

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

**TUESDAY, April 2, 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, Assistant City Attorney Heather Lee, Interim Community Development Director David Woltering, and City Clerk/HR Manager Janet Calderon.

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

3. **CONSENT CALENDAR**

Mayor Catalano advised Item 3(a) had proposed revisions requested by Councilmember Wan.

Vice Mayor Pierce understands this is a suggestion for verbatim transcription of comments made by a member of the public, she is unsure if this is something the City wants to start doing. She honestly thinks a summary of the comments in a simple sentence would be advisable. The city is currently using Live Stream allowing the public ability to look at the video at any time and hear exactly what someone has said and tone of voice. She suggested summary minutes adding a time stamp to assist the public in finding the part of the meeting they may want to refer back to. She thinks we are asking staff at this point to start transcribing a meeting, she does not feel this is a wise use of our time and resources. She suggested staying with the existing summary minutes.

Councilmember Wan disagrees when he read through the minutes, he didn't think it captured the substance of the statements that were made in this case the specific criticism that was leveled in the comments along with some of the questions he had were not captured, he doesn't think it reflects the sentiment that was offered. There was an extensive discussion in the previous meeting and when the comments were made they characterized our discussion about changes of our existing ordinance like Jim Crow laws and are if we were enacting poll taxes and conducting literacy tests. He thinks that sentiment needs to be reflected because when you read through the minutes, most people will read the minutes rather than watch the videos. It does more accurately capture what was said.

Councilmember Diaz agreed with Vice Mayor Pierce in many of the nonprofit and for profit boards that he has served, they never went to the detail it was a summary and to the point of what the essence was and not a verbatim.

Councilmember Wan agrees that is what this is, his suggestion is not a verbatim, and it would be several more paragraphs. When he wrote this suggestion, he did it from memory, and knows when he sent the suggested edits, our City Manager was going to validate on whether or not he accurately captured the substance or ask that it be done. He thinks if he misstated anything, but really when we are talking about the nature of the

comments that really was the main substance, not verbatim, rather a summary of what was said.

Councilmember Wolfe asked staff and City Attorney on what is incumbent upon us to do? Is that verbatim? There are a lot of things he said in the last City Council meeting that was not included in the minutes, it is included in summary, he had an exchange with Mr. Grimmond that was not in the minutes, he does not object to that. What he is worried about we are creating busy work when the busy work is already out there on video tape and can be seen from the livestream. He disagrees that people are reading the agenda and thinks that they prefer to watch the livestream. He feels that we are creating more busy work, in that if you read the statement verbatim it is a rather confusing statement, like reading an email you don't the know the actual reflection is, what the tone is, he tends to lean toward wanting to take a look at the video to find out the intent, how was it said, the reflection, rather than getting a transcribed copy on the agenda.

City Attorney Heather Lee advised there is no obligation for the City to take verbatim minutes; this would be something within the Councils discretion to decide as a body.

**It was moved by Vice Mayor Pierce, seconded by Councilmember Wolfe, to approve the Consent Calendar as submitted. (Passed 4-1 vote; Wan, opposed).**

- (a) Approved the minutes of the City Council's regular meeting of March 19, 2019.
- (b) Approved the Financial Demands and Obligations of the City.
- (c) Adopted Resolution No. 10-2019 awarding contract to Axon Enterprise Incorporated in the amount of \$89,223.13 to replace the Clayton Police Department's existing but antiquated patrol vehicles' in-car camera system.

#### **4. RECOGNITIONS AND PRESENTATIONS**

- (a) Presentation of its Annual Report for 2018 by Jeanne Boyd, President of the Clayton Community Library Foundation (CCLF).

Jeanne Boyd, President of the Clayton Library Foundation, presented the 2018 Annual Report of the Clayton Community Library Foundation highlighting: over 5,000 hours of in-library service hours provided by volunteers for daily needs and special events, valued at \$145,450.00; Boy Scout Troop 444 assistance with physical tasks; Clayton Valley Garden Club maintenance of flower boxes and garden areas; the twenty-third Birthday Celebration of the Clayton Community Library; Clayton Community Library Foundation generated income of \$37,000.00 from a variety of sources in 2018; the Foundation provided a \$2,000.00 donation to the City to assist in funding the extra Sunday operation hours of the Library paid by the City. Ms. Boyd also informed the community the Creekside Arts Fest began in 2004 by Arlene Kikkawa Nielsen, Volunteer Coordinator, noting this event takes a lot of work and effort and it has been decided not to continue with this event in the future.

Members of the City Council expressed their appreciation for the wonderful works by the Clayton Community Library Foundation supporting the operation and existence of the library.

- (b) Proclamation declaring the week of April 7 - 13, 2019 as "Clayton Community Library Volunteers Recognition Week," and recognition of Clayton's "Library Volunteers of the Year for 2019."

Mayor Catalano read the Proclamation declaring the week of April 7 – 13, 2019 as "Clayton Community Library Volunteer Recognition Week" and presented it to Jeanne Boyd, Clayton Library Foundation President, who then thanked the City Council, community and volunteers for their continued support.

