

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

TUESDAY, February 5, 2019

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:00 p.m. by Mayor Catalano in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Catalano, Vice Mayor Pierce and Councilmembers Diaz, Wan and Wolfe. Councilmembers absent: None. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian (arrived at 7:06 pm), Chief of Police Warren, Maintenance Supervisor Jim Warburton, Community Development Director Mindy Gentry, City Engineer Scott Alman, and City Clerk/HR Manager Janet Calderon.

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

3. **CONSENT CALENDAR**

Mayor Catalano requested Item 3(a) be pulled from the Consent Calendar for separate discussion.

It was moved by Vice Mayor Pierce, seconded by Councilmember Wan, to approve the Consent Calendar Items 3(b) – 3(e). (Passed; 5-0 vote).

 - (b) Approved Financial Demands and Obligations of the City.
 - (c) Adopted Resolution No. 03-2019 awarding a low-bid contract to Resources Environmental, Inc., in the amount of \$47,100.00 for the demolition of the City-owned bungalows located on City real properties at 1005 and 1007 Oak Street, and authorizing the allocation of \$55,000.00 from the City's Capital Improvement Budget, CIP No. 10400 – Downtown Economic Development Account, to fund the project.
 - (d) Accepted the City Investment Portfolio Report for the 2nd Quarter of FY 2018-19 ending December 31, 2018.
 - (e) Approved Mayoral appointment of Edward L. Miller to serve on the Contra Costa Transportation Authority (CCTA) Citizens Advisory Committee with a 4-years' term of office ending February 2023.

Consent Calendar Pulled

- 3(a) Approve the minutes of the regular meeting of January 15, 2019.

Mayor Catalano noted a correction to the minutes on page 12 has already been benched on the dais regarding the Planning Commissioner appointment vote. She wished an additional correction noting she made a second nomination of James Porter on Item 10 (d).

It was moved by Vice Mayor Pierce, seconded by Councilmember Wolfe, to approve Consent Calendar Item 3(a), as amended. (Passed; 5-0 vote).

Mayor Catalano asked Mr. Miller to share a few words. Mr. Edward Miller thanked the City Council for the opportunity to serve on the Contra Costa Transportation Authority (CCTA) Citizens Advisory Committee and that he wished to make periodic reports to the City Council regarding the actions of this advisory committee.

4. RECOGNITIONS AND PRESENTATIONS

- (a) Certificates of Recognition to public school students for exemplifying the "Do the Right Thing" character trait of "Kindness" during the months of November and December 2018.

Mayor Catalano and Mt. Diablo Elementary School Principal Linn Kissinger presented certificates to Abigail Buddell and Kaitlyn Connors.

Mayor Catalano and Diablo View Middle School Principal Patti Bannister presented certificates to Genevieve Dennis and Matthew Dias-Martin.

5. REPORTS

- (a) Planning Commission – No meeting held.
- (b) Trails and Landscaping Committee – Meeting held on January 28, 2019.
- (c) City Manager/Staff – No Report.
- (d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

Councilmember Diaz attended the Contra Costa Water District Board of Directors meeting, the League of California Cities Environmental Policy Committee meeting, the Clayton Valley Shell Gas Station's 7-11 store grand opening, and the Special Meeting of the City Council Goals Setting Session.

Councilmember Wolfe attended the League of California Cities New Council Member Academy, the League of California Cities East Bay Division meeting, the Special meeting of the City Council Goals Setting Session, a Regency Drive Council ad-hoc committee meeting, met with a group of residents in Peacock Creek regarding Hazardous Preparedness, and the Clayton Business and Community Association's General Membership meeting where he met Clayton resident Dee Viera, who is interested in organizing a LGBTQ group in the Clayton community for community awareness and participation in the City's annual 4th of July Parade.

Vice Mayor Pierce attended the Contra Costa Transportation Authority Board meeting and workshop, several meetings of the Association of Bay Area Governments, several meetings of the Metropolitan Transportation Commission, the Clayton Valley Shell Gas Station's 7-11 store grand opening, represented the Contra Costa Transportation Authority at the ground breaking for the Interstate 680/Highway 4 interchange improvement project, the League of California Cities East Bay Division meeting, the City's Trails and Landscaping Committee meeting, the East County Economic Development (EC2) meeting in Oakley, and met with a group of residents in Peacock Creek regarding Hazardous Preparedness.

Councilmember Wan attended the League of California Cities New Council Member Academy.

Mayor Catalano attended the Clayton Community Library Foundation Board meeting and announced its upcoming Used Book Sale scheduled for April 12-14, the League of California Cities Transportation, Communication and Public Works Policy Committee meeting, she held Mayor's office hours on January 19 and on January 25, the Special meeting of the City Council Goals Setting Session, and the Clayton Business and Community Association General Membership meeting. Mayor Catalano noted she is again the chair for the Clayton Business and Community Association's Scholarship Program for high school seniors that currently reside in Clayton; CBCA scholarship applications are available through the Clayton Business and Community Association website and are due by March 30.

- (e) Other – None.

6. PUBLIC COMMENT ON NON - AGENDA ITEMS

Fiona Hughes, on behalf of Marci Longchamps: *"After the community outcry when the City Council passed the AB109 Parolee Housing Ordinance on September 4 to protect children in some of our local parks; it excluded Coyote Circle Park and areas of Shell Lane. The residents have requested that this be rectified when a member of the City Council promised to reevaluate this exclusion within 30 days; it has been 4 months of waiting with no response. As your constituents we urge parity so all children can enjoy the Coyote Circle park safely as with all of our parks in Clayton. What's the point of having citizens of Clayton speak during public comment at meetings such as these if there is never any follow through, dialogue or emails regarding these items? It appears that the Council body is not looking at her; rather through her. The phrase "Do The Right Thing" echoes through the schools, parenting and the Clayton Police Department. We now need the City Council to respond with specific answers and action so we can extend safety and have a barrier for all the children in all of Clayton parks."*

7. PUBLIC HEARINGS – None.

8. ACTION ITEMS

- (a) Consider the report, findings and recommendations by the City Council ad-hoc committee appointed to further examine the street parking and private property impacts occurring on Regency and Rialto Drives due to visitors and hikers accessing the nearby Mt. Diablo State Park trailhead on state park property.

