

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

**TUESDAY, March 5, 2019**

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:00 p.m. by Mayor Catalano in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Catalano, Vice Mayor Pierce and Councilmembers Diaz, Wan and Wolfe. Councilmembers absent: None. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Community Development Director Mindy Gentry, and City Clerk/HR Manager Janet Calderon.

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

3. **CONSENT CALENDAR**

**It was moved by Vice Mayor Pierce, seconded by Councilmember Wolfe, to approve the Consent Calendar as submitted with Item 3 (c) revised as benched. (Passed; 5-0 vote).**

- (a) Approved the minutes of the regular meeting of February 19, 2019.
- (b) Approved Financial Demands and Obligations of the City.
- (c) Adopted Resolution No. 06-2019 approving the City's 2018 Annual Progress Report regarding its California Housing and Community Development-certified Housing Element.

4. **RECOGNITIONS AND PRESENTATIONS**

- (a) Certificates of Recognition to public school students for exemplifying the "Do The Right Thing" character trait of "Self-Discipline" during the months of January and February 2019.

Mayor Catalano and Mt. Diablo Elementary School Vice Principal Joe Bruno presented certificates to Brayden Heller-Robbins and Sloan Heller-Robbins.

Mayor Catalano and Diablo View Middle School Principal Patti Bannister presented certificates to Corbin Clifton and Zoey Jones.

Mayor Catalano and Clayton Valley Charter High School Director of Administrative Services Bill Morones presented certificates to Natalie Aliano and Cade Carter.

- (b) Proclamation declaring March 2019 as "American Red Cross Month" in the city of Clayton.

Mayor Catalano read and presented the Proclamation to Alicia Nuchols, District Representative for Supervisor Diane Burgis.

- (c) Overview on the Administration of the Contra Costa Reentry Network by Contra Costa County Office of Reentry and Justice.  
(Lara DeLaney, Senior Deputy County Administrator and Director of Office of Reentry and Justice; Donte Blué, Contra Costa County Reentry Coordinator)

Lara DeLaney, Senior Deputy County Administrator and Director of Office of Reentry and Justice lead the presentation providing an overview of the Office of Reentry and Justice's establishment and its responsibilities under AB 109.

Donte Blué, Deputy Director, continued the presentation explaining the goal of reentry is reducing recidivism, and providing resources for community reentry, and harm reduction by creating an environment for that person to thrive. Mr. Blué noted when the populations in prisons increase so does the costs of prisons and corrections. California decided to slow the flow of people into prisons by allowing them to serve their time locally and by providing funding to those local communities to invest in community corrections. Mr. Blue advised the AB 109 Program targets the non-sex offenders, non-serious, non-violent, lower-level felonies for local jails rather than state prison. In Contra Costa County not many people were sent to prison; the character of the community was not transformed terribly by AB 109, and no one was released early from State prison back into county jail.

Ms. DeLaney explained funding is constitutionally protected by Prop 30; revenue is derived from portions of the state's sales tax and Vehicle License Fees. Contra Costa County receives approximately \$26 million and it is determined by Community Corrections Partnerships with approval by the Board of Supervisors on how the funds are spent. AB 109 allocations are \$13.4 million for Law Enforcement; \$5.06 million for Community Reentry Programs; \$3.8 million for Social Services; \$3.7 million for Court and Legal Process; and \$1.96 million for Special Programs.

Mr. Blué advised since AB 109 was passed in 2011, approximately 2,800 individuals have been under AB 109 supervision, noting Clayton has had about 10 – 15 individuals be reentered in the community through this program. Since 2011, the County Office of Reentry and Justice have been working on a service delivery model by helping service providers connect with the right population at the right time and be more accessible to the services provided.

Denise Zabkiewicz, Resource and Evaluation Manager provided data on the impact of reforms noting decreases in three year conviction rates for men, woman and young adults. In 2017, there was nearly a 10% drop in 1-year re-arrest and 17% drop in 1-year reconviction rates.

Councilmember Diaz asked for a couple of examples of someone who qualifies as an AB 109 individual. Mr. Blué responded someone could have been a convicted drug-user, having a certain number of drugs and charged with possession of sales; not a serious, violent or sexual crime. Another example is someone who had a property offense, not a serious, violent or sexual crime.

