



**PLANNING COMMISSION
AGENDA
Regular Meeting
Tuesday, June 28, 2022
7:00 p.m.**

***** Virtual Meeting ***
Via Zoom Webinar
Webinar ID: 848 4043 8599**

This meeting is being held in accordance with California State Assembly Bill 361 and Government Code Section 54953(e). Given the proclaimed state of emergency and the Contra Costa County Health Officer's recommendation for social distancing for public meetings, the Planning Commission is conducting this meeting via phone/video teleconferencing. The public is invited to view or listen to the meeting and to address the Planning Commission via the methods listed under "Instructions for Virtual Planning Commission Meeting Participation," below.

Chair: Terri Denslow
Vice Chair: Ed Miller
Commissioner: Justin Cesarin
Commissioner: Frank Gavidia
Commissioner: Amy Hines-Shaikh

Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; and 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton. A digital copy of the Agenda with a complete packet of information including staff reports and exhibits related to each agenda item is available for public review on the City's website at <https://claytonca.gov/community-development/planning/planning-commission/planning-commission-agendas/>.

Any writings or documents provided to a majority of the Planning Commission after distribution of the Agenda Packet and regarding any public item on this Agenda are available for review on the City's website at <https://claytonca.gov/community-development/planning/planning-commission/planning-commission-agendas/>.

If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at 925-673-7300.

Most Planning Commission decisions are appealable to the City Council within 10 calendar days of the decision. Please contact Community Development Department staff for further information immediately following the decision. If the decision is appealed, the City Council will hold a public hearing and make a final decision. If you challenge a final decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing(s), either in spoken testimony at the hearing(s) or in written correspondence delivered to the Community Development Department at or prior to the public hearing(s). Further, any court challenge must be made within 90 days of the final decision on the noticed matter.

Instructions for Virtual Planning Commission Meeting Participation

To protect our residents, officials, and staff, and in accordance with California State Assembly Bill 361 and Government Code Section 54953(e), this meeting is being conducted using teleconferencing. The following options are provided to view, listen to, or provide comments during the meeting.

Videoconference: To join the meeting on-line via smart phone or computer, click on the link: <https://us02web.zoom.us/j/84840438599>; or, through the Zoom application, enter **Webinar ID: 848 4043 8599**. No registration or meeting password is required.

Phone-in: Dial toll free 877-853-5257. When prompted, enter the Webinar ID above.

E-mail Public Comments: If preferred, please e-mail public comments to the Community Development Director at danaa@claytonca.gov by 5:00 p.m. on the day of the Planning Commission meeting. All emailed public comments received prior to 5:00 p.m. on the day of the Planning Commission meeting will be forwarded to the entire Planning Commission.

Each person attending the meeting via video conferencing or telephone and who wishes to speak on an agendized or non-agendized matter shall have a set amount of time to speak as determined by the Planning Commission Chair.

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **PRESENTATIONS**
5. **ACCEPTANCE OF THE AGENDA:** The Planning Commission will discuss the order of the agenda, may amend the order, add urgency items, note disclosures or intentions to abstain due to conflict of interest on agenda items, and request Consent Calendar items be removed from the Consent Calendar for discussion. The Planning Commission may also remove items from the Consent Calendar prior to that portion of the Agenda.
6. **PUBLIC COMMENT (Non-Agenda Items):** This time has been set aside for members of the public to address the Planning Commission on items of general interest within the subject matter jurisdiction of the City. Although the Planning Commission values your comments, pursuant to the Brown Act, the Planning Commission generally cannot take any action on items not listed on the posted agenda. At the Chair's discretion, up to three minutes will be allotted to each speaker.
7. **CONSENT CALENDAR:** The following routine matters may be acted upon by one motion. Individual items may be removed by the Planning Commission for separate discussion at this time or under Acceptance of the Agenda.
 - A. **MINUTES:**
Planning Commission Meeting of June 14, 2022
8. **ACTION ITEMS**
 - A. **Request for Initiation of a Zoning Code Study Pertaining to Mobile Food Vendors (ZOA-01-2022)**
This is a request for the Planning Commission to initiate a study of potential amendments to Clayton Municipal Code Title 17 (Zoning) pertaining to mobile food vendors. Initiation of the study will allow staff to identify changes to the zoning code that are necessary to comply with recent changes in state law. Any amendments staff identifies will be presented to the Planning Commission at a future public hearing, with a request for recommendation to the City Council.
9. **PUBLIC HEARINGS**
None

10. COMMUNICATIONS: This time is set aside for the Planning Commission to make requests of staff, and/or for issues of concern to Planning Commissioners to be briefly presented, prioritized, and set for future meeting dates. This time is also provided for staff to share any informational announcements with the Commission.

11. ADJOURNMENT

The next Planning Commission Regular Meeting is Tuesday, July 12, 2022.

**Minutes
City of Clayton Planning Commission
Regular Meeting
Tuesday, June 14, 2022**

1. CALL TO ORDER

Chair Denslow called the meeting to order at 7:03 p.m.