Councilmember Wan lead the discussion by summarizing the written goals and resolutions of the City Council ad-hoc committee contained in the Agenda Packet, and requested the City Council provide direction to staff to create a preferential parking program near the Regency Gate on Saturdays, Sundays, and holidays.

Mayor Catalano inquired who were the attendees of this meeting? Councilmember Wan responded there were a few neighborhood residents, a few citizens from Clayton, the Superintendent from Mt. Diablo State Park, and two members from City staff. The ad-hoc committee structured the meeting with questions to prompt discussion; nearly everyone acknowledged there is an issue the City has the ability to deal with. There was a wide spectrum of ideas, with some being intrusive; ultimately having a conversation resulted in compromise to address the issues. Councilmember Wan advised the

attachment in the Agenda Packet attempts to address each of the issues; the core issue is having available parking spots in front of each of the houses while still providing the public with access to Mt. Diablo State Park.

Vice Mayor Pierce inquired if the ad-hoc committee's written report was presented to the attendees of the ad-hoc committee meeting. Councilmember Wan confirmed it was not; however, a conversation occurred with those in attendance and although the document was not presented, the ad-hoc committee's report is more of an aggregation of thoughts that were presented including the ad hoc committee members' thoughts. This proposal is asking the full City Council to agree to direct staff to take the actions listed.

Councilmember Wolfe added the meeting had a time limit and was not intended to go over all the same issues that were brought up in the City Council meeting. The ad-hoc committee had a specific set of questions that were asked to get to some compromise in the time allotted, and he believed they had achieved that.

Councilmember Wan added the proposal contemplates whichever plan is enacted is to be expense neutral to the City.

Vice Mayor Pierce added when she read the ad-hoc committee's report she felt they went into the meeting with a set of goals ahead of time, then tried to figure out how to meet them. She is unsure if the goals were of that group as a whole and they were all in favor, or is this just a list of goals heard at the City Council meeting; how did this list of goals come about? Councilmember Wan responded that as Councilmembers on an ad-hoc committee it was their task to prepare direction to be brought back to the full Council, after the group discussion, to decide whether or not the Council wants to ask staff to prepare something along these lines. He considers the proposed resolution to the issue is a fair assessment of the need that came out of the meeting and overall of the ad-hoc committee with the input from the citizens.

Mayor Catalano opened the item for Public Comment.

Rick Lewis, 170 Regency Drive, thanked the Council for listening to them and a plan that actually resolves their concerns. He agrees with all the characteristics and encourages the City Council to move forward. He briefly addressed property values and whether they would be negatively impacted by such a permit plan. He looked at two surveys; one in Charlottesville, where that city determined six permit zones would allow residents reasonable access to their properties and preserve the residential areas and property values therein, according to the city code which contains property values as a benefit to this program. He also spoke to some realtors, one in Napa, who felt a parking permit program was positive for property values, and local realtor Lynne French also thought it would be positive for property values.

Nancy Topp noted she participated in the ad-hoc committee's meeting to decide if Regency Drive residents should get preferential parking permits. She said on the sub-committee, 5 people were opposed to the parking permit program and 4 individuals were in favor of the parking permits. The side against the parking permits offered viable suggestions to mitigate the parking issues on Regency Drive residents, including 1) Redirecting hikers to park at Diablo View Middle School and other locations to condense their numbers to fewer cars; 2) Provide volunteer assistance at the state park to assist with educating hikers to respect the residents and remove their trash; 3) Assist with educating hikers on social media to reroute their destinations; and 4) The proposal of a parking lot. All of these suggestions were rejected and in fact were not included on the consequent ad-hoc committee report. She feels this was done because it was probably already pre-determined the Regency Drive residents would get preferential parking permits. So what are the consequences to the Regency Drive residents now they will get

their preferential parking permits? In all likelihood this plan will just displace the problem to another set of streets; hikers to Mt. Diablo State Park and the Clayton Open Space will park slightly farther away and because they have to walk farther there is more chance they will leave behind litter and further encumber areas including the sidewalks by a longer distance. The Regency Drive residents say they are worried about the effect of park visitors on their property values yet there is the chance their property values might further decline because of their choice to have preferential permitted parking. As a result the Regency Drive residents will have won their battle but will have lost the war for Clayton residents outside of Regency Drive as well as our neighboring communities. Please be assured there are a great many Clayton residents who do not want this result. We regret that parking permits have been approved and for the unfortunate consequences this will have for all hikers and residents alike.

Margaret Eraclio, 151 Regency Drive, thanked the Council for listening to the residents and she agrees with the proposal; however as she resides at the end of Regency Drive she would have preferred restrictive parking signs seven days a week rather than weekends and holidays. Just today one of the cars parked in her neighborhood had preferential parking permit from the Oakwood neighborhood; why can't we have something like this? She encouraged the City Council to vote yes.

