



## PLANNING COMMISSION

### AGENDA

#### Regular Meeting

7:00 P.M. on Tuesday, June 28, 2016

Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, California

1. **CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG**
2. **ADMINISTRATIVE**
  - 2.a. Review of agenda items.
  - 2.b. Declaration of Conflict of Interest.
  - 2.c. Commissioner Dan Richardson to report at the City Council meeting of July 5, 2016 (alternate Tuija Catalano).
3. **PUBLIC COMMENT**
4. **MINUTES**
  - 4.a. Approval of the minutes for the June 14, 2016 Planning Commission meeting.
5. **PUBLIC HEARINGS**
  - 5.a. **SPR-04-16; Site Plan Review Permit; Monica Funk; 1844 Yolanda Circle (APN: 118-332-002)** Review and consideration of a Site Plan Review Permit to allow the construction of a second-story balcony and exterior spiral staircase to replace an existing second-story balcony located on the rear of an existing two-story single-family residence  
  
**Staff Recommendation:** Staff recommends that the Planning Commission receive and consider the staff report and all information provided and submitted to date, receive and consider any public testimony and, if determined to be appropriate, conditionally approve Site Plan Review Permit SPR-04-16.
  - 5.b. **GPA-01-16; General Plan Amendment; City of Clayton.** A General Plan amendment to increase the density allowed within the Multifamily High Density (MHD) designation from 15.1 to 20 units per acre to 20 units per acre.  
  
**Staff Recommendation:** Staff recommends that the Planning Commission receive and consider the staff report and all information provided and submitted to date, receive and consider any public testimony and, if determined to be appropriate, approve Resolution 03-16 recommending the City Council approve a General Plan amendment to increase the minimum density in the Multifamily High Density land use designation to 20 units per acre.

- 5.c. **ZOA-04-16; Municipal Code Amendment; City of Clayton.** A Municipal Code amendment requiring projects to meet the minimum density in compliance with the General Plan Land Use designations in Multiple Family Residential Districts.

**Staff Recommendation:** Staff recommends that the Planning Commission receive and consider the staff report and all information provided and submitted to date, receive and consider any public testimony and, if determined to be appropriate, approve Resolution 04-16 recommending the City Council adopt the Ordinance to require projects to meet the minimum density in compliance with the General Plan Land Use designations in Multiple Family Residential Districts.

- 5.d. **ZOA-04-15; Municipal Code Amendment; City of Clayton.** A Municipal Code amendment adding inclusionary housing regulations.

**Staff Recommendation:** Staff recommends that the Planning Commission receive and consider the staff report and all information provided and submitted to date, receive and consider any public testimony and, if determined to be appropriate, approve Resolution 05-16 recommending the City Council adopt the Ordinance to add inclusionary housing regulations.

- 5.e. **ZOA-05-16; Municipal Code Amendment; City of Clayton.** A Municipal Code amendment to permit transitional and supportive housing in the Limited Commercial (LC) zoning district.

**Staff Recommendation:** Staff recommends that the Planning Commission receive and consider the staff report and all information provided and submitted to date, receive and consider any public testimony and, if determined to be appropriate, approve Resolution 06-16 recommending the City Council adopt the Ordinance to permit transitional and supportive housing in the Limited Commercial (LC) zoning district.

- 5.f. **ZOA-03-16; Municipal Code Amendment; City of Clayton.** A Municipal Code amendment to permit employee housing of six or fewer by right within residential zones.

**Staff Recommendation:** Staff recommends that the Planning Commission receive and consider the staff report and all information provided and submitted to date, receive and consider any public testimony and, if determined to be appropriate, approve Resolution 07-16 recommending the City Council adopt the Ordinance to permit employee housing of six or fewer by right within residential zones.

- 5.g. **ZOA-06-16; Municipal Code Amendment; City of Clayton.** A Municipal Code amendment to update the density bonus requirements to be compliant with AB 2222 and AB 744.

**Staff Recommendation:** Staff recommends that the Planning Commission receive and consider the staff report and all information provided and submitted to date, receive and consider any public testimony and, if determined to be appropriate, approve Resolution 08-16 recommending the City Council adopt the Ordinance to update the density bonus requirements to be compliant with AB 2222 and AB 744.

**6. OLD BUSINESS**

None.

**7. NEW BUSINESS**

None.

**8. COMMUNICATIONS**

8.a. Staff.

8.b. Commission.

**9. ADJOURNMENT**

9.a. The next regularly-scheduled meeting of the Planning Commission will be held on **Tuesday, July 12, 2016.**

Most Planning Commission decisions are appealable to the City Council within ten (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 oral 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. If you have a physical impairment that requires special accommodations to participate, please contact the Community Development Department at least 72 hours in advance of the meeting at 925-673-7340. An affirmative vote of the Planning Commission is required for approval. A tie vote (e.g., 2-2) is considered a denial. Therefore, applicants may wish to request a continuance to a later Commission meeting if only four Planning Commissioners are present.

Any writing or documents provided to the majority of the Planning Commission after distribution of the agenda packet regarding any item on this agenda will be made available for public inspection in the Community Development Department located at 6000 Heritage Trail during normal business hours.

**Minutes**  
**Clayton Planning Commission Meeting**  
**Tuesday, June 14, 2016**

**1. CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG**

Chair Bruzzone called the meeting to order at 7:00 p.m. at Hoyer Hall, 6125 Clayton Road, Clayton, California.

Present: Chair David Bruzzone  
Vice Chair Sandra Johnson  
Commissioner Dan Richardson  
Commissioner Gregg Manning  
Commissioner Tuija Catalano

Absent: None

Staff: Community Development Director Mindy Gentry  
Assistant Planner Milan Sikela, Jr.

**2. ADMINISTRATIVE**

- 2.a. Review of agenda items.
- 2.b. Declaration of Conflict of Interest.
- 2.c. Commissioner Tuija Catalano to report at the City Council meeting of June 21, 2016.

**3. PUBLIC COMMENT**

None

**4. MINUTES**

- 4.a. Approval of the minutes for the May 10, 2016 Planning Commission meeting.

**Commissioner Manning moved and Commissioner Catalano seconded a motion to approve the minutes, as submitted. The motion passed 4-0-1 (Chair Bruzzone abstained as he did not attend the May 10, 2016 Planning Commission meeting).**

**5. PUBLIC HEARINGS**

- 5.a. **SPR-03-16; Site Plan Review Permit; Erik Adams; 226 Bigelow Street (APN: 119-472-027).** Review and consideration of a Site Plan Review Permit to allow the construction of a second-story balcony on an existing two-story single-family residence.

Assistant Planner Sikela presented the staff report.

The public hearing was opened.

Chris Dunagan, 220 Bigelow Street, submitted a letter to the Planning Commission in opposition to the project and expressed concerns over the balcony's impact to his privacy as well as to his views of the hills around Clayton.

Bruce Ballentine, project architect, indicated the following:

- In order to address Mr. Dunagan's concerns, the privacy screen and pergola could be removed and only the balcony deck and railing could be constructed.
- We are willing to work with the neighbors on changes.
- However, the subject two-story residence is already existing so Mr. Dunagan's view would not be affected further by the addition of the balcony.

Commissioner Richardson asked the following questions:

- The two existing windows looking out toward the balcony are bedroom windows? Mr. Ballentine answered "yes."
- How far out is the balcony proposed to extend? Mr. Ballentine answered "14 feet."
- Why is the balcony proposed to be so large in area? Mr. Ballentine answered that the property owner is hoping to place a table and chairs on the balcony.

Bruce Williams, 1862 Renee Way, Concord, expressed opposition to the project.

Heather Adams, wife of the applicant, indicated the following:

- The balcony is proposed to be large so that we can waterproof the balcony and provide protection for items placed underneath the balcony on the ground floor.
- We have relatively small bedroom that will connect with the balcony so the larger design of the balcony will provide a greater amount of living space for that particular bedroom.

Commissioner Richardson asked if the balcony area could be reduced in size.

Mrs. Adams indicated that, if the balcony were reduced in size, we would not be able to fit anything underneath the balcony on the ground floor.

Commissioner Manning indicated the following:

- I do not have any issues with the balcony.
- There are already existing second-story windows on the subject residence which people can look out of, so privacy is already being impacted.
- Without a view protection easement established, the applicants could plant redwood trees and the views would be blocked to a much greater degree than a balcony would cause views to be blocked.

Commissioner Catalano indicated the following:

- I concur with Commissioner Manning on issues related to privacy and view impacts.
- The balcony has been centered in the middle of the property so that it is located far away from the rear property line and both side property lines.

Vice Chair Johnson indicated the following:

- I do not have any issues with the balcony.
- I concur with Commissioner Manning and Commissioner Catalano on issues related to privacy and view impacts.

Commissioner Richardson indicated that, although it is a large balcony, it is good that there has been some communication between the applicant and the applicant's neighbors.

Chair Bruzzone indicated the following:

- Construction of a balcony can sometimes be a touchy issue in balancing between impacts to privacy and views and a property owner's right to improve their property.
- I encourage the applicant to work with their neighbors on the design and to continue communicating.

The public hearing was closed.

**Commissioner Richardson moved and Commissioner Manning seconded a motion to conditionally approve Site Plan Review Permit SPR-03-16, with the findings and conditions of approval recommended by staff. The motion passed 5-0.**

**6. OLD BUSINESS**

None.

**7. NEW BUSINESS**

- 7.a. **GPA-02-15, City of Clayton.** Review of the Fiscal Year 2016-2017 Capital Improvement Program Projects for Conformity with the Clayton General Plan.

Director Gentry presented the staff report.

Commissioner Richardson asked if the requirements to improve City infrastructure to comply with the Americans With Disabilities Act (ADA) is in addition to the CIP improvements already slated for the City.

Director Gentry said "yes."

Commissioner Catalano asked how the City decides which projects get included on the Capital Improvement Project (CIP) list.

Director Gentry indicated that streets are graded every year as to their condition and then, based on need, the streets in most need of repairs are selected for the CIP list. The City also looks at where the funding is coming from for the improvements; it could be from gas tax funds, which are dedicated to street improvements, or the funds could be from another source such as Measure J. For instance, the City of Clayton may utilize City of Concord enterprise sewer funds to improve the El Molino sewer line. Different money sources and availability can impact what projects are included in the CIP.

Vice Chair Johnson asked what about the CIP projects for this year.

Director Gentry indicated the following:

- The ADA project and the PG&E undergrounding project will not include any work this fiscal year and it is essentially a year to accumulate funds.
- The other four programs do have specific projects associated with them, such as the El Molino Sewer project and the repaving of Keller Ridge Drive.
- The neighborhood street program does not have any specific projects identified yet but there is funding available as a placeholder.

Vice Chair Johnson asked if the \$6,000 gas tax monies from Fiscal Year (FY) 2015-2016 will be rolled into FY 2016-2017.

Director Gentry answered "yes."

Chair Bruzzone asked how the sewer monies are generated by the City of Concord.

Director Gentry indicated that Clayton residents pay fees to the City of Concord enterprise fund as part of the sewer service they receive.

Commissioner Manning asked that, since there are no new problems in the area and no new developments being constructed, am I correct in thinking that these funds are earmarked for an "in case something happens" type of situation?

Director Gentry answered "yes."

Chair Bruzzone indicated he was aware that City of Concord personnel come out to Clayton to clean the sewer line weekly so I assume they will be able to forego this service.

Director Gentry said that her understanding is that the El Molino sewer line is undersized for the neighborhood but is to be expanded to accommodate additional flow.

**Commissioner Catalano moved and Commissioner Manning seconded a motion to find City's Capital Improvement Program Projects for the Fiscal Year 2016-2017 are in conformity with the Clayton General Plan and there is no possibility this finding may have a significant effect on the environment. The motion passed 5-0.**

## 8. COMMUNICATIONS

### 8.a. Staff

Assistant Planner Sikela provided updates on the Verna Way subdivision project and St. John's mixed-use planned development project.

### 8.b. Commission

Commissioner Manning congratulated Dan Richardson on the great job he did on Measure H.

## 9. ADJOURNMENT

9.a. The meeting was adjourned at 7:45 p.m. to the regularly-scheduled meeting of the Planning Commission on June 28, 2016.

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Submitted by  
Mindy Gentry  
Community Development Director

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Approved by  
David Bruzzone  
Chair

Community Development\Planning Commission\Minutes\2016\0614

**PLANNING COMMISSION  
STAFF REPORT**

**Meeting Date:** June 28, 2016

**Item Number:** 5.a.

**From:** Milan J. Sikela, Jr.   
Assistant Planner

**Subject:** Public Hearing to consider a Site Plan Review Permit to construct a second-story balcony and staircase replacing an existing second-story balcony on the rear of an existing two-story residence (SPR-04-16)

**Applicant:** Monica Funk

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**REQUEST**

Monica Funk, the applicant, requests approval of a Site Plan Review Permit to allow construction of a second-story balcony and exterior spiral staircase to replace an existing second-story balcony located on the rear of an existing two-story single-family residence.

**PROJECT INFORMATION**

**Location:** 1844 Yolanda Circle  
APN: 118-332-002

**General Plan Designation:** Medium Density – Single Family Residential (3.1 to 5.0 units per acre).

**Zoning:** Planned Development (PD).

**Environmental Review:** Pursuant to California Environmental Quality Act (CEQA) Guideline 15303(e) – New Construction or Conversion of Small Structures, the project is categorically exempt from CEQA.

**Public Notice:** On June 17, 2016, a public hearing notice was posted at the notice boards and mailed to property owners within 300 feet of the project site.

**Authority:** Section 17.44.020 of the Clayton Municipal Code authorizes the Planning Commission to approve a Site Plan Review Permit in accordance with the Site Plan Review Permit Standards of Review in Clayton Municipal Code Section 17.44.040.



**DISCUSSION**

The applicant, Monica Funk, is requesting a public hearing for the consideration of a Site Plan Review Permit to allow the construction of a 18-foot by 22-foot second-story balcony and exterior spiral staircase to replace an existing 14.5-foot by 22-foot second-story balcony located on the rear of an existing two-story single-family residence. The balcony is proposed to be 396 square feet in area—replacing the existing 320 square-foot balcony—with the balcony deck located at 9.5 feet and the top of railing at 13 feet, approximately, above the ground. The subject balcony is proposed to be 28 feet from the rear property line, 3.5 feet closer to the rear property line than the existing balcony which is currently 31.5 feet away. The proposed balcony will be the same width, 22 feet, as the existing balcony. The vicinity map is provided as **Attachment A** and the project plans are provided as **Attachment B**.

The subject balcony is proposed with a wood deck, composite-covered vertical wood posts, and horizontal cable railings. The exterior spiral staircase is proposed to be prefabricated and constructed of metal. Examples of similar projects using these types of materials have been provided as **Attachment C**. Staff has provided a condition of approval that the balcony and staircase utilize a color scheme that is integrated with the exterior color of the subject residence.

In looking at the privacy-related aspects of the proposal, staff notes that large trees screen the proposed balcony from the closest neighboring property (which is located to the south) while another large tree provides privacy for the adjacent property to the north. Also, the neighboring residence to the rear (west) is located on a large property over 160-feet deep and, when combined with the 28-foot rear setback to the proposed balcony, it would place the subject balcony approximately 130 feet from the rear of this residence. Lastly, there is already an existing balcony in the same location as the proposed balcony, so the addition of the new balcony would not be a substantial deviation from current site conditions. Staff has provided two aerials showing a closer image of the property and one further away (**Attachment D**).

**Setback Analysis**

The project meets the Silver Creek II Planned Development standards as shown below.

Required Setbacks	Existing Setbacks	Proposed Setbacks	Project Compliance
Front Setback 20'	East 21'	East No Change	Yes
Side Setback 5' interior	North 12' South 12'	North No Change South No Change	Yes Yes
15' aggregate	Aggregate 24'	Aggregate No Change	Yes
Rear Setback 20'	West 31' 6"	West 28'	Yes*

\*See discussion below.

As part of the project, there is an exterior spiral staircase proposed to be located on the rear corner of the balcony. Although the setback analysis above indicates that the closest point of the balcony to the rear property line is 28 feet, the exterior staircase would actually be slightly closer to the rear property line at 24 feet. However, Section 17.36.030 of the Clayton Municipal Code exempts open stairways “which do not obstruct the light and ventilation of any adjoining parcel of land” from setback requirements. Since the proposed exterior staircase does not obstruct the light and ventilation of any adjoining parcel land, the subject staircase would qualify for this exemption from the setback requirements.

### **Residential Floor Area Analysis**

Section 17.78.030.D.3 of the Clayton Municipal Code excludes balconies from floor area calculations “where at least one of the longest dimensions is unenclosed.” Since the balcony is unenclosed on its longest side, it is exempt from the floor area requirements.

### **CONCLUSION**

Staff has reviewed the proposal relative to the Site Plan Review Permit Standards of Review and has determined that the project, as conditioned, is in conformance with the Clayton Municipal Code. The proposed findings listed below specifically address the standards.

### **RECOMMENDATION**

Staff recommends that the Planning Commission receive and consider the staff report and all information provided and submitted to date, receive and consider any public testimony and, if determined to be appropriate, conditionally approve Site Plan Review Permit SPR-04-16 to allow the construction of a second-story balcony and exterior spiral staircase to replace an existing second-story balcony located on the rear of an existing two-story single-family residence located at 1844 Yolanda Circle (APN: 118-332-002).

### **PROPOSED FINDINGS**

Based upon the evidence set forth in the staff report, which includes relevant information from the project application, as well as testimony at the public hearing, the Planning Commission makes the following findings that Site Plan Review Permit SPR-04-16, as conditioned:

1. Is consistent with the General Plan designation and policies.

The project is consistent with the General Plan designation and policies since the project consists of constructing a balcony, an allowed use, within the Single Family Low Density land use designation.

2. Meets the standards and requirements of the Zoning Ordinance.

The project meets the development standards and regulations of the Zoning Ordinance as it is not exceeding the building footprint area, height, unit size, or floor area requirements. Also, the project will be constructed in compliance with Site Plan Review Permit requirements, findings, and conditions of approval.

3. Preserves the general safety of the community regarding seismic, landslide, flooding, fire, and traffic hazards.

The project preserves the general safety of the community regarding seismic, landslide, flooding, fire, and traffic hazards since the project will be constructed in compliance with the Clayton Municipal Code, California Building Standards Code, and other agency regulations where applicable.

4. Maintains solar rights of adjacent properties.

The project will not block adjacent properties from direct sunlight from any angle of the ecliptic.

5. Reasonably maintains the privacy of adjacent property owners and/or occupants.

The project reasonably maintains the privacy of adjacent property owners and/or occupants since large trees screen the balcony from the neighboring properties located on each side (north and south) of the subject property as well as the adjacent property to the rear (west) having the residence located approximately 130 feet away from the balcony.