2. PLEDGE OF ALLEGIANCE

Commissioner Cesarin led the Pledge of Allegiance.

3. ROLL CALL

Present: Chair Terri Denslow
Commissioner Justin Cesarin
Commissioner Amy Hines-Shaikh

Excused: Vice Chair Ed Miller
Commissioner Frank Gavidia

City staff present at the meeting were Planning Commission Secretary/Community Development Director Dana Ayers and City Engineer Larry Theis.

4. PRESENTATIONS AND ANNOUNCEMENTS

There were no presentations or announcements.

5. ACCEPTANCE OF THE AGENDA

There were no changes to the agenda as submitted.

6. PUBLIC COMMENT

Bani V. identified herself as a resident of Kelok Way in Clayton. She wanted to bring to the City's attention some problems she observed in her cul-de-sac with respect to traffic and violations of red curb. Community Development Director Ayers gave the speaker her phone number at City Hall and suggested the speaker contact her there.

7. CONSENT CALENDAR

A. Minutes of Planning Commission Meeting of May 24, 2022.

Commissioner Hines-Shaikh moved to approve the minutes as submitted. Commissioner Cesarin seconded the motion. The motion passed by vote of 3-0 (Vice Chair Miller and Commissioner Gavidia were absent).

8. ACTION ITEMS

- A. Review of the Fiscal Year 2022/23 Capital Improvement Program Projects for Conformity with the Clayton General Plan (GPA-01-2022).** Section 65401 of the California Government Code requires the Planning Commission to determine whether projects proposed in the City's Capital Improvement Program (CIP) for planning, initiation or construction during the ensuing fiscal year are in conformity with the General Plan. The Planning Commission is requested at tonight's meeting to review the draft list of CIP projects for which funding is proposed to be identified for planning, initiation or construction during fiscal year (FY) 2022/23, and to make determinations of General Plan consistency for the projects, in accordance with the Government Code. The Planning Commission's determination will be forwarded to the City Council for their consideration prior to the City Council's adoption of the final CIP for the next fiscal year.

Community Development Director Dana Ayers introduced and gave a brief overview of the item.

Acknowledging the City's budget constraints, Commissioner Hines-Shaikh asked if the Commission's decision committed the City Council to implementing all of the projects listed in the CIP in the next fiscal year, without exception. Director Ayers advised that CIP's could change during the year; projects could be added within the year, or projects could be rolled over from one year to the next if they were not completed due to labor shortages, unexpected cost increases or other reasons. She added that many of the projects currently in the list were funded by grants or by monies allocated through tax measures such as Measure J. If, in adopting the budget, the Council decided not to include a project that was in the list provided to the Commission at tonight's meeting, any determination that the remainder of the projects were consistent with the General Plan would stand for those remaining projects.

Commissioner Cesarin asked about the process for selecting streets listed in the CIP for resurfacing. Consultant City Engineer Larry Theis said that a list of streets in a prior year's multi-agency project list included improvements to streets in the cities of Martinez, Pittsburg and Clayton; however, the work had been delayed due to cost. The streets in the current year's CIP included the next set of streets off that last list. In the future, the City will develop an objective program for prioritizing resurfacing work on certain streets based on a scoring system for condition of streets, and based on where the City could get the greatest improvement in score for the least amount of money. Typically, street paving program occurs every other year, but because the City had unexpended funds from previous years, the CIP included resurfacing projects for consecutive years 2022 and 2023. City Engineer Theis confirmed that streets would be resurfaced with a new sealant coating, replaced with new asphalt, or a combination thereof, based on their condition. Arterials and collector streets are assessed every two years, while residential streets are assessed every four years.

Further in response to Commissioner Cesarin's inquiry about whether any recycled materials were evaluated for use in road resurfacing projects, City Engineer Theis advised that hot mix asphalt typically included recycled crushed rock from old road projects or quarry materials, and tar, a sludge by-product of gasoline production. Rubberized asphalt, which replaces a portion of the crushed rock with ground up car tires, was also occasionally used. It caused slightly less road noise from cars driving on it, but it also had a slightly shorter lifespan than traditional asphalt. It was 25 to 50 percent more expensive than traditional asphalt because batch plants had to shut down operations to change to its production, and it was harder to work with. Rubberized asphalt was eliminated for the 2022 paving project because of cost due to a lack of economy of scale, though the City might consider it for future projects, and grants might be available for its use. On poorer condition roads, the pavement can be removed, recycled and put back in place, though that process was also costly.

Commissioner Cesarin asked if intersections had been selected for the ADA (Americans with Disabilities Act) compliance program in the CIP, and what the cost was for each intersection. City Engineer Theis advised that the program was a general program, with money typically allotted for no specific location in the CIP. He explained that curb ramps had to be upgraded for accessibility compliance when the adjoining road was improved. It was more costly to upgrade a curb ramp as a standalone project, so curb ramp improvements were typically done in conjunction with other projects, such as the Downtown Pedestrian Project, another project in the CIP.