Jennifer Roe indicated she read the goals and resolutions for the preferential parking program; as a Clayton resident that resides outside the proposed permit parking area, this group currently competes with the crowds on weekends and holidays for access to Donner Canyon at Regency Drive, which is our closest State Park gate, and we Clayton residents have never been mentioned as part of the problem. She was originally concerned that a new parking program would preserve quality of life for one group of Clayton residents at the expense of another. However she now sees the proposed temporary day use permits as an attempt to mitigate additional barriers to Donner Canyon imposed by this program. But to be effective, the temporary day use permit should have the following features: 1. Available online and therefore easy to access and obtainable even on weekends and holidays when City offices are closed and of a longer duration for a two week or a month period; 2. Guest passes, and in particular how the City determines whether or not a household even needs a guest pass; 3. What factors will the City use to ensure each guest pass is justified and fair; 4. Guest passes are their own commodity; they stand separate from residential parking permits and therefore should not automatically be bundled into a parking permit program without separate consideration; 5. Guest passes give the holder private ownership rights to public streets, therefore they should only be granted to a household after using measurable standards that can be equally applied in fairness to any type of Clayton home and neighborhood. These fair standards would eliminate preferential treatment when allocating private use of our public property. The Concord and Walnut Creek parking programs look at external factors such as the amount of off-street parking accommodations that currently exist at each home and whether there is a garage or not and how many cars and if street parking is the only available parking for that household. In this case, homes along Regency and Rialto Drives have off-street accommodations to park four vehicles and now the curbs in front of their homes will be cleared for use by their permitted vehicles only. This means these homeowners can legally park their vehicles on the street to free up their off street parking for additional cars; with this in mind, her question is again what measure does the City use to determine whether each of these homes need more parking via a guest pass. What is the targeted number of parking spaces for each home? She brings this up because a permit program sets a precedence for those to come; it is the model for the next one so the standards for guest passes in this case must be clearly stated, justifiable, and ones that can be applied with equality and fairness to all Clayton neighborhoods and all types of homes.

Judy Moon, 121 Regency Drive, supported a parking permit program. She has nothing against the hikers, there are many adequate places for hikers to park other than in front of their homes; she has tried to reserve street parking by placing her garbage cans out but they simply move them up on her property.

Jeff Weiner thanked the ad-hoc committee for its work. He suggested reviewing the Concord and Walnut Creek parking programs pricing, including a reduced price for senior citizens. He suggested looking at other cities to see how much vote is needed before adding another parking zone area, and look at unlimited visitor parking as no other neighborhood is experiencing these issues. He wants to work with the City on signage, and realizes the Neighborhood Watch Program is useless as it is generally unknown if people parking in front of their houses are hikers or others checking out the neighborhood. It is a very unsafe environment. He would like the Council to consider the park and the hikers, noting the hikers are not coming from Clayton.

Terri Denslow thanked the ad-hoc committee for its work; she participated in the meeting and commenting on the permit aspect, she is not sure if it is going to work as the problem is persistent and limited to Clayton residents. One of the goals stated is to direct hikers to the Mitchell Canyon staging area; she personally does not recall that occurring in the meeting or necessarily should be a goal. She also suggested there are a lot of areas to park that are not in front of these residences and she suspects they are going to drive beyond the permit areas and park in front of other residences. She questioned if there is some way to indicate not to park in front of houses and direct the parking to open areas.

Jon Adams, 134 Regency Drive, thanked the ad-hoc committee for its work and it is his understanding the City was notified not too long ago about this problem and is already looking at a solution. If he and his wife knew of this parking issue on Regency Drive prior to purchasing their home, they would have reconsidered locating to another area. He also indicated they have experienced difficulty in hosting birthday parties for their children.

Eric Rehn, 176 Regency Drive, suggested before enacting any measures tonight he would like to see the Council get more expert advice including contact with appraisers and brokers for opinions on the impact to the property values. He is not in favor of the current proposal as it is too complex, and really does nothing at all to address the traffic issues. He suggested banning state park parking on the weekends and holidays by fines and enforcement by having a police officer park at the end of Regency Drive. The parking program will also require an officer to come out to Regency to enforce the permits. The goal is to reduce the State Park's Regency Gate visitors and the traffic.

Dan Walsh supports the ad-hoc committee proposal. With people outside of their subdivision trying to dictate what goes on in his subdivision, including certain hikers of Peacock Creek, Save Mt. Diablo and Mt. Diablo State Park, they are not the stakeholders of his neighborhood being the one impacted. He also remarked if residential parking will require a fee, then everyone should have to pay a parking permit fee.

Ann Stanaway, 1553 Haviland Place, commented she has a dream that Clayton actually enforces its ordinances that it has on its books, much less the ordinances that are proposed. Clayton does not enforce its traffic ordinances right now; what make people think they are going to enforce new ones?

With no other public members wishing to speak, Mayor Catalano closed for public comment.

Mayor Catalano asked the City Attorney should the Council decide to have a permit program, would the program be open to any city resident and is that legal? She referenced Vehicle Code Section 22507 and a California Attorney General opinion on preferential parking permit programs from 2016; specifically, it talks about how local authorities can prohibit or restrict parking on certain streets or portions thereof and may include a designation to certain streets in which preferential parking privileges are given. So clearly we can do preferential parking program yet it does go on to indicate residents and merchants adjacent to the streets defined as residents that live adjacent to a street where parking is restricted or permits are granted. She questions whether that is possible.

City Attorney Subramanian responded she does not think under the Vehicle Code authorization, in reference to 22507, the City can allow the entire city residents to hold preferential parking permits for this area as it is limited to residents and merchants adjacent to the streets. The question asked to the California Attorney General was if a local permit parking program would only be limited to residents in the affected area; she believes the affected area was the adjacent street and she cautioned the City Council to adopt that portion into any preferential parking permit program.

Councilmember Wan remarked he feels these laws are not clearly defined and worth exploring with the availability to make changes. In the case he read it did not define the area as immediately adjacent.

Mayor Catalano would like to defer this matter as she found a case in 1984 in Hermosa Beach and would be interested in more recent case law on preferential parking permits. City Attorney Subramanian responded she is not aware of a recent case and remained concerned that creating a zone of the entire city is not in compliance with "adjacent." As these types of programs are created because of some sort of nuisance, in this case it is the attraction of the State Park's Regency Gate and the Vehicle Code is trying to address the problem defined to a localized area.

Councilmember Wan noted in the *Boccatto* case, the appellate court decision, the district court [the trial court] heard testimony on behalf of the city parking program that immediate adjacency would not resolve the parking problems and made the program unmanageable. To construe section 22507, to require this absurd consequence, is unreasonable and the trial court's interpretation of the statute is it only requires general adjacency, thereby permitting residents in the affected area to park anywhere within the area. It did not go further to define general adjacency so in that manner it precludes the construction of the immediate adjacency however the range to the extent that is clearly established.

Mayor Catalano thinks we have some limitations beyond these two streets and thinks the Vehicle Code states those adjacent to the streets, even in the ordinary sense application, means that which is immediately next to it.

