



AGENDA

REGULAR MEETING

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CLAYTON CITY COUNCIL

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TUESDAY, May 7, 2019

7:00 P.M.

*Hoyer Hall, Clayton Community Library
6125 Clayton Road, Clayton, CA 94517*

Mayor: Tuija Catalano
Vice Mayor: Julie K. Pierce

Council Members

Jim Diaz
Jeff Wan
Carl Wolfe

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review in City Hall located at 6000 Heritage Trail and on the City's Website at least 72 hours prior to the Council meeting.
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at www.ci.clayton.ca.us
- Any writings or documents provided to a majority of the City Council after distribution of the Agenda Packet and regarding any public item on this Agenda will be made available for public inspection in the City Clerk's office located at 6000 Heritage Trail during normal business hours.
- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7304.

* CITY COUNCIL *

May 7, 2019

1. **CALL TO ORDER AND ROLL CALL** – Mayor Catalano.

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

3. **CONSENT CALENDAR**

Consent Calendar items are typically routine in nature and are considered for approval by one single motion of the City Council. Members of the Council, Audience, or Staff wishing an item removed from the Consent Calendar for purpose of public comment, question, discussion or alternative action may request so through the Mayor.

(a) Approve the minutes of the City Council's regular meeting of April 16, 2019.

[\(View Here\)](#)

(b) Approve the Financial Demands and Obligations of the City. [\(View Here\)](#)

(c) Adopt a Resolution calling for the preparation of an Engineer's Report for the calculation of the annual real property assessments in FY 2019-20 for levy in the Diablo Estates at Clayton Benefit Assessment District (BAD). [\(View Here\)](#)

(d) Accept the City's Investment Portfolio Report for the Third Quarter of FY 2018-19 ending March 31, 2019. [\(View Here\)](#)

4. **RECOGNITIONS AND PRESENTATIONS**

(a) Certificates of Recognition to public school students for exemplifying the "Do the Right Thing" character trait of "Integrity" during the months of March and April 2019. [\(View Here\)](#)

(b) Kickoff of Clayton's Certified Farmers' Market for 2019

"Opening Day" is Saturday, May 11th

(9:00 am – 1:00 pm, each Saturday in the Main Street public and KinderCare's parking lots)

(Shawn Lipetzky, Regional Manager, Pacific Coast Farmers' Market Association)

[\(View Here\)](#)

5. **REPORTS**

(a) Planning Commission – No meeting held.

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

(c) City Manager/Staff

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

(e) Other

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

Members of the public may address the City Council on items within the Council's jurisdiction, (which are not on the agenda) at this time. To facilitate the recordation of comments, it is requested each speaker complete a speaker card available on the Lobby table and submit it in advance to the City Clerk. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Mayor's discretion. When one's name is called or you are recognized by the Mayor as wishing to speak, the speaker should approach the public podium and adhere to the time limit. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. The Council may respond to statements made or questions asked, or may at its discretion request Staff to report back at a future meeting concerning the matter.

Public comment and input on Public Hearing, Action Items and other Agenda Items will be allowed when each item is considered by the City Council.

7. **PUBLIC HEARING**

- (a) Public Hearing to consider the adoption of City-initiated Urgency Ordinance No. 486, the Introduction/First Reading of City-initiated Ordinance No. 487, and adoption of a Resolution establishing local design regulations and standards for the installation of small cell wireless antenna (5G) in the public rights-of-way of Clayton. ([View Here](#))
(Community Development Director)

Staff recommendations:

- 1) Receive the staff report;
- 2) Open the Public Hearing and receive public comments;
- 3) Close the Public Hearing;
- 4) Following City Council discussion and subject to any modifications to the proposed Urgency Ordinance, approve a motion to have the City Clerk read Urgency Ordinance No. 486 by title and number only and waive further reading; and
- 5) Following the City Clerk's reading, approve a motion by 4/5ths affirmative vote to adopt Urgency Ordinance No. 486 with the finding the adoption of this Ordinance is not subject to the California Environmental Quality Act (CEQA) because CEQA only applies to projects which have the potential for causing a significant effect on the environment and this activity is not considered to be a project and can be seen with certainty that it will not have a significant effect or physical change to the environment; and
- 6) By motion, adopt a Resolution establishing design and development standards for wireless facilities in the public right-of-way, as authorized by Section 12.05.050 of the Clayton Municipal Code; and
- 7) Subject to any modifications to proposed Ordinance No. 487, approve a motion to have the City Clerk read Ordinance No. 487 by title and number only and waive further reading; and
- 8) Following the City Clerk's reading, adopt a motion approving the Introduction of Ordinance No. 487 with the finding the enactment of this Ordinance is not subject to the California Environmental Quality Act (CEQA) because CEQA only applies to projects which have the potential for causing a significant effect on the environment and this activity is not considered to be a project and can

be seen with certainty that it will not have a significant effect or physical change to the environment.

8. **ACTION ITEMS**

- (a) Council Member Wan request to discuss traffic and pedestrian safety around Mt. Diablo Elementary School and Diablo View Middle School in Clayton. ([View Here](#)) (Council Member Wan)

Staff recommendation: Following Council Member Wan’s remarks and opportunity for City Council discussion and public comments, that Council provide any approved policy directives or action to City staff.

- (b) Continued City Council consideration on the formation of a City position letter regarding the “CASA Compact” (Committee to House the Bay Area – February 2019) involving various objectives and resultant state legislation introduced to address the region’s housing affordability crisis. ([View Here](#)) (Council Member Wan)

Staff recommendation: Following Council Member Wan’s review of his proposed draft position letter and opportunity for City Council discussion and public comments, that Council provide policy direction or action.

- (c) Council Member Diaz request to consider the establishment City Council Policy on elected officials receiving text or email communications from members of the public on agenda items during City Council meetings. ([View Here](#)) (Council Member Diaz)

Staff recommendation: Following Council Member Diaz’s remarks and opportunity for City Council discussion and public comments, that Council provide policy direction or action.

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

10. **CLOSED SESSION**

- (a) Conference with Labor Negotiator
Government Code Section 54957.6
Instructions to City-designated labor negotiator: City Manager

1. Employee Organization: Miscellaneous City Employees (Undesignated Group)

11. **RETURN TO OPEN SESSION**

Report out from Closed Session: Mayor Catalano

12. **ADJOURNMENT**

The next regularly scheduled meeting of the City Council will be May 21, 2019.

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MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL

TUESDAY, April 16, 2019

Agenda Date: 5-07-2019

Agenda Item: 3a

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:02 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, Interim Community Development Director David Woltering, Assistant to the City Manager Laura Hoffmeister, 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 Diaz, to approve the Consent Calendar as submitted. (Passed 5-0 vote).

 - (a) Approved the minutes of the City Council's regular meeting of April 2, 2019.
 - (b) Approved the Financial Demands and Obligations of the City.
 - (c) Adopted Resolution No. 11-2019 setting the City's Equivalent Runoff Unit (ERU) real property parcel assessment rates in FY 2019-20 at current rates to pay for local storm water/clean water programs and services required by the unfunded federal and state-mandated National Pollution Discharge Elimination Systems (NPDES) Program (storm water pollution prevention)
 - (d) Approved the First Amendment to the existing Cooperative Agreement between the City of Clayton and the City of Concord establishing full funding for the El Molino Drive Sanitary Sewer Improvements Project (City CIP No. 10422).
 - (e) Adopted Resolution No. 12-2019 approving the City of Clayton's list of local transportation improvement projects for Fiscal Year 2019-20 using Road Maintenance and Rehabilitation Account – Local Streets and Road Funds (RMRA-LSR; SB 1).
 - (f) Approved the multi-year (3) award of low-bid contract to Apex Grading in the amount of \$42,300 per year for performance of the City's 2019 Annual Weed Abatement Program for the fire hazards on City-owned properties and open space (funded by the Citywide Landscape Maintenance District, CFD 2007-1).
 - (g) Approved the new "Making a Difference" Recognition Program to Clayton adults for distinguished and inspiring community and vocational service to others.
 - (h) Adopted Resolution No. 13-2019 awarding a 3-year low-bid contract (with option for three 1-year extensions) to Environtech Enterprises, Inc., in the 3-year amount of \$199,101.00 for the management of the City-owned oak/grassland savannah open space parcels north and south of Peacock Creek in the Oakhurst Development areas for calendar years 2019-2021.

- (i) Approved the award if consultant services agreement to Kennedy Associates in the amount of \$42,317 for preparation of the City's Green Infrastructure (GI) Plan pursuant to an unfunded state regulatory mandate of the San Francisco Regional Water Quality Control Board.
- (j) Approved the annual request of Council Member Diaz for the City to allow the hosting of six (6) Wednesday Night Classic Car Shows with a DJ in the off-street City parking lot at 6099 Main Street plus ancillary use of portions of the City's vacant dirt lot adjacent to the public parking lot at 6005 Main Street during selected dates in 2019, with all event costs funded by private donations.

4. RECOGNITIONS AND PRESENTATIONS

- (a) Certificate of Recognition to the MDSA Storm Boys Soccer Team and Coaches for a remarkably successful 2018-19 Season and 2nd Place finish in the AYSO U-10 Division Western Championship Tournament.

Mayor Catalano presented the MDSA Storm Boys Soccer Team and Coaches a Certificate of Recognition for their remarkably successful 2018-19 Season and 2nd Place finish in the AYSO U-10 Division Western Championship Tournament.

5. REPORTS

- (a) Planning Commission – No meeting held.
- (b) Trails and Landscaping Committee – Chair Howard Kaplan indicated the Trails and Landscaping Committee's agenda at its meeting of April 15, 2019, included proposed budget recommending approval by the City Council. The proposed budget spends all of the incoming revenue with a small reserve contribution. In the future committee would like to see a budget that underspends the revenue; noting reserves are important for sustainability, reliability and resilience going forward.

Vice Mayor Pierce added the Trails and Landscaping Committee are working diligently to adhere to their budget; congratulating Maintenance Supervisor Jim Warburton by providing an itemized list of tasks and expenses.

- (c) City Manager/Staff

Mr. Napper noted the Trails and Landscaping Committee budget reserves are usually high until assessments are paid with the first installment in December. There should be enough funds available to replenish the reserve account from collected property taxes.

Mr. Napper continued his report to announce a recent resignation by Finance Manager Kevin Mizuno as he will be joining employment with a Special District at the end of the Fiscal Year. Mr. Napper included the city is in the process of securing an Interim Finance Manager.

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

Councilmember Wan met with Mt. Diablo Elementary and Diablo View School Principals about the traffic and pedestrian safety, and the ad-hoc committee regarding Regency Drive.

Vice Mayor Pierce attended the Association of Bay Area Governments (ABAG) Regional Planning Committee meeting, the Contra Costa Transportation Authority meeting, the Administration of Projects Committee meeting, the Contra Costa County Mayors' Conference, the Regional Housing Legislative Working Group meeting, the Transportation Partnership and Cooperation for Central Contra Costa (TRANSPAC), the Housing Legislative Working Group meeting, the joint Association of Bay Area Governments and Metropolitan Transportation Commission committee meetings of the administrative and planning committees, and the Trails and Landscaping Committee meeting.

Councilmember Wolfe attended the ad-hoc committee regarding Regency Drive, spoke to constituents, attended the Clayton Theater Company's "*Savannah Sipping Society*" performance, the Clayton Library Foundation Spring Book Sale, and received an email from a citizen asking Councilmember Wolfe to remind citizens to clean up after their animals on the trails whether a dog or a horse.

Councilmember Diaz attended the Contra Costa Water District meeting, and reported activity that occurred on Regency Drive during the previous two weekends including a vehicle parked in front of a fire hydrant. Councilmember Diaz also reported with the deployment of the decoy car there were no parking violations issued on Regency Drive, he also mentioned through visibility and the radar gun there were thirteen (13) speeding citations issued.

Mayor Catalano spoke with residents about various concerns. Mayor Catalano also announced some upcoming community events; Clayton Cleans Up on April 20, the Clayton Business and Community Association Annual Art & Wine Festival on April 27 and 28 noting volunteers are still needed, the "Making a Difference" program is looking for nominations for the character trait of Outstanding Teacher, Coach or Mentor; and the Clayton Valley Village Community gathering taking place on April 24.

(e) Other – None.

6. PUBLIC COMMENT ON NON - AGENDA ITEMS

Brian Buddell expressed his continued disappointment in the City not banning the use of Glyphosate noting that virtually every trail he runs on has signs of the use of Round-Up on the sides. He noted Peacock Creek Trail is a heavily used trail and it is nearly impossible to not come into contact with Round-Up. He also advised there was another recent lawsuit with a jury verdict of nearly \$80 million, the difference with this one, it wasn't somebody who was working with Round-Up in a commercial setting, and rather somebody was exposed to it by using it in their backyard.

Assistant to the City Manager Laura Hoffmeister added this is a topic that the Trails and Landscaping Committee discussed last night, it was clarified by Maintenance Supervisor Jim Warburton the orange that is seen is pre-emergent that was applied in the fall early in the season, however rains had hit not giving the emergent the opportunity to get to the root bulbs, so you will see the orange strips in a lot of areas. She advised Round-Up is limited to the median island landscape sections.

7. **PUBLIC HEARINGS** – None.

8. **ACTION ITEMS**

- (a) Consider the Second Reading and Adoption of Ordinance No. 485 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.

Interim Community Development Director David Woltering advised on April 2 the item was introduced to the City Council; previously presented to the Planning Commission who wanted to balance freedom of speech rights guaranteed under the first amendment of the constitution with community aesthetics who returned with “no recommendation” on this ordinance. The City Council determined the 16 foot limit on individual sign size would be sufficient in terms of addressing concerns of community aesthetics while balancing freedom of speech.

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

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 Wolfe, to adopt Ordinance No. 485 with the finding its adoption will not result in a significant adverse environmental impact. (Passed; 4-1; Wan opposed).

- (b) Council Member request for the City Council to discuss the “CASA Compact” (Committee to House the Bay Area – February 2019) involving various objectives to address the region’s housing affordability crisis, and request to take an official City position on the plan.

Councilmember Wan requested this item because folks at Metropolitan Transportation Commission (MTC), the Association of Bay Area Governments (ABAG) and most of the California legislative believe there is a housing crisis all across the State providing a lever for them to take this quick and decisive action that a crisis demands. He quoted Obama *“You never want to let a serious crisis go to waste; this pressure gives you the opportunity to do things that you cannot do before.”* This housing crisis is the backdrop for pushing things that could not be done before by the creation of the CASA Compact backed by MTC and ABAG. He asked for this agenda item because this is one of the most significant topics impacting local cities.

Councilmember Wan went through a PowerPoint highlighting the ten elements of the CASA Compact 1. Just Cause Eviction Policy; 2. Rent Cap; 3. Rent Assistance and Access to Legal Counsel; 4. Remove Regulatory Barriers to Accessory Dwelling Units; 5. Minimum Zoning near Transit; 6. Good Government Reforms to Housing Approval Process; 7. Expedited Approvals and Financial Incentives for Select Housing; 8. Unlock Public Land for Affordable Housing; 9. Funding; and 10. Create

Regional Housing Enterprise – A new quasi-governmental body. Overall based on what limited information is available, he estimated a conservative cost to a small city like Clayton to be just over \$900,000.00 per year. The CASA compact accepts the housing crisis was caused by multiple failures producing housing, preserving existing housing and protecting current residents. Ultimately housing demand exceeds housing supply, one of the reasons this is true, the Bay Area has created more jobs than housing units. Three counties are the biggest drivers of that disparity San Francisco, San Mateo and Santa Clara. Councilmember Wan advised many different organizations came together to form the CASA Compact leadership, along with various builders, governmental, Tech Companies, Labor, legal, and advocacy groups lead the steering and technical committees. Of the nine bay area counties the 18 voting members are not equally spread. Together the three largest counties and the ABAG delegate can control all of MTC. Councilmember Wan noted a few items that were deemed important by the CASA Compact, however did not receive enough support for example to lower the voter threshold for housing fund measures from 2/3 majority to 55%. Councilmember Wan concluded the PowerPoint by noting position and actions to the CASA Compact by several cities in the Bay Area. Councilmember Wan would like to draft a letter to legislature, ABAG and MTC providing Clayton's position in an attempt to influence the overall outcome of these legislative items.

Mayor Catalano asked Councilmember Wan to clarify what he is advocating? Councilmember Wan would like to decide the Council's position collectively and draft the letter and attempt to influence legislation as other cities have done. He is opposed for a number of reasons especially the loss of local control, he believes a lot of the goals are great but he thinks the approach at the State level that one size fits all, he does not think that is in the best interest of the residents in Clayton.

Mayor Catalano was not sure the information presented in the slides was 100% accurate and inquired on the source of the material or if it were Councilmember Wan understanding. Councilmember Wan advised he read the material that was provided and listened to the presentations and read the legislative text.

Vice Mayor Pierce added as a member and past president of ABAG she has only attended one meeting of CASA where everyone introduced themselves and talked about what was important to them, she did not attend any other meetings as she was replaced by the current president on that board. She took the liberty in inviting a staff member of ABAG and MTC who has worked closely with this issue and she invited him to provide information as to where we are in the process right now.

Brad Paul, Deputy Director for local government services for ABAG and MTC, provided an update on the two boards. In December, MTC voted to not endorse the CASA Compact, but allow the Chair of the Board, Scott Haggerty to sign a letter with caveats among other things that the MTC commission could not endorse everything in CASA they certainly did endorse the suggested revenue sources they wanted staff to do more community outreach since that was one of the short comings in the CASA process. A month later the ABAG board took the exact same action not supporting CASA, but allowing the president to sign the letter and then Scott Haggerty now Chair of the ABAG board said "If you are not at the table, you're on the menu" the idea was to sign with the caveats to be a part of the legislative process going forward. ABAG also added creating an ad-hoc committee to advise both the ABAG and MTC legislative committees on individual bills that come back the committee to be made up of two members of cities in each county and one county member. We then went out to about ten meetings in Contra Costa County to present many of the same slides presented this evening and ask people what they thought and wanted to see happen. We went to the League of California Cities East

Bay Division meeting and a joint meeting of the Fremont, Union City, San Leandro, Hayward and Newark City Council meetings, the Contra Costa City Managers Association East Bay Leadership Council a joint meeting of Lafayette, Orinda and Moraga, the Contra Costa County Mayors Conference and took extensive notes. The first thing we heard was how disappointed people were on why we didn't do this earlier and the process was not as transparent in the beginning. The second thing they heard is that there is a housing crisis but the way you solve it is giving us flexible tools and more money to work on it. There was also concern about local control not just losing local control but the belief that we were blaming the cities for the housing crisis when in fact all cities can do is approve permits, cities do not build housing. They thought the solutions that were in the CASA Compact were very general, "one size fits all" approach. There was a real fear among many of the people that spoke that they felt like not only is there a housing problem, but at capacity with traffic, transit and schools. What was CASA going to do if we let more housing be built for more families to move into the bay area, how was CASA preparing to fund more traffic, schools and infrastructure, and where was the new money going to come from. They opposed in terms of money don't take the money away from us that we need to solve our problems, in particular do not go after the sales tax because there is a limit on how much sales tax you can take. If the region takes another half percent of that it's going to stop cities and counties to be able to raise money to build the schools to fix the infrastructure to build more parks, they also said don't touch the parcel tax that is the other tool we use at the local level to fund local needs. There was a large discussion about the jobs and housing unbalance, not only do we not want you to take the local money, if you need money go to the people who created the problem, San Francisco, San Mateo and Santa Clara counties and do a gross receipts tax. But have a variable one where it can be higher where all the jobs are being generated and much lower or not at all in cities like Clayton, have we wanted to have jobs go from the west bay to east bay. So the jobs would then balance within cities regionally. People in the East Bay said we have been good on approving the housing what can you do to incentivize jobs here so our people don't have to commute across the bay and fill up the BART trains. Finally, on the surplus and use of public land understanding some of the surplus land could be available other needs like office buildings for jobs, so don't do a one size fits all with it all going to housing, be more thoughtful. Finally everybody said do not create another free standing regional agency, rather have MTC or ABAG do it as they are elected officials they represent medium and small size cities. ABAG started a committee the Housing Legislative Working Group its two people from each county from two cities in each county and one county member. He provided the council with the ABAG-MTC Legislative Working Group Organizing Principles for Reviewing Housing Legislation document and went through the ten questions. Mr. Paul advised the bills are constantly changing based on the pushback they are receiving from the cities such as Danville and Cities association of Santa Clara asking for this to be done in a thoughtful way along with the resources to do this by also looking at transportation, traffic, and school impacts. He advised there can be a lot of influence going forward and the more detailed we can be in the analysis of each of these bills on our website the same packets we give to the members of this committee the public has access to with the most recent amendments to the bills and where they are going. There's an effort now to combine Senator McGuire's Bill SB 4 and Senator Wieners Bill SB 50 and come up with some compromises to address a number of the issues that people are concerned about in SB50, we will know what those are in the next week or two.

Councilmember Wan asked Mr. Paul which elements would he delete or modify if he had known then what he knows now. Mr. Paul advised he would spend more time at meetings like this while the process was going on to give direct feedback to members of the committee. The effort was trying to get a group of people who have

been arguing and fighting for years to talk to each other and talk about some of the larger issues, protection, preservation and production. Given what he has heard, he would be more specific on the ADU parking requirements.

Councilmember Wan added there was a lot of feedback received against a quasi-governmental body development, currently AB1487 asking if Mr. Paul would be opposed to that? Mr. Paul advised he does not get to take a position on that. He added as the discussion goes on you have to look at for example in the governors trailer bill for his budget he is proposing an extra \$750 million to address this problem statewide; part of those funds are earmarked to go directly back to cities on a per capita basis to help pay for planning in creating more housing.

Councilmember Wan advised he is unfavorable of sales and parcel tax listed within AB 1487 when he talks about what action the Council should take, he doesn't think it is an effective mechanism to identify each bill as he doesn't think he could retain the audience he thinks establishing general principles that the Council agrees on or oppose he is in favor of things that keep local control and opposed to things that degrade local control he thinks a general letter similar to Danville would go a long way towards advancing our position. As Mr. Paul said the legislature can be influenced he thinks we should try to do that. He also added the current transit areas in town have the headways that would trigger transit rich if the transit authority increases the headways then there is nothing we can do about that as a city. For the job rich criteria the two things primarily mentioned are areas that had high median income and high educated populations that's a situation made by HCD essentially they can designate anywhere that meets their criteria, the criteria isn't fixed, if they do that that essentially eliminates single family zoning in any area they designate. To him, no matter how much outreach we do and how much feedback we get or moving around the margins that's pooling information and legislation he doesn't think anything positive could come from that.

Mayor Catalano understands Councilmember Wan wants the City Council as a whole to take a position on the CASA Compact in support or opposed preferring the approach Danville took with a very detailed collaborative approach by looking at all the different items which she mentioned a few meetings ago, she asked at this stage how impactful a letter addressing the CASA Elements would be versus focusing on pieces of legislation. Mr. Paul advised if time permits focusing on pieces of legislation would be more effective, the Cities Association of Santa Clara County wrote a very interesting letter we support general items like funding, however at the end opposed taking away local control of land use and housing decisions and going after local sources of funding. He felt that was effective, he advised reviewing SB 50 indicating items in support and items opposed to the way Danville did.

Mayor Catalano asked for elaboration as CASA is a Bay Area initiative and a lot of the legislation statewide, by legislators that are not in the Bay Area, what is the relationship. Mr. Paul advised what we saw from CASA was a wish to apply only to the Bay Area where it would be easier to pass and considered a pilot for the rest of the State, where legislatures decided to make it state-wide and not just in the Bay Area.

Councilmember Wolfe appreciated the presentations feeling the public is hearing about this for the first time he would be interested in getting more information out to the public, being more transparent with regard to this. He understands the work on the CASA Compact with the initial work completed. What is happening know it is going through the legislature with lots of debate, which could take several years, he asked what is the timeline we can expect on this. Mr. Paul advised he can get some

more information for the legislative staff for a more detailed timeline, roughly certain bills are introduced by a deadline in February then go through certain committees in a certain time frame or they are dead so we are in that process right now and have to go through finance committees before going to the other house. The bills are changing, he feels there is still time to make an impact, and some will become two year bills.

Councilmember Wan indicated with the volume of bills they can change quickly and does not want to focus on any one bill as it can change, his goal is to craft a letter of general principles the city would be in favor or opposed that could help influence the general tone of what is proposed or amended.

Councilmember Wolfe wanted to know which cities letters we should follow to be more effective to communicate our feelings as a Council to the State.

Councilmember Wan favored the letters drafted by Danville and Rohnert Park is well written. He also referred to the agenda packet document prepared by Contra Costa Jurisdictions' Housing and Policy Framework Proposal they itemized items they were in favor of.

Mr. Napper added the Contra Costa Jurisdictions' Housing and Policy Framework Proposal the Public Managers Association meets monthly and have been chasing after this as policy groups are concerned of what this imprint is going to be upon each of our jurisdictions' it started out as the tri-valley area, then Danville morphed into it, and what Danville has created is moving into the Public Managers Association which is the framework what is most useful we can waste a tremendous amount of time chasing after individual bills but if there is overall policy statements or philosophies terms of a local community, that's what needs to be done that typically what larger organizations do. The Public Managers Association is still morphing its responses; some cities are adopting resolutions to establish their core values. He believes the Public Managers Association is looking to present something next month in terms of what has arisen from the CASA Compact. Finally he requested clarification on Councilmembers Wan financial impact of \$900,000 and there was a linkage to the city's general fund of \$4.6 million there was an reference that the \$900,000 would come from city revenues he doesn't think he meant to say that, that was just for relativity in terms of the 20% because the monies to pay for the revenues to pay for that would not come solely from the city. Councilmember Wan clarified the City would be responsible for a portion of the \$900,000.

Councilmember Diaz advised he is in favor of local control.

Mayor Catalano does not believe one size fits all, in particular we are a city of 11,430 at the end of the road, we are not the same as San Francisco, Oakland, or Walnut Creek we don't have a BART Station next to us. She thinks whatever we decide it should have an influence by providing constructive feedback we be more impactful, she preferred the style of letters submitted by Danville and the Tri Valley Cities (Danville, Dublin, Livermore, Pleasanton, and San Ramon) recognizing the challenges of providing housing throughout the region. The City of Danville also added a chart of each CASA Compact element and providing their input of what would work in their city.

Mayor Catalano opened the item to public comment.

Brian Buddell expressed concerns about Councilmember Wolfe's comment about the urgency of this item noting we have a Vice Mayor that is intimately involved with ABAG and MTC, yet we are just now hearing about the CASA Compact. Why?

Just like Fulcrum, just like Parolee Housing we are waiting until the last minute to hurriedly throw something together when nine cities have already established a position and written a letter. This is a proposal that impacts every Clayton resident, some on multiple levels. With regard to the proposal itself to reduce it down to the basic element, Berkeley and Palo Alto who do not agree, actually agree on this issue. A detailed position by the City is necessary to convey our position on all levels. He encouraged the Council to follow Councilmember Wans suggestion in discussing this matter.

Terri Denslow she shares some sentiments on why we haven't been talking about this. She found the information provided in the staff report a little confusing and performed her own research. She expressed a concern noting online you can watch the town hall meeting between Lamorinda where they brought Ken Kirkey and Rebecca Long to clarify a lot of the questions. She is concerned as she found five things that were in Councilmember Wans presentation that are incorrect, and she only watched a 3 hour town hall, but the city council asked a lot of the same questions and they were clarified, as a Councilmember you may not like the people that you work with, but if you are going to educate the public and you are going to put together a presentation that you didn't share with the public before or work with your fellow councilmembers to come up with a cohesive response, then you are giving information to the public that yes we may already be late She wanted to encourage the council that the neighborhoods are getting more involved with this. She would like more advocacy maybe pair with neighboring cities. She would like to see Clayton have a position on this and would appreciate the information that comes from this council to be more factual and vetted.

Andrea Hecht thought this was a well thought out presentation which she saw published online giving her the opportunity to look through some resources finding it fairly factual. She wanted to encourage the city council regarding property rights. She has worked her entire life to be a property owner and is very concerned about anything that would degrade her property rights she saw several things that need the council to act very quickly. It seems that this has been out there for a while along with the parolee housing version 2.0 We have heard from the people of Clayton that this is really bothersome to them. She encourages the City Council to act quickly and swiftly with a response that they think best for the City.

Allison Snow echo the educational program that Councilmember Wan offered to us, and Councilmember Wolfe was kind enough to sit with her and have coffee he talked about matters such as this as his number one concern and his role in listening. What concerns her is this is getting to be a theme here with the first being the Fulcrum situation, the public had to educate themselves about city and policy issues. We were looking to the City Council to take the lead on that we like to see our representatives are educating the public and not two years after the fact. Ms. Snow inquired why Vice Mayor Pierce is going to these meetings and not sharing information with the public asking if she is just representing her own interests or that of the city. Transparency is the theme, if you represented us in any way, we want you to educate the public and state your opinion, which is what we have elected you to do.

Ann Stanaway, 1553 Haviland Place, her theme is "local Control" what's that in Clayton? You cannot even control your fire apparatus access roads, she does not understand. The City Council needs to be more like Danville by being proactive and enforce your ordinances as they stand right now, the State is going to make us a more dense community; population wise, at least they are going to try to. Increase density is to increase public safety concerns and do not allow those fire apparatus roads to be blocked by inconsiderate people.

Mayor Catalano closed public comment.

Vice Mayor Pierce confirmed she has been on ABAG for nine years, on the Regional Planning Committee of ABAG since 2004. Since she was elected to this position she has advocated for local control; and continues to do that. Anyone who has attended any number of ABAG or MTC meetings will know that and know that she has argued for those things. They will also know while she served on the very first meeting of CASA Compact, she was not on the committee after that and was replaced by the current president. She did not have a vote there or feedback, and in fact most of ABAG and MTC didn't even get reports on what was going on there. Since there were only five meetings of the steering committee, things moved along very quickly. When we did get the report it was the full compact that came to MTC and ABAG as she distributed to the City Council a little bit ago was a copy of the actual motion on the Compact from ABAG is one page long, to say the authorization for the president to sign the CASA Compact was subject to the following understandings; that the authorization did not constitute approval of the compact itself it enables ABAG to be proactively engaged in the process. As the Compact goes through the State legislature basically be at the table not on the menu, and the authorizations was to be accompanied by a comprehensive program outreach to local governments which she had been asking for since the Compact started and was refused. We also asked that adequate representation from local government representatives the ABAG legislation committee was to include local jurisdictions in legislative advocacy we have done that, we have formed the housing legislature working group which she chairs so she hears all of the comments from around the Bay Area and they are pretty much unanimous and we are using the influence that we have to craft some changes to the legislation that was proposed in Sacramento we are hearing from feedback from colleagues around the State that they agree with us and because many of these measures are State measures they probably won't stay in their current form. She noted the parcel tax, sales tax and property tax provisions have been removed from the legislation, she added any of the funding mechanisms require a public vote of the entire bay area. She also added it is not just now coming to the floor she has mentioned CASA and all of these meetings for some time ever since the process started and has reported on the process. When CASA finally made its way to the Bay Area last December there was a lot of uproar and concern, we demanded outreach to the local communities after the fact, but at least we have it going. She really cares if our seniors, kids and grandkids can afford to live in the town where they have spent their formative years or where they have raised their families, right now we have a lot of people in our community who will be leaving because they cannot afford to stay here, there are families who have owned their homes for many years and in retirement they cannot afford to stay in California anymore, because they cannot afford the taxes, they need to maybe have an ADU in the backyard and someone else can rent the main house. We need to think about all of our community members.

Councilmember Wan it is clear we can influence legislation if we do it in an effective way. Currently, SB 50 as it is drafted is a one size fits all bill, he believes the council agrees one size does not fit all. He wondered if the Council opposes SB 50 in its current form. He has received various advocacy groups asking him to endorse their groups; which he has declined. Councilmember Wan feels the City Council should establish what their overall preferences are and then from that see where there is agreement. He asked Vice Mayor Pierce as the Chair on the Legislative Committee if she is representing the City of Clayton or the agency she is representing.

Vice Mayor Pierce advised she was appointed to ABAG by the Contra Costa Mayors Conference that is all nineteen cities of Contra Costa, she is elected by the

Mayors Conference to serve as one of its two representatives on ABAG executive board. She was elected for a two year period to be president of that executive board. She is currently not the president, rather the immediate past president, and serves on all of the policy committees of ABAG. She also serves as the Chair of the Legislation Committee for ABAG and as the Chair she was appointed by the president to serve as the Regional Housing Legislative Working Group Chair. Technically, she represents all of the cities of Contra Costa, adding all of our cities have similar concerns. In her capacity as chair of the Regional Housing Legislative Working Group she is there to chair the meeting and gather information from all of the cities and all of the counties in the Bay Area. She has heard overwhelmingly about retaining local control as one size does not fit all and concerns about the taxes and revenues generating resources. She advised Mr. Buddell the tax measures do not apply to small businesses, requiring at least 5,000 employees which would not affect smaller businesses like mom and pops.