Mayor Catalano presented Certificates of Recognition to "Library Volunteers of the Year 2019" Joan Carolan, Megan Day, Jill Day and Hope Koonin (not present), honoring their many hours of service to the Clayton Community Library.

- (c) Proclamation declaring the week of April 7 - 13, 2019 as "Clayton Community Library Week."

Mayor Catalano read the Proclamation declaring the week of April 7 – 13, 2019 as "Clayton Community Library Week" and presented it to Jeanne Boyd, Clayton Library Foundation President and Karen Hansen-Smith, Senior Library Community Library Manager.

## 5. REPORTS

- (a) Planning Commission – No meeting held.
- (b) Trails and Landscaping Committee – No meeting held.
- (c) City Manager/Staff

Mr. Napper introduced Heather Lee, Counsel from Best Best & Krieger, who is in attendance this evening for City Attorney Mala Subramanian. He also introduced Interim Community Development Director David Woltering providing a brief history of Mr. Woltering's experience.

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

Councilmember Diaz attended the Contra Costa County Fire Department Farewell to Chief Jeff Carman and swearing in of the District's 12<sup>th</sup> Fire Chief Lewis Broschard, and the League of California Cities Environmental Quality Policy Committee meeting.

Councilmember Wolfe attended the Clayton Business and Community Association's Oktoberfest committee meeting where he was nominated to serve as co-chair for this year's event.

Vice Mayor Pierce attended the Soroptimist Diablo Vista Chapter Annual Women of Distinction Luncheon where local resident Carin Kaplan received an award, Contra Costa Transportation Authority Committee meeting, and three Association of Bay Area Governments joint meeting of the Legislation Committee where she was nominated Chair of the Regional Legislative Task Force, and the Horizon Plan Bay Area 2050 event.

Councilmember Wan spoke with Mt. Diablo Elementary School Principal Kissinger regarding the recent incident of the student being hit by a vehicle.

Mayor Catalano attended the League of California Cities Transportation, Communication, and Public Works Policy Committee meeting, and the Clayton Business and Community Association Art and Wine Committee meeting. Mayor Catalano also met with sub-committee member Councilmember Wolfe in expanding the "Do The Right Thing" program started by former Councilmember Hank Stratford to include adults by proposing a pilot program in 2019 "Making a Difference in Our Community". The committee will be seeking help from the community for nominations of outstanding teacher, mentor or coach; not required to be a Clayton resident. She advised nominations can be emailed to [Claytonmakingadifference@gmail.com](mailto:Claytonmakingadifference@gmail.com).

Mr. Napper requested the committee come back to the City Council with written guidelines for the program for approval.

Mayor Catalano advised the committee will have guidelines prepared for the next City Council meeting.

- (e) Other – None.

## 6. PUBLIC COMMENT ON NON - AGENDA ITEMS

Ann Stanaway, 1553 Haviland Place, advised she received an email from Mayor Catalano containing incorrect information on March 19 in response to concerns she had raised about parking in designated fire line on Haviland Court. She demanded to know where Mayor Catalano received the information for her position that Haviland Court is not a fire lane. California mandates clear fire access, fire apparatus access roads aka fire lanes to every "building structure or portion" still mandated in California fire code section 503.1.1. Additionally, she quoted from the City of Claytons own records "because of the narrow width Westwood streets are fire lanes and parking should be prohibited which it has been for some time" furthermore, California Fire Code Section 503.4 states "fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles" the matter is settled the City must enforce California Fire Codes as adopted no discretion is accorded She is very concerned that Mayor Catalano and others in City Hall do not view public safety with the appropriate forethought. See the big picture the safety of Westwood affects the lives of 1.2 million people in Contra Costa County by not enforcing parking restrictions which are in place to ensure the fire vehicles can completely access our neighborhoods in the event of an emergency. She cautioned to not to try and deflect these serious public safety concerns by attacking her creditably and place the focus on public safety and not on discouraging her reputation.

Chris Chreston, 1212 Mitchell Canyon Road, advised he resides near the location of the accident that recently occurred at Mt. Diablo Elementary School, approximately a month before he posted something on Nextdoor regarding people speeding down the street, which a lot of people agreed that there is a major traffic issue in that area. He and his wife thought about solutions to the speeding problem including speed bumps, additional stop signs, and additional police patrolling including ticket issuance before thinking some traffic relief could occur by not allowing a right hand turn from Mitchell Canyon to Pine Hollow during designated time frames such as morning and evening commute times, likewise if you are on Pine Hollow and restricting left turns on Mitchell Canyon Road, during afternoon commute times. They feel it wouldn't shut down Quarry traffic; it would stop the commuters from using their neighborhood as a cut through to avoid Clayton Road.