Vice Mayor Pierce noted when reading residences and businesses in the vehicle code, what then is the legal opinion if a business in downtown Clayton wants only their customers to park in the parking spaces next to their building? City Attorney Subramanian responded a business could request a preferential parking program for the merchant, and if the Council so chooses one could be done but it is parking typically for the merchant's employees. The actual parking permit could be handed out by the merchant to be displayed.

Councilmember Diaz indicated additional work will need to take place to come up with a plan to try and resolve this issue. It sounded to him like we have not gotten the attention of the violators of the parking; these are the people who are coming for outside of Clayton. Although the Police Department has issued citations for parking violations or expired registration, no vehicle has been towed. He believes if one or two vehicles are towed for being non-residence the word would get out quickly to not park on Regency Drive.

Councilmember Wan does not consider the main issue is the people violating the vehicle code; rather it is the surge of parking and he thinks it would be problematic to only tow non-resident vehicles. If the signage does not have an enforcement component it is merely a decoration not allowing any action or accomplishment of the goals.

Councilmember Diaz responded the Police Department had reasonable cause to write up 35 citations; at the time of citation we would know if the violators are residents of Clayton or not.

Councilmember Wolfe commented we are in a different time with social media playing a role in making people aware of this area with free parking. He feels that social media is the main reason for the problem in this area.

Mayor Catalano proposed a question of supply; the City has zoned these properties and other single-family residences for a requirement of four parking spaces per unit. Are we now making a statement that four parking spaces per residence is not adequate, therefore the need is more? Or does the City get in trouble with its zoning ordinances requiring four stalls per unit?

City Attorney Subramanian clarified the four required parking spaces referenced are on-site, not on public streets. It does beg the question of what is the purpose or need for preferential permit parking; is it that four parking spaces is not enough? She noted it is common that people are using their garage for storage and not parking. Councilmember Wolfe added that it seems four parking spaces would have been enough if it weren't for the influx of cars coming to this neighborhood.

Councilmember Wan reiterated the goal overall is to relieve congestion, bring back a quality of life, less density and pollution, and safety issues. Given that the vehicle code has given this option, surrounding cities have used parking permits for any attraction that has essentially created a surge in the demand of parking. He feels the City is safe in that regard to employ preferential parking.

Vice Mayor Pierce noted letters have been received on this issue, one from Mountaire Parkway noting there is not a problem there, the hikers have been considerate and that resident thinks this is a horrible idea. Another letter was received by someone living on Regency Drive who signed the petition not knowing it would result in permit parking or gating off the park, which that resident thinks are both bad ideas. Vice Mayor Pierce asked the ad-hoc committee if there was any discussion that four parking places per residence is enough at most times? If these residents want to have on street parking on the weekends for their own guests, why can't they park their own cars on the street before the weekend and then the onsite parking in the garage and on the driveway is available for guests? Sometimes there are things we want for the convenience for us but are inconvenient of that same thing for others. Vice Mayor Pierce advised she has some concerns this is precedence setting for other parts of the community and restricts the public street for public access by all of our citizens that pay for them. She also has a concern this is creating a preferred status for Regency Drive residents by guaranteeing them more parking spaces then their property is zoned for. She is not in favor of a permit

parking program, believing more can be done on social media along with more onsite education to the hikers and more enforcement of the street parking laws.

Councilmember Wan remarked the City is under no obligation to do anything, given it is a public road that has long standing access to the park; the path of least resistance is to do nothing. He is sympathetic with the neighbors regarding the loss of quality of life and possible decreased property values. Councilmember Wan noted Mr. Rehn would like signs directing hikers to the designated parking area where there are docents, bathrooms, sufficient parking and necessary facilities. He has visited the area on weekends and there is so much congestion that you are unable to make a U-turn. Councilmember Wan clarified this occurrence provides concentrated costs for the residents that bear this situation and very diffused benefits for the other folks that want to enjoy the park. The proposal on the table provides continued parking for people on a limited basis for anyone who wants to enjoy the park, in such a way that is least impactful; there still remains forty to fifty parking spots at locations close by Regency Gate and signage that will recommend parking on Mitchell Canyon. To the extent of offering guest passes, all the other parking permit programs he reviewed prohibit commodity of the passes. The suggestion is not a perfect solution, but a compromise.

Mayor Catalano inquired on the process of a parking permit program and a survey to be conducted, asking if the survey would cover onsite and/or offsite parking. Councilmember Wan clarified the survey would be conducted offsite to elevate the congestion of people coming into the area. Mayor Catalano further inquired if the goal is to provide sufficient parking for the residents and consider the onsite parking available to the residents.

Vice Mayor Pierce inquired if the goal is to eliminate street parking to nonresidents, in essence there is a creation of a private street. In a sample survey most driveways were empty, providing space for the residents to park; however, if the residents are taking up the street parking they are limiting the space available to the public on the street paid for by the taxpayer dollars. Councilmember Wan commented the street parking available at the end of Regency Drive is not in front of any homes and allows for anyone to park there.

Mayor Catalano inquired if the spaces at the end of Regency Drive are still available to the public, how is congestion relieved? Councilmember Wan responded the parking permit program and signage will not eliminate the problem but should reduce the problem while allowing limited access.

Mayor Catalano summarized the suggested alternative solutions of improved signage and possible painting red the driveway wing-tips. She feels that a preferential parking permit program sets precedence and she is unfavorable of that solution and feels four onsite parking spaces are sufficient.

City Manager Napper advised this item is before the Council as staff was unable to come up with an acceptable plan and is seeking direction with various criteria. Some of the suggestions can be problematic, for example, day passes for only Clayton residents. The vehicles that were cited were disobeying vehicle code laws but there is nowhere in the law to cite someone who is legally parked for being from out of town.

It was moved by Councilmember Wan, seconded by Councilmember Wolfe, that staff take direction from the attached criteria and come back with a proposal for a pilot preferential parking program.