Councilmember Wan inquired on the general policy positioning, while we talked about one size does not fit all and SB 50 written in its current form is a one size fits all approach does anyone disagree

Councilmember Diaz he asked Councilmember Wan to write the letter in an easily understood form and deliver by tomorrow? Councilmember Wan advised he could.

Councilmember Wolfe added opposing SB 50 is already being opposed in its present form and it is being combined with SB 4, it doesn't have a present form for the City Council to take a position on at this point. He supported the letter to the State being very specific to what Clayton needs and what we will be facing.

Mayor Catalano advised each Council member has been contacted to support SB 50 by various advocacy groups, however she is not supportive, Clayton is a tiny town and she doesn't want to live in a suburban town. One size does not fit all; she is in favor of local control. If we can write a constructive letter

Vice Mayor Pierce added she has had personal conversations with Senator Weiner about some of his provisions in SB 50, where she suggested he remove all bus routes and transit routes from the measure because of the fluctuation in public transportation money the timing on routes can change the routes can change she suggested to him that that was something that was important to remove those types of routes so we do not put something in a certain place where people expect transit to be available when it may be moved or cut. He was not receptive to that argument. The height limits were changed because he had a conversation with Newell Arnerich from the City of Danville who is a architect explaining constraints to building some of the heights he prescribed next to transit and why they won't pencil; three days later the height limits were removed from the legislation. She is still not in favor of how the bill is currently written.

Mayor Catalano advised providing suggestions on how to improve the bill based on the size of our city carries more influence.

Councilmember Wan it is important for the Council to voice their sentiment on each of the CASA Compact Elements, that are important to the community and we owe it to the constituents to share what our thoughts are. He is interested in knowing what efforts have been done thus far. He would like reporting of conversations like Vice Mayor Pierce has had to be shared. He would also like the City Council to be unified he's just trying to convince them and disagreements should not divisive up the City Council. He wants to continue to share that if you have.

Mayor Catalano added she had found it helpful in understanding where other cities and councilmembers are on these types of issues are through the Mayors Conference and East Bay League of Cities, a lot of those events are attended by State Senators and Legislatures.

Councilmember Wan advised he will come up with a draft letter for the City Council review at the next meeting.

City Manager Napper noted Councilmember Wan will prepare a letter for review by the City Council at its next meeting.

- (c) City Council discussion and determination of its preferred process regarding the recruitment and employment and other considerations involved in the selection of its next city manager due to retirement.

City Manager Napper as indicated in the staff report it is time for him to retire, and that leaves the City Council an opportune time to select its next City Manager, not many City Council get to do that, so that is a great journey for the Council. There are a number of processes that can be engaged. The first is an advertisement that can be handled in-house or through an executive search firm. The second option especially for City Manager recruitment is the use of an executive search firm, some specialize in public sector. If the Council wishes to engage that process, they can inform him this evening and he can start contact with those firms tomorrow to see if they are interested in submitting a proposal for the Council's consideration. Prevailing market for this type of search is approximately \$26,000, sometimes that includes expenses and some include options such as professional interview panels in addition to the City Council. One of the advantages of an executive search firm, many individuals prefers to speak with the executive search firm consultant to get a flavor of a background. Before the information goes out, the City Council would have interviews with the executive search firms to decide on a company in addition to an interview with the City Council to get an idea of the traits they are looking for in tis next City Manager. The City Council may also choose to hire within. Quite often the process needs to move quickly and the City Council may want to establish a recruitment steering committee for this purpose. In looking at his timetable, it takes 4-5 months to find the next City Manager and have that person onboard. It is likely the City Council will need an Interim City Manager, which can be done internally.

Vice Mayor Pierce would certainly prefer the use of a professional recruiter, by sending out an RFP as they are not many that specialize in city management. She recommended Pam Derby with CPS-HR in Sacramento; she worked with her in the recruitment process for MTC Executive Director search.

Councilmember Diaz is open to executive search firm for the recruitment. He also noted preference of a various sub-committees composed of professionals, the City Council, and members of the public.

Mayor Catalano noted she is in favor of an executive search firm, and would like to move forward on the RFP's. She also liked Councilmember Diaz's sub-committee suggestion consisting of members of the public.

Mr. Napper advised the City Council as the hiring body can do that in Closed Session however, the closed session cannot include members of the public. Mr. Napper advised rather than go through an RFP process he will call the firms he knows of to begin the process.

Mayor Catalano asked if Vice Mayor Pierce would be interested in serving on the ad-hoc committee, as she has a long history with the City and was included in the current City Manager's hiring, and experience with other agencies executive recruitment process. She also expressed that she is also interested in serving on the ad-hoc committee as well.

Councilmember Wan also expressed his interest as he has experience in interviewing candidates. He added Mayor Catalano and Vice Mayor Pierce tend to align in their views and feels having a new perspective would be helpful in this process.

Mayor Catalano directed the City Manager to contact executive search firms.

Councilmember Wan added the Council has not addressed the issue of an Interim City Manager.

Vice Mayor Pierce noted recruiters are aware of retired City Managers that can serve on an interim basis for a short period of time.

Mr. Napper added there are resources available to fill as Interim City Manager.

Councilmember Wolfe inquired on the availability of the Assistant to the City Manager to serve as an Interim City Manager.

Vice Mayor Pierce advised for short periods of time that is great, but for longer periods of time it is a concern as our Assistant to the City Manager has her hands full with other tasks.

Assistant to the City Manager Laura Hoffmeister added professionally with the current vacancies we have she felt seeking services from an outside person on the Interim would be best as there are many State mandates the City of Clayton needs to abide by with our recycling programs, solid waste and storm water program filings coming up.

Vice Mayor Pierce added Laura is the historic knowledge of the organization and preferred have a professional serve as Interim City Manager best for the City.

Ms. Hoffmeister added although she feels she can serve as the Interim, there is not another one of her to fill her position.

Mr. Napper added the City Council may not need an Interim until the end of July.

Mayor Catalano advised the City Council still needs a steering committee.

Vice Mayor Pierce expressed interest in serving on the steering committee based on her experience in the executive recruitment process with the City and other agencies. She also recommended Mayor Catalano to also serve on the steering committee

Councilmember Wan added each of the City Council members could bring their skills and do a great job. He agreed with the assistance of Vice Mayor Pierce based on her experience, he added he has hired many people over the years although it was in the private sector he feels it brings a different perspective.

Mayor Catalano advised she has done a lot of hiring to also from the private sector plus she works with a lot of public officials including City Manager and Community

Development Directors. She asked the Council if they are in favor of Vice Mayor Pierce serving on the steering committee and just need to decide between herself and Councilmember Wolfe.

Councilmember Diaz added he was a director of Human Resources for a fortune 500 company and Chief Director of a State Agency where he had to hire people as well, in the public sector. He declined to be a part of the steering committee.

It was moved by Mayor Catalano, seconded by Vice Mayor Pierce that Mayor Catalano and Vice Mayor Pierce will serve on the ad-hoc committee to serve as the recruitment steering committee. (Passed 3-1-1 vote; Diaz, abstained; Wan, opposed).

9. COUNCIL ITEMS

Councilmember Diaz advised he has three items; 1.) He would like this City Council to examine and develop a proposal on how information is received during council meetings in or outside the Council chambers from unknown parties. We need to identify who is communicating with each one of us, he has a feeling somehow questions are being delivered to one or some of us and how that should work and publically disclose; 2.) He submitted his proposal for the 2019 Classic Car Show and DJ series proposed to begin June 12.

Vice Mayor Pierce advised Councilmember Diaz his request for the Classic Car Show and DJ was approved on the Consent Calendar this evening.

Councilmember Diaz continued his request 3.) after we have had a number of technical glitches with our sound system and no way of managing who speaks at the appropriate time, he thinks there is a system out there that will allow each member to turn off and on their microphone, also suggesting master control at the Mayors desk that the Mayor controls and can shut that microphone off.

Mayor Catalano echoed request number 1; she has some serious brown act violation concerns.

Councilmember Wolfe would the policy be just for the City Council or extend to the Planning Commission as well.

City Attorney Mala Subramanian understands a Brown Act violation would be between the Council members not with members of the public

Mayor Catalano also expressed her concerns of communications with the public during our meetings.

Councilmember Diaz advised the concern is with someone in the audience or live-streaming at home.

10. CLOSED SESSION – None.

11. **ADJOURNMENT**– on call by Mayor Catalano, the City Council adjourned its meeting at 9:56 p.m.

The next regularly scheduled meeting of the City Council will be May 7, 2019.

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Respectfully submitted,

Janet Calderon, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

Tuija Catalano, Mayor

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Agenda Date: 05/07/19

Agenda Item: 3b

Approved: 

Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: KEVIN MIZUNO, FINANCE MANAGER, CPA 

DATE: 05/07/19

SUBJECT: FINANCIAL DEMANDS AND OBLIGATIONS OF THE CITY

RECOMMENDATION:

It is recommended the City Council, by minute motion, approve the financial demands and obligations of the City for the purchase of services and goods in the ordinary course of operations.

<u>Report Title</u>	<u>Description</u>	<u>Amount</u>
Open Invoice Report	Obligations paid via check	150,530.88
ACH/EFT Activity	Non-check payments for 4/12/19-5/2/19	109,791.52
	Total Required	\$ 260,322.40

Attachments:

1. Open Invoice Report, dated 5/3/19 (6 pages)
2. ACH/EFT Activity Report (1 page)

City of Clayton Open Invoice Report Check Payments

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Advanced Elevator Solutions, Inc								
Advanced Elevator Solutions, Inc	5/7/2019	5/7/2019	35586	Elevator maintenance	\$119.00	\$0.00		\$119.00
<i>Totals for Advanced Elevator Solutions, Inc:</i>					<u>\$119.00</u>	<u>\$0.00</u>		<u>\$119.00</u>
All Access Inc								
All Access Inc	5/7/2019	5/7/2019	081719	Concert in The Grove 8/17/19	\$2,000.00	\$0.00		\$2,000.00
<i>Totals for All Access Inc:</i>					<u>\$2,000.00</u>	<u>\$0.00</u>		<u>\$2,000.00</u>
All City Management Services, Inc.								
All City Management Services, Inc.	5/7/2019	5/7/2019	60755	School crossing guard svcs 3/24-4/6/19	\$237.84	\$0.00		\$237.84
All City Management Services, Inc.	5/7/2019	5/7/2019	61055	School crossing guard svcs 4/7/19-4/20/19	\$594.60	\$0.00		\$594.60
<i>Totals for All City Management Services, Inc.:</i>					<u>\$832.44</u>	<u>\$0.00</u>		<u>\$832.44</u>
Aqua Dream Pools								
Aqua Dream Pools	5/7/2019	5/7/2019	CAP0323	C&D refund for Mt Palomar PI	\$2,000.00	\$0.00		\$2,000.00
<i>Totals for Aqua Dream Pools:</i>					<u>\$2,000.00</u>	<u>\$0.00</u>		<u>\$2,000.00</u>
AT&T (CalNet3)								
AT&T (CalNet3)	5/7/2019	5/7/2019	12939009	Phones 3/22/19-4/21/19	\$1,644.77	\$0.00		\$1,644.77
<i>Totals for AT&T (CalNet3):</i>					<u>\$1,644.77</u>	<u>\$0.00</u>		<u>\$1,644.77</u>
Axon Enterprise, Inc								
Axon Enterprise, Inc	5/7/2019	5/7/2019	SI-1587661	Fleet installation PD vehicles	\$24,944.41	\$0.00		\$24,944.41
<i>Totals for Axon Enterprise, Inc:</i>					<u>\$24,944.41</u>	<u>\$0.00</u>		<u>\$24,944.41</u>
Jay Basinger								
Jay Basinger	5/7/2019	5/7/2019	051119	Concert in The Grove 5/11/19	\$1,500.00	\$0.00		\$1,500.00
<i>Totals for Jay Basinger:</i>					<u>\$1,500.00</u>	<u>\$0.00</u>		<u>\$1,500.00</u>
Bay Area Barricade Serv.								
Bay Area Barricade Serv.	5/7/2019	5/7/2019	2025	Seasonal neon vests	\$745.48	\$0.00		\$745.48
Bay Area Barricade Serv.	5/7/2019	5/7/2019	2084	No Parking signs	\$353.44	\$0.00		\$353.44
Bay Area Barricade Serv.	5/7/2019	5/7/2019	2353	"Dogs on Leash" signs for CCP	\$174.00	\$0.00		\$174.00
Bay Area Barricade Serv.	5/7/2019	5/7/2019	2591	Wooden barricades (20)	\$607.92	\$0.00		\$607.92
<i>Totals for Bay Area Barricade Serv.:</i>					<u>\$1,880.84</u>	<u>\$0.00</u>		<u>\$1,880.84</u>
Best Best & Kreiger LLP								
Best Best & Kreiger LLP	5/7/2019	5/7/2019	846746	Legal services for March 2019	\$8,500.00	\$0.00		\$8,500.00
Best Best & Kreiger LLP	5/7/2019	5/7/2019	846749	Small Claims Legal services for March 2019	\$413.00	\$0.00		\$413.00
Best Best & Kreiger LLP	5/7/2019	5/7/2019	846750	401A Benefit Legal services for March 2019	\$295.00	\$0.00		\$295.00
<i>Totals for Best Best & Kreiger LLP:</i>					<u>\$9,208.00</u>	<u>\$0.00</u>		<u>\$9,208.00</u>
Richard Bright								
Richard Bright	5/7/2019	5/7/2019	072019	Concert in The Grove 7/20/19	\$2,500.00	\$0.00		\$2,500.00

City of Clayton Open Invoice Report Check Payments

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<i>Totals for Richard Bright:</i>					\$2,500.00	\$0.00		\$2,500.00
Anthony Chippero								
Anthony Chippero	5/7/2019	5/7/2019	20190419CITG	Website hosting services for Concerts in The C	\$273.00	\$0.00		\$273.00
<i>Totals for Anthony Chippero:</i>					\$273.00	\$0.00		\$273.00
Cintas Corporation								
Cintas Corporation	5/7/2019	5/7/2019	4020282542	PW uniforms through 4/18/19	\$50.12	\$0.00		\$50.12
Cintas Corporation	5/7/2019	5/7/2019	4020684549	PW uniforms through 4/25/19	\$47.19	\$0.00		\$47.19
<i>Totals for Cintas Corporation:</i>					\$97.31	\$0.00		\$97.31
City of Concord								
City of Concord	5/7/2019	5/7/2019	76931	Live scan for PD	\$113.00	\$0.00		\$113.00
City of Concord	5/7/2019	5/7/2019	76956	PD vehicle maintenance for March 2019	\$425.41	\$0.00		\$425.41
City of Concord	5/7/2019	5/7/2019	76949	Dispatch services for March 2019	\$20,089.50	\$0.00		\$20,089.50
<i>Totals for City of Concord:</i>					\$20,627.91	\$0.00		\$20,627.91
Clean Street								
Clean Street	5/7/2019	5/7/2019	93929	Street sweeping for April 2019	\$4,500.00	\$0.00		\$4,500.00
<i>Totals for Clean Street:</i>					\$4,500.00	\$0.00		\$4,500.00
Cole Supply Company								
Cole Supply Company	5/7/2019	5/7/2019	312954-1	Trash can liners	\$2,268.38	\$0.00		\$2,268.38
Cole Supply Company	5/7/2019	5/7/2019	W318165	Latex gloves and paper towels	\$117.10	\$0.00		\$117.10
<i>Totals for Cole Supply Company:</i>					\$2,385.48	\$0.00		\$2,385.48
John E Collins								
John E Collins	5/7/2019	5/7/2019	083119	Concert in The Grove 8/31/19	\$1,250.00	\$0.00		\$1,250.00
<i>Totals for John E Collins:</i>					\$1,250.00	\$0.00		\$1,250.00
Contra Costa County - Office of the Sheriff								
Contra Costa County - Office of the She	5/7/2019	5/7/2019	CLPD-119	Blood withdrawals Q3 FY 19	\$411.60	\$0.00		\$411.60
Contra Costa County - Office of the She	5/7/2019	5/7/2019	CLPD-1903	Toxicology for March 2019	\$2,979.00	\$0.00		\$2,979.00
<i>Totals for Contra Costa County - Office of the Sheriff:</i>					\$3,390.60	\$0.00		\$3,390.60
Contra Costa County Public Works Dept								
Contra Costa County Public Works Dept	5/7/2019	5/7/2019	702355	Traffic signal maintenance for March 2019	\$2,278.38	\$0.00		\$2,278.38
<i>Totals for Contra Costa County Public Works Dept:</i>					\$2,278.38	\$0.00		\$2,278.38
Contra Costa Tractor Mobile Svc								
Contra Costa Tractor Mobile Svc	5/7/2019	5/7/2019	018002	Service to Ford 260C	\$262.50	\$0.00		\$262.50
<i>Totals for Contra Costa Tractor Mobile Svc:</i>					\$262.50	\$0.00		\$262.50
CR Fireline, Inc								
CR Fireline, Inc	5/7/2019	5/7/2019	114365	EH fire sprinkler inspection	\$175.00	\$0.00		\$175.00

City of Clayton Open Invoice Report Check Payments

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
CR Fireline, Inc	5/7/2019	5/7/2019	114363	CH fire sprinkler inspection	\$175.00	\$0.00		\$175.00
CR Fireline, Inc	5/7/2019	5/7/2019	114364	Library fire sprinkler inspection	\$175.00	\$0.00		\$175.00
<i>Totals for CR Fireline, Inc:</i>					<u>\$525.00</u>	<u>\$0.00</u>		<u>\$525.00</u>
Diablo View Cleaning								
Diablo View Cleaning	5/7/2019	5/7/2019	24208	Carpet cleaning @ Hoyer Hall	\$225.00	\$0.00		\$225.00
<i>Totals for Diablo View Cleaning:</i>					<u>\$225.00</u>	<u>\$0.00</u>		<u>\$225.00</u>
Digital Services								
Digital Services	5/7/2019	5/7/2019	11335	IT services 3/15/19-4/30/19	\$3,222.58	\$0.00		\$3,222.58
<i>Totals for Digital Services:</i>					<u>\$3,222.58</u>	<u>\$0.00</u>		<u>\$3,222.58</u>
Dillon Electric Inc								
Dillon Electric Inc	5/7/2019	5/7/2019	3885	Streetlight maintenance 4/8/19	\$327.25	\$0.00		\$327.25
Dillon Electric Inc	5/7/2019	5/7/2019	3894	Streetlight maintenance 4/16/19	\$720.01	\$0.00		\$720.01
Dillon Electric Inc	5/7/2019	5/7/2019	3897	Streetlight maintenance 4/22/19	\$652.35	\$0.00		\$652.35
<i>Totals for Dillon Electric Inc:</i>					<u>\$1,699.61</u>	<u>\$0.00</u>		<u>\$1,699.61</u>
ECS Imaging, Inc								
ECS Imaging, Inc	5/7/2019	5/7/2019	13982	LaserfischeCloud user subscrpt., support	\$11,944.00	\$0.00		\$11,944.00
<i>Totals for ECS Imaging, Inc:</i>					<u>\$11,944.00</u>	<u>\$0.00</u>		<u>\$11,944.00</u>
Bill Garvin								
Bill Garvin	5/7/2019	5/7/2019	060819	Concert in The Grove 6/8/19	\$1,000.00	\$0.00		\$1,000.00
<i>Totals for Bill Garvin:</i>					<u>\$1,000.00</u>	<u>\$0.00</u>		<u>\$1,000.00</u>
Globalstar LLC								
Globalstar LLC	5/7/2019	5/7/2019	10228180	Sat phone 3/16/19-4/14-19	\$106.97	\$0.00		\$106.97
<i>Totals for Globalstar LLC:</i>					<u>\$106.97</u>	<u>\$0.00</u>		<u>\$106.97</u>
Hammons Supply Company								
Hammons Supply Company	5/7/2019	5/7/2019	106287	Library janitorial supplies	\$142.37	\$0.00		\$142.37
Hammons Supply Company	5/7/2019	5/7/2019	106222	CCP janitorial supplies	\$303.87	\$0.00		\$303.87
Hammons Supply Company	5/7/2019	5/7/2019	106223	The Grove Park janitorial supplies	\$160.42	\$0.00		\$160.42
Hammons Supply Company	5/7/2019	5/7/2019	106224	City Hall janitorial supplies	\$459.08	\$0.00		\$459.08
Hammons Supply Company	5/7/2019	5/7/2019	106225	Library janitorial supplies	\$190.17	\$0.00		\$190.17
<i>Totals for Hammons Supply Company:</i>					<u>\$1,255.91</u>	<u>\$0.00</u>		<u>\$1,255.91</u>
Health Care Dental Trust								
Health Care Dental Trust	5/7/2019	5/7/2019	259876	Dental for May 2019	\$2,011.99	\$0.00		\$2,011.99
<i>Totals for Health Care Dental Trust:</i>					<u>\$2,011.99</u>	<u>\$0.00</u>		<u>\$2,011.99</u>
HIP Entertainment, LLC								
HIP Entertainment, LLC	5/7/2019	5/7/2019	080319	Concert in The Grove 8/3/19	\$1,250.00	\$0.00		\$1,250.00
<i>Totals for HIP Entertainment, LLC:</i>					<u>\$1,250.00</u>	<u>\$0.00</u>		<u>\$1,250.00</u>

City of Clayton Open Invoice Report Check Payments

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Humphrey Consulting								
Humphrey Consulting	5/7/2019	5/7/2019	CL0219	SSMP update & audit for April 2019	\$1,050.00	\$0.00		\$1,050.00
				<i>Totals for Humphrey Consulting:</i>	<u>\$1,050.00</u>	<u>\$0.00</u>		<u>\$1,050.00</u>
J&R Floor Services								
J&R Floor Services	5/7/2019	5/7/2019	Four2019	Janitorial services for April 2019	\$4,850.00	\$0.00		\$4,850.00
				<i>Totals for J&R Floor Services:</i>	<u>\$4,850.00</u>	<u>\$0.00</u>		<u>\$4,850.00</u>
Jocelyn E Roland, PhD, APBB								
Jocelyn E Roland, PhD, APBB	5/7/2019	5/7/2019	16542	Employment evaluation, PD	\$300.00	\$0.00		\$300.00
				<i>Totals for Jocelyn E Roland, PhD, APBB:</i>	<u>\$300.00</u>	<u>\$0.00</u>		<u>\$300.00</u>
Ken Joiret								
Ken Joiret	5/7/2019	5/7/2019	051119	Sound, Concert in The Grove 5/11/19	\$1,200.00	\$0.00		\$1,200.00
Ken Joiret	5/7/2019	5/7/2019	052519	Sound, Concert in The Grove 5/25/19	\$1,200.00	\$0.00		\$1,200.00
Ken Joiret	5/7/2019	5/7/2019	060819	Sound, Concert in The Grove 6/8/19	\$1,200.00	\$0.00		\$1,200.00
Ken Joiret	5/7/2019	5/7/2019	062219	Sound, Concert in The Grove 6/22/19	\$1,200.00	\$0.00		\$1,200.00
Ken Joiret	5/7/2019	5/7/2019	060619	Sound, Concert in The Grove 6/6/19	\$1,200.00	\$0.00		\$1,200.00
Ken Joiret	5/7/2019	5/7/2019	072019	Sound, Concert in The Grove 7/20/19	\$1,200.00	\$0.00		\$1,200.00
Ken Joiret	5/7/2019	5/7/2019	080319	Sound, Concert in The Grove 8/3/19	\$1,200.00	\$0.00		\$1,200.00
Ken Joiret	5/7/2019	5/7/2019	081719	Sound, Concert in The Grove 8/17/19	\$1,200.00	\$0.00		\$1,200.00
Ken Joiret	5/7/2019	5/7/2019	083119	Sound, Concert in The Grove 8/31/19	\$1,200.00	\$0.00		\$1,200.00
Ken Joiret	5/7/2019	5/7/2019	091419	Sound, Concert in The Grove 9/14/19	\$1,200.00	\$0.00		\$1,200.00
				<i>Totals for Ken Joiret:</i>	<u>\$12,000.00</u>	<u>\$0.00</u>		<u>\$12,000.00</u>
LarryLogic Productions								
LarryLogic Productions	5/7/2019	5/7/2019	1797	City Council meeting production 4/2/19	\$480.00	\$0.00		\$480.00
LarryLogic Productions	5/7/2019	5/7/2019	1802	City Council meeting production 4/16/19	\$480.00	\$0.00		\$480.00
				<i>Totals for LarryLogic Productions:</i>	<u>\$960.00</u>	<u>\$0.00</u>		<u>\$960.00</u>
LEHR								
LEHR	5/7/2019	5/7/2019	17334	Install traffic advisor lights on 2001 Ranger-P	\$1,805.58	\$0.00		\$1,805.58
				<i>Totals for LEHR:</i>	<u>\$1,805.58</u>	<u>\$0.00</u>		<u>\$1,805.58</u>
MPA								
MPA	5/7/2019	5/7/2019	May2019	Life/LTD for May	\$2,216.45	\$0.00		\$2,216.45
				<i>Totals for MPA:</i>	<u>\$2,216.45</u>	<u>\$0.00</u>		<u>\$2,216.45</u>
Neopost Northwest								
Neopost Northwest	5/7/2019	5/7/2019	N7684414	Postage meter lease 2/16/19-5/15/19	\$510.81	\$0.00		\$510.81
				<i>Totals for Neopost Northwest:</i>	<u>\$510.81</u>	<u>\$0.00</u>		<u>\$510.81</u>
Pacific Telemanagement Svc								
Pacific Telemanagement Svc	5/7/2019	5/7/2019	2018380	Courtyard payphone for May 2019	\$73.00	\$0.00		\$73.00

City of Clayton Open Invoice Report Check Payments

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<i>Totals for Pacific Telemanagement Svc:</i>					\$73.00	\$0.00		\$73.00
Painting by Ken								
Painting by Ken	5/7/2019	5/7/2019	TGP	Paint The Grove restrooms	\$3,890.00	\$0.00		\$3,890.00
<i>Totals for Painting by Ken:</i>					\$3,890.00	\$0.00		\$3,890.00
Pride & Joy								
Pride & Joy	5/7/2019	5/7/2019	070619	Concert in The Grove 7/6/19	\$2,800.00	\$0.00		\$2,800.00
<i>Totals for Pride & Joy:</i>					\$2,800.00	\$0.00		\$2,800.00
Riso Products of Sacramento								
Riso Products of Sacramento	5/7/2019	5/7/2019	194981	Copier usage 3/20/19-4/19/19	\$53.79	\$0.00		\$53.79
<i>Totals for Riso Products of Sacramento:</i>					\$53.79	\$0.00		\$53.79
Sprint Comm (PD)								
Sprint Comm (PD)	5/7/2019	5/7/2019	703335311-209	Cell phones 3/26/19-4/25/19	\$646.22	\$0.00		\$646.22
<i>Totals for Sprint Comm (PD):</i>					\$646.22	\$0.00		\$646.22
Robert or Tamara Steiner								
Robert or Tamara Steiner	5/7/2019	5/7/2019	196178-3	Reimbursement for Wally's Rental, Clayton C	\$259.48	\$0.00		\$259.48
<i>Totals for Robert or Tamara Steiner:</i>					\$259.48	\$0.00		\$259.48
Stericycle Inc								
Stericycle Inc	5/7/2019	5/7/2019	3004659818	Medical waste disposal	\$111.16	\$0.00		\$111.16
<i>Totals for Stericycle Inc:</i>					\$111.16	\$0.00		\$111.16
Swan Entertainment								
Swan Entertainment	5/7/2019	5/7/2019	052519	Concert in The Grove 5/25/19	\$1,250.00	\$0.00		\$1,250.00
<i>Totals for Swan Entertainment:</i>					\$1,250.00	\$0.00		\$1,250.00
Swenson's Mobile Fleet Repair								
Swenson's Mobile Fleet Repair	5/7/2019	5/7/2019	1001178	Arrow board repair on 2007 F450	\$767.74	\$0.00		\$767.74
Swenson's Mobile Fleet Repair	5/7/2019	5/7/2019	1001180	New starter for 2000 F350	\$314.02	\$0.00		\$314.02
<i>Totals for Swenson's Mobile Fleet Repair:</i>					\$1,081.76	\$0.00		\$1,081.76
Tasche Vibe Music, Inc								
Tasche Vibe Music, Inc	5/7/2019	5/7/2019	091419	Concert in The Grove 9/14/19	\$3,500.00	\$0.00		\$3,500.00
<i>Totals for Tasche Vibe Music, Inc:</i>					\$3,500.00	\$0.00		\$3,500.00
Total Imaging Solutions, LLC								
Total Imaging Solutions, LLC	5/7/2019	5/7/2019	11469	Microfische Service 5/4/19-5/3/20	\$530.00	\$0.00		\$530.00
<i>Totals for Total Imaging Solutions, LLC:</i>					\$530.00	\$0.00		\$530.00
U S Healthworks Medical Group, PC								
U S Healthworks Medical Group, PC	5/7/2019	5/7/2019	3493119-CA	Pre-employment exam - PD	\$202.00	\$0.00		\$202.00

City of Clayton
Open Invoice Report
Check Payments

<u>Vendor Name</u>	<u>Due Date</u>	<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Invoice Description</u>	<u>Invoice Balance</u>	<u>Potential Discount</u>	<u>Discount Expires On</u>	<u>Net Amount Due</u>
<i>Totals for U S Healthworks Medical Group, PC:</i>					\$202.00	\$0.00		\$202.00
Verizon Wireless								
Verizon Wireless	5/7/2019	5/7/2019	9827250387	Cell phones 3/2/19-4/1/19	\$142.84	\$0.00		\$142.84
<i>Totals for Verizon Wireless:</i>					\$142.84	\$0.00		\$142.84
Wally's Rental Center, Inc.								
Wally's Rental Center, Inc.	5/7/2019	5/7/2019	197203-3	Scissorlift rental 4/1/19	\$217.06	\$0.00		\$217.06
<i>Totals for Wally's Rental Center, Inc.:</i>					\$217.06	\$0.00		\$217.06
Western Exterminator								
Western Exterminator	5/7/2019	5/7/2019	6880777	Pest control for March 2019	\$409.50	\$0.00		\$409.50
<i>Totals for Western Exterminator:</i>					\$409.50	\$0.00		\$409.50
James B Williamson								
James B Williamson	5/7/2019	5/7/2019	062219	Concert in The Grove, 6/22/19	\$2,000.00	\$0.00		\$2,000.00
<i>Totals for James B Williamson:</i>					\$2,000.00	\$0.00		\$2,000.00
Workers.com								
Workers.com	5/7/2019	5/7/2019	124536	Seasonal workers week end 4/7/19	\$651.91	\$0.00		\$651.91
Workers.com	5/7/2019	5/7/2019	124584	Seasonal workers week end 4/14/19	\$1,439.11	\$0.00		\$1,439.11
Workers.com	5/7/2019	5/7/2019	124634	Seasonal workers week end 4/21/19	\$2,644.51	\$0.00		\$2,644.51
<i>Totals for Workers.com:</i>					\$4,735.53	\$0.00		\$4,735.53
GRAND TOTALS:					\$150,530.88	\$0.00		\$150,530.88

City of Clayton

ACH/ EFT Activity (Non-City Check Payments)

Recurring ACH/EFT payments covering the following timeframe: 4/12/2019 - 5/2/2019

For the City Council meeting dated: **5/7/2019**

The following is a detailed listing of automatic recurring and other ACH/EFT payments other than checks for the period immediately preceding the City Council meeting dated above.

Payee	Description	Service Period	Payment Date	Amount
American Fidelity	Employee other supplemental	April 2019	4/25/2019	\$ 486.38
American Fidelity	FSA/dependent care contributions	PPE 4/21/19	4/25/2019	\$ 249.60
CalPERS	Pension plan contributions	PPE 4/21/19	4/23/2019	\$ 14,660.80
CalPERS	Council-Pension plan contributions	PPE 4/24/19	4/26/2019	\$ 75.62
ICMA	457b plan contributions	PPE 4/07/19	4/12/2019	\$ 2,161.53
ICMA	457b plan contributions	PPE 4/21/19	4/26/2019	\$ 1,611.53
Nationwide	457b plan contributions	PPE 4/21/19	4/25/2019	\$ 500.00
Paychex	Payroll	PPE 4/21/19	4/23/2019	\$ 61,442.28
Paychex	Payroll taxes	PPE 4/21/19	4/24/2019	\$ 13,927.28
Paychex	Payroll processing fee	PPE 4/21/19	4/24/2019	\$ 185.49
Authorize.net	Online payment gateway	April 2019	5/2/2019	\$ 26.60
De Lage Landen	Copier lease	3/15/19-4/14/19	4/16/2019	\$ 304.59
Paysafe	Merchant services OTC	April 2019	5/2/2019	\$ 148.87
Paysafe	Merchant services HdL	April 2019	5/2/2019	\$ 87.22
US Bank	Employee procurement cards	Stmnt end 4/22/19	4/30/2019	\$ 13,893.73
Bank of America	Wire fee	N/A	4/18/2019	\$ 30.00

Total ACH/ EFT Activity (other than checks) \$109,791.52



Agenda Date: 5-07-2019
Agenda Item: 3c

STAFF REPORT

Approved: 

Gary A. Napper
City Manager

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: SCOTT ALMAN, CITY ENGINEER

DATE: MAY 7, 2019

SUBJECT: RESOLUTION DIRECTING THE PREPARATION OF AN ENGINEER'S REPORT FOR THE DIABLO ESTATES BENEFIT ASSESSMENT DISTRICT.

