



# **AGENDA**

## **REGULAR MEETING**

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## **CLAYTON CITY COUNCIL**

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**TUESDAY, September 4, 2018**

**7:00 P.M.**

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

**Mayor:** Keith Haydon

**Vice Mayor:** David T. Shuey

### **Council Members**

Tuija Catalano

Jim Diaz

Julie K. Pierce

- 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](http://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 \***

**September 4, 2018**

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

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

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 or further input may request so through the Mayor.*

(a) Approve the minutes of the City Council's regular meeting of August 21, 2018.

[\(View Here\)](#)

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

(c) Approve the City's Investment Portfolio Report for the 4<sup>th</sup> Quarter of Fiscal Year 2017-18 ending June 30, 2018. [\(View Here\)](#)

4. **RECOGNITIONS AND PRESENTATIONS**

(a) Proclamation declaring September 17 – 23, 2018 as "U.S. Constitution Week."

[\(View Here\)](#)

(b) Proclamation declaring September 2018 as "Suicide Prevention Awareness Month." [\(View Here\)](#)

(c) Presentation by Republic Services (the City's franchise solid waste/recycling collection and disposal company) regarding current trends in community recycling efforts coupled with upcoming state mandates for new recycling programs and the global problems with post-recycling secondary markets.

(Susan Hurl, Division Municipal Services Manager, Republic Services)

[\(View Here\)](#)

5. **REPORTS**

(a) Planning Commission – Chairman Bassam Altwal.

(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 – Introduction of City Council candidates (present at the meeting).

**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 shall 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 HEARINGS – None.**

**8. ACTION ITEMS**

- (a) Consider the Second Reading and Adoption of Ordinance No. 483 amending Title 17 – Zoning of the Clayton Municipal Code to restrict and regulate parolee homes in the following General Plan designations: Multifamily Low Density (MLD), Multifamily Medium Density (MMD), and Multifamily High Density (MHD), subject to a conditional use permit. ([View Here](#))  
(Community Development Director)

Staff recommendations: **1)** Receive the staff report; **2)** Open the Public Hearing and receive public comment; **3)** Close the Public Hearing; **4)** Following Council discussion and subject to any modifications to the Introduced Ordinance, approve a motion to have the City Clerk read Ordinance No. 483 by title and number only and waive further reading; and **5)** Following the City Clerk's reading, by motion adopt Ordinance No. 483 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.

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

**10. CLOSED SESSION – None.**

**11. ADJOURNMENT**

The next regularly scheduled meeting of the City Council is September 18, 2018.

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

**Agenda Date:** 9-04-2018

**Agenda Item:** 3a

**TUESDAY, August 21, 2018**

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:00 p.m. by Mayor Haydon in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Haydon, Vice Mayor Shuey and Councilmembers Catalano, Diaz and Pierce. Councilmembers absent: None. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Assistant to the City Manager Laura Hoffmeister, City Engineer Scott Alman, and City Clerk/HR Manager Janet Brown.

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

3. **CONSENT CALENDAR**

**It was moved by Councilmember Catalano, seconded by Councilmember Pierce, to approve the Consent Calendar as submitted. (Passed; 5-0 vote).**

- (a) Approved the minutes of the City Council's regular meeting of July 17, 2018.
- (b) Approved the Financial Demands and Obligations of the City.
- (c) Approved the City's response letter to the FY 2017-18 Contra Costa County Civil Grand Jury's Report No. 1808, "Joint Powers Authorities."
- (d) Adopted Resolution No. 37-2018 approving four (4) contracts for the purchase and outfitting of a new 2018 Ford F150 Police Responder Supercrew Truck in the total amount of \$59,028.16, and declaring a 2005 Ford Patrol Vehicle (Unit 1729) and a 2005 Ford Ranger Pickup as property surplus to the City's needs and authorizing its disposal by the City Manager at public auction.
- (e) Approved with regret the resignation of Nancy Morgan from the citizens advisory Trails and Landscaping Committee.
- (f) Adopted Resolution No. 38-2018 approving a First Amendment to the expiring Professional Engineering Services Agreement with Harris & Associates, Inc., authorizing adjustments in professional engineering rates and term of the Agreement for the continued provision of city engineering services.
- (g) Adopted Resolution No. 39-2018 authorizing and approving the City's submission of a FEMA-CalOES Local Hazard Mitigation Plan grant application in the amount of \$150,000 and authorizing the City Manager to sign grant-related documents.

4. **RECOGNITIONS AND PRESENTATIONS**

- (a) Certificates of Recognition to the Dana Hills Swim Team ("Otters") and the Oakhurst County Club Swim Team ("Orcas") for demonstrating extraordinary community spirit through its recent fundraising effort, "Team Up for Tucker."

Councilmember Catalano provided a brief background of the fundraising efforts of both the Dana Hills Swim Team and Oakhurst Country Club Swim Team at their July 28th "Clayton City Cup" Meet. Normally, the swim teams would compete against one another but instead they inter-mixed the teams, Ed's vs. Skip's, and renamed the event "Team up for Tucker." Funds were raised for a family whose 10 month old son had a pool incident this summer and the two teams decided to get together to do a fundraiser for that family. Coach Tony led the event with a big cheer and human "wave" around the pool for Tucker. Overall the swimmers and families raised approximately \$16,000.00 for Tucker and his family. There is some talk that the teams will do this again next year.

Mayor Haydon invited representatives from both swim teams forward and recognized the Dana Hills swim team and Oakhurst Country Club swim team coming together in this community effort. Mayor Haydon shared the Dana Hills Swim Team was already awarded the City certificate at its end of season event, and he presented the City certificate to the Oakhurst Country Club swim team.

## 5. REPORTS

### (a) Planning Commission

Vice Chair Peter Cloven indicated the Commission's agenda at its meeting of August 14th included selection of its new Chair (Altwal) and new Vice Chair (Cloven). There were several public comments related to parolee housing. The Commission's agenda included consideration of a Site Plan Review Permit and Reasonable Accommodation Request at 229 El Pueblo Place for an exterior deck and access ramp to the second floor of the dwelling for a motorized wheel chair. After discussion including a neighbor's concern for privacy, with the expertise of Chair Altwal who is an ADA specialist, the setback and plans were changed and the item was conditionally approved unanimously.

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

### (c) City Manager/Staff

City Manager Napper provided an update regarding the conclusion of Keller Ridge Drive repaving project. This was the first time the City used rubberized materials within the chip seal along some portions of street overlay; this mixture will prolong the life of the street materials. This project's construction cost \$788,000 and the City was successful in receiving grant monies for introduction of the rubberized materials.

He noted a different contractor will be starting the City's biennial Neighborhood Street Repaving Project on various residential streets in town; the list of targeted streets is on the City's website under the Residents Tab and News & Events. The city engineer will also push-out messages through the Nextdoor website to inform the community of the schedule, which is subject to change giving the timing of the contractor. The contractor will always allow a way in and way out of areas having only one ingress/egress. Mr. Napper asked for confirmation of project completion from City Engineer Mr. Alman who was in attendance. Mr. Alman confirmed the project is set to be completed in two weeks.

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

Councilmember Catalano attended the League of California Cities' East Bay Division meeting, and the Clayton Business and Community Association Oktoberfest's Committee meeting. He announced there is still a need for volunteers for Oktoberfest event. He also attended the Clayton Library Foundation Board meeting, announcing its upcoming Used Book Sale taking place October 26 – 28, and attended the Council's Audit Sub-Committee meeting.

Vice Mayor Shuey indicated "No Report".

Councilmember Julie Pierce attended three Associated Bay Area Governments Committee meetings, the Metropolitan Transportation Commission meeting, the Contra Costa Transportation Authority Board meeting, and the League of California Cities' East Bay Division meeting.

Councilmember Diaz attended the Saturday Concerts in The Grove series, the Classic Car Show and DJ event in downtown Clayton, the League of California Cities' East Bay Division meeting, participated in the 20<sup>th</sup> Annual Mudville Grill Golf Classic, and attended the 40<sup>th</sup> Annual Sheriff's Posse Barbeque. Councilmember Diaz announced the next Classic Car Show and DJ event in downtown Clayton will be tomorrow evening.

Mayor Haydon attended the County Connection Board of Directors meeting, the "Welcome Home" event for Michael Hudson, the Saturday Concerts in The Grove, the Clayton Business and Community Association's General Membership meeting, the Contra Costa Mayors' Conference hosted by the Town of Danville, the Clayton Business and Community Association's Oktoberfest Committee meeting, and the Council's Audit Sub-Committee meeting.

(e) Other – Introduction of City Council candidates (present at the meeting).

Mayor Haydon noted that during City elections, it is City Council Policy that candidates for City Council are allowed 3 minutes to introduce themselves and share a few remarks at each City Council meeting if they are in attendance and wish to do so.

Brian Buddell announced his candidacy for City Council is to fill a need from previously speaking to the current Council to convey a problem with communication. Mr. Buddell has found too often he felt his voice was not being heard, listened to or acted upon by the City Council, and he decided to get involved and run for the people like himself who want their voice heard and protect the interest of Clayton at all costs. As a City Council member Mr. Buddell noted he will always listen to the community, and convey information which currently is limited by City Council and City Staff; we need better and more time to review the information prior to the City Council meeting. Mr. Buddell will spearhead, when on the Council, for reaching out to the community by holding open town hall meetings and if someone has a concern he wants to talk about it. Granted as a City Council member, Mr. Buddell acknowledged he would be only one member and one voice, but rest assured, it will be a loud voice.

Jeff Wan stated he has been a Clayton resident for a little over 9 years, an active CPA in private industry locally in Walnut Creek. Mr. Wan is running because he sees a need on the City Council for a new voice; when he has spoken to citizens, most people are ok when things are going well in the City and that has been happening for quite a number of years. In recent times, he does not feel that is true anymore, and he decided to run to represent the people who do not always have a voice here in his demographic and age group with younger families without a lot of spare time to pursue and keep up with all the detailed activity. When Mr. Wan heard about the proposed downtown development and parolee housing, it brought citizens to a call for action. When Mr. Wan was speaking with his circle of friends, he was persuaded to run for City Council and feels this is the time to really make a difference on the City Council.

Carl Wolfe stated he has been a resident for nearly thirty years and a current Planning Commissioner. When he applied for the Planning Commission, he thought it would take a couple of years to learn the ropes and did not realize how hard it was going to be. Mr. Wolfe and the people of Clayton are very passionate about their City and he believes in

listening to the people of Clayton, and providing the community the right to understand the information and not misinformation found on social media. Mr. Wolfe is proud of his voting record on the Planning Commission, an advisory body to the City Council, in dealing with various complicated issues. Mr. Wolfe is also a proud CBCA member and volunteer for the Art & Wine Festival and the Oktoberfest, the announcer for the Rib Cook-Off and the parade announcer for the City's 4<sup>th</sup> of July parade. Mr. Wolfe intends to be a voice for Clayton by retiring early as a marketing and creative director for a major corporation; his two year experience as a Planning Commissioner was not enough for him. Mr. Wolfe is proud of Clayton and what it is and stands for, and the vision of what Clayton can become as a community. Right now we are very divided, we can bring ourselves back together as one community with a new vision as the future is coming and we need to be prepared by listening. Mr. Wolfe promises to use his two ears and one voice for the City of Clayton.