6. Reasonably maintains the existing views of adjacent property owners and/or occupants.

The project reasonably maintains the existing views of adjacent property owners and/or occupants since the balcony is not a solid structure and is architecturally integrated into the existing home. The balcony contains architectural elements such as balustrades which tend to be less intrusive in nature than a completely solid structure while still allowing visibility to areas beyond the balcony. Additionally, the project complies with the setback requirements of the Clayton Municipal Code by being located greater distances from the property lines—approximately 43 feet from the north (right) side property line, 12 feet from the south (left) side property line, and 28 feet from the rear property line—than the setback standards require. These greater distances between the balcony and the property lines reduce the balcony's impacts to existing views of adjacent property owners and/or occupants.

7. Is complementary, although not identical, with adjacent existing structures in terms of materials, colors, size, and bulk.

The project is complementary, although not identical, with adjacent existing structures in terms of materials, colors, size, and bulk since the balcony has been designed with colors which architecturally complement the existing residence on the subject lot as well as surrounding residences. Additionally, the project complies with all applicable zoning regulations and development standards for setbacks, building footprint, and residential floor area requirements.

8. Is in accordance with the design standards for manufactured homes per Section 17.36.078.

The project consists of the construction of a balcony and is not considered a manufactured home; therefore this finding is not applicable.

The above-stated findings assume acceptance and approval of the proposed conditions of approval listed below.

#### **PROPOSED CONDITIONS OF APPROVAL**

These conditions of approval apply to the *Funk Residence* prepared by Metamorphosis Construction, date stamped June 7, 2016.

1. The applicant shall indemnify, protect, defend, and hold harmless the City and its elected and appointed officials, officers, employees, and agents from and against any and all liabilities, claims, actions, causes, proceedings, suits, damages, judgments, liens, levies, costs, and expenses of whatever nature, including, but not limited to, attorney's fees, costs, and disbursements arising out of or in any way relating to the issuance of this entitlement, any actions taken by the City relating to this entitlement, and any environmental review conducted under the California Environmental Quality Act for this entitlement and related actions.
2. The project shall be constructed in accordance with the conditionally approved to the *Funk Residence* prepared by Metamorphosis Construction, date stamped June 7, 2016.
3. Any major changes to the project shall require Planning Commission review and approval. Any minor changes to the project shall be subject to City staff review and approval.
4. No permits or approvals, whether discretionary or mandatory, shall be considered if the applicant is not current on fees, reimbursement payments, and any other payments that are due.
5. An encroachment permit shall be required for all work in the public right-of-way.

#### **ADVISORY NOTES**

Advisory notes are provided to inform the applicant of: (a) Clayton Municipal Code requirements; and (b) requirements imposed by other agencies. The advisory notes state requirements that may be in addition to the conditions of approval.

1. The applicant shall comply with all applicable State, County, and City codes, regulations and adopted standards as well as pay all associated fees and charges.

2. The Site Plan Review Permit shall be used, exercised, or established within twelve months after the granting of the Permit, or a time extension must be obtained from the Planning Commission, otherwise the Permit shall be null and void (Clayton Municipal Code Sections 17.64.010-17.64.030).
3. All construction and other work shall occur only between 7:00 a.m. and 5:00 p.m. Monday through Friday. Any such work beyond these hours and days is strictly prohibited unless specifically authorized in writing by the City Engineer (Clayton Municipal Code Section 15.01.101) located at 1470 Civic Court #320, Concord, 925-363-7433.
4. The applicant shall obtain the necessary building permits from the Contra Costa County Building Inspection Department. All construction shall conform to the California Building Standards Code.
5. Additional requirements may be imposed by the Contra Costa County Fire Protection District. Before proceeding with the project, it is advisable to check with the Fire District located at 2010 Geary Road, Pleasant Hill, 925-930-5500.
6. If the project site is located within an area subject to covenants, conditions, and restrictions (CC&Rs) administered by a homeowners' association (HOA), additional requirements and/or approvals may be required by the HOA. Before proceeding with the project, it is advisable to check with the HOA to ensure any applicable requirements are met.

#### **ATTACHMENTS**

- A. Vicinity Map
- B. *Funk Residence* Plans
- C. Examples railing work completed by project contractor Metamorphosis Construction
- D. Aerial views of subject property



Community Development\SPR\2016\SPR-04-16.funk.balcony\SPR-04-16.funk.sr.for.pc.mtg.6.28.16

Community Development\Planning Commission\Final Staff Reports and Notices of Decision\2016\6.28.16\SPR-04-16.funk.sr.for.pc.mtg.6.28.16

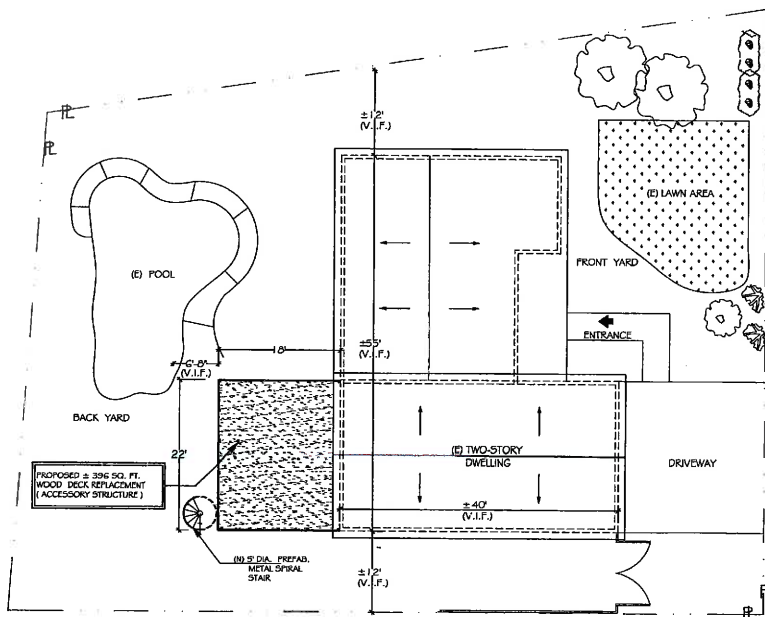
# ATTACHMENT A



## VICINITY MAP

	<p><b>Funk Residence</b> <b>Site Plan Review Permit SPR-04-16</b> <b>1844 Yolanda Circle</b> <b>APN: 118-332-002</b></p>	<p><b>N</b></p>  <p><b>(Not to Scale)</b></p>
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B-1



SITE PLAN Scale: 1/8" = 1'-0"



**SCOPE OF WORK:**  
 THE SCOPE OF WORK FOR THIS PROJECT IS TO BUILD A WOOD DECK & A PREFAB. METAL SPIRAL STAIR AT THE REAR OF THE HOUSE.

**APPLICABLE CODES**  
 2013 CALIF. BLDG. CODE  
 2013 CALIF. RESIDENTIAL CODE

- NOTES:**
- DO NOT SCALE DRAWING.
  - CONTRACTOR SHALL VERIFY ALL DIMENSIONS PRIOR CONSTRUCTION.
  - CONTRACTOR SHALL PROVIDE ADEQUATE SHORING.
  - ALL HARDWARE TO BE SIMPSON STRONG TIE.
  - REINFORCING STEEL SHALL CONFORM TO ASTM 615 GRADE 60 FOR #4 & LARGER BARS GRADE 40 FOR #3 & SMALLER BARS.
  - CONCRETE STRENGTH  $f'_c = 2500$  psi.

**DRAWING INDEX**  
 A-1 SITE PLAN & NOTES  
 A-2 FOUNDATION / FIRST FLOOR SECOND FLOOR PLANS  
 A-3 ELEVATIONS & DETAILS

REVISIONS	BY

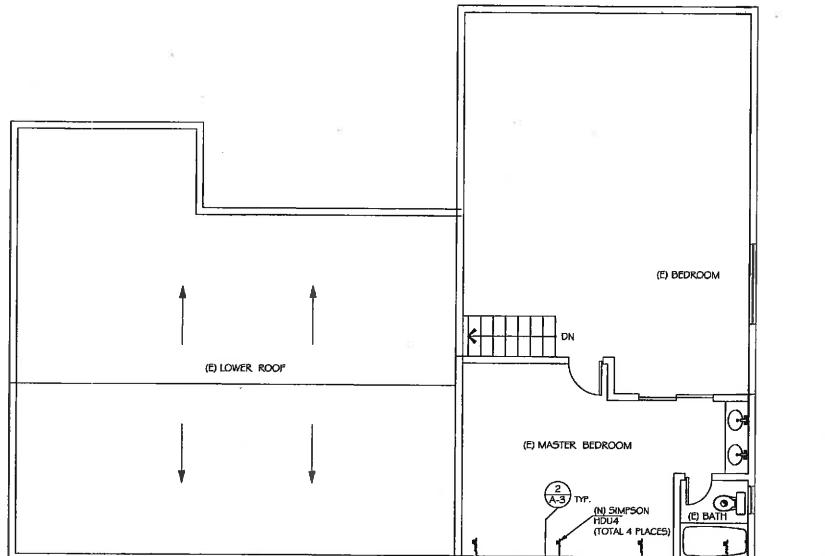
**PROJECT:**  
 THE FUNK RESIDENCE  
 1844 YOLANDA CIRCLE  
 CLAYTON, CALIFORNIA.

**SHEET TITLE:** SITE PLAN & NOTES.  
**SCOPE OF WORK:** NEW DECK

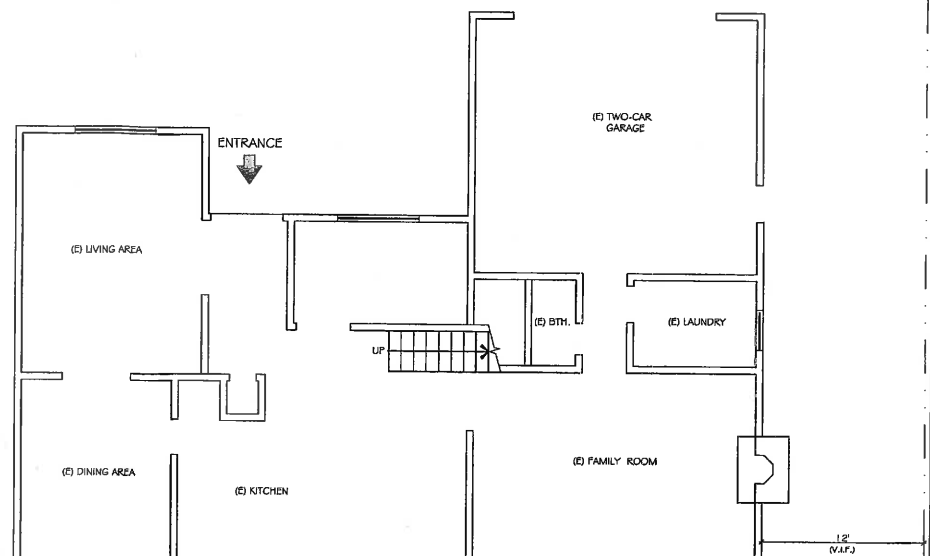
Date:	MAY, 30-2016
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Sheet:	A-1
of	Sheets

**RECEIVED**  
 JUN 7 2016  
 CITY OF CLAYTON  
 COMMUNITY DEVELOPMENT DEPT

ATTACHMENT B  
 METAMORPHOSIS CONSTRUCTION  
 J CARLOS SANCHEZ (925) 768-1992



SECOND FLOOR FRAMING PLAN  
SCALE: 1/4"=1'-0"



FOUNDATION PLAN / FIRST FLOOR PLAN  
SCALE: 1/4"=1'-0"



REVISIONS	BY

PROJECT:	FLOOR PLANS
THE <i>FUNK</i> RESIDENCE	NEW DECK
1844 YOLANDA CIRCLE	
CLAYTON, CALIFORNIA.	
SHEET TITLE:	
SCOPE OF WORK:	
DATE:	MAY, 30-2016
SCALE:	AS SHOWN
DRAWN:	
JOB:	
CHECKED:	
SHEET:	

METAMORPHOSIS CONSTRUCTION  
 JUAN CALOS SANCHEZ 925-768-1992

B-2

A-2  
Sheet





Milan Sikela

# ATTACHMENT C

**From:** Juan Carlos Sanchez <mcbayarea@yahoo.com>  
**Sent:** Thursday, June 23, 2016 12:42 PM  
**To:** <msikela@ci.clayton.ca.us>  
**Subject:** Re: Photo Examples of Proposed Balcony and Staircase -- 1844 Yolanda Circle

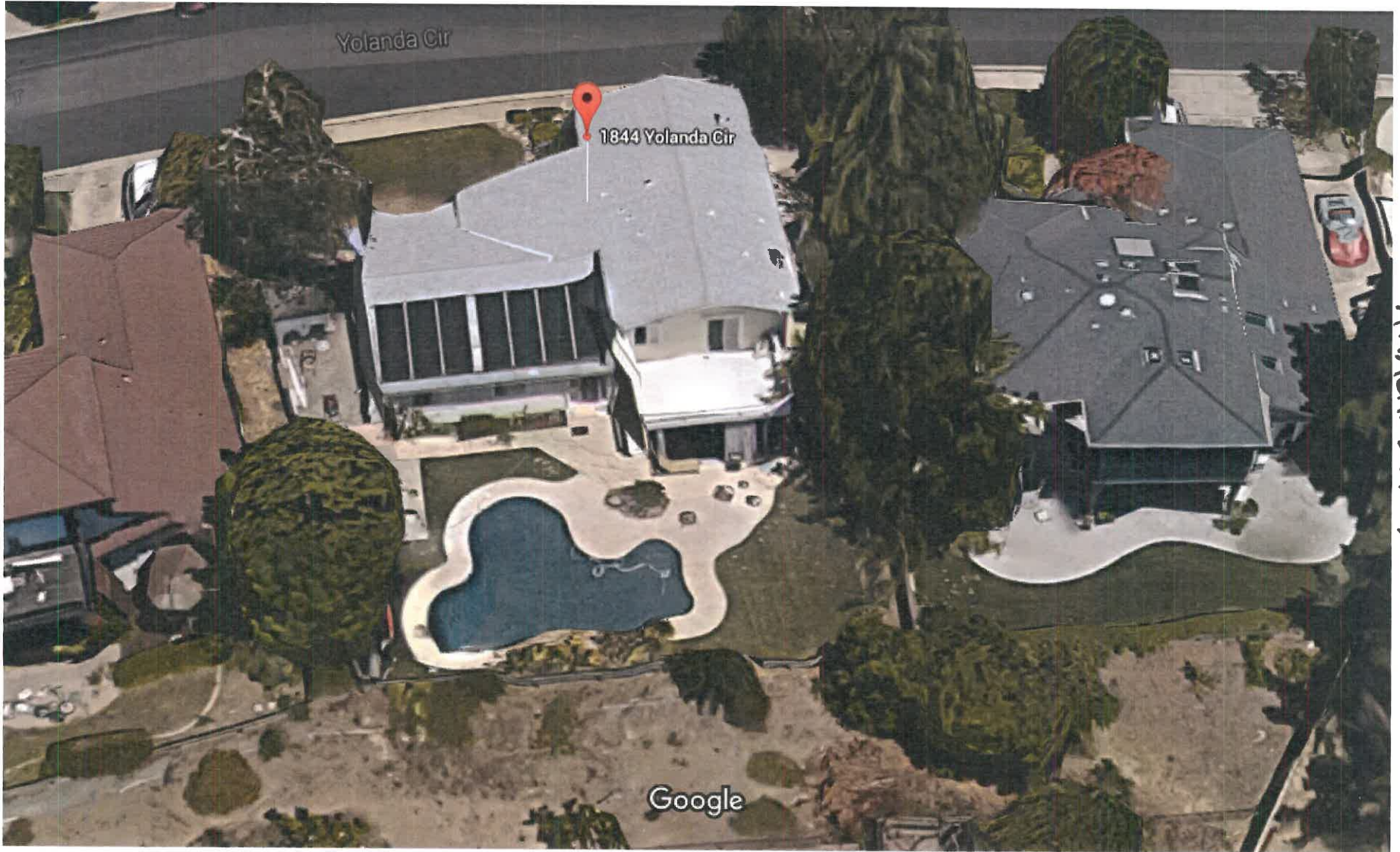








Google Maps 1844 Yolanda Cir



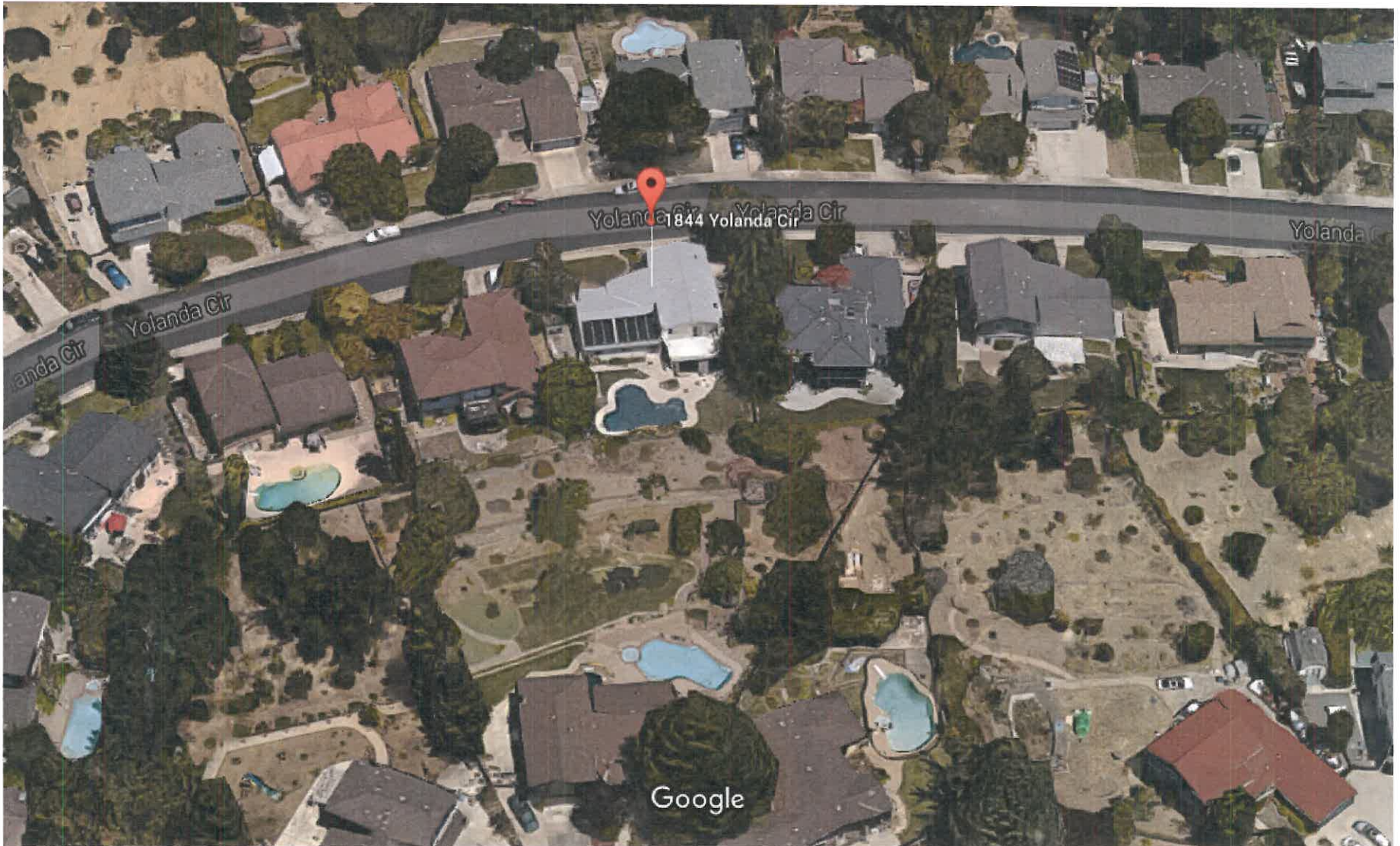
ATTACHMENT D

D-1

Google Maps

Imagery ©2016 Google, Map data ©2016 Google 20 ft

Google Maps 1844 Yolanda Cir



Imagery ©2016 Google, Map data ©2016 Google 50 ft

D-2

# PLANNING COMMISSION STAFF REPORT

**Meeting Date:** June 28, 2016

**Item Number:** 5.b – 5.g

**From:** Mindy Gentry *AGH*  
Community Development Director

**Subject:** Compliance with City Housing Element and Recent State Laws: General Plan Amendment to Increase the Minimum Density of the Multifamily High Density Land Use Designation and Ordinances to Amend Various Chapters of Title 17 of the Clayton Municipal Code Pertaining to Density Bonuses, Transitional and Supportive Housing, Employee Housing, and Requiring Projects to Meet the Minimum Density in Multiple Family Residential Zoning Designations (M-R-L, M-R-M, and M-R-H) (GPA-01-16, ZOA-04-15, ZOA-03-16, ZOA-04-16, ZOA-05-16, and ZOA-06-16)