RECOMMENDATION

Adopt the attached Resolution.

BACKGROUND

At the request of Toll Bros., Inc. (the developer of the Diablo Estates residential project) the City Council (by passage of Resolution 04-2012 on February 7, 2012) formed the Diablo Estates Benefit Assessment District (BAD) in accordance with the requirements of Landscaping & Lighting Act of 1972 and the Benefit Assessment Act of 1982. The purpose of the District is for the private property owners to collectively provide sufficient funds each year for the proper maintenance of its various subdivision improvements constructed as part of the residential project. The Engineer of Work for the preparation of the initial Engineer's Report was the Developer's consultant, SCI Consulting Group. The initial assessment was approved via a Proposition 218 ballot election by the property owner and its authorization included an annual CPI increase in the assessment amount.

Although the Benefit Assessment Act of 1982 does not require further action prior to levying the annual assessment if the assessment rates are not increased (other than any pre-authorized adjustment due to a CPI increase), the Landscaping & Lighting Act of 1972 does require the filing and approval of an annual Engineer's Report prior to levying an annual assessment.

For the purpose of continuing to levy annual assessments for the property owners to maintain its improvements, the process is initiated by the City Council officially calling for such an annual report. After enactment of this Resolution, the next step will be for the Engineer of Work (City Engineer) to submit, and the City Council to review and then accept, the Engineer's Report for this District. Following that submittal will be a single public hearing

Subject: Diablo Estates BAD – Call for Engineer's Report

Date: May 7, 2018

Page 2 of 2

(with property owners' advance notification) prior to formally setting next year's assessments in sufficient time to be levied and collected via the real property tax bills issued by the County in 2019-2020.

This Resolution does not commit the City Council to any action but is just the first administrative step required by the Landscaping & Lighting Act of 1972.

FISCAL IMPACT

None to the City. As designed and approved, all expenses of the subdivision's BAD are borne by the private property owners as the beneficiaries of its subdivision improvements, maintenance, operation and repair.

Attachment: Resolution [2 pp.]

RESOLUTION NO. - 2019

A RESOLUTION DIRECTING THE FILING OF AN ANNUAL ENGINEER'S REPORT FOR THE DIABLO ESTATES BENEFIT ASSESSMENT DISTRICT (PURSUANT TO THE LANDSCAPING AND LIGHTING ACT OF 1972)

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

WHEREAS, as requested by the development project's property owner and by Resolution No. 04-2012 adopted February 7, 2012, the Clayton City Council formed the Diablo Estates Benefit Assessment District pursuant to both the Landscaping & Lighting Act of 1972 and the Benefit Assessment Act of 1982; and

WHEREAS, an initial Engineer's Report was prepared by the project developer's own consultant, SCI Consulting Group; and

WHEREAS, an initial annual assessment, along with an allowable rate increase in accordance with annual increases in the San Francisco-Bay Area Consumer Price Index ("CPI"), was approved by the affected property owner(s) in a Proposition 218 ballot election; and

WHEREAS, although the Benefit Assessment Act of 1982 requires no further action to continue levying the annual assessment, the Landscaping & Lighting Act of 1972 does require the City Council direct the Engineer of Work to prepare an Annual Engineer's Report prior to the levying of an assessment; and

WHEREAS, it is expedient for the City Council to commence said proceedings to ensure sufficient funds be assessed, levied, collected and expended each fiscal year to fulfill the property owner's intent and fiscal obligation to properly maintain, operate and repair the associated Diablo Estates subdivision improvements as private property owner beneficiaries;

NOW, THEREFORE, the City Council of Clayton, California does hereby resolve as follows:

1. The City Engineer is hereby directed to file an Annual Engineer's Report in accordance with the provisions of the Landscaping & Lighting Act of 1972.
2. This Resolution is adopted pursuant to Section 23622 of the Streets and Highways Code.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 7th day of May 2019 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CA

Tuija Catalano, Mayor

ATTEST:

Janet Calderon, City Clerk

#

I hereby certify that the foregoing Resolution was duly and regularly passed by the City Council of the City of Clayton, California at a regular public meeting held on May 7, 2019.

Janet Calderon, City Clerk



Agenda Date: 5-7-2019

Agenda Item: 3d

Approved:

Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: KEVIN MIZUNO, FINANCE MANAGER

DATE: MAY 7, 2019

SUBJECT: THIRD QUARTER FY 2018-19 INVESTMENT PORTFOLIO REPORT

RECOMMENDATION

It is recommended the City Council, by minute motion, accept the City Investment Portfolio Report for the third quarter of the fiscal year ending June 30, 2019 (FY 2018-19).

BACKGROUND

Pursuant to section XIII of the City of Clayton Investment Policy, the Finance Manager is required to submit a quarterly investment report to the City Council. This quarterly report is also designed to meet the local agency reporting requirements outlined in *California Government Code* section 53646. The FY 2018-19 third quarter report is provided herein.

The City's Investment Policy guides staff and its advisors for all investment activities. Permitted investment activities are primarily governed by state law (*California Government Code* sections 53600-53610) and the City's adopted Investment Policy. The City's Investment Policy is consistent with state law and is designed to be more restrictive for the purpose of added safety and liquidity, which take precedence over yield. Section XVI of the Investment Policy states it shall be periodically reviewed by the City Treasurer and the City Council to ensure its consistency with the overall objectives of preservation of principal, liquidity, and return on investments, along with its relevance to current law, financial and economic trends, and to meet the needs of the City. The policy was last amended by the City Council, following recommendation by the Finance Manager and City Treasurer on November 20, 2018 to add the California Asset Management Program (CAMP) as an authorized investment type. No revisions to the Policy are being recommended at this time.

DISCUSSION

With the third quarter of the fiscal year complete, year-to-date interest earnings for the General Fund is \$83,429, or 94.59% of forecasted General Fund interest revenues per the FY 2018-19 adopted budget of \$88,200. City-wide investment earnings solely attributable to pooled investments (i.e. not related to cash with fiscal agents such as bond proceeds) through the third quarter of FY 2018-19 totaled \$197,198.

Only a small proportion (0.16%) of the current City Investment Portfolio is invested in Local Agency Investment Funds (LAIF), with a larger proportion (6.92%) being held in the newly established CAMP account. As of March 31, 2019 the LAIF quarterly apportionment rate was 2.55%, which is a substantial increase from a rate of 1.51% in the same quarter one year ago. Comparatively, the CAMP apportionment rate for the month ended March 31, 2019 was 2.61%. Similar to the prior quarter, the apportionment rates of LAIF and CAMP both exceed the quarterly weighted average yield to maturity for the City's two non-governmental investment accounts with UBS and Morgan Stanley, which is unusual. This phenomenon is due to the external UBS and Morgan Stanley accounts being comprised nearly entirely of fixed-income securities, such as certificates of deposit and government agency notes purchased previously during a period of rising interest rates. Nevertheless, an advantage with these accounts is proceeds of matured securities can be used to purchase new three to five year low risk fixed income investment instruments currently yielding between 2.65% to 2.80%, exceeding both LAIF and CAMP.

This reporting quarter, the second highest yielding investment type collectively making up 7.09% of the portfolio was deposits held with CAMP and LAIF, with weighted average interest rates of 2.61% and 2.55% respectively. Investments in certificates of deposit comprised approximately 83.83% of the portfolio and were the highest yielding investment type with a collective weighted average interest rate of 2.12%. Federal Agency Notes, authorized by the revised April 21, 2015 Investment Policy, were the third highest yielding investment type in the pool making up approximately 5.67% of the portfolio with a weighted average interest rate of 1.59%.

The market value of the total investment portfolio was approximately \$12,277,239, which is \$65,240 lower than total carrying value as of March 31, 2019. Currently, the cost of securities in the Investment Portfolio exceeds the estimated market value due to the City's heavy investment in two to five year fixed income securities during this continued period of rising interest rates. The negligible difference (-0.53%) demonstrates how the cautious nature of the City's investment strategy mitigates the risk of the City incurring large unrealized losses during market retractions. On the other hand, given less risk exposure, more predictable and modest investment returns will be realized following this same strategy.

The City of Clayton Investment Portfolio was managed in accordance with the City's Investment Policy. Furthermore, the City's cash management program provides sufficient liquidity to meet the next six months expenditures. The attached City of Clayton Investment Holdings Summary – Third Quarter of Fiscal Year 2018-19 (Attachment 1) provides additional

analysis and the specific investment reporting criteria required by *California Government Code* section 53646.

FISCAL IMPACT

The acceptance of this report has no direct fiscal impact to the City of Clayton.

Attachments: 1. City of Clayton Investment Holdings Summary – Third Quarter of Fiscal Year 2018-19
(January 1, 2019 – March 31, 2019) [2 pp.]

City of Dayton
Investment Holdings Summary
Quarter Ending: March 31, 2019

ATTACH. INT 1

Investment Account	Investment Type	Institution	CUSIP	Carrying Value	Rate	Current Yield	Schedule Date	Maturity Date	Market Value
CAMP	Local Agency Pool	California Asset Management Program	n/a	854,576.00	2.61%	2.61%	n/a	n/a	854,576.00
LAIF	Local Agency Pool	Local Agency Investment Fund	n/a	20,189.91	2.55%	2.55%	n/a	n/a	20,189.88
UBS Financial Services Inc.	Money Market Fund	RMA Government Portfolio	n/a	9,313.64	1.75%	1.95%	n/a	n/a	9,313.64
	Certificate of Deposit	First Savings Bank, IN	33621L8V4	99,000.00	1.15%	1.15%	5/4/16	5/24/19	98,829.72
	Certificate of Deposit	UBS Bank, UT	90348JA59	200,000.00	1.20%	1.20%	6/9/16	6/17/19	199,500.00
	Certificate of Deposit	First Financial NW, WA	32022MAJ7	147,000.00	1.45%	1.46%	2/10/16	8/19/19	146,467.86
	Certificate of Deposit	Third Fed S&L Assn, OH	88413QAY4	200,000.00	1.50%	1.50%	2/19/15	8/19/19	199,762.00
	Certificate of Deposit	Park Natl Bk Newar, OH	700654AT3	240,000.00	2.15%	2.15%	9/12/14	9/12/19	239,572.80
	Certificate of Deposit	Gulf Coast B&T, LA	402194FB5	99,000.00	1.25%	1.26%	10/14/16	10/15/19	98,291.16
	Certificate of Deposit	GE Capital Bank UT	36162YF24	145,000.00	1.80%	1.80%	1/16/15	1/16/20	144,683.90
	Certificate of Deposit	Mercantile Comm Ban, FL	58733AEJ4	100,000.00	1.90%	1.91%	8/15/17	3/2/20	99,473.00
	Certificate of Deposit	BMW Bank NA, UT	05580AHL1	198,000.00	1.80%	1.81%	4/12/17	4/21/20	196,592.22
	Certificate of Deposit	Wells Fargo Bk Na Sd Us	94986TTT4	197,000.00	1.25%	2.00%	4/30/15	4/30/20	196,960.60
	Certificate of Deposit	Washington Trust, RI	940637HX2	99,000.00	1.45%	1.47%	11/18/16	5/18/20	97,862.49
	Certificate of Deposit	Comenity Bank, DE	981996K55	100,000.00	2.30%	2.32%	6/30/15	7/1/20	98,952.00
	Certificate of Deposit	World's Foremost B, NE	9159919E5	200,000.00	2.30%	2.33%	8/6/15	8/6/20	197,304.00
	Certificate of Deposit	Merrick Bk, UT	59013JHE2	149,000.00	1.90%	1.91%	8/20/15	8/20/20	147,836.31
	Certificate of Deposit	Morgan Stanley Bk, UT	61747MG96	245,000.00	2.45%	2.45%	1/18/18	1/25/21	244,970.60
	Certificate of Deposit	JP Morgan Chase, OH	48125Y2B3	200,000.00	1.25%	1.51%	1/26/16	2/10/21	198,842.00
	Certificate of Deposit	Synchrony Bank, UT	87164XLH7	94,000.00	1.70%	1.72%	2/25/16	3/4/21	93,000.78
	Certificate of Deposit	BLC Comenity Bank, WI	05549CGN4	198,000.00	2.00%	2.02%	11/13/17	5/28/21	195,919.02
	Certificate of Deposit	Webbank, UT	947547KC8	200,000.00	3.00%	3.00%	5/18/18	5/28/21	200,228.00
	Certificate of Deposit	Barclays Bank, DE	06740KCC0	100,000.00	2.00%	2.02%	7/12/17	7/12/21	98,812.00
	Certificate of Deposit	Comenity Cap Bank UT	20033AUX2	245,000.00	2.00%	2.02%	7/16/17	7/16/21	242,050.20
	Certificate of Deposit	UBS Bank, UT	90348JAJ4	50,000.00	1.50%	1.54%	7/20/16	7/20/21	48,775.50
	Certificate of Deposit	Synchrony Bank, UT	87164XNA0	50,000.00	1.45%	1.49%	7/22/16	7/22/21	48,763.50
	Certificate of Deposit	Peoples Sec B&T Co, PA	712303AA4	100,000.00	3.01%	3.00%	8/20/18	8/31/21	100,064.00
	Certificate of Deposit	Medallion Bk, UT	58403B5Q5	198,000.00	2.05%	2.08%	12/5/16	12/16/21	194,810.22
	Certificate of Deposit	Mercantile Comm Bank	58733ADT3	150,000.00	2.10%	2.13%	1/27/17	1/27/22	147,550.50
	Certificate of Deposit	BMO Harris Bank, IL	05581WK53	100,000.00	3.00%	2.99%	1/22/19	1/28/22	100,209.00
	Certificate of Deposit	Texas Exchange Bank, TX	88241T8D1	150,000.00	2.25%	2.28%	3/28/17	3/28/22	147,849.00
	Certificate of Deposit	First National Bank of McGregor, TX	36A99U934	145,000.00	2.35%	2.43%	12/20/18	6/20/22	140,054.05
	Certificate of Deposit	Bank of New England, NH	06426KAL2	246,000.00	3.15%	3.11%	7/17/18	7/28/22	248,792.10
	Certificate of Deposit	First Bank Highland, IL	319141HN0	247,000.00	2.20%	2.24%	9/7/17	9/7/22	242,094.58
	Certificate of Deposit	Capital One Bank	1404205H9	99,000.00	2.30%	2.34%	10/4/17	10/4/22	97,296.21
	Certificate of Deposit	Belmont Svgs Bk, MA	08051SCH0	200,000.00	2.70%	2.72%	2/13/18	2/28/23	198,744.00
	Certificate of Deposit	Citibank, NA SD	17312QJ26	200,000.00	2.90%	2.90%	4/2/18	4/11/23	200,132.00
	Certificate of Deposit	Toyota Financial Savings Bank, NV	89235MJA0	250,000.00	3.40%	3.40%	6/29/18	7/24/23	250,202.50
	Certificate of Deposit	Bank of Baroda, NY	06063H8H5	250,000.00	3.55%	3.46%	12/17/18	12/28/23	256,792.50
	Certificate of Deposit	Sallie Mae Bank, UT	7954502C8	197,000.00	2.65%	2.65%	4/3/19	4/4/22	197,000.00
	Government Agency	FHLMC	3134G8VZ9	250,000.00	1.50%	1.51%	3/29/16	4/28/21	248,100.00
	Total UBS Financial Services Inc.			6,346,313.64					6,312,483.96

City of Clayton
Investment Holdings Summary
Quarter Ending: March 31, 2019

ATTACHMENT 1

Investment Account	Investment Type	Institution	CUSIP	Carrying Value	Rate	Current Yield	Settlement Date	Maturity Date	Market Value
Morgan Stanley	Money Market Fund	Morgan Stanley	n/a	3,902.06	0.15%	0.15%	n/a	n/a	3,902.06
	Certificate of Deposit	State Bank of India, ILL.	856283YN0	198,000.00	1.65%	0.83%	5/28/15	5/28/19	197,778.24
	Certificate of Deposit	First Business Bank, WI	31938QL85	50,000.00	1.50%	0.75%	6/11/15	6/11/19	49,914.50
	Certificate of Deposit	Ally Bank, UT	02006LE66	148,000.00	1.25%	0.63%	6/23/16	6/24/19	147,385.60
	Certificate of Deposit	American Express Bank FSB, UT	02587CAJ9	247,000.00	2.00%	1.00%	7/24/14	7/24/19	246,701.13
	Certificate of Deposit	BMW, UT	05580aia7	50,000.00	1.20%	0.60%	8/26/16	8/26/19	49,730.50
	Certificate of Deposit	Comenity Bank, DE	20099A7A9	100,000.00	2.10%	0.88%	8/27/14	8/27/19	99,699.95
	Certificate of Deposit	JPM, OH	48126XCP8	48,000.00	1.25%	0.63%	8/31/16	8/31/19	47,739.84
	Certificate of Deposit	Capital One Bank, VA	14042QF0	130,000.00	2.15%	2.15%	10/16/14	10/16/19	129,773.80
	Certificate of Deposit	State Bk India, NY	8562842P8	50,000.00	2.25%	2.25%	8/22/14	10/17/19	49,956.00
	Certificate of Deposit	The Privatebank & Trust Co., IL	74267GUU9	100,000.00	1.90%	1.90%	1/23/15	1/23/20	99,759.00
	Certificate of Deposit	American Express Centurion Bank, UT	02587DXE3	47,000.00	1.95%	1.96%	1/30/15	1/30/20	46,809.18
	Certificate of Deposit	Peoples United Bank, CT	71270QML7	151,000.00	1.75%	1.76%	3/4/15	3/4/20	150,392.98
	Certificate of Deposit	Everbank, FL	29976DVW7	200,000.00	1.75%	2.64%	3/30/15	3/30/20	198,546.00
	Certificate of Deposit	CIT Bank, UT	17284DBM3	50,000.00	1.98%	2.01%	6/3/15	6/3/20	49,723.00
	Certificate of Deposit	Capital One NA McLean, VA	14042E4Y3	245,000.00	2.22%	2.26%	7/22/15	7/22/20	244,135.15
	Certificate of Deposit	Beneficial Mut, PA	08173QB72	200,000.00	1.37%	1.37%	10/7/16	10/7/20	196,444.00
	Certificate of Deposit	Connectone England Cliffs, NJ	20786ACD5	100,000.00	2.60%	2.59%	3/28/18	3/29/21	100,293.00
	Certificate of Deposit	Townebank Portsmouth, VA	89214PBL2	200,000.00	2.80%	2.78%	4/19/18	4/30/21	201,308.00
	Certificate of Deposit	Wells Fargo, SD	9497485W3	50,000.00	1.77%	1.79%	6/17/16	6/17/21	49,014.50
	Certificate of Deposit	Ist Internet Bank Indianapolis, IN	32056GCP3	100,000.00	1.95%	1.98%	7/14/17	7/14/21	98,691.00
	Certificate of Deposit	Bank Hapoalim, NY	06251AU32	147,000.00	3.00%	2.97%	8/23/18	8/23/21	148,462.65
	Certificate of Deposit	First Bank PR Santurce, PR	33767A4K4	157,000.00	2.05%	2.08%	8/25/17	8/25/21	155,086.17
	Certificate of Deposit	Enerbank USA, UT	29266N3H8	50,000.00	1.48%	1.49%	8/26/16	8/26/21	48,688.50
	Certificate of Deposit	Privatebank, IL	74267GVM6	147,000.00	1.53%	1.54%	8/30/16	8/30/21	143,154.48
	Certificate of Deposit	Commercial Bank Harrogate, Tenn	20143PDR8	197,000.00	3.00%	2.97%	6/19/18	9/21/21	198,916.81
	Certificate of Deposit	Franklin Syn Bank, TN	35471TCV2	204,000.00	2.00%	2.04%	1/12/17	1/31/22	200,085.24
	Certificate of Deposit	Live Oak Banking, NC	538036CM4	97,000.00	2.25%	2.28%	4/7/17	4/7/22	95,584.77
	Certificate of Deposit	Commercial Savings Bank, IA	202291AD2	247,000.00	2.10%	2.15%	10/18/17	10/18/22	241,002.84
	Certificate of Deposit	Industrial & Coml, NY	45581EAR2	250,000.00	2.65%	2.67%	2/17/18	2/14/23	248,032.50
	Certificate of Deposit	Enerbank USA, UT	29278TCG3	100,000.00	3.20%	3.16%	7/31/18	7/31/23	101,206.00
	Certificate of Deposit	Commercial Bank, AL	201282HZ6	200,000.00	3.20%	3.18%	1/11/19	1/23/24	201,290.00
	Government Agency	Federal Farm Credit Bank	3133BEGEX9	200,000.00	1.67%	1.69%	6/9/16	6/14/21	197,104.00
	Government Agency	Federal Home Loan Bank	3130A8HH9	250,000.00	1.62%	1.64%	6/16/16	6/23/21	246,007.50
	Total Morgan Stanley			4,713,902.06					4,682,518.89
Bank of America (book balance)	Cash (checking account)	Bank of America		407,500.12	0.00%	0.00%	n/a	n/a	407,500.12

Broker / Institution	Carrying Value	Percentage of Portfolio	Weighted Average Yield to Maturity	W.A.M. (yrs)	Market Value
CAMP	854,576	6.92%	2.61%	0.11	854,576
LAIF	20,187	0.16%	2.55%	0.53	20,190
UBS Financial Services Inc.	6,346,314	51.42%	2.18%	2.20	6,312,454
Morgan Stanley	4,713,902	38.19%	2.10%	1.96	4,682,519
Bank of America (book balance)	407,500	3.30%	0.00%	0.00	407,500
Total investment Portfolio	12,342,479	100.00%	2.11%	1.89	12,277,239
2018-19 Budgeted Interest - General Fund		\$	88,200		
2018-19 Actual Interest Revenue to date (7/1/18 - 3/31/19)		\$	83,429		
Percent of General Fund Budget Realized			94.59%		
Quarterly Weighted Average Annual Yield*			2.11%		
2018-19 Total Pooled Investment Income To Date (7/1/18 - 3/31/19)		\$	197,198		

*This calculation excludes the City's non-interest bearing pooled checking account with Bank of America

I verify that this investment portfolio is in conformity with State laws and the City of Clayton's investment policy. The City's cash management program provides sufficient liquidity to meet the next six month's expenditures.

T. Kevin Mizuno 4/18/19
Kevin Mizuno, Finance Manager Date

Hank Stratford 4/23/19
Hank Stratford, City Treasurer Date

JOSEPH DESCALZO
for
"Doing the Right Thing"
at
Mt. Diablo Elementary School
by exemplifying great "Integrity"
March and April 2019

Agenda Date: 5-07-2019

Agenda Item: 4a

SKYE ORR
for
"Doing the Right Thing"
at
Mt. Diablo Elementary School
by exemplifying great "Integrity"
March and April 2019

McKENZIE MacPHERSON
for
"Doing the Right Thing"
at
Diablo View Middle School
by exemplifying great "Integrity"
March and April 2019

MADISON MacPHERSON
for
"Doing the Right Thing"
at
Diablo View Middle School
by exemplifying great "Integrity"
March and April 2019

STEFAN JONES
for
"Doing the Right Thing"
at
Clayton Valley Charter High School
by exemplifying great "Integrity"
March and April 2019

COLE MURPHY
for
"Doing the Right Thing"
at
Clayton Valley Charter High School
by exemplifying great "Integrity"
March and April 2019

Clayton Certified Farmers' Market

Annual Report 2019

Presented by

Chong Thao, Senior Manager

Shawn Lipetzky, Regional Manager



New Direction in 2019

- ✓ Now a farmer-run farmers' market
- ✓ Contracted with PCFMA
- ✓ Uphold regulations from state and local departments
- ✓ Customer service
- ✓ PCFMA staff communications



2019 Producers

Ag Producers

Hanson Family Farms
Chay's Farm
G&S Farms
Gotelli Farms
Nojaba Farms
Resendiz Farms

Clayton pork, lamb and beef
Vegetables, berries
Brentwood corn
Cherries
Pistachios, eggs
Stone fruit

Non-Ag Producers

Rosa's Portuguese Bakery
Upper Crust Bakery

Pastries, pies, breads
Artisan Breads



Partnering with local events

- Cross promotion with Concerts in the Park
-flyers, fruit give-aways
- Derby Day - TBD
- Rib Cook-off – TBD
- Clayton Garden Club plant sales
collaboration



Marketing & Promotional Activities

Outreach

- ❖ Concord/Clayton Pioneer monthly newspaper articles and ads
- ❖ East Bay Times articles
- ❖ Diablo Gazette articles
- ❖ Claycord online ad in June
- ❖ Monthly email newsletter
- ❖ Enter to win contests to local businesses



Social media

- Facebook
 - 819 followers, 750 likes, 4.8 out of 5 review approval
 - 663 Email newsletter



Goals

- Increase community involvement
- Increase crowd counts
- Local business involvement
- Adding new producers

Thank You!

Any questions?



Approved: 
Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: DAVID WOLTERING, INTERIM COMMUNITY DEVELOPMENT DIRECTOR

DATE: MAY 7, 2019

SUBJECT: PUBLIC HEARING TO CONSIDER THE ADOPTION OF CITY-INITIATED URGENCY ORDINANCE NO. 486 AND THE INTRODUCTION/FIRST READING OF CITY-INITIATED ORDINANCE NO. 487, AND A RESOLUTION ESTABLISHING DESIGN AND DEVELOPMENT STANDARDS FOR WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY OF CLAYTON.

RECOMMENDATIONS

It is recommended that the City Council consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, take the following actions:

- 1) Receive the staff report;
- 2) Open the Public Hearing and receive public comments;
- 3) Close the Public Hearing;
- 4) Following City Council discussion and subject to any modifications to the proposed Urgency Ordinance, approve a motion to have the City Clerk read Urgency Ordinance No. 486 by title and number only and waive further reading;
- 5) Following the City Clerk's reading, approve a motion by 4/5ths affirmative vote to adopt Urgency Ordinance No. 486 with the finding the adoption of this Ordinance is not subject to the California Environmental Quality Act (CEQA) because CEQA only applies to projects that have the potential for causing a significant effect on the environment and this activity is not considered to be a project and can be seen with certainty that it will not have a significant effect or physical change to the environment;
- 6) By motion, adopt a Resolution establishing design and development standards for wireless facilities in the public right-of-way, as authorized by Section 12.05.050 of the Clayton Municipal Code;

- 7) Subject to any modifications to proposed Ordinance No. 487, approve a motion to have the City Clerk read Ordinance No. 487 by title and number only and waive further reading; and
- 8) Following the City Clerk's reading, adopt a motion approving the Introduction of Ordinance No. 487 with the finding the adoption of this Ordinance is not subject to the California Environmental Quality Act (CEQA) because CEQA only applies to projects which have the potential for causing a significant effect on the environment and this activity is not considered to be a project and can be seen with certainty that it will not have a significant effect or physical change to the environment.

BACKGROUND/DISCUSSION

This Report introduces an Urgency Ordinance, a regular Ordinance, and a Resolution to provide the regulatory framework and standards for the installation of wireless facilities within the City of Clayton's public rights-of-way ("ROW"). Adoption of the Urgency Ordinance, which requires a 4/5ths vote, will enable the City to immediately have local permitting regulations and standards in place for applications to install or modify wireless facilities in the right-of-way, whereas the regular Ordinance requires a second reading and becomes effective 30 days after the second reading.

Traditionally, wireless antennas and equipment were primarily installed on large towers placed in easements on private land or on tops of structures (above-ground reservoirs and stadium light structures) or on the rooftops of buildings. These deployments were subject to land use review under the zoning code.

In recent years, companies increasingly seek to install wireless facilities in the ROW on utility poles, streetlights, and new poles. Current predictions indicate that the next wave of wireless facility deployment—5G—will involve \$275 billion in investment over the next decade, with the vast majority of these new facilities anticipated to be placed in ROW. Historically, telecommunications installations in the ROW are typically addressed through encroachment permits. However, the City's existing Municipal Code contains very minimal standards or regulations designed to address the unique aesthetic, safety, operational, and locational issues in connection with the installation of wireless facilities in the right-of-way.

In September 2018, the Federal Communications Commission ("FCC") issued a declaratory order and regulations¹ ("September 2018 Order") that placed shortened time frames or "shot clocks" and additional obligations and restrictions on local review of wireless facility installations in the ROW. The September 2018 Order went into effect partly on January 14, 2019 and partly on April 15, 2019. For applications

¹ See *In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Federal Communications Commission, FCC 18-133, WT Docket 17-79, WC Docket 17-84 (rel. Sept. 27, 2018).

received after January 14th, if a city does not render a decision on a small wireless facility application within a specified time period (60 days for installations on existing structures, and 90 days for new structures), the failure to meet the deadline for action will be presumed to violate federal law (both a failure to act within a reasonable period of time and an effective prohibition of personal wireless services).

The September 2018 Order also declared that all fees (including permit fees and rental fees for use of government-owned infrastructure, such as streetlights) must be based on a reasonable approximation of the local government's costs, such that only objectively reasonable costs are factored into those fees, and fees are no higher than the fees charged to similarly situated competitors in similar situations. The FCC established of presumptively reasonable fee levels (called "safe harbors") that include: non-recurring fees equal to \$500 for a single application for up to five collocations, plus \$100 for each additional collocation, and \$1,000 for each new pole. Recurring fees for attachment to municipal infrastructure are presumed reasonable if equal to \$270 per facility/per year, including the fee for attachment to municipal infrastructure and use of ROW. Staff proposes to require a deposit and charge fees according to the City's Master Fee Schedule, which is updated annually.

Further, the FCC rules that went into effect on April 15, 2019 address aesthetics standards, including undergrounding. The FCC declared that such requirements will not be preempted if they are reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective and published in advance so that applicants know what aesthetic requirements they must satisfy to be able to deploy facilities.

Another FCC order that was released in August 2018 ("August 2018 Order") prohibits cities from imposing a moratorium on wireless installations, which means that there can be no pause in accepting or processing applications to allow a city to study and address potential issues.² While the legal validity of the September 2018 and August 2018 Orders is being litigated, both the FCC and a federal court have denied requests to stay the effectiveness of the small cell order pending the resolution of the litigation.³

The FCC has existing radiofrequency (RF) emissions limits. Under federal law, local governments are not allowed to regulate the installation of wireless facilities on the basis of the effects of RF emissions if such facilities comply with FCC emissions regulations. As a result, City staff is proposing to address compliance with FCC RF

² See *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, FCC 18-111, WC Docket 17-84, WT Docket 17-79 (rel. Aug. 3, 2018).

³ See *In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Federal Communications Commission, ORDER DENYING MOTION FOR STAY, FCC 18-133, WT Docket 17-79, WC Docket 17-84 (DA 18-1240, rel. Dec. 10, 2018). In January 2019, the Tenth Circuit Court of Appeals denied a stay request but granted a Motion to Transfer. The case is now in the Ninth Circuit as *Sprint v. FCC*, No. 19-70123.

emissions regulations as an application requirement *and* as a condition of approval of a permit.

Wireless carriers can begin submitting applications to install small wireless facilities in the City ROW at any time. Therefore, it is crucial that the City implements a process to review applications and design standards to maintain the aesthetics and character of the ROW. Staff proposes the steps discussed below to address wireless deployments in the ROW consistent with new federal regulations and recommends that the City Council adopt an Urgency Ordinance and, by separate City Council action, adopt a Resolution on design and development standards that formally establish the local regulations and design and development standards for the City of Clayton ROW.

The Ordinances and Resolution work in concert as described in more detail below:

- *Ordinances.* The ordinances would amend Title 12 of the Municipal Code to add Chapter 12.05, Wireless Facilities in the Public Right-of-Way. For all wireless facility installations in the ROW, these ordinances provide, among other regulations, the permit and review procedures as well as the operation and maintenance standards. The ordinances treat wireless installations in the ROW similar to other installations in the ROW by requiring an encroachment permit. Specifically, the ordinances set additional standards and requirements for obtaining an encroachment permit to install wireless facilities.
- *Design and Development Resolution.* The ordinances provide that design and development standards will be established and maintained by resolution of the City Council. The Design and Development Resolution provides these standards. Given the frequent and often important changes to the law and technology of wireless installations, especially the pending litigation surrounding the FCC Order, design standards-by-resolution affords the City flexibility to readily adapt and tailor its regulations to these changes and the concerns of the City. The design and development standards that Clayton can impose include the following:
 - Establishing a maximum height and size of cellular antennas and support structures (cabinetry) that are allowed within the rights-of-way.
 - Prohibiting small cell antennas or equipment placement that causes interference with sight distances, ADA access, other adjacent utilities, pedestrian and bicycle traffic.
 - Requiring small cell facilities to be painted to match background materials and provide other stealthy attributes to limit visual exposure.

