

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

TUESDAY, August 21, 2018

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:00 p.m. by Mayor Haydon in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Haydon, Vice Mayor Shuey and Councilmembers Catalano, Diaz and Pierce. Councilmembers absent: None. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Assistant to the City Manager Laura Hoffmeister, City Engineer Scott Alman, and City Clerk/HR Manager Janet Brown.

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

3. **CONSENT CALENDAR**

It was moved by Councilmember Catalano, seconded by Councilmember Pierce, to approve the Consent Calendar as submitted. (Passed; 5-0 vote).

 - (a) Approved the minutes of the City Council's regular meeting of July 17, 2018.
 - (b) Approved the Financial Demands and Obligations of the City.
 - (c) Approved the City's response letter to the FY 2017-18 Contra Costa County Civil Grand Jury's Report No. 1808, "Joint Powers Authorities."
 - (d) Adopted Resolution No. 37-2018 approving four (4) contracts for the purchase and outfitting of a new 2018 Ford F150 Police Responder Supercrew Truck in the total amount of \$59,028.16, and declaring a 2005 Ford Patrol Vehicle (Unit 1729) and a 2005 Ford Ranger Pickup as property surplus to the City's needs and authorizing its disposal by the City Manager at public auction.
 - (e) Approved with regret the resignation of Nancy Morgan from the citizens advisory Trails and Landscaping Committee.
 - (f) Adopted Resolution No. 38-2018 approving a First Amendment to the expiring Professional Engineering Services Agreement with Harris & Associates, Inc., authorizing adjustments in professional engineering rates and term of the Agreement for the continued provision of city engineering services.
 - (g) Adopted Resolution No. 39-2018 authorizing and approving the City's submission of a FEMA-CalOES Local Hazard Mitigation Plan grant application in the amount of \$150,000 and authorizing the City Manager to sign grant-related documents.

4. **RECOGNITIONS AND PRESENTATIONS**
 - (a) Certificates of Recognition to the Dana Hills Swim Team ("Otters") and the Oakhurst County Club Swim Team ("Orcas") for demonstrating extraordinary community spirit through its recent fundraising effort, "Team Up for Tucker."

Councilmember Catalano provided a brief background of the fundraising efforts of both the Dana Hills Swim Team and Oakhurst Country Club Swim Team at their July 28th "Clayton City Cup" Meet. Normally, the swim teams would compete against one another but instead they inter-mixed the teams, Ed's vs. Skip's, and renamed the event "Team up for Tucker." Funds were raised for a family whose 10 month old son had a pool incident this summer and the two teams decided to get together to do a fundraiser for that family. Coach Tony led the event with a big cheer and human "wave" around the pool for Tucker. Overall the swimmers and families raised approximately \$16,000.00 for Tucker and his family. There is some talk that the teams will do this again next year.

Mayor Haydon invited representatives from both swim teams forward and recognized the Dana Hills swim team and Oakhurst Country Club swim team coming together in this community effort. Mayor Haydon shared the Dana Hills Swim Team was already awarded the City certificate at its end of season event, and he presented the City certificate to the Oakhurst Country Club swim team.

5. REPORTS

(a) Planning Commission

Vice Chair Peter Cloven indicated the Commission's agenda at its meeting of August 14th included selection of its new Chair (Altwal) and new Vice Chair (Cloven). There were several public comments related to parolee housing. The Commission's agenda included consideration of a Site Plan Review Permit and Reasonable Accommodation Request at 229 El Pueblo Place for an exterior deck and access ramp to the second floor of the dwelling for a motorized wheel chair. After discussion including a neighbor's concern for privacy, with the expertise of Chair Altwal who is an ADA specialist, the setback and plans were changed and the item was conditionally approved unanimously.

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

(c) City Manager/Staff

City Manager Napper provided an update regarding the conclusion of Keller Ridge Drive repaving project. This was the first time the City used rubberized materials within the chip seal along some portions of street overlay; this mixture will prolong the life of the street materials. This project's construction cost \$788,000 and the City was successful in receiving grant monies for introduction of the rubberized materials.

He noted a different contractor will be starting the City's biennial Neighborhood Street Repaving Project on various residential streets in town; the list of targeted streets is on the City's website under the Residents Tab and News & Events. The city engineer will also push-out messages through the Nextdoor website to inform the community of the schedule, which is subject to change giving the timing of the contractor. The contractor will always allow a way in and way out of areas having only one ingress/egress. Mr. Napper asked for confirmation of project completion from City Engineer Mr. Alman who was in attendance. Mr. Alman confirmed the project is set to be completed in two weeks.

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

Councilmember Catalano attended the League of California Cities' East Bay Division meeting, and the Clayton Business and Community Association Oktoberfest's Committee meeting. She announced there is still a need for volunteers for Oktoberfest event. She also attended the Clayton Library Foundation Board meeting, announcing its upcoming Used Book Sale taking place October 26 – 28, and attended the Council's Audit Sub-Committee meeting.

Vice Mayor Shuey indicated “No Report”.

Councilmember Julie Pierce attended three Associated Bay Area Governments Committee meetings, the Metropolitan Transportation Commission meeting, the Contra Costa Transportation Authority Board meeting, and the League of California Cities’ East Bay Division meeting.

Councilmember Diaz attended the Saturday Concerts in The Grove series, the Classic Car Show and DJ event in downtown Clayton, the League of California Cities’ East Bay Division meeting, participated in the 20th Annual Mudville Grill Golf Classic, and attended the 40th Annual Sheriff’s Posse Barbeque. Councilmember Diaz announced the next Classic Car Show and DJ event in downtown Clayton will be tomorrow evening.