Councilmember Diaz inquired on the type of supervision received by the County probation department. Mr. Blué responded there are two types of supervision: County probation office with a dedicated AB 109 unit who supervises people who are in prison, and mandatory supervision who is someone newly convicted under the new law who serves a split sentence in county jail and mandatory supervision probation. Before the individual is released into custody they would have already met with a probation officer and have a treatment plan prior to being released back into the community.

Councilmember Wolfe noticed according to the PowerPoint charts the prison population started decreasing in 2006 and he wondered why. Ms. DeLaney responded there was a Supreme Court order to reduce the size of the prison population to 137% of capacity. Although some inmates were sent out-of-states there was still a capacity issue and health concerns regarding the inmates.

Vice Mayor Pierce asked if it were possible that AB 109 individuals may have plead down to significantly lesser offenses yet are included in this program. Ms. DeLaney responded if their last offense they were convicted on was one of the AB 109 criteria, even if in their prior experience they had a more serious offense, the AB 109 Program is based on the last offense they were convicted.

Councilmember Wan noted it appears the pilot program is reaching its expiration and asked if the program were going to continue. Ms. DeLaney responded the program has funding approved by the Contra Costa Board of Supervisors through FY 2020. AB 109 changes where the sentence is served, not the length of the sentence.

Councilmember Wan noted some criminal offenses he found that could fall under AB 109; for example, brandishing a firearm while in a vehicle, is that violent? Mr. Blué responded there are penal code statutes for example the non-sexual crimes falls under 290s required sex registration, there are also penal code sections for enhancements. If a crime is serious and when the crime is violent, it pulls from those lists to indicate it is a non-qualifying offense to AB 109. Their office has conducted some analysis to see what individuals are actually convicted of and eligible crime that does not necessarily mean people are convicted of that. People they would classify as violent based on their criminal history ends up being less than 5%. The whole idea behind AB 109 is to reduce subsequent commissions of crime and how to prevent something happening tomorrow.

Councilmember Wan asked if AB 109 or the County imposes any requirements on cities. Ms. DeLaney advised that she is unaware of any requirements to be made on the city level.

Councilmember Wan inquired if Shelter, Inc. is a group that would provide housing services to an incarcerated person. Ms. DeLaney advised Shelter, Inc. has been operating in Contra Costa County for more than forty years providing housing assistance, placement, transitional housing, and supportive housing and is one of the longest housing providers in the county.

Councilmember Wan inquired if there have been any AB 109 funds directed to Clayton. Ms. DeLaney advised there are has been no direct funding to Clayton as funding requests come from the County Police Chiefs Association directly to the community corrections partnership.

Mayor Catalano inquired about the 10-15 individuals that were released to Clayton; she assumed they are typically people who lived in Clayton prior to their conviction? Ms. DeLaney responded "yes," the goal is for them to reintegrate back into the community successfully that has an economic base that they can pursue the rest of their lives with secure housing and access to service they need to be productive members of the community.

Vice Mayor Pierce expressed concerns about group homes run by non-profit organizations and how locations are determined. Ms. DeLaney advised the County does not dictate where the housing needs to located and it should be provided in approximation of where their clients would go. Mr. Blué advised the County's role is to approve or not approve a selected location based on where a person could or could not be supported.

Vice Mayor Pierce noted the limited public transit services in Clayton, asking if the supervision by these nonprofits is a 24/7 operation and if that nonprofit is paid by a person who is housed in that facility. Ms. DeLaney responded from the funding received, allocation is made by the number of beds to be made available for the AB 109 community. Mr. Blué added there are different program models of housing individuals, there are rental subsidiary programs where a person might share a living space that may be subsidized when a person is getting stabilized; there is also help in getting their own place; the County highly leverages sober living environments connected to treatment. Ms. DeLaney added the County recently released its request for interest from providers to provide both housing and employment services and received twelve proposals; they do not know who the service providers will be for a three year contract period.

City Manager Napper inquired about the statistic on the Clayton addresses over the noted time period, with 2-3 currently in Clayton. Does the County know if that data is captured by Clayton proper because Clayton's zip code is actually geographically larger than the city limit. Ms. DeLaney thinks it is zip code determined; she would have to inquire with the probation office to confirm.

City Manager Napper indicated his understanding is the individuals that have been assisted through this program have largely been on an individualized basis not in a group housing situation, at least in the Clayton area. Ms. DeLaney confirmed there has not been any type of group housing in Clayton provided by this funding.