**Applicant:** City of Clayton

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## REQUEST

The City of Clayton is requesting a public hearing for the Planning Commission to consider and recommend approval to the City Council regarding a General Plan amendment [for compliance with the City's conditionally HCD-certified Housing Element and State law] to increase the density of the Multifamily High Density land use designation from 15.1 to 20 units per acre to 20 units per acre (GPA-01-16) (**Attachment A1**) as well as the following City-initiated Ordinances to amend various sections of Title 17 in the Clayton Municipal Code:

- Requiring projects to meet the minimum density in compliance with the General Plan land use designations for Multiple Family Residential (M-R-L, M-R-M, and M-R-H) (ZOA-04-16) (**Attachment A2**);
- Add inclusionary housing regulations (ZOA-04-15) (**Attachment A3**);
- Allow transitional and supportive housing contingent upon the approval of a use permit within the Limited Commercial (LC) District (ZOA-05-16) (**Attachment A4**);
- Permit employee housing for six or fewer employees in all residential districts (ZOA-03-16) (**Attachment A5**); and
- Changes to density bonus regulations in compliance with AB 2222 and AB 744 (ZOA-06-16) (**Attachment A6**)

## PROJECT INFORMATION

**Location:** Citywide

**Environmental:** Adoption of the Ordinance pertaining to the density bonus regulations (ZOA-06-16) is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this



activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment. Approval of the General Plan amendment (GPA-01-16) and adoption of the remaining Ordinances (ZOA-04-15, ZOA-03-16, ZOA-04-16, ZOA-05-16, ZOA-06-16) will not result in a significant adverse environmental impact as these changes were considered as part of the November 18, 2014 City Council adoption of the IS/ND for the 2015-2023 Housing Element, which was prepared pursuant to the California Environmental Quality Act (CEQA). The IS/ND concluded there is no substantial evidence to suggest the 2015-2023 Housing Element document would have a significant effect on the environment and anticipated impacts have not changed nor is there new information that would alter those findings.

Public Notice: On June 17, 2016, a public hearing notice was published in the East Bay Times and a public hearing notice was posted at designated locations in the City.

### **BACKGROUND AND DISCUSSION**

State law and state public policies have long recognized the vital role local governments play in facilitating the supply and affordability of housing; therefore each local government in California is required to have a General Plan to guide the physical development of the city. The Housing Element is one of the seven mandated elements that must be included within each city's General Plan.

On November 18, 2014, the City Council approved the City's 2015-2023 Housing Element, which is available on the City's website at: [http://ci.clayton.ca.us/?page\\_id=150](http://ci.clayton.ca.us/?page_id=150) or it can be viewed at the City of Clayton Community Development Department, which is located at City Hall, 6000 Heritage Trail (**Attachment B**). The City's 2015-2023 Housing Element contains goals, policies, and implementation measures that are not only important to the City, but must also be put into effect in order for the City to be compliant with State law. The subject General Plan amendment and the proposed Ordinances, except for the Ordinance pertaining to the density bonus regulations, are in response to the identified goals, policies, and the implementation measures that are contained within the 2015-2023 Housing Element. The update to the density bonus regulations would merely make the City's zoning ordinance in compliance with State law following the passage of AB 2222 and AB 744.

### **HOUSING ELEMENT IMPLEMENTATION**

#### ***Density Increase of Multifamily High Density Designation (GPA-01-16, ZOA-04-16)***

California State law Government Code Section 65583.2(c)(3)(B)(iii) requires suburban jurisdictions to establish a land use designation with a minimum density of 20 dwelling units per acre in order to accommodate lower income households. Therefore, the City of Clayton in its 2015-2023 Housing Element established Goal 1, which was to provide adequate sites and promote the development of new housing to accommodate Clayton's fair share housing allocation. Under Goal 1, Policy I.1 states "The City shall designate and zone sufficient land to accommodate Clayton's projected fair share housing allocation as determined by the Association of Bay Area Governments."

In order for the City to be compliant with State law and in order to execute the City's Housing Element's aforementioned Goal 1 and Policy I.1, Implementation Measure I.1.2 was adopted. The Implementation

Measure states the City will amend the Multifamily High Density (MHD) General Plan land use designation to meet the State requirements of a minimum of 20 units to the acre. This minimum density is specifically for sites rezoned to accommodate the City's lower-income RHNA from 2007-2014 planning period, to specifically allow multifamily housing by-right at a minimum density of 20 units per acre. The 2015-2023 Housing Element identified January 31, 2016 as the timeframe this Implementation Measure would be in place (**Attachment C**).

The Multifamily High Density (MHD) General Plan land use designation is found in two locations within the City. There is a cluster of six parcels adjacent to the Town Center area, mostly fronting onto Marsh Creek Road. The other location consists of two parcels, the old fire station building located on Clayton Road and an adjacent parcel fronting onto Mitchell Canyon Road (**Attachment D**).

Resolution 03-16 (**Attachment A1**) is proposing the City Council approve a General Plan amendment to change the density of the City's Multifamily High Density designation from 15.1 to 20 units per acre to a minimum of 20 units per acre as required by State law. The companion Resolution to the General Plan amendment recommends the City Council adopt an Ordinance that would amend the Clayton Municipal Code to require projects within the Multiple Family Residential Districts to meet the minimum density requirements (**Attachment A2**). The amendment to the Municipal Code would ensure the minimum density is met, again ensuring compliance with State law. The implementation of the General Plan amendment and the companion Ordinance to require the minimum density would fulfill the City's requirement to meet State law as well as allowing the City to successfully implement its own Housing Element.

If the City does not fulfill the requirements of State law or the commitments made in its conditionally certified 2015-2023 Housing Element, it places the City at risk for a lawsuit, loss of regional, federal and/or State funds, potentially jeopardizes HCD's conditional certification of the City's current Housing Element, and not being able to achieve a State certified Housing Element in the future.

### ***Inclusionary Housing (ZOA-04-15)***

State law requires that local governments identify and plan for the existing and projected housing needs of all economic segments of the community in their Housing Elements. The law acknowledges that, in order for the private market to adequately address housing needs and demand, local governments must adopt land use plans and regulatory systems that provide opportunities for, and do not unduly constrain, housing development of all types and variations.

State law requires that the State Department of Housing and Community Development (HCD) forecast statewide housing needs and allocate the anticipated need to regions throughout the state. For the Bay Area, HCD provides the regional need to the Association of Bay Area Governments (ABAG), which then distributes the Regional Housing Needs Assessments (RHNA) to the cities and counties within the ABAG region. ABAG allocates housing production goals for cities and counties based on their projected share of the region's household growth, the state of the local housing market and vacancies, and the jurisdiction's housing replacement needs.

For the 2014-2022 projection period, ABAG has allocated the City of Clayton a total of 141 units which are broken down as follows by income category: 51 extremely low- and very low-income units, 25 low-income units, 31 moderate-income units, and 34 above moderate-income units. Given the City's RHNA allocation and the State legislature's push for local governments to identify actions that will make sites available for affordable housing as well as assist in the development of such housing, the City of Clayton identified a goal to provide for adequate sites and promote the development of new housing to accommodate Clayton's fair share housing allocation. The City also adopted Policy I.2, which states "The City shall actively support and participate in the development of extremely low-, very low-, low-, and moderate-income housing to meet

Clayton's fair share housing allocation. To that end, the City shall help facilitate the provision of affordable housing through the granting of regulation concessions and available financial assistance."

In order to meet Goal I and Policy I.2, Implementation Measure I.2.1 was identified to require residential projects of ten or more units to develop an Affordable Housing Plan, which requires a minimum of 10% of the units to be built or created as affordable housing units. To promote the goal of actively supporting and participating in providing housing for all economic segments, the City is proposing an Inclusionary Housing Ordinance, which would facilitate the fulfillment of Implementation Measure I.2.1 (**Attachment A3**). The addition of an Inclusionary Housing Ordinance would fully implement Measure I.2.1 by detailing the process and standards for the City and developers to follow.

Many cities and counties, over 170 within the State of California, have adopted inclusionary housing/zoning programs in order to address the lack of affordable housing as well as the obligations imposed by the legislature. Furthermore, affordable housing was the subject of two recent landmark court cases. The courts provided clarification on what could be required by local governments as it pertained to inclusionary housing. The first case was *Palmer/Sixth Street Properties v. City of Los Angeles* (2009), which determined that cities could no longer require developers to construct affordable rental housing units due to the determination that inclusionary rental programs are contrary to the Costa-Hawkins Act, a State law which limits the ability of local jurisdictions to control how apartment rents are set. Given this case law, inclusionary programs for rental units and affordable housing are limited. However, the case *California Building Assn v. City of San Jose* (2015) clarified that cities may require a developer to construct for-sale affordable housing units.

Given the City's Implementation Measure I.1.2 and the clarification from the courts, the City is now proposing to codify a formal Inclusionary Housing Ordinance requiring developers to include lower income units within a project, pay an in-lieu fee, or dedicate land. The following discussion outlines the key aspects of the proposed program:

#### Applicability

The Inclusionary Housing Ordinance would pertain to developments of ten or more for-sale dwelling units. Ten percent of the newly constructed homes would be required to be offered and sold to low and moderate income households. In the event the calculation results in a fraction of unit, the developer will have the option to make an in-lieu payment in an amount equal to the percentage represented by the fractional unit or providing a full affordable unit.

#### Alternatives

As an alternative to providing the inclusionary units on-site, the developer may elect to construct off-site units, pay an in-lieu fee, or make a land dedication. The provision of the units off-site would increase the required percentage of units to 15 and the developer would have to complete the construction of the units prior to or concurrently with the development. The in lieu fee would be set by the City Council and could be paid by the developer for all or a portion of the inclusionary units. Lastly, instead of building the inclusionary units, the developer may request to dedicate land to the City that would be suitable for the construction of inclusionary units, however the developer would have to meet certain parameters as outlined in the Ordinance. Those parameters include, but are not limited to, marketable title transferred to the City, a residential General Plan designation, infrastructure available at the property line, and a completed environmental review.

#### Procedures

The Ordinance also contains procedures that need to be followed by both the developer and the City. These procedures include submittal of the Inclusionary Housing Plan by the developer, which requires review and approval by the Community Development Director. The Inclusionary Housing Agreement would then need to be recorded on the property, unless the in-lieu fee will be paid or a land dedication will be made. No discretionary approval shall be issued for all or any portion of the development until the developer has

submitted an Inclusionary Housing Plan and no building permit shall be issued unless the City Council has approved the Inclusionary Housing Plan and, if required, the Inclusionary Housing Agreement has been recorded. Lastly, no certificate of occupancy shall be issued unless the Inclusionary Housing Plan has been fully implemented.

#### Standards

The inclusionary units shall be reasonably dispersed throughout the property and shall be proportional in number of bedrooms to the unrestricted units. The units shall also consist of the same finishes, appearance, materials, and amenities. All of the inclusionary units shall be constructed concurrently with or prior to the construction of the unrestricted units. The inclusionary units shall prohibit subsequent rental occupancy, unless approved for hardship reasons such as for military personnel. A deed restriction or other enforceable obligation shall also be recorded on the property requiring that, whenever the inclusionary unit is sold, it must be sold to persons meeting the income eligibility requirements for low- and moderate-income households for a period of 55 years.

#### ***Transitional and Supportive Housing in Limited Commercial (LC) District (ZOA-05-16)***

Senate Bill 2, which became effective January 1, 2008 (Government Code Section 65583 and 65589.5), required all local jurisdictions within California to consider transitional and supportive housing as a residential use, and the use shall be subject to only those restrictions that apply to other residential dwellings of the same type and size.

Transitional housing is defined by the State in Section 50675.2 of the Health and Safety Code as rental housing for stays of at least six months but where the units are re-circulated to another program recipient after a set period. This housing can take several forms, such as single family or multifamily units, and may include supportive services to allow individuals to gain necessary life skills in support of independent living. Supportive housing is defined by the State in Section 50675.14 of the Health and Safety Code as housing that is occupied by the target population, and that is linked to on-site or off-site services that assist the supportive housing resident in retaining housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

In order to be compliant with State law, the City of Clayton adopted, within its 2015-2023 Housing Element, the following to address transitional and supportive housing (**Attachment C**).

Goal II: To the extent feasible, remove governmental constraints for affordable and special needs housing.

Policy II.1: The City shall seek to meet the special housing needs of individuals with disabilities and developmental disabilities, extremely low-, very low-, and low-incomes, large families, senior citizens, farmworkers and their families, female-headed and single-parent households, and others with special needs.

Implementation Measure II.1.3: The City shall amend the Zoning Ordinance to allow transitional and supportive housing in the Limited Commercial (LC) zoning district as a residential use subject only to the requirements of other residential uses in this district in compliance with Senate Bill 2 (2007).

The approval of this Ordinance would allow transitional and supportive housing to be located within the Limited Commercial (LC) District; however it would require the approval of a Conditional Use Permit (**Attachment A4**).

The timeframe for implementation provided in the Housing Element was one to two years following the

adoption of the Housing Element. If the City does not implement this Ordinance, the City will not be compliant with State law and the City's own 2015-2023 Housing Element, which places the City at-risk for a lawsuit, loss of funding, and not being able to retain its conditionally-certified Housing Element and/or achieve a future certified Housing Element.

### ***Employee Housing for Six or Fewer Employees (ZOA-03-16)***

The California Health and Safety Code Section 17021.5 requires employee housing as a permitted use in residential zoning districts. Employee housing is a distinctly defined housing type (Health and Safety Code Section 17008), and is generally characterized as farmworker housing.

As stated earlier, one of the City's policies within the 2015-2023 Housing Element is to meet special housing needs of certain populations, which includes farmworker housing. Implementation Measure II.1.2 of the City's 2015-2023 Housing Element states "The City shall amend the Zoning Ordinance to specifically allow employee housing for six or fewer residents as a permitted use in residential zoning districts, in compliance with Health and Safety Code Section 17021.5." Currently, the City's Municipal Code does not expressly prohibit or allow employee housing for six or fewer residents and since the Code does not define the term "household", the use is essentially allowed. However, since the City has identified this as an Implementation Measure, and if adopted, the proposed Ordinance would expressly allow employee housing for six or fewer residents to be permitted in residential districts (**Attachment A5**).

The 2015-2023 Housing Element identified 2015 as the timeframe for implementation. Again, if the City does not implement this Ordinance, the City will not be compliant with State law and the City's own 2015-2023 Housing Element, which places the City at-risk for a lawsuit, loss of funding, and not being able to retain its current conditionally-certified Housing Element and/or achieve a future certified Housing Element.

### **AB 2222 AND AB 744**

#### ***Density Bonus (ZOA-06-16)***

The State Density Bonus Law was originally enacted in 1979 to encourage public agencies to offer density bonuses and other development incentives in order to encourage affordable housing units. Since the law has been in effect, there have been periodic updates and most recently the State legislature passed AB 2222 (2014) and AB 744 (2015). The City's Municipal Code currently outlines density bonus requirements as required per State law; however, it does not address the two aforementioned Assembly Bills, given their recent passage.

AB 2222 prohibits a developer from receiving a density bonus unless the proposed project would, at a minimum, maintain the number and proportion of affordable housing units within the proposed development and the Bill also increased the required affordability period from 30 to 55 years.

AB 744 allows a developer that is requesting a density bonus and including 100 percent affordable rental units in the development to also request to reduce the minimum parking requirements for the development. In order to qualify, the project would have to be within one-half mile of a major transit stop, a seniors-only development with access to transit, or a development that serves special needs individuals with access to transit. For mixed income developments within one-half mile of a major transit stop that include the maximum number of very low- or low-income units under the Density Bonus Law the parking requirement cannot exceed 0.5 per bedroom. Local governments could require a higher parking ratio if a parking study has been completed within the last seven years and it supports the need for additional parking.

Minor language changes to the Density Bonus Chapter (17.90) of the Clayton Municipal Code have been proposed to address AB 2222 (**Attachment A6**). Those language changes include increasing the affordability period from 30 years to 55 years and requiring the developer to maintain the number and proportion of affordable housing units within the development. No language amendments to the City's Municipal Code were required to address AB 744.