Asking about the Pine Hollow Road upgrade, Commissioner Cesarin asked how funds were being allocated and divided among the jurisdictions participating in that project. City Engineer Theis advised that the project was in the feasibility study phase, and roughly 80 to 85 percent of the work would occur in the city of Concord. No specific dollar amount had been determined for the project, though improvements occurring in Clayton were estimated to be between \$800,000 and \$900,000, and improvements occurring in Concord were estimated to be between \$5 million to \$6 million. Concord was lead agency on the project and was pursuing grant funds through Caltrans. Clayton and Concord would have to provide local matches of funds. Funds were not allocated to this project for the upcoming fiscal year but might be in the following year.

Commissioner Cesarin confirmed with staff that the determination of General Plan consistency of the CIP did not constitute approval of any project in the CIP, and therefore, the Planning Commission's determination was not subject to the California Environmental Quality Act (CEQA). However, a finding of CEQA compliance would need to be made for each project as it was approved for construction.

Chair Denslow confirmed with staff that the Commission's role was to determine that the projects in the CIP were consistent with the City's

development strategy as described in the General Plan. While Commissioners may have interest in budget or other details of the CIP, those other matters were outside of the Commission's authority. She asked why the 2022 and 2023 paving projects were separated into two different projects since the fiscal year encompassed portions of both years. City Engineer Theis advised that the 2022 paving project had been designed and bid in 2021, and the streets in the 2023 project had been included in that bid as a bid alternate that was beyond the City's budget for the project. The 2023 project therefore had been designed for the paving portion, though design for some of the accessible curb ramps in the project scope still needed to be done. The 2023 project also differed from the 2022 project because it was grant funded and therefore required approvals by the California Department of Transportation (Caltrans) and the Contra Costa Transportation Authority (CCTA), the grantor agencies.

Chair Denslow noted that the Downtown Pedestrian Project on this fiscal year's CIP was also on last year's CIP and asked why the project was repeated. City Engineer Theis said that the project had not been constructed. He added that the scope of the project exceeded its budget, so staff was evaluating ways to make the scope fit the budget and include raised crosswalks and rapid rectangular flashing beacons at strategic locations such as the trail crossing at Main Street and Marsh Creek Road, and on Oak Street near the elementary school. Chair Denslow asked why the project did not move forward last year, to which Director Ayers advised that staffing changes and constraints on grant funding contributed to the delay. City Engineer Theis advised that funds allocated for the upcoming fiscal year were primarily targeted toward project design, with construction anticipated to start at the end of the fiscal year such that construction payments would be reported in FY 2023/24.

Chair Denslow noted that the Local Road and Safety Plan (LRSP) was a new project and asked for clarification of what the LRSP is. City Engineer Theis stated that the LRSP was a relatively new program in the past two years, but federal, state and local grant funding agencies were starting to make it a requirement for transportation grant eligibility. The LRSP was supposed to analyze traffic accident data and roadway geometries, obtain public input, generate recommendations for safety improvements and present the information in a comprehensive plan. City staff was hoping to get grant funds to prepare the plan.

With no further questions from Commissioners. Chair Denslow invited the public to comment on this agenda item. No one in the audience requested to speak. The Chair invited a motion from Commissioners.

Commissioner Hines-Shaikh moved to adopt Resolution No. 02-2022 determining the draft list of CIP projects for FY 2022/23 to be consistent with the Clayton General Plan. Commissioner Cesarin seconded the motion. The motion passed by vote of 3-0 (Vice Chair Miller and Commissioner Gavidia were absent).

9. COMMENT SESSION

A. **Comment Session on the City of Clayton Public Review Draft Housing Element for the 6th Cycle (2023-2031).**

This is an opportunity for Planning Commissioners and interested parties, individuals and other public agencies to provide spoken comments on the City of Clayton Public Review Draft Housing Element for the 6th Cycle (2023-2031).

Director Ayers introduced the item and presented a brief overview of the Public Review Draft Housing Element. She explained the purpose of tonight's second Planning Commission comment session following the Commission's May 24, 2022 meeting and the City Council's May 31, 2022 special meeting. Director Ayers stated that spoken comments could be given this evening, and that written comments on the Public Review Draft Housing Element were requested to be submitted to Community Development Department staff by June 20, 2022.

Chair Denslow invited questions from Commissioners.

Commissioner Hines-Shaikh asked staff about a reference Assembly Bill (AB) 1397 in a comment letter attached to the staff report. The letter's author wrote that AB 1397 mandated the City to rezone sites that had been in two prior housing element cycles in such a manner as to allow by-right residential development. Commissioner Hines-Shaikh asked whether the author's interpretation of the statute was correct, and more specifically, if the City had to take action to rezone sites that had been in two housing cycles for minimum 20 percent affordability as was described in the letter, or whether the zoning revision happened automatically because of state law. Director Ayers stated that her understanding of the state statute was that the City had to rezone sites to allow 20 percent affordability, if the site was identified in two prior housing element cycles and the jurisdiction wanted to assign any of its low-income units to that site. She did not believe it was a complete characterization of the statute to state that a site had to be rezoned for by-right housing simply by nature of the site's inclusion in two preceding housing cycles. She stated that in the instance that the statute did apply to a site, the City would have to make the commitment to rezone the site appropriately, and that it was not done automatically. Chair Denslow stated that she believed the requirement would only apply to two sites identified in the current Housing Element, namely, the site of The Olivia at Marsh Creek residential development and the former fire station property on the corner of Clayton and Mitchell Canyon Roads.