Councilmember Diaz thanked Ms. DeLaney and Mr. Blué and expressed his interest in they providing Clayton with one or two additional community outreach meetings in the future.

Mayor Catalano also thanked Ms. DeLaney and Mr. Blué for the presentation.

## **5. REPORTS**

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

Councilmember Wan indicated he met and spoke with constituents about the subject matter for this Council meeting.

Vice Mayor Pierce attended the Contra Costa Transportation Authority meeting where she was chosen to be the next Vice Chair, attended the League of California Cities East Bay Division meeting, the Metropolitan Transportation Commission meeting, and attended a women's transportation seminar.

Councilmember Wolfe completed his orientation with City staff, attended the Clayton Library Foundation meeting, the East Contra Costa Habitat Conservancy meeting, and the Clayton Business and Community Association general membership meeting.

Councilmember Diaz attended the Clayton Business and Community Association general membership meeting, was a judge at the Clayton Club's 19<sup>th</sup> Annual Chili Cook-off, and attended the Clayton Business and Community Association's 24<sup>th</sup> Annual Art and Wine committee meeting.

Mayor Catalano attended the East Contra Costa Habitat Conservancy governing board meeting, was a judge at the Clayton Club's 19<sup>th</sup> Annual Chili Cook-off, and attended the Clayton Business and Community Association's Art and Wine Committee meeting.

(e) Other –

Mayor Catalano invited forward Community Development Director Mindy Gentry and presented her with a plaque in appreciation of her valued service with the City of Clayton. Ms. Gentry is leaving Clayton employment after almost 4 years for a similar position in a nearby city.

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

Terri Denslow encouraged the City Council and residents to be respectful to one another although there are difficult and sensitive topics before us this evening. Although we may not agree with one another perspectives, accountability and compassion is needed. We are a strong vocal community having the same core values and have a responsibility to shape the generation behind us.

Ann Stanaway, 1553 Haviland Place, expressed her continued concerns with the City's lack of enforcement of public safety. Ms. Stanaway provided photos she has taken of vehicles in parking violation of fire lanes in her neighborhood. She wondered if the County would want to house people in our unsafe community. First responders are unable to access residents or businesses unless the fire lanes are clear.

Brian Buddell expressed his continued concern for the use of Round-Up in the City of Clayton, particularly regarding safety and liability. It is a known carcinogen. He has been informed by the end of this first quarter there will be approximately 12,000 personal injury lawsuits filed nationwide alleging harm from the use of Round-Up. He also expressed his concerns of Maintenance Supervisor Mr. Warburton's verbal report last meeting on how Round-Up is used in the City. It was a misrepresentation as it was indicated Round-Up was only being used in medians and where people do not walk, and he has pictures of City employees spraying Round-Up on the vacant lot downtown.

**7. PUBLIC HEARINGS – None.**

**8. ACTION ITEMS**

- (a) Council Members request to revisit certain provisions of the 2018-adopted City Ordinance No. 483 involving amendments to *Clayton Municipal Code*, Title 17 – Zoning, to restrict and regulate parolee homes in the following General Plan designations: Multifamily Low Density, Multifamily Medium Density, and Multifamily High Density, subject to a City conditional use permit.  
(Councilmember Diaz and Councilmember Wan)

Councilmember Diaz led the discussion believing the Parolee Housing Ordinance needed a presentation like the one they had this evening from the Office of Realignment and Justice. Councilmember Diaz wrote a letter to the previous mayor for the Council to consider three additional items in the Parolee Housing Ordinance, consisting of: 1) a formal community outreach program; 2) inclusion of private parks; and 3) expansion of

the 1,000' buffer zone. Councilmember Diaz noted he is unaware if the Coyote Circle homeowners association had considered changing its private park to a public park so it could be counted as a sensitive use site.

Councilmember Wan wondered if the City were to take ownership of that private park would the City have to compensate the homeowners association? Rather than the City take ownership of the park there may be an option to designate specific areas as sensitive. Councilmember Wan inquired about the alcohol license held by the Oakhurst Country Club, expressing his viewpoint its on- and off-site premises alcohol sales constitute a sensitive use site under the Ordinance. If a determination is established and Oakhurst triggers the buffer distance, a discussion on the impact of that assessment would need to occur. He also questioned the buffer zones as he did not feel there was sufficient time spent in cataloging items that trigger sensitive uses; for example, a data base of all the daycares in the City or if a cross reference was made with State-run facilities. He concluded by seeking his City councilmembers input on why only multifamily units were designated.