Vice Mayor David Shuey advised he grew up in the area and when he moved back to raise his family he got involved in Clayton politics. When he moved back to Clayton in the Keller Ridge area there was no City park in an area with a lot of new families with children who wanted a playground. He got involved by being appointed to the City's Community Services Commission to help get a community park installed there. Mr. Shuey indicated it has been his honor and privilege to serve for 16 years on the City Council and 4 years on the Community Services Commission. He was the Chair for the downtown Grove Park Design Committee and its design has enabled the community to have a place to meet and have concerts. Mr. Shuey has assisted the City in keeping a balanced budget through the economic downturn in 2008, keeping our City services and a balanced budget when most cities in California were unable to do so. Mr. Shuey noted he is a CBCA member and also the Labor Day Derby MC with Pastor Robinson for all the years except one that this event has been going on. Mr. Shuey included he is an active coach and board member for Clayton Valley Little League, and has coached soccer and in the past helped with youth basketball. It would be his honor and privilege to serve again if re-elected and asked for your vote.

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

Susan Pricco, on behalf of the Contra Costa Taxpayers Association, noted for over a year and a half staff members of CoCo Taxpayers have been researching the CalPERS pension crisis as it affects the cities in Contra Costa County. In the past 5 years, city-required contributions to CalPERS have risen 40% and it's about to get worse. In the next 6 year period in FY 2019-2025 city payments to CalPERS for pension contributions will increase to an average 84% for fifteen Contra Costa cities. This financial crisis will suck the life out of public services in this county. Not only are we concerned with the rising costs of unfunded pension liability this year but were also concerned about the potential financial crisis for residents within the next few years. The current system is unsustainable and unaffordable; many government agencies are proudly announcing they have balanced budgets and rosy financial pictures yet ignore the outstanding pension obligation. Recent requirements instituted by the Government Accounting Standard Board (GASB) will now disclose a more complete and truthful picture.

CoCo Taxpayers want Clayton to be aware of where it stands and she distributed a projection for the five years ahead. The current unfunded pension debt for Clayton is \$4.7 million and Clayton's CalPERS contributions will increase by 23% over the next 5 years. She expressed confidence your city manager will confirm their findings. CoCo Taxpayers is also aware that figure for Clayton is modest compared with other cities but it is no small amount especially in a small city like Clayton. CoCo Taxpayers did publicly acknowledge Clayton's track record of excellent fiscal responsibility over the years. But it would like to see Clayton formulate a plan to address this debt. They expect the

already over-taxed Bay Area voters cannot and will not be inclined to approve a tax measure for services already rendered; however, they are also concerned about the retirees who earned and will rely on their reasonable pensions and cannot afford a loss of their financial security in their retirement years. If the Council wishes, they can present a more detailed analysis at a later time. She noted the Council did not create this situation but it is their responsibility to address it. The quality of life in your community is at risk.

Ann Stanaway, 1553 Haviland Place, stated Council needs to take serious its constitutional duty to protect the public safety. Since Mr. Diaz impassioned homily at the last Council meeting, trumping his personal commitment to neighborhood safety and quality of life in Clayton, she felt the need to raise her voice in a follow-up representing voters in those neighborhoods that Councilmember Diaz professed to protect. How dare he rebuke us for questioning his fitness to protect incorporated Clayton. Every single member of this Council continually violates his and her oath of office by allowing violations of existing public safety ordinances to proliferate despite exhausted photographic evidence of California Fire Code violations. Our government's constitutional commitment to protect its citizens is nothing more than empty rhetoric.

Brian Buddell spoke in general terms with respect to proposed and future developments keep Clayton, as it is. Mr. Buddell located to Clayton, he moved here because he liked it the way it is, without multi-story residential or commercial buildings. Lately, there have been some proposals not consistent with what Clayton is about and he has received conflicting information about a proposed development over on High Street and Marsh Creek that he does not think fits within the General Plan. Please listen to people and do not let Clayton turn into Walnut Creek or downtown Concord.

Andy Li, introduced himself as a candidate for Contra Costa Community College Board, Ward IV, which includes San Ramon, Danville, Clayton, part of Antioch and Brentwood. His goal is to help the community reduce the stress for the students by creating an alternate pathway through the community college, help them succeed, by reducing mental stress and financial burden by promoting online courses and working with business owners to offer vocational training for local workers.

Jim Gamble, Prospector Place, echoed Mr. Buddell's remarks adding according to the City's website, the original plan was forty-four condos and now it is three stories high with eighty condos. Before something like that is considered, he wants people to be aware. We love Clayton the way it is; if our award winning trail system does not go away overnight, it goes away incrementally as developments start popping up.

## **7. PUBLIC HEARINGS**

- (a) Consider the Second Reading and Adoption of proposed Ordinance No. 483 amending Title 17 – Zoning of the Clayton Municipal Code to restrict and regulate parolee homes in the following General Plan designations: Multifamily Low Density (MLD), Multifamily Medium Density (MMD), and Multifamily High Density (MHD), subject to a conditional use permit.  
(Community Development Director)

City Manager Napper Community Development Director Mindy Gentry had a previous commitment for this evening arranged back in January and he will provide the staff overview. He noted the Government Code process indicates how general law cities adopt local laws, otherwise known as ordinances. The introduction and first reading of an ordinance is done at the first public hearing. If the City Council does not approve the motion to read by title and number only, the City Clerk must then read the ordinance in

its entirety. Once the ordinance is adopted for Introduction, no earlier than 5 days after its introduction that ordinance is eligible to return for its Second Reading, at which its actual adoption can occur at that time. If that ordinance is adopted, then the new law (ordinance) normally, with few exceptions, takes thirty days to become effective.

City Manager Napper provided highlights of the proposed Ordinance regarding its Use Permit process, which is subject to a public hearing, is discretionary with the review and consideration by the Planning Commission. Should a parolee home applicant/operator wish to locate in Clayton, it would need to file an application with the City. If the applicant does not own the underlying real property, the application also requires the signature of the property owner in order to process the request. The proposed Ordinance includes prohibition for parolee homes to locate within 500' of a sensitive use. When the City received notification in 2016 by an operator wanting to open a parolee home in Clayton, City staff brought an ordinance to the City Council, an urgency ordinance placing a two year ban to allow staff to conduct more research. Unfortunately, the City is unauthorized to further continue the ban as the interim moratorium comes under the authority of California Government Code 65858 (a), which state law allows an urgency moratorium to be effective for a maximum two year period. In the absence of doing nothing, the City is faced with parolee homes coming to Clayton with no notification or local review. At its July 17<sup>th</sup> meeting the City Council included buffer zones of 500' from defined sensitive uses, and cannot to be located within 1,000' of another parolee home. Staff recommended the multifamily designations as there are not many such areas in the city as there are for single family dwellings or residential districts. The interest of the City is to regulate and limit the City's receivable of such a parole home operation. Additional components include multifamily housing projects of 25 units or less would be limited to one parolee home and multifamily housing projects with 25 or more units would be limited to a maximum of two parolee homes. At the last City Council meeting the City Council introduced the Ordinance but also asked staff come back and plot a 750' and a 1,000' buffer distance map. There is no state or local law that determines a specific buffer requirement or distance.

Vice Mayor Shuey inquired under the 500' buffer there are three opportunities for parolee housing to locate. Mr. Napper advised the areas for consideration are located at Indianhead Way, the Keller Ridge area, and the Shell Lane area.

Vice Mayor Shuey clarified the areas at Indianhead Way and Shell Lane are actually one opportunity because of the 1,000' buffer between parolee homes if they were to locate in that area. Mr. Napper concurred and further advised in those areas there may already be a group housing the City is unaware of, licensed by the state, or after the City Council adopts the Ordinance a particular sensitive use comes into play it would be part of the consideration when staff went to apply the distance criteria that is included in the ordinance. He noted none of the maps are an actual part of the proposed Ordinance; the maps were prepared to provide a visual of the areas that are multifamily high density and where possible parolee homes could go, and for the City Council to have a discussion on concerning what it feels is a legally defensible position of the City.

Vice Mayor Shuey asked if a daycare is located in a zone, would that area then be excluded in having a parolee home located in that area? Mr. Napper advised the City is notified of state-licensed daycare facilities, but another licensed daycare could show up in those areas, or other group housing or sensitive uses in those areas for the Planning Commission to consider during its review of a proposed parolee home.

Vice Mayor Shuey inquired if the 750' or the 1,000' buffer zone would reduce the opportunity to 2 locations and if our City Attorney is comfortable with only having 2 areas available for parolee housing? City Attorney Mala Subramanian advised in terms of the risk factor it goes back to the sensitive uses and ones we may not be aware of; she does consider it is still defensible to move from two versus three yet doing so does pose an

additional risk if a sensible use comes in knocking-out the proposed parolee home. However she does not consider it creates a de-facto ban.

Councilmember Catalano added most other cities have placed regulations on parolee housing and she conducted her own research for any examples of a de-facto ban. She located one in the City of Hesperia, California, where they had a group home definition prohibiting housing of two or more individuals on probation. In November 2015 a crime free rental housing ordinance was passed requiring landlords to evict any tenants that were involved in any criminal activity. In May 2016, that city was sued on both of these ordinances by ACLU and another entity, starting with the Supreme Court case talking about AB109 and Prop 47. In July 2016, a preliminary injunction was issued by the court preventing the City of Hesperia from enforcing its ordinances. In March 2017, that city decided to repeal the group home definition by urgency ordinance with the findings the ordinance was necessary for public peace, health and safety yet the cost for litigation may be so detrimental to the fiscal stability of the city that the city would only be able to provide less city services, such as police, fire, building safety and enforcement. The lawsuit was settled a year later with ACLU and the other entity at almost \$500,000, with \$470,000 in just attorney fees, which amounts did not include the city's own legal expenses that it incurred over the two years. In comparison, Hesperia has a population of 94,000 and its General Fund Budget is about \$26 - \$27 million per year. Clayton is about \$4.5 million per year.

Councilmember Pierce requested a clarification regarding group homes to explain the process and state law requirements for small daycares that are licensed by the state for 6 or less children. City Manager Napper responded state law allows for certain types of group housing to go into communities in residential zones without any permission or regulation by a city, provided the number of persons in that group housing is 6 people or less. When people say "how does the City not know about a group housing that is occurring in their neighborhood or in the city?", the City is usually first notified by the neighborhood at which point the City inquires with the state because licensed daycare of 6 persons or less is permitted by right. He noted different state agencies handle other types of adult group housing versus a different type of group housing, such as sober living environments, which can lead to over-concentration of state-permitted group housing in a particular neighborhood.

Councilmember Pierce noted she is trying to have a larger buffer zone to include any potential daycare of 6 or less in operation that would have the potential to eliminate a proposed location.

Mayor Haydon inquired if there would be any issue in expanding the public notification distance to 1,000'? Ms. Subramanian advised if there a 1,000' public notification that would be fine.

Mayor Haydon opened the Public Hearing for public comments.

Pat Hilts, resident of Chaparral Springs, expressed within the chosen area of Shell Lane are three women who live alone, and she cannot imagine having a resident in the court of one or more felons. Ms. Hilts noted it would be very uncomfortable for the residents and suggested felons reside nowhere close to the city but in an area that is more remote.

Ann Stanaway, 1553 Haviland Place, noted Clayton carries municipal JPA insurance to defray that cost of legal defense, and a prudent counsel would outsource review of our staff recommendation and welcome the professional scrutiny by professional knowledge experts like Goldfarb & Libman in Oakland. As constituents, citizens are not qualified to guide the City Council through the complexities surrounding compliance of this magnitude. This statutory compliance measure is a big deal with far reaching

consequences; reaching a ban now would record Clayton's reluctance and allow City Hall time to seek professional advice from the highest and best source.

Nancy Hughes stated nobody wants a criminal in their backyard. In Shell Lane's area, behind the units is open space. Anyone can slip down that hill through the parking space and have access to any of our backyards. There are 500 crimes that qualify for the prison realignment act; how will county parole officers provide supervision? What about sensitive areas? Ms. Hughes does not want felons in her neighborhood, and also expressed concerns over deflated home values.