Terri Denslow wanted to clarify at the last City Council meeting she read something she is very passionate about. She heard Councilmember Wan and others say they were not sure of the context, she wanted to make that very clear, she is an advocate of civil rights and has seen firsthand the long term impact of some of the decisions in the past had on communities in Louisiana and Mississippi while living in those areas for four years have changed her life for forever changing her perspective of things like inclusion. The comments she made in regard to the Jim Crow laws were simply a question about whether we were finding ways to exclude people and if we were how were we doing that in a different way than what was done in the past. She said that to challenge our thinking not necessarily to call anybody out. Ms. Denslow put out a post on Nextdoor to ask if there were interest from citizens coming together to talk about solutions for the neighborhoods other than Regency Drive and how they are going to be impacted once the parking permit program comes into place. Since her post, she has received a number of responses, on Nextdoor, by text message and angry Nextdoor IM's. She has also had six different residents send her emails stating they do not feel they can speak out because they are concerned of harassment. They have shared emails with her and text messages of other neighbors harassing them for having a difference of opinion. The whole intention was to find a constructive solution and not intended to take away the parking permits. When she arrived today to hear that Councilmember Wan and Diaz are talking providing more detail than in her own comments it makes her concerned for the rest of the Clayton citizens that maybe the ones that have been emailing me about being scared in having a voice have a real issue.

## 7. PUBLIC HEARINGS

- (a) Public Hearing to consider the Introduction and First Reading of a proposed City-initiated Ordinance No. 485 amending Clayton Municipal Code Section 15.08.040 (G) regulating temporary noncommercial signs on private real properties.  
(Community Development Director)

Interim Community Development Director David Woltering provided background on this item noting on February 5, the City Council directed staff to provide formal consideration an amendment to the City's Municipal Code limiting the per sign size to sixteen square feet, and no aggregate. This matter was brought to the Planning Commission meeting of March 12, where the Planning Commission wanted to balance the fundamental rights and interests of assuring freedom of speech guarantee under the First Amendment of the Constitution of the United States. The Planning Commission understood the maximum sign limit size with a 42 inch separation between individual signs; however they are still concerned about potential sign blight. The Planning Commission was unable to agree on the aggregate and adopted a Resolution of "no recommendation". Mr. Woltering further noted the *Reed vs. Town of Gilbert* case does indicate jurisdictions can control aspects of temporary noncommercial signs that do not affect the message; noting the proposed ordinance establishes only a maximum individual sign size to sixteen square feet with no limit on the number, location, duration of display, or aggregate signage area of temporary noncommercial signs on private property. Mr. Woltering concluded his staff report anticipating the enforcement of the proposed amendment will be addressed as part of the City's regular Code Enforcement efforts and not require additional staff resources.

Councilmember Wolfe expressed his confusion because at the last meeting this item was discussed in length recalling the City Attorney required an aggregate size.

City Manager Napper his recollection is the City Attorney was comfortable at the last meeting with an aggregate size of eighty square feet, and it was the City Council who

decided after significant discussion that not to have an aggregate, so it is not a matter of the City Attorney changing her position, he thinks Mr. Woltering is making certain that the City Council wishes to continue to hold no limitation on the aggregate signage.

City Attorney Lee added we would want to make sure there were sufficient findings if an aggregate is something the Council wanted to consider as part of the approval.

Vice Mayor Pierce inquired on 42" of separation and how was that number determined. Mr. Woltering advised the Planning Commission did not come up with that number, as indicated by former Community Development Director Mindy Gentry, the separation is a provision in the code which she provided to the Planning Commission in terms of guidance in respect to if there were a larger number of signs placed on a property Ms. Gentry wanted to see what that might look like based on current standards.

Mayor Catalano advised the separation is included in Section 15.08.80 B.

Mr. Napper added he does not recall the separation requirement mentioned in the last presentation of this item.

Vice Mayor Pierce advised it seems the separation would be a requirement of all signs, she found our aesthetics allows to do that, but the law does not allow us to limit the sign size; that is reason why she made the motion last time for a sixteen square foot sign per sign with no aggregate she doesn't want to get challenged but she will support and hope that our citizens have more wisdom and more taste and more discretion to allow what is placed on their own property. She is hopeful that future folks wanting to put in noncommercial signs for any reason temporary noncommercial signs will have the same amount of aesthetic discretion in our community and not push this to the max. She doesn't think Clayton wants to look like other communities during certain times of the year.

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

Councilmember Wan advised when this issue first arose he is not in favor of limits, he finds it odd our City Attorney at the time recommended no individual limit but an aggregate limit, however the City Council went the other direction with no aggregate but an individual sign limit. The memo described establishing a limit carries some legal risk, he finds it odd the Council collectively is ok with certain risks in this matter then they are not in others. He maintains any limitation on speech should be looked at with heavy scrutiny and while it is supportable, that we meet the immediate scrutiny test for content neutral as well as the other five prongs analysis. He cautioned that anytime we are restricting speech, we should be very well prepared to defend why we want to limit someone's ability to speak; and he would not do so under any circumstance.

Councilmember Wolfe advised he is in favor of free speech and limiting the size, limiting the font he does not limit what people want to say. It may be distasteful to him and may have to have a talk with his neighbor if something that size goes up across from his house. Which would be unfortunate but when it comes to being a free speech issue he does not see it. He doesn't see any reason why we can't go back to what we've discussed originally with a sixteen square foot sign size limit and we could discuss the aggregate.