Mayor Catalano asked staff to clarify the difference between a principally permitted use and conditional use permit. Ms. Gentry responded a use principally permitted use or "by right" use requires no formal process, including no notification to the City of establishment of this type of use including any type of application, unless it is a commercial business which would require a business license be issued. A Conditional Use Permit requires an application submitted to the City and is a discretionary process with review by the Planning Commission.

Mayor Catalano also inquired on how many land use applications for this type of use have been received since this Ordinance was adopted. Ms. Gentry advised there have been no applications received or any interest expressed to date.

Mayor Catalano opened the matter for public comment.

Colleen Shipp, 3603 Coyote Circle, asked the City Council to reconsider the Parolee Housing Ordinance as she is against group parolee housing. She expressed concerns with Oakhurst Country Club backing up to homes in her neighborhood as she has personally experienced the ability to purchase alcoholic beverages while she is not a member. Ms. Shipp also expressed concerns for the private park located on Coyote Circle as neighborhood children and children not from the neighborhood utilize this park. She decided to look up the definition of discrimination, reading ... "treatment or consideration of or making a distinction in favor of or against a person or thing based on the group, class or category to which the person or things belong rather than on individual merit." The neighborhoods of Shell Lane and Keller Ridge are being discriminated against because its homes cost less than other homes in Clayton. As representatives of the City of Clayton she asked the City Council to please show the same level of respect and protection for all residents of Clayton and either make this a citywide ordinance or ban parolee housing in all of Clayton.

Brian Buddell, advised it was learned tonight there is no mandate for the City to take action on parolee housing, no indication parolees are waiting to get into Clayton as of October 1, 2018, and no reason for the rush to push this ordinance through other than a self-created rush without all the facts to make an informed decision. This ordinance should not have been passed with haste, lack of research, and without the input from people who actually know what they are talking about.

John Kranci, Coyote Circle, requested repealing Ordinance 483 as it was rushed into existence at behest the City Council and City staff at that time. As he heard this evening the state and county are not pushing this regulation.

Allison Snow, Keller Ridge, requested information regarding CASA, to House the Bay Area. Ms. Snow is interested in the items that Vice Mayor Pierce felt was important to Clayton, and what items she agreed with and not.

Marci Longchamps, Coyote Circle, thanked Councilmember Wan for his commitment and dedication to the people of Clayton as he took time to come out to their park on Coyote Lane, in the rain, to speak with the residents regarding parolee housing. Ms. Longchamps believes in forgiveness and second chances; she is not interested nor has the intent or desire to build walls around Clayton to keep certain people out. Her issue is the park on Coyote Circle; any park should be safe and protected from convicted felons. She also wanted to know who dictates multi-density housing: the State, the County or the City? It seems only fair that all neighborhoods in Clayton be held to the same mandate as Coyote Circle and Shell Lane. Ms. Longchamps requested a complete and thorough analysis be done protecting the safety and wellbeing of all children and residents of Clayton.

Molly Meksavan, Coyote Circle, located to Clayton in 2016 as a safe environment to raise her future children. She really enjoys walking around her neighborhood and trails where she sees children playing. She is against parolee housing and the current ordinance unfairly discriminates against two neighborhoods; she requested the City Council review the current ordinance.

Richard Willis, Arrowhead Terrace, noted AB 109 has unintended consequences. Based on an incident in Los Angeles, Mr. Willis does not feel the State is telling us the whole truth about AB 109.

Joanne Lederman, Keller Ridge, thanked Councilmembers Diaz and Wan for reconsideration of this ordinance. She is opposed to the ordinance as it is currently written. Ms. Lederman supports realignment, restorative justice and second chances. She is not in favor of targeting just two neighborhoods, and considers this ordinance should be shared as a community. She expressed concerns about the broad definitions of parolee and parolee homes written in sections 17.04.155 and 17.04.156 in the *Municipal Code*. She understands the ordinance addresses all parolees, not just AB 109; she desired clarification of the definitions.

