relative to the materials below a depth of 70 feet.

V-Ditches

The V-ditches below Pebble Beach Drive were walked in the field. Observations by BSA's engineer indicate that slight movements have occurred in the V-ditches since its last site visit in 2016. The following observations pertain to Cracks A through E: Minor right lateral offset and dilation less than approximately $\frac{1}{4}$ inch was observed in Cracks A and B; Minor dilation less than approximately $\frac{1}{4}$ inch was visible in crack C; Crack D appears to have dilated slightly, and Crack E appears to have contracted slightly, however neither cracks have exhibited any significant movement since the last field study. Portions of the mortar in patches A, B, C and E have delaminated since the 2016 site visit and Crack D remains unpatched. The delaminated areas of the patches at the cracks make it difficult to determine whether movement has occurred since the 2016 observation.

Asphalt Pavement

The AC pavement along Pebble Beach Drive showed no additional cracking in the locations observed.

BSA's Recommendations

BSA recommends the following actions be taken to facilitate future inspections and readings as well as preserve the integrity of the ditches in the open space slope:

1. Chisel markings into the sidewall of the concrete V-ditches on either side of each crack at a distance of 12" and centered on the crack. This will facilitate measurement of any future movement; and
2. Remove and replace all existing patch materials in cracks A, B, C and E with new flexible caulking and patch crack D with new flexible caulking.

CONCLUSION

The District Manager recommends the Board accept this annual report. Staff will work on options to fulfill the recommendations of BSA as it pertains to the V-ditches in the open space slope area, and return with its recommendations and request for funding at a future meeting.

Attachments:
Report (11 pp)

Via E-Mail Only

August 24, 2017
Job No. 2947.102

**BERLOGAR
STEVENS &
ASSOCIATES**

City of Clayton
6000 Heritage Trail
Clayton, California 94517

Attention: Mr. Gary Napper

Subject: Slope Inclinometer Monitoring Program
Open Space Slope Below Lots 59 through 61
Pebble Beach Drive
Clayton, California

Mr. Napper:

At your request, we have completed the following tasks at the subject site:

1. Take readings on Slope Inclinometers SI-1 and SI-2.
2. Walk the V-ditches and map apparent displacements.

Our findings are as follows:

Slope Inclinometers:

- | | |
|------|--|
| SI-1 | The plotting suggests that no significant movement has occurred since our last readings were taken in June 2016. |
| SI-2 | The inclinometer casing has pinched at a depth of 71 feet. Therefore, we were unable to take readings between 71 feet and 125 feet in depth. To process the data collected in the upper 70 feet, we used the prior readings taken February 25, 2010 for depths of 71 to 125 feet to provide a data set for plotting purposes. While the plotting suggests that the upper 70 feet has not internally moved significantly since our last readings were taken in June 2016, it is not possible to determine if the upper 70 feet has moved differentially relative to the materials below a depth of 70 feet. |

V-Ditches

The V-ditches below Pebble Beach Drive were walked in the field. Observations by our engineer indicate that slight movements have occurred in the V-ditches since our last site visit in 2016. The following observations pertain to Cracks A through E in the locations shown on the attached Plate 1, Site Plan. Minor right lateral offset and dilation less than approximately ¼ inch was observed in Cracks A and B. Minor dilation less than approximately ¼ inch was visible in crack C. Crack D appears to have dilated slightly and Crack E appears to have contracted slightly, however neither cracks have exhibited any significant movement since our last field

study. Portions of the mortar in patches A, B, C and E have delaminated since our 2016 site visit and Crack D remains unpatched. The delaminated areas of the patches at the cracks make it difficult to determine whether movement has occurred since our 2016 observation. The attached Appendix presents the photographs of Cracks A through E in the V-ditches from our 2016 report in juxtaposition with the photographs taken in the same locations during our 2017 site visit.

Additional Observations:

The AC pavement along Pebble Beach Drive was walked in the field. No additional cracking was apparent in the locations observed; one of these sections is presented on the attached Plate 1, Site Plan and Appendix

We recommend the following:

1. Chisel markings into the sidewall of the concrete V-ditches on either side of each crack. The chisel marks should measure 12 inches apart and be centered on the cracks to facilitate the measurement of any future movement in the existing V-ditch cracks;
2. Remove the existing patches in cracks A, B, C and E; and
3. Properly patch all cracks using a flexible caulking.

We trust this provides the necessary information at this time. If you have any questions, please contact the undersigned at (925) 484-0220.