Commissioner Hines-Shaikh requested clarification on the intent of the phrase of "by-right" and asked if the City's task with the Housing Element was not only to establish certain density and height standards but to define the exact the composition of affordability levels in a future development of an opportunity site. Director Ayers advised that the Housing Element had to have in its inventory enough sites to accommodate all of its allocations

for housing for all of income levels. Where densities allowed on a site in the inventory were 20 or more units per acre, the City could count the potential units on that site toward the City's low-income housing allocation. Speaking to Commissioner Hines-Shaikh's question about "by-right," Director Ayers advised that by-right land uses were permitted uses without being subject to discretion, as differentiated from land uses that were subject to conditional use permits that could be denied. With some exceptions for certain qualifying affordable housing projects, by-right development could still be subject to review for compliance with design criteria.

Speaking to the City-owned Downtown Site that was discussed at the City Council's special meeting on May 31, as well as to survey results that indicated that 20 percent of respondents had an interest in housing or mixed-use development on that site, Commissioner Hines-Shaikh asked if the site could be divided and how the Surplus Lands Act would apply in that situation. Director Ayers said that the City could start by recording a map to subdivide the Downtown Site into separate parcels. From that subdivision, any parcel that the City wanted to sell would be subject to the requirements of the Surplus Lands Act.

Speaking to the need for school-employee and teacher housing, Commissioner Hines-Shaikh asked if it was appropriate within the Housing Element to specify locations for employee or workforce housing. Director Ayers said that the decision to build units for teachers or certain workers was generally the developer's decision; however, if the City was the seller of the site, the City could negotiate school employee or workforce housing to be built on the site, as part of the property disposition. Director Ayers noted that in her experience, developers would often approach City staff to inquire about any particular housing needs in the community. Commissioner Hines-Shaikh confirmed with staff that the City-owned sites in the draft inventory were Sites D, F, G and P, and that the Surplus Lands Act would apply to all of those sites if the City decided to sell them.

Chair Denslow asked how the sites in the draft inventory were selected. Director Ayers said that some of the sites already had housing entitlements, namely, Sites J, K, L and O, and because those projects were not yet built, the City could claim them as credits toward the City's Regional Housing Needs Allocation (RHNA) for the 6th cycle. Other sites were selected because they were vacant, underutilized with low intensities of existing development, and/or because the owners of the sites had expressed to staff an interest in developing housing there. Site B was also included in the inventory; it had a pending application that was undergoing review by the City staff, and the housing units in the inventory reflected the proposed project's unit count. She added that staff had contacted owners of all of the sites in the draft inventory, as well as owners of other properties that had been suggested by Commissioners and Council members at their respective meetings, to gauge their interest in developing housing. In response to Chair Denslow, Director Ayers said that none of the owners of properties in the Clayton Station Shopping Center were interested in

redeveloping their properties with housing or mixed-use, but that the owners of sites on Eagle Peak Drive and the Oakhurst Golf Club had expressed tentative interest.

Chair Denslow asked if the City could rezone land to a higher density without the consent of the property owner. Director Ayers said that it was possible, but that the City was trying to avoid that scenario by doing outreach to each of the owners of property considered for inclusion in the draft inventory. Chair Denslow confirmed with staff that rezoning a site did not necessarily mean that the site would be built with that density of housing, as it was still the property owner's discretion to sell or develop the site according to the zoned density.

Chair Denslow then asked if any sites in the 5th housing cycle had been rezoned against property owners' wishes. Director Ayers differentiated between a site being identified in the housing inventory versus being rezoned. She explained that some property owners to whom she had spoken did not know that their property had been listed in the adopted Housing Element inventory. By contrast, municipal code required that in rezoning a site, the City had to send notice of the action to the property owner.

In response to Chair Denslow, Director Ayers advised that June 20, 2022 was the end of the 30-day statutorily-required comment period on the Public Review Draft Housing Element, and that there was a special meeting of the City Council scheduled for June 23, 2022, for the Council to confirm submission of the next draft document to the state Department of Housing and Community Development (HCD) for HCD's review. Chair Denslow confirmed with Director Ayers that staff had not made changes to the published Public Review Draft Housing Element since the Commission's meeting on May 24, and that future versions of the draft document will include revisions made to address public comments received during the comment period, and in a later version, comments made by HCD.