Mayor Catalano inquired if the City Code would have to be updated for a pilot program. City Attorney Subramanian advised the program could come back as a resolution for the duration of a pilot program.

City Manager Napper commented inherent with the implementation of a pilot program, a number of fixtures will need installation, such as poles and street signage. In his experience with other cities once pilot programs are started it is difficult to have a termination date.

Vice Mayor Pierce indicated she will be opposing the motion as she feels there are other measures that should be taken prior to a pilot parking program, such a social media posts that recommend parking at the Mitchell Canyon entrance gate. Councilmember Wolfe recommended whatever goes out on social media should be of enforceable nature.

Mayor Catalano commented there are three actions that could be taken: 1. Permanently change the City Code to allow a preferential parking program; 2. Establish some type of pilot program, just for this street; and 3. Addressing lower level items like painting red the driveway wing tips, addressing social media to redirect the public to the Mitchell Canyon gate, post improved signage with greater enforcement. In her opinion she would like to begin with the third action.

A substitute motion was made by Vice Mayor Pierce, seconded by Mayor Catalano directing staff to try alternative methods prior to a pilot preferential parking program. The substitute motion failed (Failed, 2-3 vote; Diaz, Wan and Wolfe, no).

The vote was taken on the original motion to direct staff to prepare a Resolution implementing a pilot preferential parking permit program (Approved, 3-2 vote; Catalano and Pierce, no)

- (b) City Council consideration of the necessity for revisions to the City's existing size and number limitation regarding temporary noncommercial signage (Municipal Code 15.08.040 (G)).

City Attorney Mala Subramanian presented the staff reporting providing two options of consideration for the City Council: 1.) A per sign size; and 2.) Aggregate sign area limits. Ms. Subramanian also noted if challenged on this issue and unsuccessful these cases can be difficult to defend resulting in the possible requirement of attorney's fees to be paid to the plaintiff. She also pointed out the existing ordinance is currently written specifies if both sides of the sign are visible, the sign would be considered double-sided. For example, a 40 square foot sign visible on both sides amounts to an aggregate of 80 square feet.

Councilmember Wan clarified this is specifically about non-commercial temporary signs and does not address any other sign type in the Ordinance. City Attorney Subramanian confirmed that understanding is correct.

Mayor Catalano opened the matter to public comment.

Frank Gavidia, 104 Gold Rush Court, noted this issue is a big deal for him as 32 years ago he took an oath to the U.S. Constitution. That two hundred year old document has the First Amendment which guarantees all of us freedom of speech. As a young Marine he had an instructor once who served in Vietnam who spoke of stories when he came home to protestors and of course all of us went nuts and started to insult protestors. That

instructor said those protestors have a right to do what they do because of that document we all took an oath to. The City Council and Planning Commissioners took an Oath to that document. The words of that instructor stuck with him so much he cannot stand seeing protestors burning the flag but they have a right to do so because of the First Amendment. Last year this City had a contentious issue during election season when residents wished to display more than one sign for more than one candidate; soon there will be three seats open for City Council office. As the proposed Ordinance is written, a resident could display only one sign per candidate; that is not right. Mr. Gavidia watched the video when this Ordinance was passed recalling a complaint of sign blight. He does not think it is right to limit freedom of speech especially for something that is temporary. The First Amendment is pretty clear: freedom of speech, freedom of political speech. Some of us took an oath to protect that right with our lives and that is why this is important to him. Councilmember Diaz understands that; he took the same oath. Mr. Gavidia is sure the City Council will do the right thing on this.

Mayor Catalano closed public comments.

Vice Mayor Pierce noted that while she personally prefers the old sign ordinance provisions, we legally are not allowed to have the sign ordinance specify candidates, parties or issues with regard to what the sign is for. This Ordinance has to apply to any noncommercial sign, not just political ones. When the City Council was considering this item last year, it was meant to be no larger than 3 square feet per sign. She would like to try and keep the signs relatively small as she does not think residents will like 4x8 signs on private property. Her preference is a limited number of signs for each candidate to 3 square feet per sign; in our community these signs are almost always visible.

Councilmember Diaz agreed with Vice Mayor Pierce and does not want to see the sign blight and limit the sign size and one sign per candidate.

Vice Mayor Pierce clarified this subject only addresses signs on private property.

Councilmember Wan noted content neutral speech is not regulated if any restrictions are placed; he would challenge any restriction on favored speech. Unfavorable speech is what the First Amendment is about; it is about protecting what is unfavorable because speech is important. Any time we are going to restrict what someone can say or how they express themselves, he will be opposed.

Councilmember Wolfe noted he is not concerned with speech content but sign size, including two-sided signs.

Mayor Catalano also preferred the sign ordinance prior to 2017; she does not want to regulate speech either however she prefers the most restrictive in size.

City Attorney Subramanian confirmed the sign size could be limited to 16 square feet with an aggregate of 32 square feet with appropriate findings.

Councilmember Wan requested an example of the findings. City Attorney Subramanian provided some of the findings that were used in Redwood City which were upheld due to concerns about debris, littering, as well as traffic hazards.

Councilmember Diaz inquired on the length of time the sign could be posted and its removal. City Attorney Subramanian she is a little concerned if limitations within a certain period of time of an event as these are temporary noncommercial signs that are being discussed and it is not limited to political signs. The type of material was defined as a finding; if a sign started to decay in terms of debris and litter it could be removed.

Councilmember Diaz further inquired of when these signs would be removed?

Councilmember Wan commented based on what he has read it does not look favorable of when a sign would have to be removed. City Attorney Subramanian inquired for what is the time based limit on? The discussion is content neutral, temporary, noncommercial, not political speech.

Vice Mayor Pierce expressed her interpretation of a sign made of wood as permanent and her preference of a 90 day time limit for any temporary sign. If there is a reason that sign would have to be displayed longer, maybe it should be considered a permanent sign. She is also concerned with a 4x4 minimum sign size with a 30 foot aggregate; if it is a two-sided sign, it is restrictive and would limit speech.