Respectfully Submitted,

BERLOGAR STEVENS & ASSOCIATES



Matt Gessner
Staff Engineer

MG/FB:as



Frank Berlogar
RCE 20383



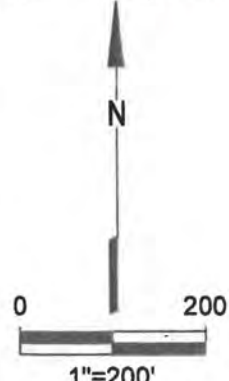
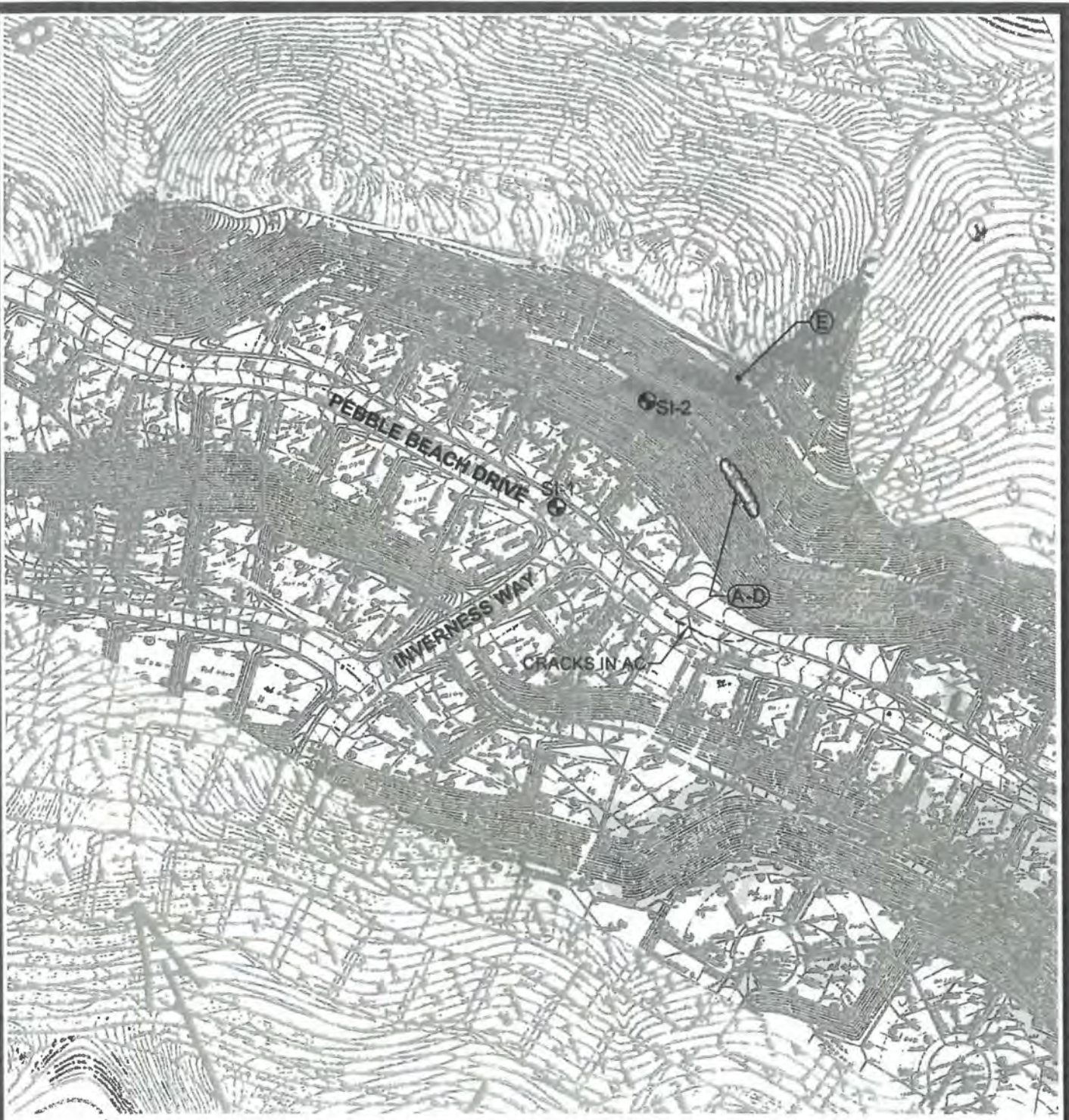
Attachments:

- Plate 1 – Site Plan
- Plate 2 – Slope Inclinator Plot SI-1
- Plate 3 – Slope Inclinator Plot SI-2
- Appendix – Photographs

U:\@@@Public\I-Pleasanton\2947 - Pebble Beach Dr\2017\slope monitoring letter 2017 FINAL - 29732.docx