Referencing text on page 7-65 of the Public Review Draft Housing Element, Chair Denslow questioned whether the meaningful actions listed on page 7-65 had the same criteria for reporting and accountability as the Housing Element programs. She confirmed with staff that the meaningful actions informed the policies and programs in Chapter 2 of the draft document, particularly those actions addressing prioritization of alternate and affordable housing types and creation of inclusionary housing requirements to allow more population diversity. She requested clarification on the second bullet point with respect to prioritizing capital improvement projects, asking how that point informs the Housing Element programs and how a project that brings greater transit connectivity might come about in planning. Director Ayers responded that vehicle ownership among lower-income households is low due to the costs of owning and maintaining a car, so expanding residents' options for use of transit and non-motorized transportation such as biking would expand opportunities for greater

diversity in various income levels in the population. She added that transit services change and increase as demand increases, and land use actions that increase density could result in greater ridership numbers that could in turn result in expansion of transit or greater frequency of existing bus service.

Commissioner Cesarin noted that while transit service is affected by demand, it is a community service and not profit-driven. He asked how transit service changes are made and if they were initiated by the City. Director Ayers advised that the Central Contra Costa Transit Authority (CCCTA) would make those decisions, and that the process involved opportunity for public input. Transit agencies were also usually invited to offer comments early in the process of review of a development application, and they may provide comments about changes to transit facilities or services related to a project proposal. Director Ayers said she did not recall if CCCTA was sent notification of the City's Housing Element update, though she did recall that notification was sent to CCTA, the County's congestion management agency, who worked cooperatively with the County's transit agencies. In response to the questions, she suggested that the language in the draft Housing Element may be better broadened to encompass capital improvements for other shared transportation (carpools) and non-motorized transportation users such as bicyclists and pedestrians, to clarify the action's intent.

In response to Commissioner Cesarin, Director Ayers advised that an owner of a site that is rezoned for higher density was not obligated to sell or develop the property, even if the site had been identified as a housing opportunity site in more than one housing cycle. She was unsure of any future statutory changes to housing element law that might affect how properties are treated if they are identified in more than one cycle.

Commissioner Cesarin wanted to be sure that either the Commission or City Council would review the next draft Housing Element to be sent to HCD, to which Director Ayers said that the draft would not return again to the Planning Commission, but City Council would see the HCD Review Draft Housing Element at its special meeting on June 23.

With no further questions from Commissioners. Chair Denslow invited the public to comment on this agenda item. No one in the audience requested to speak. Chair Denslow invited comments from Commissioners, with a reminder that no action of the Commission was requested at this time.

Commissioner Hines-Shaikh confirmed with Director Ayers that the sites at 6500 and 6530 Marsh Creek Road, for which correspondence had been received from the property owner requesting that the sites be included in the inventory at 30 units per acre, were not in the Public Review Draft Housing Element inventory because the property owner's intent for the sites was unknown when that inventory was compiled. However, staff was open to including the sites in the next iteration of the draft document.

Commissioner Hines-Shaikh said that she was glad to learn that the Eagle Peak Drive site property owner, who was also a housing developer, had expressed some potential interest in adding that acreage to the inventory. Referencing the community feedback in support of high densities on the two church sites (Sites A and R), she suggested that developers of those sites be given unlimited height and density allowances to optimize their development potential. Director Ayers said that she would have to think about how that flexibility would be drafted into the zoning code. She also shared some of what she had learned from conversations with developers, with one item being that while the City could grant a project maximum flexibility in development regulations, financing models for affordable housing did not generally support developments much larger than 100 units in total. She also learned that with increased density, methods of construction change from wood frame to steel and concrete, and with those changes, construction costs increase and affect developers' profits. She advised that the practical constraints of development might not generate the hundreds of units that some might expect from granting developers maximum flexibility. Commissioner Hines-Shaikh suggested that if the church sites had expanded flexibility in development regulations, they could potentially provide more units than the realistic capacity identified in the housing inventory and could help fill in the gap for other sites that may be developed with fewer than their assumed number of units. She also said that she was aware of \$49 million in state funds that might become available for affordable housing development that could help with construction costs.

Chair Denslow suggested that design guidelines should still be upheld, even if development regulations were relaxed. Commissioner Hines-Shaikh agreed, clarifying that she supported removing maximum standards primarily for building height and density but not for all regulations and standards for development of the two church sites.

Speaking to language in the Public Review Draft Housing Element that referenced removal of requirements for covered parking, Commissioner Hines-Shaikh said she agreed with that program and suggested that it be expanded for single-family houses. She acknowledged that current parking requirements in the zoning code mandated four spaces per house, of which two must be in a garage and two could be in tandem with the garage. She observed that garages in her neighborhood were typically used for storage of things other than cars, and she did not think that the zoning code should require private storage to be built with a house. She suggested that the parking requirement for a single-family residence be reduced to two spaces, which could be covered or uncovered; that the parking requirement for a small lot residence and duplex be one space per unit; that the parking requirement for one- and two-bedroom units in a multifamily development be one per unit; and that the requirement for one space per studio unit remain as is, but with flexibility for the space to be covered or uncovered. She added that relaxing the requirements would not constrain the developer's choice to add more than the required parking for a residence if that was what appealed to the potential buyers or tenants in a development.