Ann Stanaway, 1553 Haviland Place, congratulated all the speakers voicing their concerns about AB 109 and also suggested repeal of the current Ordinance. This City is known for its lack of enthusiasm to enforce its public safety ordinances. She wonders how Clayton will deal with parolee housing and everything that comes along with it. She requested that staff ensure the definition work for the City and make sure the citizens of Clayton are safe.

Jim Gamble inquired if a parolee housing application is presented meeting all the requirements, how much discretion will the Planning Commission have to vote against it?

Shawn O'Keefe, a HOA Board Member, indicated they have discussed the private park about making it public. He wondered what Clayton has to offer parolees as there are not a lot of jobs and lack of transportation or services to offer them. He is also concerned with the actual felony charges as they are almost always plead down.

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

Councilmember Diaz reiterated his request to consider expanding the buffer zone and inclusion of private parks for staff and legal review.

Ms. Gentry advised staff can look at the requests made by Councilmember Diaz noting specific criteria in the ordinance is a snapshot of time because sensitive uses can

change over time; for example, a daycare use that is in business at one time may not be in business at another time. She also indicated another review of private parks can be done.

Councilmember Wan inquired if the Council would be interested in adding additional requirements to the Conditional Use Permit by increasing the certification or expertise of facility staff, and requiring the provider to provide a higher insurance bond. He was also interested in knowing the level of discretion the Planning Commission and City Council had in determining action on an application. When he read through the record on this item, back in May 2018 the Planning Commission reviewed this item with a 300' buffer zone and did not feel they had enough information; the City Council first heard this issue in July 2018 with a 500' buffer zone, which later changed to 1,000' buffer zone. Councilmember Wan noted given the magnitude of the buffer size changes in that short period of time, he is not clear on the level of resources used to mitigate this issue and would like to take the necessary time to perform due diligence in this matter. Based on the presentation this evening there are no requirements on cities from the State or the County to address this matter. He also wants to explore the potential issue at Oakhurst Country Club and would like to get to the point that parolee housing is essentially banned in Clayton.

Mayor Catalano provided the discretion of the Planning Commission and City Council by reading references in the *Municipal Code* Sections 17.60 – Conditional Use Permit Review and 17.60.050 – Conditionals of Approval. She explained when a radius was drawn and extended, there comes a point where there are not areas left in the city thereby creating a de-facto ban.

Ms. Gentry explained the process undertaken for the radius; there was identification of each sensitive use site, then a radius drawn around sites at varying distances from 300', 500', 750', and then to 1,000' which left two areas. When there were no longer two locations within the City is when it entered into a legally questionable area if it were still legally defensible.

Mayor Catalano indicated when the City Council considered the buffer zones it found the 1,000' was the maximum radius still allowing a couple of areas without creating a de-facto ban.

Councilmember Diaz commented if the City Council decides to review this item again there will likely be a new set of eyes reviewing this item.

City Manager Napper noted Interim Community Development Director Mr. Woltering has the qualifications and credentials to review this item, however we may also have to use additional outside resources as well. Mr. Napper noted he also went out to view the private park on Coyote Circle; by adding additional variables such as private parks or the Oakhurst Country Club as sensitive sites, it results in a de-facto ban. As a professional he will not recommend anything that may be illegal, however if the City Council decides to have a policy to ban parolee housing entirely, that is a political decision of the City Council as trustees and stewards of the community. He is unsure of what exactly the permit/ABC license held by Oakhurst Country Club allows for; perhaps there needs to be enforcement by ABC regarding its liquor license. Staff determined Oakhurst Country Club is a business but is not generally available to the public. During the Art and Wine Festival someone wanted to allow alcohol to be consumed outdoors; that consumption that did occur outside its building had to be screened off; if that requirement is true for Oakhurst Country Club, a spilt rail fence would not be adequate. If the ordinance is bad law, it can be changed or repealed.

What he heard from the County officials tonight is the more likely portal parolee housing will come into any community is through sober living environments; that is State-licensed

group housing that in the bill and in the law has been deemed deregulated from local control. When asked, Ms. Lara DeLaney confirmed Mr. Napper's summary of the pathway the County Program would pursue for AB 109, namely state-licensed facilities exempt from local control.

City Manager Napper added through this ordinance the City Municipal Code now states it excludes probation or correctional facilities except under certain regulations. The prior Code had an exposure gap that resulted in all parolees, whether from AB 109 or other paths, could land anywhere in a residential zone without local control. During the prior two year time period he noted the City had a moratorium in place, allowed by State law, that parolee group housing by whatever venue could not come into Clayton. Mr. Napper wondered why, under that restriction, would the City have rushed to end its moratorium any earlier and allow parolee group housing to apply?