### **RECOMMENDATION**

Staff recommends that the Planning Commission consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, take the following actions:

- 1) Motion to approve Resolution 03-16 recommending the City Council approve a General Plan amendment to increase the minimum density in the Multifamily High Density land use designation to 20 units per acre (GPA-01-16).
- 2) Motion to approve Resolution 04-16 recommending the City Council adopt the Ordinance to require projects to meet the minimum density in compliance with the General Plan Land Use designations in Multiple Family Residential Districts (M-R-L, M-R-M, and M-R-H) (ZOA-04-16).
- 3) Motion to approve Resolution 05-16 recommending the City Council adopt the Ordinance to add inclusionary housing regulations (ZOA-04-15).
- 4) Motion to approve Resolution 06-16 recommending the City Council adopt the Ordinance to permit transitional and supportive housing in the Limited Commercial (LC) zoning district (ZOA-05-16).
- 5) Motion to approve Resolution 07-16 recommending the City Council adopt the Ordinance to permit employee housing of six or fewer by right within residential zones (ZOA-03-16).
- 6) Motion to approve Resolution 08-16 recommending the City Council adopt the Ordinance to update the density bonus requirements to be compliant with AB 2222 and AB 744 (ZOA-06-16).

### **ATTACHMENTS**

#### **A. Planning Commission Resolutions:**

1. Planning Commission Resolution 03-16 Recommending City Council Approval to Amend the General Plan Land Use Element to Modify the Permitted Density within the Multifamily High Density Land Use Category (GPA-01-16) [2 pp.]
2. Planning Commission Resolution 04-16, with attachment:  
Exhibit A – Draft Ordinance Amending the Clayton Municipal Code to Require Projects to Meet the Minimum Density in Compliance with the General Plan within the Multiple Family High Density Residential Districts (M-R-L, M-R-M, AND M-R-H) (ZOA-04-16) [5 pp.]
3. Planning Commission Resolution 05-16, with attachment:  
Exhibit A – Draft Ordinance Adding Chapter 17.92 to the Clayton Municipal Code Regarding Inclusionary Housing Requirements (ZOA-04-15) [16 pp.]
4. Planning Commission Resolution 06-16, with attachment:  
Exhibit A – Draft Ordinance Amending the Clayton Municipal Code Permitting Transitional and Supportive Housing within the Limited Commercial (LC) District (ZOA-05-16) [5 pp.]
5. Planning Commission Resolution 07-16, with attachment:  
Exhibit A – Draft Ordinance Approving an Amendment to the Clayton Municipal Code Permitting Employee Housing of Six or Few Employees in Residential Zones (ZOA-03-16) [5 pp.]
6. Planning Commission Resolution 08-16, with attachment:  
Exhibit A – Draft Ordinance Regarding Density Bonus Requirements (ZOA-06-16) [6 pp.]

B. Excerpt from the November 14, 2014 City Council Staff Report [10 pp.]

C. Excerpt from the City of Clayton's 2015-2023 Housing Element [6 pp.]

D. General Plan Map [1 pp.]

# ATTACHMENT A1.

## CITY OF CLAYTON PLANNING COMMISSION RESOLUTION NO. 03-16

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### A RESOLUTION RECOMMENDING CITY COUNCIL APPROVAL TO AMEND THE GENERAL PLAN LAND USE ELEMENT TO MODIFY THE PERMITTED DENSITY WITHIN THE MULTIFAMILY HIGH DENSITY LAND USE CATEGORY (GPA-01-16)

**WHEREAS**, State Planning and Zoning Law, and specifically California Government Code Section 65358, authorizes cities to amend their general plans; and

**WHEREAS**, on November 18, 2014, the Clayton City Council adopted Resolution No. 42-2014 approving the Clayton 2015-2023 Housing Element; and

**WHEREAS**, on December 1, 2014, the State Department of Housing and Community Development (HCD) conditionally certified the Clayton 2015-2023 Housing Element based on the City making a good faith effort toward enacting a number of implementation measures; and

**WHEREAS**, the State of California Government Code Section 65583.2(c)(3)(B)(iii) has determined suburban jurisdictions must establish a minimum density of 20 dwelling units per acre to accommodate for lower income households; and

**WHEREAS**, under Goal I, Implementation Measure I.1.2 of the Clayton 2015-2023 Housing Element, the City committed to amending the General Plan Land Use Element to allow projects within the Multifamily High Density District (MHD) by right subject to a minimum density of 20 dwelling units per acre; and

**WHEREAS**, the City of Clayton wishes to amend its General Plan Land Use Element to enact this Implementation Measure and remain compliant with its certified 2015-2023 Housing Element and applicable State laws; and

**WHEREAS**, the proposed amendment of the General Plan Land Use Element would be in the public interest, has been assessed for potential impacts, and has been determined to not be detrimental to the public health, safety, or welfare; and

**WHEREAS**, the proposed amendment of the Land Use Element is internally consistent with the balance of the General Plan; and

**WHEREAS**, on November 18, 2014, the City Council of the City of Clayton adopted an IS/ND for the 2015-2023 Housing Element, which was prepared pursuant to the California Environmental Quality Act (CEQA). The IS/ND concluded there was no substantial evidence to suggest the 2015-2023 Housing Element document would have a significant effect on the environment; and

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

**WHEREAS**, on June 28, 2016, the Clayton Planning Commission held a duly-noticed public hearing on the matter, and received and considered testimony, both oral and documentary, and recommended approval to the City Council of an amendment to the General Plan Land Use Element to increase the minimum density from 15.1 to 20 units per acre to 20 units per acre by right; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the City of Clayton based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby recommend City Council approval of an amendment to the General Plan Land Use Element of a paragraph entitled "Multifamily High Density (15.1 to 20 Units Per Acre) on Page II-7 to be amended as follows:

**"Multifamily High Density (20 Units Per Acre)**

This designation is intended for and allows two-story (or higher) apartments or condominiums located where higher densities may be appropriate, such as near major public transportation and commercial centers. Development within this density shall be encouraged to use a PUD concept and standards with incorporation of significant design and amenity in the project. Structural coverage, excluding recreational amenities, shall not exceed 65% of the site area."

**PASSED AND ADOPTED** by the Planning Commission of the City of Clayton at a regular meeting on the 28<sup>th</sup> day of June, 2016.

APPROVED:

ATTEST:

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David Bruzzone  
Chair

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Mindy Gentry  
Community Development Director



**ATTACHMENT A2.**

**CITY OF CLAYTON  
PLANNING COMMISSION  
RESOLUTION NO. 04-16**

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**RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE AMENDING THE MUNICIPAL CODE TO REQUIRE PROJECTS TO MEET THE MINIMUM DENSITY IN COMPLIANCE WITH GENERAL PLAN LAND USE DESIGNATIONS WITHIN THE MULTIPLE FAMILY RESIDENTIAL DISTRICTS (ZOA-04-16)**

**WHEREAS**, on November 18, 2014, the Clayton City Council adopted Resolution No. 42-2014 approving the Clayton 2015-2023 Housing Element;

**WHEREAS**, on December 1, 2014, the State Department of Housing and Community Development (HCD) conditionally certified the Clayton 2015-2023 Housing Element based on the City making a good faith effort toward enacting a number of implementation measures;

**WHEREAS**, the State of California Government Code Section 65583.2(c)(3)(B)(iii) has determined suburban jurisdictions must establish a minimum density of 20 dwelling units per acre to accommodate for lower income households; and

**WHEREAS**, under Goal I, Implementation Measure I.1.2 of the Clayton 2015-2023 Housing Element, the City committed to amending the General Plan and the Zoning Ordinance to allow projects within the Multifamily High Density General Plan land use designation (MHD) and the Multiple Family High Density (M-R-H) zoning designation by right subject to a minimum density of 20 dwelling units per acre; and

**WHEREAS**, on November 18, 2014, the City Council of the City of Clayton adopted an IS/ND for the 2015-2023 Housing Element, which was prepared pursuant to the California Environmental Quality Act (CEQA). The IS/ND concluded there was no substantial evidence to suggest the 2015-2023 Housing Element document would have a significant effect on the environment; and

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

**WHEREAS**, on June 28, 2016, the Clayton Planning Commission held a duly-noticed public hearing on the matter, and received and considered testimony, both oral and documentary, and recommended approval to the City Council of the proposed Ordinance to require projects to meet the minimum density in compliance with the General Plan land use designations within the Multiple Family Residential Districts (M-R-L, M-R-M, M-R-H); and

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

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the City of Clayton, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby recommend City Council approval of the proposed Ordinance to amend the Clayton Municipal Code to require projects to meet the minimum density in compliance with the General Plan land use designations within the Multiple Family Residential Districts (M-R-L, M-R-M, M-R-H), attached hereto as Exhibit A and incorporated herein by this reference.

**PASSED AND ADOPTED** by the Planning Commission of the City of Clayton at a regular meeting on the 28<sup>th</sup> day of June, 2016.

APPROVED:

ATTEST:

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David Bruzzone  
Chair

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Mindy Gentry  
Community Development Director

**ATTACHMENTS:**

Exhibit A – Draft Ordinance Requiring Projects to Meet the Minimum Density in Compliance with the General Plan Land Use Designations within the Multiple Family Residential Districts (M-R-L, M-R-M, M-R-H) (ZOA-04-16)

**EXHIBIT A**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE AMENDING THE CLAYTON MUNICIPAL CODE  
REQUIRING PROJECTS TO MEET THE MINIMUM DENSITY IN COMPLIANCE  
WITH THE GENERAL PLAN LAND USE DESIGNATIONS WITHIN THE MULTIPLE  
FAMILY RESIDENTIAL DISTRICTS (M-R, M-R-M, AND M-R-H) (ZOA-04-16)**

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

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

**WHEREAS**, on November 18, 2014, the Clayton City Council adopted Resolution No. 42-2014 approving the Clayton 2015-2023 Housing Element; and

**WHEREAS**, on December 1, 2014, the State Department of Housing and Community Development (HCD) conditionally certified the Clayton 2015-2023 Housing Element based on the City making a good faith effort toward enacting a number of implementation measures; and

**WHEREAS**, the State of California Government Code Section 65583.2(c)(3)(B)(iii) has determined suburban jurisdictions must establish a minimum density of 20 dwelling units per acre to accommodate for lower income households; and

**WHEREAS**, under Goal I, Implementation Measure I.1.2 of the Clayton 2015-2023 Housing Element, the City committed to amending the General Plan and the Zoning Ordinance to allow projects within the Multi-Family High Density General Plan land use designation (MHD) and the Multiple Family High Density (M-R-H) zoning designation by right subject to a minimum density of twenty dwelling units per acre (Ordinance); and

**WHEREAS**, the Clayton Planning Commission held a duly-noticed public hearing on June 28, 2016, at which it adopted Resolution No. \_\_\_\_\_ recommending City Council approval of the proposed Ordinance; and

**WHEREAS**, the Clayton City Council at its regular meeting on \_\_\_\_\_, held a duly noticed public hearing to review and consider the Ordinance; and

**WHEREAS**, on November 18, 2014, the City Council of the City of Clayton adopted an IS/ND for the 2015-2023 Housing Element, which was prepared pursuant to the California Environmental Quality Act (CEQA). The IS/ND concluded there is no substantial evidence to suggest the 2015-2023 Housing Element document would have a significant effect on the environment; and

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

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

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

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

**Section 2.** Subsection A of Section 17.20.030 of the Clayton Municipal Code is hereby amended to read in full as follows:

“A. Duplex, triplex, townhouses, apartments and other multifamily structures meeting and not exceeding the density limits set by the applicable General Plan Land Use Designation.”

**Section 3. Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

**Section 4. Conflicting Ordinances Repealed.** Any ordinance or part thereof, or regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this Ordinance.

**Section 5. Effective Date and Publication.** This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution by the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause Section 2 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a regular public meeting of the City Council of the City of Clayton, California held on \_\_\_\_\_, 2016.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Howard Geller, Mayor

ATTEST

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

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

\_\_\_\_\_  
Malathy Subramanian, City Attorney

\_\_\_\_\_  
Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Clayton held on \_\_\_\_\_, 2016 and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on \_\_\_\_\_, 2016.

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

**ATTACHMENT A3.**

**CITY OF CLAYTON  
PLANNING COMMISSION  
RESOLUTION NO. 05-16**

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**RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE TO ADD CHAPTER 17.92 TO  
THE CLAYTON MUNICIPAL CODE REGARDING INCLUSIONARY HOUSING REQUIREMENTS  
(ZOA-04-15)**

**WHEREAS**, on November 18, 2014, the Clayton City Council adopted Resolution No. 42-2014 approving the Clayton 2015-2023 Housing Element; and

**WHEREAS**, on December 1, 2014, the State Department of Housing and Community Development (HCD) conditionally certified the Clayton 2015-2023 Housing Element based on the City making a good faith effort toward enacting a number of implementation measures; and

**WHEREAS**, the City of Clayton currently does not have a formal Inclusionary Housing Ordinance; and

**WHEREAS**, Implementation Measure I.2.1 of the Housing Element of the Clayton General Plan encourages the City to adopt an Inclusionary Housing Ordinance with desired targets of five percent low-income and five percent very low-income units for residential projects of ten units or more; and

**WHEREAS**, as noted in the City's 2015-2023 Housing Element, there is a significant need for more affordable housing within the City, including for the following reasons:

(1) The State Legislature, through California Government Code Section 65580, declares the availability of housing of vital statewide importance and local governments have a responsibility to use powers vested in them to facilitate the adequate provision for the housing needs of all economic segments of the community.

(2) Rental units in Contra Costa County are not affordable to people with extremely low incomes, such as those who depend on General Assistance, Temporary Assistance to Needy Families, or Supplemental Security Income. Over 2,000 households within Contra Costa County are on a waiting list for Section 8 assistance, and not all affordable housing units qualify for Section 8 housing assistance. In addition, many persons or families cannot accumulate the money required to move into an apartment (i.e., first and last months' rent plus security deposit);

(3) The high cost of housing makes it difficult to find housing that is affordable for those working minimum wage jobs. For example, based on 2000 Census data, 27% of low and very-low income households owning their home and 27% of low and very-low income households renting their home overpaid for housing costs;

(4) Only households earning above moderate-incomes could afford a home priced at or around median. Homeownership is out of reach in Clayton for most lower-income households. For example, moderate-income households within the City could not afford the 2013 median home price of \$595,000. Recent appreciation in real estate prices has increased these concerns;

(5) The City has a significant need for new affordable housing. The Association of Bay Area Governments (ABAG) has allocated the following Regional Housing Needs Allocation (RHNA) to the City for the period 2014 to 2022: 51 extremely low- and very low-income units, 25 low-income units, 31 moderate-income units and 34 above moderate-income units; and

**WHEREAS**, the legal landscape surrounding the development of affordable housing in California is continually evolving; and

**WHEREAS**, the court in *Palmer/Sixth Street Properties v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 determined that cities may no longer require developers to construct affordable housing units for rent; and

**WHEREAS**, the court in *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435 clarified that cities may require developers to construct affordable housing units for sale; and

**WHEREAS**, on November 18, 2014, the City Council of the City of Clayton adopted an IS/ND for the 2015-2023 Housing Element, which was prepared pursuant to the California Environmental Quality Act (CEQA). The IS/ND concluded there was no substantial evidence to suggest the 2015-2023 Housing Element document would have a significant effect on the environment; and

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

**WHEREAS**, on June 28, 2016, the Clayton Planning Commission held a duly-noticed public hearing on the matter, and received and considered testimony, both oral and documentary, and recommended approval to the City Council of the proposed Ordinance to add Chapter 17.92 to the Clayton Municipal Code pertaining to inclusionary housing requirements; and

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

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the City of Clayton, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby recommend City Council approval of the proposed Ordinance to amend the Clayton Municipal Code by adding Chapter 17.92 regarding inclusionary housing requirements, attached hereto as Exhibit A and incorporated herein by this reference.

**PASSED AND ADOPTED** by the Planning Commission of the City of Clayton at a regular meeting on the 28<sup>th</sup> day of June, 2016.

APPROVED:

ATTEST:

\_\_\_\_\_  
David Bruzzone  
Chair

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

**ATTACHMENTS:**

Exhibit A – Draft Ordinance Adding Chapter 17.92 to the Clayton Municipal Code Regarding Inclusionary Housing Requirements (ZOA-04-15)



**EXHIBIT A**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE ADDING CHAPTER 17.92 TO THE CLAYTON MUNICIPAL CODE  
REGARDING INCLUSIONARY HOUSING REQUIREMENTS (ZOA-04-15)**

**THE CITY COUNCIL**

**City of Clayton, California**

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

**WHEREAS**, the City of Clayton currently does not have a formal Inclusionary Housing Ordinance; and

**WHEREAS**, Implementation Measure I.2.1 of the Housing Element of the Clayton General Plan encourages the City to adopt an Inclusionary Housing Ordinance with desired targets of five percent low income and five percent very low income units for residential projects of ten units or more; and

**WHEREAS**, as noted in the City's Housing Element (2015-2023), there is a significant need for more affordable housing within the City, including for the following reasons:

(1) The State Legislature, through California Government Code Section 65580, declares the availability of housing of vital statewide importance and local governments have a responsibility to use powers vested in them to facilitate the adequate provision for the housing needs of all economic segments of the community.

(2) Rental units in Contra Costa County are not affordable to people with extremely low incomes, such as those who depend on General Assistance, Temporary Assistance to Needy Families, or Supplemental Security Income. Over 2,000 households within Contra Costa County are on a waiting list for Section 8 assistance, and not all affordable housing units qualify for Section 8 housing assistance. In addition, many persons or families cannot accumulate the money required to move into an apartment (i.e., first and last months' rent plus security deposit);

(3) The high cost of housing makes it difficult to find housing that is affordable for those working minimum wage jobs. For example, based on 2000 Census data, twenty-seven percent of low and very-low income households owning their home and twenty-seven percent of low and very-low income households renting their home overpaid for housing costs;

(4) Only households earning above moderate incomes could afford a home priced at or around median. Homeownership is out of reach in Clayton for most lower-income households. For example, moderate income households within the City could not afford the 2013 median home price of \$595,000. Recent appreciation in real estate prices has increased these concerns;

(5) The City has a significant need for new affordable housing. The Association of Bay Area Governments (ABAG) has allocated the following Regional Housing

Needs Allocation (RHNA) to the City for the period 2014 to 2022: 51 extremely low- and very low-income units, 25 low-income units, 31 moderate-income units and 34 above moderate-income units; and

**WHEREAS**, the legal landscape surrounding the development of affordable housing in California is continually evolving; and

**WHEREAS**, the court in *Palmer/Sixth Street Properties v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 determined that cities may no longer require developers to construct affordable housing units for rent; and

**WHEREAS**, the court in *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435 clarified that cities may require developers to construct affordable housing units for sale; and

**WHEREAS**, on November 18, 2014, the City Council of the City of Clayton adopted an IS/ND for the 2015-2023 Housing Element, which was prepared pursuant to the California Environmental Quality Act (CEQA). The IS/ND concluded there was no substantial evidence to suggest the 2015-2023 Housing Element document would have a significant effect on the environment; and

**WHEREAS**, on June 28, 2016, the Planning Commission considered all information provided and submitted, took and considered all public testimony, and recommended the City Council approve the ordinance amending the City of Clayton Municipal Code by adding Chapter 17.92 – Inclusionary Housing Requirements; and

**WHEREAS**, the City Council wishes to adopt this Inclusionary Housing Ordinance to satisfy Housing Element Implementation Measure I.2.1 in compliance with applicable state and local laws; and

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

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

**Section 2. Amendment.** Chapter 17.92 is hereby added to the Clayton Municipal Code to read in full as set forth in the attached Exhibit A, incorporated by this reference.