Mayor Catalano cares deeply about the aesthetics in our small community and we absolutely have the ability to control signs as long as the regulation is content neutral she supports the First Amendment and is saddened to see inhere the type of dividedness we had during Election season to still continue. We as all citizens can do better in allowing all voices and all opinions to be heard without any fear of intimidation

and it is sad to hear that is continuing. That does not mean we have to allow signs the size of billboards in our residential community and allowing that type of blight and excessive signage when you actually can limit the size seems to be contrary to some of our type of aesthetics in our small city. The First Amendment is a fundamental right but it is not an absolute right the U.S. Supreme Court has said over and over again that you can have time place and matter restrictions as long as they are content neutral. We did talk on February 5 extensively about the individual sign size limit of sixteen square feet was within those perimeters and acceptable; she feels we can regulate the individual sign size and comfortable with continuing with the decision the City Council had at the previous hearing on this item.

Councilmember Wan wanted to clarify the content neutral test under intermediate scrutiny is just one aspect of the test, there is an additional five prongs of analysis that need to be done even for content neutral. One of the minimum requirements is restrictions in the least intrusive way possible he thinks when we consider these types of limits we are combating blight which however loosely that is defined then we have to also make the assertion that restricting people's ability to speak in the manner they wish is the least intrusive way possible.

Mayor Catalano asked the City Attorney whether or not we impose a limit on individual signs; she thinks at the last hearing we could limit it up to sixteen square feet per sign.

City Attorney Lee advised Mayor Catalano is correct and there is case law that supports that.

Vice Mayor Pierce added the final decision is that of the City Council's with and legal precedent a sixteen square foot limit on individual signs is defensible, it doesn't mean someone has to use a sign that large. She hears the concerns of aggregate, if someone were to use a sixteen square foot sign they can get away with approximately five of that size per property; barrage signs are also an option running a message across a property if wanted. She doesn't think they are making a restriction on free speech. The determination the Council has to make if they would like an aggregate limit as suggested at the last meeting of eighty feet or leave it unlimited.

**It was moved by Vice Mayor Pierce, seconded by Councilmember Diaz, to have the City Clerk read Ordinance No. 485, by title and number only and waive further reading. (Passed; 5-0 vote).**

The City Clerk read Ordinance No. 485 by title and number only.

**It was moved by Vice Mayor Pierce, seconded by Councilmember Diaz, to adopt Ordinance No. 485 to amending Chapter 15.08 of the Clayton Municipal Code regarding Sign Provisions. (Passed 4-1 vote; Wan, opposed).**

## **8. ACTION ITEMS**

- (a) Discussion and City Council policy direction concerning the content and parameters of an Accessory Dwelling Unit (ADU) Ordinance.  
(Community Development Director)

Community Development Director David Woltering provided a brief introduction in recent years the State of California has passed legislation finding Accessory Dwelling Units (ADUs) to be a valuable form of housing for various segments of the State's population; family members, students, the elderly, in-home health care providers, the disabled and

others seeking below market rate housing. An ADU is a secondary dwelling unit with complete independent living facilities for one or more persons and generally takes three different forms; second unit, in-law units and granny units. The ADU can be detached or attached to the primary structure. It can be repurposed existing space within a primary residence converted into an independent living unit. It can also be a Junior Accessory Dwelling Unit similarly repurposed space with various streamlining measures required by the State of California. The passage of various laws by the State legislature has relaxed requirements for Accessory Dwelling Units by repurposing the development of this type of housing by property owners. The State has determined ADUs an essential part of California's housing supply an important component to address the housing crisis. Accessory Dwelling Units can provide a lower cost to meet the needs of many of the State's existing and future residents. ADUs can be built in neighborhoods on existing parcels thereby a reduction in land costs. Additionally, there can be a rental opportunity for the property owner. As a result of the passage of ADU laws by the State, Clayton's Municipal Code Chapter 17.47 Second Dwelling Units is null and void. The State Law will modify many of the provisions in Chapter 17.47. Clayton is not required to adopt a new ordinance to reflect the State changes, but if it does not, then the City of Clayton is compiled to apply with the States standards in government Code Section 65852.2 for requests to construct Accessory Dwelling Units in this community. In order to preserve a measure of local control the City Council may want to consider adopting its own ADU regulations, an ordinance to take advantage of where the State allows discretion. The city of Clayton adopted General Plan Housing Element promotes the development of this type of housing; pointing out State law requires ministerial nondiscretionary review process for ADUs and a decision to be made within 120 days of the jurisdiction receiving an application.

Mr. Woltering continued his presentation by asking the City Council nine policy questions for their consideration:

Policy Question 1 – Definition; Should the City decrease the minimum unit size from 220 square feet to 150 square feet and/or require only a partial bathroom and/or kitchen?

Policy Question 2 – Location; Should there be a minimum lot size for new detached ADUs not contained within an existing structure? Should more than one ADU be allowed per lot?

Policy Question 3 – Setbacks; Should the setbacks remain the same as second units, which would apply setbacks for the principal dwelling to ADUs? Should the ADU setbacks match the requirements of an accessory structure? Should different setbacks apply for small lot ADUs? Should alternative set of setbacks be considered?