BERLOGAR STEVENS & ASSOCIATES

JOB NUMBER: 2947.102 DATE: 8-11-17 DRAWN BY: CC



EXPLANATION

- SI-2 SLOPE INCLINOMETER LOCATION
- ⓔ CRACK DESIGNATION LETTER
(SEE PHOTOGRAPHS)

SITE PLAN

V-DITCH OBSERVATIONS

PEBBLE BEACH DRIVE
CLAYTON, CALIFORNIA
FOR
CITY OF CLAYTON

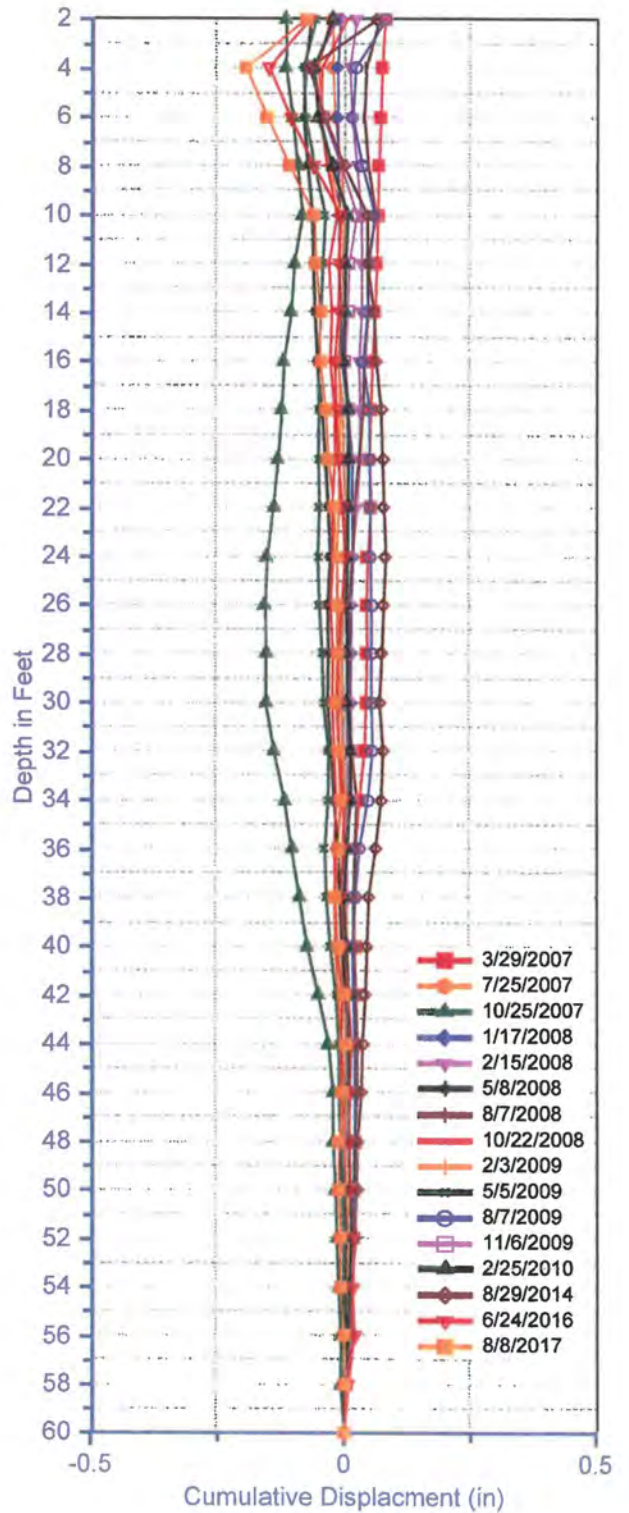
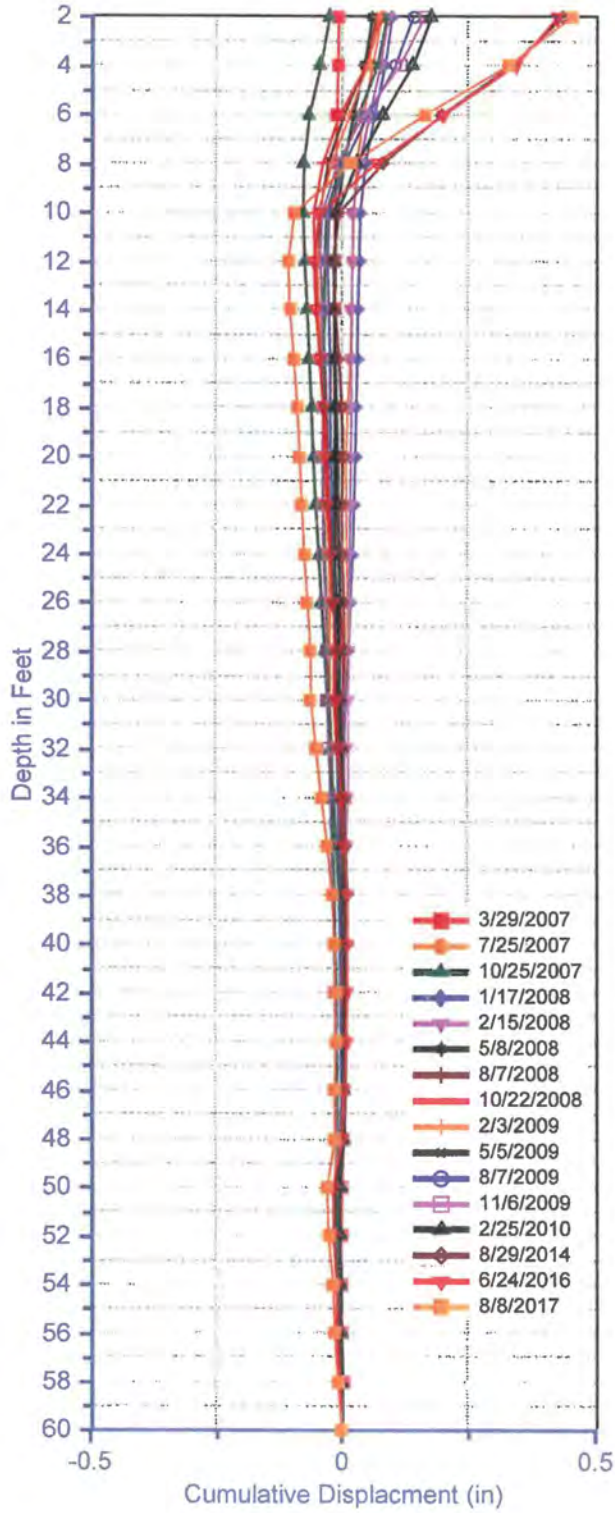
Berlogar Stevens & Associates