**Section 3. Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

**Section 4. Conflicting Ordinances Repealed.** Any ordinance or part thereof, or regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this Ordinance.

**Section 5. Effective Date and Publication.** This Ordinance shall become effective thirty (30) days from and after its passage. This Ordinance shall be published or posted as required by law.

The foregoing Ordinance was introduced at a noticed public hearing at a regular public meeting of the City Council of the City of Clayton held on \_\_\_\_\_, 2016.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Howard Geller, Mayor

ATTEST

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

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

\_\_\_\_\_  
Malathy Subramanian, City Attorney

\_\_\_\_\_  
Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a noticed public hearing of a regular meeting of the City Council of the City of Clayton held on \_\_\_\_\_, 2016, and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on \_\_\_\_\_, 2016.

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

## Chapter 17.92

### INCLUSIONARY HOUSING REQUIREMENTS

#### Sections:

17.92.000	Intent
17.92.010	Definitions
17.92.020	Applicability
17.92.030	Inclusionary Unit Requirement
17.92.040	Alternatives
17.92.050	Procedures
17.92.060	Standards
17.92.070	Enforcement
17.92.080	General Provisions

#### 17.92.000 INTENT

It is the intent of this Chapter to establish standards and procedures that facilitate the development and availability of housing affordable to a range of households with varying income levels to implement the City's Housing Element and as mandated by Government Code Section 65580. The purpose of this Chapter is to encourage the development and availability of such housing by ensuring the addition of affordable housing units to the City's housing stock is in proportion with the overall increase in new housing units.

#### 17.92.010 DEFINITIONS

Whenever the following terms are used in this Chapter, they shall have the meaning established by this Section:

(a) **"Affordable Housing Costs"** means

(1) For Very Low-Income Households, the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.

(2) For Low-Income Households, the product of 30 percent times 70 percent of the area median income adjusted for family size appropriate for the unit.

(3) For Moderate Income Households, Affordable Housing Cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit.

(b) **"Developer"** means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks City approvals for all or part of a Residential Development. The term "Developer" also means the owner or owners for any such property for which such approvals are sought.

(c) **"Director"** means the City's Director of Community Development.

- (d) **“Discretionary Approval”** means any entitlement or approval, including but not limited to a use permit, variance, design approval, and subdivision map.
- (e) **“Inclusionary Housing Agreement”** means a legally binding, written agreement between a Developer and the City, in form and substance satisfactory to the Director and City Attorney, setting forth those provisions necessary to ensure that the requirements of this Chapter, whether through the provision of Inclusionary Units or through an alternative method, are satisfied.
- (f) **“Affordable Housing Plan”** means the plan referenced in Section 17.92.050.
- (g) **“Inclusionary Housing Fund”** shall have the meaning set forth in Section 17.92.080(a).
- (h) **“Inclusionary Units”** means a dwelling unit developed pursuant to an Inclusionary Housing Agreement that will be offered for sale to Low and Moderate Income Households, at an Affordable Housing Cost, pursuant to this Chapter.
- (i) **“Low Income Households”** means households who are not very low income households but whose gross income does not exceed the qualifying limits for lower income families as established from time to time pursuant to Section 8 of the United States Housing Act for Contra Costa County as set forth in Title 25 of the California Code of Regulations, Section 6932, or its successor provision and adjusted for family size and other factors by the United States Department of Housing and Urban Development.
- (j) **“Low Income Units”** means Inclusionary Units restricted to occupancy by Low Income Households at an Affordable Housing Cost.
- (k) **“Moderate Income Households”** means households who are not low income households but whose gross income does not exceed one hundred and twenty percent (120%) of the median income for Contra Costa County, adjusted for family size and other factors by the U.S. Department of Housing and Urban Development, as published annually in Title 25 of the California Code of Regulations, Section 6932, or its successor provision.
- (l) **“Moderate Income Units”** means Inclusionary Units restricted to occupancy by Moderate Income Households at an Affordable Housing Cost.
- (m) **“Residential Development”** means the construction of new projects requiring any specific plan, development agreement, planned unit development permit, tentative map, minor subdivision, conditional use permit, site plan review or building permit for which an application has been submitted to the City and which would create one or more additional dwelling units to be offered for sale by the construction or alteration of structures. All new construction projects creating one or more additional dwelling units to be offered for sale on contiguous parcels of land by a single Developer shall constitute a single Residential Development subject to the requirements of this Ordinance, and any accompanying regulations, regardless of whether such projects are constructed all at once, serially, or in phases. The term “Residential Development” shall include the conversion of rental units to for-sale units.
- (n) **“Unrestricted Units”** means those dwelling units in a Residential Development that are not Inclusionary Units.

(o) **“Very Low Income Households”** means households whose gross income does not exceed the qualifying limits for very low income families as established from time to time pursuant to Section 8 of the United States Housing Act for Contra Costa County as set forth in Title 25 of the California Code of Regulations, Section 6932, or its successor provision and adjusted for family size and other factors by the United States Department of Housing and Urban Development, adjusted for family size and other factors by the United States Department of Housing and Urban Development.

#### **17.92.020 APPLICABILITY**

This Chapter shall apply to all Residential Developments, except as provided below.

- (a) Residential Developments proposed to contain less than ten (10) dwelling units.
- (b) Residential Developments that obtained a current, valid building permit prior to the effective date of the ordinance adding this Chapter.
- (c) Any dwelling unit or Residential Development which is damaged or destroyed by fire or natural catastrophes so long as the use of the reconstructed building and number of dwelling units remain the same, and the cost of such rehabilitation constitutes no more than fifty percent (50%) of the of its reasonable market value at the time of destruction or damage.

#### **17.92.030 INCLUSIONARY UNIT REQUIREMENT**

(a) **For-Sale Units:** If the Residential Development includes ten (10) or more units for sale, a minimum of ten percent (10%) of all newly constructed for sale dwelling units in the Residential Development shall be developed, offered to and sold to Low and Moderate Income Households, in a ratio determined pursuant to Section 17.92.060, at an Affordable Housing Cost.

(b) The Inclusionary Unit requirement set forth in this Section may be reduced as follows: If only Low Income Units are provided in lieu of any Moderate Income units, a credit of 1.5 units to every 1 unit shall be provided. However, the credits may only be applied to the extent such credit equals a whole number.

(c) In the event the calculation for the number of Inclusionary Units results in a fraction of an Inclusionary Unit, the Developer shall have the option of either: (i) providing a full Inclusionary Unit at Affordable Housing Costs; or (ii) making an in lieu payment to the Inclusionary Housing Fund in an amount equal to the percentage represented by the fractional unit multiplied by the applicable in lieu fee.

(d) The number of Inclusionary Units required for a particular project will be determined at the time a land use application is filed by the Developer for a Residential Development with the City. If a change in the subdivision design results in a change in the total number of units, the number of Inclusionary Units required will be recalculated to coincide with the final approved project.

(e) For purposes of calculating the number of Inclusionary Units required by this Section, any additional units authorized as a density bonus under Chapter 17.90 and California Government Code Section 65915(b)(1) or (b)(2) will not be counted in determining the required number of Inclusionary Units.

## 17.92.040 ALTERNATIVES

In lieu of including the Inclusionary Units in the Residential Development pursuant to Section 17.92.030, the requirements of this Chapter may be satisfied through the following alternatives set forth in this Section.

(a) Off-Site. As an alternative to providing Inclusionary Units upon the same site as the Residential Development, the Developer may elect, by right, at the Developer's sole discretion to construct Inclusionary Units off-site subject to the following requirements:

(1) If the Developer constructs units off-site, the percentage of required Inclusionary Units shall be increased to fifteen percent (15%).

(2) The site of the Inclusionary Units has a General Plan designation that authorizes residential uses and is zoned for Residential Development at a density to accommodate at least the number of otherwise required Inclusionary Units, including the additional five percent (5%) for development off-site, within the Residential Development. The Developer shall obtain all required Discretionary Approvals and complete all necessary environmental review of such site.

(3) The site is suitable for development of the Inclusionary Units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria.

(4) Environmental review for the site has been completed for the presence of hazardous materials and geological review for the presence of geological hazards and all such hazards are or shall be mitigated to the satisfaction of the City prior to acceptance of the site by the City.

(5) The construction schedule for the off-site Inclusionary Units shall be included in the Affordable Housing Plan and the Inclusionary Housing Agreement.

(6) Construction of the off-site Inclusionary Units shall be completed prior to or concurrently with the Residential Development.

(7) Unless otherwise noted, all requirements applicable to on-site Inclusionary Units shall apply to off-site Inclusionary Units.

(b) In Lieu Fee. For Residential Developments proposing ten (10) units, the Developer may elect, by right, at the Developer's sole discretion to pay a fee in lieu of developing an Inclusionary Unit on-site. The amount of the in-lieu fee to be paid by Developer pursuant to this Section shall be the applicable in-lieu fee set forth in the fee schedule adopted by the City Council. For all Residential Developments proposing eleven (11) units or more, the Developer may request to pay a fee in lieu of all or some of the Inclusionary Units otherwise required by the Ordinance in lieu of developing Inclusionary Units on-site. The fee shall be charged for each unit or fraction of a unit as set forth in Section 17.92.030(c), and the fee shall be paid as follows:



(1) The amount of the fee to be paid by Developer pursuant to this subsection shall be the fee schedule established by Resolution of the City Council, and as adjusted from time to time by Resolution of the City Council.

(2) One-half (1/2) of the in-lieu fee required by this subsection shall be paid (or a letter of credit posted) prior to issuance of a building permit for all or any part of the Residential Development. The remainder of the fee shall be paid before a certificate of occupancy is issued for any unit in the Residential Development.

(3) The fees collected shall be deposited in the Inclusionary Housing Fund.

(4) No certificate of occupancy shall be issued for any corresponding Unrestricted Units in a Residential Development unless fees required under this Section have been paid in full to the City.

(c) Land Dedication. In lieu of building Inclusionary Units, a Developer may request to dedicate land to the City suitable for the construction of Inclusionary Units that the City Council reasonably determines to be equivalent or greater value than is produced by applying the City's in lieu fee to the Developer's inclusionary obligation and otherwise meets the following standards and requirements:

(1) Marketable title to the site is transferred to the City, or an affordable housing developer approved by the City, prior to the commencement of construction of the Residential Development pursuant to an agreement between the Developer and the City and such agreement is in the best interest of the City.

(2) The site has a General Plan designation that authorizes residential uses and is zoned for Residential Development at a density to accommodate at least the number of otherwise required Inclusionary Units within the Residential Development, and conforms to City development standards.

(3) The site is suitable for development of the Inclusionary Units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition, or location of the site.

(4) Infrastructure to serve the dedicated site, including but not limited to streets and public utilities, must be available at the property line and have adequate capacity to serve the maximum allowable Residential Development pursuant to zoning regulations.

(5) Environmental review of the site has been completed for the presence of hazardous materials and geological review for the presence of geological hazards and all such hazards are or will be mitigated to the satisfaction of the City prior to acceptance of the site by the City.

(6) The City shall not be required to construct restricted income units on the site dedicated to the City, but may sell, transfer, lease, or otherwise dispose of the dedicated site. Any funds collected as the result of a sale, transfer, lease, or other disposition of sites dedicated to the City shall be deposited into the Inclusionary Housing Fund.

### **17.92.050 PROCEDURES**

(a) At the times and in accordance with the standards and procedures set forth herein, Developer shall:

(1) Submit an Inclusionary Housing Plan for approval by the Director, setting forth in detail the manner in which the provisions of this Chapter will be implemented for the proposed Residential Development. If land dedication or off-site units are proposed, the Inclusionary Housing Plan shall include information necessary to establish site location, suitability, development, constraints, and the number of Inclusionary Units assigned pursuant to this Chapter.

(2) Execute and cause to be recorded an Inclusionary Housing Agreement, unless Developer is complying with this Chapter pursuant to Section 17.92.040(b) (in lieu fee) or Section 17.92.040(c) (land dedication).

(b) No Discretionary Approval shall be issued for all or any portion of a Residential Development subject to this Chapter until the Developer has submitted an Inclusionary Housing Plan.

(c) No building permit shall be issued for the Residential Development, or any portion thereof, subject to this Chapter unless the City Council has approved the Inclusionary Housing Plan and the Inclusionary Housing Agreement (if required) is recorded.

(d) No certificate of occupancy shall be issued for the Residential Development, or any portion thereof, subject to this Chapter unless the approved Inclusionary Housing Plan has been fully implemented.

(e) The City Manager or designee may establish and amend policies for the implementation of this Chapter.

### **17.92.060 STANDARDS**

(a) Inclusionary Units shall be reasonably dispersed throughout the Residential Development; shall be proportional, in number of bedrooms, to the Unrestricted Units. If the Residential Development offers a variety of unit plans with respect to design, materials and optional interior amenities, the Inclusionary Units shall be identical with the Residential Development's base-plan in terms of design, appearance, materials, finished quality and interior amenities. If multiple floor plans with the same number of bedrooms are proposed, the Inclusionary Units may be the units with the smaller floor plans.

(b) All Inclusionary Units in a Residential Development shall be constructed concurrently with or prior to the construction of the Unrestricted Units. In the event the City approves a phased project, the Inclusionary Units required by this Chapter shall be constructed and occupied in proportion to the number of units in each phase of the Residential Development. In no case shall an Affordable Housing Unit be the final dwelling unit issued a Certificate of Occupancy of a Residential Development or its approved phase(s).

(c) Inclusionary Units shall be sold to Low and Moderate Income Households at a ratio established pursuant to a Resolution adopted by the City Council, and shall be provided at the applicable Affordable Housing Cost.

(d) The number of bedrooms must be the same as those in the Unrestricted Units, except that if the Unrestricted Units provide more than four (4) bedrooms, the Inclusionary Units need not provide more than four (4) bedrooms.

(e) Inclusionary Units shall prohibit subsequent rental occupancy, unless approved for hardship reasons by the City Manager or designee. Such hardship approval shall include provision for United States military personnel who are required to leave the country for active military duty.

(f) Prior the development of any units in a Residential Development, a deed restriction or other enforceable obligation approved by the City Attorney shall be recorded limiting the Developer and any successors, whenever an Inclusionary Unit is sold, to sell such unit to persons meeting the income eligibility requirements for Low and Moderate Income Households as applicable for a period of fifty-five (55) years.

#### **17.92.070 ENFORCEMENT**

(a) The provisions of this Chapter shall apply to all Developers and their agents, successors and assigns proposing a Residential Development. All Inclusionary Units shall be sold in accordance with this Chapter. It shall be a misdemeanor to violate any provision of this Chapter. Without limiting the generality of the foregoing, it shall also be a misdemeanor for any person to sell or rent to another person an Inclusionary Unit under this Chapter at a price exceeding the maximum allowed under this Chapter or to sell an Inclusionary Unit to a Household not qualified under this Chapter. It shall further be a misdemeanor for any person to provide false or materially incomplete information to the City or to a seller or lessor of an Inclusionary Unit to obtain occupancy of housing for which he or she is not eligible.

(b) Any individual who sells an Inclusionary Unit in violation of the provisions of this Chapter shall be required to forfeit all monetary amounts so obtained. Recovered funds shall be deposited into the Inclusionary Housing Fund.

(c) The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Chapter, including but not limited to: (1) actions to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval; (2) civil actions for injunctive relief or damages; (3) actions to recover from any violator of this Chapter civil fines, restitution to prevent unjust enrichment, and/or enforcement costs; and (4) any other action, civil or criminal, authorized by law or by any regulatory document, restriction, or agreement under this Chapter.

(d) In any action to enforce this Chapter or an Inclusionary Housing Agreement recorded hereunder, the City shall be entitled to recover its reasonable attorney's fees and costs.

(e) Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any person, owner, Developer or household from the requirements of this Chapter.

(f) The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it would otherwise be entitled under law or equity.

## **17.92.080 GENERAL PROVISIONS**

### **(a) Inclusionary Housing Fund**

There is hereby established a separate fund of the City, to be known as the Inclusionary Housing Fund. All monies collected pursuant to 17.92.040, 17.92.060 and 17.92.070 shall be deposited in the Inclusionary Housing Fund. Additional monies from other sources may be deposited in the Inclusionary Housing Fund. The monies deposited in the Inclusionary Housing Fund shall be subject to the following conditions:

(1) Monies deposited into the Inclusionary Housing Fund must be used to increase and improve the supply of housing affordable to Very Low, Low, and Moderate, Income Households in the City. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this Section.

(2) The fund shall be administered, subject to the approval by the City Manager, by the Director of Community Development, or his or her designee, who may develop procedures to implement the purposes of the Inclusionary Housing Fund consistent with the requirements of this Chapter and through the adopted budget of the City.

(3) Monies deposited in accordance with this Section shall be used in accordance with the City's Housing Element, or subsequent plan adopted by the City Council to construct, rehabilitate, or subsidize affordable housing or assist other government entities, private organizations, or individuals to do so. Permissible uses include, but are not limited to, assistance to housing development corporations, equity participation loans, grants, pre-home ownership co-investment, pre-development loan funds, participation leases, or other public-private partnership arrangements. The Inclusionary Housing Fund may be used for the benefit of both rental and owner-occupied housing. In no case is the City obligated to actually construct affordable housing units on its own.

### **(b) Administrative Fees**

The City Council may by Resolution establish reasonable fees and deposits, which shall fund the City's costs associated with the administration and monitoring of the Inclusionary Units and administration of the Inclusionary Housing Fund.