Policy Question 4 –Unit Size; What should the maximum ADU unit size? Should the unit size be increased beyond the 1,200 square feet as mandated by State law? If so, should the larger ADUs be subject to a discretionary review by the Planning Commission and subject to additional standards? Should the maximum unit size differ between attached and detached ADUs?

Policy Question 5 – Height; Should the height requirement be higher than one-story or 15 feet for detached ADUs? Should the height requirements of detached ADUs match the height requirements of accessory buildings at 16 feet? Should the previously adopted second dwelling unit height standards be utilized?

Policy Question 6 – Off-Street Parking; Should the parking requirements be further reduced beyond the requirements of State law or even be eliminated for ADUs?

Policy Question 7 – Owner Occupancy; Should the same owner occupancy restriction for second units be carried forward to ADUs? Should the owner occupancy requirement restriction be removed? Should there be a requirement the property be used for rentals of terms longer than 30 days?

Policy Question 8 – Appeals; Should there be an appeal process established whereby an administrative decision can be appealed to the Planning Commission and then subsequently to the City Council?

Policy Question 9 – Junior ADUs; Should these types of units be allowed in Clayton? If so, should there be a requirement the rentals terms be longer than 30 days?

Councilmember Wolfe inquired Junior ADU can that replace any part of the ADU for instance having one inside and one outside?

Mr. Woltering explained a Junior ADU is similar to a repurposed internal dwelling unit; in terms of size and process.

Councilmember Wan requested clarification of policy question 7 if there are any existing short term rental restrictions in Clayton?

Mr. Napper advised the City Council reviewed short-term rentals such as Air BnB sometime back and decided to not regulate those at this time in the residential zones; waiting to see if they became a problem.

Councilmember Wan also inquired on the Appeals process in regards to the former Community Development Director if an owner disagreed with the Appeal process. Mr. Woltering advised in reviewing the second dwelling units in Clayton, there have been very few, in terms of the volume it has been very low with the action of the State and the local ordinance that may follow its very likely ADUs and constructional ADUs will increase, with the various provisions in an ordinance, they will be some discussion between the property owner and staff at some point, it would be helpful to have a clear appeal process spelled out in the Ordinance. Mr. Napper advised nothing has come to his level of anyone who has applied for an ADU and felt a denial of their rights not being heard, if it were to come to his level that someone wasn't satisfied with the Directors decision he would've asked the director to take the matter to the Planning Commission to provide response to the citizen.

Councilmember Wan inquired on connection fees, within the unit are not permissible and detached dwelling units are limited. He asked Mr. Woltering to provide an example of the cost of utility connection. Mr. Woltering advised this would have to have a more detailed review to provide an accurate cost, in general, State provisions indicate there cannot be additional connection fees for an internal ADU important in keeping costs down and proportional for detached ADU. Mr. Woltering offered to research further and reports his findings.

Councilmember Wan is curious on what the fees look like in a typical detached setting and if those fees still need to be determined. Mr. Napper added some cities provide their own water services, however, Clayton does not it and it is provided by a separate special district, Contra Costa Water District. The City has no control over what that special district charges for connections. In the past, when people were interested in

ADUs they found them to be cost prohibitive, the City charges a fee for sewer connections the application would need to be discussed with the City of Concord who is responsible for the operation and maintenance and the fees for people making connections to the sewer in Clayton.

Councilmember Wan noticed some developments provide for a maximum square footage per property for the residence would an ADU square footage count toward the maximum square footage aggregate? Mr. Woltering advised it could, referring to the Development Standards question, he is not prepared to discuss in great detail tonight, he thinks as Council may come back that they are interested in staff developing a schedule regarding size and setback and lot coverage showing the City Council what a lot would look like with a detached ADU. The idea is the jurisdiction has some discretion in those areas without any undue unreasonable incumbencies in the way of achieving more ADUs in the community. He requested more time to research more time to research the Annual Progress Report (APR) in terms of the Housing Element implementation. It is important to know HCD does count ADUs toward the RHNA numbers, looking at current APR in Clayton the total for this period is 141. The community has 51 in very low and 25 in the low category with none to date in either category. In theory, ADUs could be an opportunity to see some units in the low category.

Mayor Catalano asked if an ADU can be done in a new construction project or can it only be done on an existing property? Mr. Woltering advised an ADU can be constructed in either a new project or existing project.

Mayor Catalano inquired if ADUs are constructed in a new construction project that is more than ten units, is the City then subject to inclusionary housing requirements? Can those ADUs satisfy the Below Market Rate (BMR) requirements? Mr. Woltering advised he will need to research that a little further, in terms of density the ADUs do not count toward density.

Mayor Catalano opened Public Comment.

Chris Chreston advised based on the conversation between the City Council, he is unsure if the Council is pro-ADU or is trying to set up guidelines and more restrictions to make it more difficult to have ADUs. As a builder it is already extremely difficult to build anything in the State of California, standard contracts are approximately \$500-\$600 per square foot. He also restricting possible sizes in his opinion it is great to have more housing for seniors and making more units available. Putting more intense restriction on square foot and sizes on the ADUs can potentially make it more difficult for someone to build one of these housing units for their family members or someone with disabilities.