Mayor Haydon attended the County Connection Board of Directors meeting, the “Welcome Home” event for Michael Hudson, the Saturday Concerts in The Grove, the Clayton Business and Community Association’s General Membership meeting, the Contra Costa Mayors’ Conference hosted by the Town of Danville, the Clayton Business and Community Association’s Oktoberfest Committee meeting, and the Council’s Audit Sub-Committee meeting.

(e) Other – Introduction of City Council candidates (present at the meeting).

Mayor Haydon noted that during City elections, it is City Council Policy that candidates for City Council are allowed 3 minutes to introduce themselves and share a few remarks at each City Council meeting if they are in attendance and wish to do so.

Brian Buddell announced his candidacy for City Council is to fill a need from previously speaking to the current Council to convey a problem with communication. Mr. Buddell has found too often he felt his voice was not being heard, listened to or acted upon by the City Council, and he decided to get involved and run for the people like himself who want their voice heard and protect the interest of Clayton at all costs. As a City Council member Mr. Buddell noted he will always listen to the community, and convey information which currently is limited by City Council and City Staff; we need better and more time to review the information prior to the City Council meeting. Mr. Buddell will spearhead, when on the Council, for reaching out to the community by holding open town hall meetings and if someone has a concern he wants to talk about it. Granted as a City Council member, Mr. Buddell acknowledged he would be only one member and one voice, but rest assured, it will be a loud voice.

Jeff Wan stated he has been a Clayton resident for a little over 9 years, an active CPA in private industry locally in Walnut Creek. Mr. Wan is running because he sees a need on the City Council for a new voice; when he has spoken to citizens, most people are ok when things are going well in the City and that has been happening for quite a number of years. In recent times, he does not feel that is true anymore, and he decided to run to represent the people who do not always have a voice here in his demographic and age group with younger families without a lot of spare time to pursue and keep up with all the detailed activity. When Mr. Wan heard about the proposed downtown development and parolee housing, it brought citizens to a call for action. When Mr. Wan was speaking with his circle of friends, he was persuaded to run for City Council and feels this is the time to really make a difference on the City Council.

Carl Wolfe stated he has been a resident for nearly thirty years and a current Planning Commissioner. When he applied for the Planning Commission, he thought it would take a couple of years to learn the ropes and did not realize how hard it was going to be. Mr. Wolfe and the people of Clayton are very passionate about their City and he believes in

listening to the people of Clayton, and providing the community the right to understand the information and not misinformation found on social media. Mr. Wolfe is proud of his voting record on the Planning Commission, an advisory body to the City Council, in dealing with various complicated issues. Mr. Wolfe is also a proud CBCA member and volunteer for the Art & Wine Festival and the Oktoberfest, the announcer for the Rib Cook-Off and the parade announcer for the City's 4th of July parade. Mr. Wolfe intends to be a voice for Clayton by retiring early as a marketing and creative director for a major corporation; his two year experience as a Planning Commissioner was not enough for him. Mr. Wolfe is proud of Clayton and what it is and stands for, and the vision of what Clayton can become as a community. Right now we are very divided, we can bring ourselves back together as one community with a new vision as the future is coming and we need to be prepared by listening. Mr. Wolfe promises to use his two ears and one voice for the City of Clayton.

Vice Mayor David Shuey advised he grew up in the area and when he moved back to raise his family he got involved in Clayton politics. When he moved back to Clayton in the Keller Ridge area there was no City park in an area with a lot of new families with children who wanted a playground. He got involved by being appointed to the City's Community Services Commission to help get a community park installed there. Mr. Shuey indicated it has been his honor and privilege to serve for 16 years on the City Council and 4 years on the Community Services Commission. He was the Chair for the downtown Grove Park Design Committee and its design has enabled the community to have a place to meet and have concerts. Mr. Shuey has assisted the City in keeping a balanced budget through the economic downturn in 2008, keeping our City services and a balanced budget when most cities in California were unable to do so. Mr. Shuey noted he is a CBCA member and also the Labor Day Derby MC with Pastor Robinson for all the years except one that this event has been going on. Mr. Shuey included he is an active coach and board member for Clayton Valley Little League, and has coached soccer and in the past helped with youth basketball. It would be his honor and privilege to serve again if re-elected and asked for your vote.

6. PUBLIC COMMENT ON NON - AGENDA ITEMS

Susan Pricco, on behalf of the Contra Costa Taxpayers Association, noted for over a year and a half staff members of CoCo Taxpayers have been researching the CalPERS pension crisis as it affects the cities in Contra Costa County. In the past 5 years, city-required contributions to CalPERS have risen 40% and it's about to get worse. In the next 6 year period in FY 2019-2025 city payments to CalPERS for pension contributions will increase to an average 84% for fifteen Contra Costa cities. This financial crisis will suck the life out of public services in this county. Not only are we concerned with the rising costs of unfunded pension liability this year but were also concerned about the potential financial crisis for residents within the next few years. The current system is unsustainable and unaffordable; many government agencies are proudly announcing they have balanced budgets and rosy financial pictures yet ignore the outstanding pension obligation. Recent requirements instituted by the Government Accounting Standard Board (GASB) will now disclose a more complete and truthful picture.

CoCo Taxpayers want Clayton to be aware of where it stands and she distributed a projection for the five years ahead. The current unfunded pension debt for Clayton is \$4.7 million and Clayton's CalPERS contributions will increase by 23% over the next 5 years. She expressed confidence your city manager will confirm their findings. CoCo Taxpayers is also aware that figure for Clayton is modest compared with other cities but it is no small amount especially in a small city like Clayton. CoCo Taxpayers did publicly acknowledge Clayton's track record of excellent fiscal responsibility over the years. But it would like to see Clayton formulate a plan to address this debt. They expect the

already over-taxed Bay Area voters cannot and will not be inclined to approve a tax measure for services already rendered; however, they are also concerned about the retirees who earned and will rely on their reasonable pensions and cannot afford a loss of their financial security in their retirement years. If the Council wishes, they can present a more detailed analysis at a later time. She noted the Council did not create this situation but it is their responsibility to address it. The quality of life in your community is at risk.