SOIL ENGINEERS • ENGINEERING GEOLOGISTS

BASE: COMPILATION OF RECORD PLANS UDI-TETRAD DATED 10-7-96, AND FIGURE IIIA-2 HALLENBECK 1988

SI-1, A-Axis

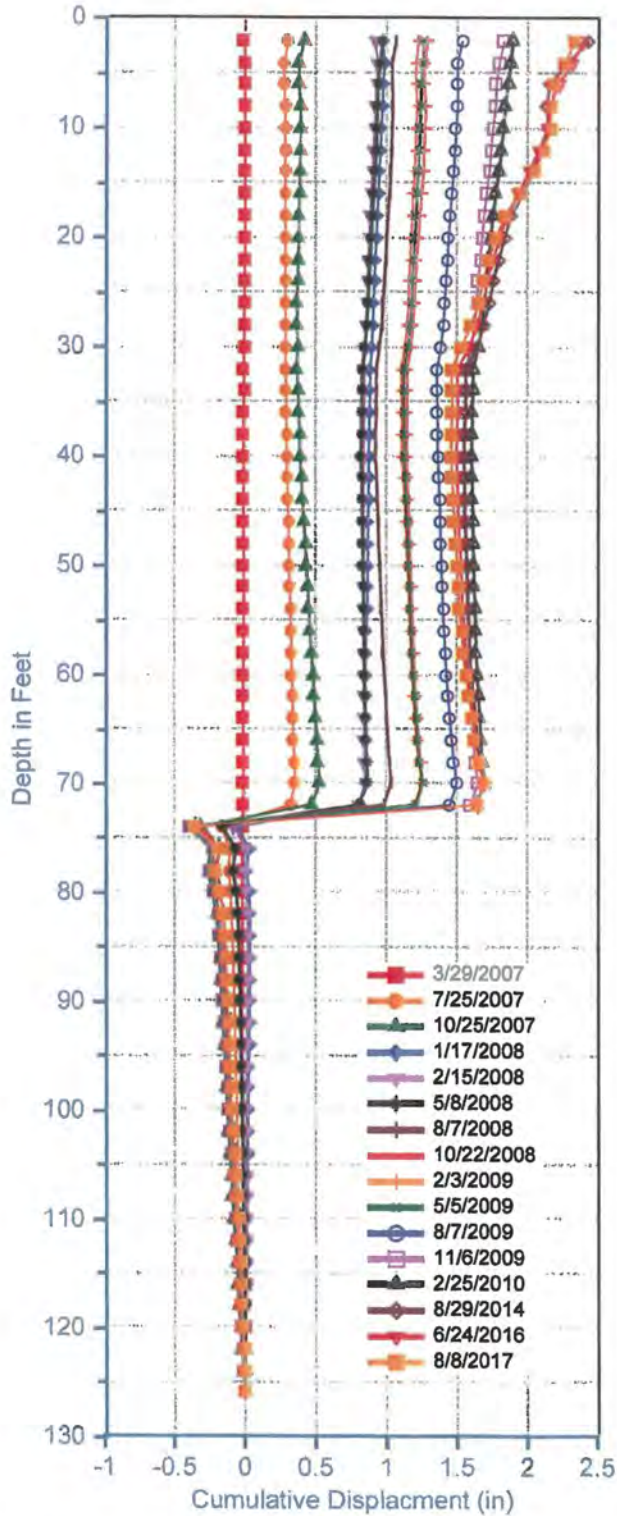
SI-1, B-Axis



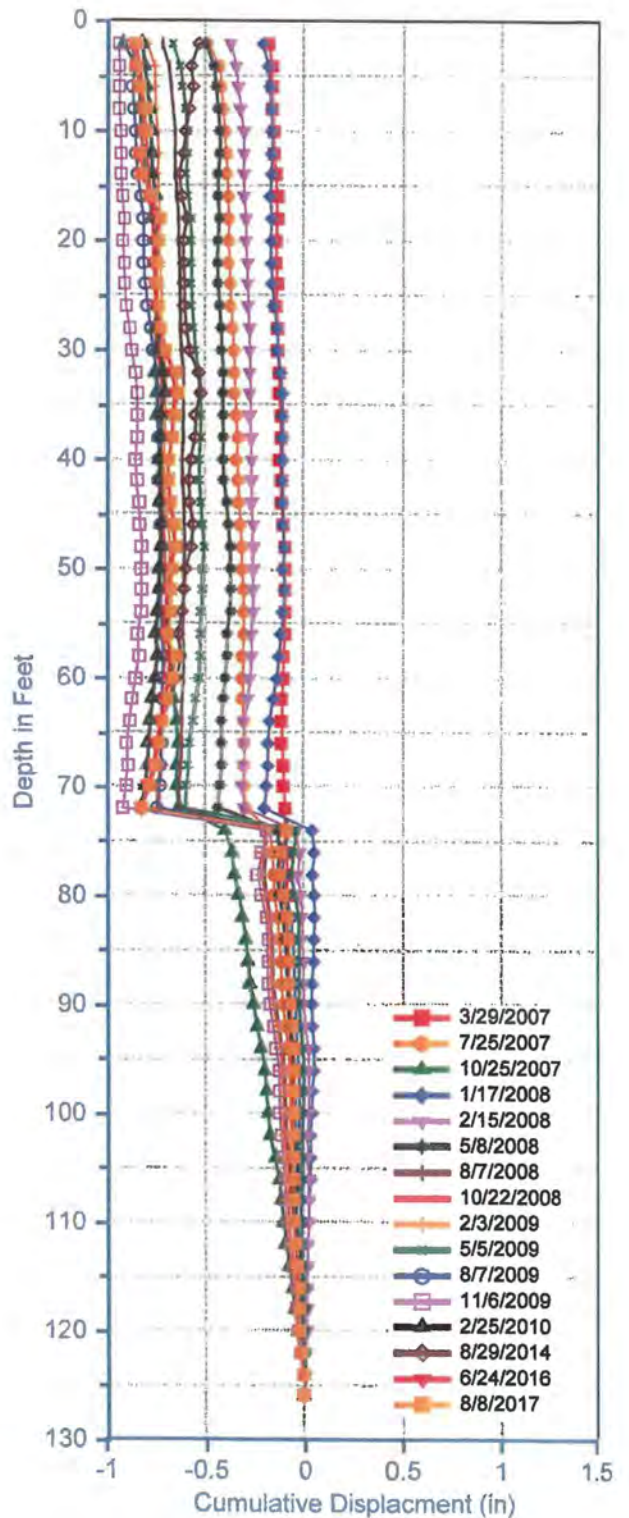
**BERLOGAR
STEVENS &
ASSOCIATES**

2947.100 - Open Space Slope Below Lots 59-61
Baseline Reading Date: 2-20-07
A+=N49E B+=S41E