Mayor Catalano closed Public Comment.

Councilmember Wan inquired if the policy questions the population of areas the City has discretion or are there other areas the City potentially has discretion understanding the law is quite complex are these the only areas the city has the ability to act in?

Vice Mayor added there are over 200 bills in Sacramento regarding housing thinking this encompasses most of the things the State has already adopted, but there is more on the horizon. She definitely wants to put in place our own rules, she does not want to beholden to the State standards, in some cases she would like them to be more liberal and others she just wants more definition, she is favor of putting Claytons own ADU Ordinance.

Mayor Catalano went through each policy question for the Council's feedback.

*Policy Question 1 – Definition; Should the City decrease the minimum unit size from 220 square feet to 150 square feet and/or require only a partial bathroom and/or kitchen?*

Vice Mayor Pierce wants to be as least restrictive as possible in favor of reducing the size to 150 square feet depending on the unit being unsure of a kitchen sink requirement and less than a full kitchen facility.

Councilmember Wan added this is essentially a room and inquired if there is an advantage to designate it as an ADU. He understands the city receives an increased RHNA number other than that.

Mayor Catalano recalled the only ADU the City has approved was for a generational change where a widowed elderly retired person is living in a single family home, too large for her, however her daughter was married with children needed a more affordable place to live, so they built a second unit on the property, where the elderly woman moved into and her daughter and her family moved into the single family home.

Councilmember Wan found the 150 square foot not sufficient in a multigenerational situation. He asked what benefit someone would receive in designating an ADU

Mayor Catalano advised there are some tax benefits. Mr. Woltering added there would be an opportunity for the City to get a RHNA credit, it also sets up a situation where there are different size homes in every community and maybe a smaller home, maybe a property owner wants to hold on to a certain amount of space but they may have a small area they could set up as an efficiency and rent that portion out, and it could meet the RHNA credit. Mr. Napper clarified the 150 square unit may be sufficient for an internal ADU, but did the Council want to have the same minimum requirement for external units. The council can make a distinction between an internal ADU and external ADU.

Councilmember Wolfe inquired on Casitas and rooms that already exist, does the city receiving credit for those or will they be considered ADUs? Mr. Woltering advised the property owner would have to come through the City to obtain necessary permits to have that permitted as an ADU. For example an accessory structure has been used for other purposes the owner may want to have the unit approved as an ADU they would need to go through the process whether it is State regulated or local ordinance at the time, and building code requirements to ensure it is a safe structure. The Casita that is out there today with the benefit of a building permit may not be an ADU the whole objective with State standards are to be less restrictive and maybe converting the Casita legal ADU in a cost effective manner. The city would get RHNA credit at a low. We are trying to get more safe housing.

Vice Mayor Pierce offered even as an external unit it can be an efficiency unit by adding a sink, microwave, refrigerator and hot plate it could be an efficiency unit. Even in smaller size lots these units could be external so long that they meet the setbacks. She doesn't see a need to increase the minimum size requirement.

Mayor Catalano prefers the 150 square foot whether interior or exterior.

Councilmember Wan is not concerned at this point with the minimum size as there are other factors to be determined. He requested more definition regarding a partial bath or kitchen. Mr. Woltering added the bathroom facility could be shared within the dwelling unit as an internal ADU, there could be a sink or microwave that also could be shared the opportunities for something small and efficient within the space or shared. Mr. Woltering advised there seems to be a desire for more information on this and would be happy to report his findings.

Councilmember Wans concern is with an exterior unit he would say 150 square feet is ok, he would want the partials on the external units.

Vice Mayor Pierce asked if this is where we should look at our floor ratios on our lots this may where we need to look at lot coverage, right now we are pretty restrictive on our lot coverages and we may want to reconsider some of the larger lots.

Mayor Catalano inquired on kitchen vs bathroom facilities in the external units finding it makes sense to have a separate bathroom facility with a partial kitchen.

Councilmember Wan is hesitant on partial bathroom and facility on the external units.

*Policy Question 2 – Location; Should there be a minimum lot size for new detached ADUs not contained within an existing structure? Should more than one ADU be allowed per lot?*

Councilmember Wan thought Single Family zoning you would have the maximum of the one external unit; consistent with the zoning.

Councilmember Wolfe likes the maximum of one external unit and would like more exploration on the Junior ADUs.

Councilmember Wan finds the Junior ADU as a different type of review and approval and streamlines the process in a reasonable amount of time.

Mayor Catalano also preferred a maximum of one external unit per lot

Councilmember Wan preferred a maximum of one external unit per lot.

Vice Mayor Pierce originally said one external unit per lot, but thinking of some of the larger lots in the City, there can easily be more than one unit on those lot still meeting a minimum lot size without requiring a lot spilt.

Councilmember Wan expressed concerns of having more than one family residing in a Single Family zoning area.

Vice Mayor Pierce added maybe those could be restricted to multigenerational family members.