Ann Stanaway, 1553 Haviland Place, stated Council needs to take serious its constitutional duty to protect the public safety. Since Mr. Diaz impassioned homily at the last Council meeting, trumping his personal commitment to neighborhood safety and quality of life in Clayton, she felt the need to raise her voice in a follow-up representing voters in those neighborhoods that Councilmember Diaz professed to protect. How dare he rebuke us for questioning his fitness to protect incorporated Clayton. Every single member of this Council continually violates his and her oath of office by allowing violations of existing public safety ordinances to proliferate despite exhausted photographic evidence of California Fire Code violations. Our government's constitutional commitment to protect its citizens is nothing more than empty rhetoric.

Brian Buddell spoke in general terms with respect to proposed and future developments keep Clayton, as it is. Mr. Buddell located to Clayton, he moved here because he liked it the way it is, without multi-story residential or commercial buildings. Lately, there have been some proposals not consistent with what Clayton is about and he has received conflicting information about a proposed development over on High Street and Marsh Creek that he does not think fits within the General Plan. Please listen to people and do not let Clayton turn into Walnut Creek or downtown Concord.

Andy Li, introduced himself as a candidate for Contra Costa Community College Board, Ward IV, which includes San Ramon, Danville, Clayton, part of Antioch and Brentwood. His goal is to help the community reduce the stress for the students by creating an alternate pathway through the community college, help them succeed, by reducing mental stress and financial burden by promoting online courses and working with business owners to offer vocational training for local workers.

Jim Gamble, Prospector Place, echoed Mr. Buddell's remarks adding according to the City's website, the original plan was forty-four condos and now it is three stories high with eighty condos. Before something like that is considered, he wants people to be aware. We love Clayton the way it is; if our award winning trail system does not go away overnight, it goes away incrementally as developments start popping up.

7. PUBLIC HEARINGS

- (a) Consider the Second Reading and Adoption of proposed Ordinance No. 483 amending Title 17 – Zoning of the Clayton Municipal Code to restrict and regulate parolee homes in the following General Plan designations: Multifamily Low Density (MLD), Multifamily Medium Density (MMD), and Multifamily High Density (MHD), subject to a conditional use permit.
(Community Development Director)

City Manager Napper Community Development Director Mindy Gentry had a previous commitment for this evening arranged back in January and he will provide the staff overview. He noted the Government Code process indicates how general law cities adopt local laws, otherwise known as ordinances. The introduction and first reading of an ordinance is done at the first public hearing. If the City Council does not approve the motion to read by title and number only, the City Clerk must then read the ordinance in

its entirety. Once the ordinance is adopted for Introduction, no earlier than 5 days after its introduction that ordinance is eligible to return for its Second Reading, at which its actual adoption can occur at that time. If that ordinance is adopted, then the new law (ordinance) normally, with few exceptions, takes thirty days to become effective.

City Manager Napper provided highlights of the proposed Ordinance regarding its Use Permit process, which is subject to a public hearing, is discretionary with the review and consideration by the Planning Commission. Should a parolee home applicant/operator wish to locate in Clayton, it would need to file an application with the City. If the applicant does not own the underlying real property, the application also requires the signature of the property owner in order to process the request. The proposed Ordinance includes prohibition for parolee homes to locate within 500' of a sensitive use. When the City received notification in 2016 by an operator wanting to open a parolee home in Clayton, City staff brought an ordinance to the City Council, an urgency ordinance placing a two year ban to allow staff to conduct more research. Unfortunately, the City is unauthorized to further continue the ban as the interim moratorium comes under the authority of California Government Code 65858 (a), which state law allows an urgency moratorium to be effective for a maximum two year period. In the absence of doing nothing, the City is faced with parolee homes coming to Clayton with no notification or local review. At its July 17th meeting the City Council included buffer zones of 500' from defined sensitive uses, and cannot to be located within 1,000' of another parolee home. Staff recommended the multifamily designations as there are not many such areas in the city as there are for single family dwellings or residential districts. The interest of the City is to regulate and limit the City's receivable of such a parole home operation. Additional components include multifamily housing projects of 25 units or less would be limited to one parolee home and multifamily housing projects with 25 or more units would be limited to a maximum of two parolee homes. At the last City Council meeting the City Council introduced the Ordinance but also asked staff come back and plot a 750' and a 1,000' buffer distance map. There is no state or local law that determines a specific buffer requirement or distance.

Vice Mayor Shuey inquired under the 500' buffer there are three opportunities for parolee housing to locate. Mr. Napper advised the areas for consideration are located at Indianhead Way, the Keller Ridge area, and the Shell Lane area.

Vice Mayor Shuey clarified the areas at Indianhead Way and Shell Lane are actually one opportunity because of the 1,000' buffer between parolee homes if they were to locate in that area. Mr. Napper concurred and further advised in those areas there may already be a group housing the City is unaware of, licensed by the state, or after the City Council adopts the Ordinance a particular sensitive use comes into play it would be part of the consideration when staff went to apply the distance criteria that is included in the ordinance. He noted none of the maps are an actual part of the proposed Ordinance; the maps were prepared to provide a visual of the areas that are multifamily high density and where possible parolee homes could go, and for the City Council to have a discussion on concerning what it feels is a legally defensible position of the City.

Vice Mayor Shuey asked if a daycare is located in a zone, would that area then be excluded in having a parolee home located in that area? Mr. Napper advised the City is notified of state-licensed daycare facilities, but another licensed daycare could show up in those areas, or other group housing or sensitive uses in those areas for the Planning Commission to consider during its review of a proposed parolee home.