SI-2, A-Axis



SI-2, B-Axis



**BERLOGAR
STEVENS &
ASSOCIATES**

SOIL ENGINEERS ENGINEERING GEOLOGISTS

2947.100 - Open Space Slope Below Lots 59-61

Baseline Reading Date: 2-20-07

A+=N41E B+=S49E

Reading 8-29-14 refusal at 70 feet

All subsequent readings start at 70 feet

PLATE 3

JOB NUMBER: 2947.102

DATE: 8-22-17

DRAWN BY: CC



PHOTO 1 - 2016 CRACKS IN PAVEMENT, PEBBLE BEACH DRIVE



PHOTO 2 - 2017 CRACKS IN PAVEMENT, PEBBLE BEACH DRIVE

PHOTOGRAPHS

JOB NUMBER: 2947.102

DA1 E. 8-22-17

DRAWN BY: CC



PHOTO 3 - 2016 CRACK A



PHOTO 4 - 2017 CRACK A

PHOTOGRAPHS



PHOTO 5 - 2016 CRACK B

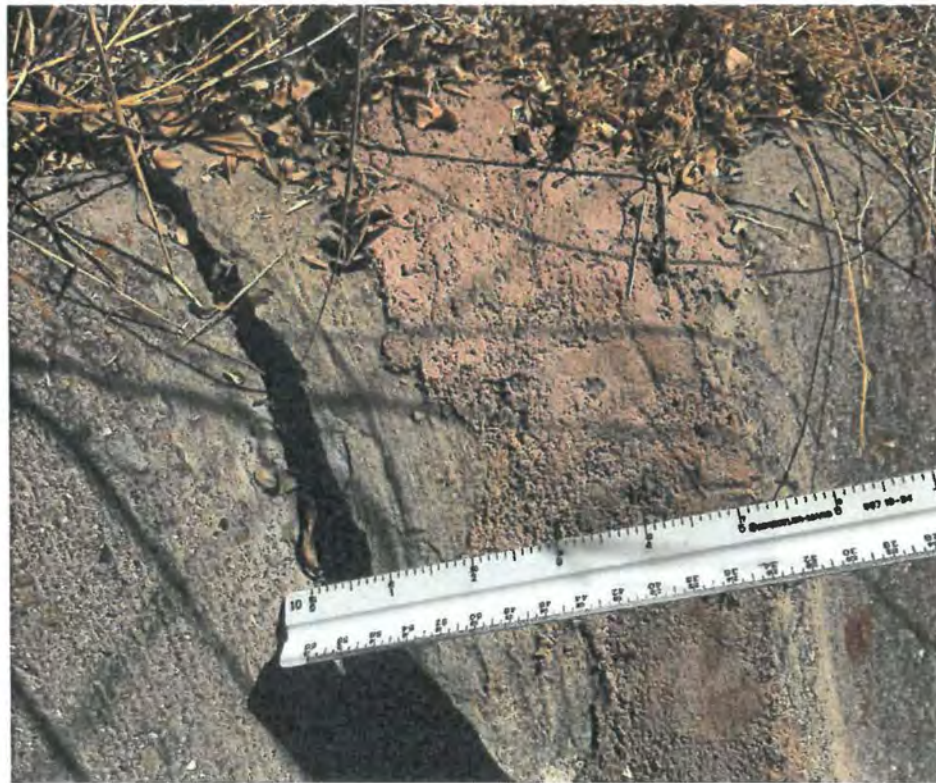


PHOTO 6 - 2017 CRACK B

PHOTOGRAPHS

JOB NUMBER: 2947.102

DATE: 8-22-17

DRAWN BY: CC



PHOTO 7 - 2016 CRACK C



PHOTO 8 - 2017 CRACK C

PHOTOGRAPHS

DRAWN BY: CC

DATE: 8-22-17

JOB NUMBER: 2947.102



PHOTO 9 - 2016 CRACK D



PHOTO 10 - 2017 CRACK D

PHOTOGRAPHS

JOB NUMBER: 2947.102

DATE: 8-22-17

DRAWN BY: CC

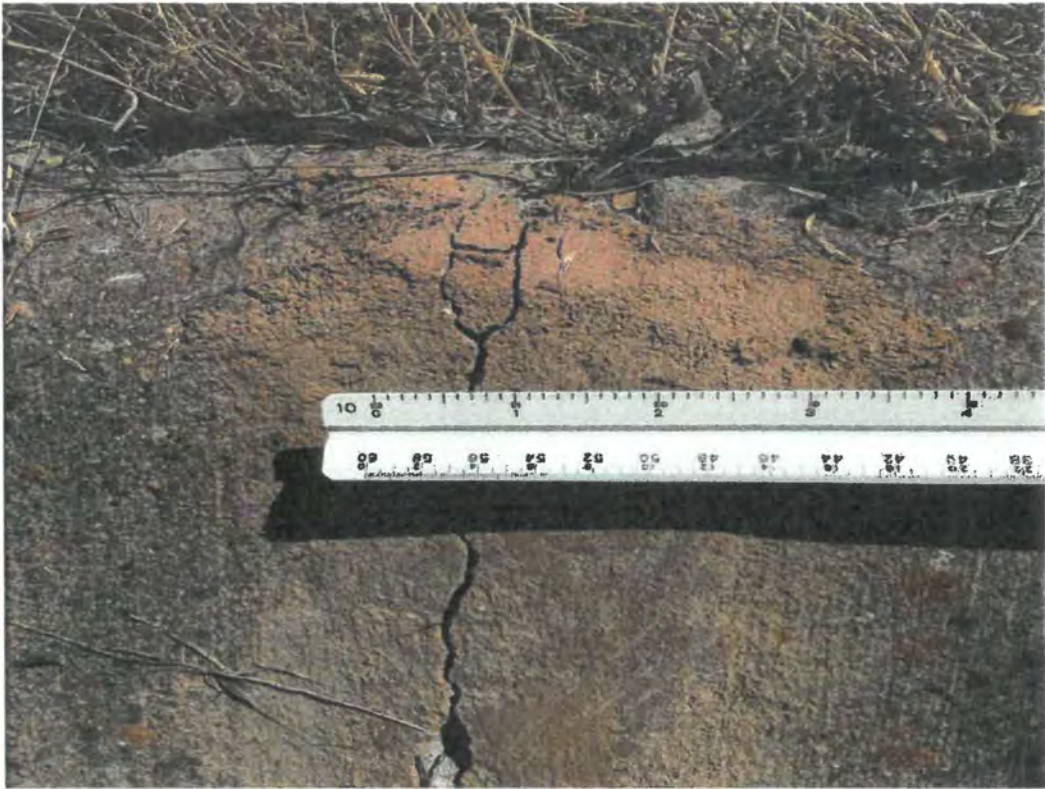


PHOTO 11 - 2016 CRACK E

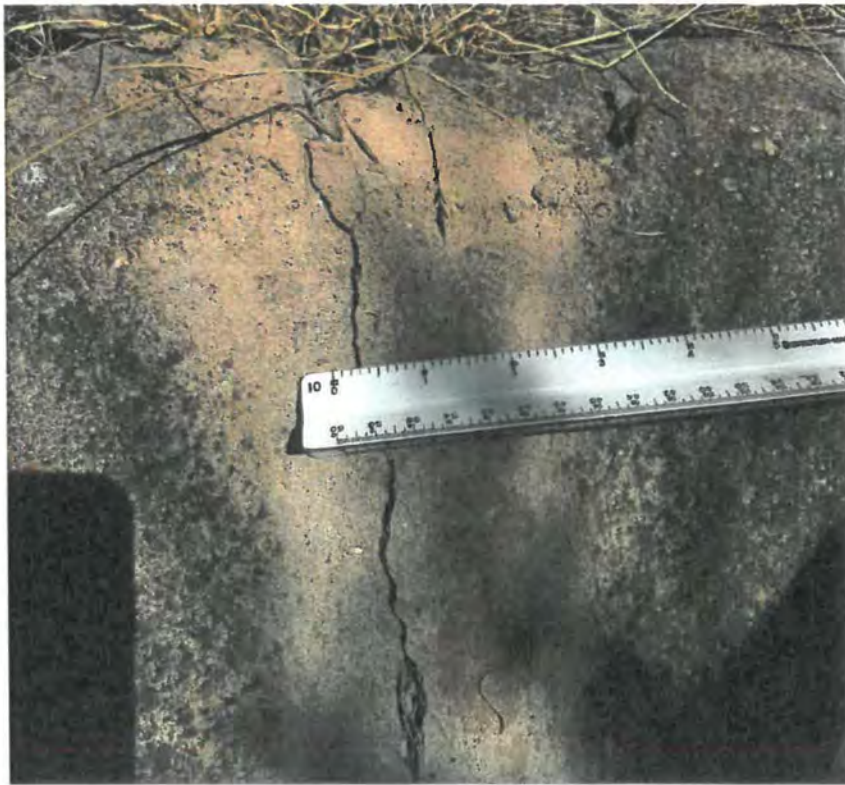


PHOTO 12 - 2017 CRACK E

PHOTOGRAPHS

MINUTES
REGULAR MEETING
OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT (GHAD)

August 1, 2017

1. **CALL TO ORDER AND ROLL CALL** – the meeting was called to order at 7:42 p.m. by Chairman Shuey. **Board Members present:** Chairman Shuey, Vice Chair Catalano, Board Members Diaz, Haydon, and Pierce. **Board Members absent:** None. **Staff present:** City Manager Gary Napper, General Legal Counsel Mala Subramanian, and Secretary Janet Brown.

2. **PUBLIC COMMENTS** – None.