Barbara Vogt, Coyote Circle, opposes any parolee housing in Clayton noting concerns of young children in her neighborhood and the sale of alcohol on the adjoining golf course. Ms. Vogt understands parolees need to access public transportation, noting Condor and Coyote are privately owned streets and are not patrolled regularly; it seems like we are more concerned for the safety of the parolees. Please protect our small community.

Jeff Wan stated the number one priority of the City Council should be the safety of its residents, but it is letting its fear of potential litigation paralyze its thought process rather than protect the city and protect the safety of Clayton residents. The citizens have been told by the Council there is a mandate by the state that claims there is a requirement to take up paroles in community-based programs in our neighborhoods. His research indicates no such mandate. Why didn't the City Council adopt the most restrictive ordinance possible at the July 17<sup>th</sup> City Council meeting? Even nearby Antioch and Oakley has a greater distance requirement. It's hardly persuasive the Council explored all possible actions in its due diligence; it forgot about the park of Stranahan Circle where they identified a potential location for parolee housing next to a park. If the proposed ordinance is the very best the City Council could come up with then, they are not trying hard enough. The Council should go back to the drawing board and take action to actually protect all Clayton residents and more heavily restrict or outright ban parolee housing in the city. We can do better, and that's why he is a candidate for City Council.

Jerry Koehne, Chaparral Springs, remarked Clayton is not just any other city, it's a community and everybody is here because we don't want to be Hesperia or Concord. We want Clayton be an all-inclusive safe community. When Mr. Koehne first moved to Clayton, there was trouble with landscaping and the voters voted to pay more taxes for the landscaping, the fountain and CBCA. Mr. Koehne suggested if City money needs to be raised to defend us, have a bake sale or sell something at the Saturday night concerts. We will all be there to do it to protect our community and live the way we wanted to, because that's why we moved here.

Kim Brazill echoed the last two speakers' comments.

Fred Fuld asked who is the non-profit organization that seeks to put a facility in Clayton? Mr. Napper advised he did not have that information readily however that operator ended up in Pittsburg to open a similar facility. Mr. Fuld asked would this organization be purchasing or renting these units? Mayor Haydon advised they would have either option. Mr. Fuld asked, as a homeowner of a rental property, if he were approached about renting his property for parolee housing, can he refuse? Mayor Haydon responded yes; this evening the City Council is reviewing the Ordinance that would control whether or not they could use the property in that manner, not binding the owner of the property the type of rentals they want to approve with their own property. Mr. Fuld noted on the county's level of supervision it excluded any listed high risk sex offenders as defined by CDDCR; would they will allow "low risk sex offenders," and what does that mean?

Richard Haile, Indianhead, advised somewhere between 80-90% of all felons indictments are out of court for pleading to a lesser offense so we are unaware of what they were really charged with when somebody moves in. Mr. Haile would like review of a well written ordinance and consider that model. He wondered with the two other cities which have banned this use, why has ACLU left them alone? Mr. Haile suggested sharing the risk equally across the city, not just in the areas where they cannot buy their influence.

Dan Hummer read AB109 and it said the county can still contract back with the state; is there a reason why Contra Costa County did not contract back with the state in regards to where these people be held and things like that? Mayor Haydon advised the county is still working on its plans and ordinances. Mr. Hummer also inquired if the county supervision could possibly raise taxes in Clayton? Mayor Haydon advised the council is reviewing the impacts of the ordinance itself within Clayton city limits.

Joanne Lederman is dumbfounded about the idea of putting parolee homes in the high density areas and if Clayton will allow parolees to avoid a potential lawsuit with the ACLU then this use should be citywide. Ms. Lederman stated it is absolutely unacceptable to target certain groups as you make second class citizens out of people who live in high density housing. The City has failed to consider if anyone who resides anywhere around the Keller Ridge area will have to disclose this when we sale our properties as we are located in a small targeted area where parolee homes can locate, decreasing our property values.

John Kranci, Coyote Circle, has seen firsthand what these parolees can do to a community; after spending 28 years on the streets of San Francisco and going into these houses the recidivism of them committing the crimes over and over again is unconscionable. Parolees do not want to be controlled and want do what they want and go where they want. Unfortunately Clayton does not have the staff in its police department to do anything about it. Make it impossible for these people.

Marci Longchamps, Coyote Circle, voiced her strong opposition to any kind of parolee housing, anywhere in Clayton. The Keller Ridge development currently has a playground area which can be defined as a sensitive area. How is this playground area overlooked? The Keller Ridge area and any other area are not suitable for parolees. Ms. Longchamps noted she is very passionate about this issue and believes when it comes to any conversation, regarding convicted felons living in Clayton there has to be a place for both emotions as well as facts.

Galina Milman, Eagle Peak Avenue, expressed her concern about the City statement the parolee housing business will not be using extra City funds as every parolee that comes through the system is going to review each case. For example, if a parolee sexual assaulted or raped someone younger than 14 they are considered a hard core parolee and are restricted 2 miles from any park, school or daycare. If they rape someone 14 years and 1 month old it is considered soft core parolee but in cases like this that is why we have a professional parolee officer who has had training to differentiate the difference. Our City police department does not have the work force to review each case and will have to hire extra people at about \$70,000 per year salary. A parolee officer makes \$70,000 - \$80,000 per year plus benefits. Are we ready to put it on our shoulders? Ms. Millman spoke about the golden standard in 2006 when 70% of California voted for Jessica's Law after a nine year old girl that was raped and killed by a parolee in Florida. In California it was decided to also place a 2,000' buffer around parolees; if Clayton cannot do an overall ban, and then have a 2,000' buffer because the golden standard exists.

Stacey Holz, Shell Lane, echoed the sentiment of her fellow community members that there needs to be more creativity sought and try harder and restrictions should be there, but not discrimination in the effort to avoid offending the ACLU, or felons, as she believes the City Council is at risk of discriminating against certain members of our community. We are a community and we need to share the burden and asked that the Council to please listen to its community members; we all moved here not because it is convenient to our work place. Clayton is amazing because we are a community that makes it amazing. Let's find a solution that works for everyone in Clayton because it is special; we are not going to be afraid to offend the devil because we want to be politically correct.

Brian Buddell attended the last City Council meeting and listened in great detail to the City Attorney present at that time she said "1,000' would be a total ban, a de-facto ban;" now we are hearing "no its not, its fine." He's hearing Councilmember Pierce there might be daycares there, but we don't know where they are. Council, we are talking about a piece of legislation that is possibly the most important piece of legislation in the 54 year history of Clayton. This is safety, this is a protection of Clayton, and Mr. Buddell does not want to see anyone hurt, regardless of the potential costs. Our safety has no cost, no budget and it should not have a ceiling. We need to protect, we need to be smart, we need to do it right.

Jim Gamble noted like a lot of the other speakers this buffer is ridiculous it should be 1,500' or 2,000' and regulate it or have an outright ban. Mr. Gamble also would like to know Mr. Wolfe's thoughts on this, if he has time.

Chuck Blazer attended the Planning Commission meeting thinking there would be some type of town hall meeting; instead there is a Council meeting. The *Clayton Pioneer* came out where the Mayor at the end of the article said the citizens just don't understand. Mr. Blazer provided scenarios of when a parolee home comes to a community syringes and baggies show up because of drug use that goes on day and night; rooms in the back of the house that have turned to brothels; parolees stealing all the mail from the community and all their neighbors and you hit that house you find it all piled in the living room; in the garage all the property stolen from the neighborhood is there, it will be worth the lawsuit. Mr. Blazer referred to a Penal Code those talks about a safe zone from schools of 1,500' from parolees. If Council is going to use something to beat a lawsuit, why not use a code that the state of California has already offered?

Jason Kirkham, Coyote Circle, commented as an echo to what many people have already said noting his family resides in targeted area and doesn't consider his residence a multifamily dwelling, it's his home. He is offended by the multifamily selection process. Mr. Kirkham is concerned about safety like everyone else and is a taxpayer with a vested interest in the value of his property, but more so he is interested in the safety of the community at-large. Mr. Kirkham is also concerned with the nature of the criminal backgrounds; as the nature of crimes has been redefined in recent years. When Mr. Kirkham was seventeen years old, he sold newspaper subscriptions in the summer of 1991 and came across a parolee, who was the person who kidnapped JC Dugard and happened to be standing on the front lawn of the house at the time he had her in his backyard.

Michael Gibson, Keller Ridge Drive, added he was not sure if the City Council was familiar with the contagion and opportunity effect in our community. He suggested looking into parole evidence on recidivism in contributing to these things, noting research suggests up to one half of the individuals released from prison return to prison within 3 years. How will the Council answer to the prospective victims in this room as to why it did not prevent this from happening.

Joanna Welch mentioned the recent incident of a woman whose neck was slashed and she was slaughtered on the BART platform by a parolee. Personally, she had a best friend from high school where there was a gentleman plead down 6 times; every time he had great attorneys that plead his charge down, the seventh time he abducted her friend and dismembered her, and to this day there isn't a day that goes by that Ms. Welch doesn't think of her. He even tried to plead down after he cut up her friend, finding her three years later in pieces, her parts all over. She cannot compare the fear mongering of the legal stuff to fear mongering of a woman's life whose throat was slashed or spread out over dumpsters. She knows these are huge heavy potential legal bills but there is not a lot of precedence for this. There are other councilmembers and also have media. Ms. Welch said these are not easy things and we are not asking too much for the safety of our children, the elderly and every one of us.

Sally Hitchcock, Coyote Circle, is concerned that if someone is living in her neighborhood it is very easy to get into our small backyards consisting of a patio. No one wants parolee housing here in Clayton, except maybe the parolees and their families; but to limit it from 11,000 people to a few hundred people exposed, that is not right.

Cheryl Morgan pointed out one of the clauses in Brown Act training is to avoid all appearances of conflict of interest. This issue has become pretty apparent to everyone here that the Council has opened itself to a Brown Act violation. Ms. Morgan noted a nearby trailer park is closing off access to felons, in Clayton Palms. Ms. Morgan knows the County is concerned about where they are going to house felons, with no answer. Has the County encouraged Clayton to do this because it needs new housing for felons?

Colleen Shipp is expressed her concerns as it was her dream to live in Clayton, and a year and a half ago her husband and she purchased a home on Coyote Circle, to raise their children there and she is saddened to think how our city of Clayton may be changing. Her father is a retired San Francisco police officer who encouraged her to come to Clayton because of the safety. We don't have the police in Clayton that are going to be able to patrol the area if we have these parolees.

Anthony Dimas, Easley Estates, added when one accumulates the loss in property values because of this action it will be a lot more than \$1,000,000. Might consider it more economical to litigate this if we do get sued than it would be to have these people lose much more than that in property value

Galina Milman expressed her biggest concern is in regard to infrastructure in Clayton; where will parolees obtain drug addiction center and employee agency and physiological help. Will Clayton spend money to build these facilities because in order for them to find the closest facilities they will have to travel through other cities? The whole purpose of having parolee housing is to be able to rehabilitate them.

Jim Gamble questioned the "No Fiscal Impact;" when he asked Ms. Gentry about that initially, she said there was none. With all these other people coming up here and talking about the costs on the infrastructure and impacts to the neighborhoods and all the other apparatus, he just thought it should be public record that Ms. Gentry did say there is no police cost.

Mayor Haydon closed the Public Hearing.