Vice Mayor Shuey inquired if the 750' or the 1,000' buffer zone would reduce the opportunity to 2 locations and if our City Attorney is comfortable with only having 2 areas available for parolee housing? City Attorney Mala Subramanian advised in terms of the risk factor it goes back to the sensitive uses and ones we may not be aware of; she does consider it is still defensible to move from two versus three yet doing so does pose an

additional risk if a sensible use comes in knocking-out the proposed parolee home. However she does not consider it creates a de-facto ban.

Councilmember Catalano added most other cities have placed regulations on parolee housing and she conducted her own research for any examples of a de-facto ban. She located one in the City of Hesperia, California, where they had a group home definition prohibiting housing of two or more individuals on probation. In November 2015 a crime free rental housing ordinance was passed requiring landlords to evict any tenants that were involved in any criminal activity. In May 2016, that city was sued on both of these ordinances by ACLU and another entity, starting with the Supreme Court case talking about AB109 and Prop 47. In July 2016, a preliminary injunction was issued by the court preventing the City of Hesperia from enforcing its ordinances. In March 2017, that city decided to repeal the group home definition by urgency ordinance with the findings the ordinance was necessary for public peace, health and safety yet the cost for litigation may be so detrimental to the fiscal stability of the city that the city would only be able to provide less city services, such as police, fire, building safety and enforcement. The lawsuit was settled a year later with ACLU and the other entity at almost \$500,000, with \$470,000 in just attorney fees, which amounts did not include the city's own legal expenses that it incurred over the two years. In comparison, Hesperia has a population of 94,000 and its General Fund Budget is about \$26 - \$27 million per year. Clayton is about \$4.5 million per year.

Councilmember Pierce requested a clarification regarding group homes to explain the process and state law requirements for small daycares that are licensed by the state for 6 or less children. City Manager Napper responded state law allows for certain types of group housing to go into communities in residential zones without any permission or regulation by a city, provided the number of persons in that group housing is 6 people or less. When people say "how does the City not know about a group housing that is occurring in their neighborhood or in the city?", the City is usually first notified by the neighborhood at which point the City inquires with the state because licensed daycare of 6 persons or less is permitted by right. He noted different state agencies handle other types of adult group housing versus a different type of group housing, such as sober living environments, which can lead to over-concentration of state-permitted group housing in a particular neighborhood.

Councilmember Pierce noted she is trying to have a larger buffer zone to include any potential daycare of 6 or less in operation that would have the potential to eliminate a proposed location.

Mayor Haydon inquired if there would be any issue in expanding the public notification distance to 1,000'? Ms. Subramanian advised if there a 1,000' public notification that would be fine.

Mayor Haydon opened the Public Hearing for public comments.

Pat Hilts, resident of Chaparral Springs, expressed within the chosen area of Shell Lane are three women who live alone, and she cannot imagine having a resident in the court of one or more felons. Ms. Hilts noted it would be very uncomfortable for the residents and suggested felons reside nowhere close to the city but in an area that is more remote.

Ann Stanaway, 1553 Haviland Place, noted Clayton carries municipal JPA insurance to defray that cost of legal defense, and a prudent counsel would outsource review of our staff recommendation and welcome the professional scrutiny by professional knowledge experts like Goldfarb & Libman in Oakland. As constituents, citizens are not qualified to guide the City Council through the complexities surrounding compliance of this magnitude. This statutory compliance measure is a big deal with far reaching

consequences; reaching a ban now would record Clayton's reluctance and allow City Hall time to seek professional advice from the highest and best source.

Nancy Hughes stated nobody wants a criminal in their backyard. In Shell Lane's area, behind the units is open space. Anyone can slip down that hill through the parking space and have access to any of our backyards. There are 500 crimes that qualify for the prison realignment act; how will county parole officers provide supervision? What about sensitive areas? Ms. Hughes does not want felons in her neighborhood, and also expressed concerns over deflated home values.

Barbara Vogt, Coyote Circle, opposes any parolee housing in Clayton noting concerns of young children in her neighborhood and the sale of alcohol on the adjoining golf course. Ms. Vogt understands parolees need to access public transportation, noting Condor and Coyote are privately owned streets and are not patrolled regularly; it seems like we are more concerned for the safety of the parolees. Please protect our small community.

Jeff Wan stated the number one priority of the City Council should be the safety of its residents, but it is letting its fear of potential litigation paralyze its thought process rather than protect the city and protect the safety of Clayton residents. The citizens have been told by the Council there is a mandate by the state that claims there is a requirement to take up paroles in community-based programs in our neighborhoods. His research indicates no such mandate. Why didn't the City Council adopt the most restrictive ordinance possible at the July 17th City Council meeting? Even nearby Antioch and Oakley has a greater distance requirement. It's hardly persuasive the Council explored all possible actions in its due diligence; it forgot about the park of Stranahan Circle where they identified a potential location for parolee housing next to a park. If the proposed ordinance is the very best the City Council could come up with then, they are not trying hard enough. The Council should go back to the drawing board and take action to actually protect all Clayton residents and more heavily restrict or outright ban parolee housing in the city. We can do better, and that's why he is a candidate for City Council.

Jerry Koehne, Chaparral Springs, remarked Clayton is not just any other city, it's a community and everybody is here because we don't want to be Hesperia or Concord. We want Clayton be an all-inclusive safe community. When Mr. Koehne first moved to Clayton, there was trouble with landscaping and the voters voted to pay more taxes for the landscaping, the fountain and CBCA. Mr. Koehne suggested if City money needs to be raised to defend us, have a bake sale or sell something at the Saturday night concerts. We will all be there to do it to protect our community and live the way we wanted to, because that's why we moved here.

Kim Brazill echoed the last two speakers' comments.