Mayor Catalano also prefers one ADU per lot, but open to further review to larger lots. She does not want to impose any minimum lot size as it is governed by setbacks.

Mr. Woltering asked to clarify when the City Council is saying one ADU per lot as there is an opportunity for an internal ADU and the opportunity an external ADU.

Vice Mayor Pierce is ok with one internal and one external unit per lot.

Councilmember Wan would only like one ADU per lot either external or internal.

Councilmember Wolfe agreed with Councilmember Wan.

Mayor Catalano would like to limit the external unit to one and indifferent on internal units.

Mr. Woltering clarified if someone came in for an internal ADU, they could not come in later for an external unit.

Vice Mayor Pierce would like to look at this on a case by case basis as there may already be an existing external structure such as a pool house that may have the opportunity to be turned into an ADU, is there a reason why the pool house couldn't be turned into an ADU. The problem we have is there are a lot of large homes with seniors and because of Prop 13 they are unable to afford to move out to a smaller unit, there are underutilized spaces that could go back into their real use instead of having empty bedrooms.

Councilmember Wan prefers one unit per lot.

Vice Mayor Pierce prefers one internal and one external unit per lot.

Mayor Catalano prefers one internal and one external unit per lot.

Councilmember Wolfe prefers one unit per lot.

Councilmember Diaz prefers one internal and one external per lot.

*Policy Question 3 – Setbacks; Should the setbacks remain the same as second units, which would apply setbacks for the principal dwelling to ADUs? Should the ADU setbacks match the requirements of an accessory structure? Should different setbacks apply for small lot ADUs? Should alternative set of setbacks be considered?*

Councilmember Wan would like to be as consistent as possible throughout setbacks requirements notwithstanding the garage type of conversion and consistent with current setbacks also applying to external ADUs.

Vice Mayor Pierce would like to go with the Accessory Structure setbacks that we already have with the exception as State law suggests we can go 5' from the back and side and 12' from the front of the property. She finds the 65' setback from the front of the property unreasonable. We were trying to keep sheds visible from the front of the property but this is different from that.

Mayor Catalano agreed with Vice Mayor Pierce.

Councilmember Wolfe also agreed.

Councilmember Wan would like to keep the setbacks consistent with the primary residence, although he doesn't like the structure 5' from the side yard.

Mr. Woltering clarified Vice Mayor Pierce and Councilmembers Wan comments as they seem to differ.

Councilmember Wan expressed his concern of someone building a structure up to 15' in height with windows looking into their neighbor's yard.

Mayor Catalano added there are building codes that restrict that from happening.

Vice Mayor Pierce added design standards could be added to avoid windows installed looking into a neighbor's yard.

*Policy Question 4 – Unit Size; What should the maximum ADU unit size? Should the unit size be increased beyond the 1,200 square feet as mandated by State law? If so, should the larger ADUs be subject to a discretionary review by the Planning Commission and subject to additional standards? Should the maximum unit size differ between attached and detached ADUs?*

Mr. Woltering added there is some uncertainty of 1,200 square feet being the maximum size, he does not think that is a firm standard in State law there has been some discussion that a local agency could go to a larger size, but if you apply the State regulations, the maximum size is 1,200 square feet. The council has the authority in the local ordinance to go above or below 1,200 square feet maximum ADU size. He added other jurisdictions have gone 800 to 1,200 square feet is acceptable to the Housing and Community Development at the State level.

Councilmember Wolfe doesn't see a reason to go beyond 1,200 square feet on the external unit.

Vice Mayor Pierce she would go with an internal not to go beyond 50% of the primary home living area, and maximum of 1,200 for an external unit.

Mayor Catalano agreed.

Councilmember Wan also agreed.

*Policy Question 5 – Height; Should the height requirement be higher than one-story or 15 feet for detached ADUs? Should the height requirements of detached ADUs match the height requirements of accessory buildings at 16 feet? Should the previously adopted second dwelling unit height standards be utilized?*

Vice Mayor Pierce would like to height limit at 16' for the detached ADU. If the attached unit were to be placed on an existing two story structure, she is okay with matching that.

Mayor Catalano added an external structure have a height limit of 16'.

Councilmember Wolfe agreed.

Councilmember Wan thought he read somewhere about a garage conversion that the setbacks are different.

Mr. Woltering added the State standard garage conversion if the setback is less than 5' from the existing setback, you could convert that garage without modifying the setback, however if you added a second story to the conversion that that needs to be set back 5'.

*Policy Question 6 – Off-Street Parking; Should the parking requirements be further reduced beyond the requirements of State law or even be eliminated for ADUs?*

Councilmember Wan does not want the parking requirements reduced beyond the requirements of State law.

Vice Mayor advised off street could be tandem or anywhere in the driveway.

*Policy Question 7 – Owner Occupancy; Should the same owner occupancy restriction for second units be carried forward to ADUs? Should the owner occupancy requirement restriction be removed? Should there be a requirement the property be used for rentals of terms longer than 30 days?*

Vice Mayor Pierce is in favor of owner occupancy and 30 day minimum rental term.