In addition to the Urgency Ordinance and the Design and Development Standards Resolution for City Council approval and the Regular Ordinance for first reading, City Staff is developing a standard application for wireless facility installations in the ROW

and a master license agreement for use of City infrastructure such as streetlights, all of which together will serve as the City's framework for addressing applications for wireless facility installations in the ROW. Also, as was mentioned above, this package of documents will allow the City to make compliance with FCC RF emissions an application requirement and a condition of approval of any permit issued pursuant to the new permitting process.

ENVIRONMENTAL

The Ordinances and Resolution are not a "project" within the meaning of Section 15378 of the State CEQA Guidelines, because they have no potential for resulting in direct or indirect physical change in the environment. Rather, it is only once an application is filed that CEQA would be implicated. Further, even if they were interpreted to permit a "project," any applicable wireless facility installation would likely be exempt from CEQA review in accordance with State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land).

Accordingly, City Staff recommends that the City Council direct that a Notice of Exemption be filed with the County Clerk of the County of Contra Costa in accordance with CEQA Guidelines.

FISCAL IMPACT

There is no direct fiscal impact.

ATTACHMENTS

1. Urgency Ordinance No. 486 (Wireless Facilities in the ROW Urgency Ordinance).
2. Resolution No. XX (Design and Development Resolution).
3. Ordinance No. 487 (Wireless Facilities in the ROW Ordinance).

ORDINANCE NO. 486

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON, ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 36937, AMENDING THE CLAYTON MUNICIPAL CODE, Title 12 – STREETS AND SIDEWALKS, TO ADD CHAPTER 12.05, “WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY”.

WHEREAS, pursuant to the California State Constitution, the City of Clayton (“City”) has the authority to adopt such ordinances as it deems necessary and appropriate to assure good government in the City, to protect and preserve the City’s rights, property and privileges, and to preserve peace, safety and good order; and

WHEREAS, the City deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction and maintenance of telecommunications towers, antennas and other structures within the City’s public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority.

WHEREAS, since the City Council last amended the portions of its Municipal Code related to wireless communication facility installations, significant changes in federal laws that affect local authority over wireless communication facilities and other related infrastructure deployments have occurred, including, but not limited to, the following:

- On August 2, 2018, the Federal Communications Commission (“FCC”) adopted a Third Report & Order and Declaratory Ruling in the rulemaking proceeding titled Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, 33 FCC Rcd. 7705 (rel. Aug. 3, 2018) (the “August Order”), that, among other things, contained a declaratory ruling prohibiting express and de facto moratoria for all personal wireless services, telecommunications services and their related facilities under 47 U.S.C. § 253(a) and directed the Wireless Telecommunications Bureau and Wireline Competition Bureau to hear and resolve all complaints on an expedited basis. The declaratory ruling in the August Order was made effective upon release of the August Order which occurred on August 3, 2018; and
- On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, 33 FCC Rcd. 9088 (rel. Sep. 27, 2018) (the “September Order”), which, among many other things, created new shorter “shot clocks” for small wireless facilities (as defined in the September Order), altered existing “shot clock” regulations to require local public agencies to do more in less time, established a national standard for an effective prohibition related to small wireless facilities that replaced the existing “significant gap” test adopted by the United States Court of Appeals for the Ninth Circuit and provided that a failure to act within the applicable timeframe

presumptively constitutes an effective prohibition. The September Order was made effective 90 days after publication in the Federal Register, that is, on January 14, 2019;

WHEREAS, in light of the FCC Orders, the City deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction, and maintenance of telecommunications antennas and infrastructure within the City's public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority;

WHEREAS, considering that the FCC Orders are already in effect, if the City does not immediately amend the Clayton Municipal Code ("Code"), there is a risk that the City may not be able to enforce provisions of its Code or comply with the new federal regulations;

WHEREAS, the City's public rights-of-way are a valuable resource, and the regulation of wireless installations in the public rights-of-way is necessary to protect and preserve aesthetics in the community;

WHEREAS, if not adequately regulated, the installation of small wireless facilities within the public rights-of-way can pose a threat to the public health, safety, and welfare, including disturbance to the public rights-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; land use conflicts and incompatibilities including excessive height or poles and towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise, or lack of camouflaging of wireless facilities, including the associated pedestals, meters, equipment and power generators, all of which may negatively impact the City and its citizens; and

WHEREAS, the City deems it necessary and appropriate to enact regulations for wireless telecommunications facilities in the public rights-of-way by urgency ordinance under Cal. Gov. Code Section 36937(b) because the matters herein concern "the immediate preservation of the public peace, health or safety" of the City's citizens.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the City Council of the City of Clayton:

SECTION 1: The foregoing Recitals are adopted as findings of the City Council as set forth fully within the body of this ordinance.

SECTION 2: The Municipal Code for the City ("Code") shall be amended to add a new Chapter 12.05, entitled "Wireless Facilities in Public Rights-Of-Way" as follows:

Chapter 12.05
WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY

12.05.010. Purpose.

- (a) The purpose of this Chapter is to establish a process for managing, and uniform standards for acting upon, requests for the placement of wireless facilities within the public rights-of-way of the City consistent with the City's obligation to promote the public health, safety, and welfare, to manage the public rights-of-way, and to ensure that the public is not incommoded by the use of the public rights-of-way for the placement of wireless facilities. The City recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable Federal and State law regarding the placement of personal wireless services facilities in its public rights-of-way. This ordinance shall be interpreted consistent with those provisions.
- (b) The City of Clayton requires radio frequency (RF) emissions studies as described in this Chapter to ensure all installations are compliant with Federal Communications Commission (FCC) regulations.

12.05.020. Definitions. The terms used in this Chapter shall have the following meanings:

Application: A formal request, including all required and requested documentation and information, submitted by an applicant to the City for a wireless encroachment permit.

Applicant: A person filing an application for placement or modification of a wireless facility in the public right-of-way.

Base Station: shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(1), or any successor provision.

Eligible Facilities Request: shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision.

FCC: The Federal Communications Commission or its lawful successor.

Municipal Infrastructure: City-owned or controlled property structures, objects, and equipment in the ROW, including, but not limited to, street lights, traffic control structures, banners, street furniture, bus stops, billboards, or other poles, lighting fixtures, or electroliers located within the ROW.

Permittee: any person or entity granted a wireless encroachment permit pursuant to this Chapter.

Personal Wireless Services: shall have the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).

Personal Wireless Services Facility: means a wireless facility used for the provision of personal wireless services.

Public Right-of-Way, or ROW: shall have the same meaning as in Section 12.04.010, but shall also include any portion of any road or public way which the City has the responsibility to maintain or manage.

Small Cell Facility: shall have the same meaning as “small wireless facility” in 47 C.F.R. 1.6002(l), or any successor provision (which is a personal wireless services facility that meets the following conditions that, solely for convenience, have been set forth below):

- (1) The facility—
 - (i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or
 - (ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or
 - (iii) does not extend an existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- (2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- (4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;
- (5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and
- (6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b).

Support Structure: Any structure capable of supporting a base station.

Tower: Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for personal wireless services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

Underground areas: Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

Utility Pole: A structure in the ROW designed to support electric, telephone and similar utility lines. A tower is not a utility pole.

Wireless Encroachment Permit: A permit issued pursuant to this Chapter authorizing the placement or modification of a wireless facility of a design specified in the permit at a particular location within the ROW; and the modification of any existing support structure to which the wireless facility is proposed to be attached.

Wireless Facility, or Facility: The transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s).

Wireless Infrastructure Provider: A person that owns, controls, operates or manages a wireless facility or portion thereof within the ROW.

Wireless Regulations: Those regulations adopted pursuant to Section 5 and implementing the provisions of this Chapter.

Wireless Service Provider: An entity that provides personal wireless services to end users.

12.05.030. Scope.

- (a) **In general.** There shall be a type of encroachment permit entitled a "wireless encroachment permit," which shall be subject to all of the same requirements as an encroachment permit would under Chapter 12.04, Article II in addition to all of the requirements of this Chapter. Unless exempted, every person who desires to place a wireless facility in the public rights-of-way or modify an existing wireless facility in the public rights-of-way must obtain a wireless encroachment permit authorizing the placement or modification in accordance with this Chapter. Except for small cell facilities, facilities qualifying as eligible facilities requests, or any other type of facility expressly allowed in the public right-of-way by state or federal law, no other wireless facilities shall be permitted pursuant to this Chapter.
- (b) **Exemptions.** This Chapter does not apply to:
 - (1) The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.
 - (2) Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.
- (c) **Other applicable requirements.** In addition to the wireless encroachment permit required herein, the placement of a wireless facility in the ROW requires the persons who will own or control those facilities to obtain all permits required by applicable law, and to comply with applicable law, including, but not limited, applicable law governing radio frequency (RF) emissions.

- (d) **Pre-existing Facilities in the ROW.** Any wireless facility already existing in the ROW as of the date of this Chapter's adoption shall remain subject to the provisions of the City Code in effect prior to this Chapter, unless and until an extension of such facility's then-existing permit is granted, at which time the provisions of this Chapter shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing facilities shall be conducted pursuant to this Chapter, rather than the portion(s) of the City Code that it was previously reviewed under.
- (e) **Public use.** Except as otherwise provided by California law, any use of the public right-of-way authorized pursuant to this Chapter will be subordinate to the City's use and use by the public.

12.05.040. Administration.

- (a) **City Engineer.** The City Engineer or their designee is responsible for administering this Chapter. As part of the administration of this Chapter, the City Engineer may:
 - (1) Interpret the provisions of this Chapter;
 - (2) Ensure that applications are reviewed by the other applicable departments including, but not limited to, the Community Development Department and Maintenance Department.
 - (3) Develop and implement standards governing the placement and modification of wireless facilities consistent with the requirements of this Chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;
 - (4) Develop and Implement acceptable designs and development standards for wireless facilities in the public rights-of-way, taking into account the zoning districts bounding the public rights-of-way;
 - (5) Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this Chapter;
 - (6) Determine the completeness of any application and collect any fee or deposit established by this Chapter;
 - (7) Establish any application deposit amount;
 - (8) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate, consistent with state and federal laws and regulations;
 - (9) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued, consistent with state and federal laws and regulations;
 - (10) Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;
 - (11) Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
 - (12) Take such other steps as may be required to timely act upon applications for placement of wireless facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

(b) Appeal.

- (1) Any person adversely affected by the decision of the City Engineer pursuant to this Chapter may appeal the City Engineer's decision to the Independent Hearing Officer, which may decide the issues *de novo*, and whose written decision will be the final decision of the City. The Independent Hearing Officer shall be a qualified person appointed by the City Manager. Any costs associated with an appeal and the Independent Hearing Officer shall be borne by the appealing party. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the personal wireless services facility.
- (2) Where the City Engineer grants an application based on a finding that denial would result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the Independent Hearing Officer. All appeals must be filed within two (2) business days of the written decision of the City Engineer, unless the City Engineer extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.
- (3) Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law.

12.05.050. General Standards for Wireless Facilities in the Public Rights-of-Way.

- (a) **Generally.** Wireless facilities in the ROW shall meet the minimum requirements set forth in this ordinance and the wireless regulations, in addition to the requirements of any other applicable law.
- (b) **Regulations.** The wireless regulations and decisions on applications for placement of wireless facilities in the ROW shall, at a minimum, ensure that the requirements of this section are satisfied, unless it is determined that applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter may be waived, but only to the minimum extent required to avoid the prohibition or violation.
- (c) **Minimum Standards.** Wireless facilities shall be installed and modified in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures in the public rights-of-way, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights of way; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the public rights of way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the rights of way.
- (d) **Design Standards and Location Preferences.** All new wireless facilities and collocations, modifications, or other changes to existing wireless facilities that are not

eligible facilities requests must conform to the design and development standards adopted by resolution of the City Council.

12.05.060. Applications.

- (a) **Submission.** Unless the wireless regulations provide otherwise, applicant shall submit a paper copy and an electronic copy of any application, amendments, or supplements to an application, or responses to requests for information regarding an application to the City Engineer.
- (b) **Pre-application meeting.** Prior to filing an application for a wireless encroachment permit, an applicant is strongly encouraged to schedule a pre-application meeting with the City Engineer to discuss the proposed facility, the requirements of this Chapter, and any potential impacts of the proposed facility.
- (c) **Content.** An applicant shall submit an application on the form approved by the City Engineer, which may be updated from time-to-time, but in any event shall require the submission of all required fee(s), documents, information, and any other materials necessary to allow the City Engineer to make required findings and ensure that the proposed facility will comply with applicable federal and state law, the City Code, and will not endanger the public health, safety, or welfare. If no form has been approved, applications must contain all information necessary to show that applicant is entitled to the wireless encroachment permit requested, and must specify whether the applicant believes state or federal law requires action on the application within a specified time period.
- (d) **Fees.** Application fee(s) or deposits shall be required to be submitted with any application for a wireless encroachment permit. Through the Master Fee Schedule, City Council will establish fees, including hourly rates charged against the deposit determined by the City Engineer. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a wireless encroachment permit unless paid as a refundable deposit.
- (e) **Waivers.** Requests for waivers from any requirement of this section and implementing resolution(s) shall be made in writing to the City Engineer or his or her designee. The City Engineer may grant or deny a request for a waiver pursuant to this subsection. The City Engineer may grant a request for a waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the permit sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of the City Code.
- (f) **Incompleteness.** For personal wireless facilities and eligible facilities requests, applications will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is deemed incomplete, the City Engineer may notify the applicant in writing, specifying the material missing from the application.

12.05.070. Findings; Decisions; Consultants.

(a) Findings Required for Approval.

- (1) Except for eligible facilities requests, the City Engineer or Independent Hearing Officer, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - (i) The facility is not detrimental to the public health, safety, and welfare;
 - (ii) The facility complies with this Chapter and all applicable design and development standards;
 - (iii) The facility meets applicable requirements and standards of state and federal law; and
- (2) For eligible facilities requests, the City Engineer or Independent Hearing Officer, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - (i) That the application qualifies as an eligible facilities request; and
 - (ii) That the proposed facility will comply with all generally-applicable laws.

(b) Decisions. Decisions on an application by the City Engineer or Independent Hearing Officer shall be in writing and include the reasons for the decision.

(c) Independent Consultants. The City Engineer or Independent Hearing Officer, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise in telecommunications in connection with the review of any application under this Chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including, but not limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards. All costs associated with the work by authorized independent consultants shall be the responsibility of the applicant and paid through the deposit account established by the project.

12.05.080. Conditions of Approval.

(a) Generally. In addition to any supplemental conditions imposed by the City Engineer or Independent Hearing Officer, as the case may be, all permits granted pursuant to this Chapter shall be subject to the following conditions, unless modified by the approving authority:

- (1) *Code Compliance.* The permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules, including, without limitation, those applying to use of public rights-of-way.
- (2) *Permit Duration.* A wireless encroachment permit shall be valid for a period of ten (10) years, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such Permit shall automatically expire, unless an extension or renewal has been granted. At least one hundred fifty (150) days prior to expiration, a person holding a wireless encroachment permit must either (1) notify the City that they will not be applying for a new permit to extend the use of the facility and remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to

maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility may remain in place until it is acted upon by the City and all appeals from the City's decision exhausted. The applicant shall apply for an encroachment permit for the removal of the facility and pay the associated fees, if required.

- (3) *Timing of Installation.* The installation and construction authorized by a wireless encroachment permit shall begin within ninety (90) days after its approval, or it will expire without further action by the City. The installation and construction authorized by a wireless encroachment permit shall conclude, including any necessary post-installation repairs and/or restoration to the ROW, within thirty (30) days following the day construction commenced.
- (4) *Commencement of Operations.* The operation of the approved facility shall commence no later than thirty (30) days after the completion of installation, or the wireless encroachment permit will expire without further action by the City.
- (5) *As-Built Drawings.* The Permittee shall submit an as-built drawing within thirty (30) days after installation of the facility. As-builts shall be in a format as approved by the City Engineer.
- (6) *Inspections; Emergencies.* The City or its designee may enter onto the facility area to inspect the facility upon 48 hours prior notice to the permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The City shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case shall notify permittee within one (1) working day of doing so.
- (7) *Contact.* The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person.
- (8) *Insurance.* Permittee shall obtain and maintain throughout the term of the permit [commercial general liability insurance with a limit of \$2,000,000 per occurrence for bodily injury and property damage and \$10,000,000 general aggregate including premises operations, contractual liability, personal injury, and products completed operations.] The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of to the cancellation or material modification of any applicable insurance policy.
- (9) *Indemnities.* The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought

against the City or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and, if applicable, the property owner and shall reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.

- (10) *Performance Bond.* Prior to issuance of a wireless encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 200 % of the cost of physically removing the facility and all related facilities and equipment on the site, based on the higher of two contractor's quotes for removal that are provided by the permittee but in no case less than \$10,000. The permittee shall reimburse the City for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall be paid when the security is posted and during each administrative review.
- (11) *Adverse Impacts on Adjacent Properties.* Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility.
- (12) *Noninterference.* Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless encroachment permit, the Permittee shall provide the City with documentation establishing to the City's satisfaction that the Permittee has the legal right to use or interfere with any other structure, improvement, or property within the public right-of-way or City utility easement to be affected by Permittee's facilities.
- (13) *No Right, Title, or Interest.* The permission granted by a wireless encroachment permit shall not in any event constitute an easement on or an encumbrance against

the public right-of-way. No right, title, or interest (including franchise interest) in the public right-of-way, or any part thereof, shall vest or accrue in Permittee by reason of a wireless encroachment permit or the issuance of any other permit or exercise of any privilege given thereby.

- (14) *No Possessory Interest.* No possessory interest is created by a wireless encroachment permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that City has given to Permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a wireless encroachment permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this permit.
- (15) *General Maintenance.* The site and the facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, shall be maintained in a neat and clean manner and in accordance with all approved plans. All graffiti on facilities shall be removed at the sole expense of the permittee within forty eight (48) hours after notification from the City. Maintenance work and resulting restoration work shall be completed in a time frame as required by the City Engineer. The applicant shall apply for an encroachment permit (with associated fees) for all work within the public right of way, if required.
- (16) *RF Exposure Compliance.* All facilities shall comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, permittee or its representative shall conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.
- (17) *Testing.* Testing of any equipment shall take place on weekdays only, and only between the hours of 9:00 a.m. and 4:00 p.m., except that testing is prohibited on City holidays that fall on a weekday. In addition, testing is prohibited on weekend days. All testing for RF emissions shall be overseen by the City's RF consultant to ensure that operation of the facility is in full compliance with FCC Regulations. An encroachment permit shall be obtained by the applicant for such work, if required, unless waived by the City Engineer.
- (18) *Modifications.* No changes shall be made to the approved plans without review and approval in accordance with this Chapter. All facilities shall be in conformance with the approved plans.
- (19) *Agreement with City.* If not already completed, permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to

constructing, attaching, or operating a facility on Municipal Infrastructure. This permit is not a substitute for such agreement.

- (20) *Conflicts with Improvements.* For all facilities located within the ROW, the permittee shall remove or relocate, at its expense and without expense to the City, any or all of its facilities when such removal or relocation is deemed necessary by the City by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way.
- (21) *Abandonment.* If a facility is not operated for a continuous period of 90 days, the wireless encroachment permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the 90 day period (i) the City Engineer has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than thirty (30) days from the date the facility is determined to have been abandoned or the permittee has notified the City Engineer of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the City Engineer. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned, but will not be effective for the entirety thereof until all users cease use thereof.
- (22) *Encourage Co-location.* Where the facility site is capable of accommodating a co-located facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow co-location of third party facilities, provided the parties can mutually agree upon reasonable terms and conditions.
- (23) *Records.* The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the City, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.
- (24) *Attorney's Fees.* In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal

action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.

- (b) **Eligible Facilities Requests.** In addition to the conditions provided in Section 9(a) of this Chapter and any supplemental conditions imposed by the City Engineer or Independent Hearing Officer, as the case may be, all permits for an eligible facility requests granted pursuant to this Chapter shall be subject to the following additional conditions, unless modified by the approving authority:
- (1) *Permit subject to conditions of underlying permit.* Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.
 - (2) *No permit term extension.* The City's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
 - (3) *No waiver of standing.* The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.
- (c) **Small Cell Facilities Requests.** In addition to the conditions provided in Section 9(a) of this Chapter and any supplemental conditions imposed by the City Engineer or Independent Hearing Officer, as the case may be, all permits for a small cell facility granted pursuant to this Chapter shall be subject to the following condition, unless modified by the approving authority:
- (1) *No waiver of standing.* The City's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the City to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

12.05.090. Breach; Termination of Permit.

- (a) **For breach.** A wireless encroachment permit may be revoked for failure to comply with the conditions of the permit or applicable law. Upon revocation, the wireless facility must be removed; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.
- (b) **For installation without a permit.** An wireless facility installed without a wireless encroachment permit (except for those exempted by this Chapter) must be removed;

provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.

- (c) **Municipal Infraction.** Any violation of this Chapter will be subject to the same penalties as are addressed in Chapter 1.20 or other applicable Code sections.

12.05.100. Infrastructure Controlled By City. The City, as a matter of policy, will negotiate agreements for use of Municipal Infrastructure. The placement of wireless facilities on those structures shall be subject to the agreement. The agreement shall specify the compensation to the City for use of the structures. The person seeking the agreement shall additionally reimburse the City for all costs the City incurs in connection with its review of, and action upon the person's request for, an agreement.

12.05.110. Nondiscrimination. In establishing the rights, obligations and conditions set forth in this Chapter, it is the intent of the City to treat each applicant or public right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for use of the public rights-of-way.

SECTION 3: The City Manager, or his or her delegate, is directed to execute all documents and to perform all other necessary City acts to implement effect this Ordinance.

SECTION 4: CEQA. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt CEQA because the City Council's adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land). The City Council, therefore, directs that a

Notice of Exemption be filed with the County Clerk of the County of Contra Costa within five working days of the passage and adoption of the Ordinance.

SECTION 5: Severability. If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid, and enforceable.

SECTION 6: In accordance with California Government Code Section 36937(b), this ordinance shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF CLAYTON this
_____ day of _____, _____, **by the following vote:**

AYES:

NOES:

ABSENT:

APPROVED:

ATTEST:

_____, City Clerk

APPROVED AS TO FORM:

_____, **City Attorney**

RESOLUTION NO. - 2019

A RESOLUTION ESTABLISHING DESIGN AND DEVELOPMENT STANDARDS FOR WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY, AS AUTHORIZED BY SECTION 12.05.050 OF THE CITY MUNICIPAL CODE.

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

WHEREAS, Chapter 12.05 of the City's Municipal Code governs the permitting, installation, and regulation of personal wireless services facilities in the City's public rights-of-way (ROW);

WHEREAS, Section 12.05.050 provides that the City Council may develop and implement acceptable designs and development standards for wireless facilities in the public rights-of-way, taking into account the zoning districts bounding the public rights-of-way;"

WHEREAS, the City's public rights-of-way are a uniquely valuable public resource, closely linked with the City's character, making the regulation of wireless installations in the public rights-of-way necessary to protect and preserve the aesthetics in the community;

WHEREAS, being authorized to do so, the City wishes to establish design and development standards applicable to wireless installations in the public rights-of-way;

WHEREAS, on May 7th, 2019, the City Council conducted a duly noticed public meeting and received testimony from City staff and all interested parties regarding the design and development standards; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

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

SECTION 1. INCORPORATION OF RECITALS. The recitals above are each incorporated by reference and adopted as findings of the City Council.

SECTION 2. DEFINITIONS. The definitions set forth in Section 12.05.020 of the Municipal Code are incorporated by reference into this Resolution.

SECTION 3. DESIGN AND DEVELOPMENT STANDARDS FOR ALL FACILITIES.

The following design and development standards shall apply to all wireless facilities in the public right-of-way:

A. Visual Criteria.

1. **Generally.** Shall minimize view impacts to surrounding properties and roadway users; least visible means possible; compatible with support structure/surroundings.
2. **Coloring.** Shall match the colors of the support structure (including banding).
3. **Materials.** Shall be non-flammable and non-reflective.
4. **Concealment.** The wireless facility and pole-mounted equipment shall be camouflaged or concealed to blend the facility with surrounding materials and colors of the support structure on which the facility is installed.

B. Location.

1. **Preferred Locations/Zones.** On existing street light poles; in locations where enlarged street light base or auxiliary cabinet can be screened with landscaping; medians equal to or greater than 16 feet curb to curb.
2. **Discouraged Locations/Zones.** Hardscape areas; decorative wood street light poles (must be replaced with metal pole of similar design); in front of front-on single family residential properties.
3. **Prohibited Zones.** Flood plains; environmentally-protected areas; Town Center Specific Plan Area; on traffic signal poles; in the ADA path of travel.
4. **Preference for Use of Existing Infrastructure.** The City has a preference for installations on existing infrastructure.
5. **Design/Styling Preferences.** The City prefers undergrounding of equipment. If ground-mounted equipment is required, then it shall be enclosed in a cabinet or enlarged street light base sized only large enough to fit the necessary equipment. No unapproved equipment is allowed in cabinets. The ground-mounted cabinets should be painted, coated, and screened by vegetation to match existing infrastructure and/or the surrounding environment.

6. Curb Setback Requirements. Prohibited within 2.5 feet of the face of curb.
 7. Strand-Mounted Facilities are prohibited.
- C. Equipment.
1. Prohibition of Generators. Generators are prohibited within the right-of-way.
 2. Electric Service. The City encourages site operators to use flat-rate electric service when it would eliminate the need for a meter. Where meters are required, use the narrowest electric meter and disconnect available.
- D. Security. All equipment and facilities shall be installed in a manner to avoid being an attractive nuisance and to prevent unauthorized access, climbing, and graffiti.
- E. Safety. All wireless facilities in the right-of-way, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the right-of-way; impede the flow of vehicular or pedestrian traffic; impair the primary use and purpose of poles/signs/traffic signals or other infrastructure; interfere with outdoor dining areas or emergency facilities; or otherwise obstruct the accessibility of the right-of-way. Further, all wireless facilities and associated equipment in the right-of-way shall comply with Americans with Disabilities Act (ADA) requirements.
- F. Noise. Noise levels shall be in conformance with the City of Clayton's adopted Community Noise Standards and shall not increase the existing ambient noise levels.
- G. Lighting. No facility shall be illuminated unless specially required by the Federal Aviation Administration (FAA) or other government agency. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding area property.
- H. Signs. No facility may display any signage or advertisement unless it is expressly allowed by the City in a written approval, recommended under FCC regulations, or required by law or permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the owner's unique site number and a local or toll-free telephone number to contact the facility owner's operations center.

- I. Landscaping. In addition to any landscaping used for concealment or screening purposes, the applicant shall propose and install additional landscaping to replace any existing landscaping displaced during construction or installation of the applicant's facility in the right-of-way. The applicant's landscaping plan shall be subject to the City's review and approval but shall, at a minimum, match the existing landscaping and foliage surrounding the installation site.
- J. Modifications. Modifications to existing facilities or collocations cannot defeat the stealthing elements of the existing structure/facility.
- K. Maintenance. Any work that will impact vehicular, bicycle, or pedestrian traffic will require an encroachment permit by the City.

SECTION 4. DESIGN AND DEVELOPMENT STANDARDS FOR POLE-MOUNTED FACILITIES. In addition to the generally applicable standards set forth in Section 3 of this Resolution, the design and development standards for pole-mounted facilities in the ROW are as follows:

- A. Definition of Pole-Mounted Facility. For purposes of this Resolution, the term "pole-mounted facility" means a wireless facility that is, or is proposed to be, attached to, contained in or on, or otherwise mounted to, in, or on a pole.
- B. Poles, Generally. For facilities installed on any pole:
 - 1. Dimensions. Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume. Pole-top wireless facilities, including shroud, shall be no more than 72 inches in height and 14.5 inches in diameter.
 - 2. Antennas. Antennas and radio relay units (RRUs) shall be top-mounted in a shroud. RRUs attached to the side of the pole are discouraged, but if they are required due to technical reasons, should use the smallest RRU volume possible and be stacked vertically and close together with minimal distance from the pole.
 - 3. Accessory Equipment. If pole-mounted, equipment (excluding antennas) shall be no larger than 16"w x 36"h x 4"d per pole. If equipment is placed in ground-mounted cabinets and or mounted at the pole base, the enclosures shall be no larger than 2.5'w x 2.5'd x 3'h.

4. Cables. All cables and wiring must be within the support structure, or if not feasible, within conduit on the exterior of the structure. The conduit must be a color that matches the pole and of the smallest size technically feasible.
 5. Wind and Earthquake. Wind structural calculations for poles shall be for 100 mph and shall include the assume that there are of two signs on the pole: the lower sign shall be 24"w x 18"h placed seven (7) feet clear from the surrounding ground surface. The upper sign shall be a 36" diamond shaped sign placed just above the lower sign. The wireless facility must also comply with any applicable State seismic regulations.
 6. CPUC General Orders. All installations shall fully comply with the California Public Utilities Commission ("CPUC") General Orders, including, but not limited to General Order 95 ("GO 95"). None of the design standards are meant to conflict with or cause a violation of GO 95, including, but not limited to, its standards for a safe installation on a utility pole. Accordingly, the Standards can be adjusted at the City's discretion to ensure compliance with CPUC rules on safety.
 7. Pole Owner Authorization. Proof of authorization from the pole owner is required. If the City owns the pole, then the applicant must enter into an agreement with City to install the pole-mounted facility.
- C. Traffic Signal Poles. Installation on traffic signal poles is prohibited.
- D. Replacement Poles. If an applicant proposes a replacement pole to accommodate the facility:
1. Placement. Must be in same location as the pole that is being replaced or as close to the original location as possible. Decorative wood street light poles shall be replaced with a metal pole of similar design and approved by the City Engineer.
 2. Design. With the exception of decorative wood street light poles, replacement poles should match the design (e.g., color, dimensions, height, style, and materials) of the existing pole that is being replaced to the greatest extent feasible. The maximum pole height is 30 feet, excluding wireless equipment.

E. New Poles.

1. Waiver Required. New poles are prohibited, unless a waiver is approved by the City to prevent a prohibition of service.
2. Design. New poles shall have a maximum height of 30 feet and a maximum diameter of 14 inches. The poles should be designed so that cables and wiring can be contained inside the poles, and wooden poles are prohibited. If existing poles are present in the surrounding area, then the new pole shall be designed to resemble the existing poles in appearance, color, materials, and distribution pattern/spacing.

SECTION 5. An encroachment permit is required for any and all work, including maintenance and modifications, in the public right-of-way that may affect pedestrian, bicycle, or vehicular traffic, cause any disturbance of existing public improvements, create noise, or increase radio frequency levels.

SECTION 6. If any provision of this Resolution or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the Resolution that can be given effect without the invalid provision or application, and to this extent, the provisions of this Resolution are severable. The City Council declares that it would have adopted this Resolution irrespective of the invalidity of any portion thereof.

SECTION 7. The City Clerk shall certify to the adoption of this Resolution and cause it, or a summary of it, to be published once within fifteen (15) days of adoption in a newspaper of general circulation printed and published within the City of Clayton, and shall post a certified copy of this Resolution, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code Section 36933.

SECTION 8. The documents and materials associated with this Resolution that constitute the record of proceedings on which the City Council's findings and determinations are based are located at City Hall, 6000 Heritage Trail, Clayton, CA.

SECTION 9. The City Clerk shall certify the adoption of this Resolution and cause it, or a summary of it, to be published as required by law.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof on the 7th day of May 2019 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CA

Tuija Catalano, Mayor

ATTEST:

Janet Calderon, City Clerk

ORDINANCE NO. 487

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON TO AMEND THE CLAYTON MUNICIPAL CODE, Title 12 – STREETS AND SIDEWALKS, TO ADD CHAPTER 12.05, “WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY”.

WHEREAS, pursuant to the California State Constitution, the City of Clayton (“City”) has the authority to adopt such ordinances as it deems necessary and appropriate to assure good government in the City, to protect and preserve the City’s rights, property and privileges, and to preserve peace, safety and good order; and

WHEREAS, the City deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction and maintenance of telecommunications towers, antennas and other structures within the City’s public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the City Council of the City of Clayton:

SECTION 1: The foregoing Recitals are adopted as findings of the City Council as set forth fully within the body of this ordinance.