Fred Fuld asked who is the non-profit organization that seeks to put a facility in Clayton? Mr. Napper advised he did not have that information readily however that operator ended up in Pittsburg to open a similar facility. Mr. Fuld asked would this organization be purchasing or renting these units? Mayor Haydon advised they would have either option. Mr. Fuld asked, as a homeowner of a rental property, if he were approached about renting his property for parolee housing, can he refuse? Mayor Haydon responded yes; this evening the City Council is reviewing the Ordinance that would control whether or not they could use the property in that manner, not binding the owner of the property the type of rentals they want to approve with their own property. Mr. Fuld noted on the county's level of supervision it excluded any listed high risk sex offenders as defined by CDDCR; would they will allow "low risk sex offenders," and what does that mean?

Richard Haile, Indianhead, advised somewhere between 80-90% of all felons indictments are out of court for pleading to a lesser offense so we are unaware of what they were really charged with when somebody moves in. Mr. Haile would like review of a well written ordinance and consider that model. He wondered with the two other cities which have banned this use, why has ACLU left them alone? Mr. Haile suggested sharing the risk equally across the city, not just in the areas where they cannot buy their influence.

Dan Hummer read AB109 and it said the county can still contract back with the state; is there a reason why Contra Costa County did not contract back with the state in regards to where these people be held and things like that? Mayor Haydon advised the county is still working on its plans and ordinances. Mr. Hummer also inquired if the county supervision could possibly raise taxes in Clayton? Mayor Haydon advised the council is reviewing the impacts of the ordinance itself within Clayton city limits.

Joanne Lederman is dumbfounded about the idea of putting parolee homes in the high density areas and if Clayton will allow parolees to avoid a potential lawsuit with the ACLU then this use should be citywide. Ms. Lederman stated it is absolutely unacceptable to target certain groups as you make second class citizens out of people who live in high density housing. The City has failed to consider if anyone who resides anywhere around the Keller Ridge area will have to disclose this when we sale our properties as we are located in a small targeted area where parolee homes can locate, decreasing our property values.

John Kranci, Coyote Circle, has seen firsthand what these parolees can do to a community; after spending 28 years on the streets of San Francisco and going into these houses the recidivism of them committing the crimes over and over again is unconscionable. Parolees do not want to be controlled and want do what they want and go where they want. Unfortunately Clayton does not have the staff in its police department to do anything about it. Make it impossible for these people.

Marci Longchamps, Coyote Circle, voiced her strong opposition to any kind of parolee housing, anywhere in Clayton. The Keller Ridge development currently has a playground area which can be defined as a sensitive area. How is this playground area overlooked? The Keller Ridge area and any other area are not suitable for parolees. Ms. Longchamps noted she is very passionate about this issue and believes when it comes to any conversation, regarding convicted felons living in Clayton there has to be a place for both emotions as well as facts.

Galina Milman, Eagle Peak Avenue, expressed her concern about the City statement the parolee housing business will not be using extra City funds as every parolee that comes through the system is going to review each case. For example, if a parolee sexual assaulted or raped someone younger than 14 they are considered a hard core parolee and are restricted 2 miles from any park, school or daycare. If they rape someone 14 years and 1 month old it is considered soft core parolee but in cases like this that is why we have a professional parolee officer who has had training to differentiate the difference. Our City police department does not have the work force to review each case and will have to hire extra people at about \$70,000 per year salary. A parolee officer makes \$70,000 - \$80,000 per year plus benefits. Are we ready to put it on our shoulders? Ms. Millman spoke about the golden standard in 2006 when 70% of California voted for Jessica's Law after a nine year old girl that was raped and killed by a parolee in Florida. In California it was decided to also place a 2,000' buffer around parolees; if Clayton cannot do an overall ban, and then have a 2,000' buffer because the golden standard exists.

Stacey Holz, Shell Lane, echoed the sentiment of her fellow community members that there needs to be more creativity sought and try harder and restrictions should be there, but not discrimination in the effort to avoid offending the ACLU, or felons, as she believes the City Council is at risk of discriminating against certain members of our community. We are a community and we need to share the burden and asked that the Council to please listen to its community members; we all moved here not because it is convenient to our work place. Clayton is amazing because we are a community that makes it amazing. Let's find a solution that works for everyone in Clayton because it is special; we are not going to be afraid to offend the devil because we want to be politically correct.

Brian Buddell attended the last City Council meeting and listened in great detail to the City Attorney present at that time she said "1,000' would be a total ban, a de-facto ban;" now we are hearing "no its not, its fine." He's hearing Councilmember Pierce there might be daycares there, but we don't know where they are. Council, we are talking about a piece of legislation that is possibly the most important piece of legislation in the 54 year history of Clayton. This is safety, this is a protection of Clayton, and Mr. Buddell does not want to see anyone hurt, regardless of the potential costs. Our safety has no cost, no budget and it should not have a ceiling. We need to protect, we need to be smart, we need to do it right.

Jim Gamble noted like a lot of the other speakers this buffer is ridiculous it should be 1,500' or 2,000' and regulate it or have an outright ban. Mr. Gamble also would like to know Mr. Wolfe's thoughts on this, if he has time.

Chuck Blazer attended the Planning Commission meeting thinking there would be some type of town hall meeting; instead there is a Council meeting. The *Clayton Pioneer* came out where the Mayor at the end of the article said the citizens just don't understand. Mr. Blazer provided scenarios of when a parolee home comes to a community syringes and baggies show up because of drug use that goes on day and night; rooms in the back of the house that have turned to brothels; parolees stealing all the mail from the community and all their neighbors and you hit that house you find it all piled in the living room; in the garage all the property stolen from the neighborhood is there, it will be worth the lawsuit. Mr. Blazer referred to a Penal Code those talks about a safe zone from schools of 1,500' from parolees. If Council is going to use something to beat a lawsuit, why not use a code that the state of California has already offered?