3. **CONSENT CALENDAR** – It was moved by Board Member Pierce, seconded by Board Member Haydon, to approve the Consent Calendar as submitted. (Passed; 5-0 vote).
 - (a) Approved the Board of Directors' minutes for its regular meeting of July 18, 2017.
 - (b) Adopted Resolution No. 03-2017 GHAD to amend the Fiscal Year 2017-2018 GHAD Budget in the amount of \$9,500 for geotechnical monitoring and inspection consultant services, and authorize the geotechnical consultant services to be performed by Stevens, Ferrone & Bailey Engineering Company (\$5,200) on Kelok Way, and by Berlogar Geotechnical Consultants (\$4,300) on Pebble Beach Drive within the Oakhurst Development area.

4. **PUBLIC HEARINGS** – None.

5. **ACTION ITEMS** – None.

6. **BOARD ITEMS** – None.

7. **ADJOURNMENT** - on call by Chairman Shuey the meeting adjourned at 7:43 p.m.

Respectfully submitted,

Janet Brown, Secretary

Approved by the Board of Directors
Oakhurst Geological Hazard Abatement District

David T. Shuey, Chairman

**MINUTES
OF THE
SPECIAL MEETING
OAKHURST GEOLOGICAL ABATEMENT DISTRICT (GHAD)**

Monday, August 14, 2017

1. CALL TO ORDER AND ROLL CALL

The GHAD Board of Directors special meeting was called to order at 5:50 p.m. by Vice Chair Catalano in the 1st Floor Conference Room, Clayton City Hall, 6000 Heritage Trail, Clayton, CA. Board Members present: Vice Chair Catalano, and Board Members Diaz and Haydon. Board Members absent: Board Members Pierce and Shuey. Staff present: City Manager Gary Napper.

2. PUBLIC COMMENT PERIOD – No comments.

3. CONSENT CALENDAR – None.

4. ACTION ITEM

- (a) Consider the approval a proposed Agreement for Professional Engineering Services with Harris & Associates (Concord, CA) for the provision of GHAD engineering services at applicable rates of \$105.00 - \$190.00 per hour, and appoint Mr. Scott Alman, P.E., as General Manager of the Oakhurst Geological Hazard Abatement District.

City Manager Napper provided a brief overview of the requested action, noting the City of Clayton had approved a new contract for city engineering services with Harris & Associates and also appointed Mr. Scott Alman as its new City Engineer. Although the GHAD is a separate public entity, in the past the GHAD has determined it is beneficial and cost effective to have the same engineering firm for the City also manage the administration and limited geotechnical consultant services offered through the GHAD. Further, the GHAD needs a new General Manager and it is prudent to have that individual be the same professional who is the City Engineer. The proposed hourly rate schedule is attached and noted in the Staff Report.

Vice Chair Catalano opened the floor to receive public comment; no public comments were offered.

It was moved by Board Member Haydon, seconded by Board Member Diaz, to approve the rates of \$105.00 - \$190.00 per hour for GHAD engineering services, as contained in the Professional Engineering Services Agreement with Harris & Associates, and appoint Mr. Scott Alman, P.E., as General Manager of the Oakhurst Geological Hazard Abatement District.

(Passed; 3-0 vote).

- 4. ADJOURNMENT– on call by Vice Chair Catalano the Oakhurst Geological Hazard Abatement District special meeting adjourned at 5:53 p.m.**

The next regularly scheduled GHAD Board of Directors will be scheduled when needed.

#

Respectfully submitted,

Janet Brown, Secretary

Approved by the Board of Directors
Oakhurst Geological Hazard Abatement District

David T. Shuey, Chair

GHAD STAFF REPORT

TO: HONORABLE CHAIRPERSON AND BOARDMEMBERS

FROM: SCOTT ALMAN, DISTRICT MANAGER

DATE: NOVEMBER 21, 2017

SUBJECT: APPROVE THE AWARD OF LOW-QUOTE CONTRACT TO G.N. HENLEY, INC., IN THE AMOUNT OF \$19,750.00 FOR REPAIRS TO CONCRETE V-DITCHES IN THE DISTRICT HILLS, ALLOCATE GHAD RESERVE MONIES IN THE AMOUNT OF \$35,000.00 FROM FUND NO. 213, AND AMEND THE FY 2017-18 GHAD BUDGET ACCORDINGLY

RECOMMENDATION

It is recommended the GHAD Board authorize the following actions:

1. Award a low-bid contract to G.N. Henley, Inc. in the amount of \$19,750.00 to remove and replace broken concrete V-ditches in three separate locations within the District, with findings the contemplated ditch repair/replacement project is categorically exempt under CEQA Section 15302(C); and
2. Appropriate \$35,000.00 from Fund 213 – Presley GHAD Settlement, to underwrite the cost of this contract work and to establish a small expense account to perform additional ditch repair work in FY 2017-18 should the occasion arise after the winter rains, and amend the GHAD FY 2017-18 Budget accordingly.

BACKGROUND

During the 2016 annual field review of all V-ditches, citywide, by the City's Maintenance Department, it was discovered there are three locations within the GHAD District limits that have broken concrete ditch sections. These broken sections of ditch allow run-off to escape the ditch and run down the slope causing erosion of the surface soils and potentially destabilizing the slope.

The previous district manager (Permco Engineering) requested price quotes to do the ditch repair and replacement work from Wayne E. Swisher Cement Contractor, and from GN Henley. Those quotes were \$28,888.00 and \$33,600.00 respectively. During the district manager recent transition in 2017, those price quotes were ultimately delivered to the current District Manager to take action on the repair/replacement work. Since the quotes were approximately a year old, updated quotes were requested from both contractors as well as a third quote from Abacus Concrete.

DISCUSSION

The following price quotes for the GHAD V-ditch repair/replacement work were received from Wayne E. Swisher Cement Contractor, Inc., G.N. Henley, Inc. and Abacus Concrete:

2016	Area 1	Area 2	Area 3	Discount	Total
Swisher	\$9,800	\$10,800	\$10,800	<\$2,512>	\$28,888.00
Henley	\$9,800	\$13,500	\$10,300		\$33,600.00
2017					
Swisher (revised)	\$9,800	\$10,800	\$10,800		\$31,400.00
Henley (revised)	\$6,000	\$8,500	\$5,250		\$19,750.00
Abacus					\$35,300.00

ENVIRONMENTAL

This concrete ditch repair/replacement project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15301(c) – Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety).