SECTION 2: The Municipal Code for the City (“Code”) shall be amended to add a new Chapter 12.05, entitled “Wireless Facilities in Public Rights-Of-Way” as follows:

**Chapter 12.05
WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY**

12.05.010. Purpose.

- (a) The purpose of this Chapter is to establish a process for managing, and uniform standards for acting upon, requests for the placement of wireless facilities within the public rights-of-way of the City consistent with the City’s obligation to promote the public health, safety, and welfare, to manage the public rights-of-way, and to ensure that the public is not incommoded by the use of the public rights-of-way for the placement of wireless facilities. The City recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable Federal and State law regarding the placement of personal wireless services facilities in its public rights-of-way. This ordinance shall be interpreted consistent with those provisions.

- (b) The City of Clayton requires radio frequency (RF) emissions studies as described in this Chapter to ensure all installations are compliant with Federal Communications Commission (FCC) regulations.

12.05.020. Definitions. The terms used in this Chapter shall have the following meanings:

Application: A formal request, including all required and requested documentation and information, submitted by an applicant to the City for a wireless encroachment permit.

Applicant: A person filing an application for placement or modification of a wireless facility in the public right-of-way.

Base Station: shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(1), or any successor provision.

Eligible Facilities Request: shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision.

FCC: The Federal Communications Commission or its lawful successor.

Municipal Infrastructure: City-owned or controlled property structures, objects, and equipment in the ROW, including, but not limited to, street lights, traffic control structures, banners, street furniture, bus stops, billboards, or other poles, lighting fixtures, or electroliers located within the ROW.

Permittee: any person or entity granted a wireless encroachment permit pursuant to this Chapter.

Personal Wireless Services: shall have the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).

Personal Wireless Services Facility: means a wireless facility used for the provision of personal wireless services.

Public Right-of-Way, or ROW: shall have the same meaning as in Section 12.04.010, but shall also include any portion of any road or public way which the City has the responsibility to maintain or manage.

Small Cell Facility: shall have the same meaning as “small wireless facility” in 47 C.F.R. 1.6002(l), or any successor provision (which is a personal wireless services facility that meets the following conditions that, solely for convenience, have been set forth below):

(1) The facility—

(i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or

(ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or

- (iii) does not extend an existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- (2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- (4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;
- (5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and
- (6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b).

Support Structure: Any structure capable of supporting a base station.

Tower: Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for personal wireless services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

Underground areas: Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

Utility Pole: A structure in the ROW designed to support electric, telephone and similar utility lines. A tower is not a utility pole.

Wireless Encroachment Permit: A permit issued pursuant to this Chapter authorizing the placement or modification of a wireless facility of a design specified in the permit at a particular location within the ROW; and the modification of any existing support structure to which the wireless facility is proposed to be attached.

Wireless Facility, or Facility: The transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s).

Wireless Infrastructure Provider: A person that owns, controls, operates or manages a wireless facility or portion thereof within the ROW.

Wireless Regulations: Those regulations adopted pursuant to Section 5 and implementing the provisions of this Chapter.

Wireless Service Provider: An entity that provides personal wireless services to end users.

12.05.030. Scope.

- (a) **In general.** There shall be a type of encroachment permit entitled a “wireless encroachment permit,” which shall be subject to all of the same requirements as an encroachment permit would under Chapter 12.04, Article II in addition to all of the requirements of this Chapter. Unless exempted, every person who desires to place a wireless facility in the public rights-of-way or modify an existing wireless facility in the public rights-of-way must obtain a wireless encroachment permit authorizing the placement or modification in accordance with this Chapter. Except for small cell facilities, facilities qualifying as eligible facilities requests, or any other type of facility expressly allowed in the public right-of-way by state or federal law, no other wireless facilities shall be permitted pursuant to this Chapter.
- (b) **Exemptions.** This Chapter does not apply to:
 - (1) The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.
 - (2) Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.
- (c) **Other applicable requirements.** In addition to the wireless encroachment permit required herein, the placement of a wireless facility in the ROW requires the persons who will own or control those facilities to obtain all permits required by applicable law, and to comply with applicable law, including, but not limited, applicable law governing radio frequency (RF) emissions.
- (d) **Pre-existing Facilities in the ROW.** Any wireless facility already existing in the ROW as of the date of this Chapter’s adoption shall remain subject to the provisions of the City Code in effect prior to this Chapter, unless and until an extension of such facility’s then-existing permit is granted, at which time the provisions of this Chapter shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing facilities shall be conducted pursuant to this Chapter, rather than the portion(s) of the City Code that it was previously reviewed under.
- (e) **Public use.** Except as otherwise provided by California law, any use of the public right-of-way authorized pursuant to this Chapter will be subordinate to the City’s use and use by the public.

12.05.040. Administration.

- (a) **City Engineer.** The City Engineer or their designee is responsible for administering this Chapter. As part of the administration of this Chapter, the City Engineer may:
 - (1) Interpret the provisions of this Chapter;

- (2) Ensure that applications are reviewed by the other applicable departments including, but not limited to, the Community Development Department and Maintenance Department.
 - (3) Develop and implement standards governing the placement and modification of wireless facilities consistent with the requirements of this Chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;
 - (4) Develop and Implement acceptable designs and development standards for wireless facilities in the public rights-of-way, taking into account the zoning districts bounding the public rights-of-way;
 - (5) Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this Chapter;
 - (6) Determine the completeness of any application and collect any fee or deposit established by this Chapter;
 - (7) Establish any application deposit amount;
 - (8) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate, consistent with state and federal laws and regulations;
 - (9) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued, consistent with state and federal laws and regulations;
 - (10) Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;
 - (11) Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
 - (12) Take such other steps as may be required to timely act upon applications for placement of wireless facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.
- (b) **Appeal.**
- (1) Any person adversely affected by the decision of the City Engineer pursuant to this Chapter may appeal the City Engineer's decision to the Independent Hearing Officer, which may decide the issues *de novo*, and whose written decision will be the final decision of the City. The Independent Hearing Officer shall be a qualified person appointed by the City Manager. Any costs associated with an appeal and the Independent Hearing Officer shall be borne by the appealing party. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the personal wireless services facility.
 - (2) Where the City Engineer grants an application based on a finding that denial would result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the Independent Hearing Officer. All appeals must be filed within two (2) business days of the written decision of the City Engineer, unless the City Engineer extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.

- (3) Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law.

12.05.050. General Standards for Wireless Facilities in the Public Rights-of-Way.

- (a) **Generally.** Wireless facilities in the ROW shall meet the minimum requirements set forth in this ordinance and the wireless regulations, in addition to the requirements of any other applicable law.
- (b) **Regulations.** The wireless regulations and decisions on applications for placement of wireless facilities in the ROW shall, at a minimum, ensure that the requirements of this section are satisfied, unless it is determined that applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter may be waived, but only to the minimum extent required to avoid the prohibition or violation.
- (c) **Minimum Standards.** Wireless facilities shall be installed and modified in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures in the public rights-of-way, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights of way; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the public rights of way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the rights of way.
- (d) **Design Standards and Location Preferences.** All new wireless facilities and collocations, modifications, or other changes to existing wireless facilities that are not eligible facilities requests must conform to the design and development standards adopted by resolution of the City Council.

12.05.060. Applications.

- (a) **Submission.** Unless the wireless regulations provide otherwise, applicant shall submit a paper copy and an electronic copy of any application, amendments, or supplements to an application, or responses to requests for information regarding an application to the City Engineer.
- (b) **Pre-application meeting.** Prior to filing an application for a wireless encroachment permit, an applicant is strongly encouraged to schedule a pre-application meeting with the City Engineer to discuss the proposed facility, the requirements of this Chapter, and any potential impacts of the proposed facility.
- (c) **Content.** An applicant shall submit an application on the form approved by the City Engineer, which may be updated from time-to-time, but in any event shall require the submission of all required fee(s), documents, information, and any other materials necessary to allow the City Engineer to make required findings and ensure that the

proposed facility will comply with applicable federal and state law, the City Code, and will not endanger the public health, safety, or welfare. If no form has been approved, applications must contain all information necessary to show that applicant is entitled to the wireless encroachment permit requested, and must specify whether the applicant believes state or federal law requires action on the application within a specified time period.

- (d) **Fees.** Application fee(s) or deposits shall be required to be submitted with any application for a wireless encroachment permit. Through the Master Fee Schedule, City Council will establish fees, including hourly rates charged against the deposit determined by the City Engineer. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a wireless encroachment permit unless paid as a refundable deposit.
- (e) **Waivers.** Requests for waivers from any requirement of this section and implementing resolution(s) shall be made in writing to the City Engineer or his or her designee. The City Engineer may grant or deny a request for a waiver pursuant to this subsection. The City Engineer may grant a request for a waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the permit sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of the City Code.
- (f) **Incompleteness.** For personal wireless facilities and eligible facilities requests, applications will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is deemed incomplete, the City Engineer may notify the applicant in writing, specifying the material missing from the application.

12.05.070. Findings; Decisions; Consultants.

(a) Findings Required for Approval.

- (1) Except for eligible facilities requests, the City Engineer or Independent Hearing Officer, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - (i) The facility is not detrimental to the public health, safety, and welfare;
 - (ii) The facility complies with this Chapter and all applicable design and development standards;
 - (iii) The facility meets applicable requirements and standards of state and federal law;and
- (2) For eligible facilities requests, the City Engineer or Independent Hearing Officer, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - (i) That the application qualifies as an eligible facilities request; and
 - (ii) That the proposed facility will comply with all generally-applicable laws.

- (b) **Decisions.** Decisions on an application by the City Engineer or Independent Hearing Officer shall be in writing and include the reasons for the decision.

- (c) **Independent Consultants.** The City Engineer or Independent Hearing Officer, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise in telecommunications in connection with the review of any application under this Chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including, but not limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards. All costs associated with the work by authorized independent consultants shall be the responsibility of the applicant and paid through the deposit account established by the project.

12.05.080. Conditions of Approval.

- (a) **Generally.** In addition to any supplemental conditions imposed by the City Engineer or Independent Hearing Officer, as the case may be, all permits granted pursuant to this Chapter shall be subject to the following conditions, unless modified by the approving authority:
- (1) *Code Compliance.* The permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules, including, without limitation, those applying to use of public rights-of-way.
 - (2) *Permit Duration.* A wireless encroachment permit shall be valid for a period of ten (10) years, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such Permit shall automatically expire, unless an extension or renewal has been granted. At least one hundred fifty (150) days prior to expiration, a person holding a wireless encroachment permit must either (1) notify the City that they will not be applying for a new permit to extend the use of the facility and remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility may remain in place until it is acted upon by the City and all appeals from the City's decision exhausted. The applicant shall apply for an encroachment permit for the removal of the facility and pay the associated fees, if required.
 - (3) *Timing of Installation.* The installation and construction authorized by a wireless encroachment permit shall begin within ninety (90) days after its approval, or it will expire without further action by the City. The installation and construction authorized by a wireless encroachment permit shall conclude, including any necessary post-installation repairs and/or restoration to the ROW, within thirty (30) days following the day construction commenced.
 - (4) *Commencement of Operations.* The operation of the approved facility shall commence no later than thirty (30) days after the completion of installation, or the wireless encroachment permit will expire without further action by the City.

- (5) *As-Built Drawings.* The Permittee shall submit an as-built drawing within thirty (30) days after installation of the facility. As-builts shall be in a format as approved by the City Engineer.
- (6) *Inspections; Emergencies.* The City or its designee may enter onto the facility area to inspect the facility upon 48 hours prior notice to the permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The City shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case shall notify permittee within one (1) working day of doing so.
- (7) *Contact.* The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person.
- (8) *Insurance.* Permittee shall obtain and maintain throughout the term of the permit [commercial general liability insurance with a limit of \$2,000,000 per occurrence for bodily injury and property damage and \$10,000,000 general aggregate including premises operations, contractual liability, personal injury, and products completed operations.] The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of to the cancellation or material modification of any applicable insurance policy.
- (9) *Indemnities.* The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the City or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and, if applicable, the property owner and shall reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.
- (10) *Performance Bond.* Prior to issuance of a wireless encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout

the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 200 % of the cost of physically removing the facility and all related facilities and equipment on the site, based on the higher of two contractor's quotes for removal that are provided by the permittee but in no case less than \$10,000. The permittee shall reimburse the City for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall be paid when the security is posted and during each administrative review.

- (11) *Adverse Impacts on Adjacent Properties.* Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility.
- (12) *Noninterference.* Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless encroachment permit, the Permittee shall provide the City with documentation establishing to the City's satisfaction that the Permittee has the legal right to use or interfere with any other structure, improvement, or property within the public right-of-way or City utility easement to be affected by Permittee's facilities.
- (13) *No Right, Title, or Interest.* The permission granted by a wireless encroachment permit shall not in any event constitute an easement on or an encumbrance against the public right-of-way. No right, title, or interest (including franchise interest) in the public right-of-way, or any part thereof, shall vest or accrue in Permittee by reason of a wireless encroachment permit or the issuance of any other permit or exercise of any privilege given thereby.
- (14) *No Possessory Interest.* No possessory interest is created by a wireless encroachment permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that City has given to Permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a wireless encroachment permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this permit.
- (15) *General Maintenance.* The site and the facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, shall be maintained in a

neat and clean manner and in accordance with all approved plans. All graffiti on facilities shall be removed at the sole expense of the permittee within forty eight (48) hours after notification from the City. Maintenance work and resulting restoration work shall be completed in a time frame as required by the City Engineer. The applicant shall apply for an encroachment permit (with associated fees) for all work within the public right of way, if required.

- (16) *RF Exposure Compliance.* All facilities shall comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, permittee or its representative shall conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.
- (17) *Testing.* Testing of any equipment shall take place on weekdays only, and only between the hours of 9:00 a.m. and 4:00 p.m., except that testing is prohibited on City holidays that fall on a weekday. In addition, testing is prohibited on weekend days. All testing for RF emissions shall be overseen by the City's RF consultant to ensure that operation of the facility is in full compliance with FCC Regulations. An encroachment permit shall be obtained by the applicant for such work, if required, unless waived by the City Engineer.
- (18) *Modifications.* No changes shall be made to the approved plans without review and approval in accordance with this Chapter. All facilities shall be in conformance with the approved plans.
- (19) *Agreement with City.* If not already completed, permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to constructing, attaching, or operating a facility on Municipal Infrastructure. This permit is not a substitute for such agreement.
- (20) *Conflicts with Improvements.* For all facilities located within the ROW, the permittee shall remove or relocate, at its expense and without expense to the City, any or all of its facilities when such removal or relocation is deemed necessary by the City by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way.
- (21) *Abandonment.* If a facility is not operated for a continuous period of 90 days, the wireless encroachment permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the 90 day period (i) the City Engineer has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than thirty (30) days from the date the facility is determined to have been abandoned or the permittee has notified the City Engineer of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original

condition to the satisfaction of the City Engineer. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned, but will not be effective for the entirety thereof until all users cease use thereof.

- (22) *Encourage Co-location.* Where the facility site is capable of accommodating a co-located facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow co-location of third party facilities, provided the parties can mutually agree upon reasonable terms and conditions.
 - (23) *Records.* The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the City, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.
 - (24) *Attorney's Fees.* In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.
- (b) **Eligible Facilities Requests.** In addition to the conditions provided in Section 9(a) of this Chapter and any supplemental conditions imposed by the City Engineer or Independent Hearing Officer, as the case may be, all permits for an eligible facility requests granted pursuant to this Chapter shall be subject to the following additional conditions, unless modified by the approving authority:
- (1) *Permit subject to conditions of underlying permit.* Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.
 - (2) *No permit term extension.* The City's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its

term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.

- (3) *No waiver of standing.* The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.
- (c) **Small Cell Facilities Requests.** In addition to the conditions provided in Section 9(a) of this Chapter and any supplemental conditions imposed by the City Engineer or Independent Hearing Officer, as the case may be, all permits for a small cell facility granted pursuant to this Chapter shall be subject to the following condition, unless modified by the approving authority:
 - (1) *No waiver of standing.* The City's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the City to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

12.05.090. Breach; Termination of Permit.

- (a) **For breach.** A wireless encroachment permit may be revoked for failure to comply with the conditions of the permit or applicable law. Upon revocation, the wireless facility must be removed; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.
- (b) **For installation without a permit.** An wireless facility installed without a wireless encroachment permit (except for those exempted by this Chapter) must be removed; provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.
- (c) **Municipal Infraction.** Any violation of this Chapter will be subject to the same penalties as are addressed in Chapter 1.20 or other applicable Code sections.

12.05.100. Infrastructure Controlled By City. The City, as a matter of policy, will negotiate agreements for use of Municipal Infrastructure. The placement of wireless facilities on those structures shall be subject to the agreement. The agreement shall specify the compensation to the City for use of the structures. The person seeking the agreement shall additionally reimburse the City for all costs the City incurs in connection with its review of, and action upon the person's request for, an agreement.

12.05.110. Nondiscrimination. In establishing the rights, obligations and conditions set forth in this Chapter, it is the intent of the City to treat each applicant or public right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with

considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for use of the public rights-of-way.

SECTION 3: The City Manager, or his or her delegate, is directed to execute all documents and to perform all other necessary City acts to implement effect this Ordinance.

SECTION 4: CEQA. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City’s boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a “project” within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt CEQA because the City Council’s adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land). The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Contra Costa within five working days of the passage and adoption of the Ordinance.

SECTION 5: Severability. If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid, and enforceable.

SECTION 6: In accordance with _____, this ordinance shall become effective on the _____ day following its passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF CLAYTON this _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

ATTEST:

_____, **City Clerk**

APPROVED AS TO FORM:

_____, **City Attorney**



Agenda Date: 5-07-2019

Agenda Item: 8a

Approved:

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY MANAGER

DATE: 07 MAY 2019

SUBJECT: COUNCIL MEMBER REQUEST TO DISCUSS TRAFFIC AND PEDESTRIAN SAFETY AROUND THE ELEMENTARY AND MIDDLE PUBLIC SCHOOLS

RECOMMENDATION

Following introductory remarks by Council Member Wan, opportunity for public comments and City Council discussion, that Council provide any policy directives to City staff.

BACKGROUND

On the morning of 22 March 2019, an elementary school student riding a non-motorized scooter was struck by a vehicle at/near the intersection of Four Oaks Lane and So. Mitchell Canyon Road. Fortunately the child was not seriously injured.

This intersection is situated a short distance between the signal-controlled intersection at So. Mitchell Canyon Road/Clayton Road and the 4-way traffic-controlled stop sign intersection at So. Mitchell Canyon Road/Pine Hollow Road. Each of those two intersections has yellow crosswalks denoting a location within a designated school zone. The intersection at So. Mitchell Canyon Road and Pine Hollow Road is staffed by a City-paid crossing guard during the elementary school's traffic and pedestrian daytime commute hours.

At the conclusion of the City Council meeting on 02 April 2019, Council Member Wan requested a future agenda item for the discussion of traffic safety around the Mt. Diablo Elementary School and the Diablo View Middle School.

Pursuant to City Council policy and protocols the Council consideration of his request has been placed on this Agenda. As the requestor, Council Member Wan has responsibility to introduce the subject. He has also invited Principals Linn Kissinger and Patti Bannister to the meeting and be afforded time to share their perspectives as part of his presentation.

FISCAL IMPACT

None, at this time.

- Attachments: 1. Proposed Joint Letter for Elementary School families [1 pg.]
2. Recent history of vehicle accidents at the school crossing intersections [1 pg.]

MT DIABLO UNIFIED SCHOOL DISTRICT
Mt. Diablo Elementary School
5880 Mt. Zion Drive
Clayton, California 94517-1199
OFFICE OF THE PRINCIPAL



CITY OF CLAYTON
6000 Heritage Trail
Clayton, CA 94517
OFFICE OF THE MAYOR



May 2019

Families of Mt. Diablo Elementary

We wish to remind you to follow the traffic rules posted on streets especially around our schools. As the City, the School, and the Clayton Police work together to support safety on our streets it is important that you practice and teach safety to your children.

In August the school will begin with a safety reminder for students in an assembly by Street Smarts and street safety lessons will continue in our school assemblies.

Thank you for your support and keeping our children and yourselves safe.

Thank you,

Linn Kissinger
Principal
Mt. Diablo Elementary
kissingerl@mdusd.org
925-682-8000 ext 84500

Tuija Catalano
Mayor
City of Clayton
tcatalano@ci.clayton.ca.us
925-673-7321

Elise Warren
Chief of Police
City of Clayton
elise.warren@claytonpd.com
925-673-7350

Gary Napper

From: Warren, Elise (Clayton PD) <Elise.Warren@claytonpd.com>
Sent: Thursday, May 02, 2019 1:43 PM
To: Gary Napper; Scott Alman (Scott.Alman@weareharris.com)
Subject: Accident records from 2014 - present/Mt. Diablo Elementary & Diablo View Middle School area

According to our records there have been the following number of vehicle accidents during school hours:

Area of Diablo View Middle School:

3 Auto vs Auto accidents: 1 in 2015, 1 in 2016 & 1 in 2018

Area of Mt. Diablo Elementary School:

3 Auto vs Auto accidents: 1 in 2014, 1 in 2016 & 1 in 2017
1 Auto vs. Pedestrian(Scooter): 2019

Let me know if you need any other information.



Agenda Date: 5-07-2019

Agenda Item: 8b

Approved: 
Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY MANAGER

DATE: 07 MAY 2019

SUBJECT: CONSIDER PROPOSED LETTER OF CITY COUNCIL POSITION ON THE CASA COMPACT AND RESULTANT INTRODUCED STATE LEGISLATION

RECOMMENDATION

Following City Council discussion and opportunity for public comment, that Council determine its action on a proposed CASA Compact position letter of the City as requested of Council Member Wan.

BACKGROUND

At its public meeting on 16 April 2019, the City Council received various presentations and perspectives concerning the "CASA Compact" (Committee to House the Bay Area – February 2019). The CASA Compact is a series of policy objectives released through the Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) designed to address the 9-county region's housing affordability crisis.

At the conclusion of the discussion, Council Member Wan accepted the task to prepare a draft City position letter on the CASA Compact and its resultant series of introduced state legislation. The proposed position letter and discussion of it was agendized for this meeting.

RESOURCE MATERIALS

Attached to this cover report is a copy of Council Member Wan's proposed letter and materials.

In addition, included is a copy of the Contra Costa County Jurisdictions' "*Housing and Policy Framework on Housing Matters*" prepared by the Contra Costa Public Managers' Association ["PMA"; city managers]. This document includes a proposed Resolution for adoption by each of the 18 cities and the county and was transmitted to the Contra Costa County Mayors' Conference at its monthly meeting on 02 May 2019.

Attachments: 1. Proposed City position letter [2 pp. + 10 pp. of position statement tables]
2. PMA's "*Housing and Policy Framework on Housing Matters*" and Resolution [24 pp.]

The City of Clayton values local control to maintain and improve the quality of life for its residents. As the smallest city in Contra Costa County by area and population, the needs and interests of our residents are those of a small close knit city on the outskirts of the Bay Area and are often different than other larger cities in the region.

The City of Clayton recognizes the challenge of providing adequate and affordable housing opportunities in the region. Our historic city however, is nearly 100% built out. We have consistently met or exceeded our Regional Housing Needs Assessment (RHNA), and always strive to meet the needs of our approximate 11,000 residents with the limited staff and resources of our small city. Therefore, it is very concerning to us that the CASA Compact, a wide-ranging set of housing policies which implies a regional consensus, would be approved by the Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) with no outreach to local communities. Our view is that housing production goals should focus on areas with greater job growth.

Because of the near complete absence of outreach to small cities like Clayton, we find ourselves now needing to work through our representatives in the legislature, rather than having an inclusive conversation about these important issues. We feel there is an opportunity for Clayton to develop a constructive response to the CASA Compact in order to influence legislative efforts at the State level towards outcomes that address housing needs, while respecting our local community character and desire for local decision making.

While some jurisdictions are likely to support the philosophical principles of the CASA Compact, the City of Clayton has concerns that revolve around three main issues:

1. **Loss of local control:** Several elements of the Compact force cities to surrender local control over land-use authority for things like heights, density, setbacks, parking, and impact fees. Top down approaches that usurp local control do not take into account the impacts to city services, infrastructure, and the character of our neighborhoods. Further, repurposing of revenue streams used for core city services should only be done after careful consideration of each city's economic circumstances.
2. **One Size Fits All approach:** The Compact proposes actions that may be effective in large urban cities but can be ineffective or counterproductive in smaller suburban and rural communities. For example, mandating eight story high density housing near transit lines presumes transit service remain static when in fact that is not the case in suburban communities. Rent control may disincentivize multifamily housing production in suburban communities. Given varying economic conditions from city to city, a one-size-fits all approach may be ineffective in some cities while yielding windfalls in housing supply in others.
3. **Lack of attention to infrastructure needs related to increased housing supply:** The Compact's singular focus on housing production throughout the entire region minimizes the fact that the most acute imbalance between housing and jobs is focused in three of the nine counties in the Bay Area (San Francisco, San Mateo and Santa Clara). Imposing housing production in the far reaches of the Bay Area (such as Clayton) would not alleviate the crisis in those three big counties. Instead, it would likely induce significant congestion and exacerbate the jobs/housing imbalance.

The City of Clayton believes that a better solution that mitigates these three concerns would be to provide tools that enable local control but still hold us accountable for housing entitlement. Local context should be considered when housing requirements are established. Rather than focusing on housing without the associated infrastructure needs, a more reasonable approach could be to adjust the production requirements

based on a county's existing housing supply and tie housing requirements to job production where those jobs are being created.

While this discussion is effectively no longer a local one, we still find it important to convey our concerns with the CASA Compact, as approved by MTC and ABAG. See [Attachment 1](#) for a more detailed breakdown of the CASA Compact, Clayton's concerns, and recommended approaches for future legislation.

Going forward, The City of Clayton holds that the following principles should be followed when crafting future housing legislation:

- **Balanced Solutions – Housing, Jobs, Transportation, and Infrastructure**
 - Regional solutions need to take a balanced approach that considers housing, transportation/transit, and jobs together. Building housing without adequate transportation infrastructure may exacerbate, not alleviate, the affordable housing crisis.
 - Housing production requirements should target areas with greater job growth.
 - Mandates for new housing production need to be accompanied by funding that can support expanded transportation, transit, and infrastructure, including planning, and capital improvement programs and funding to support new school facilities.

- **Promote Local Control and Context-Sensitive Housing**
 - Avoid “one-size-fits-all” standards for regional housing by ensuring that policies and laws allow for sensitivity to local context. For example the City of Clayton is nearly 100% built out. Anything that requires that a certain number of units actually get built misses this important context, as well as the fact that cities don't build housing units themselves, developers do but only if the projects can be profitable.
 - Advocate and facilitate production of ADUs (examples: reduce all fees including those from special districts and utility companies).
 - Enable cities to develop locally-appropriate plans that meet State objectives in a manner that is compatible with existing community character. For example, some cities use density-based (rather than height-based) development standards and realistic parking requirements given their distance from reliable and frequent public transit.

- **Funding and Resources**
 - There should be no net loss of local funding.
 - New funding measures should not unduly impact local taxation capacity or divert financial resources from essential local public services and infrastructure programs.
 - Any new housing mandates should include funding to offset administrative costs associated with supporting the new program and new reporting requirements.

SUMMARY OF CASA ELEMENT	CONCERNS AND CONSIDERATIONS	RECOMMENDED APPROACH
<p>1. Just Cause Eviction Standards</p> <p>Adopts a Bay Area wide requirement that landlords must cite specific "just causes" (both fault and no-fault) for an eviction.</p> <p>Landlords are required to cover relocation assistance in all "no-fault" evictions. Exemptions would apply.</p> <p>Objective: <i>Protect tenants from arbitrary evictions.</i></p>	<p>Increasing barriers to housing availability is counterproductive</p> <ul style="list-style-type: none"> • Making it more difficult for property owners in either time or expense disincentivizes property owners from making housing available. • Property owners should not be responsible for a former tenants relocation costs. 	<p>Oppose unless amended</p> <ul style="list-style-type: none"> • Administrative responsibility to be assigned to an existing regional agency (no new regional bureaucracy). • Provide exemptions for homeowners with ADUs and owner-occupied duplex and triplex units. • Eliminate property owner payment of tenant relocation costs.

SUMMARY OF CASA ELEMENT	CONCERNS AND CONSIDERATIONS	RECOMMENDED APPROACH
<p>2. Rent Cap</p>	<p>Rent control is poor economic policy and will not accomplish its goals</p>	<p>Oppose</p>
<p>Establish a Bay Area-wide emergency rent cap that limits annual rent increases to “reasonable” amount. For an emergency period (defined as 15 years), the annual cap would be no more than CPI+5%. Certain exemptions and banking provisions would apply.</p> <p>Objective: <i>Decrease the number of households at risk of displacement and to prevent homelessness.</i></p>	<ul style="list-style-type: none"> • Creates deadweight loss and economic inefficiency • Disincentivizes creation of new housing units due to lowered return on investment. • Concentrated benefits surpassed by diffused costs to everyone. • Quality of available housing decreases as repair and maintenance is undervalued. • Reduces overall housing supply contrary to stated objective. 	

SUMMARY OF CASA ELEMENT	CONCERNS AND CONSIDERATIONS	RECOMMENDED APPROACH
<p>3. Rent Assistant and Free Legal Counsel</p> <p>Rent Assistance and Free Legal Counsel: Provide access to free legal counsel and emergency rent assistance for tenants with an urgent, temporary financial gap. Funding, policies and guidelines to be determined at a later time.</p> <p>Objective: <i>Ensure right to legal counsel; provide funding for emergency/temporary rent gap.</i></p>	<p>Mediation should be encouraged in lieu of litigation</p> <ul style="list-style-type: none"> • Encourages litigation even when not warranted and could encourage abuse of the system thwarting lawful eviction. • Presumes tenants lack resources while landlords do not. 	<p>Oppose unless amended</p> <ul style="list-style-type: none"> • Administrative responsibility to be assigned to an existing regional agency (no new regional bureaucracy). • Cost of legal counsel should not be borne by the taxpayer. If it is, a “means test” (demonstration of need) to be required before receiving free legal assistance. • Emphasize and encourage mediation rather than litigation.

SUMMARY OF CASA ELEMENT	CONCERNS AND CONSIDERATIONS	RECOMMENDED APPROACH
<p>4. Remove Regulatory Barriers to Accessory Dwelling Units (ADUs)</p> <p>Extend existing state law to allow ADUs on single family lots and multiple ADUs in existing multi-family buildings with ministerial approval.</p> <p>Forgives code violations in grandfathered ADUs. Impact fees to be based on a square foot basis and only on net new living area >500 SF.</p> <p>Objective: Increase more affordable units, provide income source for cost-burdened homeowners.</p>	<p>ADUs should not be able to circumvent health, safety, and community standards</p> <ul style="list-style-type: none"> • Code violations that present health and safety risks should be required to be remedied. • Cities should continue to be able to promulgate requirements for things like setbacks and height consistent with rules applicable to primary residence. 	<p>Encourage Modifications</p> <ul style="list-style-type: none"> • Ensure existing structures brought up to code for health and safety issues. • Create tiered RHNA qualification to qualify for Very Low, Low, and Moderate housing units based on ADU size. • Ensure consistent setbacks and heights for new structures.

SUMMARY OF CASA ELEMENT	CONCERNS AND CONSIDERATIONS	RECOMMENDED APPROACH
<p>5. Minimum Zoning Near Transit and Job-Rich areas:</p> <p>Establish statewide <i>minimum zoning</i> for housing on all residential, commercial and institutional zones.</p> <p>For projects that are within ½ mile of a high quality bus service, ¼ mile of a major transit stop, or within a Job-Rich area, grants Equitable Communities Incentive which provides, among other items:</p> <ul style="list-style-type: none"> • A waiver from maximum controls on density • A waiver from minimum parking requirements greater than 0.5 spaces per unit • Up to three incentives and concessions pursuant to CA Density bonus law • Minimum 36-foot high within ½-mile of <i>high quality bus service</i>, defined as a bus stop with 15-min headways (weekday peak) and 30-min headways (weekend) • Minimum 55-foot high (75' with density bonus) within ¼-mile of a major transit stop, defined as a rail station or a ferry terminal) <p>Objective: <i>Spur development near transit.</i></p>	<p>This is a one size fits all approach that ignores community context</p> <ul style="list-style-type: none"> • Creates potential land use incompatibility issues with tall developments immediately adjacent to low density areas. • Nebulous criteria for what constitutes “jobs-rich” has potential to promote housing nowhere near transit. • Requiring minimum height does not create density as there could be higher ROI with lower density luxury units. • Does not contemplate that transit service is not static in suburban cities; tying housing requirements to transit routes which may be eliminated due to budget cuts (or lowering demand) is problematic as it introduces density to areas that may not have any transportation. • Promotes land speculation near impacted areas. 	<p>Oppose – one size fits all approaches should be rejected</p> <ul style="list-style-type: none"> • Allow all cities to develop context sensitive community plans that achieves the overall goal of providing affordable housing around transit and a balanced land use framework. • Development should be focused near where jobs are being created to encourage reduction of vehicle miles travelled. • Local control should be preserved by leveraging RHNA requirements instead of forcing density. This would allow for both local control and accountability.