Mayor Catalano clarified that a sober living group housing type is State-licensed activity and as a City we are unable to regulate it; additionally, in regards to non AB 109 sex offenders there are no restrictions of where they can move, our City is unable to govern that occurrence in any way. Registered sex offenders are under a state registry; if they move into our city they are required to register with local law enforcement within 5 days, but there is no notice or local permit process. Mayor Catalano clarified AB 109 offenders are serving a portion of their sentence within community-based programs; once done with their sentence they are no longer subject to that regulation.

Councilmember Diaz noted the 94517 zip code expands beyond Clayton city limits with a large area that is county related out near Morgan Territory Road. City Manager Napper added the area out near Morgan Territory Road does not have access to public transportation options, although there are areas that do nearer town with the same zip code that are not part of Clayton proper.

Vice Mayor Pierce commented there are several other pieces of legislation of various types of group sober living environments, supportive service homes to be located anywhere without any notification to the City or required local permitting. For example, daycares and senior care facilities with up to six children or seniors are not required by the State to notify the City. Although the City is not obligated under AB 109 from the County's perspective, the potential for legal challenge is by a non-profit group housing provider.

City Attorney Subramanian commented "yes," they would likely work with an organization such as the ACLU for the litigation. Vice Mayor Pierce continued her concern regarding exposure to a lawsuit. She recalled the City's Housing Element and the Municipal Code multifamily residential have a provision for parolee homes only with a conditional use permit. Can that be vetted to all residential zoning criteria? Ms. Gentry responded one of the earlier staff options provided to the City Council for consideration was to have this ordinance apply to all residential districts of Clayton.

Vice Mayor Pierce confirmed an alternative is to take away the buffer zones and make this apply citywide without regard to sensitive uses such as schools.

Councilmember Wolfe commented he thinks it is best to have a process in place but did not know what buffer distances would be best.

Councilmember Wan requested clarification on why the two areas were chosen as areas where parolee homes could locate. Ms. Gentry advised when staff was evaluating locations for possible parolee homes, multifamily areas typically have a higher level of impacts associated with it rather than single family homes. Staff essentially recommended it be located in multiple family with buffer zones for sensitive uses in place. It originally started with six areas in the City's General Plan as multiple family

designations but due to the subsequent application of sensitive use areas it precluded to only two.

Councilmember Wolfe asked if it is more than the AB 109 people that will be coming to Clayton. Ms. Gentry responded the ordinance addresses larger populations.

Councilmember Wolfe inquired if these populations are only from Clayton? Ms. Gentry responded "no."

Councilmember Wolfe expressed he is not in favor of a de-facto ban at this point. City Attorney Subramanian commented she has serious concerns about a de-facto ban; that is why she is not recommending a de-facto ban, and what was recommended allowed for two potential homes.

Councilmember Wolfe suggested leave the ordinance in place while more research is conducted. To date there has been no official HOA inquiry if the City would like to take over the private park.

Vice Mayor Pierce added the reason why the moratorium was in place for two years is because of an inquiry the City received from a non-profit to establish a parolee home in Clayton without any form of process. At the time, the City did not have anything in place. While the City waited for the County to get its AB 109 Reentry Plan together, the moratorium was due to expire and the Council was very concerned. The Council felt the best way to protect the City was to find a way to regulate and at least require a conditional use permit process that any applicant would have to go through, such as notifying the City of these intended group home locations, the public having an opportunity to provide its feedback during a public hearing and know what was potentially happening. Given the Planning Commission has a fair amount of discretion on the kinds of conditions it can put on a Conditional Use Permit the City Council thought that process provides a better protection than none. That was the reason the City Council acted expeditiously to get it in place before the moratorium expired. There was a non-profit group housing request about our process at the very beginning; she believes that would have been followed up had a moratorium not been put in place. As it turned out that applicant went to Antioch to establish its group home. She is not convinced that Clayton will ever become an appealing place for this type of use as there are not sufficient public transportation options.

Councilmember Wolfe inquired if a parolee has family in Clayton can they come to Clayton no matter this ordinance? Ms. Gentry responded "yes," they could come back to Clayton to family as that option does not fall under this ordinance; as defined a group home setting requires two or more parolees in a structured environment.