Speaking to the City-owned Downtown Site and the discussion of the Surplus Lands Act at the City Council meeting of May 31, Commissioner Hines-Shaikh said that she did not think the City should opt to have fallow land rather than be inclusive and allow opportunity for affordable housing on the site. She referenced *The Sum of Us*, a book by Heather McGhee, wherein the author describes a public pool that the community opted to close rather than allow admission to all residents. Commissioner Hines-Shaikh suggested that there could be a middle ground, where the City subdivided the property and offered a portion of it for sale to affordable housing developers pursuant to the Surplus Lands Act, while holding on to the remaining area for other community wishes, expressed in the community survey, for recreational, entertainment or mixed uses.

Commissioner Hines-Shaikh observed that Site B in the inventory, which had a pending application for single-family residential development, could potentially accommodate more units. She suggested that the zoning of the site allow for a higher density than the 5 units per acre indicated in the inventory. While she was happy to see housing in general being built in Clayton, she asked if discussion with the developer could occur about the developer's interest in adding a higher density component to the project, such as townhouses. Director Ayers advised that a previous iteration of the project some years ago was a townhouse project that had more units than the current proposal; however, there was significant opposition to that design. Director Ayers was doubtful that the developer would want to re-introduce that concept given the past opposition. She advised that the developer was proposing that three of the single-family houses would have accessory dwelling units (ADUs), and that staff could discuss increasing the number of ADUs to increase the total unit count. Chair Denslow further confirmed with staff that because of a creek that runs through the site, and requirements for a creek setback, the developable acreage of the parcel was fewer than the 8 acres indicated in the inventory. Chair Denslow noted that the situation was similar to what happened with the Diablo Meadows development, which also had wetlands that had to be avoided in the development. Commissioner Hines-Shaikh confirmed with staff that increasing the number of ADUs did not require a zoning amendment because ADUs do not contribute to the calculation of density; rather, the density of a project is calculated based on the number of its principal dwelling units or single-family lots in the development.

Commissioner Cesarin suggested consideration of a new ordinance that would require construction of an ADU with any house or addition thereto over a specified size. Chair Denslow and Director Ayers recalled that the two most recent housing developments approved in Clayton—Diablo Meadows and Oak Creek Canyon—were subject to the City's 10 percent inclusionary housing requirement. The developers of those projects chose to meet some or all of their inclusionary requirements through construction of ADUs. Addressing Commissioner Cesarin's suggestion, Director Ayers said she would be reluctant to add a requirement for an ADU to be built with

a large single-family residence because the City's RHNA included a subset for above-moderate income housing, and she was concerned that adding a requirement for construction of an ADU could be perceived as a constraint to construction of housing for that income category. Commissioner Cesarin suggested that requiring an ADU could facilitate more efficient use of land for housing.

Commissioner Hines-Shaikh suggested that increasing the number of ADUs from the recent historical average of two per year to five per year could be reasonable. She asked that if any sites currently in the inventory were likely to be removed and were known at this time, that the Commission be advised of what they are, so that the Commission could have opportunity to suggest responses or ways to address any new shortfall. Director Ayers said that no owner of property currently in the draft inventory had indicated that they did not want their site removed from the inventory as of tonight's meeting; however, staff and the consultant were evaluating a scenario wherein maximum density on sites in the Town Center was reduced from 30 to 20 units per acre in the draft inventory, and how the RHNA would be affected.

Commissioner Hines-Shaikh asked what staff's professional opinion was about how to address loss of units in the inventory that would result from removal of sites or reduction of density. Director Ayers said that with the reduction in density on Town Center sites, there was still a buffer of housing units above the RHNA in the draft site inventory. Director Ayers said that, to offset units in a shortfall, principles of professional land use planning would support increased densities on all infill sites and particularly in downtown, where areas were more walkable and residential development could help foster economic growth and success of businesses. However, she emphasized the importance of remaining cognizant of community input in the process, and that her professional opinion must be tempered with feedback from community members.

Commissioner Hines-Shaikh asked how the draft inventory was affected by the lowered Town Center density and the addition of sites at 6500 and 6530 Marsh Creek Road, as requested by that property owner. More specifically, she asked whether the units added with that site's inclusion in the inventory offset the loss of units as a result of density decrease on Town Center sites. Director Ayers said that the addition of the two Marsh Creek Road parcels, coupled with the increase in density on the church sites and Oakhurst overflow parking lot, made up for some but not all of the loss in units resulting from reduction of Town Center sites' densities. However, the inventory still maintained a buffer in the number of housing units above the RHNA.

Commissioner Hines-Shaikh asked how the density for the Oakhurst overflow lot was selected for the inventory. She suggested that given the community feedback and the site's location on a main road, the site have a higher zoning allowance of 40 units per acre. Director Ayers said that the

owner of the Oakhurst site had expressed an interest in developing the site but had not submitted a formal application yet. She thought it made sense to allow the developer the option of a higher unit count there.