SUMMARY OF CASA ELEMENT	CONCERNS AND CONSIDERATIONS	RECOMMENDED APPROACH
<p>6. “Good Government” Reforms to Housing Approval Process</p> <p>Focused on streamlining the permitting process and how residential impact fees are set and enforced.</p> <p><i>Streamlining (zoning compliant projects <500 units):</i> Includes “locking” rules, fees and historic status at the date of the “application completeness”; permits no more than 3 de novo hearings for each project.</p> <p><i>Impact Fees:</i> Impose a state standard for establishing and imposing impact fees using objective standards rather than current “reasonableness” test. Allow for fee deferral (pay some fees at a later point in the (development process).</p> <p><i>Annual ‘Impositions’ Report:</i> Recommends cities annually document any impositions (undefined) that would increase the hard cost (excludes labor and materials) of housing construction (such as fees and inclusionary zoning requirements).</p> <p>Objective: Remove ‘regulatory uncertainty’ perceived to be a major cause of economically infeasible projects.</p>	<p>This has the potential to significantly reduce public input in the review process which may lead to distrust and community concern</p> <ul style="list-style-type: none"> • Disincentivizes developers to collaborate on delivering projects that best meet community needs (such as mitigating traffic and infrastructure impacts, offering community amenities). • Significantly reduces the ability to provide public input and the ability to satisfy the public concerns. Reducing public interest may lead to distrust. • Potentially eliminates ability to negotiate community benefits (services and infrastructure to support those who would occupy the housing) as a part of the development process. 	<p>Oppose unless amended</p> <ul style="list-style-type: none"> • Require an “expiration date” for all fees and regulations locked at application completeness to ensure they are applicable to viable projects. This eliminates potential abuse by developers who might “lock” a future application to avoid addressing future federal, state or local requirements that may surface. • Require a “reset” should substantive project changes be introduced during the course of the development review process to avoid potential abuse of the system. • Maintain clear and objective standards and controls, and support fee deferral programs that ensure context sensitivity. • Impositions to be clearly defined and administrative burden in reporting to be minimized. • Allow all cities to develop context sensitive community plans that achieves the overall goal.

SUMMARY OF CASA ELEMENT	CONCERNS AND CONSIDERATIONS	RECOMMENDED APPROACH
<p>7. Expedited Approvals and Financial Incentives</p> <p>Another permit streamlining effort to accelerate approvals of zoning-compliant projects and enable on-site affordability with financial incentives.</p> <p><i>Streamlining:</i> Applies to zoning compliant projects that restrict at least 20% of onsite housing units to middle-income households, defined as 80-150% of area median income (AMI). Projects granted a statutory CEQA exemption and limited discretionary review.</p> <p><i>Financial Incentives</i> include 15-year property tax <i>increment</i> abatement, cap on impact fees, parking standards reduced to 50% of local requirement. Projects to pay prevailing wage.</p> <p><i>Sensitive Communities:</i> receive an automatic 3-year deferral on implementation while the city develops a context-sensitive plan.</p> <p>Objective: <i>Build more moderate income housing units.</i></p>	<p>There should be no net loss of local funding. This is a one size fits all approach that ignores community context</p> <ul style="list-style-type: none"> • Potential to reduce property tax allocations for Clayton. • Caps on impact fees to a “reasonable” level is currently undefined. Caps on impact fees would eliminate funding sources to provide services and infrastructure (example: school, transit, etc.). • Requirement to pay prevailing wage is inconsistent with the overall goal to lower housing construction costs. • Reducing tax allocations and capping impact fees while increasing demands on services and infrastructure is contrary to the fiscal sustainability of each city. 	<p>Oppose unless amended</p> <ul style="list-style-type: none"> • There should be no net loss of local funding. • Require outside agencies to cap/reduce fees to stimulate affordable housing. • Require an “expiration date” for all fees and regulations locked at application completeness to ensure they are applicable to viable projects. This eliminates potential abuse by developers who might “lock” a future application to avoid addressing future federal, state or local requirements that may surface. • Require a “reset” should substantive project changes be introduced during the course of the development review process to avoid potential abuse of the system. • 50% parking reduction from local standards should initially be applied only near a major transit stop such as a rail station or ferry stop where residents actually have the option to use frequent and high quality public transit.

SUMMARY OF CASA ELEMENT	CONCERNS AND CONSIDERATIONS	RECOMMENDED APPROACH
<p>8. Unlock Public Lands for Affordable Housing</p> <p>Promote use of “surplus” and “underutilized” public lands (undefined) for affordable housing through legislative and regulatory changes.</p> <p>This would also create a database listing all publicly owned land in the Bay Area, limit approval process to no more than two years, and deploy 10 percent of underutilized/surplus public land to affordable housing development on an annual basis.</p> <p>Element also calls for policies to help expand the housing Construction labor pool, including requiring trained apprentices and prevailing wages. Exceptions would apply to temporary housing built to address an emergency.</p> <p>Objective: <i>Encourage re-use of public land for mixed income/affordable housing units.</i></p>	<p>This is a one size fits all approach that ignores community context</p> <ul style="list-style-type: none"> • Creates potential land use incompatibility issues with tall developments immediately adjacent to low density areas. • Puts at risk land owned by Clayton that is used for other community purposes. • Lacks a definition for surplus and underutilized land and how this proposal relates to the exiting Surplus Land Act requirement to offer surplus land to affordable housing developers and other public agencies. 	<p>Oppose unless amended</p> <ul style="list-style-type: none"> • Provide clear and objective standards for the definition of “surplus land.” • Should prioritize land around existing rail station or ferry stops. • Require projects to be consistent with locally adopted land use plans that are already in place (e.g. specific plans) and consistent with objective local standards.

SUMMARY OF CASA ELEMENT	CONCERNS AND CONSIDERATIONS	RECOMMENDED APPROACH
<p>9. Funding and Financing the CASA Compact</p> <p>Raise \$1.5 billion new revenue annually from broad range of sources including (but not limited to) property taxes, gross receipts tax, ¼-cent sales tax, head tax, and General Obligation Bonds (reissued every 5 years). Of the total \$1.5 billion, \$300 million would come from local communities (former RDA set aside and future tax increment).</p> <p><i>New revenue distribution formula:</i></p> <ul style="list-style-type: none"> • Minimum 60% towards affordable housing • 75% to county of origin (“return to source”) • 25% to regional program (“revenue sharing”) <p>Revenue collection and disbursement would be managed by a new regional housing authority (described in Element 10).</p> <p>Objective: <i>Fund elements of the Compact that requires public subsidy (e.g., rental assistance, free legal counsel, financial incentives, etc.).</i></p>	<p>Funding sources should come primarily from regions with greatest housing/job imbalance</p> <ul style="list-style-type: none"> • Wide range of new taxes and fees may limit a city’s taxing capacity (limit its voters’ appetite to pass local funding measures). • No “return to source” formula at the city-level, resulting in some communities being “donor communities” without having resources to meet its assigned housing obligation. • Revenue sources should target areas creating housing/job imbalance. • The property tax “set aside” is punitive to those cities whose tax base is largely from property taxes. 	<p>Oppose unless amended</p> <ul style="list-style-type: none"> • No loss of current property tax or transportation funding. • Defined return-to-source funding formula at a city level. • Regional “fair share” housing assignment (RHNA process) is correlated to level of funding received (i.e., the less regional funding a city receives, the lower the regional housing assignment). • Revenue sources tied to areas of job creation.

SUMMARY OF CASA ELEMENT	CONCERNS AND CONSIDERATIONS	RECOMMENDED APPROACH
<p>10. Regional Housing Enterprise (RHE)</p> <p>Establishes a new independent regional housing agency – formed through state legislation - to implement the Compact. It would have the authority to collect and distribute revenue, issue debt, buy/lease/hold land, and track/report on local progress. No regulatory or enforcement powers.</p> <p>Composition: independent board with representation from MTC, ABAG, and stakeholder groups that created the Compact.</p> <p>Objective: <i>Administers the Compact.</i></p>	<p>Clayton does not support creating an unrepresentative layer of oversight</p> <ul style="list-style-type: none"> • Creating an entity that is not comprised of elected officials does not allow it to be accountable to the voters or local needs, and appears to be structured to exclude local government input. • Large cities would have disproportionate influence at the expense of small cities like Clayton . • Creates taxation without representation. • Existing agencies that could do the same functions, should be utilized instead of creating a new bureaucracy. 	<p>Oppose</p> <p>Regional entities should be accountable to the voters directly.</p>



DATE: May 2, 2019
[Updated to reflect corrected footer]

TO: Laura Hoffmeister, Conference Chair
Gary Pokorny, Executive Director
Contra Costa Mayors' Conference

FROM: Michelle Fitzer, Chair
Contra Costa Public Managers' Association

RE: Summary of Memorandums related to emerging housing legislation

Consistent with the interest and discussion at the April 2019 Contra Costa Mayors' Conference on the CASA Compact and rapidly emerging housing legislation, the Contra Costa Public Managers' Association (PMA) – acting as the staff – is including three separate documents for consideration, discussion and action:

- Attachment A: Recommended Policy Framework on Emerging Housing Legislation
- Attachment B: Summary and Recommended Policy Position on AB 1487 (Chiu) - the Housing Alliance for the Bay Area Housing Legislation
- Attachment C: DRAFT Resolution Supporting the Contra Costa County Jurisdictions' Housing and Policy Framework on Housing Matters (for adoption by each city and the county in Contra Costa)

The Contra Costa Public Managers' Association (PMA) is an organization comprised of public managers representing the nineteen cities and county of Contra Costa. The Contra Costa PMA works collaboratively to share information, discuss and find solutions on issues of regional significance.

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Antioch - R. Bernal
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Clayton - G. Napper
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Walnut Creek - D. Buckshi / F. Robustelli
Contra Costa County - D. Twa

ATTACHMENT A
Recommended Policy Framework on Emerging Housing Legislation



DATE: May 2, 2019
[Updated to reflect corrected description of Contra Costa PMA]

TO: Laura Hoffmeister, Conference Chair
Gary Pokorny, Executive Director
Contra Costa Mayors' Conference

FROM: Michelle Fitzer, Chair
Contra Costa Public Managers' Association

RE: Recommended Policy Framework on Emerging Housing Legislation

The Contra Costa Public Managers' Association (PMA) is an organization comprised of public managers representing the nineteen cities and county of Contra Costa. The Contra Costa PMA works collaboratively to share information, discuss and find solutions on issues of regional significance.

As an association of professionals who are committed to serving the public, the Contra Costa PMA has closely reviewed and discussed the implications of recent efforts at both the regional and state level to address the housing crisis, including the CASA Compact and numerous legislation that have emerged out of that effort. Based on the PMA's analysis and given the rapid rate in which housing legislation is moving through the state legislative process, the PMA recommends that the Contra Costa Mayors' Conference consider adopting the following housing policy framework as a basis for upcoming advocacy work.

RECOMMENDATION

Position Statement: Contra Costa cities recognize and fully *endorse* the need for increased housing opportunities - especially for people earning below the area median income. While we appreciate its intent, the CASA Compact is a high-level document with only limited detail. Small and medium sized cities, representing 66% of the Bay Area population, were not well-represented in its creation.

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As such, the Contra Costa Mayors Conference wants to ensure that their member cities' voices are heard as the details of legislation are being crafted and encourages MTC, ABAG and the State Legislature to collaborate with all cities on all housing legislation so that we may collectively formulate feasible solutions to address the Bay Area's housing needs. Therefore, it is the consensus of the Contra Costa Mayors' Conference that:

Balanced Solutions – Housing, Jobs, and Transportation

1. **We support** regional solutions that take a balanced approach and consider the needs of housing, transportation/transit, and jobs *together* (never one at the expense of the other). Building housing without adequate transportation or other infrastructure would exacerbate - not alleviate - the affordable housing crisis.
2. **We support** policies that encourage a regional jobs-housing balance as a strategy to lower vehicle miles traveled (VMT) and greenhouse gas (GHG) emissions, and oppose policies that exacerbate it.
3. **We support** additional transportation investments to expand the Bay Area transit network to provide connections from job centers to existing as well as planned future housing.

Provide, Promote, and Protect Affordability

4. **We support** every city's ability to establish tenant protections as they deem appropriate for their residents.
5. **We support** incentives for the production of new accessory dwelling units (ADUs) including (a) streamlining the entitlement process; (b) eliminating all fees - including pass-through fees charged by utilities and special districts; (c) developing standardized state-approved floorplans similar to Factory Built Home plans; and (d) counting ADUs - by right - as *very low, low, or moderate* units in the RHNA attainment reporting process.

Context Sensitive Housing

6. **We support** maintaining local control of land use and the entitlement process. We urge the State to recognize that cities control only the entitlement process and have no ability to produce housing, which is a developer- and market-driven process. Therefore, cities should be measured by the number of entitlements approved when calculating RHNA attainment and not be penalized for being unable to produce housing.

7. **We oppose** top-down or one-size-fits-all approaches to land-use decision-making, including those mandating residential densities, building heights and development intensity.

Infrastructure and Services

8. **We support** removing barriers to planning communities for all and ensuring that adequate resources are available for existing and new infrastructure (e.g., roads, schools, parks) and municipal services (e.g., public safety) to serve our growing population.
9. **We support** utilizing existing local housing authorities - which are more familiar with needs of their subregion - to serve as the governance structure that administers new affordable housing funds and monitors housing production, rather than establishing yet another state or regional agency to take on that role.

Funding and Resources

10. **We support** legislation that will return e-commerce/internet sales tax revenue to the point of sale - not the point of distribution as currently mandated - to provide cities that have a significant residential base with a commensurate fiscal stimulus for new housing.
11. **We support** Governor Newsom's investments proposed in the state budget that will benefit California cities by including a substantial increase in state funding for affordable and workforce housing and addresses the growing homelessness crisis in our state.
12. **We oppose** any diversion of existing revenue sources from cities.

As a county, we are grateful for the State Legislature's leadership on these difficult issues and look forward helping to ensure that new housing legislation is crafted in a manner that is compatible with - and supports the diversity of - all local communities. We invite you to partner with cities, small and large, to find solutions to address the housing shortage in a way that is compatible and supports the diversity of local realities.

ATTACHMENT B
Summary and Recommended Policy Position on AB 1487 (Chiu) - the Housing
Alliance for the Bay Area Housing Legislation



DATE: May 2, 2019
[Updated to reflect corrected footer]

TO: Laura Hoffmeister, Conference Chair
Gary Pokorny, Executive Director
Contra Costa Mayors' Conference

FROM: Michelle Fitzer, Chair
Contra Costa Public Managers' Association

RE: Summary and Recommended Policy Position on AB 1487 (Chiu) - the Housing Alliance for the Bay Area Housing Legislation

Consistent with the Contra Costa Public Managers' Association (PMA) policy framework recommendations on emerging housing legislation, this memorandum summarizes the recently amended Assembly Bill 1487 to establish the "Housing Alliance for the Bay Area," a new regional housing agency for the 9-county San Francisco Bay Area.

SUMMARY

Consistent with a recommendation from the CASA Compact, this bill would establish a new regional government entity to raise revenue (subject to applicable voter requirements) and allocate those funds for purposes of providing tenant protections, affordable housing preservation, and new affordable housing production. As proposed, this new entity would be comprised of 18 voting members, nine (9) from the Metropolitan Transportation Commission (MTC) and nine (9) from the Association of Bay Area Governments (ABAG).

Subsequent to the State of California's dissolution of redevelopment, there is a recognition for affordable housing funding sources. In support of this effort, new revenue sources are welcomed (though it should be noted that the current text of the bill does not ensure an equitable distribution of funds). Of concern is that the bill would

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establish a new regional bureaucracy without direct and equal representation by all cities in the Bay Area.

RECOMMENDATION

It is recommended that the Contra Costa Mayors' Conference issue a statement of **support with amendments**, as follows:

1. **We support** the establishment of funding sources for the protection and production of affordable housing that is consistent with the will of the voters.
2. **We support** establishing a correlation between the "fair share" housing (Regional Housing Needs Allocation or RHNA) assignment and the level of funding allocated. In other words, a city with a lower RHNA assignment would receive less funding.
3. **We support** the ability for cities to apply for these funds directly.
4. **We support** using an existing housing agency to serve as this revenue collection and distribution agency with additional funding. The agency should be comprised of directly elected officials that represent the diversity of cities in the Bay Area (rather than through appointments from existing regional entities) to ensure accountability to the voters.
5. **We oppose** the creation of a new regional bureaucracy with its own unique set of requirements.

As a county, we are grateful for Assembly Member Chiu's leadership on these difficult issues and look forward helping to ensure that any new housing agency is established in a manner that helps - rather than hinder - the production of affordable housing in all areas of the 9-county Bay Area.

ATTACHMENT C

**DRAFT Resolution Supporting the Contra Costa County Jurisdictions'
Housing and Policy Framework on Housing Matters
(for adoption by each city and the county in Contra Costa)**

Contra Costa County Jurisdictions'

HOUSING AND POLICY FRAMEWORK PROPOSAL



APRIL 2019

PREAMBLE

The jurisdictions taking part in this effort value regional leadership and collaboration to maintain and improve the quality of life for Contra Costa County residents and to create a positive environment for employers. These Contra Costa County jurisdictions recognize the challenges inherent in providing adequate and affordable housing opportunities in the region. Recent efforts at the regional level, namely through the Committee to House the Bay Area (CASA), and by State legislators have brought these challenges and the resultant policy implications for the Contra Costa County into sharper focus. There is a unique opportunity for the Contra Costa County Cities to work together, to develop a collaborative response to influence legislative efforts at the State towards outcomes that address housing needs, while respecting community character and desire for local decision making.

Knowing that scores of new housing bills are likely to be introduced by State legislators in 2019 and beyond, the Contra Costa County jurisdictions taking part in this effort recommend a proactive and nuanced approach to advocacy and engagement, with the cities working together. In addition to educating our stakeholders on these issues, our goal is to influence the legislative process and create a shared position on key topics, where possible. While this approach identifies common areas of concern, each city may continue to pursue their own individual areas of concern that are context sensitive to their community.

INTRODUCTION

Contra Costa represents one of the most diverse areas in the State, and each jurisdiction has its own perspective on how to best meet the needs of its resident and business communities. However, many of our interests overlap, which allows for collaboration and advocacy that will strengthen the voice of the Contra Costa County. The Contra Costa County jurisdictions taking part in this effort are committed to open and honest communication with a goal of building consensus and a united approach to address housing legislation as it is developed by State legislators.

The housing challenges in California are real and the current and upcoming legislative cycles will include notable and impactful housing legislation that will be felt statewide, including in Contra Costa County. Recent history has demonstrated that simply opposing legislation has limited effectiveness (and in fact, may be counter-productive) and that jurisdictions will need to collaborate to influence legislative efforts, such as proposing revisions to draft legislation, to address new housing law as it is developed.

BACKGROUND

California's Affordable Housing Crisis & The State's Response

In 2017, the State of California published a report titled, "[California's Housing Future: Challenges and Opportunities](#)." The report identifies the severity of the housing shortage across the State and became a backdrop to the State's adoption of a suite of 15 housing-related bills known as the 2017 "Housing Package". The 15 bills focused on:

- Providing funding for affordable housing;
- Streamlining the review and approval process for housing;
- Increasing accountability and reporting requirements for local governments; and
- Preserving existing affordable housing.

During the 2017 legislative cycle many communities (including multiple Contra Costa County jurisdictions) responded to the proposed legislation with an outright rejection of the entire Housing Package. Nonetheless, the 15 bills were signed into law, and in 2018, most local jurisdictions began implementation of these measures in various ways. Key pieces of that recent legislation are outlined later in this Housing Framework.

HOUSING ELEMENT

Purpose

The Housing Element is one of nine mandated elements in a city's General Plan and implements the declaration of State law that, "the availability of housing is a matter of vital statewide importance and the attainment of decent housing and a suitable living environment for all Californians is a priority of the highest order." (Gov. Code § 65580)

At the local level, the Housing Element allows the local jurisdiction to approve a community-specific (local) approach to "how" and "where" housing needs will be addressed to meet the needs of their community. A jurisdiction's Housing Element must be updated every eight years.

For the Bay Area, the current planning period started in 2015 and ends in 2023. The next planning period will run from 2023 to 2031, meaning that local jurisdictions will be updating their Housing Elements in the 2021/2022 timeframe.

Regional Housing Need Allocation (RHNA)

All California cities and counties are required to accommodate their fair share of regional housing need. This fair share assignment is determined through a Regional Housing Needs Allocation (RHNA) process. The California Department of Housing and Community Development (HCD) determines the share of the state's housing need for each region. In turn, the council of governments (COG) for the region allocates to each local jurisdiction its share of the regional housing need. In the nine-county Bay Area, the region's COG is the Association of Bay Area Governments (ABAG). After the RHNA is determined, local jurisdictions must update their Housing Element (and typically identify housing opportunity sites and rezone property) to demonstrate that there is an adequate amount of land zoned, at appropriate density, to achieve its RHNA for the current planning period.

Planning vs. Building; No Net Loss

Under current state law, a jurisdiction is not required to *build* the housing units assigned to it by the RHNA. Rather, it is required to adopt a land use program – appropriate General Plan and Zoning, including identification of specific sites with available infrastructure and suitable physical conditions – to accommodate these housing units under market-driven conditions. The "No Net Loss" laws (adopted in 2017 by Senate Bill [SB] 166) ensure that local governments do not approve projects with less units per income category or downzone these opportunity sites after their Housing Element has been certified. This means that cities cannot approve new housing at significantly lower densities (or at different income categories) than was projected in the Housing Element without making specific findings and identifying other sites that could accommodate these units and affordability levels.

RHNA Cycles & Income Levels

Based on population projections from the California State Department of Finance in the lead-up to the last RHNA, and economic and regional housing market uncertainty (including the "Great Recession"), HCD required the Bay Area to plan for 187,990 new housing units during the current 2015-2023 RHNA cycle.

A RHNA assignment is comprised of four income categories: very low; low; moderate; and above moderate income. Table 1 shows the current combined RHNA for Contra Costa County and its 19 jurisdictions.

Table 1 – Contra Costa County and Cities 2015-2023 RHNA and Housing Production through 2017

Income Level	RHNA Allocation by Income Level	Total Permits to Date	Total Remaining RHNA by Income Level
Very Low	5244	401	4861
Low	3075	507	2568
Moderate	3458	1104	2444
Above Moderate	8802	7648	1154
Total RHNA	20579	6143	11027

Source: Department of Housing and Community Development (HCD) Annual Progress Reports

Similar to many communities throughout the Bay Area, the Contra Costa County jurisdictions' RHNA for housing production of very-low, low, moderate, have been modest. In fact, most of the low- and very-low income unit production has been generated by inclusionary zoning¹ requirements, or produced with substantial subsidies from local, state and federal dollars. The production data is indicative of the real challenges faced by local jurisdictions in meeting RHNA for lower income housing in a market-driven environment, where high land and development costs mean substantial subsidy is needed to build each unit, and where local, State and federal funding is inadequate to meet all but a tiny fraction of the need. Cities have the ability to

¹ Inclusionary Zoning = local zoning code standards that require a portion of a market rate project to be provided (and maintained) at below-market-rate.

designate Housing Opportunity Sites; however, with the loss of redevelopment, financing and construction of the housing unit is predominately driven by the private sector.

Certification and Annual Progress Report (APR)

After local adoption, State law provides HCD with the authority to review and “certify” each jurisdiction’s Housing Element. To ensure ongoing compliance, the law requires local jurisdictions to submit an annual report to HCD, generally referred to as the Annual Progress Report (APR), documenting the number of housing units in various affordability categories that have been produced over the past year and through the course of the eight-year housing element cycle.

RECENT CHANGES TO STATE LAW

The extensive housing legislation passed in 2017 (as part of the Housing Package) and supplemented in 2018 reflects the seriousness for State leaders to address the affordable housing crisis. Their focus has been largely on holding local governments accountable (increasing reporting and monitoring), curtailing the discretionary review process (streamlining), and identifying new funding sources.

Of the 15 bills passed in 2017 and the follow-on bills passed in 2018, the following are the most relevant and potentially impactful to Contra Costa County communities:

Streamlined Approval (SB 35): SB 35 requires cities to “streamline” the approval process for housing developments if the jurisdiction has not issued sufficient building permits to satisfy its regional housing need by income category. A project would be eligible for ministerial approval if it complies with objective planning standards, meets specifications such as a residential General Plan designation, does not contain housing occupied by tenants within 10 years, and pays prevailing wages. Additionally, projects must restrict 10 to 50 percent of their units to be affordable to households classified as having low- or very low-income (i.e., less than 80 percent of the area median income).

Housing Accountability Act (SB 167, AB 678, AB 1515): The bills affecting the Housing Accountability Act apply to every housing development application, not just those with an affordable housing component. The legislation requires that local governments provide developers with a list of any inconsistencies between a proposed project and all local plans, zoning, and standards within 30 to 60 days after the application is complete or the project will be deemed complete with all local policies. Additionally, if a housing project complies with all “objective” general plan, zoning, and subdivision standards, it may not be denied or have its density reduced unless a city or county can find that the project would have a specific adverse

impact on public health and safety. If a project includes affordable units, a local jurisdiction is responsible for making additional findings to deny the project, reduce its density, or add a condition that makes the project infeasible, even if the project does not comply with all "objective" standards.

No Net Loss (SB 166): State law in place prior to 2017 prohibited cities from downzoning sites or approving projects at less density than identified in their Housing Elements. Under the 2017 modification, if the approval of a development project results in fewer units by income category, the jurisdiction must identify additional sites to accommodate the RHNA obligation lost as a result of the approval and make corresponding findings. This change is significant because, for many cities, the Housing Element will have counted most of the high-density housing sites as producing very-low and low-income units, when actual projects constructed will typically provide only a portion of their units at below-market rates. This means cities will likely need to zone additional land for higher density development to ensure there is an adequate number of sites to meet RHNA, and to make more conservative assumptions about future yield of affordable units on those sites.

Housing Element Requirements (AB 1397): This bill makes many changes to how a jurisdiction establishes its Housing Element site inventory. Of special note, this legislation requires "by-right" approval for projects that offer 20-percent of its units at a rate that is affordable to lower income households.

BART TOD Districts (AB 2923): This bill was passed in 2018 and established minimum local zoning requirements for BART-owned land that is located on contiguous parcels larger than 0.25 acres and within one-half mile of an existing or planned BART station entrance. All cities must adopt conforming standards within two years of BART adopting transit-oriented development (TOD) standards (or by July 1, 2022) that include minimum height, density, parking, and floor area ratio requirements. In addition, all projects must include a minimum 20 percent of units for very low and low-income households. This bill is anticipated to help facilitate BART's plan to build 20,000 units across its network.

PENDING LEGISLATION

Local jurisdictions should expect another round of significant housing legislation in 2019, and likely beyond. In the first three months of 2019, more than 50 new bills dealing intended to spur housing development have been introduced. Two key issues, the CASA Compact and Senate Bill (SB) 50, are discussed in detail below.

See [Attachment 1](#) for a more detailed breakdown of 21 pieces of proposed legislation, the CASA Compact elements they relate to, as well as local concerns and recommended approaches for future advocacy work. The Contra Costa County jurisdictions participating in this effort will continue to monitor and advocate as appropriate.

CASA Compact Overview

From this point forward, much of this legislation will likely be informed and influenced by the CASA Compact, which was released in December 2018. The Metropolitan Transportation Commission (MTC) formed CASA to address the affordable housing crisis. CASA is a 21-member steering group comprised of major employers, for-profit and nonprofit housing developers, affordable housing advocates, transportation professionals, charitable foundations and elected officials from large cities. CASA's Compact is an ambitious 10-point plan to remedy the Bay Area's housing issues.

The CASA Compact sets out to achieve three goals:

- Produce 35,000 housing units per year (14,000 affordable to low-income and 7,000 to moderate-income, a 60% affordability rate);
- Preserve 30,000 existing affordable units (26,000 of which are market-rate affordable units and 4,000 are at-risk over the next 5 years); and
- Protect 300,000 lower-income households (those who spend more than 50% of income on their housing).

To achieve these goals, the Compact includes 10 Elements (or actions). Below is a brief summary (see Attachment 1 for a more detailed overview):

- *Elements 1-3 – Preserve and Protect*

Together, these elements represent the “preserve and protect” components of the Compact, including arguments for: just-cause eviction standards; rent caps; and rent assistance and free legal counsel.

- *Elements 4-8 – Production*

Together, these elements are the “production” component of the Compact, with subcategories, including: accessory dwelling units (ADUs); process streamlining and financial incentives; and using public land for affordable housing.

- *Elements 9-10 – Revenue and Administration*

Together, these elements offer revenue generating mechanisms to fund the Compact and suggests the formation of a new independent regional “housing authority” to collect and distribute those funds.

The Compact concludes with “Calls for Action,” which were ideas that garnered sufficient interest from the CASA steering committee, but not enough to become a standalone element in the Compact. Because these will also generate some legislative interest, those topic areas are also briefly discussed here:

- *Redevelopment 2.0*: Pass legislation enabling the re-establishment of redevelopment in California to provide new funding for affordable and mixed income development.
- *Lower the Voter Threshold for Housing Funding Measures*: Pass legislation that would apply a 55% threshold for affordable housing and housing production measures.
- *Fiscalization of Land Use*: Pass legislation that would return e-commerce/internet sales tax revenues to the point of sale - not at the point of distribution as it is currently - to provide cities that have a significant residential base with a commensurate financial incentive to develop new housing. Also, pass legislation that would change the Proposition 13 property tax allocation formula to provide cities that build more housing with a higher share of property tax revenue.
- *Homelessness*: CASA's funding package includes resources that help produce housing for formerly homeless people and prevent homelessness when possible.
- *Grow and Stabilize the Construction Labor Force*: Increase the construction labor pool by requiring prevailing wages on projects that receive incentives, calling upon the State to improve the construction employment pipeline, and creating a CASA/state labor workgroup to implement.

Concluding Thoughts Regarding CASA

The intent of the CASA Compact is to serve as state legislative research data for future housing legislation. Specifically, its development timeline is driven by the desire to place elements of the Compact on the ballot in the 2020 General Election. While some jurisdictions are likely to support the philosophical principles of the CASA Compact, many have expressed concerns that revolve around three main issues:

- *One-Size-Fits-All Approach*: The Compact proposes one-size solutions that may be effective in large urban cities but can be counterproductive in smaller suburban and rural communities. As an example, rent caps may disincentivize multifamily housing production in suburban communities. In another example, mandating high density housing near transit lines presumes transit service remain static when in fact that is not the case in suburban communities.
- *Potential to Jobs/Housing Imbalance*: The Compact's singular focus on housing production throughout the entire region minimizes the fact that the most acute housing pressure is focused in three of the nine counties in the Bay Area (San Francisco, San Mateo and Santa Clara), where most of the jobs are being created. Imposing housing production in far reaches of the Bay Area, including certain areas of Contra Costa County, would not alleviate the crisis in the three counties with the largest employment centers. Instead, it would likely induce significant congestion and exacerbate the jobs/housing imbalance. A more reasonable approach could be to adjust the production requirements based on a county's existing housing supply.

- *Absence of Public Engagement:* One of the most concerning aspects of the Compact is the absence of a transparent public process that would have incorporated input from those most affected - the general public and cities throughout the region. An often-repeated concern is that this top-down approach is not only ill-informed of the issues highlighted above but could breed anti-growth sentiment that would actively resist reasonable measures to build or fund affordable housing in the future.

Equitable Communities Incentive (SB 50)

SB 50 is an evolution of Senator Wiener's 2018 proposed bill, SB 827. It is a developer opt-in bill that would require a city or county to grant an "equitable communities incentive," which is a waiver from maximum controls on density, height, and parking spaces per unit, and up to three concessions (such as deviation from setbacks or other development standards), if the project provides low, very low or extremely low income housing and is located in a "job-rich housing project" or "transit-rich housing project," as defined below:

"Transit-rich housing project" means a residential development, the parcels of which are all within a one-half mile radius of a major transit stop or a one-quarter mile radius of a stop on a high-quality bus corridor.

"Job-rich housing project" means a residential development within an area identified by the Department of Housing and Community Development and the Governor's Office of Planning and Research, based on indicators such as proximity to jobs, high area median income relative to the relevant region, and high-quality public schools, as an area of high opportunity close to jobs.