Councilmember Wan is also in favor of owner occupancy and 30 day minimum rental term.

Councilmember Wolfe is in favor of owner occupancy and 30 day minimum rental term.

Mayor Catalano is also in favor of owner occupancy and 30 day minimum rental term.

*Policy Question 8 – Appeals; Should there be an appeal process established whereby an administrative decision can be appealed to the Planning Commission and then subsequently to the City Council?*

Vice Mayor Pierce is in favor of establishing an appeal process.

Councilmember Wolfe is also in favor of establishing an appeal process.

Councilmember Wan is in favor of a formalized appeal process.

Mayor Catalano is also in favor of an appeal process.

*Policy Question 9 – Junior ADUs; Should these types of units be allowed in Clayton? If so, should there be a requirement the rentals terms be longer than 30 days?*

Councilmember Wolfe will rescind his former comments regarding Junior ADU.

Mayor Catalano advised by allowing Junior ADUs they do not count towards the cities RHNA numbers, if we do not allow Junior ADUs it may encourage more people to apply for ADU, which could benefit the cities RHNA numbers.

Mr. Woltering advised he will need to check if Junior ADUs count toward the RHNA requirements.

Vice Mayor Pierce advised the only advantage of a Junior ADU is there is not requirement for utility connection fees. Mr. Woltering advised Vice Mayor Pierce is correct however even with the repurposed units do not have a connection fee requirement. He requested to come back with more information to the Planning Commission and the City Council and the advantages of a Junior ADU.

Mayor Catalano if there is an existing structure, connection fees are not required. Mayor Catalano asked of the effective date of no requirements if that is the time of the application or adoption of the ordinance. Mr. Woltering advised the effective date depends on how the ordinance is drafted. In terms of the connection fees what we are learning from the State is if there is an existing structure and put in an internal ADU you can't then require separate connection fees for the internal ADU.

Vice Mayor Pierce added in her experience each utility wants to collect connection fees. She asked if an external ADU requires a separate meter and what that cost would be or if there is an option to come off the existing lines.

Mayor Catalano clarified if a stand-alone ADU has a different meaning to utilities like PG&E. Mr. Woltering advised that is a question that can be asked. The idea in terms of charges should not be that of the primary structure.

Vice Mayor Pierce commented San Mateo County has put together a Second Unit pamphlet and website; finding it very informational called [SecondUnitCenterSMC.org](http://SecondUnitCenterSMC.org) providing an idea on the process.

Mayor Catalano reopened public comment.

Ann Stanaway, 1553 Haviland Place advised she is against back-door rezoning because taking a single family zone property making it into a multi-family zone. From a consumer standpoint she would never purchase in a community that allowed that to happen as there are no disclosure requirements if your neighbor is renting out an ADU unit.

Mayor Catalano closed public comment.

## 9. COUNCIL ITEMS

Councilmember Wan requested discussion around the pedestrian and traffic safety around Mt. Diablo Elementary School and Diablo View Middle School. He advised these concerns are the responsibility of the City.

Mayor Catalano requested more direction from the City Manager.

Mr. Napper advised the school district does not have jurisdiction over streets or determine the safe routes to school it does fall under the City. In speaking with the City Engineer he does not know if any additional signage would help; there might an opportunity for additional barriers, which can be open for discussion.

Mayor Catalano asked if Councilmember Wan would like to meet with staff first to come up with some ideas.

Councilmember Wan indicated it is important to him that everyone has a chance to comment and provide feedback and ideas in a public forum.

Mr. Napper requested to add a future agenda item, providing a background that many moons ago in the month of April that a young graduate student walked into the City Manager's office in the City of Orange and nailed an interview and got a paid administrative internship. Seven years later in the month of April that same individual became the City Manager of the City of Morro Bay and now here we are 35 years later in the month of April, informing the City Council his intent to retire at the end of this July. He tells you that to provide advance notice, as there will be some additional requirements on their part to decide in which those decisions have to be publicly made regarding if they wish to try an in-house recruitment or whether they wish to hire an executive search firm to assist in that process. His employment agreement only requires a 30 day notice and he will provide that in sufficient time, there are some requirements he is having to pursue right now for retirement purposes, he wanted to advance that to them so they can have the opportunity to begin to commence that, assuming Mayor Catalano would want to have that on the next City Council meeting to discuss. He realizes there are some in the community that are thrilled of that announcement, there is no one more thrilled then his wife. After 35 years of giving up Tuesday and Friday evenings as we are preparing agenda packets and having meetings. The timing is right as there is a Community Development Director position open that merits a new City Manager to select that individual.

Councilmember Wan congratulated Mr. Napper.

10. CLOSED SESSION – None.

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

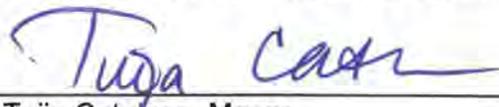
The next regularly scheduled meeting of the City Council will be April 16, 2019.

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Respectfully submitted,

  
\_\_\_\_\_  
Janet Calderon, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

  
\_\_\_\_\_  
Tuija Catalano, Mayor

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