Councilmember Catalano this is not an issue that we brought or introduced; this is an issue we are dealing with through the Supreme Court decision and a state proposition. All of this is pressure from the top to all the cities in the state of California. A lot of other cities are larger cities that already had group housing ordinances when AB109 and Prop 47 passed, they already regulated group housing one way or another. Clayton's code is

silent on parolee group housing. Councilmember Catalano recited what other neighboring cities have done, many without buffer distances and regulations as was presented at the last City Council meeting by staff. The California Supreme Court has eliminated Jessica's Law buffer - it was ruled to be unconstitutional. The 1,500' Penal Code reference applies to a different context; in this context, when we talk about the radius we are talking about whether we are doing a ban or a de-facto ban or not. Her concern about potential litigation is there are costs involved; Clayton is not a big city and budgeted at about \$4.5 million; our police force is about 50% of our budget and she is not willing to sacrifice about \$2.5 million of the Police Budget to pay for a lawsuit. She also does not want a judge who does not live in Clayton to determine the local regulations for Clayton. Clayton has the ability to control its land use. Two cities adopted bans before AB 109 was passed by the state. The cost would take away from our resources but more so the potential outcome. If every city in California prohibits parolee housing, what is the state going to do? Councilmember Catalano advised the approval of an Ordinance establishes a process for a proposed parolee home, it would have to be noticed, a hearing at the planning commission, the planning commission would have to make a decision, there are findings in this conditional use Ordinance and it would impose additional requirements and the criteria the Planning Commission must determine the conditions and whether to approve it or approve it with conditions or deny it. This can be regulated just like every other city has done.

Councilmember Diaz thinks we need to do a lot more work on this. He is inclined, if moving the buffer zone out creates a de-facto ban, the Council should review what a 1,500' or 2,000' buffer looks like and if it eliminates the potential for a parolee home to establish here, then so be it.

Vice Mayor Shuey indicated we are elected to make hard decisions, good or bad; depending on who you are, you can never please 100% of the people 100% of the time. In the 16 years he has been on this Council, on multiple occasions we take a careful look at regulations and issues and try to make a determination on whether or not it was worth the fight. Almost every time there is a difficult decision imposed by the state, we have chosen to let the bigger cities fight those battles with the state. The Supreme Court has already ruled on the prison overcrowding and the state has said we have to do this certain thing to get rid of our overcrowded prisons, they have got to put these people somewhere: that somewhere is either counties or cities or both. He would rather know if there will be a parolee living next door to him and to regulate it and carefully do so through the use permit, and if it is violated, we can revoke. We fight the state, the ACLU, he did not believe the City can win because the Supreme Court has already ruled on overcrowded prisons and the state determined there is now a specific need and interest that they have. The City has narrow locations to the very limited options of multi-family; if we chose single family areas, that decision is giving more opportunities for felons to come into Clayton.

Councilmember Pierce said she has spoken to well over 100 residents who believe very strongly we have to regulate this as far and as tight as we can to discourage it. Nobody wants parolee housing in Clayton, what we disagree about is how to keep it out of Clayton. She asked if staff was unaware of a pocket park in the area of Keller Ridge and didn't know if it is classified as a legal park or not. City Manager Napper advised that presently as written, the Ordinance calls for public parks as sensitive sites, not private parks.

Councilmember Pierce remarked she is convinced the 1,000' buffer and 1,000' notice still allows two locations within town. If we strengthen the noticing process it allows us to make as much noise as much as we can about this potential. From what we know, these operating organizations want to fly under the radar and not let the public know they are there. The more the City locally requires on an applicant, such as the owner of the

property must be a signatory to the use permit application, it makes a very uncomfortable process. We are fighting for local control.

Mayor Haydon asked staff if the council is able to expand our park definition to include private parks as well. City Attorney Subramanian responded if Council were to do that, we would need to re-look at the maps and figure out how many actual locations we would have within the City. To this point, it was only analyzed for public parks as a sensitive use site. She was concerned if private parks would be included it would result in a de-facto ban.

Mayor Haydon commented he wanted to address the question of why the City did not take action earlier. It originated because an inquiry alerted the City to take a look at it. That particular organization ended up relocating to another area based on many factors. No other city has been advised to outright ban parolee homes. Mayor Haydon went over the three options presented at the last City Council meeting. The Council does not like the idea of parolees coming to Clayton; it is proposing the strictest conditions in Contra Costa County and he recommends expanding the buffer to 1,000' and similar noticing distance is an effective deterrent.

Councilmember Catalano wished to recall the moratorium expires in 30 days; the City needs two hearings prior to the Ordinance becoming effective. If we do not do anything today and October 4<sup>th</sup> comes along, we will have a parolee home allowed anywhere in Clayton without any restrictions. All of us live in the same community; one person mentioned "show me a mom in Clayton that isn't concerned about safety." We've talked a lot about the radius - there are a lot more requirements in the Ordinance.

Councilmember Pierce noted the Ordinance can be amended at any time.

City Manager Napper concurred that an ordinance can be amended by an ordinance; in fact the municipal code is amended all the time... He added the City is a part of the Municipal Polling Authority and as one of his tasks he serves as the Vice President of the Municipal Pooling Authority, a Joint Powers Authority of 23 member cities. In its Memorandum of Coverage, legislative decisions of a land use nature are excluded from liability coverage by the Municipal Pooling Authority. Any exposure to litigation on this matter, the City would be on its own for defense funds.

Councilmember Diaz commented he is not prepared to approve the 1,000' buffer. He respectfully requested as a part of any motion that the City Council provide itself the opportunity in the Ordinance to re-address this down the line when there is more information we can research.

**It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to Re-Introduce Ordinance No. 483 with amendments for a 1,000' buffer from sensitive use sites, a 1,000' distance public hearing notice requirement for any associated parolee housing conditional use permit, and include requirements for published notice in the local newspaper and on the City website, and to have the City Clerk read Re-Introduced Ordinance No 483 by title and number only and waive further reading. (Passed; 5-0 vote).**

The City Clerk read Ordinance No. 483 by title and number only.

**It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to approve the Re-Introduction of Ordinance No. 483 with the finding its adoption is not a project under CEQA and it will not have a significant adverse effect on the environment and therefore is exempt under CEQA. (Passed; 4-1; Diaz - no).**

[The Council took a recess from 10:38 p.m. to 10:47 p.m.]

## 8. ACTION ITEMS

- (a) Request to discuss and reconsider the City Council's existing Clayton Fountain operating policy.  
(Mayor Haydon and Council Member Catalano)

Assistant to the City Manager Laura Hoffmeister presented the staff report noting it is a matter if the Council wishes to make any changes to its existing Clayton Fountain Operating Policy. The Policy's last update in 2008 included twelve events or holidays the fountain is operational. At its last meeting, the Council received a request to run it on all federal holidays. Currently there are three federal holidays that the fountain is not operating: Martin Luther King, Jr. Birthday, Columbus Day and Christmas Day. She noted additional information was provided regarding the cost to operate the fountain; based on its one-day operation last 4<sup>th</sup> of July, it costs about \$1,350 per 24 hours to include the geysers and the waterfall feature. The cost is higher as it is a peak period for PG&E. Also included is another PG&E bill for a month's operating cost of \$478.00 to merely re-circulate the water, not including operation of the visual water features. Funds would come from the Landscape Maintenance District to operate the fountain the three additional federal holidays. She noted the fountain has not operated lately during the annual Halloween Ghost Walk as that event is no longer held. Therefore, if the City Council chooses to add the three federal holidays for fountain operation, it would result in a net two more operational days to the current operation schedule.

Mayor Haydon opened Public Comment.

Glenn Miller, 1005 Pebble Beach Drive, indicated a couple of weeks ago he was interested in the fee charged by the City to run the fountain on a non-operational day which is \$300.00 per day, and is now surprised at the \$1,350.00 expense. Mr. Miller also asked that City staff to look at the Oakhurst Development agreements and all of the assessments the residents in Oakhurst pay as part of their tax bills. Personally, he has been paying those for over twenty years, and when he first moved here, that was the source of funds to support the operation and maintenance of the fountain. It seems the funds that are still being paid for this service have just disappeared. He would like an accounting of those funds and how they have been used, and if there was any contractual agreement that has been violated and funds used for something else. He wants the City Council to consider running the fountain on the low level every weekend and the 13 holidays, and for city events maybe charge them \$1,351.00 a day; why are they getting a free ride and we're getting screwed basically.

Brian Buddell commented he tried to review the PG&E statement and he noticed in the \$1,351 there was a demand usage fee of \$800-\$900. He tried to figure it out and found many different PG&E plans; perhaps maybe consider a different more economical commercial plan.

Mayor Haydon advised he will have staff look into commercial plan options.

City Manager Napper added the amount of power necessary to operate each of the four geysers is great, its volume is greater. The demand surcharge is added as PG&E is not expecting that type of sudden usage when the power is turned on and it peaks quite high. The City's new Maintenance Supervisor is reviewing the fountain's operation and has thought about reducing the surcharge by turning one geyser on per hour so it evens the rate charge out and is not subject to the high-demand surcharge.

City Manager Napper added the \$300.00 public charge was the rate at the time the Operational Policy was last enacted in 2008. Come to find out that charge has been increased since then but only by the applicable Consumer Price Index. The fee is currently at \$408.00. He handed Mr. Miller a copy of the Operational Policy he downloaded from his computer, not realizing the rate had been changed since then as he was focused on what days it operates. Currently, no one is charged for the operation of the fountain and very rarely there are public inquiries to operate the fountain for a private event, such as a wedding. He is unaware of any specific assessment, other than the Landscape District, that pays for operation of the fountain. When the Oakhurst Development paid as a separate Landscape District, it included the Clayton Fountain operations. Oakhurst residents subsequently asked why they were paying a higher landscape district rate than the other landscape district in the city. Those districts were merged by voters in 1997 and that landscape district has always paid for the fountain's operation.

Glenn Miller commented there is a separate Oakhurst assessment and he thinks there are several others when compared to another home in the area. City Manager Napper responded staff would be happy to look at that as he is unaware of any other Oakhurst assessments than what assessments the City Council levies annually.

Councilmember Pierce added there could be a couple others who have property up there could tell better; there was an Oakhurst Assessment for the middle school, and the streets and roads, and a Mello Roos for the internal streets, depending on which development one resides in. City Manager Napper replied the City often receives questions on what the various assessments pay for on their tax bill and staff would be happy to assist and let the Finance Manager review Mr. Miller's tax assessments, if that is appropriate.

The Council expressed interest to add the extra federal holidays and remove the Halloween Ghost Walk. Councilmember Pierce requested the additional date of the CBCA Cook-Off as its date is now scheduled regularly on the community events calendar.

**It was moved by Councilmember Pierce, seconded by Vice Mayor Shuey, to amend the Clayton Fountain Operation Policy to add the three federal holidays and to substitute the Halloween Ghost Walk operation for the CBCA Rib Cook-off. (Passed; 5-0 vote).**

- (b) Consider the option to designate a City Council Voting Delegate and Alternate Delegate to the League of California Cities 2018 Annual Conference to be held September 12<sup>th</sup> – 14<sup>th</sup> in Long Beach, and determine a City voting position, if any, on the two League Conference General Resolutions.  
(City Clerk)

City Clerk Janet Brown presented the staff report and noted the registration fee for this year's Annual League of Cities Conference is \$575, which does not include additional expenses of transportation or lodging accommodations. At this year's conference there are two (2) League Conference General Resolutions for consideration at the Business Session. Ms. Brown noted the adopted City Budget for FY 2018-19 has \$1,600 allocated for any council member attendance and related expenses.

Mayor Haydon opened the floor to receive public comment; no public comments were offered.