Mayor Catalano inquired about the State Advertising Act indicating when signs can be put up and when they are required to be removed, encourages a particular vote in an upcoming election, can be put up no sooner than 90 days, removed no later than 10 days after an election, and up to 32 square feet. How does that Act fit into this? City Attorney Subramanian replied the State Advertising Act does not apply in Clayton as it applies to signs on the highway or certain proximity to the highway, and in addition she questions the legality of the Act as it is not content neutral.

City Attorney Subramanian added that someone could always use with a smaller sized sign as the limit being discussed is the maximum size.

Mayor Catalano shared it seems a lot of people do not want a lot of signs like in the neighboring city of Concord, so what she is hearing the minimum individual size sign could be 16 square feet and a resident could display as many candidates and ballot measures signs as they would like. She is unsure of the appropriate aggregate size to accommodate.

Councilmember Wan suggested no aggregate.

City Manager Napper noted the limitations being discussed are the maximums; if Council wishes to regulate the per sign size it would be expressed in terms of maximum size. However, with the concern of multiple candidates for multiple offices in an election and even multiple issues such as ballot measures that could be applicable, an aggregate limit could be problematic as it could be reached very quickly. There is the option of no aggregate. If you are the neighbor to someone who places signs all over their lawn in a shape or way you don't like, one may have a conversation with that individual or maybe others would to become self-limiting. From a staff perspective, the size of each sign should have limitations but tread a little more carefully on the aggregate limitation. At any given time when a ballot is full and someone wishes to support a write-in candidate plus additional ballot measures, it could become problematic in limiting free speech.

Councilmember Wolfe added that we are not just talking about political signage, but it could be about anything.

Vice Mayor Pierce inquired if there is any recourse on time limitations? Some of the materials being used for temporary signs with these days last a long time and realistically, if we are talking about a sign deteriorating that's not going to give us anything. City Attorney Subramanian advised it is currently defined as constructed of paper, cloth, canvas, light fabric, cardboard, wallboard or other substances of similar lightweight materials with or without frames which is designed or intended to be displayed for a limited amount of time.

Councilmember Wolfe advised that description is very vague. City Attorney Subramanian advised that was intentional to avoid limiting it to a period of time and event that could again be challenged.

Councilmember Wolfe inquired if we put a limit on the time what is the limit on when the sign would have to be removed and allowed to be displayed again?

City Manager Napper offered as an example to a temporary time limit, a sign could be displayed for ninety days and on day ninety-one that same individual displays a different sign that says the same thing differently or moves it slightly on their property. Such practices would be lawful and defeat any time limitation being contemplated.

Vice Mayor Pierce suggested an individual 4x4 maximum sign with the recommendation specifying no time limit or aggregate. City Manager Napper clarified the proposed ordinance amendment would be written as 16 square feet as opposed to restricting that size to a specified dimension of 4x4. City Attorney Subramanian advised it can be written as no more than 16 square feet with no aggregate and no time limit.

It was moved by Vice Mayor Pierce, seconded by Councilmember Diaz, to have staff prepare the draft Ordinance limiting the temporary noncommercial sign size to 16 square feet with no aggregate or time limit, with a hearing to the Planning Commission in the near future. (Passed 4-1 vote; Wan, no).

- (c) Council Member request to discuss consideration of the City possibly banning its use of glyphosate (Round Up) in its weed extermination services on City properties and in public rights-of-way.

Councilmember Wan opened the discussion noting various members of the public expressed concern for the use of Round Up by the City. He found it valuable to get information on the extent and nature of the City's current utilization, what safety measures are in place, and any possible alternatives. Another factor driving this item was a recent judgement involving the Benicia School District where a groundskeeper prevailed in a multi-million dollar injury case by the use of Round Up. Councilmember Wan noted he was not really proposing a ban per say, rather seeking a report of its use, liability and safety of the public and any consideration of alternative products. Councilmember Wan considered the document in the report is sufficient outlining the level of use with a remaining question of potential liability given the fact pattern of the previous ruling. After conducting his own research he has found there is no conclusive evidence and it is more of a judgement matter.

City Attorney Subramanian advised the potential risk exposure is in the Workers' Compensation situation in terms of our own employees and their utilization of the product; with safety protocols in place that will reduce the City's risk. Outreach has been made with the Municipal Pooling Authority which is looking into since they are the first line of defense for the City in these types of employee injury cases. She is unsure if Councilmember Wan is concerned with the risk exposure in terms of the public's exposure on public property; she thinks causation or any illness would be very difficult to prove.

Councilmember Wan inquired if the City's insurance would provide coverage if a claim were made by a member of the public. City Attorney Subramanian advised the City's insurance would be the first line of defense if a Workers' Compensation claim is filed by an employee of the City.

Councilmember Wan indicated he was pleased with the protocols and safety precautions used by the City provided by Maintenance Supervisor Jim Warburton.

Mayor Catalano noted the City is not regulating a private person's glyphosate use, and not proposing any action against private citizens to purchase or use the product. She clarified Councilmember Wan made the request to see how the City currently uses the product. Councilmember Wan confirmed that is correct.

Vice Mayor Pierce inquired if employees who perform this type of duty must have certification and attend special training? Maintenance Supervisor Warburton confirmed he is a certified pesticide/herbicide applicator and confirmed there are also two other employees in his small department that are also certified applicators; certification is not required to spray chemicals however one does have to be trained by a pesticide applicator. The City Maintenance Department maintains personnel training records for the employees that are spraying to prove training has taken place.

City Manager Napper added based upon the initial request of the nature of this item, staff went back through and reviewed its protocols and best practices, which is included in the Agenda Packet list. Areas in which the public might be going through, signage will be placed advising the public of the spraying. Mr. Napper noted he recently saw an article stating the City of Concord had banned the use of Glyphosate so he contacted its city manager and she advised the City of Concord did not ban the use; rather they have chosen to follow the "Clayton model" which we has always been done, and Concord stopped spraying it in their parks where the public frequents. He noted the sale of the product has not been banned however Costco has recently chosen not to sell it any longer. Individuals may unknowingly have exposure to Round Up in their own neighborhoods then where the City has limited its application. The City has Workers' Compensation insurance for employee exposure claims and General Liability to cover such an incident if a member of the public were to file a claim.