### **(c) Appeal**

Within ten (10) calendar days after the date of any decision of the Director under this Chapter, an appeal may be filed with the City Clerk. Within ninety (90) calendar days of the request for an appeal is filed or a later time as agreed to by the appellant, the City Council shall consider the appeal. The City Council's decision shall be final.

(d) Waiver

(1) Notwithstanding any other provision of this Chapter, the requirements of this Chapter may be waived, adjusted, or reduced if a Developer shows, based on substantial evidence, that there is no reasonable relationship between the impact of a proposed Residential Development and the requirements of this Chapter, or that applying the requirements of this Chapter would take property in violation of the United States or California Constitutions.

(2) Any request for a waiver, adjustment, or reduction under this Section shall be submitted to the City concurrently with the Affordable Housing Plan required by Section 17.92.050. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.

(3) The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and at the same time as the Affordable Housing Plan, and is subject to the appeal process in subsection (c) above.

(4) In making a determination on an application for waiver, adjustment, or reduction, the Developer shall bear the burden of presenting substantial evidence to support the claim. The City may assume each of the following when applicable:

(i) That the Developer will provide the most economical Inclusionary Units feasible, meeting the requirements of this Chapter and any implementing regulations.

(ii) That the Developer is likely to obtain housing subsidies when such funds are reasonably available.

(5) The waiver, adjustment or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this Section.

**ATTACHMENT A4.**

**CITY OF CLAYTON  
PLANNING COMMISSION  
RESOLUTION NO. 06-16**

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**RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE AMENDING THE MUNICIPAL CODE TO PERMIT TRANSITIONAL AND SUPPORTIVE HOUSING IN THE LIMITED COMMERCIAL DISTRICT (ZOA-05-16)**

**WHEREAS**, on November 18, 2014, the Clayton City Council adopted Resolution No. 42-2014 approving the Clayton 2015-2023 Housing Element;

**WHEREAS**, on December 1, 2014, the State Department of Housing and Community Development (HCD) conditionally certified the Clayton 2015-2023 Housing Element based on the City making a good faith effort toward enacting a number of implementation measures;

**WHEREAS**, under Goal II, Implementation Measure II.1.3 of the Clayton 2015-2023 Housing Element, the City committed to amending the Zoning Ordinance to allow transitional and supportive housing within the Limited Commercial (LC) District to be compliant with Senate Bill 2;

**WHEREAS**, this Ordinance will amend Title 17 of the Clayton Municipal Code, permitting transitional and supportive housing in the Limited Commercial (LC) District; and

**WHEREAS**, on November 18, 2014, the City Council of the City of Clayton adopted an IS/ND for the 2015-2023 Housing Element, which was prepared pursuant to the California Environmental Quality Act (CEQA). The IS/ND concluded there was no substantial evidence to suggest the 2015-2023 Housing Element document would have a significant effect on the environment; and

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

**WHEREAS**, on June 28, 2016, the Clayton Planning Commission held a duly-noticed public hearing on the matter, and received and considered testimony, both oral and documentary, and recommended approval to the City Council of the proposed Ordinance to permit transitional and supportive housing in the Limited Commercial (LC) District as a residential use subject only to the requirements of other residential uses in this district; and

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

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the City of Clayton based on substantial evidence in the administrative record of proceedings and pursuant

to its independent review and consideration, does hereby recommend City Council approval of the proposed Ordinance to amend the Clayton Municipal Code permitting transitional and supportive housing in the Limited Commercial (LC) District, attached hereto as Exhibit A and incorporated herein by this reference.

**PASSED AND ADOPTED** by the Planning Commission of the City of Clayton at a regular meeting on the 28<sup>th</sup> day of June, 2016.

APPROVED:

ATTEST:

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David Bruzzone  
Chair

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Mindy Gentry  
Community Development Director

**ATTACHMENTS:**

Exhibit A – Draft Ordinance Permitting Transitional and Supportive Housing in the Limited Commercial (LC) District (ZOA-05-16)

**EXHIBIT A**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING THE CLAYTON MUNICIPAL CODE  
PERMITTING TRANSITIONAL AND SUPPORTIVE HOUSING WITHIN THE  
LIMITED COMMERCIAL (LC) DISTRICT (ZOA-05-16)**

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

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

**WHEREAS**, on November 18, 2014, the Clayton City Council adopted Resolution No. 42-2014 approving the Clayton 2015-2023 Housing Element; and

**WHEREAS**, on December 1, 2014, the State Department of Housing and Community Development (HCD) conditionally certified the Clayton 2015-2023 Housing Element based on the City making a good faith effort toward enacting a number of implementation measures; and

**WHEREAS**, under Goal II, Implementation Measure II.1.3 of the Clayton 2015-2023 Housing Element, the City committed to amending the Zoning Ordinance to allow transitional and supportive housing within the Limited Commercial (LC) District (Ordinance) to be compliant with Senate Bill 2; and

**WHEREAS**, the Clayton Planning Commission held a duly-noticed public hearing on June 28, 2016, at which it adopted Resolution No. 06-16 recommending City Council approval of the proposed Ordinance to amend a portion of Title 17 of the Clayton Municipal Code, permitting transitional and supportive housing within the Limited Commercial (LC) zoning district; and

**WHEREAS**, the Clayton City Council at a regular meeting on \_\_\_\_\_, held a duly noticed public hearing to review and consider the Ordinance to amend a portion of Title 17 of the Clayton Municipal Code, permitting transitional and supportive housing within the Limited Commercial (LC) zoning district; and

**WHEREAS**, on November 18, 2014, the City Council of the City of Clayton adopted an IS/ND for the 2015-2023 Housing Element, which was prepared pursuant to the California Environmental Quality Act (CEQA). The IS/ND concluded there is no substantial evidence to suggest the 2015-2023 Housing Element document would have a significant effect on the environment; and

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

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

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



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

**Section 2.** Subsection L is hereby added to Section 17.24.020 of the Clayton Municipal Code to read in full as follows:

“L. Transitional and supportive housing, in the same manner and subject to the same restrictions as SRO facilities, including obtaining a conditional use permit (See Section 17.60.030.B.6).”

**Section 3.** **Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

**Section 4.** **Conflicting Ordinances Repealed.** Any ordinance or part thereof, or regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this Ordinance.

**Section 5.** **Effective Date and Publication.** This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution by the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause Section 2 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a regular public meeting of the City Council of the City of Clayton, California held on \_\_\_\_\_, 2016.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Howard Geller, Mayor

ATTEST

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

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

\_\_\_\_\_  
Malathy Subramanian, City Attorney

\_\_\_\_\_  
Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Clayton, California held on \_\_\_\_\_, 2016 and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on \_\_\_\_\_, 2016.

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

**ATTACHMENT A5.**

**CITY OF CLAYTON  
PLANNING COMMISSION  
RESOLUTION NO. 07-16**

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**RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE AMENDING THE MUNICIPAL CODE TO PERMIT EMPLOYEE HOUSING OF SIX OR FEWER EMPLOYEES IN ALL RESIDENTIAL ZONES (ZOA-03-16)**

**WHEREAS**, on November 18, 2014, the Clayton City Council adopted Resolution No. 42-2014 approving the Clayton 2015-2023 Housing Element;

**WHEREAS**, on December 1, 2014, the State Department of Housing and Community Development (HCD) conditionally certified the Clayton 2015-2023 Housing Element based on the City making a good faith effort toward enacting a number of implementation measures;

**WHEREAS**, under Goal II, Implementation Measure II.1.2 of the Clayton 2015-2023 Housing Element, the City committed to amending the Zoning Ordinance to allow employee housing in residential districts to become compliant with California Health & Safety Code Section 17021.5; and

**WHEREAS**, this Ordinance will amend Title 17 of the Clayton Municipal Code, permitting employee housing for six or fewer employees in all residential districts; and

**WHEREAS**, on November 18, 2014, the City Council of the City of Clayton adopted an IS/ND for the 2015-2023 Housing Element, which was prepared pursuant to the California Environmental Quality Act (CEQA). The IS/ND concluded there was no substantial evidence to suggest the 2015-2023 Housing Element document would have a significant effect on the environment; and

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

**WHEREAS**, on June 28, 2016, the Clayton Planning Commission held a duly-noticed public hearing on the matter, and received and considered testimony, both oral and documentary, and recommended approval to the City Council of the proposed Ordinance to permit employee housing for six or fewer employees in all residential districts; and

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

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the City of Clayton based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby recommend City Council approval of

the proposed Ordinance to amend the Clayton Municipal Code permitting employee housing for six or fewer employees in all residential districts, attached hereto as Exhibit A and incorporated herein by this reference.

**PASSED AND ADOPTED** by the Planning Commission of the City of Clayton at a regular meeting on the 28<sup>th</sup> day of June, 2016.

APPROVED:

ATTEST:

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David Bruzzone  
Chair

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Mindy Gentry  
Community Development Director

**ATTACHMENTS:**

Exhibit A – Draft Ordinance Permitting Employee Housing for Six or Fewer Employees in all Residential Districts (ZOA-03-16)

**EXHIBIT A**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE AMENDING THE CLAYTON MUNICIPAL CODE  
PERMITTING EMPLOYEE HOUSING OF SIX OR FEWER EMPLOYEES WITHIN  
RESIDENTIAL ZONES (ZOA-03-16)**

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

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

**WHEREAS**, on November 18, 2014, the Clayton City Council adopted Resolution No. 42-2014 approving the Clayton 2015-2023 Housing Element; and

**WHEREAS**, on December 1, 2014, the State Department of Housing and Community Development (HCD) conditionally certified the Clayton 2015-2023 Housing Element based on the City making a good faith effort toward enacting a number of implementation measures; and

**WHEREAS**, under Goal II, Implementation Measure II.1.2 of the Clayton 2015-2023 Housing Element, the City committed to amending the Zoning Ordinance to allow employee housing in residential districts to become compliant with California Health & Safety Code Section 17021.5 (Ordinance); and

**WHEREAS**, the Clayton Planning Commission held a duly-noticed public hearing on June 28, 2016, at which it adopted Resolution No. \_\_\_\_\_ recommending City Council approval of the proposed Ordinance to amend a portion of Title 17 of the Clayton Municipal Code, permitting employee housing for six or fewer employees; and

**WHEREAS**, the Clayton City Council at a regular meeting on \_\_\_\_\_, held a duly noticed public hearing to review and consider the Ordinance to amend a portion of Title 17 of the Clayton Municipal Code, permitting employee housing for six or fewer employees; and

**WHEREAS**, on November 18, 2014, the City Council of the City of Clayton adopted an IS/ND for the 2015-2023 Housing Element, which was prepared pursuant to the California Environmental Quality Act (CEQA). The IS/ND concluded there is no substantial evidence to suggest the 2015-2023 Housing Element document would have a significant effect on the environment; and

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

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

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

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

**Section 2.** Section 17.04.090 of the Clayton Municipal Code is hereby renumbered as Section 17.04.092.

**Section 3.** A new Section 17.04.090 is hereby added to the Clayton Municipal Code to read in full as follows:

“17.04.090 Employee Housing. “Employee Housing” means housing as defined in California Health and Safety Code Section 17008 as it may be amended or modified.

**Section 4.** Subsection G is hereby added to Section 17.16.020 of the Clayton Municipal Code to read in full as follows:

“G. Employee housing providing accommodations for six or fewer employees.”

**Section 5.** Subsection D is hereby added to Section 17.20.030 of the Clayton Municipal Code to read in full as follows:

“D. Employee housing providing accommodations for six or fewer employees, provided that a conditional use permit is obtained. Such permit shall be reviewed and issued under the same procedures and in the same manner as that permit issued for single family dwelling units (See Section 17.60.030.B.5).”

**Section 6.** **Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

**Section 7.** **Conflicting Ordinances Repealed.** Any ordinance or part thereof, or regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this Ordinance.

**Section 8.** **Effective Date and Publication.** This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution by the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause Sections 2-3 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a regular public meeting of the City Council of the City of Clayton, California held on \_\_\_\_\_, 2016.

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

A5-4

EXHIBIT A

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Howard Geller, Mayor

ATTEST

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

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

\_\_\_\_\_  
Malathy Subramanian, City Attorney

\_\_\_\_\_  
Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Clayton held on \_\_\_\_\_, 2016 and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on \_\_\_\_\_, 2016.

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

**ATTACHMENT A6.**

**CITY OF CLAYTON  
PLANNING COMMISSION  
RESOLUTION NO. 08-16**

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**RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE AMENDING THE CLAYTON MUNICIPAL CODE TO UPDATE THE DENSITY BONUS REQUIREMENTS IN COMPLIANCE WITH AB 2222 AND AB 744 (ZOA-06-16)**

**WHEREAS**, on September 27, 2014, the State of California passed Assembly Bill 2222 (AB 2222) which extended affordability restrictions for 55 years or longer;

**WHEREAS**, on October 9, 2015, the State of California passed Assembly Bill 744 (AB 744), which prohibits local jurisdictions, at the request of the developer, from imposing a vehicular parking ratio in excess of 0.5 spaces per bedroom on a development that includes the maximum percentage of low- or very low-income units, and is located within a half mile of a major transit stop; and

**WHEREAS**, this Ordinance will amend Title 17 of the Clayton Municipal Code, increasing the length of affordability for projects that receive a density bonus to 55 years and require the maintenance of the number and proportion of affordable housing units within the proposed development; and

**WHEREAS**, the Planning Commission has determined that, pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15060(c)(3), because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 and pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment; and

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

**WHEREAS**, on June 28, 2016, the Clayton Planning Commission held a duly-noticed public hearing on the matter, and received and considered testimony, both oral and documentary and recommended approval to the City Council of the proposed Ordinance to modify the density bonus requirements to be in compliance with AB 2222 and AB 744; and

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

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the City of Clayton based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby recommend City Council approval of



the proposed Ordinance to amend the Clayton Municipal Code to modify the density bonus requirements to extend the affordability restrictions to 55 years and require the developer to maintain number and proportion of affordable housing units within the development in compliance with AB 2222 and AB 744, attached hereto as Exhibit A and incorporated herein by this reference.

**PASSED AND ADOPTED** by the Planning Commission of the City of Clayton at a regular meeting on the 28<sup>th</sup> day of June, 2016.

APPROVED:

ATTEST:

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David Bruzzone  
Chair

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Mindy Gentry  
Community Development Director

**ATTACHMENTS:**

Exhibit A – Draft Ordinance Amending Portions of Chapter 17.90 of the Clayton Municipal Code Regarding Density Bonus Requirements (ZOA-06-16)

**EXHIBIT A**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING PORTIONS OF CHAPTER 17.90 OF THE CLAYTON MUNICIPAL CODE REGARDING DENSITY BONUS REQUIREMENTS (ZOA-06-16)**

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

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

**WHEREAS**, with the adoption of state legislation AB 2222 and AB 744, changes to the City's current density bonus regulations set forth in Chapter 17.90 are necessary; and

**WHEREAS**, on June 28, 2016, the Planning Commission considered all information provided and submitted, took and considered all public testimony, and recommended the City Council approve the ordinance amending the City of Clayton Municipal Code; and

**WHEREAS**, the City Council wishes to modify Chapter 17.90 of the Clayton Municipal Code as set forth in this Ordinance.

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

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

**Section 2. Amendment.** Section 17.90.030 is hereby amended to read in full as set forth below:

17.90.030 Application. The provisions of this Article apply to residential Development Projects and mixed-use Residential Development Projects, consisting of either five (5) or more general Dwelling Units, Senior Citizen Housing Developments, or Mobilehome Parks. However, this Article shall not apply to a Development Project located on property subject to Government Code sections 65915(c)(3) or 65915.5(g).

**Section 3. Amendment.** Subsection 17.90.050(d) is hereby amended to read in full as set forth below:

d. The transferred land and the Affordable Housing Units shall be subject to a deed restriction, which shall be recorded on the real property at the time of dedication, ensuring continued affordability of the units for a term of at least fifty-five (55) years.

**Section 4.** **Amendment.** Section 17.90.070 is hereby amended to read in full as set forth below:

17.90.070 Condominium Conversions. When an Applicant's residential Development Project is the conversion of an existing apartment complex to a condominium complex and the Applicant agrees to make at least thirty-three (33%) of the total units of the proposed condominium Residential Development Project affordable to moderate income households for fifty-five (55) years, or fifteen percent (15%) of the total units of the proposed condominium Residential Development Project to Lower Income households for fifty-five (55) years, and agrees to pay for the administrative costs incurred by the City related to processing the application and monitoring the future status of the Affordable Housing Units, the City shall either (i) grant a Condominium Conversion Density Bonus or (ii) provide other incentives of equivalent financial value to be determined by the City.

An Applicant shall be ineligible for a Condominium Conversion Density Bonus or other incentives under this Section if the apartments proposed for conversion constitute a Residential Development Project for which a Density Bonus or other incentives were previously provided in accordance with this Chapter.

**Section 5.** **Amendment.** Subsection 17.90.160(c) is hereby amended to read in full as set forth below:

c. The purchaser of each Affordable Housing Unit shall execute an instrument or agreement approved by the City restricting the sale of the Affordable Housing Unit in accordance with this Chapter during the applicable use restriction period. Such instrument or agreement shall be recorded against the real property containing the Affordable Housing unit and shall contain such provisions as the City may require to ensure continued compliance with this Chapter and with Government Code Section 65915, including, but not limited to, equity-sharing as set forth in Government Code Section 65915; and

**Section 6.** **Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

**Section 7.** **CEQA.** The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

**Section 8. Conflicting Ordinances Repealed.** Any ordinance or part thereof, or regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this Ordinance.

**Section 9. Effective Date and Publication.** This Ordinance shall become effective thirty (30) days from and after its passage. This Ordinance shall be published or posted as required by law.

The foregoing Ordinance was introduced at a noticed public hearing at a regular public meeting of the City Council of the City of Clayton held on \_\_\_\_\_, 2016.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Howard Geller, Mayor

ATTEST

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

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

\_\_\_\_\_  
Malathy Subramanian, City Attorney

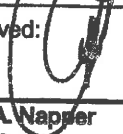
\_\_\_\_\_  
Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a noticed public hearing of a regular meeting of the City Council of the City of Clayton held on \_\_\_\_\_, 2016, and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on \_\_\_\_\_, 2016.

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



# STAFF REPORT

Approved: 
Gary A. Napper City Manager

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: CHARLIE MULLEN, COMMUNITY DEVELOPMENT DIRECTOR** *CM*

**DATE: NOVEMBER 18, 2014**

**SUBJECT: PUBLIC HEARING TO CONSIDER AN INITIAL STUDY/NEGATIVE DECLARATION AND FINAL DRAFT 2015-2023 HOUSING ELEMENT UPDATE (ENV-02-14 & GPA-02-13).**

## RECOMMENDATION

Staff recommends the City Council hold a Public Hearing and then adopt a Resolution approving an Initial Study/Negative Declaration and the Final Draft 2015-2023 Housing Element update for the City of Clayton, and further direct staff to submit the Final Draft 2015-2023 Housing Element update to the California Department of Housing and Community Development (HCD) for certification.