Councilmember Pierce commented there is one General Resolution calling upon the League to respond to the increasing vulnerabilities to local municipal authority, control and revenue and to explore the preparation of a statewide ballot measure and or constitutional amendment that would further strengthen local democracy and authority. This initiative of retaining local control is of particular interest to Clayton, given recent events, but she believed other city delegates would have the same urgency to retain local control and therefore it did not necessitates Clayton's presence to vote on it.

By general consensus, the City Council indicated no need to send a delegate to this year's League of California Cities Conference.

**It was moved by Councilmember Pierce, seconded by Vice Mayor Shuey, to not send a delegate to the League of California Cities 2018 Annual Conference held September 12<sup>th</sup> – 14<sup>th</sup> in Long Beach, California. (Passed; 5-0 vote).**

- (c) Consider the rescheduling of the regular City Council public meeting of Tuesday, September 4, 2018.  
(City Manager)

Councilmember Pierce indicated it seems the canceled September 4, 2018 City Council meeting needs to be rescheduled to address the timely second reading and adoption of the Parolee Housing Ordinance to meet the October 3, 2018 moratorium expiration.

**It was moved by Councilmember Pierce, seconded by Vice Mayor Shuey, to reschedule the regular City Council public meeting of Tuesday, September 4, 2018. (Passed; 5-0 vote).**

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

None.

10. **CLOSED SESSION**

Mayor Haydon announced the City Council will adjourn into Closed Session for the following noticed item (11:11 p.m.):

- (a) Government Code Section 54956.8, Conference with Real Property Negotiator.

1. Real Properties: 1005 and 1007 Oak Street, Clayton, CA  
(APNs 119-050-034, 119-050-008, and 119-050-009)

Instructions to City Negotiators: City Manager Gary Napper; Mr. Edward Del Beccaro, Managing Director, and Mr. Matt Hatfield, Senior Associate, with Transwestern, regarding price and terms of payment.

Negotiating Parties: Mr. Michael Paez, The Kase Group (Investment Real Estate, Lafayette) representing Luis Munoz.

**Report Out From Closed Session** (11:21 p.m.)

Mayor Haydon stated there is no reportable action.

13. **ADJOURNMENT**– on call by Mayor Haydon, the City Council adjourned its meeting at 11:22 p.m.

With the action taken on Agenda Item No. 8(c) above, the next regularly scheduled meeting of the City Council will be September 4, 2018.

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Respectfully submitted,

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Janet Calderon, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

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Keith Haydon, Mayor

# # # # #



Agenda Date: 09/04/18

Agenda Item: 3b

# STAFF REPORT

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: Kevin Mizuno, FINANCE MANAGER**

**DATE: 09/04/18**

**SUBJECT: INVOICE SUMMARY**

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Approved:   
Gary A. Napper  
City Manager

**RECOMMENDATION:**

**Approve the following:**

Cash Requirements Report dated 8/31/18	\$83,433.12
Paychex Payroll week 35, PPE 08/26/18	\$81,754.80
<b>Total</b>	<b>\$165,187.92</b>

**Attachments:**

Cash Requirements reports, dated 8/31/18 (3 pages)

Paychex Cash Requirements, week 35 (2 pages)

## City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<b>All-Guard Systems, Inc.</b>								
All-Guard Systems, Inc.	9/4/2018	9/4/2018	S89117	Library alarm repair	\$225.00	\$0.00		\$225.00
				<i>Totals for All-Guard Systems, Inc.:</i>	<u>\$225.00</u>	<u>\$0.00</u>		<u>\$225.00</u>
<b>American Fidelity Assurance Company</b>								
American Fidelity Assurance Company	9/4/2018	9/4/2018	B772592	Supplemental insurance for July	\$588.24	\$0.00		\$588.24
American Fidelity Assurance Company	9/4/2018	9/4/2018	B784368	Supplemental insurance for August	\$392.16	\$0.00		\$392.16
American Fidelity Assurance Company	9/4/2018	9/4/2018	2016936	FSA PPE 8/12/18	\$411.14	\$0.00		\$411.14
American Fidelity Assurance Company	9/4/2018	9/4/2018	2016027	FSA PPE 7/29/18	\$411.14	\$0.00		\$411.14
American Fidelity Assurance Company	9/4/2018	9/4/2018	2014547	FSA PPE 7/15/18	\$411.14	\$0.00		\$411.14
American Fidelity Assurance Company	9/4/2018	9/4/2018	2014185	FSA PPE 7/1/18	\$411.14	\$0.00		\$411.14
American Fidelity Assurance Company	9/4/2018	9/4/2018	2009263	FSA PPE 5/6/18	\$411.14	\$0.00		\$411.14
				<i>Totals for American Fidelity Assurance Company:</i>	<u>\$3,036.10</u>	<u>\$0.00</u>		<u>\$3,036.10</u>
<b>AT&amp;T (CalNet3)</b>								
AT&T (CalNet3)	9/4/2018	9/4/2018	11806517	Phones 7/22/18-8/21/18	\$1,670.12	\$0.00		\$1,670.12
				<i>Totals for AT&amp;T (CalNet3):</i>	<u>\$1,670.12</u>	<u>\$0.00</u>		<u>\$1,670.12</u>
<b>Authorize.net</b>								
Authorize.net	9/4/2018	9/4/2018	6/18, 7/18	Online credit card gateway fee for June, July	\$60.30	\$0.00		\$60.30
				<i>Totals for Authorize.net:</i>	<u>\$60.30</u>	<u>\$0.00</u>		<u>\$60.30</u>
<b>Bay Area Barricade Serv.</b>								
Bay Area Barricade Serv.	9/4/2018	9/4/2018	0356823-IN	Curb paint, glass beads	\$1,264.15	\$0.00		\$1,264.15
				<i>Totals for Bay Area Barricade Serv.:</i>	<u>\$1,264.15</u>	<u>\$0.00</u>		<u>\$1,264.15</u>
<b>CalPERS Retirement</b>								
CalPERS Retirement	9/4/2018	9/4/2018	100000015402770	GASB-68 Reports & Schedules	\$2,100.00	\$0.00		\$2,100.00
CalPERS Retirement	9/4/2018	9/4/2018	082618	Retirement PPE 8/26/18	\$15,680.66	\$0.00		\$15,680.66
				<i>Totals for CalPERS Retirement:</i>	<u>\$17,780.66</u>	<u>\$0.00</u>		<u>\$17,780.66</u>
<b>Contra Costa County - Office of the Sheriff</b>								
Contra Costa County - Office of the She	9/4/2018	9/4/2018	CLPD-1807	Toxicology for July	\$500.00	\$0.00		\$500.00
				<i>Totals for Contra Costa County - Office of the Sheriff:</i>	<u>\$500.00</u>	<u>\$0.00</u>		<u>\$500.00</u>
<b>Contra Costa County Public Works Dept</b>								
Contra Costa County Public Works Dept	9/4/2018	9/4/2018	701904	Traffic signal maintenance for July	\$1,878.58	\$0.00		\$1,878.58
				<i>Totals for Contra Costa County Public Works Dept:</i>	<u>\$1,878.58</u>	<u>\$0.00</u>		<u>\$1,878.58</u>
<b>De Lage Landen Financial Services, Inc.</b>								
De Lage Landen Financial Services, Inc.	9/4/2018	9/4/2018	60323607	Property tax for Copier	\$71.21	\$0.00		\$71.21
				<i>Totals for De Lage Landen Financial Services, Inc.:</i>	<u>\$71.21</u>	<u>\$0.00</u>		<u>\$71.21</u>
<b>Dillon Electric Inc</b>								
Dillon Electric Inc	9/4/2018	9/4/2018	3734	Street light repairs 8/27/18	\$652.96	\$0.00		\$652.96
				<i>Totals for Dillon Electric Inc:</i>	<u>\$652.96</u>	<u>\$0.00</u>		<u>\$652.96</u>

## City of Clayton Cash Requirements Report

<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>
<b>Jeff Ferriera</b>								
Jeff Ferriera	9/4/2018	9/4/2018	BP121-18	C&D refund for 7 Casey Glen Ct	\$2,000.00	\$0.00		\$2,000.00
				<i>Totals for Jeff Ferriera:</i>	<u>\$2,000.00</u>	<u>\$0.00</u>		<u>\$2,000.00</u>
<b>Geoconsultants, Inc.</b>								
Geoconsultants, Inc.	9/4/2018	9/4/2018	18929	Well monitoring for March	\$1,546.50	\$0.00		\$1,546.50
				<i>Totals for Geoconsultants, Inc.:</i>	<u>\$1,546.50</u>	<u>\$0.00</u>		<u>\$1,546.50</u>
<b>Globalstar LLC</b>								
Globalstar LLC	9/4/2018	9/4/2018	9609512	Sat phone 7/18/18-8/15/18	\$86.70	\$0.00		\$86.70
				<i>Totals for Globalstar LLC:</i>	<u>\$86.70</u>	<u>\$0.00</u>		<u>\$86.70</u>
<b>HdL Coren &amp; Cone</b>								
HdL Coren & Cone	9/4/2018	9/4/2018	0025745-IN	CAFR Stats Pkg FY 18	\$745.00	\$0.00		\$745.00
				<i>Totals for HdL Coren &amp; Cone:</i>	<u>\$745.00</u>	<u>\$0.00</u>		<u>\$745.00</u>
<b>J&amp;R Floor Services</b>								
J&R Floor Services	9/4/2018	9/4/2018	Eight 2018	Janitorial services for August	\$4,850.00	\$0.00		\$4,850.00
				<i>Totals for J&amp;R Floor Services:</i>	<u>\$4,850.00</u>	<u>\$0.00</u>		<u>\$4,850.00</u>
<b>LarryLogic Productions</b>								
LarryLogic Productions	9/4/2018	9/4/2018	1747	City council meeting production 8/21/18	\$540.00	\$0.00		\$540.00
				<i>Totals for LarryLogic Productions:</i>	<u>\$540.00</u>	<u>\$0.00</u>		<u>\$540.00</u>
<b>LEHR</b>								
LEHR	9/4/2018	9/4/2018	SI9317	Replace battery, repair gunlock, car 1738	\$408.72	\$0.00		\$408.72
				<i>Totals for LEHR:</i>	<u>\$408.72</u>	<u>\$0.00</u>		<u>\$408.72</u>
<b>Marken Mechanical Services Inc</b>								
Marken Mechanical Services Inc	9/4/2018	9/4/2018	6544	EH HVAC service call for kitchen AC	\$185.00	\$0.00		\$185.00
				<i>Totals for Marken Mechanical Services Inc:</i>	<u>\$185.00</u>	<u>\$0.00</u>		<u>\$185.00</u>
<b>Miracle Play Systems, Inc</b>								
Miracle Play Systems, Inc	9/4/2018	9/4/2018	F2018-0730	The Grove play surface repair	\$1,471.00	\$0.00		\$1,471.00
				<i>Totals for Miracle Play Systems, Inc:</i>	<u>\$1,471.00</u>	<u>\$0.00</u>		<u>\$1,471.00</u>
<b>Neopost (add postage)</b>								
Neopost (add postage)	9/4/2018	9/4/2018	082218	Postage added 8/22/18	\$300.00	\$0.00		\$300.00
				<i>Totals for Neopost (add postage):</i>	<u>\$300.00</u>	<u>\$0.00</u>		<u>\$300.00</u>
<b>PG&amp;E</b>								
PG&E	9/4/2018	9/4/2018	082218	Energy 7/20/18-8/21/18	\$5,873.72	\$0.00		\$5,873.72
PG&E	9/4/2018	9/4/2018	082118	Energy 7/16/18-8/14/18	\$20,459.55	\$0.00		\$20,459.55
				<i>Totals for PG&amp;E:</i>	<u>\$26,333.27</u>	<u>\$0.00</u>		<u>\$26,333.27</u>
<b>Riso Products of Sacramento</b>								
Riso Products of mento	9/4/2018	9/4/2018	186618	Copier usage 7 -8/19/18	\$73.65	\$0.00		\$73.65