Jason Kirkham, Coyote Circle, commented as an echo to what many people have already said noting his family resides in targeted area and doesn't consider his residence a multifamily dwelling, it's his home. He is offended by the multifamily selection process. Mr. Kirkham is concerned about safety like everyone else and is a taxpayer with a vested interest in the value of his property, but more so he is interested in the safety of the community at-large. Mr. Kirkham is also concerned with the nature of the criminal backgrounds; as the nature of crimes has been redefined in recent years. When Mr. Kirkham was seventeen years old, he sold newspaper subscriptions in the summer of 1991 and came across a parolee, who was the person who kidnapped JC Dugard and happened to be standing on the front lawn of the house at the time he had her in his backyard.

Michael Gibson, Keller Ridge Drive, added he was not sure if the City Council was familiar with the contagion and opportunity effect in our community. He suggested looking into parole evidence on recidivism in contributing to these things, noting research suggests up to one half of the individuals released from prison return to prison within 3 years. How will the Council answer to the prospective victims in this room as to why it did not prevent this from happening.

Joanna Welch mentioned the recent incident of a woman whose neck was slashed and she was slaughtered on the BART platform by a parolee. Personally, she had a best friend from high school where there was a gentleman plead down 6 times; every time he had great attorneys that plead his charge down, the seventh time he abducted her friend and dismembered her, and to this day there isn't a day that goes by that Ms. Welch doesn't think of her. He even tried to plead down after he cut up her friend, finding her three years later in pieces, her parts all over. She cannot compare the fear mongering of the legal stuff to fear mongering of a woman's life whose throat was slashed or spread out over dumpsters. She knows these are huge heavy potential legal bills but there is not a lot of precedence for this. There are other councilmembers and also have media. Ms. Welch said these are not easy things and we are not asking too much for the safety of our children, the elderly and every one of us.

Sally Hitchcock, Coyote Circle, is concerned that if someone is living in her neighborhood it is very easy to get into our small backyards consisting of a patio. No one wants parolee housing here in Clayton, except maybe the parolees and their families; but to limit it from 11,000 people to a few hundred people exposed, that is not right.

Cheryl Morgan pointed out one of the clauses in Brown Act training is to avoid all appearances of conflict of interest. This issue has become pretty apparent to everyone here that the Council has opened itself to a Brown Act violation. Ms. Morgan noted a nearby trailer park is closing off access to felons, in Clayton Palms. Ms. Morgan knows the County is concerned about where they are going to house felons, with no answer. Has the County encouraged Clayton to do this because it needs new housing for felons?

Colleen Shipp is expressed her concerns as it was her dream to live in Clayton, and a year and a half ago her husband and she purchased a home on Coyote Circle, to raise their children there and she is saddened to think how our city of Clayton may be changing. Her father is a retired San Francisco police officer who encouraged her to come to Clayton because of the safety. We don't have the police in Clayton that are going to be able to patrol the area if we have these parolees.

Anthony Dimas, Easley Estates, added when one accumulates the loss in property values because of this action it will be a lot more than \$1,000,000. Might consider it more economical to litigate this if we do get sued than it would be to have these people lose much more than that in property value

Galina Milman expressed her biggest concern is in regard to infrastructure in Clayton; where will parolees obtain drug addiction center and employee agency and physiological help. Will Clayton spend money to build these facilities because in order for them to find the closest facilities they will have to travel through other cities? The whole purpose of having parolee housing is to be able to rehabilitate them.

Jim Gamble questioned the "No Fiscal Impact;" when he asked Ms. Gentry about that initially, she said there was none. With all these other people coming up here and talking about the costs on the infrastructure and impacts to the neighborhoods and all the other apparatus, he just thought it should be public record that Ms. Gentry did say there is no police cost.

Mayor Haydon closed the Public Hearing.

Councilmember Catalano this is not an issue that we brought or introduced; this is an issue we are dealing with through the Supreme Court decision and a state proposition. All of this is pressure from the top to all the cities in the state of California. A lot of other cities are larger cities that already had group housing ordinances when AB109 and Prop 47 passed, they already regulated group housing one way or another. Clayton's code is

silent on parolee group housing. Councilmember Catalano recited what other neighboring cities have done, many without buffer distances and regulations as was presented at the last City Council meeting by staff. The California Supreme Court has eliminated Jessica's Law buffer - it was ruled to be unconstitutional. The 1,500' Penal Code reference applies to a different context; in this context, when we talk about the radius we are talking about whether we are doing a ban or a de-facto ban or not. Her concern about potential litigation is there are costs involved; Clayton is not a big city and budgeted at about \$4.5 million; our police force is about 50% of our budget and she is not willing to sacrifice about \$2.5 million of the Police Budget to pay for a lawsuit. She also does not want a judge who does not live in Clayton to determine the local regulations for Clayton. Clayton has the ability to control its land use. Two cities adopted bans before AB 109 was passed by the state. The cost would take away from our resources but more so the potential outcome. If every city in California prohibits parolee housing, what is the state going to do? Councilmember Catalano advised the approval of an Ordinance establishes a process for a proposed parolee home, it would have to be noticed, a hearing at the planning commission, the planning commission would have to make a decision, there are findings in this conditional use Ordinance and it would impose additional requirements and the criteria the Planning Commission must determine the conditions and whether to approve it or approve it with conditions or deny it. This can be regulated just like every other city has done.

Councilmember Diaz thinks we need to do a lot more work on this. He is inclined, if moving the buffer zone out creates a de-facto ban, the Council should review what a 1,500' or 2,000' buffer looks like and if it eliminates the potential for a parolee home to establish here, then so be it.