Councilmember Wan noted in the staff write-up there is no effective herbicide substitute, which seems to be his experience as well. He inquired if the City has tried other tactics. Mr. Warburton consulted with his pesticide advisor and he was assured there is no other equivalent to Round Up or Glyphosate. It was suggested the City try spraying more pre-emergent which is a viable solution but does not cure the weed problem.

Councilmember Wolfe added since this issue has come up more citizens have approached him with ideas and questions. Although some cities have banned the use going back to 1997 in Arcadia, he felt the statement there is no effective herbicide or substitute is untrue, suggesting industrial-strength vinegar or Burnout, both being more natural. His other concern is the exposure pets have to the chemicals as they run and play in the areas sprayed with Round Up. He understands marine life could also be affected once Round Up dries it could get wet again and then the chemical can run into the ground, into the streams, and kill marine life. Mr. Warburton responded to the best of his knowledge Round Up will not translocate into the water system; he knows once it is applied to the weed the chemical works its way to the root of the weed. He knows the Burnout product only kills the top of the weed, temporarily solving the problem. He has not heard of Round Up going into the water system; it is mentioned with some chemicals they are not to be sprayed on the edge of a creek bank or edge of a waterway because of the possibility of the chemical getting into the waterway. To his knowledge, Round Up is not sprayed around the creeks.

Councilmember Wolfe feels there could be potential litigation and would like to consider alternative products. Mr. Warburton advised recently staff has been using signage to make the public aware the spray is being used in specific areas of the city, noting the chemical has a drying time of 1-hour.

Councilmember Wolfe asked if Mr. Warburton is comfortable spraying Round Up? Mr. Warburton responded he is comfortable, and he has been spraying the chemical for over forty years with no health risk to himself or children. He feels with the use of the proper safety equipment, which is regularly tested and not leaking, one is not being exposed to the product. Mr. Warburton added the Maintenance Department has started to use blue dye in the Round Up as an indicator while spraying in public rights-of-way to visually inform the public where the chemical has recently been sprayed.

Councilmember Wan had a clarifying question regarding the written statement the "primary" public areas sprayed with glyphosate being landscaped medians and rights-of-way. Is there an inventory of other areas that are considered primary? Mr. Warburton noted that should probably say "only" instead of "primary".

Mayor Catalano noted she found a website showing what some California cities have done regarding the use of Round Up and there were several different categories; most have taken action which is consistent with the City's existing practice with signage protocols. She indicated that Arcadia and Oakland reduced their use of Round Up, and she learned Benicia and Richmond have a complete ban on the use of Round Up.

Mayor Catalano opened public comment.

Brian Buddell expressed concerned the City is not considering an out-right ban of the use of Glyphosate and is opening itself to huge liability, not simply a Workers' Comp issue. The case in Benicia got around that through a third party claim, which can be done here too. The City of Clayton is using Glyphosate, a recognized Carcinogen, recognized by the State of California, and is doing so willingly. Although the City is implementing all the uses and protections and guidelines, all it takes is one illness and one creative plaintiff's attorney and this City is screwed. If you don't believe him, just watch a little late night TV and watch the ads for asbestos claims, which was once thought as the only product available. He does not know what the City's insurance coverage is but like an asbestos lawsuit, even if you win, it is a costly endeavor, and if you lose, the verdicts are going up. The same thing is coming for the use of talc. This is a grave concern; although he understands the usefulness of Glyphosate if it means pulling more weeds by hand to save the City a multi-million dollar lawsuit, then that is the way to go.

Marsha Rosenthal, Mitchell Creek Place HOA representative, recalled her experience was last week walking her two dogs down Oak Street she noticed a City employee spraying. When she approached him to ask what he was using and which side of the street had been sprayed, he directed where she would be able to walk. She noticed a woman with a baby in a stroller who stopped in the area where it was just sprayed; if the baby would have dropped a toy or she dropped her phone and had to step into the area that was just sprayed she would be tracking the chemical into her home. Her dogs like to eat grass; if she had not seen the worker she would have thought it was just moisture and not the chemical. We have to be honest that the chemical is not just being sprayed on median strips; the spray is being used near the school where children play. She noted Mr. Warburton confirmed with her the area is being sprayed while the children are in school so they are not exposed. She added as a retired school teacher she knows of several people who are now homeschooling their children, who may be out in the parks during the day.

Ann Stanaway, 1553 Haviland Place, indicated is in favor of the City banning the use of Round Up. She appreciates the fact that Round Up is a known carcinogen; not only does the City need to ban it from their own use but it needs to prescribe a barrier around the City parks where it cannot be used by private residents or HOAs so when people who perform lawn or garden maintenance of any kind, they are currently Round Up happy in this town. The City needs to protect its park areas because the public use those parks; they need to have a barrier maybe 10-20 feet around the park where one cannot possibly use Round Up.

Mayor Catalano closed public comments.

Councilmember Wan indicated he is uncertain about this issue and would like to explore other alternatives but he does not know how fruitful that would be.

Councilmember Wolfe added he is glad that people are becoming more aware of this and being more careful with this product. He suggested a public relations campaign advising the public where and when spraying is occurring; notifying the public by signage and blue dye especially when people are outdoors with their pets and children.

Councilmember Wan remarked a blue dye would not be an indicator to him that the area was just sprayed, and he looked for further public outreach.

City Manager Napper suggested public outreach could occur through the Mayor's Column in the *Clayton Pioneer*. The difficulty is how does the City reach out and notify everyone in the community what to read or how to look for news. Another challenge is knowing exactly when and where City personnel are going to spray Round Up. The City a limited number of personnel whose schedules can change due to weather patterns and availability of trained personnel to make these applications. He noted after Ms. Rosenthal met Maintenance Worker Jeff Miller in the field he then had a conversation with Mr. Warburton and the City has since initiated the field practice of letting people know when and where it is spraying by the display of signage. A problem with this setting is its abundance of weeds and open space; pulling weeds by hand can be managed in one's own yard but it is a huge task when it involves the entire city with a staff of six maintenance workers. City staff is open to trying some of the suggestions, such as industrial-based vinegar, in a small section to determine its effectiveness.