## City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<i>Totals for Riso Products of Sacramento:</i>					\$73.65	\$0.00		\$73.65
<b>Site One Landscape Supply, LLC</b>								
Site One Landscape Supply, LLC	9/4/2018	9/4/2018	86584340	Sprinkler heads	\$266.84	\$0.00		\$266.84
Site One Landscape Supply, LLC	9/4/2018	9/4/2018	87617317	Irrigation supplies	\$7,092.26	\$0.00		\$7,092.26
<i>Totals for Site One Landscape Supply, LLC:</i>					\$7,359.10	\$0.00		\$7,359.10
<b>Stericycle Inc</b>								
Stericycle Inc	9/4/2018	9/4/2018	3004376146	Medical waste disposal	\$106.18	\$0.00		\$106.18
<i>Totals for Stericycle Inc:</i>					\$106.18	\$0.00		\$106.18
<b>U S Healthworks Medical Group, PC</b>								
U S Healthworks Medical Group, PC	9/4/2018	9/4/2018	3385222-CA	Pre-employment exam	\$191.00	\$0.00		\$191.00
<i>Totals for U S Healthworks Medical Group, PC:</i>					\$191.00	\$0.00		\$191.00
<b>Workers.com</b>								
Workers.com	9/4/2018	9/4/2018	122714	Seasonal workers week end 8/12/18	\$3,361.40	\$0.00		\$3,361.40
Workers.com	9/4/2018	9/4/2018	122466	Seasonal workers week end 7/8/18	\$3,088.12	\$0.00		\$3,088.12
Workers.com	9/4/2018	9/4/2018	122769	Seasonal workers week end 8/19/18	\$3,648.40	\$0.00		\$3,648.40
<i>Totals for Workers.com:</i>					\$10,097.92	\$0.00		\$10,097.92
<b>GRAND TOTALS:</b>					<b>\$83,433.12</b>	<b>\$0.00</b>		<b>\$83,433.12</b>

# CASH REQUIREMENTS

**CASH REQUIRED FOR NEGOTIABLE CHECKS &/OR ELECTRONIC FUNDS TRANSFERS (EFT) FOR CHECK DATE 08/29/18: \$81,754.80**

**TRANSACTION SUMMARY**

<b>SUMMARY BY TRANSACTION TYPE -</b>	TOTAL ELECTRONIC FUNDS TRANSFER (EFT)	81,754.80
	CASH REQUIRED FOR NEGOTIABLE CHECKS &/OR EFT	81,754.80
	TOTAL MANUAL CHECKS/UPDATES	2,586.27
	CASH REQUIRED BEFORE REMAINING D / W / L	84,341.07
	TOTAL REMAINING DEDUCTIONS / WITHHOLDINGS / LIABILITIES	12,621.13
	CASH REQUIRED FOR CHECK DATE 08/29/18	96,962.20

**TRANSACTION DETAIL**

**ELECTRONIC FUNDS TRANSFER** - *Your financial institution will initiate transfer to Paychex at or after 12:01 A.M. on transaction date.*

<u>TRANS. DATE</u>	<u>BANK NAME</u>	<u>ACCOUNT NUMBER</u>	<u>PRODUCT</u>	<u>DESCRIPTION</u>		<b>BANK DRAFT AMOUNTS &amp; OTHER TOTALS</b>
08/28/18	BANK OF AMERICA, NA	xxxxxx4799	Direct Deposit	Net Pay Allocations	63,704.35	
08/28/18	BANK OF AMERICA, NA	xxxxxx4799	Direct Deposit	Deductions with Direct Deposit	663.50	64,367.85
08/28/18	BANK OF AMERICA, NA	xxxxxx4799	Readychex®	Check Amounts	396.53	396.53
08/28/18	BANK OF AMERICA, NA	xxxxxx4799	Garnishment	Employee Deductions	36.40	36.40
					<b>EFT FOR 08/28/18</b>	<b>64,800.78</b>
08/29/18	BANK OF AMERICA, NA	xxxxxx4799	Taxpay®	Employee Withholdings		
				Social Security	79.16	
				Medicare	1,331.77	
				Fed Income Tax	10,119.37	
				CA Income Tax	3,989.56	
				<b>Total Withholdings</b>	<b>15,519.86</b>	
				Employer Liabilities		
				Social Security	79.17	
				Medicare	1,331.80	
				Fed Unemploy	2.58	
				CA Unemploy	20.18	
				CA Emp Train	0.43	
				<b>Total Liabilities</b>	<b>1,434.16</b>	<b>16,954.02</b>
					<b>EFT FOR 08/29/18</b>	<b>16,954.02</b>
					<b>TOTAL EFT</b>	<b>81,754.80</b>

# CASH REQUIREMENTS

**CASH REQUIRED FOR NEGOTIABLE CHECKS &/OR ELECTRONIC FUNDS TRANSFERS (EFT) FOR CHECK DATE 08/29/18: \$81,754.80**

**MANUAL CHECKS/UPDATES** - These amounts are for previously calculated checks that were issued by you. You may have already deducted these funds from your account.

<u>TRANS. DATE</u>	<u>BANK NAME</u>	<u>ACCOUNT NUMBER</u>	<u>PRODUCT</u>	<u>DESCRIPTION</u>		<u>TOTAL</u>
08/29/18	Refer to your records for account	Information	Payroll	Check Amounts	2,586.27	
<b>TOTAL MANUAL CHECKS/UPDATES</b>						<b>2,586.27</b>

**REMAINING DEDUCTIONS / WITHHOLDINGS / LIABILITIES** - Paychex does not remit these funds. You must ensure accurate and timely payment of applicable items.

<u>TRANS. DATE</u>	<u>BANK NAME</u>	<u>ACCOUNT NUMBER</u>	<u>PRODUCT</u>	<u>DESCRIPTION</u>		<u>TOTAL</u>
08/29/18	Refer to your records for account	Information	Payroll	Employee Deductions		
				1959 Surv. Ben.	11.16	
				414h2 EE PD ER Cont.	85.62	
				414h2 Pretax	5,769.53	
				457b EE Pretax	103.85	
				DC ICMA Pretax	2,204.80	
				FSA Dep Care Pretax	411.14	
				Health Prem Pretax	3,058.95	
				Nationwide Pretax	720.00	
				POA Dues	60.00	
				Supp Ins Post Tax	89.57	
				Supplemental Ins	106.51	
				<b>Total Deductions</b>	<b>12,621.13</b>	
<b>TOTAL REMAINING DEDUCTIONS / WITHHOLDINGS / LIABILITIES</b>						<b>12,621.13</b>

**PAYCHEX WILL MAKE THESE TAX DEPOSIT(S) ON YOUR BEHALF** - This information serves as a record of payment.

<u>DUE DATE</u>	<u>PRODUCT</u>	<u>DESCRIPTION</u>	
09/06/18	Taxpay@	FED IT PMT Group	12,941.27
09/06/18	Taxpay@	CA IT PMT Group	3,989.56



Agenda Date: 9-04-2018

Agenda Item: 3C

Approved:   
\_\_\_\_\_  
Gary A. Napper  
City Manager

# STAFF REPORT

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: KEVIN MIZUNO, FINANCE MANAGER**

**DATE: September 4, 2018**

**SUBJECT: INVESTMENT PORTFOLIO REPORT – FOURTH QUARTER FY 2017-18**

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## RECOMMENDATION

It is recommended the City Council accept the City Investment Portfolio Report for the fourth quarter of fiscal year 2017-18 ending June 30, 2018.

## BACKGROUND

Pursuant to the section XIII of the City of Clayton Investment Policy, last revised on April 21, 2015, 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 fourth quarter 2017-18 fiscal year report is provided herein.

## DISCUSSION

With the fourth quarter of the fiscal year completed, annual interest earnings for the General Fund is \$93,749, or 117.19% of forecasted General Fund interest revenues per the 2017-18 fiscal year adopted budget of \$80,000. City-wide investment earnings solely attributable to pooled investments (i.e. not related to cash with fiscal agents such as bond proceeds) through the fourth quarter of fiscal year 2017-18 totaled \$213,467. Approximately 13.48% of the current City Investment Pool (the Pool) is invested in Local Agency Investment Funds (LAIF). The LAIF quarterly apportionment rate was 1.90%, which is a noteworthy increase from a rate of 1.51% in just the preceding quarter. This is also a substantial improvement compared to the LAIF apportionment rate of 0.92% one year ago on June 30, 2017. Investments in certificates of deposit comprised approximately 77.46% of the City investment portfolio as of the quarter ended June 30, 2018 and were the highest yielding investment type with a collective weighted average interest rate of 1.94%. Approximately 3.02% of the pool is made up of cash deposits and low interest bearing money market mutual funds, liquid and available for normal operating cash flow purposes. Federal Agency Notes, authorized by the revised April 21, 2015

investment policy, were the second highest yielding investment type making up approximately 6.04% of the portfolio with a weighted average interest rate of 1.90%.

The market value of the total investment portfolio was approximately \$14,704,068, which is \$194,513 lower than total carrying value as of June 30, 2018. The unrealized loss in fair market value is higher than in recent quarterly portfolio reports given the City's heavy investment in two to five year fixed income investments during a prior of rising interest rates. The relatively marginal difference (-1.30%) demonstrates how the conservative nature of the City's investment strategy mitigates the risk of the City incurring large unrealized losses in market declines. Simultaneously, given less risk being incurred, more predictable and modest investment returns will be realized following this same strategy.

In accordance with Section XVI of the City Investment Policy, the policy shall be reviewed at least annually 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 meets the needs of the City. Upon the City Treasurer's review and authorization of the fourth quarter investment portfolio on August 23, 2018, the current status of the investment policy was also considered. At this time the City Treasurer is not recommending any change to the current Investment Policy.

In conclusion, for the fourth quarter ending June 30, 2018, the City of Clayton Investment Portfolio is being managed in accordance with the City's investment policy. In addition, the City's cash management program provides sufficient liquidity to meet the next six month's expenditures. The attached City of Clayton Investment Holdings Summary – Fourth Quarter of Fiscal Year 2017-18 (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.