Vice Mayor Shuey indicated we are elected to make hard decisions, good or bad; depending on who you are, you can never please 100% of the people 100% of the time. In the 16 years he has been on this Council, on multiple occasions we take a careful look at regulations and issues and try to make a determination on whether or not it was worth the fight. Almost every time there is a difficult decision imposed by the state, we have chosen to let the bigger cities fight those battles with the state. The Supreme Court has already ruled on the prison overcrowding and the state has said we have to do this certain thing to get rid of our overcrowded prisons, they have got to put these people somewhere: that somewhere is either counties or cities or both. He would rather know if there will be a parolee living next door to him and to regulate it and carefully do so through the use permit, and if it is violated, we can revoke. We fight the state, the ACLU, he did not believe the City can win because the Supreme Court has already ruled on overcrowded prisons and the state determined there is now a specific need and interest that they have. The City has narrow locations to the very limited options of multi-family; if we chose single family areas, that decision is giving more opportunities for felons to come into Clayton.

Councilmember Pierce said she has spoken to well over 100 residents who believe very strongly we have to regulate this as far and as tight as we can to discourage it. Nobody wants parolee housing in Clayton, what we disagree about is how to keep it out of Clayton. She asked if staff was unaware of a pocket park in the area of Keller Ridge and didn't know if it is classified as a legal park or not. City Manager Napper advised that presently as written, the Ordinance calls for public parks as sensitive sites, not private parks.

Councilmember Pierce remarked she is convinced the 1,000' buffer and 1,000' notice still allows two locations within town. If we strengthen the noticing process it allows us to make as much noise as much as we can about this potential. From what we know, these operating organizations want to fly under the radar and not let the public know they are there. The more the City locally requires on an applicant, such as the owner of the

property must be a signatory to the use permit application, it makes a very uncomfortable process. We are fighting for local control.

Mayor Haydon asked staff if the council is able to expand our park definition to include private parks as well. City Attorney Subramanian responded if Council were to do that, we would need to re-look at the maps and figure out how many actual locations we would have within the City. To this point, it was only analyzed for public parks as a sensitive use site. She was concerned if private parks would be included it would result in a de-facto ban.

Mayor Haydon commented he wanted to address the question of why the City did not take action earlier. It originated because an inquiry alerted the City to take a look at it. That particular organization ended up relocating to another area based on many factors. No other city has been advised to outright ban parolee homes. Mayor Haydon went over the three options presented at the last City Council meeting. The Council does not like the idea of parolees coming to Clayton; it is proposing the strictest conditions in Contra Costa County and he recommends expanding the buffer to 1,000' and similar noticing distance is an effective deterrent.

Councilmember Catalano wished to recall the moratorium expires in 30 days; the City needs two hearings prior to the Ordinance becoming effective. If we do not do anything today and October 4th comes along, we will have a parolee home allowed anywhere in Clayton without any restrictions. All of us live in the same community; one person mentioned "show me a mom in Clayton that isn't concerned about safety." We've talked a lot about the radius - there are a lot more requirements in the Ordinance.

Councilmember Pierce noted the Ordinance can be amended at any time.

City Manager Napper concurred that an ordinance can be amended by an ordinance; in fact the municipal code is amended all the time... He added the City is a part of the Municipal Polling Authority and as one of his tasks he serves as the Vice President of the Municipal Pooling Authority, a Joint Powers Authority of 23 member cities. In its Memorandum of Coverage, legislative decisions of a land use nature are excluded from liability coverage by the Municipal Pooling Authority. Any exposure to litigation on this matter, the City would be on its own for defense funds.

Councilmember Diaz commented he is not prepared to approve the 1,000' buffer. He respectfully requested as a part of any motion that the City Council provide itself the opportunity in the Ordinance to re-address this down the line when there is more information we can research.

It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to Re-Introduce Ordinance No. 483 with amendments for a 1,000' buffer from sensitive use sites, a 1,000' distance public hearing notice requirement for any associated parolee housing conditional use permit, and include requirements for published notice in the local newspaper and on the City website, and to have the City Clerk read Re-Introduced Ordinance No 483 by title and number only and waive further reading. (Passed; 5-0 vote).

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

It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to approve the Re-Introduction of Ordinance No. 483 with the finding its adoption is not a project under CEQA and it will not have a significant adverse effect on the environment and therefore is exempt under CEQA. (Passed; 4-1; Diaz - no).

[The Council took a recess from 10:38 p.m. to 10:47 p.m.]

8. **ACTION ITEMS**

- (a) Request to discuss and reconsider the City Council's existing Clayton Fountain operating policy.
(Mayor Haydon and Council Member Catalano)

Assistant to the City Manager Laura Hoffmeister presented the staff report noting it is a matter if the Council wishes to make any changes to its existing Clayton Fountain Operating Policy. The Policy's last update in 2008 included twelve events or holidays the fountain is operational. At its last meeting, the Council received a request to run it on all federal holidays. Currently there are three federal holidays that the fountain is not operating: Martin Luther King, Jr. Birthday, Columbus Day and Christmas Day. She noted additional information was provided regarding the cost to operate the fountain; based on its one-day operation last 4th of July, it costs about \$1,350 per 24 hours to include the geysers and the waterfall feature. The cost is higher as it is a peak period for PG&E. Also included is another PG&E bill for a month's operating cost of \$478.00 to merely re-circulate the water, not including operation of the visual water features. Funds would come from the Landscape Maintenance District to operate the fountain the three additional federal holidays. She noted the fountain has not operated lately during the annual Halloween Ghost Walk as that event is no longer held. Therefore, if the City Council chooses to add the three federal holidays for fountain operation, it would result in a net two more operational days to the current operation schedule.

Mayor Haydon opened Public Comment.