Councilmember Wolfe inquired on neighboring cities that do not have an ordinance or process in place; wouldn't parolees be better served in those areas? Ms. Gentry responded other jurisdiction handle parolee homes differently; for example, Pittsburg classifies parolee homes as "group housing" with no buffer zones to sensitive uses.

Mayor Catalano provided a history of the process: the Planning Commission and City Council took for consideration of parolee homes in Clayton about five months including multiple hearings. In prior meetings neighboring cities parolee home policies were discussed, with Clayton becoming the most restrictive. She is not in favor of a de-facto ban, it would be irresponsible. She noted if the City Council wants to change the ordinance it seems the only option is to make it more permissive by allowing it in other areas and not regulate it.

Councilmember Wan expressed he does not have an interest in making parolee housing more permissive; he is for a ban. He wants to act in the best interest of the citizens of Clayton now, and if the State deems it within their level of judgement then they should

change those laws and we should continue to act in the best interest of Clayton citizens. Why would we hurt ourselves now to avoid a potential that may never come to pass? Councilmember Wan would still like to explore a cross reference of the State's list of its licensed group facilities in Clayton; it is important to get that information. He expressed we are not talking about individual parolees, rather regulating a business in our residential district. There is no State law that regulates business for the health, safety and welfare of the community. Parolee homes may cause crime, congestion and blight, substance abuse, and the extent of this danger can vary widely city by city. This information was in the case of *City of Riverside vs. Inland Empire*; it wasn't parolee homes but the same rationale we can apply.

Mayor Catalano advised last time there was relevant legal examples on parolee housing, settling the case, more permissive and approximately \$500,000 in attorney's fees. In order to move forward she does not have anything against staff coming back with additional information if there are questions for staff to be answered.

Councilmember Wolfe commented he is not in favor of a ban and is interested in maintaining a legal defensible ordinance that is best for Clayton. He doesn't have any questions to add for staff.

City Manager Napper remarked he is a little troubled in terms of staff doing more work as they have tried to answer some of the questions already. The more one looks to restrict parolee homes further in location, the closer to a de-facto ban results. He expressed concern with the expectation that if this item is given back to staff that it will miraculously uncover or provide information that is not already known at this time. If the City Council desires to have a de-facto ban or outright ban, or to allow any group housing in all residential zones citywide, he considers those are the clear choices rather than try to contort more variables into the Ordinance that results in a de facto ban. A de facto ban is not clever; the City record on this matter will work against the City in any challenge to its de facto ban. By pushing this matter back to staff it will not provide any clearer idea than what is already in front of the City Council. Staff can try; if the private park is allowed as a sensitive site, the Keller Ridge area would be eliminated leaving only one potential area for parolee housing, which steps closer to a de-facto ban. If a de-facto ban is desired, staff can return with the findings that can assist the City Council in achieving its objective.

Vice Mayor Pierce noted the Shell Circle area has a common HOA which includes a swimming pool and private recreation area; if you apply it to one area, you have to apply the sensitive use definition to both. City Manager Napper added he received an email today noting there are children on the trails, on the sidewalks ... they are everywhere. If the idea is to protect children wherever they may be, you have a de facto ban; everything by definition could be contorted into a sensitive area.

Vice Mayor Pierce commented she does not feel that is practical and a ban is not responsible to our citizens, putting our treasury at risk. There are groups like ACLU that they would relish coming after Clayton; she does not want to put our City in that perspective. In respect to what Council would want staff to come back with, she thinks the only thing to respond to some of the public is to go back to the point of what it would take to put in a conditional use permit requirement for any area of the entire town, and she does not know if we can actually do that and how effective that would be. There are at least 2 other statutes that would be an escape clause for these types of homes to go through. This matter may be all for not.

Councilmember Diaz indicated he would like to keep it simple: take a look at the private park issue and the buffer zones around sensitive uses to put the public at ease, with legal input.

Councilmember Wan inquired about the ACLU interest; when did that happen? Vice Mayor Pierce advised there was a published report; shortly after the City started the discussion a letter was issued. Mr. Napper added it was not ACLU, rather a group in San Francisco, "Yes in My Backyard" (YIMBYs). Ms. Gentry further advised that group requested a copy of our ordinance which was provided to them; another letter to the City was received by the California Renters Legal Act, a similar type of advocacy group prior to one of the previous hearings. That letter indicated this ordinance is a blatant outright attempt to ban parolees from the city of Clayton.