City of Clayton  
Investment Holdings Summary  
Quarter Ending: June 30, 2018

ATTACHMENT 1

Investment Account	Investment Type	Institution	CUSIP	Carrying Value	Rate	Current Yield	Settlement Date	Maturity Date	Market Value
Local Agency Investment Fund (LAIF)	Local Agency Pool	Local Agency Investment Fund	n/a	2,006,571.51	1.90%	1.90%	n/a	n/a	2,004,809.19
UBS Financial Services Inc.	Cash	BS Bank Sa Deposit Account	n/a	-	0.00%	0.00%	n/a	n/a	-
	Money Market Fund	RMA Government Portfolio	n/a	6,287.26	1.27%	1.27%	n/a	n/a	6,287.26
	Certificate of Deposit	American Exp Cent, UT	02587DPT9	100,000.00	1.70%	1.70%	7/5/13	7/5/18	99,992.00
	Certificate of Deposit	Compass Bank, AL	20451PAU0	150,000.00	1.55%	1.55%	7/10/13	7/10/18	149,985.00
	Certificate of Deposit	Goldman Sachs Bank, NY	38147IHW5	100,000.00	1.75%	1.75%	7/10/13	7/10/18	99,996.00
	Certificate of Deposit	Cit Bank, UT	17284CHW7	146,000.00	1.80%	1.80%	7/17/13	7/17/18	145,992.70
	Certificate of Deposit	First Financial NW, WA	32022MAG3	100,000.00	1.14%	1.15%	1/28/16	8/20/18	99,891.00
	Certificate of Deposit	Bank Baroda New York, NY	0606245Q2	247,000.00	2.05%	2.05%	10/18/13	10/18/18	246,948.13
	Certificate of Deposit	Sallie Mae Bank, UT	795450CS7	147,000.00	2.05%	2.05%	10/23/13	10/23/18	146,988.24
	Certificate of Deposit	American Express C, UT	02587DWJ3	100,000.00	2.00%	2.00%	11/28/14	11/28/18	99,952.00
	Certificate of Deposit	Sallie Mae Bank, UT	795450RT4	100,000.00	2.00%	2.00%	12/11/13	12/11/18	99,958.00
	Certificate of Deposit	Keybank NA, IN	49306SVY9	100,000.00	1.53%	1.55%	1/20/16	1/22/19	99,849.00
	Certificate of Deposit	Discover Bank, DE	254672GC6	150,000.00	1.61%	1.61%	1/28/15	1/28/19	149,508.00
	Certificate of Deposit	Preferred Bank, CA	740367ER4	197,000.00	1.20%	1.21%	3/9/16	3/29/19	195,786.48
	Certificate of Deposit	First Savings Bank, IN	33621LBV4	99,000.00	1.15%	1.16%	5/4/16	5/24/19	97,984.26
	Certificate of Deposit	UBS Bank, UT	90348JAS9	200,000.00	1.20%	1.21%	6/9/16	6/17/19	197,750.00
	Certificate of Deposit	Discover Bank, DE	2546712B9	100,000.00	2.00%	2.01%	7/9/14	7/9/19	99,592.00
	Certificate of Deposit	Synchrony Bank, UT	87164XBQ8	100,000.00	2.05%	2.06%	7/11/14	7/11/19	99,588.00
	Certificate of Deposit	First Financial NW, WA	32022MAJ7	147,000.00	1.45%	1.41%	2/10/16	8/19/19	145,363.89
	Certificate of Deposit	Third Fed S&L Assn, OH	88413QAY4	200,000.00	1.50%	1.51%	2/19/15	8/19/19	199,184.00
	Certificate of Deposit	Park Natl Bk Newar, OH	700654AT3	240,000.00	2.15%	2.16%	9/12/14	9/12/19	238,665.60
	Certificate of Deposit	Gulf Coast B&T, LA	402194FB5	99,000.00	1.25%	1.27%	10/14/16	10/15/19	97,214.04
	Certificate of Deposit	GE Capital Bank UT	36162YF24	145,000.00	1.80%	1.81%	1/16/15	1/16/20	144,037.20
	Certificate of Deposit	Mercantil Comm Ban, FL	58733AEJ4	100,000.00	1.90%	1.92%	8/15/17	3/2/20	98,738.00
	Certificate of Deposit	BMW Bank NA, UT	05580AHL1	198,000.00	1.80%	1.83%	4/12/17	4/21/20	194,750.82
	Certificate of Deposit	Wells Fargo Bk Na Sd Us	94986TTT4	197,000.00	1.25%	2.00%	4/30/15	4/30/20	196,546.90
	Certificate of Deposit	Washington Trust, RI	940637HX2	99,000.00	1.45%	1.49%	11/18/16	5/18/20	96,616.08
	Certificate of Deposit	Comenity Bank, DE	981996XS5	100,000.00	2.30%	2.33%	6/30/15	7/1/20	98,788.00
	Certificate of Deposit	World's Foremost B, NE	9159919E5	200,000.00	2.30%	2.34%	8/6/15	8/6/20	196,976.00
	Certificate of Deposit	Merrick Bk, UT	59013JHE2	149,000.00	1.90%	1.94%	8/20/15	8/20/20	146,097.48
	Certificate of Deposit	Morgan Stanley Bk, UT	61747MC96	245,000.00	2.45%	2.48%	1/18/18	1/25/21	242,165.35
	Certificate of Deposit	JP Morgan Chase, OH	48125YZB3	200,000.00	1.25%	1.52%	1/26/16	2/10/21	197,438.00
	Certificate of Deposit	Synchrony Bank, UT	87164XLH7	94,000.00	1.70%	1.75%	2/25/16	3/4/21	91,460.12
	Certificate of Deposit	BLC Comenity Bank, WI	05549CGN4	198,000.00	2.00%	2.06%	11/13/17	5/28/21	192,570.84
	Certificate of Deposit	Webbank, UT	947547KC8	200,000.00	3.00%	3.00%	5/18/18	5/28/21	200,094.00
	Certificate of Deposit	Barclays Bank, DE	06740KKC0	100,000.00	2.00%	2.06%	7/12/17	7/12/21	97,106.00
	Certificate of Deposit	Comenity Cap Bank UT	20033AUX2	245,000.00	2.00%	2.06%	7/16/17	7/16/21	237,833.75
	Certificate of Deposit	UBS Bank, UT	90348JAU4	50,000.00	1.50%	1.57%	7/20/16	7/20/21	47,729.50
	Certificate of Deposit	Synchrony Bank, UT	87164XNA0	50,000.00	1.45%	1.52%	7/22/16	7/22/21	47,722.00
	Certificate of Deposit	Medallion Bank, UT	58403B5Q5	198,000.00	2.05%	2.12%	12/16/17	12/16/21	191,450.16
	Certificate of Deposit	Mercantile Comm Bank	58733ADT3	150,000.00	2.10%	2.17%	1/27/17	1/27/22	145,066.50
	Certificate of Deposit	Texas Exchange Bank, TX	88241TBD1	150,000.00	2.25%	2.32%	3/28/17	3/28/22	145,534.50
	Certificate of Deposit	First National Bank of McGregor, TX	36A99U934	145,000.00	2.35%	2.39%	12/20/18	6/20/22	142,353.75
	Certificate of Deposit	First Bank Highland, IL	319141HN0	247,000.00	2.20%	2.29%	9/7/17	9/7/22	237,759.73
	Certificate of Deposit	Capital One Bank	1404205H9	99,000.00	2.30%	2.38%	10/4/17	10/4/22	95,575.59
	Certificate of Deposit	Belmont Svgs Bk, MA	080515CH0	200,000.00	2.70%	2.77%	2/13/18	2/28/23	195,288.00
	Certificate of Deposit	Citibank, NA SD	17312QJ26	200,000.00	2.90%	2.95%	4/2/18	4/11/23	196,774.00
	Government Agency	FHLMC	3134G8VZ9	250,000.00	1.38%	1.41%	3/29/16	4/28/21	244,335.00
	<b>Total UBS Financial Services Inc.</b>			<b>7,937,287.26</b>					<b>6,937,282.87</b>

City of Clayton  
Investment Holdings Summary  
Quarter Ending: June 30, 2018

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	9,174.67	0.15%		n/a	n/a	9,174.67
	Certificate of Deposit	Compass Bank, AL	20451PMD5	100,000.00	1.50%	0.75%	6/30/15	7/2/18	99,997.00
	Certificate of Deposit	Mercantile Bank of Grand Rapids, MI	58740XYT1	147,000.00	1.65%	0.83%	8/14/13	8/14/18	147,005.88
	Certificate of Deposit	First Bank PR Santurce, PR	33767AUJ8	50,000.00	1.45%	0.85%	1/20/16	1/22/19	49,801.00
	Certificate of Deposit	Webster Bank, CT	94768NKJ2	100,000.00	1.35%	1.35%	1/20/16	1/28/19	99,775.00
	Certificate of Deposit	Homebank, NA	43738AFU5	200,000.00	1.50%	1.13%	3/30/15	3/29/19	199,324.00
	Certificate of Deposit	Ally Bank, UT	02006LZR7	100,000.00	1.20%	1.21%	4/14/16	4/15/19	99,278.00
	Certificate of Deposit	State Bank of India, ILL	856283YN0	198,000.00	1.65%	1.66%	5/28/15	5/28/19	196,732.80
	Certificate of Deposit	First Business Bank, WI	31938QL85	50,000.00	1.50%	1.51%	6/11/15	6/11/19	49,594.00
	Certificate of Deposit	Ally Bank, UT	02006LE66	148,000.00	1.25%	1.26%	6/23/16	6/24/19	146,271.36
	Certificate of Deposit	Barclays Bank, DE	06740KHK6	149,000.00	2.10%	2.11%	7/23/14	7/23/19	148,344.40
	Certificate of Deposit	American Express Bank FSB, UT	02587CAJ9	247,000.00	2.00%	2.01%	7/24/14	7/24/19	245,905.79
	Certificate of Deposit	BMW, UT	05580afa7	50,000.00	1.20%	1.22%	8/26/16	8/26/19	49,220.50
	Certificate of Deposit	Comenity Bank, DE	20099A7A9	100,000.00	2.10%	2.12%	8/27/14	8/27/19	99,257.72
	Certificate of Deposit	JPM, OH	48126XCP8	48,000.00	1.25%	1.27%	8/31/16	8/31/19	47,248.80
	Certificate of Deposit	Capital One Bank, VA	140420QF0	130,000.00	2.15%	2.16%	10/16/14	10/16/19	129,301.90
	Certificate of Deposit	State Bk India, NY	8562842P8	50,000.00	2.25%	2.26%	8/27/14	10/17/19	49,832.00
	Certificate of Deposit	The Privatebank & Trust Co., IL	74267GUU9	100,000.00	1.90%	1.91%	1/23/15	1/23/20	99,285.00
	Certificate of Deposit	American Express Centurion Bank, UT	02587DXE3	47,000.00	1.95%	1.97%	1/30/15	1/30/20	46,453.39
	Certificate of Deposit	Peoples United Bank, CT	71270QML7	151,000.00	1.75%	1.77%	3/4/15	3/4/20	149,423.56
	Certificate of Deposit	Everbank, FL	29976DVM7	200,000.00	1.75%	1.78%	3/30/15	3/30/20	196,738.00
	Certificate of Deposit	CIT Bank, UT	17284DBM3	50,000.00	1.98%	2.03%	6/3/15	6/3/20	49,268.00
	Certificate of Deposit	Capital One NA McLean, VA	14042E4Y3	245,000.00	2.22%	2.28%	7/22/15	7/22/20	241,957.10
	Certificate of Deposit	Beneficial Mut, PA	08173QBT2	200,000.00	1.37%	1.40%	10/7/16	10/7/20	193,026.00
	Certificate of Deposit	Connectone England Cliffs, NJ	20786ACD5	100,000.00	2.62%	2.62%	3/29/18	3/29/21	99,070.00
	Certificate of Deposit	Townebank Portsmouth, VA	89214PBL2	200,000.00	2.80%	2.81%	4/19/18	4/30/21	199,080.00
	Certificate of Deposit	Wells Fargo, SD	9497485W3	50,000.00	1.77%	1.82%	6/17/16	6/17/21	48,028.50
	Certificate of Deposit	BAR HBR Bank & TR, ME	066851WF9	100,000.00	3.00%	3.00%	6/19/18	6/29/21	100,000.00
	Certificate of Deposit	1st Internet Bank Indianapolis, IN	32066GCP3	100,000.00	1.95%	2.01%	7/14/17	7/14/21	96,937.00
	Certificate of Deposit	First Bank PR Santurce, PR	33767A4K4	157,000.00	2.05%	2.11%	8/25/17	8/25/21	152,425.02
	Certificate of Deposit	Enerbank USA, UT	29266N3H8	50,000.00	1.48%	1.52%	8/26/16	8/26/21	47,638.50
	Certificate of Deposit	Privatebank, IL	74267GVM6	147,000.00	1.53%	1.57%	8/30/16	8/30/21	140,099.82
	Certificate of Deposit	Commercial Bank Harrogate, Tenn	20143PDR8	197,000.00	3.00%	3.00%	6/19/18	9/21/21	196,826.64
	Certificate of Deposit	Franklin Syn Bank, TN	35471TCV2	204,000.00	2.00%	2.08%	1/12/17	1/31/22	196,574.40
	Certificate of Deposit	Live Oak Banking, NC	538036CM4	97,000.00	2.25%	2.32%	4/7/17	4/7/22	94,082.24
	Certificate of Deposit	Commercial Savings Bank, IA	202291AD2	247,000.00	2.10%	2.10%	10/18/17	10/18/22	236,341.95
	Certificate of Deposit	Industrial & Coml, NY	45581EAR2	250,000.00	2.65%	2.65%	2/17/18	2/14/23	243,692.50
	Government Agency	Federal Farm Credit Bank	3133EGEX9	200,000.00	1.67%	1.72%	6/9/16	6/14/21	193,700.00
	Government Agency	Federal Home Loan Bank	3130A8HH9	250,000.00	1.62%	1.67%	6/16/16	6/23/21	241,437.50
	Government Agency	Federal Home Loan Bank	3130AE6H8	200,000.00	3.15%	3.16%	5/3/18	5/2/23	199,278.00
	<b>Total Morgan Stanley</b>			<b>5,418,174.67</b>					<b>5,327,427.94</b>
Bank of America (book balance)	Cash (checking account)	Bank of America		434,547.75	0.00%	0.00%	n/a	n/a	434,547.75