## BACKGROUND

State law and state public policies have long recognized the vital role local governments play in facilitating the supply and affordability of housing. As a consequence, each local government in California is required to adopt a comprehensive, long-term General Plan for the physical development of the city or county. The Housing Element is one of the seven mandated elements of the local General Plan. The Clayton General Plan comprises eight elements: Land Use, Circulation, Housing, Community Design, Open Space/Conservation, Safety, Noise, Community Facilities, and Growth Management. All of the goals, policies, and programs contained in these elements must be and are consistent with the proposed Housing Element for years 2015-2023. The City will continue to review the General Plan for internal consistency as amendments are proposed and adopted.

State law requires that local governments identify and plan for the existing and projected housing needs of all economic segments of the community in one's Housing Element. The law acknowledges that, in order for the private market to adequately address housing needs and demand, local governments must adopt land use plans and regulatory systems that provide opportunities for, and do not unduly constrain, housing developments of all types and variations. Housing policy in the State rests largely upon the effective implementation of local General Plans and, in particular, local Housing Elements.

State law lists specific timetables in regard to the schedule for updating local Housing Elements. In previous Housing Element cycles, the updates were required to occur every five (5) years to address and respond, in our case, to assigned Regional Housing Needs Allocations (RHNA) by the Association of Bay Area Governments (ABAG), site inventory, housing constraints and any new provisions in State Law. For this current Housing Element update cycle, the State also changed the update cycle period to allow up to eight (8) years, from January 31, 2015 to January 31, 2023, provided the document is reviewed and certified by the State Housing and Community Development Department (HCD).

### **LOCAL PROCESS**

State law requires that local governments "make a diligent effort to achieve public participation of all economic segments of the community in the development of the Housing Element." To satisfy this requirement, the City conducted a series of community meetings and public hearings to receive community input regarding housing needs and policy direction in the city of Clayton.

The City kicked off the public participation process with a joint Public Workshop before the City Council and Planning Commission on November 5, 2013. City staff and the City's Housing Element consultant, Pacific Municipal Consultants (PMC), made a presentation that included an overview of the update process and schedule, a description of the required components, and initial findings from the needs assessment. The comments received at the meeting included general questions and comments regarding the Housing Element process, which were addressed at the meeting. There were no comments from the public offered at this workshop.

On May 13, 2014, the Planning Commission conducted a public hearing on the proposed draft 2015-2023 Housing Element update and, with minor suggestions, recommended the City Council direct staff to submit the draft 2015-2023 Housing Element update to HCD for review. No members of the public spoke on the matter. The Planning Commission's minor comments were incorporated into the Final Draft.

On June 3, 2014, the City Council conducted a public hearing on the draft 2015-2023 Housing Element update and, with minor suggestions, directed staff to submit the draft 2015-2023 Housing Element update to HCD for review (see attached meeting minutes). No members of the public spoke on the matter. The City Council's comments were incorporated into the Final Draft.

On June 4, 2014, PMC transmitted the Draft 2015-2023 Housing Element update to HCD for review. Subsequently, City staff and PMC staff held interactive phone discussions with HCD staff. Based on these discussions, PMC staff prepared and transmitted additional-requested Housing Element revisions to HCD. On July 31, 2014, HCD provided a letter to the City of Clayton indicating our draft Housing Element met the statutory requirement of State housing element law (see attached letter). With this HCD endorsement, PMC went forth and prepared the accompanying Initial Study/Negative Declaration (IS/ND) environmental review. The IS/ND and Final Draft 2015-2023 Housing Element for the City of Clayton was then complete and distributed to Planning Commissioners and City Council members on September 11, 2014. The documents were made available for public review on September 12, 2014. The 30-day comment period on this IS/ND began on September

12, 2014, and ended on October 14, 2014. Complete hard copies of the documents were made available at City Hall and the Library, while electronic copies were uploaded to the City's website at [www.ci.clayton.ca.us](http://www.ci.clayton.ca.us).

On October 14, 2014, the Planning Commission conducted its public hearing on the IS/ND and Final Draft 2015-2023 Housing Element update. One member of the public spoke on the matter, raising issue with the public outreach and concerns over potential high density housing (see attached draft meeting minute excerpts). At the meeting staff presented a few minor staff administrative corrections to be made in one paragraph under Chapter 6. The Planning Commission provided minor comments and questions that did not require any changes in the Final Draft. After hearing and considering all information the Commission adopted Resolution No. 04-14, recommending City Council approval of the Initial Study/Negative Declaration and the Final Draft 2015-2023 Housing Element update for the City of Clayton.

At a regular public meeting of the City Council on October 21, 2014, under "Public Comments one resident addressed the Council objecting to the insertion of the term "by right," as referenced in the Final Draft 2015-2023 Housing Element Update for higher density multi-family housing, asserting such terminology is not found in State Law and therefore the City is not obliged to include such language in its Housing Element and acquiesce its local control. As requested, the Community Development Director responded to the City Council with a memorandum (dated October 28, 2014; see attached) at its regular public meeting on November 4, 2014 explaining and confirming that State Law (ref. CA Government Code section 65583.2) does indeed use the term "by right" and explaining why the City's Housing Element requires that term by reference. At its regular public meeting on November 4<sup>th</sup>, the same resident spoke under "Public Comments" and again disputed the staff's findings on this issue.

On November 7, 2014, a Public Notice of this Public Hearing was published in the Contra Costa Times, posted at the notice boards, and mailed to interested parties, housing advocacy groups, and public agencies (see attached mailing list). The public hearing notice was also posted on the City's website.

## **DISCUSSION**

This staff report, along with the meeting presentation and public hearing, are a continuation of the public participation process for Clayton's 2015-2023 Housing Element update. This Housing Element update picks up and takes off where the current 2009-2014 Housing Element ends. The Housing Element update consists of the following chapters/sections:

- Section 1.0 provides an introduction and overview of the Housing Element process.
- Section 2.0 provides a housing needs' assessment, with a description and analysis of Clayton's population and household characteristics, employment and economic trends, housing stock, and existing and future housing needs.
- Section 3.0 examines opportunities and resources for residential energy conservation.
- Section 4.0 describes potential governmental and non-governmental constraints to the production of affordable housing.



- Section 5.0 provides an overview of existing financial and programmatic resources available to assist in housing production and improve affordability, as well as an inventory of existing affordable housing developments and properties.
- Section 6.0 analyzes land available for residential development and demonstrates the City's capacity to meet its Regional Housing Needs Allocation.
- Section 7.0 reviews the implementation status, effectiveness, and continued appropriateness of implementation measures from the 2009-2014 Housing Element.
- Section 8.0 establishes goals, policies, implementation measures, and quantified objectives for the 2015-2023 Housing Element planning period. Following the housing goals, policies, and implementation measures section is a table that outlines quantified objectives for the 2015-2023 planning period.

**Regional Housing Needs Allocation (RHNA)**

Much of the specific detail, data, and resultant goals, policies, implementation measures stem from the RHNA numbers discussed in Section 6.0 of the Housing Element. State law requires that HCD project statewide housing needs and allocate the anticipated need to regions throughout the state. For the Bay Area, HCD provides the regional need to the Association of Bay Area Governments (ABAG), which then distributes the RHNAs to the cities and counties within the ABAG region. ABAG allocates housing production goals for cities and counties based on their projected share of the region's household growth, the state of the local housing market and vacancies, and the jurisdiction's housing replacement needs.

Projected housing needs in the RHNA are described by income categories as established by HCD: very low, low, moderate, and above moderate. Additionally, recent state legislation requires jurisdictions to project housing needs for extremely low-income households, which is assumed to be half of the very low-income allocation (see next report section for more detail on household income).

Clayton's share of the 2014-2022 RHNA is 141 housing units. As shown in the table below (Table 44 excerpt from the Housing Element), the RHNA includes 25 extremely low-income units, 26 very low-income units, 25 low-income units, 31 moderate-income units, and 34 above-moderate income units. Clayton's RHNA represents less than one percent of the total Contra Costa County RHNA of 20,630 units.

**City of Clayton Regional Housing Needs Allocation, 2014-2022**

Income Category	ABAG Need Determination	Percentage of Total
Extremely Low	25	18%
Very Low	26	18%
Low	25	18%
Moderate	31	22%
Above Moderate	34	24%
<b>Total Units</b>	<b>141</b>	<b>100%</b>

BA

Capacity to Accommodate the RHNA

As detailed in Section 6.2 Adequate Sites Inventory and summarized in the Table below (Table 45 excerpt from the Housing Element), Clayton must demonstrate it has capacity in planned or approved projects and adequate land zoned at densities appropriate to meet the 2014-2022 RHNA for all income categories. Projects already approved or planned can accommodate 13 units, vacant residential sites can accommodate 133 units, and underutilized sites can accommodate 129 units. Identified sites have realistic capacity for a total of 275 units, of which approximately 145 may be appropriate for lower-income households.

As stated in Implementation Measure I.1.1, the City will continue to track and monitor the inventory of available sites throughout the planning period to ensure that adequate sites remain available to accommodate the City's RHNA.

**City of Clayton Capacity to Accommodate the 2014-2022 RHNA**

Income Category	RHNA	Planned/ Approved	Vacant Land	Underdeveloped Sites	Remaining Need (Surplus)
Extremely Low	25	2	57	86	(75)
Very Low	26				
Low	25				
Moderate	31	11	76	43	(61)
Above Moderate	34				
<b>Total Units</b>	<b>141</b>	<b>13</b>	<b>133</b>	<b>129</b>	<b>(134)</b>

Household Income

Each year, HCD publishes median income amounts and State Income Limits for five categories of household income for each county in the state. The 2014 State Income Limits were released on February 28, 2014, and provide income limits based on income category and household size. As shown in the table below (Table 16 excerpt from the Housing Element), the income range (based on a percentage of the area median income for Contra Costa County in 2014 of \$93,500) and annual income amount for a four-person household range from \$28,020 or less for extremely low-income households to more than \$112,200 for above-moderate income households.

### Contra Costa County Income Categories, 2014

Income Category	Percentage of Median Income	Annual Household Income*
Extremely Low	≤30%	\$28,050 or less
Very Low	31%–50%	\$28,051–\$46,750
Low	51%–80%	\$46,751–\$67,600
Moderate	81%–120%	\$67,601–\$112,200
Above Moderate	>120%	More than \$112,200

#### Existing Housing Element Accomplishments

Clayton has made significant progress toward achieving one-time and ongoing goals set forth in the existing Housing Element, which was adopted by the City and certified by HCD in 2010. The following is a summary list of the existing Housing Element implementation actions completed, from 2010 through 2014:

- Established the Multi-Family High Density land use designation, re-designated and rezoned several sites, and amended Planned Development District regulations (I.1.1).
- Established regulations for manufactured homes, consistent with State law (I.3.1).
- Prepared and distributed a Development Handbook (I.5.2).
- Established regulations and a Zone for emergency shelters (II.1.1).
- Established regulations and a Zone for transitional and supportive housing (II.1.2).
- Established regulations and a Zone for single-room occupancy (SRO) units (II.1.3).
- Modified zoning to require a Use Permit for single-family homes in multi-family districts (II.2.1).
- Revised the City's definition of "family" (IV.1.2).
- Adopted a reasonable accommodations ordinance (IV.3.1).

#### New Implementation Actions Added

The following is a summary list of key new implementation actions proposed to be added to the 2015-2023 Housing Element and key revisions requested (i.e. required) by HCD:

- Identify the number of acres zoned to accommodate emergency shelters.
- Update Tables 46 & 47 to include revised approved projects and vacant sites.
- Monitor the residential land inventory and maintain adequate sites (I.1.1).
- Amend the General Plan and Zoning Ordinance to accommodate multi-family housing "by right" at a minimum density of 20 units per acre. Explain in more detail the City good faith efforts to rezones sites in 2012 to meet the RHNA shortfall (I.1.2).
- Establish zoning regulations for employee housing for six (6) or fewer persons (II.1.2).
- Amend the Zoning Ordinance to allow transitional and supportive housing by conditional use permit in the Limited Commercial (LC) zoning district (II.1.3).
- Consider regulatory incentives and concessions for development projects that provide residential affordable housing units or housing for special needs groups (II.2.1).

- Consider waiving or deferring fees for affordable housing projects (II.2.2).
- Explore financing and programs for residential energy efficiency improvements (V.1.3).

**Housing Element Update Schedule**

The draft 2015-2023 Housing Element update for the City of Clayton is on track to meet the State-recommended adoption schedule per the following table:

**City of Clayton 2015-2023 Housing Element Update Schedule**

November 5, 2013	Joint Planning Commission/City Council Workshop
May 13, 2014	Planning Commission Public Hearing
June 3, 2014	City Council Public Hearing
June-August, 2014	HCD review – completed July 31, 2014
October 14, 2014	Planning Commission Public Hearing
November 18, 2014	City Council Adoption Public Hearing
November 2014 – Jan. 2015	Final HCD review (up to 90 days)
January 2015	Receive HCD Certification of Housing Element

**FISCAL IMPACT**

On May 21, 2013, the City Council authorized the City Manager to enter into a Consulting Services Agreement with Pacific Municipal Consultants (PMC) for the preparation of the City's 2015-2023 Housing Element update. The cost of the PMC service proposal is \$32,180, and includes a 10% contingency of \$3,218, for a not-to-exceed contract amount of \$35,398. The City Council authorized the necessary funds from the CIP Interest Earnings Fund Account (303-5601-00) to pay for this State-mandated Housing Element Update.

**ATTACHMENTS**

1. Resolution – Approving IS/ND and Final Draft 2015-2023 Housing Element update.
2. Excerpt Draft Minutes from Planning Commission meeting of 10/14/14.
3. Minor Correction Edits to Chapter 6, Capacity to Accommodate the RHNA.
4. Memorandum to City Council, dated October 28, 2014 pertaining to term "by right."
5. Housing Element Public Hearing Mailing List for City Council meeting of 11/18/14.
6. Initial Study/Negative Declaration, dated September 2014 (the entire document is also available on City's website [[http://ci.clayton.ca.us/?page\\_id=208](http://ci.clayton.ca.us/?page_id=208)], and a complete copy was previously transmitted to the City Council).
7. Final Draft 2015-2023 Housing Element, dated August 25, 2014 (the entire document is also available on City's website [[http://ci.clayton.ca.us/?page\\_id=208](http://ci.clayton.ca.us/?page_id=208)], and a complete copy was previously transmitted to the City Council).

**RESOLUTION NO. 42 - 2014**

**A RESOLUTION APPROVING AN  
INITIAL STUDY/NEGATIVE DECLARATION AND THE FINAL DRAFT 2015-2023  
HOUSING ELEMENT UPDATE OF THE CLAYTON GENERAL PLAN  
IN COMPLIANCE WITH REQUIREMENTS OF APPLICABLE STATE LAW  
(ENV-02-14 & GPA-02-13)**

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

**WHEREAS**, California Government Code Article 10.6 commencing with section 65583, requires that every jurisdiction in California must adopt a General Plan, and every General Plan must contain a Housing Element. California law lists specific timetables in regard to the schedule for updating the Housing Elements. In previous Housing Elements cycles, the updates were required to occur every five (5) years to address and respond to Regional Housing Needs Allocations (RHNA), site inventory, housing constraints, and any new provisions in State Law. For this current Housing Element update cycle, the State did change the update cycle period to allow up to eight (8) years, from January 31, 2015 to January 31, 2023, provided the document is reviewed and certified by the California Department of Housing and Community Development (HCD); and

**WHEREAS**, the City of Clayton's share of regional housing need is established by the Association of Bay Area Governments (ABAG) and this period's related "Regional Housing Needs Allocation" (RHNA) was adopted by ABAG in 2013 which determined that Clayton's fair share of the RHNA for the period between 2014 and 2022 is a total of 141 units in the following income categories: 25 extremely-low income, 26 units very low income, 25 low-income, 31 moderate-income and 34 above-moderate income; and

**WHEREAS**, the City has prepared a Housing Element update, titled "City of Clayton 2015-2023 Housing Element", to comply with applicable requirements of State law and to facilitate the City's capacity to satisfy its RHNA as established for this period by ABAG; and

**WHEREAS**, on November 5, 2013, the City of Clayton conducted a joint Public Workshop before the City Council and Planning Commission to seek input on the Housing Element update from the community. There were no oral or written comments from the public provided at this workshop; and

**WHEREAS**, on May 13, 2014, the Planning Commission conducted a public hearing on the draft 2015-2023 Housing Element update and, with minor suggestions, recommended the City Council direct staff to submit the draft 2015-2023 Housing Element update to HCD for review. There were no oral or written comments from the public provided at this meeting; and

**WHEREAS**, on June 3, 2014, the City Council conducted a public hearing on the draft 2015-2023 Housing Element update and, with suggestions, directed staff to submit the draft 2015-2023 Housing Element update to HCD for its review. There were no oral comments from the public provided at this meeting however, two written communications were submitted and considered; and

**WHEREAS**, on June 4, 2014, the draft 2015-2023 Housing Element update was transmitted to HCD for review and, on July 31, 2014, HCD provided a letter to the City of Clayton indicating the draft Housing Element meets the statutory requirement of State housing element law; and

**WHEREAS**, the Planning Commission, at a regular public meeting on October 14, 2014, held a duly noticed public hearing to review and consider the Initial Study/Negative Declaration (IS/ND) and the City of Clayton 2015-2023 Housing Element update and then adopted Resolution No. 04-14, recommending City Council approval of the documents. There were no written comments provided at this meeting, however, oral comments from one member of the public were provided and taken into consideration; and

**WHEREAS**, the City Council, at a regular public meeting on November 18, 2014, held a duly noticed public hearing to review and consider the Initial Study/Negative Declaration (IS/ND) and the City of Clayton 2015-2023 Housing Element update; and

**WHEREAS**, pursuant to California Environmental Quality Act (CEQA) Guidelines, Section 15063, an IS/ND was prepared and made available for public review. The IS/ND has concluded there is no substantial evidence to suggest the Housing Element document may have a significant effect on the environment. Accordingly, the Initial Study with a Negative Declaration determination is being considered for adoption by the City of Clayton. The 30-day comment period on this IS/ND began on September 12, 2014, and ended on October 14, 2014; and

**WHEREAS**, the City Council has determined the proposed revisions to the Housing Element are in general conformance with the Clayton General Plan; and

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

**WHEREAS**, the City Council duly considered and reviewed all written evidence and oral testimony presented to date on its proposed Housing Element for 2015-2023.