Councilmember Wan remarked he would question what the ultimate risk is, if quantified can it be calculated? He would like to get an assessment of whether Oakhurst qualifies as a sensitive use site under its business license of on or off premise alcohol sales.

**It was moved by Councilmember Diaz, seconded by Councilmember Wan, to direct staff to continue research on expanding the 1,000' buffer zone and inclusion of private parks and come back with a recommendation based on their findings. Motion failed (2-3 vote; Catalano, Pierce, and Wolfe, no).**

**It was moved by Councilmember Wan to have staff look into the ABC permit regulations for Oakhurst Country Club regarding on and off site sales of alcohol. Motion died for lack of a second.**

- (b) Discussion and City Council policy direction concerning the content and parameters of an Accessory Dwelling Units (ADUs) Ordinance.  
(Community Development Director)

City Manager Napper noted the time is 10:385 p.m. and this item has some complexities to it; while we would love to take advantage of Mindy Gentry and her time on this before she leaves City employment, there is nothing compelling that has to be discussed at this City Council meeting. He asked if it is the City Council desire to discuss this at a future meeting, the public comment should be opened to allow anyone here this evening who wished to speak regarding this matter.

Mayor Catalano opened the item to public comment; no comments were received.

**It was moved by Councilmember Wolfe, seconded by Vice Mayor Pierce, to bring this item back to a future regular City Council meeting. (Passed; 5-0 vote).**

- (c) Adopted Resolution 07-2019 certifying findings and authorizing the 180-day wait period exception for the temporary employment of CalPERS retired annuitant David Woltering as Interim Community Development Director.  
(City Manager)

City Manager Napper advised with Ms. Gentry's announcement of leaving employment with the City he had made contact with a former community development director who recently retired from the City of San Bruno. Because the individual in mind has not been in retirement longer than the CalPERS-required wait period of 180 days before performing interim work in another CalPERS public agency, there are exceptions allowed by CalPERS that an agency can employ a retired CalPERS annuitant who has not been retired for more than 180-days under special circumstances there be a finding

by the interested legislative body the retired annuitant retention is necessary to fill the vacant position. That finding has been incorporated into the recommended Resolution as this City has only one full time professional planner on staff and is need of filling the vacated position on an interim basis while the recruitment takes place. The City's circumstance qualifies for the allowance under CalPERS regulations.

Councilmember Wan inquired if the annuitant would be eligible for CalPERS under this Resolution? Mr. Napper responded this annuitant is not eligible for CalPERS benefits as he is already receiving a pension from CalPERS. The employment regulations of a retired annuitant only allow the public agency to pay an hourly compensation rate and no other form of compensation, with the exception of a business travel expenses.

**It was moved by Vice Mayor Pierce, seconded by Mayor Catalano, to adopt Resolution No. 07-2019 certifying findings and authorizing the 180-day wait period exception for the interim employment of CalPERS retired annuitant David Woltering as interim Community Development Director (G.C. sections 7522.56 & 21221(h)). (Passed; 5-0 vote).**

**9. COUNCIL ITEMS**

Councilmember Wan requested as an agenda item to take a position on the CASA Compact, endorsed by MTC and ABAG, whether the City supports or opposes CASA Compact in its current form.

Mayor Catalano noted there have been some discussions about having some joint presentations on the CASA Compact with other cities. Vice Mayor Pierce advised MTC and ABAG are in the process of setting up some extra presentations, noting at the upcoming Contra Costa County Mayors' Conference the business meeting includes a presentation of the CASA Compact and she encouraged Councilmember Wan to attend.

Councilmember Wan clarified he was interested in having a public meeting discussion on whether the City of Clayton supports or opposes the CASA Compact.

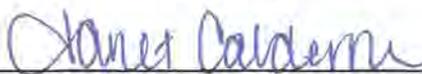
**10. CLOSED SESSION – None.**

**11. ADJOURNMENT– on call by Mayor Catalano, the City Council adjourned its meeting at 10:42 p.m.**

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

**# # # # #**

Respectfully submitted,

  
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Janet Calderon, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL



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Tuija Catalano, Mayor

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