Mayor Catalano appreciated the written City use guidelines and is happy to cover the outreach in the next *Clayton Pioneer* Mayor's Column. Councilmember Wan agreed the Mayor's Column is a good first step.

No action was taken.

- (d) Council Member request to discuss City consideration of possible semi-annual public reports by City staff on achievement of Council goals.

Councilmember Wan lead the discussion noting the most recent Council goals setting session there is no formal report out on the goals set during this session, with some being over ten years old, and with limited time and resources, City staff does not have the time to accomplish these goals. Councilmember Wan thinks it is a good idea to report out as a matter of public record and prioritize goals noting those without a very realistic chance of being implemented. He proposes a semi-annual report from staff that describes each of the goals, a rough outline of the steps necessary to accomplish those goals, and progress made in achieving the goals with a potential timeline. Doing so would go a long way informing the public about the activities of the City staff and allows Council to present its accomplishments and areas it is working on. Given there is already

a running list of these goals, the informative value of this activity would be high compared to the level of effort it would require. He requests a more formalized nature of report out and better direction for both the City Council and public to evaluate the process a little bit further.

Councilmember Wolfe inquired on the extra time and work it will take to achieve the goals outlined in the Council goals for staff to accomplish.

City Manager Napper responded noting as discussed at the goals setting session, there is limited number of resources the City staff has, and this proposal would have staff spending more time reporting as opposed to achieving the tasks. Such work efforts can be disrupted at any time. For example, he noted there were plans last year by the City Council to replace the tot lot equipment at North Valley Park. Ms. Hoffmeister took over working on that project when former Maintenance Supervisor Mark Janney retired last year from the City. Mr. Warburton was hired and he is still in that transition so Ms. Hoffmeister has been leading the project. She contacted the approved low-bid CMAS recreational vendors and those vendors did not return her calls as they were busy restoring park properties that have been destroyed by wildfires in other areas of California, which are larger projects and more lucrative than what the City of Clayton wants to do. City staff still does not have the specifications or quotes. If Councilmember Wan is looking to make the Council's goals a public document it can be done, but City Manager Napper suggested the report be on an annual basis as not much progress can be accomplished if reporting on a semiannual basis.

Councilmember Wan indicated he feels the current product is good, suggesting something more expansive with an outline of the steps needed to achieve the goal and the process needed.

City Manager Napper noted the progress list is received weekly with updates but does it not tell the whole story of what City staff is doing, and that is the difficulty in reporting out. While the current document is labeled "Staff Work in Progress," it is really City Council goals and the Council should assign its priorities. Mr. Napper advised he has his own set of goals for the City organization that are not measured by this table; he is concerned with having the Council Goals published and the public perception that City staff is doing nothing. In order to keep City Hall doors open with a staff of 26, half of which is the Police Department and 6 maintenance workers, it leaves only 7 employees on the third floor of City Hall to accomplish the tasks. There are no middle managers employed by the City; department heads are doing the heavy lifting of running the City and accomplishing Council goals, himself included. It can be very difficult with sick leaves and vacations and not getting timely responses from a vendor or contractor. If an annual reporting requirement is desired, staff can try and aim for that; often cities will do such with their annual budget.

Vice Mayor Pierce added during the Goals Setting Session, Councilmember Wan pointed out some of the organization of our goals need improvement. The biggest thing she wants the public to understand is many of the Council's goals are aspirational goals. If the City had unlimited resources, or adequate resources, so much more could be accomplished; however with limited numbers of staff and resources, the City needs the resources we do have for daily operations of the community. One active goal for staff, if the resources could be identified, is the review of the Town Center Specific Plan; even that will be incumbent on whether we have financial and staff resources. Mr. Napper referred to a weekly report that he generates for the City Council and staff, where the department heads provide a summary of what they have been working on during the week. However, that does not even count all the trips to the counter to help a member of the public, or the number of phone calls being answered, along with other things, and those are things that potentially take up a great deal of time. Keeping the City running is

answering those phone calls and assisting the public; that is what we do. To think staff has adequate time to report or provide a presentation of how staff is spending their time is not accurate. A lot of the goals the Council has are keeping the City running. She thinks staff is doing a terrific job with the resources we have in keeping the City running in a way that is far above what a lot of other cities could accomplish. She is not in favor of time logs or reports that distract City staff from actually doing the daily work. Vice Mayor Pierce suggested that perhaps the City Manager weekly report may be posted on the City's website but she doubts that many people will read it.

Councilmember Wolfe thought some members of the public who attended the Goals Setting Session were confused on the long-term, decade long goals; he suggested the decade long goals are aspirational because it presently can very much confuse the public.

Councilmember Wan advised in his profession it is very normal to report out on the goals with steps outlining the accomplishment and feels it is a healthy conversation with the oversight of the City to make sure the goals that we set are continued to be supported. Councilmember Wan looks forward to the City Manager weekly report which contains a lot of good information.

Councilmember Diaz remarked he finds the City Manager weekly report adequate.

Mayor Catalano noted the items contained in the Council Goals are there if resources became available. She finds the weekly report very informative, and if she had a question about any item City staff is always available to the City Council and the public.

Councilmember Wolfe also finds the weekly report very informative.

Councilmember Wan noted in the previous Council Goals Setting Sessions one can see the goals that were added, but not the previous items on the list. His idea allows public view into the established goals of the City and having the complete list in the record.

Mayor Catalano opened public comment; no public comments were received.

No action taken.

9. **COUNCIL ITEMS** - None.

10. **CLOSED SESSION** – None.

11. **ADJOURNMENT**– on call by Mayor Catalano, the City Council adjourned its meeting at 10:36 p.m.

The next regularly scheduled meeting of the City Council will be February 19, 2019.

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Respectfully submitted,



Janet Calderon, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL



Tuija Catalano, Mayor

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