FINANCIAL IMPACT

The adopted FY 2017-18 GHAD Budget has insufficient funds to perform this mitigation repair work within the District's boundaries. However, there are monies (originating from the settlement of the Presley and related lawsuits) in the amount of \$123,983 which monies were reserved for the conduct of street repairs associated with geotechnical movements along Kelok Way.

The City of Clayton is presently undertaking a revised scope of work to repave Keller Ridge Drive using collector street monies distributed by the Contra Costa Transportation Authority (CCTA). It is the intent of the City, through its contract city engineer, to expand the scope of this repaving project to include Kelok Way, which proportional expense is likely larger than the proposed \$35,000 allocation from Fund No. 213.

Therefore, the objectives of the GHAD Board in this regard are better achieved by allowing the City to repave the nearby collector streets of Kelok Way and Keller Ridge Drive using local transportation funds and redirect the settlement proceeds to perform the necessary V-ditch repairs and maintenance associated with hillside movements.

Attachments: None

Agenda Date: 11-21-2017

Agenda Item: 3d

GHAD STAFF REPORT

TO: HONORABLE CHAIRPERSON AND BOARDMEMBERS

FROM: SCOTT ALMAN, DISTRICT MANAGER

DATE: NOVEMBER 21, 2017

SUBJECT: APPROVE THE AWARD OF A PROFESSIONAL SERVICES CONTRACT TO BERLOGAR STEVENS AND ASSOCIATES (BSA), IN THE AMOUNT OF \$10,800.00 FOR SLOPE MONITORING AND REPORTING SERVICES AT KELOK WAY

RECOMMENDATION

It is recommended that the GHAD Board approve the award of a professional services contract to Berlogar Stevens & Associates in the amount of \$10,800.00 for slope monitoring and reporting services at Kelok Way.

BACKGROUND

At the August 1, 2017 GHAD meeting the Board approved a contract with Stevens, Ferrone & Bailey (SF&B) to perform slope monitoring services at the Kelok Way location. Subsequent to that approval, SF&B refused to enter into the contract for the services and walked away from the GHAD. Staff turned to BSA, the geotechnical firm that provides these same inspection and reporting services for the Pebble Beach Drive area of Peacock Creek and requested a proposal from BSA to take over monitoring and reporting services for the Kelok Way area. BSA submitted a proposal that includes \$5,800.00 to perform the monitoring and reporting as well as a one-time \$5,000.00 cost for review of the historical record of SF&B's previous work.

FINANCIAL IMPACT

The adopted FY 2017-18 GHAD Budget has sufficient funds budgeted to perform these monitoring and reporting services including the one-time \$5,000.00 fee.

Attachments:
Letter Proposal (4 pp)

Via E-Mail

November 15, 2017
Proposal No. P8817.000

**BERLOGAR
STEVENS &
ASSOCIATES**

Oakhurst Geologic Hazard Abatement District
6000 Heritage Trail
Clayton, California 94517

Attention: Mr. Scott Alman, P.E., District Manager

Subject: Proposal to Provide Geotechnical Support Services
Open Space Slope Below Pebble Beach Drive
Concord, California

Gentlemen:

Berlogar Stevens & Associates (BSA) is pleased to provide this proposal to the Oakhurst Geologic Hazard Abatement District (GHAD). The proposal was issued in response to the request received from Mr. Scott Alman, P.E., the GHAD District Manager for slope monitoring services to be provided on a semi-annual (twice each year) basis, as well as for the installation of an inclinometer to replace a damaged inclinometer. Two inclinometers were installed for monitoring purposes. One is located in the street and the second, which requires replacement, is located about 50 feet downslope from Pebble Beach Drive. The inclinometers have been monitored for several years. Our understanding of the scope of slope monitoring services requested is listed below.

SCOPE OF SERVICES

1. Semi-Annual Monitoring

- a) Conduct site reconnaissance consisting of walking the slope below Pebble Beach Drive between the addresses of 1021 and 1045 Pebble Beach Drive to inspect and document conditions of concrete v-ditches and any evidence of slope movement potentially associated with slope failure (including surficial failures) and erosion.
- b) Conduct site reconnaissance of the pavement and sidewalk areas between the addresses of 1021 and 1045 Pebble Beach Drive to document distress and note changes in conditions from the previously documented conditions.
- c) Obtain inclinometer measurements at two existing inclinometers. Readings will be obtained to the depth of the inclinometer installation, any obstruction preventing full depth readings or a depth of 150 feet, whichever occurs first. Reduce the field data and compare the data to prior readings noting any changes.
- d) Evaluate the current data compared to the historic data. Prepare a summary report presenting the data and geotechnical engineering opinions regarding the current state of the slope and slope performance since the previous monitoring event, expressing any concerns regarding observed conditions or those indicated by the instrumentation data, recommendations for additional investigation or monitoring efforts if indicated by the data, and identifying any maintenance needs.

2. Inclinometer Installation

The inclinometer located adjacent to the mid-slope concrete v-ditch has experienced excessive casing deformation due to ground movement at a depth of 71 feet below the ground surface. This precludes measurement of any on-going movement at this apparent slide plane location and below. We propose to install a new inclinometer in the same general location to allow for renewed continued monitoring of the slope at this site. The installation will be to a depth of 120 feet below the ground surface.

Accessing the site will require considerable effort given that the inclinometer is 50 feet down a 2 horizontal to 1 vertical slope. Accessing the site and the use of specialized track-mounted drilling equipment will require three days for the installation. The time required and the use of the track-mounted equipment adds cost above those of a simpler installation on a flat site using truck-mounted equipment. Access may be from the open space between 1033 and 1045 Pebble Beach Drive or from below off of Black Diamond trail. Access route will be determined in consultation with the City of Clayton and the GHAD prior to our mobilizing to the site. Clearing of brush will likely be required for both options.

SCHEDULE

Semi-Annual Monitoring

Scheduling of the monitoring events is to be coordinated with the GHAD. Typically, these events are scheduled for early to mid-spring to identify any changes that have occurred as a result of winter rains and so maintenance can be scheduled for the summer months, and late fall to verify maintenance has been completed and to document conditions prior to the coming winter rains. Each monitoring event will require about a two-week time period from the site walk to the submittal of our summary report.

Inclinometer Installation

Scheduling of a track-mounted drill rig typically requires about four- to six-weeks' notice. Given the restricted site access due to the steep sloping conditions, we recommend that this installation be scheduled for mid- to late spring to allow for the rainy season to pass and for the surface of the slope to dry-out. Installation is expected to require three days for drilling, sampling and logging of the boring and inclinometer casing installation for a single inclinometer installed to a depth of 120 feet.