Chair Denslow invited Alice Bristol to speak. Ms. Bristol said she had participated in the various Housing Element engagement tools and thanked staff for those efforts. She said that the comments that people had offered through the online surveys and meetings indicated opposition to residential development in downtown and loss of parking. She said that if the City was giving people opportunities to express their opinions, decision-makers should listen to those opinions. She did not feel there was an objection to housing and inclusion in Clayton but felt that people wanted a voice in how housing gets done. She believed Clayton to be a special place, and that one of the things that makes the city special is its downtown, and that people did not want to see downtown Clayton look like downtown Pleasant Hill. She expressed gratitude to City staff for the Balancing Act tool and acknowledged the staff's challenge of considering multiple perspectives. She hoped that decision-makers listened to the public.

Chair Denslow acknowledged the effort of staff and the consultant in preparation of the draft Housing Element. She recognized the multiple opportunities that the public has had to engage in the process. She said that Clayton is welcoming of demographic diversity but is challenged by being a community that does not undergo a lot of change. She believed it was necessary to be mindful about how change occurs, the pace of change, and how to bring others into the discussion. Between no development and intense urban development, she believed there was a middle ground. Building higher densities where people indicated a level of comfort now could foster people becoming more comfortable with density on other sites in the future. She recognized that the Commission is advisory with respect to the Housing Element, with the City Council having the final decision, but that the Commission still had a role in the process. She hoped the community would recognize that there are a lot of options to balance.

There were no other comments on this item.

B. Progress Report on the City of Clayton Accessory Dwelling Unit Pre-Approved Plan Program

This is an update on the status of development of the City of Clayton Accessory Dwelling Unit (ADU) Pre-Approved Plan Program and presentation of the elevation concepts for the ADUs to be included in the Program.

Director Ayers introduced the item and presented a brief overview of the item. She shared the three exterior elevation concepts for the ADUs.

Commissioner Hines-Shaikh expressed appreciation to staff and the consultant and looked forward to the program making ADU construction easier for residents.

Chair Denslow invited public comment on this item. No one in the audience requested to speak.

Commissioner Cesarin asked when the other elevations would be available. Director Ayers said that the exterior renderings for the remaining floor plans would be completed later in the upcoming summer. Commissioner Cesarin asked if there were floor plans for the ADUs. Director Ayers said that floor plans were not attached to the staff report but were described in text. The six floor plans ranged in size from a 375 square foot studio unit to a 1,200 square foot, two-bedroom/two-bathroom unit. She explained that the City's agreement with the consultant allowed the City to purchase the four floor plans in the City of Oakley's pre-approved ADU plan program, and two add two new floor plans. Recognizing increases in construction and labor costs, staff opted to have the new floor plans designed as smaller units, consisting of the studio unit and a 740-square foot two-bedroom/one-bathroom unit. Commissioner Cesarin asked about the design review process for ADUs, to which Director Ayers advised that the permit process was ministerial for ADUs under a certain square footage. So far, Clayton had not had any proposed ADUs that did not qualify for ministerial permit approval. Commissioner Cesarin confirmed with staff that the intent of the program was to help facilitate property owners' savings of design and plan check costs for construction of ADUs. He also confirmed with staff that the program would be posted to the City website. Director Ayers said that the contract with the consultant included preparation of a guidebook for construction of ADUs.

Chair Denslow confirmed with staff that the City would do some promotion of the program, though Director Ayers said she had not figured out what that would look like yet. Chair Denslow had no comments on the plans. She was also hopeful that the program would foster more ADU construction in the City. She confirmed with staff that the Commission did not need to take any action at this time.

There were no other comments on this item.

10. PUBLIC HEARING

There were no public hearings.

11. COMMUNICATIONS

Director Ayers stated that applications for the three Planning Commission terms to start July 1, 2022, were due to the City Clerk by June 15, 2022.

Chair Denslow invited the community to attend Clayton's first Pride Parade scheduled for June 25, 2022.

12. ADJOURNMENT

The meeting was adjourned at 9:59 p.m. to the next regular meeting of the Planning Commission on June 28, 2022.

Respectfully submitted:

Dana Ayers, AICP, Secretary

Approved by the Clayton Planning Commission:

Terri Denslow, Chair



AGENDA REPORT

To: Honorable Chair and Planning Commissioners

From: Dana Ayers, AICP, Community Development Director

Date: June 28, 2022

Subject: Agenda Item 9.A
Request for Initiation of a Zoning Code Study Pertaining to
Mobile Food Vendors

SUMMARY

This is a request for the Planning Commission to initiate a study of potential amendments to Clayton Municipal Code Title 17 (Zoning) pertaining to mobile food vendors. Initiation of the study will allow staff to identify changes to the zoning code that are necessary to comply with recent changes in state law. Any amendments staff identifies will be presented to the Planning Commission at a future public hearing, with a request for recommendation to the City Council.

RECOMMENDATION

That the Planning Commission adopt Resolution No. 03-2022 initiating a study of potential amendments to Clayton Municipal Code (CMC) Title 17, pertaining to mobile food vendors.