Glenn Miller, 1005 Pebble Beach Drive, indicated a couple of weeks ago he was interested in the fee charged by the City to run the fountain on a non-operational day which is \$300.00 per day, and is now surprised at the \$1,350.00 expense. Mr. Miller also asked that City staff to look at the Oakhurst Development agreements and all of the assessments the residents in Oakhurst pay as part of their tax bills. Personally, he has been paying those for over twenty years, and when he first moved here, that was the source of funds to support the operation and maintenance of the fountain. It seems the funds that are still being paid for this service have just disappeared. He would like an accounting of those funds and how they have been used, and if there was any contractual agreement that has been violated and funds used for something else. He wants the City Council to consider running the fountain on the low level every weekend and the 13 holidays, and for city events maybe charge them \$1,351.00 a day; why are they getting a free ride and we're getting screwed basically.

Brian Buddell commented he tried to review the PG&E statement and he noticed in the \$1,351 there was a demand usage fee of \$800-\$900. He tried to figure it out and found many different PG&E plans; perhaps maybe consider a different more economical commercial plan.

Mayor Haydon advised he will have staff look into commercial plan options.

City Manager Napper added the amount of power necessary to operate each of the four geysers is great, its volume is greater. The demand surcharge is added as PG&E is not expecting that type of sudden usage when the power is turned on and it peaks quite high. The City's new Maintenance Supervisor is reviewing the fountain's operation and has thought about reducing the surcharge by turning one geyser on per hour so it evens the rate charge out and is not subject to the high-demand surcharge.

City Manager Napper added the \$300.00 public charge was the rate at the time the Operational Policy was last enacted in 2008. Come to find out that charge has been increased since then but only by the applicable Consumer Price Index. The fee is currently at \$408.00. He handed Mr. Miller a copy of the Operational Policy he downloaded from his computer, not realizing the rate had been changed since then as he was focused on what days it operates. Currently, no one is charged for the operation of the fountain and very rarely there are public inquiries to operate the fountain for a private event, such as a wedding. He is unaware of any specific assessment, other than the Landscape District, that pays for operation of the fountain. When the Oakhurst Development paid as a separate Landscape District, it included the Clayton Fountain operations. Oakhurst residents subsequently asked why they were paying a higher landscape district rate than the other landscape district in the city. Those districts were merged by voters in 1997 and that landscape district has always paid for the fountain's operation.

Glenn Miller commented there is a separate Oakhurst assessment and he thinks there are several others when compared to another home in the area. City Manager Napper responded staff would be happy to look at that as he is unaware of any other Oakhurst assessments than what assessments the City Council levies annually.

Councilmember Pierce added there could be a couple others who have property up there could tell better; there was an Oakhurst Assessment for the middle school, and the streets and roads, and a Mello Roos for the internal streets, depending on which development one resides in. City Manager Napper replied the City often receives questions on what the various assessments pay for on their tax bill and staff would be happy to assist and let the Finance Manager review Mr. Miller's tax assessments, if that is appropriate.

The Council expressed interest to add the extra federal holidays and remove the Halloween Ghost Walk. Councilmember Pierce requested the additional date of the CBCA Cook-Off as its date is now scheduled regularly on the community events calendar.

It was moved by Councilmember Pierce, seconded by Vice Mayor Shuey, to amend the Clayton Fountain Operation Policy to add the three federal holidays and to substitute the Halloween Ghost Walk operation for the CBCA Rib Cook-off. (Passed; 5-0 vote).

- (b) Consider the option to designate a City Council Voting Delegate and Alternate Delegate to the League of California Cities 2018 Annual Conference to be held September 12th – 14th in Long Beach, and determine a City voting position, if any, on the two League Conference General Resolutions.
(City Clerk)

City Clerk Janet Brown presented the staff report and noted the registration fee for this year's Annual League of Cities Conference is \$575, which does not include additional expenses of transportation or lodging accommodations. At this year's conference there are two (2) League Conference General Resolutions for consideration at the Business Session. Ms. Brown noted the adopted City Budget for FY 2018-19 has \$1,600 allocated for any council member attendance and related expenses.

Mayor Haydon opened the floor to receive public comment; no public comments were offered.

Councilmember Pierce commented there is one General Resolution calling upon the League to respond to the increasing vulnerabilities to local municipal authority, control and revenue and to explore the preparation of a statewide ballot measure and or constitutional amendment that would further strengthen local democracy and authority. This initiative of retaining local control is of particular interest to Clayton, given recent events, but she believed other city delegates would have the same urgency to retain local control and therefore it did not necessitates Clayton's presence to vote on it.

By general consensus, the City Council indicated no need to send a delegate to this year's League of California Cities Conference.

It was moved by Councilmember Pierce, seconded by Vice Mayor Shuey, to not send a delegate to the League of California Cities 2018 Annual Conference held September 12th – 14th in Long Beach, California. (Passed; 5-0 vote).

- (c) Consider the rescheduling of the regular City Council public meeting of Tuesday, September 4, 2018.
(City Manager)

Councilmember Pierce indicated it seems the canceled September 4, 2018 City Council meeting needs to be rescheduled to address the timely second reading and adoption of the Parolee Housing Ordinance to meet the October 3, 2018 moratorium expiration.

It was moved by Councilmember Pierce, seconded by Vice Mayor Shuey, to reschedule the regular City Council public meeting of Tuesday, September 4, 2018. (Passed; 5-0 vote).

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

None.

10. **CLOSED SESSION**

Mayor Haydon announced the City Council will adjourn into Closed Session for the following noticed item (11:11 p.m.):

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

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

Instructions to City Negotiators: City Manager Gary Napper; Mr. Edward Del Beccaro, Managing Director, and Mr. Matt Hatfield, Senior Associate, with Transwestern, regarding price and terms of payment.

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

Report Out From Closed Session (11:21 p.m.)

Mayor Haydon stated there is no reportable action.

13. **ADJOURNMENT**– on call by Mayor Haydon, the City Council adjourned its meeting at 11:22 p.m.

With the action taken on Agenda Item No. 8(c) above, the next regularly scheduled meeting of the City Council will be September 4, 2018.

#

Respectfully submitted,



Janet Calderon, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL



Keith Haydon, Mayor

#