COST OF SERVICES

We propose to provide our geotechnical services for semi-annual monitoring and inclinometer installation on a fixed fee basis. The costs for these services are as follows:

Semi-Annual Monitoring with Summary Report (each session)	\$3,700
Installation of Replacement Inclinometer on slope below Pebble Beach Dr.	\$38,000

The above costs for semi-annual monitoring are valid for a three-year period from 2018-2020. At the end of the three-year period, at your option services may be extended into a fourth year and also into a fifth year. The per session cost for year four will be \$3,800. The per session cost for year five be \$3,900.

The costs for inclinometer installation are based on current costs for drillers and materials. The quoted cost is valid for six months from the date of this proposal and is subject to review and possible adjustment after that time.

Should additional consulting services beyond those specifically identified above be requested and authorized, those services will be provided on a time and expense basis in accordance with our fee schedule in effect at the time of services unless other arrangement for fixed fee services are made.

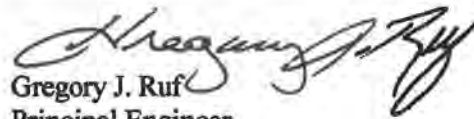
AUTHORIZATION

If this proposal is acceptable, please provide us with your contract for consideration. We will need to confirm that the terms and conditions are acceptable based on our business practices and the requirements of our insurance carriers. If there is a need to modify the scope of services, please contact our office at your earliest convenience so that a revised proposal can be issued.

If you have any questions regarding our proposed scope of services, schedule or cost, please contact the undersigned at (925) 484-0220.

Respectfully Submitted,

BERLOGAR STEVENS & ASSOCIATES



Gregory J. Ruf
Principal Engineer

Attached: Fee Schedule – 2017

GJR/FB:as

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BERLOGAR STEVENS & ASSOCIATES

FEE SCHEDULE - 2017

General

Billing Rate/Hour

Principal Engineers and Geologists	\$263.00
Associate Engineers and Geologists	220.00
Senior Engineers and Geologists	199.00
Project Engineers and Geologists	178.00
Staff Engineers and Geologists	164.00
Supervising Technicians	180.00
Laboratory Technicians	136.00
Senior Engineering Technicians	136.00
Engineering Technicians	123.00
Computer Time	42.00
Draftsman	125.00
Word Processor	84.00
Outside Services	Cost + 20%
Vehicle	68¢/mile
Nuclear Density Gauge (Two-Hour Minimum)	16.00
Proton Magnetometer	183.00/day
Seismograph (12 Channel)	500.00/day
Slope Indicator	355.00/day
Sondex Instrument	171.00/day
Shoring (each)	148.00/day
Water Pump	58.00/day
Coring Machine	226.00/day
Piezometer Read-Out Unit	214.00/day
Settlement Transducer Read-Out	214.00/day

Overtime work performed at the request of the Client or necessitated by Contractor working overtime will be billed at 1.5 times the hourly rates listed above. Double time is charged for work on Sundays and Holidays. Shift differentials are applied for nighttime work.

Expert witness testimony/deposition minimum charges: \$454/hour; preparation at applicable hourly rates.

Project-related out-side costs including: Equipment rental, consultants, special fees, permits or insurance, meals and lodging and other similar items are billed at cost + 20%. In lieu of individually charging for: photo copies, federal express, facsimile, telephone and clerical time a flat fee of 2% of total labor will be charged. Copies of previously issued reports of up to 50 pages will be billed at \$98.00 for the first copy, and \$54.00 for each additional copy. Specific quotes for larger reports and/or reports containing drawings larger than 8 1/2 X 11 inches.

Laboratory Tests

(Unit charge for laboratory testing including the normal laboratory work and report of results only. Unusual or time-consuming sample preparation or special tests are billed at hourly charge for the laboratory technician. Charges for testing which are not listed will be given upon request. Similarly, a reduction of the Fee Schedule rate can be given for a large number of tests).

<u>Classification Tests</u>	<u>Rate/Test</u>	<u>Shrink/Swell Tests</u> (including moisture content and dry unit weight determinations)	<u>Rate/Test</u>
Atterberg Limits (PI & LL)	\$180	A. Undisturbed	\$ 121
Sieve Analysis	142	B. Remolded	196
Percent Passing #200 Sieve	75	<u>Strength Tests</u> (including moisture content and dry unit weight determinations)	
Hydrometer Analysis	174	<u>Direct Shear, Per Point</u>	
Sand Equivalent	147	A. Undisturbed	73
Specific Gravity, fine aggregate	179	B. Remolded	142
Bulk Specific Gravity, coarse aggregate	156	<u>Triaxial Compression, Per Point</u>	
Moisture Content/Unit Weight	29	A. Unconsolidated, Undrained	185
<u>Compaction Curves</u>		B. Unconsolidated, Undrained & Backsaturation	314
A. 4-Inch Mold	282	C. Consolidated, Undrained	338
B. 6-Inch Mold	330	D. Consolidated, Undrained & Backsaturated	503
C. Cal Impact (Wet)	282	E. Consolidated, Drained w/ Pore Pressure	503
D. Cal Impact (Dry)	330	F. Remolded Specimens, Add, Per Point	81
E. 1 Point Verification	122	<u>Unconfined Compression</u>	
<u>Durability Factor</u>		A. Undisturbed	121
A. Fine	267	B. Remolded	185
B. Coarse	220	<u>Consolidation Tests</u> (including moisture content and dry unit weight determinations)	
L.A. Rattler	282	A. Undisturbed	282
<u>Concrete Tests</u>		B. Remolded	361
A. Compression Tests (each 4-inch X 8-inch specimen)	34	C. Time Compression Curve, Per Increment	81
B. Compression Tests (each 6-inch X 12-inch specimen)	68	<u>R-Value Tests</u>	
C. Trial Batch	1577	Not Requiring Reproportioning	378
<u>Asphaltic Concrete - HVEEM</u>		Cement, Lime, Other	426
A. Maximum Density	144		
B. Extraction	185		
C. Gradation	175		

A new Fee Schedule is issued at the beginning of each year. Unless other arrangements have been made, charges for all work performed after December 31, 2017, (including projects initiated in the prior year) will be based on the new schedule of charges.

A service charge of one and a half percent per month (but not exceeding the maximum rate allowable by law) will be payable on any amounts not paid within 30 days, payment thereafter to be applied first to accrued interest and then to the principal unpaid amount. Any attorney's fees or other costs incurred in collecting any delinquent amount shall be paid by the Client.