The League of California Cities Housing, Community and Economic Development Policy Committee (HCED) discussed SB 50 at their January 17, 2019, meeting. HCED took a position to oppose the bill unless amended. Understanding that Senator Weiner is the Chair of the Housing Committee, along with the political make-up of the Senate and Assembly, HCED formed a subcommittee to explore amendments to SB 50 to make it more amenable to cities and will be presented and discussed further at a later time.

A summary of SB 50, which was presented to HCED on January 17, 2019, is included as [Attachment 2](#).

PROACTIVE APPROACH TO LEGISLATIVE ADVOCACY

Below is a discussion of "key themes" to consider while informing, influencing, and advocating, on the topic of housing.

Key Themes

Balanced Solutions – Housing, Jobs, and Transportation

- Regional solutions need to take a balanced approach that considers housing, transportation/transit, and jobs together. Building housing without adequate transportation infrastructure may exacerbate, not alleviate, the affordable housing crisis.
- Regional transit agencies and MTC must support improved transit services to existing and new neighborhoods and address accompanying funding needs.
- Until the transportation and transit infrastructures are improved and ready to accommodate the new housing growth, focus initial efforts to producing housing in the counties where the jobs are located and where the jobs/housing ratio is at its worst.
- Incentivize employers to locate in housing-rich environments.

Provide, Promote, and Protect Affordability

- Protect existing affordable housing stock, including rental apartments, deed-restricted units, and mobile homes, and promote affordable housing that includes long-term affordability agreements.
- Ensure that all new state mandated incentives, fee reductions, and density bonus program are directly linked to the level and percentage of affordable units provided for each project.

Context-Sensitive Housing

- Avoid "one-size-fits-all" standards for regional housing by ensuring that policies and laws allow for sensitivity to local context. For example, historic districts should be exempt from higher density housing requirements if they are not compatible with the historic context of the area. Provide flexibility to cities that have demonstrated that they are working towards meeting their RHNA numbers.
- Advocate and facilitate production of ADUs (examples: reduce all fees including those from special districts and utility companies) and encourage development of "missing-

- middle" housing that is compatible with suburban community character (examples: duplex, triplex and four-plexes, small scale apartment complexes).
- Enable cities to develop locally-appropriate plans that meet State objectives in a manner that is compatible with existing community character. For example, some cities use density-based (rather than height-based) development standards and realistic parking requirements given their distance from reliable and frequent public transit.

Infrastructure and Services

- Mandates for new housing production need to be accompanied by funding that can support expanded transportation, transit, and infrastructure, including planning, and capital improvement programs and funding to support new school facilities.

Funding and Resources

- There should be no net loss of local funding.
- New funding measures should not unduly impact local taxation capacity or divert financial resources from essential local public services and infrastructure programs.
- Any new housing mandates should include funding to offset administrative costs associated with supporting the new program and new reporting requirements. Funding to offset administrative costs could include concepts similar to the surcharge on building permit applications for the Certified Access Specialist (CASP) program.

NEXT STEPS

- Housing and Policy Framework Workshop for Mayors and City Councilmembers
- Develop engagement materials that highlight the narrative regarding key themes

ATTACHMENTS

1. CASA Compact Legislation - Summary & Recommendations
2. SB 50 Overview

RESOLUTION NO. _____

**RESOLUTION OF THE [] CITY/TOWN COUNCIL
SUPPORTING THE CONTRA COSTA COUNTY JURISDICTIONS' HOUSING
AND POLICY FRAMEWORK ON HOUSING MATTERS**

WHEREAS, the Contra Costa County Jurisdictions' recognize and respect the local needs and character of each community, and have a shared interest in maintaining local control of decision-making related to all aspects of the management of each jurisdiction, including but not limited to financial, land use and development, and growth-related matters; and

WHEREAS, in January of 2017, the State of California published a report titled "California's Housing Future: Opportunities and Challenges," which documented the negative consequences of the historic underproduction of housing in California, including an increasing affordability gap, falling rates of homeownership, disproportionate rates of homelessness, and issues such as urban sprawl and traffic congestion. Collectively, these issues have been identified by legislators as part of a statewide "housing crisis"; and

WHEREAS, in September of 2017, California Governor Jerry Brown signed into law the "Housing Package" consisting of 15 new bills focused on funding, permit streamlining, and increased enforcement and accountability for local governments with respect to implementation of the Housing Element; and

WHEREAS, in 2018, State legislators approved, and the Governor signed into law several additional housing bills; and

WHEREAS, the Metropolitan Transportation Commission formed the Committee to House the Bay Area (CASA) to address the housing challenges in the Bay Area; and

WHEREAS, in December 2018 the Committee to House the Bay Area released an ambitious 10-point plan, known as the CASA Compact, to serve as state legislative research data for future housing legislation; and

WHEREAS, the State's focus on the affordable housing challenges is likely to continue for the foreseeable future with new legislation that will impact local Jurisdictions'; and

WHEREAS, the Contra Costa County Jurisdictions' recognize the substantial challenge of providing adequate and affordable housing opportunities in the region, and the shared responsibility of all communities across the State to help address these needs; and

WHEREAS, there is a unique opportunity for the Contra Costa County Jurisdictions' to work together, to develop a collaborative response to influence legislative efforts at the State towards outcomes that address housing needs, while respecting community character and desire for local control of decision making; and

WHEREAS, the Contra Costa County Jurisdictions' affirm their interest in and commitment to shaping housing policy outcomes in a constructive manner, through a proactive and nuanced approach to advocacy and engagement on the topic of housing that will result in better outcomes for the region and the individual communities; and

WHEREAS, the Contra Costa County Jurisdictions' Housing and Policy Framework provides a comprehensive approach, reflecting the following Key Themes:

- Balanced Solutions – Housing, Jobs, and Transportation;
- Provide, Promote, and Protect Affordability;
- Context Sensitive Housing;
- Infrastructure and Services; and
- Funding and Resources; and

WHEREAS, the Key Themes are topic areas where there is consensus among the Contra Costa County and its respective cities, and which can be used to inform, influence, respond, and advocate, on the topic of housing at the local, regional and State level; and

WHEREAS, the overall approach identifies and addresses common areas of concern, while recognizing that each city can and will continue to pursue individual areas of interest that are specific to their community's needs; and

WHEREAS, the _____ City/Town Council met on _____, 2019 to consider and discuss the Contra Costa County Jurisdictions' Housing and Policy Framework;

NOW, THEREFORE BE IT RESOLVED THAT THE _____ CITY/TOWN COUNCIL DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER THE FOLLOWING:

Section 1. The Contra Costa County Jurisdictions' Housing and Policy Framework is hereby supported on matters related to housing legislation.

Section 2. The Contra Costa County Jurisdictions' may from time-to-time revisit the Contra Costa County Jurisdictions' Housing and Policy Framework to ensure that the approaches and topics discussed within the report remain relevant and appropriate.

Section 2. The Mayor and City Manager are authorized to take positions on behalf of the City in regard to pending legislation consistent with the Contra Costa Jurisdictions' Housing and Policy Framework and to communicate those positions to interested parties on behalf of the City Council.

PASSED, APPROVED AND ADOPTED by the _____ City [Town] Council
on March ____, 2019.

I, _____, City [Town] Clerk of the City [Town] of _____,
California, certify that the foregoing resolution was adopted by the City [Town] Council at
a regular meeting held on the ____ day of March 2019, by the following vote:

Ayes:
Noes:
Absent:
Abstain:

City/Town Clerk

APPROVED AS TO FORM:

City/Town Attorney



Agenda Date: 5-07-2019

Agenda Item: 8c

Approved:


Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY MANAGER

DATE: 07 MAY 2019

SUBJECT: COUNCIL MEMBER REQUEST TO CONSIDER BEST PRACTICES AND THE ESTABLISHMENT OF COUNCIL POLICY ON ELECTED OFFICIALS' RECEIPT OF TEXTS OR EMAILS FROM MEMBERS OF THE PUBLIC DURING PUBLIC MEETINGS OR DURING DISCUSSION OF AGENDIZED ITEMS

RECOMMENDATION

Following introduction of the subject and opportunity for public comment, that Council provide any policy direction regarding this matter.

BACKGROUND

At the conclusion of the City Council public meeting on 16 April 2019, under "Council Items" [limited to Council requests and directives for future meetings], Council Member Diaz requested a future agenda item to consider the development of a Council Policy on members of the City Council receiving communications from the public at the dais during discussion of the specific items agendized at that public meeting.

Pursuant to existing Council policy and protocols in the consideration of "future agenda items," this request has been placed on this agenda. The member of the City Council making the request assumes lead for the discussion and may generate a summary of the issue for inclusion in the Agenda Packet to enhance and facilitate discussion of the matter for possible further Council directive or staff research.

In this instance, Council Member Diaz has indicated to staff the question is self-explanatory. As has been done in past similar situations, the City Attorney assembled some materials for inclusion in the Agenda Packet to assist the Council's discussion of this item.

FISCAL IMPACT

None.

Attachments: Exhibits A-E [35 pp.]

RESOURCE MATERIALS

FOR

AGENDA ITEM

MAY 7, 2019 CITY COUNCIL MEETING

Exhibit A:	City of Palo Alto Council Electronic Council Policy	[5 pp.]
Exhibit B:	City of Saratoga Electronic Communications Policy	[6 pp.]
Exhibit C:	City of Lafayette Council iPad Policy	[5 pp.]
Exhibit D:	<i>"Meetings and Technology: Finding the Right Balance"</i> Institute for Local Government (ILG)	[8 pp.]
Exhibit E:	<i>"City Council emails, texts present challenges for laws governing open meetings, records"</i> Wisconsin State Journal, May 2012	[11 pp.]



CITY OF PALO ALTO OFFICE OF THE CITY CLERK

June 14, 2011

The Honorable City Council
Attention: Policy & Services Committee
Palo Alto, California

Discussion and Recommendation for Approval of an Electronic Packet for Council

As directed by the City Council, the City Clerk has taken the lead in identifying technology solutions that help Council processes be more efficient, and to achieve cost savings. In conjunction with the City Manager, the City Attorney, the Information Technology Division, and the Administrative Services Director, staff has explored moving toward a paperless packet for the City Council. Beginning last fall, the City Manager and his department along with the City Clerk department piloted a program to receive the Council packet electronically on iPads.

BACKGROUND

Staff produces weekly packets for the upcoming City Council Meetings. These packets can be anywhere from a couple hundred pages to over 1,000 pages and are produced approximately 46 times a year. Each packet is copied 22 times and distributed to Council, the Libraries, and the public in the Chambers.

In an effort to reduce the amount of paper used and increase efficiency, Staff is proposing options for Council to receive their packets electronically. Mayor Espinosa noted the goal of producing electronic packets in his 2011 State of the City Address. Distributing the packet to Council Members electronically fits into the City's overall sustainability goals through the reduction of paper use and other resources used to distribute the packet.

The current process is to produce a total of 22 packets:

- Nine for Council
- Six for the public in the Chambers
- Three for the libraries
- Two for media (KZSU, Palo Alto Weekly)
- One for Staff
- One for the City Clerk

Once the packets are complete they are delivered via City vehicle to the Council Member's homes and the libraries in a special delivery that evening. The current annual cost for printing and delivering paper packets is \$29,810 (Attachment A: Year 1, Quarter 4).

The Finance Committee had the following Motion regarding iPads on May 24, 2011. The excerpted minutes are Attachment B.

MOTION: Vice Mayor Yeh moved, seconded by Chair Scharff to not expend City funds on the iPad in Fiscal Year 2012.

MOTION FAILED: 2 - 2 Scharff, Yeh yes - Schmid, Shepherd no

Recently there was a City Clerk listserve question circulated regarding paperless agenda packets utilizing iPads. Some Cities such as Mountain View, Redwood City, Moreno Valley, Portola Valley, Sacramento, Corona, Huntington Beach, Livermore, and Sacramento have all switched to distributing their packets through iPads and report successful transitions.

ELECTRONIC PACKETS

If the Policy and Services Committee recommendation is to direct Staff to distribute the packets electronically, Staff would only distribute 11 paper packets:

- Six for the public in the Chambers
- Four for the libraries (increased for Downtown Library reopening)
- One for KZSU

The paper packets should still be completed for the public and the libraries to comply with the Americans with Disabilities Act. Additional paper packets may still be provided by request for a charge of \$35.00 per packet per the Municipal Fee Schedule. Staff actively encourages members of the public to access the packet on-line and subscribe to the agenda notification program, GovDelivery (<http://www.cityofpaloalto.org/knowzone/agendas/council.asp>).

If Council directs Staff to proceed with the implementation of the electronic packet, Staff would notify Council via email when their packet is ready each week. Council Members would then download the packet to their electronic device. The process Staff has been testing for iPads includes the use of Dropbox and Goodreader. Dropbox is a cloud-based program to which Staff uploads the packet each week. Goodreader is one of many reader programs that can be purchased to pull the packet out of Dropbox and onto the iPad for reading. Staff uses Goodreader because it has the functionality we believe Council would want: the ability to highlight text, save annotations to the document, bookmark pages, and search for text.

FINANCIAL

Administrative Services Staff prepared a cost analysis showing the current cost of producing and delivering paper packets versus the distribution of an electronic packet to Council using the Apple iPad as the electronic distribution device (See Summary in Figure 1). An electronic packet can be read on just about any type of computer or e-reader. The City Manager's Office and the City Clerk's Office began a pilot program using the iPad to test the electronic process for packets in the fall of 2010.

Figure 1

Post-iPad Annual Cost Estimate	
Printing Costs	
11 packet copies per week for 46 weeks (marginal cost only)	\$ 11,506
Monthly selected document printing	\$ 120
Subtotal Printing Costs	\$ 11,626
Delivery costs	\$ 157
IPad equipment Costs, annualized	\$ 2,299
Cost of wiring Dais for iPads, annualized	\$ 2,000
IPad annual data plan costs	\$ 4,548
Total Costs of iPads and Packets	\$ 20,631

Current Annual Cost Estimate	
Printing	\$ 23,011
Delivery	\$ 6,799
Total	\$ 29,810
Annual Savings with iPads	\$ 9,179

The cost analysis indicates that if the City purchased iPads for Council and paid for the monthly data plan, the City would break even in the first year. Over the expected three-year life span of the devices the City would save approximately \$27,500.

The budget savings would include dramatically reduced printing costs as the number of packets printed is reduced from 22 to 11. The savings would also include the elimination of the delivery costs as the 11 packets would be delivered to the libraries with the regularly scheduled deliveries the morning after they are printed instead of a special delivery as is the current practice. There still will periodically be a need for delivery to Council Members when there are large documents such as plans and EIR's, but these are assumed to be deliverable during normal business hours, not requiring overtime.

POLICY DECISIONS

Staff is recommending Council review the following options:

OPTION A

City Purchases 9 iPads for the Council Members to receive and read the packets. The City installs the appropriate applications, pays for the monthly data services fees, and provides all maintenance and service. Council Members will return the devices to the City when they leave office. Option A will cost the City approximately \$16,942 at onset of the project, and \$61,419 over the life of the devices (3 years). The annual savings for the City in year one will be

approximately \$9,333, and over the life of the devices will be \$28,000. This option allows City Staff to offer training for Council Members because the process will be consistent. The City will be able to maintain City owned devices. Staff would be able to monitor the devices for needed updates and repairs. Staff would be able to provide a backup device in the event one is needed. Program functions associated with the iPad would include the ability to highlight text, save annotations to the document, bookmark pages, and search for text. The City Clerk's Office would work with the IT department to design a training program for Council Members. Council Members would follow City Policy 1-08, the Employee Telephone, Cellular Phone, and Wireless Device Use Policy (Attachment C) and City Policy 1-40, the Employee Computer Use Policy: Passwords, Internet, Intranet, E-Mail, and Information Resources Policy (Attachment D).

OPTION B

Council Members purchase and use their own electronic reading devices. The City would purchase any applications required to allow the Council Member to read the packet on their device. The City could choose to pay any applicable monthly fees incurred by the Council Member to receive the packet. These charges would fluctuate based upon the Council Members having either wi-fi or 3G access. Staff would support the accessibility of the electronic packet.

OPTION C

Council Members purchase and use their own electronic reading devices and pay all fees associated with the packet. The City would provide an electronic copy of the packet to Council Members to download into the device of their preference. There is no quantifiable cost associated with this option for the City.

Council Members who do not wish to receive an electronic packet may still have a paper packet delivered.

Staff respectfully requests the Policy and Services Committee to provide direction to Staff regarding paperless packets.

LEGAL

As part of increased use of electronic devices during council meetings, the Clerk noted that some cities have chosen to adopt policies addressing potential issues associated with such use, and reviewed and discussed these policies with the City Attorney's Office. The City Attorney provided the following assessment for the Committee's consideration:

The Council currently does not have a policy addressing Council Members' use of electronic communications such as text messaging during meetings. The Brown Act does not specifically prohibit text messaging or similar communications during meetings and there is no definitive case law on the subject. However,

because using electronic devices during meetings has the potential to create an appearance that officials are either not paying attention or are engaged in communications to which the public is not privy to about an item on the agenda, the Council may want to consider whether a policy regulating use during meetings is appropriate.

There are two primary legal issues related to use of electronic devices during meetings. First, while the Brown Act does not specifically prohibit text messaging or other electronic communications, communication that is used to develop a collective concurrence is prohibited. Thus, text messages or e-mails among members during meetings on a matter within the Council's purview create the risk of a collective concurrence and Brown Act violation. Second, these types of communications are particularly problematic during adjudicative proceedings because the potential to communicate and receive evidence that other members or parties to the proceeding do not see could raise due process concerns.

Cities handle electronic communication during meetings in a variety of different ways. Several have not adopted a policy and leave the use of electronic devices during meetings to the discretion of individual council members. A few cities have adopted policies banning all electronic communication during meetings (with limited exceptions for family emergencies). For example, the City of Saratoga has a policy that provides:

Use of E-Communication during Meetings. City Council members shall not use E-Communication at any time during a meeting of the City Council at which he or she is in attendance. No Commissioner may use E-Communication at any time during a meeting of the Commission of which he or she is a member at which he or she is in attendance. The foregoing limitation shall not apply to the receipt of telephone calls or text messages from family members in the event of an urgent family matter; a Council member or Commissioner wishing to respond to such a message during the meeting shall do so during a recess or shall excuse him or herself from the meeting to place the return call or text in a manner that does not disrupt the meeting.

Policy revisions are not legally required; as long as Council Members ensure that their communications do not violate the Brown Act or the due process rights of parties to quasi-judicial proceedings, the legal standard is met. Whether to require new standards of conduct that go above this legal "floor" is a policy decision for the Council.

**SARATOGA CITY COUNCIL****MEETING DATE:** July 1, 2009**AGENDA ITEM:****DEPARTMENT:** City Attorney**CITY MANAGER:** Dave Anderson**PREPARED BY:** Richard Taylor**DIRECTOR:** Richard Taylor

SUBJECT: City Council and Commissions' Electronic Communications Policy

RECOMMENDED ACTION: Discuss the draft City Council and Commissions' Electronic Communications Policy and provide direction to staff.**REPORT SUMMARY:**

City communications increasingly occur through electronic means. Over the years the City has followed various formal and informal procedures for effective use of electronic communications. The attached draft policy seeks to collect and coordinate those procedures into a single policy document for use by the City Council and City Commissions. While the primary objective of the draft policy is to promote effective use of electronic communications in conducting City business, an important secondary purpose is to create a system that allows compliance with state and federal laws governing electronic communications. Those laws include the Records Retention Act, the Public Records Act, the Brown Act, and state and federal rules of evidence. The attached policy facilitates compliance with those laws by the City, Council members, and Commissioners.

Under the policy, the City would issue e-mail addresses to all Commissioners and Council members (currently only the Council and Planning Commission have e-mail addresses). These addresses would be used for all City business. Personal business via City e-mail would be prohibited. The policy includes straightforward guidelines for use of City e-mail and the internet in a manner that does not violate the Brown Act or other laws (e.g., no policy discussions among Council members or Commissioners via e-mail or internet forums). The policy is drafted in a manner that applies to any type of electronic communication account issued by the City. If the City develops tools other than e-mail (e.g., instant messaging) the policy would apply to use of those tools as well.

The policy also formalizes existing procedures for responding to e-mails from the public addressed to the Council or a Commission as a whole and for responding to e-mails to less than a quorum. It also establishes as formal policy for all Commissions the existing practice for Council and Planning Commission of posting all agendas and minutes on the City website.

Finally, the policy addresses two relatively new matters. The first concerns use of e-mail during Council or Commission meetings. With increasing use of laptops for notes and paperless agendas there is a potential for use of e-mail during the meeting. To assure the public that their decision-makers are considering only the public information presented at the meeting the policy makes clear that e-mail may not be used by a decision-maker during a meeting. The second new matter concerns e-mail retention. Historically the City has printed all substantive e-mail for archival purposes. The City now has the capacity to electronically archive e-mails without printing. This is reflected in the policy.

FISCAL IMPACTS: None significant. There will be some staff time involved in establishing user accounts for all Commissioners and in Commissioner training but these costs will be offset in the long run through more effective recordkeeping and resident services.

FOLLOW UP ACTION:

The City Attorney will finalize the policy to reflect direction from Council and the policy will be set for formal adoption at a future Council meeting.

ADVERTISING, NOTICING AND PUBLIC CONTACT:

Notice for this meeting.

ATTACHMENTS:

Draft City Council and Commission Electronic Communications Policy

CITY OF SARATOGA
City Council and Commissions
Electronic Communications Policy
Adopted May 19, 2010

I. Purpose: Use of electronic media is necessary and useful for City Council and Commission members in order to improve communication and efficiently perform their City duties. The purpose of this policy is to insure the proper use of the City's electronic media and to set out the policy the City Council and Commission members will follow when using electronic media and the City's electronic communication system. This policy will also insure that use of City electronic media complies with applicable law, including the Public Records Act and Brown Act. This policy is applicable to all City Council members and Commissioners except members of the Youth Commission.

II. Definitions

- A. City's Electronic Communication System** – City-owned devices or products designed to electronically process, transmit, or store information such as computers, phones, cell and smart phones, printers, modems, data files, and e-mail.
- B. User** – a Council member or Commissioner who uses the City's electronic communication system.
- C. E-Communication** – electronic text or visual communication and attachments distributed via e-mail, websites, instant messaging, text messaging, twitter, or comparable services.
- D. Electronic Media** – a method for processing or transmitting information in electronic form, including E-Communication, software programs and the Internet.

III. General Procedures

- A. Procedures for Electronic Communications.** All Council members and Commissioners will be issued accounts for use of City electronic media for E-Communication on City business. E-Communication by nature represents and reflects upon the City's public image and integrity. Users should insure that their messages are respectful, professional, and are consistent with City policies. E-Communication should be written or otherwise presented in the same professional and respectful manner as paper communications. The City's Electronic Communication System shall be used only for City business.
- B. No Use of Personal E-Communication.** Users shall not use their home or business E-Communication accounts or addresses for any communication pertaining to City

business. When using E-Communication, users should communicate with the public and staff solely via their designated City E-Communication addresses. Users shall not commingle E-Communication pertaining to City business with E-Communication pertaining to their home or business.

- C. Electronic Communications between Council members or Commissioners Concerning City Business.** Communications from (1) a Council member to another Council member or members concerning City business, and (2) a Commissioner to another Commissioner or Commissioners concerning Commission business should be "one way" and marked "For Information Only—Do Not Reply."
- D. Electronic Communication by a Quorum of the Council and Commission or a Council and Commission Standing Committee.** A majority of the members of the Council or a Commission shall not send or exchange facts about or engage in discussions regarding City issues via E-Communication, including chat rooms, news groups, on-line forums, weblogs, twitter feeds, or list-serves (collectively referred to as "Internet forums").
- E. Electronic Communications from the Public.** The public may electronically communicate with the Council and Commission through the City's Website at: www.saratoga.ca.us.
- 1) E-Communication from the public addressed to the City Council will be distributed to each Council member and E-Communication addressed to a Commission will be distributed to each member of the Commission. E-Communication addressed to the Council or a Commission also will be forwarded to the City Clerk. The Mayor, or Mayor's designated representative, in consultation with staff if necessary, will respond on behalf of the Council to E-Communication addressed to the Council. The Commission chair or Commission staff liaison will respond on behalf of the Commission to E-Communication addressed to the Commission.
 - 2) E-Communication from the public addressed to more than a quorum of the City Council or Commission shall be forwarded by the recipients to the City Clerk (for the City Council) or staff liaison for the Commission. These E-Communications will be distributed and responded to in accordance with paragraph E.1, above.
 - 3) Upon receipt of an E-Communication addressed to less than a quorum of the City Council or Commission, the recipient may: 1) treat it as an individual communication to which he or she may or may not respond; 2) inform the Council or Commission of the communication at a properly noticed meeting; or 3) ask that it be forwarded to the full Council or Commission as part of its information packet for the next available Council or Commission meeting. Such E-Communication may also be forwarded to staff for response as set out in Section G, below. When a User responds to individual E-Communication from the public, and desires to forward the response to the Council or Commission, he or

she shall forward his or her response and the individual E-Communication to the City Clerk or Commission liaison for inclusion in the Council or Commission's informational packet at the next available Council or Commission meeting.

- F. City Electronic Communications with the Public.** City staff will post official information on upcoming and prior City Council meetings, workshops and events on the City Website. Council and Commission agendas and minutes will be posted for the current and prior calendar year. Additional materials may be posted at the discretion of the City Manager or Manager's designee.
- G. Use of E-Communication During Meetings.** City Council members shall not use E-Communication at any time during a meeting of the City Council at which he or she is in attendance. No Commissioner may use E-Communication at any time during a meeting of the Commission of which he or she is a member at which he or she is in attendance. The foregoing limitation shall not apply to receipt of telephone calls or text messages from family members in the event of an urgent family matter; a Council member or Commissioner wishing to respond to such a message during the meeting shall do so during a recess or shall excuse him or herself from the meeting to place the return call or text in a manner that does disrupt the meeting.
- H. City Participation in Internet Forums.** The City will not generally answer questions or respond to comments made in Internet forums. The City will post answers to such questions on its website if the questions are deemed important by the Mayor or by the City Manager or at the direction of the City Council. If a Council member desires staff to prepare a response to a question or comment received by E-Communication or made in an Internet forum, the Council and Commission member may forward the question or comment to the City Manager and request that staff prepare an appropriate response in a reasonable period of time. If preparation of a response will require significant staff time to research or draft the response, an interim response to the questioner or commenter will be sent as soon as possible acknowledging receipt of the inquiry and informing the sender that a response is being prepared.

IV. Specific Procedures

- A. Retention of E-Mail.** The City electronically archives E-communications in accordance with the City's Records Retention schedule. E-communications that constitute preliminary drafts, notes, or intra-agency or interagency memoranda that are not retained by the City in the ordinary course of business are not required to be archived and should be deleted prior to regularly scheduled archiving. The City Clerk and City Attorney are available to assist users in determining how to address questions concerning the application of these procedures.
- B. Public Records Act.** City records, whether paper or electronic, are governed by the public disclosure requirements of the Public Records Act. Disclosure may be required regardless of who sends or receives a communication or document. In the event that the City receives a request for disclosure of City records that includes E-Communication, the

person responsible for the requested records must use his or her best efforts to preserve all City E-Communication covered by the request until the responsive E-Communications have been identified. Requests for disclosure of any City records applicable to E-Communication or other electronic records of any user subject to this policy shall be submitted to the City Clerk..

C. Confidentiality.

- 1) California law requires that certain information be treated as confidential and not be distributed to others inside or outside the City who do not have authorization to view such information. Council members or Commissioners may occasionally receive confidential electronic information. Some examples of confidential information are: personnel records, internal investigations, information relating to litigation or potential litigation, attorney-client communication, information relating to labor negotiations, or information relating to confidential real estate negotiations. When Council and Commission members receive confidential information, it should be marked "Confidential Information" so that Council and Commission members are alerted to the nature of the information.
- 2) Confidential information should not be sent or forwarded to individuals or entities not authorized to receive that information and should not be sent or forwarded to City employees not authorized to view such information.
- 3) Council and Commission members shall exercise caution in sending confidential information by E-Communication as compared to written memoranda, letters or phone calls, because of the ease with which such information can lose confidentiality by inadvertent or intentional diversion or re-transmission by others.
- 4) The City Attorney should be contacted concerning any questions about whether a communication is confidential.

V. Compliance with this Policy: It is the responsibility of every user to insure that he or she is in compliance with this Electronic Communications Policy.



City of Lafayette
Staff Report
City Council

Meeting Date: March 11, 2019

Staff: Tracy Robinson, Administrative Services Director

Subject: Administrative Regulation 527 – Council iPad Policy

Summary

The Council authorized the purchase of iPads for each Councilmember, the City Clerk, the City Manager and the Administrative Services Director in order to improve communication and specifically to allow the digital distribution of Council agenda packets.

The attached Administrative Regulation describes the appropriate use of City-owned iPads.

Recommendation

Approve Resolution 2019-14 adopting Administrative Regulation 527 – Council iPad Policy.

ADMINISTRATIVE REGULATIONS

Regulation Number 527

Date: March 2019

Subject: Council iPad Policy

527.0 Purpose

The City issues iPads to Councilmembers and select staff to improve communication and to aid in the performance of their City duties. This regulation sets out the policy regarding permitted use of City-issued iPads.

527.1 Requirements

- A. Upon certification of Election results, and/or following the appointment of new Councilmember, the City Clerk's office will issue each incoming member, if they so desire, an iPad, cover, keyboard and one charging unit. iPads issued by the City are the property of the City of Lafayette. Users have no ownership, interest or right to title of the iPads.
- B. The City Manager may also designate that iPads be issued to specific staff members as s/he deems appropriate.
- C. The intended use of the iPad is for paperless meeting packets, sending and receiving City email and for internet access for City business. The iPad is not intended as a portable desktop and will not be linked to the City network.
- D. All iPads are covered by the Apple Warranty. Users of City-issued iPads shall contact AppleCare at 1-800-275-2273 with any technical, warranty, or repair issues; the City Clerk shall be notified of the issue concurrently.
- E. Upon departure from Council seat or employment due to the conclusion of the term of office, resignation or termination, the iPad will be returned to the City Clerk. Users will also furnish the City Clerk with the necessary login information, passwords and lock codes necessary to return the iPad to factory settings and remove any documents, images, files, or media stored on the iPad and re-issue the unit.
- F. Any additional iPad accessories, such as styluses, screen protectors, cables or adaptors, shall be at an individual user's own expense and shall remain the property of the users at the end of the user's term or service.
- F. Users are personally responsible for the security and safety of their assigned iPads.
 - 1. If the iPad is stolen and the user provides a police report, the City will replace the iPad at the expense of the City.
 - 2. If the iPad is lost, broken or accidentally destroyed the City will split the cost of a repair or replacement device for the first instance. The second instance involving the same device will be at the sole cost of the user.
 - 3. Damage occurring in the ordinary course of use will be repaired at the expense of the City.

- G. Loss of, or damage to a city iPad must be reported immediately to the City Clerk.

527.2 Implementation

- A. The software and applications installed by the City must remain on the iPad in usable condition and be readily accessible at all times. From time to time, the City may add or upgrade software applications on City-issued iPads.
- B. The user is responsible for complying with any and all hardware, software and service provider licensing agreements, terms of use, and applicable state and federal copyright and other intellectual property protections. Violation of any such licenses, terms or laws shall constitute a violation of this policy.
- C. The City is not responsible for loss of any information or data stored on the City-owned iPads.
- D. All data stored on a City-owned iPad is subject to disclosure under the Public Records Act.
- E. Users are subject to the Brown Act may not use the iPad at public meetings of the body in any manner or for any purpose prohibited by law or City policy. In particular, but without limitation, electronic communications and data devices may not be used at public meetings by City legislative body members in any of the following ways:
 - 1. In violation of the requirements of the Ralph M. Brown Act, such as by sharing communications among a majority of the legislative body privately and separate from the public discussion at the meeting.
 - 2. In violation of the requirements of the California Public Records Act, such as by transmitting to a majority of the legislative body information connected with a matter subject to consideration at the meeting, which information is not available to the public.
 - 3. In violation of due process rights of interested parties at adjudicatory hearings, such as by consideration of information not a part of the hearing record, or by use of an electronic communications or data device so as to result in inattention to the record and/or proceedings before the body.

527.1 Permissible use

- A. The City of Lafayette only authorizes use of the iPads in a manner that supports its mission.
- B. Personal use is permissible so long as, in the determination of the City of Lafayette, it does not interfere with the City's mission, does not interfere with or negatively impact any other person's or entity's rights and work and/or learning environment, and does not conflict with any law.
- C. Installation of applications is limited to applications that are consistent with the terms listed in this policy and are available through the iTunes application store.