BACKGROUND

CMC section 17.04.142 defines a mobile food vendor as follows:

"Mobile Food Vendor" means any vehicle, pushcart, trailer, wagon, portable stand or temporary location, designed or used or intended to be used, by or for any one or more of, but not limited to, the following persons and/or uses: bakery distributor, fish or meat peddler, food salvage distributor, fruit, nut and/or vegetable distributor, grocery distributor, commercial or industrial catering, food cooking and/or preparation unit, and itinerant restaurant. It includes, but is not limited to, any vehicle, pushcart, trailer, wagon, portable stand or temporary location, from which animal food, bakery products, fish, shell fish, seafood, fruits and nuts, vegetables, meats, poultry, preserves, jelly, relish, milk or any other dairy

products, fresh, frozen or non-perishable food or food products, ice cream, shaved ice or yogurt products, ice or beverages, whether in bulk, canned, wrapped, bottled, packaged, or any other form, are sold or kept for sale at retail, or are distributed to the consumer. See Section 17.36.084 for permits required and regulations.

CMC sections 10.35.130 and 17.36.084 specify that mobile food vendors may operate in Clayton, subject to approval of a use permit or a temporary use permit for vendors operating as part of a special event.

Senate Bill 946, approved in 2018, added sections 51036 through 51039 to the California Government Code, thereby establishing prohibitions on what local agencies can impose in regulation of sidewalk vendors. Other regulations applicable to food trucks operating on public streets are embedded in California Vehicle Code (CVC) section 22455 and Health and Safety Code (HSC) section 114315.

ANALYSIS

CMC Chapter 17.56 (Amendments) establishes authority and procedure for amendment of the City's zoning regulations. CMC Section 17.56.020 states that amendments to CMC Title 17 can be initiated by the City Council or Planning Commission or by a qualified applicant. The Planning Commission is therefore authorized to initiate this study of potential zoning code amendments pertaining to mobile food vendors.

Staff requests authorization from the Planning Commission to initiate the study of the zoning and other municipal code title provisions applicable to mobile food vendors, to determine whether any amendments to Clayton's zoning regulations are necessary to address the regulations in CVC, HSC and the amended requirements of Government Code. Upon completion of the study, if amendments to CMC Title 17 are determined to be necessary to comply with state law, staff will return to the Planning Commission at a future noticed public hearing with a request for the Commission to make a recommendation to the City Council on the zoning code amendment.

ATTACHMENT

Proposed Resolution No. 03-2022

**PROPOSED
CITY OF CLAYTON
PLANNING COMMISSION
RESOLUTION NO. 03-2022**

**A RESOLUTION OF THE CLAYTON PLANNING COMMISSION INITIATING A
STUDY OF POTENTIAL ZONING CODE AMENDMENTS PERTAINING TO MOBILE
FOOD VENDORS (ZOA-01-2022)**

WHEREAS, Clayton Municipal Code (CMC) Chapter 17.56 (Amendments) establishes authority and procedure for amendment of the City's zoning regulations in CMC Title 17; and

WHEREAS, CMC Section 17.56.020 states that amendments to CMC Title 17 can be initiated by the City Council or Planning Commission or by a qualified applicant; and

WHEREAS, CMC Sections 10.35.130 and 17.36.084 specify that mobile food vendors may operate in Clayton, subject to approval of a use permit or a temporary use permit for vendors operating as part of a special event; and

WHEREAS, Senate Bill 946 approved in 2018 added sections 51036 through 51039 to the California Government Code, thereby establishing prohibitions on what local agencies can impose in regulation of sidewalk vendors; and

WHEREAS, other regulations applicable to food trucks operating on public streets are embedded in California Vehicle Code (CVC) section 22455 and Health and Safety Code (HSC) section 114315; and

WHEREAS, the City desires to initiate a study of the zoning and other municipal code provisions applicable to mobile food vendors, to determine whether any amendments to Clayton's zoning regulations are necessary to address the regulations in CVC, HSC, and the amended requirements of Government Code; and

WHEREAS, at its June 28, 2022 meeting, the Planning Commission received and considered testimony, both spoken and written, regarding the request to initiate a study of potential amendments to the CMC applicable to mobile food vendors; and

WHEREAS, initiation of a study of potential future municipal code changes is statutorily exempt from the California Environmental Quality Act (CEQA, Public Resources Code 21000 *et seq.*) pursuant to CEQA Guidelines section 15262, Feasibility and Planning Studies.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission does hereby initiate a study of potential amendments to Clayton Municipal Code Title 17 (Zoning) pertaining to mobile food vendors, to identify changes to the zoning code that are necessary to comply with state law.

PASSED AND ADOPTED by the Planning Commission of the City of Clayton at a regular meeting on the 28th day of June, 2022.

AYES:

NOES:

ABSTAINED:

ABSENT:

APPROVED:

ATTEST:

Terri Denslow
Chair

Dana Ayers, AICP
Community Development Director