**NOW, THEREFORE BE IT RESOLVED** the City Council of Clayton, California, does hereby find and determine the above Recitals are true and correct statements of fact related to this action and does herewith base its action in part relying on the veracity of said Recitals; and

**BE IT FURTHER RESOLVED** the Clayton City Council, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby approve the Initial Study/Negative Declaration and the City of Clayton 2015-2023 Housing Element Update, respectively attached hereto as Exhibit A and Exhibit B and incorporated herein by this reference.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held on November 18, 2014, by the following vote:

**AYES:** Mayor Stratford, Vice Mayor Shuey, Councilmembers Diaz, Geller and Pierce.

**NOES:** None.

**ABSENT:** None.

**ABSTAIN:** None.

THE CITY COUNCIL OF CLAYTON, CA

  
\_\_\_\_\_  
Hank Stratford, Mayor

ATTEST

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

# # # # #

I hereby certify that the foregoing resolution was duly adopted and passed by the City Council of the City of Clayton at a regular public meeting thereof held on November 18, 2014.

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

**ATTACHMENTS**

Exhibit A – Initial Study/Negative Declaration, dated September 2014

Exhibit B – City of Clayton 2015-2023 Housing Element, dated August 25, 2014

X:\Com Dev\GPA\2013\GPA-02-13 - Housing Element Update\CC mtg. 11-18-14\CC Reso - ISND Final HE - 11-18-14-Final.docx



### 8.0 GOALS AND POLICIES

#### Adequate Sites and New Construction

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**GOAL I** Provide for adequate sites and promote the development of new housing to accommodate Clayton's fair share housing allocation.

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**POLICY I.1** The City shall designate and zone sufficient land to accommodate Clayton's projected fair share housing allocation as determined by the Association of Bay Area Governments.

**Implementation Measure I.1.1.** To ensure that adequate sites are available through the planning period to meet the City's Regional Housing Needs Allocation (RHNA), the City will continue to maintain an inventory of sites available and appropriate for residential development for households at all income levels. In keeping with state "no net loss" provisions (Government Code Section 65863), if development projects are approved at densities lower than anticipated in the sites inventory, the City will evaluate the availability of sites appropriate for lower-income housing and, if necessary, shall rezone sufficient sites to accommodate the RHNA.

**Responsibility:** Community Development Department

**Time Frame:** Ongoing, as development projects are proposed.

**Funding:** General Fund

**Implementation Measure I.1.2.** The City will amend the Multi-Family High Density (MHD) General Plan land use designation or otherwise amend the General Plan and/or Zoning Ordinance as needed to meet state requirements specific to sites rezoned to accommodate the City's lower-income RHNA from 2007-2014 planning period, specifically to allow multi-family housing by-right on these sites at a minimum density of 20 units per acre.

The City's 2007-2014 Housing Element identified a shortfall of land that provided for residential development at a density deemed appropriate for affordable housing to accommodate 84 units to meet the extremely low-, very low-, and low-income RHNA. State law (Government Code Section 65583.2(h) and (i)) requires that land rezoned or redesignated to meet a shortfall meet the following criteria:

- Require a minimum density of at least 20 units per acre;
- Accommodate at least 16 units per site;
- Allow multi-family housing by-right (without a use permit); and



- At least 50 percent of rezoned sites must be designated for residential uses only.

In 2012, the City in good faith established the Multi-Family High Density General Plan Land Use and Zoning District designations and made specified General Plan Map and Zoning Map changes in an attempt to accommodate the City's lower-income RHNA shortfall from the 2007-2014 planning period. The City was advised by HCD that these efforts fell short of State Law, and therefore, the City's land use regulations will be appropriately revised to comply with the above stated criteria.

**Responsibility:** City Council, Planning Commission, Community Development Department

**Time Frame:** By January 31, 2016.

**Funding:** General Fund

**POLICY I.2** The City shall actively support and participate in the development of extremely low-, very low-, low-, and moderate-income housing to meet Clayton's fair share housing allocation. To this end, the City shall help facilitate the provision of affordable housing through the granting of regulatory concessions and available financial assistance.

**Implementation Measure I.2.1.** For residential projects of 10 or more units, developers will be required to develop an Affordable Housing Plan that requires a minimum of 10 % of the units to be built or created as affordable housing units. The City has established the following guidelines to provide direction for the review of Affordable Housing Plans associated with individual development projects and to provide direction for the preparation of an Affordable Housing Plan.

The plan shall be approved in conjunction with the earliest stage of project entitlement, typically with the City Council approval of the development agreement or other primary land use entitlement.

The Affordable Housing Plan shall specify and include the following:

- The number of dwelling units that will be developed as affordable to very low-, low-, moderate-, and above moderate-income households shall be a minimum of 10% of the total project. The number of affordable units shall be rounded up to a whole number. It is the City's desire that at least 5 percent of all project units be built as very low-income housing units and at least 5 percent of all project units be built as low-income housing units.
- The number of affordable ownership and rental units to be produced. Such split shall be approved by the City Council based on housing needs, market

conditions, and other relevant factors. The split of ownership and rental units shall be addressed within the plan for each individual project.

- Program options within project-specific Affordable Housing Plans may include, but are not limited to, the following:
  - Actual production (on-site or off-site) of affordable units (including ownership and rental opportunities in the form of corner units, halfplexes, duplexes, cottages, creative alternative housing products, etc.).
  - Land dedication (on-site and off-site).
  - Payment of in-lieu fees.
- The timing for completion of affordable housing obligations. For projects proposing to construct affordable housing units, the City generally supports construction of affordable dwellings concurrent with the construction of market-rate housing when feasible. For projects providing alternative contributions (land dedication, funds, etc.), timing of such contributions shall be identified in the plan, with the expectation that the City will pursue construction of affordable units generally concurrent with construction of project market-rate housing.
- At the City Council’s discretion, land or other contributions provided by developers as specified within project Affordable Housing Plans may be utilized to augment City efforts and the efforts of its nonprofit partners to provide affordable housing opportunities to all income levels throughout the community. The City will pursue supplemental funding to allow affordability to households earning less than 50 percent of area median income.
- In order to ensure the production and preservation of housing affordable to the City’s workforce, no productive, reasonable program or incentive option will be excluded from consideration within project-specific Affordable Housing Plans. Possible incentives may include, but are not limited to:
  - Density bonuses
  - Fee waivers or deferrals (as reasonably available)
  - Expedited processing/priority processing
  - Reduced parking standards
  - Technical assistance with accessing funding



- Modifications to development standards (on a case-by-case basis)

**Responsibility:** City Council, Planning Commission, Community Development Department

**Time Frame:** Ongoing, as projects of 10 or more units are processed through the Community Development Department. The City will monitor the implementation of this program to ensure that it does not cause a constraint to the development of housing in the City of Clayton and will make necessary revisions to the program if needed to avoid such a constraint.

**Funding:** General Fund

**POLICY I.3** The City shall encourage the development of second dwelling units on new and existing single-family-zoned lots.

**Implementation Measure I.3.1.** The City shall continue to promote the development of second dwelling units by publicizing information in the general application packet and posting information on the City’s website. The City will aim to approve two second dwelling units per year during the planning period.

**Responsibility:** Community Development Department

**Time Frame:** Ongoing, 2015–2023

**Funding:** General Fund

**POLICY I.4** The City shall aggressively promote mixed-use or second-story residential units above commercial uses in the Town Center.

**Implementation Measure I.4.1.** To encourage development of mixed-use projects in the Town Center, the City has adopted the Clayton Town Center Specific Plan which provides detailed policy direction, standards, and guidelines that encourage mixed-use and second-story residential development. The City will continue to promote development opportunities in the Town Center, circulate a development handbook that describes the permitting process for mixed-use projects, and offer incentives such as density bonuses to incentivize mixed-use projects. The City will aim to facilitate the development of at least one mixed-use project within the planning period.

**Responsibility:** City Council, Planning Commission, Community Development Department

**Time Frame:** Annually and upon receiving development inquiries for mixed-use development.

**Funding:** General Fund

C4

## Regulatory Relief and Incentives

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**GOAL II** To the extent feasible, remove governmental constraints for affordable and special needs housing.

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**POLICY II.1** The City shall seek to meet the special housing needs of individuals with disabilities and developmental disabilities, extremely low-, very low-, and low-incomes, large families, senior citizens, farmworkers and their families, female-headed and single-parent households, and others with special needs.

**Implementation Measure II.1.1.** Work with housing providers to address special housing needs for seniors, large families, female-headed households, single-parent households with children, persons with disabilities and developmental disabilities, farmworkers, and homeless individuals and families. The City may seek funding under the federal Housing Opportunities for Persons with AIDS, California Child Care Facility Financing Program, and other state and federal programs designated specifically for special needs groups such as seniors, persons with disabilities, and persons at risk for homelessness. The City will aim to work with housing providers on at least one project serving a special needs group during the planning period.

**Responsibility:** Planning Commission, Community Development Department

**Time Frame:** Ongoing, 2015–2023

**Funding:** General Fund

**Implementation Measure II.1.2.** The City shall amend the Zoning Ordinance to specifically allow employee housing for six or fewer residents as a permitted use in residential zoning districts, in compliance with Health and Safety Code Section 17021.5.

**Responsibility:** Planning Commission, City Council, Community Development Department

**Time Frame:** 2015

**Funding:** General Fund

**Implementation Measure II.1.3.** The City shall amend the Zoning Ordinance to allow transitional and supportive housing in the Limited Commercial (LC) zoning district as a residential use subject only to the requirements of other residential uses in this district in compliance with Senate Bill 2 (2007).

**Responsibility:** Community Development Department

**Time Frame:** Within one to two years of adoption of the Housing Element



**Funding:** General Fund

**POLICY II.2** The City shall encourage affordable housing by granting regulatory incentives to projects that provide affordable units.

**Implementation Measure II.2.1.** The City shall continue to authorize regulatory incentives and concessions for development projects that include residential units affordable to extremely low-, very low-, and low-income households and special needs groups including disabled and developmental disabled persons. Incentives and concessions may include:

- Flexibility in development standards (e.g., reduced parking requirements, landscaping, setbacks)
- Reduction or deferral of certain development fees
- Priority application processing to decrease review and approval time
- Density bonus in accordance with State density bonus law (Government Code Section 65915)

The City will aim to facilitate the development of at least one affordable or special needs project during the planning period.

**Responsibility:** City Council, Planning Commission, Community Development Department

**Time Frame:** Ongoing, as residential development projects are proposed.

**Funding:** General Fund

**Implementation Measure II.2.2.** The City shall monitor the impact of development fees and consider waiving or deferring fees for affordable housing projects, if and when funding is available.

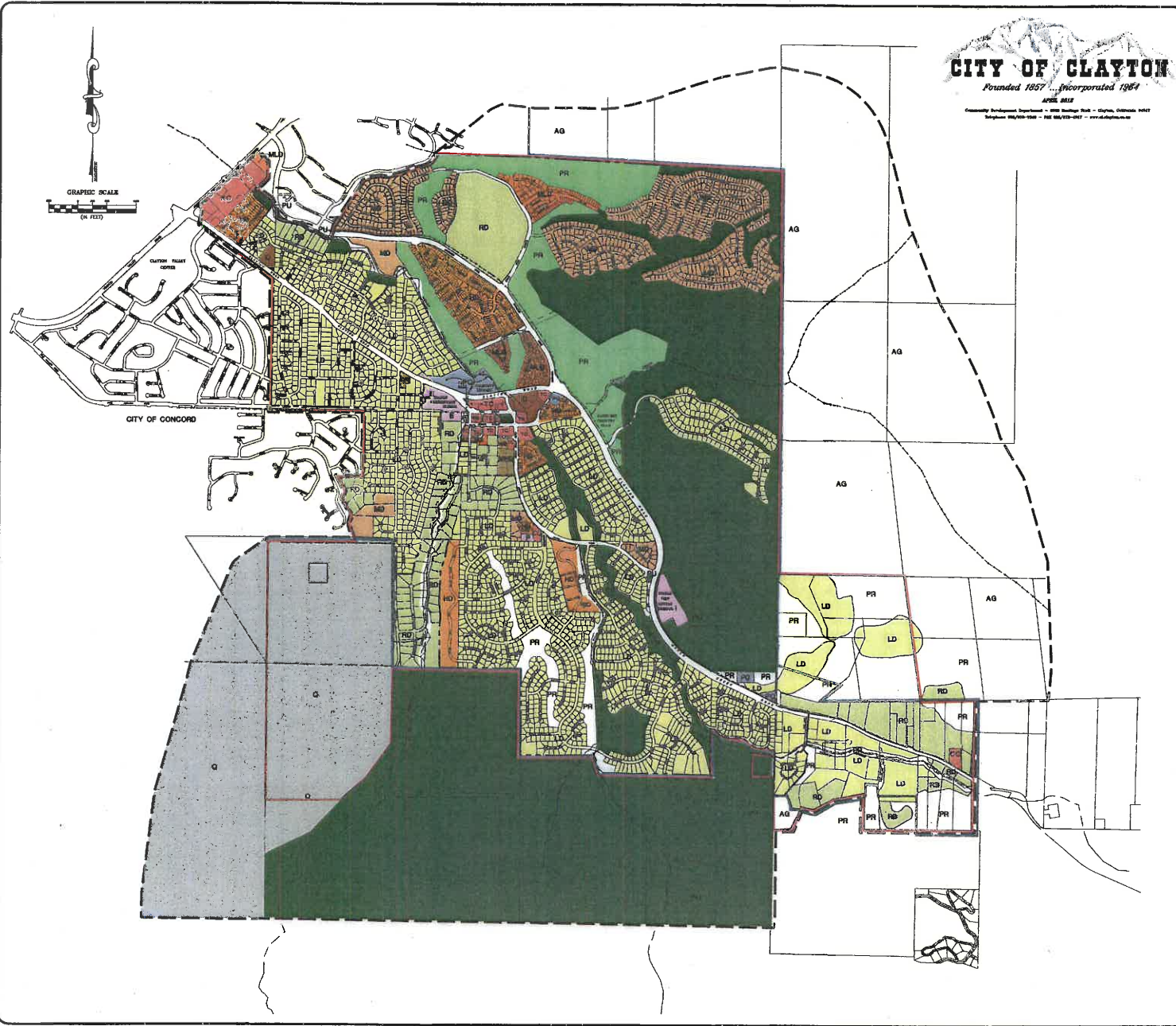
**Responsibility:** City Council, Planning Commission, Community Development Department

**Time Frame:** Ongoing, as residential development projects are proposed.

**Funding:** General Fund

C6

# ATTACHMENT D



**CITY OF CLAYTON**  
 Founded 1857...Incorporated 1984  
 APRIL 2012  
 Community Development Department • 8000 Redwing Drive • Clayton, California 94517  
 Telephone (925) 738-2200 • FAX (925) 738-2217 • www.ci.clayton.ca.us

## LEGEND

- |                             | RESIDENTIAL  | UNITS/GROSS ACRE |
|-----------------------------|--|------------------|
| RD                          | RURAL ESTATE   | (0 TO 1.0)       |
| LD                          | SINGLE FAMILY LOW DENSITY                              | (1.1 TO 3)       |
| MD                          | SINGLE FAMILY MEDIUM DENSITY                           | (3.1 TO 5)       |
| HD                          | SINGLE FAMILY HIGH DENSITY                             | (5.1 TO 7.5)     |
| MLD                         | MULTIFAMILY LOW DENSITY                                | (7.6 TO 10)      |
| MMD                         | MULTIFAMILY MEDIUM DENSITY                             | (10.1 TO 15)     |
| MHD                         | MULTIFAMILY HIGH DENSITY                               | (15.1 TO 20)     |
| ID                          | INSTITUTIONAL DENSITY                                  | (7.6 TO 20)      |
| <b>COMMERCIAL</b>           |  |                  |
| TC                          | TOWN CENTER  |                  |
| KC                          | KIRKER CORRIDOR  |                  |
| CC                          | CONVENIENCE COMMERCIAL                                 |                  |
| <b>COMMUNITY FACILITIES</b> |  |                  |
| CV                          | CULTURAL CENTER  |                  |
| PD                          | PUBLIC/QUASI-PUBLIC                                    |                  |
| I                           | INTERMEDIATE SCHOOL                                    |                  |
| E                           | ELEMENTARY SCHOOL                                      |                  |
| P                           | PRIVATE SCHOOL   |                  |
| <b>OPEN SPACE</b>           |  |                  |
| PR                          | PRIVATE OPEN SPACE                                     |                  |
| PS                          | PUBLIC PARK/OPEN SPACE/<br>OPEN SPACE AND RECREATIONAL |                  |
| AG                          | AGRICULTURE  |                  |
| Q                           | QUARRY   |                  |
| PS                          | PRIVATE OPEN SPACE (GOLF COURSE)                       |                  |
| --- TRAILS                  |  |                  |
| <b>BOUNDARIES</b>           |  |                  |
| ---                         | CITY LIMITS  |                  |
| ---                         | SPHERE OF INFLUENCE                                    |                  |
| ---                         | URBAN LIMIT LINE                                       |                  |
| ---                         | PLANNING AREA  |                  |

DATE	RESOLUTION NUMBER	AMENDMENT
7/17/85	22-85	ADOPTION OF CLAYTON 2000 GENERAL PLAN
5/6/87	21-87	KELLER RANCH
3/2/88	13-88	GREYSTONE ESTATES
4/17/90	25-90	OSKWOOD SUBDIVISION
6/15/93	43-93	DOUGLAS ROAD
2/21/95	08-95	MARSH CREEK CIRCLE
6/28/95	43-95	MARSH CREEK ROAD SPECIFIC PLAN
12/1/98	54-98	DABLO VILLAGE
7/18/00	49-2000	MARSH CREEK ROAD/CLAYTON ROAD
9/1/04	23-2004	DOWNTOWN PARK
7/19/05	03-05	CITY HALL / COMMUNITY LIBRARY
4/5/05	13-2005	ONK CREEK CANYON
12/21/04	83-2004	DABLO POINTE
2/6/07	06-2007	TOWN CENTER AND VICINITY
4/3/12	11-2012	OLD MARSH CREEK ROAD/CLAYTON ROAD

CITY OF CLAYTON COMMUNITY DEVELOPMENT  
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 PHONE (925) 738-2200 FAX (925) 738-2217  
 WWW.CI.CLAYTON.CA.US

DATE: 04/12/12 11:00 AM  
 DRAWN BY: J. HARRIS  
 CHECKED BY: J. HARRIS  
 APPROVED BY: J. HARRIS  
 SCALE: AS SHOWN  
 SHEET NO.: 1 OF 1