- D. Installation of additional applications shall be at the sole expense of the individual user, utilizing their personal iTunes application store account.
- E. Modification of the iPad's operating system to allow installation of applications not approved by Apple is prohibited.
- F. Users may use the City's iPad equipment for the following incidental personal uses so long as such use does not interfere with the user's duties, does not conflict with the City's business, is at no cost to the City and does not violate either this or any other City policy:
 1. To send and receive occasional personal e-mail and other communications
 2. To prepare and store incidental personal data (such as personal calendars, personal address lists, and similar incidental personal data) in a reasonable manner;
 3. To access the Internet for brief personal searches and inquiries, provided that the user adheres to all other City policies.

527.1 Impermissible use

- A. As set forth more fully in the City's policy against harassment, the City does not tolerate discrimination, disparagement or harassment based on gender, pregnancy, child- birth (or related medical conditions), race, color, religion, national origin, ancestry, age, physical disability, mental disability, medical condition, marital status, sexual orientation, political beliefs, family care or medical leave status, veteran status, or any other status protected by state and federal laws. Under no circumstances may a city staff member or a member of a City legislative body use a City iPad to transmit, receive, or store any information that is discriminatory, harassing, or defamatory in any way (e.g., sexually explicit or racist messages, jokes, or cartoons).
- B. Users may not use a City iPad for any illegal purpose, in violation of any City policy, in a manner contrary to the best interests of the City, in any way that discloses confidential or proprietary information of the City or third parties, for the conduct of non-City business, to solicit or proselytize others for commercial ventures, religious or political causes, election related activities, or for other purposes not related to the user's duties with or responsibilities to the City, except for incidental personal use, as provided in Section 527.1 (F).

I, the undersigned, acknowledge receipt of the iPad Use Policy and agree to its terms and conditions:

Name: _____
(Please Print)

Signature: _____

Date: _____

RESOLUTION 2019-14

**BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:**

**APPROVING ADMINISTRATIVE REGULATION 527
COUNCIL IPAD POLICY**

WHEREAS, the City has approved a number of policies and procedures related to administrative functions in order to ensure that City business is conducted consistently and efficiently;

WHEREAS, these policies and procedures are collectively referred to as Administrative Regulations;

WHEREAS, additional Administrative Regulations are necessary to address new City policies;

WHEREAS, the City has authorized the purchase of iPads for Councilmembers and select City staff members in order to allow digital distribution of Council agenda packets;

NOW, THEREFORE, BE IT RESOLVED THAT:

Administrative Regulation 527 outlines the approved uses and policies related to City-owned iPads.

PASSED AND ADOPTED by the City Council of the City of Lafayette at a regular meeting held on the March 11, 2019 by the following vote to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Cameron Burks, Mayor

ATTEST:

Joanne Robbins, City Clerk EXHIBIT A



Meetings and Technology: Finding the Right Balance

www.ca-ilg.org/technology-and-meetings

4/30/2013 (Update)

Question: *Our agency is mulling whether and how to take advantage of technology at meetings. What issues should we be aware of?*

Related Resources from the Institute

The Institute's website offers the following additional resources relating to technology, social media, and transparency:

- "Legal Issues Associated with Social Media" available at: www.ca-ilg.org/SocialMediaLegalIssues
- "Local Agency Website Transparency Opportunities" available at: www.ca-ilg.org/WebsiteTransparency
- "Taking the Bite out of Blogs: Ethics in Cyberspace" available at: www.ca-ilg.org/blogs

Answer: The answer to that question benefits from a clear sense of the purpose of the meeting. Meetings of public agency decision makers have several purposes. Meetings are where public agency decision-makers:

Consider the technical analysis and recommendations that staff has prepared:

- Hear public input
- Come together to make a decision
- Explain their reasons for the decision made.

A number of transparency and fair process rules govern public meetings. In addition, voters judge decision-makers in part by how decision-makers conduct themselves at public meetings.

With that backdrop in mind, let's look at specific issues that arise relating to meetings and technology.

Electronic Agendas

For Decision-Makers

Being prepared for meetings is a key responsibility for public officials. Providing agenda materials to decision-makers and others electronically result in speedier delivery. Electronic versions can also result in savings of public resources (staff time and supplies) in photocopying and delivering agendas in hardcopy form.

Through internal links and other techniques, electronic formats can involve advantages in making supporting materials easier to find in lengthier agenda packets. There are also software

packages that allow decision-makers to engage in the same activities when reviewing agenda materials electronically as they would for hard copy agenda materials (for example, highlighting text and note-making).

Whether electronic agenda packets work in any given jurisdiction will depend on decision-makers' 1) comfort level with technology and/or receptiveness to training, and 2) access to the necessary computer equipment to review agenda materials (see next section on providing computers to decision-makers).

For the Public

Another important purpose of agendas is alerting the public of what decision-makers will be discussing and deciding at a meeting. A key thing to understand about electronic agendas is that while many members of the public will be happy to receive this information electronically through either email or accessing the agency's website, the law requires agencies to make this information through more traditional channels if requested (see sidebar at right on digital divide).

As a result, agendas must be posted in an area "freely accessible" to the public and on its website (if it has one).¹ An agenda must explain where interested individuals can review agenda materials.² Members of the public can also request that copies of the agenda packet be mailed to them.³

Of course, agenda materials are public records and must be made available to the public.⁴ This includes documents distributed during a public meeting. If the document is prepared by the agency, the document must be made available at the meeting; if the document is prepared by others, like members of the public, the document may be made available after the meeting.⁵

Providing Computers to Elected Officials

To assure that all officials have ready and uniform access to electronic agendas, some agencies provide laptops or tablets to elected officials. The notion is that the officials will use these to review the agendas to be well prepared for meetings. The computers also enable elected officials to access the materials during the meeting. In addition, some agencies provide equipment to elected officials to enable them to receive and respond to email in their official capacity.

Agencies typically include the cost of providing and maintaining such equipment in their cost/benefit analysis on providing agendas in electronic format.

In the event that an agency does decide to provide such equipment, another issue to be aware of is the restrictions on use of that equipment. Using public resources for either personal or political

Additional Resources on Transparency and Meetings

The Institute's website offers additional resources relating to transparency, technology and meetings.

- **Transparency Strategies**, offers resources on suggested local agency website content and social media issues. www.ca-ilg.org/TransparencyStrategies.
- **Leadership Skills**, includes resources on chairing meetings, civility in public discourse, and meeting procedures. www.ca-ilg.org/leadership-skills.

purposes is unlawful.⁶ “Personal” use of public resources means activities that are for personal enjoyment, private gain or advantage.⁷ The statute penalizes both intentional and negligent violations.⁸

There are very narrow exceptions for “incidental and minimal” use of resources. An “occasional telephone call” is an example of an incidental and minimal use of public resources.⁹

To avoid traps for the unwary, a good practice is to specify that agency-provided electronic devices are for official use only.

Streaming and Archiving Meetings

In addition to broadcasting governing body meetings over cable, a number of local agencies also webcast their meetings and/or make the videos available from their websites. Others make the audio portion or the meeting available. “Live streaming” makes the meeting proceedings available as the meeting is occurring. This practice enables residents to access meeting proceedings in real time even if they are unable to attend the meeting in person.

Afterwards, a number of agencies post meeting recordings and minutes on the agency’s website.

This can demonstrate an agency’s commitment to transparency. Proactively providing such information can also save staff time in responding to questions and public records requests.

Accessing the Internet during Public Meetings

Using an electronic device (either agency-provided or one’s own personal device) to access the Internet during a meeting presents a number of issues.

At the most basic level, such activity suggests divided attention or inattention to the information being shared at the meeting. Focused attention on meeting proceedings throughout long meetings can require self-discipline at times. However, meeting participants and other constituents expect such attention as one of the responsibilities of public office. It also demonstrates respect for those presenting information at the meeting.

Members of the Connecticut state legislature found this out the hard way. A number of them were photographed playing a computer game during a legislative debate. One of the legislators issued an apology to his constituents. He reassured them that he does pay attention at meetings and works hard as their representative them.¹⁰

Current State of the Digital Divide

According to the Pew Center for the Internet, even though the increasing prevalence of smart phones has diminished the digital divide, one in five American adults still do not use the Internet. (See www.pewinternet.org/Reports/2012/Digital-differences/Overview.aspx?view=all.)

Moreover, the nature of the access matters: If information is not available on or suitable for a small screen, it is not available to people who rely on their mobile phones for Internet access. That’s likely to be young people, people with lower household incomes, and recent immigrants. (See www.pewinternet.org/Commentary/2010/September/The-Power-of-Mobile.aspx.)

Using Email/Texting during Meetings

Using email during meetings also presents transparency issues. Emails among decision-makers risk violating the California's open meeting laws. California law prohibits decision-makers from:

us[ing] a series of communications of any kind, directly or through intermediaries, to discuss, deliberate or take action on any item of business that is within the subject matter jurisdiction of the legislative body.¹¹

The Attorney General has opined that this section prohibits officials from using email to develop a collective concurrence as to an action to be taken.¹² According to the opinion, posting the emails on the Internet and distributing them at the next public meeting of the body does not fix the problem. A key goal of open meetings laws is allowing the public to observe decision-maker deliberations.¹³

Another issue to be aware of is whether such emails or text message are subject to disclosure as public records, either under local agency policy or state law. Media outlets and open government advocates take the position that emails should be retained and produced upon demand as public records.¹⁴ In fact, one trial court has found that even emails the public officials send on their personal (non-agency) email accounts are public records subject to disclosure upon request.¹⁵ Although this decision is not binding on other courts, it demonstrates the potential breadth of the records subject to disclosure under the Public Records Act.

Irrespective of their legal status as disclosable records or not, once one pushes "send," the communications leave one's control. Officials are wise to be mindful of what they say in emails or text messages for a whole host of reasons.

Using Information Received Outside Public Hearings

Sometimes public hearings involve complex issues. It may be tempting to research the issue or consult an expert via email either in preparation or during the public meeting.

This is when the nature of the public meeting can be important to keep in mind. When a decision-making body is applying agency policies to specific situations (acting in an adjudicative or "quasi-judicial" capacity), special fair process rules can apply. A fair process issue can arise when decision-makers receive information outside the public hearing. For example, such an issue arose when members of a civil service board received evidence outside the administrative

Transparency Resources

There are two dimensions to public agency transparency:

- 1) Information transparency, and
- 2) Process transparency.

With respect to both kinds of transparency, a website is an opportunity to provide raw information (budget numbers and meeting dates) and also to provide the public with background information on what the numbers mean for the services they receive and how they can participate in the decision-making process if they choose.

Recognizing that many local agencies are struggling with budget cuts and providing information involves staff time, money and sufficient site capacity, the Institute has developed a number of resources designed to help local agencies offer general information about local agency decision-making to the public as part of its "local government 101" efforts (www.ca-ilg.org/localgov101). The Institute welcomes links to its resources from agency websites.

hearing and also had conversations with the independent medical examiners and employee's physician outside the hearing.

Attorneys often refer to such information as "*ex parte*" because it occurs outside the hearing and typically from one side only ("from one side only" is a loose translation of the Latin term *ex parte*). The court found that receiving information outside the hearing was unfair, because the decision-makers based their decision upon information that not all parties were aware of and therefore had no opportunity to challenge.¹⁶

The Importance of Attentiveness

Technology should not be a distraction in a meeting. Another fair process issue that arose in one jurisdiction is whether decision-makers were truly paying attention at the hearing.¹⁷ As the appellate court noted, a fundamental principle of due process is "he who decides must hear."¹⁸ It also implicates values relating to respect, even when one disagrees with a position being advocated.

The case involved an appeal of a zoning administrator's decision to loosen certain restrictions imposed on adult business operators. The adult business videotaped the hearing, which showed decision-makers talking with each other, talking on cell phones and otherwise not paying attention to either side that was speaking. The court concluded that the inattentiveness of decision-makers during the hearing prevented them from satisfying fair process principles and overturned the decision.¹⁹

The Difference Between Legislative and Adjudicative Decision-Making

When an elected official acts in a legislative capacity, his or her decision-making is less constrained. For example, when one acts in a legislative capacity, one can review information submitted by interested parties and conduct one's own investigation; investigating and determining facts as a basis for legislation is acceptable. Also, courts generally won't inquire into what evidence was or was not examined or relied on by an elected official in reaching his or her decision.

Policies Prohibiting Messaging During Public Meetings

For all the above reasons, a number of public agencies have adopted policies prohibiting decision-makers from reading, sending or receiving messages while at meetings. Sample policies are available from the Institute's website.

Using Technology to Include an Official in a Meeting

California's open meeting law creates a limited opportunity for officials to use technology to participate in meetings. For purposes of this law, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video or both.²⁰ Special posting requirements apply²¹ and each teleconference location must be accessible to the public.²² The public must have the opportunity to address decision-makers at each location.²³

Using Technology to Expand Public Participation

Meetings offer one opportunity for the public to share their views on a matter with their elected representatives. Technology can expand those opportunities.

Many local agencies use translation equipment to enable non-English speaking residents to understand meeting proceedings. The same equipment can enable decision-makers to understand public comments offered in languages in which they are not fluent.

Local agencies are increasingly using online tools to encourage public input and public discussion of issues facing the community. Examples include e-comment features on agenda items, online surveys that help decision-makers expand their sense of community sentiment beyond those who can attend meetings, and online forums that enable residents to exchange ideas and also understand how their neighbors view a particular issue.

As with any public engagement effort, the first step is to be clear on the agency's goal in engaging the public on an issue or in general. Available resources to support the effort are another part of the analysis. Ideally, any online efforts will be part of a broader public engagement plan that are tailored to the needs of the community and include both online as well as face-to-face opportunities for public involvement. Technologies also exist to play a role in those meetings as well (for example, keypad polling devices for larger gatherings).

For ideas and strategies in this area, see *A Local Official's Guide to Online Public Engagement* (www.ca-ilg.org/document/local-officials-guide-online-public-engagement).

About the Institute for Local Government

This resource is a service of the Institute for Local Government (ILG) whose mission is to promote good government at the local level with practical, impartial, and easy-to-use resources for California communities.

ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties.

For more information and to access the Institute's resources on ethics visit www.ca-ilg.org/trust.

The Institute welcomes feedback on this resource:

- *Email:* ethicsmailbox@ca-ilg.org Subject: *Meetings and Technology*
- *Mail:* 1400 K Street, Suite 205 • Sacramento, CA • 95814

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References and Resources

Note: Sections in the California Code are accessible at <http://leginfo.ca.gov/>. Fair Political Practices Commission regulations are accessible at www.fppc.ca.gov/index.php?id=52. A source for case law information is www.findlaw.com/cacases/ (requires registration).

- ¹ Cal. Gov't Code § 54954.2(a). See also 88 Ops. Cal. Att'y Gen. 218 (2005) (finding that an electronic kiosk accessible 24/7 to the public can be "freely accessible" to the public).
- ² Cal. Gov't Code § 54957.5.
- ³ Cal. Gov't Code § 54954.1.
- ⁴ Cal. Gov't Code § 54957.5(a).
- ⁵ Cal. Gov't Code § 54957.5(c).
- ⁶ See Cal. Penal Code § 424; Cal. Gov't Code § 8314.
- ⁷ Cal. Gov't Code § 8314(b)(1).
- ⁸ Cal. Gov't Code § 8314(c)(1).
- ⁹ Cal. Gov't Code § 8314(b)(1).
- ¹⁰ See <http://www.snopes.com/photos/politics/solitaire.asp>.
- ¹¹ Cal. Gov't Code § 54952.2(b).
- ¹² 84 Ops. Cal. Att'y Gen. 30 (2001) available at <http://ag.ca.gov/opinions/pdfs/00-906.pdf>. See also *Wood v. Battle Ground School District*, 107 Wash. App. 550 (2001) (email exchange among school board members amounted to illegal meeting under Washington's open meetings law); *Johnston v. Metropolitan Gov't of Nashville*, 320 S.W.3d 299, 312 (Tenn.Ct.App.2009) (e-mail exchanges in which "members are weighing arguments for and against a proposed zoning measure and which were copied to all members violate spirit of the open meetings law). See generally John F. O'Connor & Michael J. Baratz, *Some Assembly Required: The Application of State Open Meeting Laws to Email Correspondence*, 12 Geo. Mason L.Rev. 719 (2004). But see *Lambert v. McPherson*, --- So.3d ---, 2012 WL 1071632 (Ala.Civ.App., 2012) (unilateral declaration of elected official's opinions which did not involve an exchange of information or opinions among a quorum does not violate open meetings laws).
- ¹³ See *Coalition of Labor, Agriculture and Business v. County of Santa Barbara Board of Supervisors*, 129 Cal. App. 4th 205 (2d Dist. 2005).
- ¹⁴ See, for example, http://www.voiceofoc.org/countwide/this_just_in/article_b093e90c-edbf-11df-b928-001cc4c002e0.html ; <http://sanleandro.patch.com/articles/city-emails-fleeting-notes-or-vital-public-records>.
- ¹⁵ See *Smith v. City of San Jose*, No. 1-09-CV-150427 (March 19, 2013) (finding that personal emails are "retained" by public agency because they are retained by a public officials; in addition, such emails are also "prepared" and "used" by such officials). See also *Tracy Press, Inc. v. Superior Court of San Joaquin County (City of Tracy)*, 164 Cal. App. 4th 1290, 80 Cal. Rptr. 3d 464 (2008) (The appellate court dismissed, on technical grounds, a trial court decision finding that emails sent by public officials from their personal email accounts are not public records subject to disclosure, the court recognized that the question of whether the emails sent from the city council member's private email account are public records is a novel question they would not address in the appeal).
- ¹⁶ *English v. City of Long Beach*, 35 Cal. 2d 155, 157, 217 P. 2d 22, 24 (1950) (adjudicative body's acting on information of which parties were not apprised and which they had no opportunity to controvert amounts to a denial of a hearing). *Accord Today's Fresh Start, Inc. v. Los Angeles County Office of Educ.*, 128 Cal. Rptr. 3d 822, 844, 197 Cal. App. 4th 436, 463, (2 Dist. Jul 12, 2011).
- ¹⁷ *Lacy Street Hospitality Service, Inc. v. City of Los Angeles*, , 22 Cal. Rptr. 3d 805 (2 Dist. 2004), *decertified from publication* June 15, 2005.
- ¹⁸ *Vollstedt v. City of Stockton*, 220 Cal. App. 3d 265, 276, 269 Cal. Rptr. 404 (1990).
- ¹⁹ *Lacy*, citing *Haas v. County of San Bernardino*, 27 Cal. 4th 1017, 1024, 119 Cal. Rptr. 2d 341 (2002) ("due process requires fair adjudicators in administrative tribunals"); *Henderling v. Carleson*, 36 Cal. App. 3d 561, 566, 111 Cal. Rptr. 612 (1974) (takes as a given that administrative decision-maker listens at hearing), *disapproved on another point by Frink v. Prod*, 31 Cal. 3d 166, 180, 181 Cal. Rptr. 893 (1982); *Chalfin v. Chalfin*, 121 Cal. App. 2d 229, 233, 263 P.2d 16 (1953) (fact finder must listen to the evidence before making a decision).
- ²⁰ Cal. Gov't Code § 54953(b)(4).
- ²¹ Cal. Gov't Code § 54953(b)(3) ("If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations . . .").

²² Cal. Gov't Code § 54953(b)(3) ("Each teleconference locale shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public.")

²³ Cal. Gov't Code § 54953(b)(3) ("The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.")

BREAKING



https://madison.com/wsj/news/local/govt-and-politics/city-council-emails-texts-present-challenges-for-laws-governing-open/article_89466178-96e1-11e1-a11d-0019bb2963f4.html

City Council emails, texts present challenges for laws governing open meetings, records

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Madison City Council members are emailing or texting colleagues, lobbyists, staff and others during public meetings, raising questions about whether the state's Open Meetings Law has kept pace with changing technology.

The unseen flow of electronic communications — from the snarky and playful to real-time conversations on key matters before the council, including millions of dollars in public funds for redevelopment of the Edgewater Hotel or Overture Center — is revealed in records obtained by the State Journal under the state Open Records Law.

A review of 7,656 emails and hundreds of texts exchanged during council meetings from April 2010 through 2011 suggest awareness of the state Open Meetings Law, and no apparent violations of it.

But the records lay bare a previously unknown level of private communications at council meetings and suggest similar exchanges likely occur in other governmental bodies across Wisconsin, including the state Legislature. The records don't include comments made on social media such as Facebook, which present their own challenges to open government.

Some see emails and texts as an efficient way to manage council duties, and because the records are public, as more transparent than council members and lobbyists whispering in the corners of the council chambers.

Others see it as disrespectful to those attending meetings or watching on TV, flouting the spirit of the Open Meetings Law, and a slap at open government.

Several council members — including some who email and text the most — and City Attorney Michael May said the city should consider tighter rules.

The state would also benefit from such a review, others said.

Attorney Robert Dreps, an expert in the state's Open Meetings and Records laws, said evolving technology presents challenges to good government and that the public would benefit from more clarity on a host of issues, from a prohibition on elected officials doing public business on personal electronic devices to rules for what's appropriate in meetings.

"It would be beneficial to explicitly address this in the statutes," Dreps said.

The issue is vexing not only for the Madison City Council but for small and

large governments across the country.

"This is a problem that's popping up everywhere," said Mark Caramanica, freedom of information director for the Reporters Committee for Freedom of the Press in Arlington, Va.

Violating spirit of the law

The city attorney and state attorney general discourage use of electronic communications between council members during meetings.

The spirit of the Open Meetings Law is to do business in the public eye, but the letter of the law is less clear.

State law bans the use of email and instant messaging to create a quorum capable of making decisions on government business, according to the attorney general. The city prohibits council members from electronic communication with each other during meetings on agenda items — unless the communication is saved as a public record and doesn't violate state law. City rules for keeping and accessing communications are so strong, assistant city attorney Roger Allen was honored by the Wisconsin Freedom of Information Council in 2009.

Still, no Wisconsin court has ruled whether the Open Meetings Law applies to the use of electronic communications in creating a quorum of a government body, experts said.

The result: Many council members have had conversations with colleagues — never reaching an illegal quorum — and with lobbyists, staff, constituents and others, sometimes as the subject of the exchanges was before the council, the records show. That was especially true with text messages.

Most emails dealt with schedules, information sharing and constituent questions, and a large volume were sent unsolicited to council members from the outside.

"It would be impossible to do our jobs efficiently as alders in 2012 without using electronic forms of communication," said council president Shiva Bidar-Sielaff, who emails and sends texts during meetings, knowing records are kept.

But others send few or no emails or texts.

"I think it's disrespectful to my colleagues and the public to be doing something other than listening and participating in the issue at hand," said Ald. Paul Skidmore, 9th District, who doesn't bring a computer to meetings.

The city didn't release 46 emails deemed personal and 138 protected as drafts, legal advice, spam or duplicates. Six council members provided the city attorney with texts — one member withholding 217 of them as personal. Eleven members said they had no texts, and three didn't respond.

Started with the Solomon case

The State Journal sought the communications after learning Ald. Brian Solomon, 10th District, exchanged emails with assistant city clerk Elena Berg largely not about city business during council meetings. The exchanges were part of a public record related to Berg's sexual assault and harassment claims against Solomon, claims that weren't prosecuted or substantiated by the city.

The city's recent release of emails and texts include messages about ordering pizza at late-night meetings or going out for drinks afterward, counting votes on hot issues, and desperate exchanges between council members, lobbyists and the public during debate over a narrowly failed effort on Nov. 15, 2011, to preserve \$16 million in city assistance for the \$98 million Edgewater project.

On that night, developer Robert Dunn, Downtown Madison Inc. President Susan Schmitz and others lobbied council members by text for the funding as deliberations unfolded.

Bidar-Sielaff pleaded by text with Ald. Lisa Subeck, 1st District, a swing vote, to support the \$16 million — even though Bidar-Sielaff later cast her vote against the assistance due to opposition in her district. Subeck voted no, too.

Dreps, who has represented the State Journal in records cases, said it was unfortunate that some council members exchanged texts about the Edgewater decision but didn't debate the matter publicly.

"It's not fair to say they didn't have a debate, it's just that some of them had one in private," he said.

At other times, exchanges revealed personal animosities.

Ald. Chris Schmidt, 11th District, who befriended Berg during her conflict with Solomon, texted her about Solomon during the height of their tensions on Nov. 16, 2010, saying: "Ego. Arrogance. Want to destroy, must behave...It's hard."

Both Schmidt and Solomon voiced regret for communications exchanged with Berg and said they're supportive of examining city rules.

Mayor Paul Soglin, who leads meetings, on rare occasion sends brief messages through his phone.

"I would refrain from communicating with anyone on any subject before the council, other than a very procedural thing," Soglin said. "When you text and email, it's out there forever. Good government suggests we stay away from anything that could be questioned."

Electronic communication during Edgewater debate

Some of the Madison City Council's busiest electronic communication traffic came during deliberations on keeping \$16 million in tax incremental financing (TIF) support for the \$98 million Edgewater Hotel project, which began on the evening of Nov. 15, 2011. Here are some of the text exchanges involving Aids. Shiva Bidar-Sielaff, Chris Schmidt, Lisa Subeck, Bridget Maniaci, Steve King, and Mark Clear; Edgewater developer Robert Dunn; and Downtown Madison, Inc. President Susan Schmitz. The council heard testimony and asked questions of staff and the public but did not debate amongst themselves before the vote. The \$16 million in funding failed on a 10-10 tie with the vote after midnight.

6:48 p.m. Bidar-Sielaff to Schmitz: "You need to convince Lisap."

6:55 p.m. Schmitz to Bidar-Sielaff: "Other suggestions?"

6:56 p.m. Bidar-Sielaff to Schmitz: "Weir, Johnson."

8:06 p.m. Schmitz to Subeck: "I know we already talked but this is a REALLY big deal! I hope u guys can figure this out! Thanks!"

Just please don't let this slip through our fingers. Thanks."

8:24 p.m. Bidar-Sielaff to Clear: "Can't you convince Weier?"

8:25 p.m. Clear to Bidar-Sielaff: "Haven't had any luck so far. Jobs jobs jobs!"

8:26 p.m. Bidar-Sielaff to Clear: "Keep trying. She represents blue collar union members!"

8:26 p.m. Clear to Bidar-Sielaff: "Yup."

8:44 p.m. King to Bidar-Sielaff: "No matter what you have to do I'll still love you in the morning!"

8:46 p.m. Bidar-Sielaff to King: "Thank you, Steve. I truly feel like crying. I do want the project to happen but can't get to the TIF yes given my district."

8:46 p.m. King to Bidar-Sielaff: "You are the best!!!"

9:01 p.m. Bidar-Sielaff to Maniaci: "Lisa still a no??"

9:01 p.m. Bidar-Sielaff to Schmidt: "I just want to cry."

9:04 p.m. Bidar-Sielaff to Subeck: "Still a no?"

9:07 p.m. Schmidt to Bidar-Sielaff: "It will be all right. The worst case scenario for you is not as bad as you fear, and you'll have backup from me and others."

9:08 p.m. Bidar-Sielaff to Schmidt: "What is the worst case scenario?"

9:22 p.m. Schmidt to Bidar-Sielaff: "The cadre goes after you for awhile, but runs out of steam over the next 18 months and your basic awesomeness prevails and you get no opponent."

9:25 p.m. Bidar-Sielaff to Schmitz: "Did u talk to Bob?"

9:27 p.m. Schmitz to Bidar-Sielaff: "yes."

9:28 p.m. Dunn to Shiva Bidar-Sielaff: "Help!!!"

9:32 p.m. Bidar-Sielaff to Dunn: "I can't always carry it all on my shoulders. I have really done nothing but help..."

9:44 p.m. Schmitz to Subeck: "None of this 'smells' right. R there promises being made? I have never had such a bad feeling about peoples' intentions and that is hard 4 me 2 swallow. This could be so harmful to the city & its process. Thanks."

Subeck to Schmitz: "Not that I know of."

Schmitz to Subeck: "All the major organizations, the hospitals, UW, the letters – this will not work well 4 getting things done in the future. I can't believe how frustrated and sad I feel for our city. :("

9:58 p.m. Maniaci to Bidar-Sielaff: "Presumably."

9:58 p.m. Maniaci to Bidar-Sielaff: "Not getting much out of her."

10:06 p.m. Bidar-Sielaff to Subeck: "Please help me now!"

10:36 p.m. Schmitz to Subeck: "Sorry u r in this spot. This is about an agreement with the city that was made by the Council – not by the Mayor."

11:15 p.m. King to Bidar-Sielaff: "I am kind of regretting my support of Lisa."

11:17 p.m. King to Bidar-Sielaff: "She didn't even consult me about the other southwest side amendments."

11:18 p.m. Bidar-Sielaff to King: ":-(("

Some government bodies ban communication during meetings

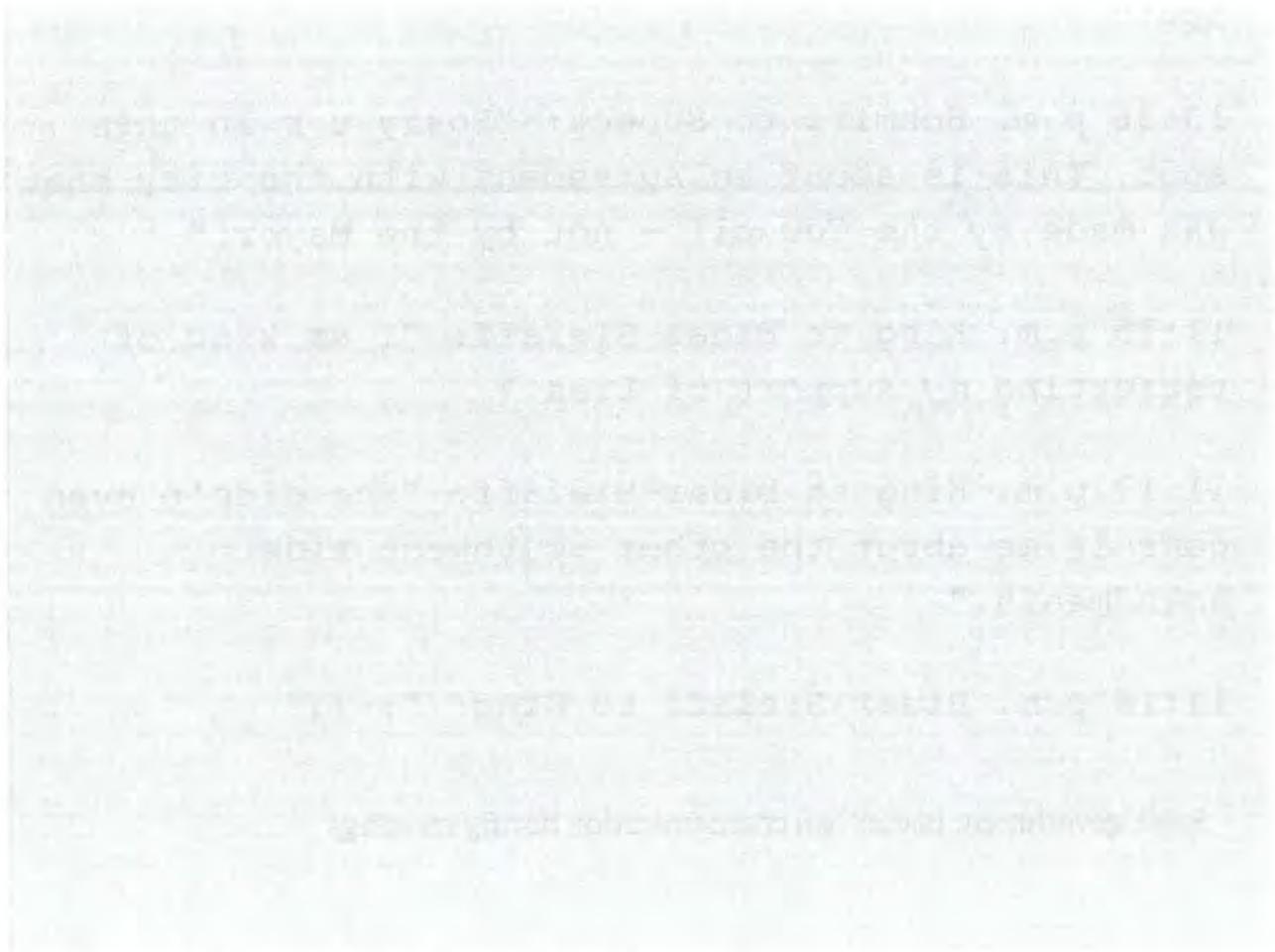
EMAIL MESSAGE ...

- *From: Mark Clear (Ald., 19th District)*
- *Sent: Wednesday, Sept. 21, 2010, 10:10 p.m.*
- *To: Al Matano (Madison Area Transportation Planning Board)*

- *Subject: RE: Citizens' Guide to High Speed Rail construction Debate*

"Mr. Chair. 1. I'm concerned that this email exchange among the membership of the TBA may be treading near an open meetings violation, and hope you will do what you can do to discourage it."

Chris Rickert: Technology isn't helping council's efficiency



Rules on emails, texts in public meetings face scrutiny