Broker / Institution	Carrying Value	Percentage of Portfolio	Weighted Average Yield to Maturity	W.A.M. (yrs)	Market Value
Local Agency Investment Fund (LAIF)	2,008,572	13.48%	1.90%	0.64	2,004,809
UBS Financial Services Inc.	7,037,287	47.23%	1.90%	2.05	6,937,283
Morgan Stanley	5,418,175	36.37%	1.87%	2.12	5,327,428
Bank of America (book balance)	434,548	2.92%	0.00%	0.00	434,548
<b>Total Investment Portfolio</b>	<b>14,898,581</b>	<b>100.00%</b>			<b>14,704,068</b>
2017-18 Budgeted Interest - General Fund	\$	80,000			
2017-18 Actual Interest Revenue to date (7/1/17 - 6/30/18)	\$	93,749			
Percent of General Fund Budget Realized		117.19%			
Quarterly Weighted Average Annual Yield*		1.83%			
2017-18 Total Pooled Investment Income To Date (7/1/17 - 6/30/18)	\$	213,467			

\*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*, 8/1/18  
Kevin Mizuno, Finance Manager Date

*Hank Stratford*, 8/28/18  
Hank Stratford, City Treasurer Date

Agenda Date: 9-04-2018

Agenda Item: 4a

declaring  
September 17 - 23, 2018

as

## "Constitution Week"

**WHEREAS**, the Constitution of the United States of America, the guardian of our liberties, embodies the principles of limited government in a Republic dedicated to rule by law; and

**WHEREAS**, September 17, 2018, marks the two hundred thirty-first anniversary of the framing of the Constitutional Convention; and

**WHEREAS**, it is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate it; and

**WHEREAS**, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as Constitution Week.

**NOW, THEREFORE, I**, Keith Haydon, Mayor, on behalf of the Clayton City Council, do hereby proclaim the week of September 17 through 23 as "Constitution Week" in the City of Clayton, California, and ask our citizens to reaffirm the ideals the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties.

Agenda Date: 9-04-2018

Agenda Item: 4b

declaring

September 2018

as

## "Suicide Prevention Awareness Month"

**WHEREAS**, September is known around the United States as National Suicide Prevention Awareness Month and is intended to help promote awareness surrounding each of the Suicide Prevention resources available to us and our community. The simply goal is to learn how to help those around us and how to talk about suicide without increasing the risk of harm; and

**WHEREAS**, Suicidal thoughts can affect anyone regardless of age, gender, race, orientation, income level, religion, or background; and

**WHEREAS**, According to the CDC, each year more than 41,000 people die by suicide; and

**WHEREAS**, Suicide is the 10<sup>th</sup> leading cause of death among adults in the US, and the 2<sup>nd</sup> leading cause of death among people aged 10-24; and

**WHEREAS**, Clayton, California is no different than any other community in the country, but chooses to publicly state and place our full support behind local educators, mental health professionals, athletic coaches, pack leaders, police officers, and parents, as partners in supporting our community in simply being available to one another; and

**WHEREAS**, local organizations like Suicide Prevention Services (SPS) and national organizations like the National Alliance on Mental Illness (NAMI) are on the front lines of a battle that many still refuse to discuss in public, as suicide and mental illness remain too taboo a topic to speak on; and

**WHEREAS**, every member of our community should understand that throughout life's struggles we all need the occasional reminder that we are all silently fighting our own battles.

**NOW THEREFORE**, I, Keith Haydon, Mayor, on behalf of the Clayton City Council, do hereby proclaim September 2018 as "Suicide Prevention Awareness Month" in Clayton, California and encourage all residents to take the time to inquire as to the wellbeing of their family, friends, and neighbors over the next few days and to genuinely convey their appreciation for their existence by any gesture they deem appropriate. A simple phone call, message, handshake, or hug can go a long way towards helping someone realize that suicide is not the answer.

Agenda Date: 9-04-2018

Agenda Item: 4C



Approved:   
Gary A. Napper,  
City Manager

# STAFF REPORT

**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** Laura Hoffmeister, Asst. to the City Manager 

**MEETING DATE:** September 4, 2018

**SUBJECT:** Presentation on Clayton's Recycling Trends, State Mandated Regulation Changes and Global issues impacting Recycling Markets

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## BACKGROUND

During its goal setting session held on January 30, 2018, the City Council requested a presentation on the status of the community's recycling trends. Republic Services is the City's franchise solid waste/recycling collection and disposal company. The Assistant to the City Manager is responsible for ensuring the City is meeting its state mandated recycling program implementation, compliance monitoring and reporting.

Republic Services Division Municipal Services Manager, Susan Hurl, will provide a PowerPoint point presentation on this subject at the meeting. Topics will cover current trends in the community recycling efforts, upcoming state mandates for recycling, and the global problems with post recycling secondary markets. Attached are background materials on global and national trends related to recycling.

## **Attachments:**

1. Cal Recycle – Dept. of Resources, Recycling & Recovery: Update on California Recycling Markets
2. Waste 360 Article "Chinas Changing Import Regulations – What Does It All Mean"

**DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**1001 I STREET, SACRAMENTO, CALIFORNIA 95814 • WWW.CALRECYCLE.CA.GOV • (916) 322-4027  
P.O. BOX 4025, SACRAMENTO, CALIFORNIA 95812**RECEIVED****JUL 02 2018**

May 8, 2018

**City of Clayton**

In light of recent changes to China's import policies, I'm writing to share an update on California's recycling markets, answer questions regarding jurisdiction compliance, emphasize the importance of health and safety at solid waste facilities, and discuss what lies ahead. On May 4<sup>th</sup>, China stopped accepting any imports of recyclable materials from the United States for one month. This decision follows China's implementation of its National Sword policy on March 1<sup>st</sup>, banning the imports of 24 categories of scrap materials including low grade plastics and unsorted mixed paper, and setting strict contamination standards for allowable bales of recyclable material. The exporting of recyclable commodities to China, primarily our traditional curbside materials, has historically been a key component of California's recycling infrastructure. Approximately two thirds of curbside collected material is exported to foreign markets. In 2016, 62 percent of the exported recyclable materials were sent to China. However, China's implementation of National Sword is a major disruption in recycling commodities markets, a signal that California can no longer be primarily reliant on exports to manage our recyclable materials.

These new policies provide California with an opportunity to take a couple of important steps: first, to reduce our waste, and second, to work together to build infrastructure and domestic markets to successfully and responsibly manage our recyclable materials. Each of these will take investment and collaboration across state and local governments, the solid waste industry, manufacturers, and rate-payers. These are critical steps to improve the environment and economy here in California and beyond, although they will take time.

We're already witnessing the effect of China's new policy. Material flow is significantly disrupted and the economics of recycling are unfavorable for many recyclable commodities, challenging what recycling means to Californians.

This letter is intended to address concerns I have been hearing from local governments and industry about the impacts of China's import policies. I would like to reassure local governments that we have existing statutory policies to address the impact of markets when determining whether or not a jurisdiction has made a good faith effort to implement its diversion programs for compliance with AB 939. I am aware that facilities are having a hard time moving recyclable materials and are keeping them on site in significant quantities. If facilities are temporarily storing materials for longer periods, public health and safety should be their number one priority. Finally, looking toward the long-term, we will need more domestic infrastructure to manufacture products using California's recycled content feedstock. This valuable infrastructure will not only support the domestic recyclable commodities market but also support SB 1383's goal to reduce disposal of organic waste by 75 percent.

**ATTACHMENT 1**

Let me expand on these points.

### **Considering Market Factors When Evaluating Jurisdiction Performance**

Given shifting markets for recyclable commodities, it is important to clarify that CalRecycle takes market conditions into consideration when evaluating a jurisdiction's compliance with the following state recycling laws; AB 939, mandatory commercial recycling, and mandatory organics recycling. I have heard many stakeholders express concerns that CalRecycle will not take market factors – e.g., the precipitous drop in ability to get collected materials to market at an adequate price or even at all – into consideration when we evaluate jurisdiction programs. Jurisdictions are concerned that this could lead to potential penalties for situations that jurisdictions cannot control. This is not what statute dictates. Specifically, under existing statute, regulations, and policy, CalRecycle already takes market conditions into consideration when determining “good faith effort” in evaluating each jurisdiction's program implementation. CalRecycle recognizes that over the short term, lack of markets is not indicative of a jurisdiction's efforts to implement its programs fully. Additionally, a jurisdiction's achievement of its 50 percent requirement is not determinative for assessing compliance. Instead, CalRecycle's jurisdictional review focuses on program implementation and includes the assessment of barriers a jurisdiction is facing, including a lack of markets.

The following is an overview of the applicable statutes, regulations, and policies utilized when evaluating a jurisdiction's performance. I am providing you with this level of detail because it is descriptive of how we have reviewed jurisdiction program implementation in the past and how we will continue to do so in light of National Sword.

California Public Resources Code [41825\(e\)\(3\)](#) establishes that CalRecycle must consider the enforcement criteria included in its enforcement policy, known as the Countywide Integrated Waste Management Plan (CIWMP) Enforcement Policy Part II. This is the guiding process for determining compliance for a number of programs. CalRecycle periodically revises this policy to incorporate the goals of new statutes, as it did for [AB 341](#) and [AB 1826](#). Staff uses the criteria delineated in the policy to determine the extent to which a jurisdiction has implemented, or shown a good faith effort to implement, its selected diversion programs. Staff also uses the identified criteria to assist local jurisdictions who may need help in identifying why implementation of diversion programs is failing to achieve the results expected, or is failing to meet the diversion requirements. We want jurisdictions to be successful in implementing diversion programs.

The [CIWMP Enforcement Policy Part II](#) specifically includes consideration of markets for [AB 939 Source Reduction and Recycling Element \(SRRE\)](#), [Mandatory Commercial Recycling \(AB 341\)](#) and [Mandatory Commercial Organics Recycling \(AB 1826\)](#) compliance review. The following are some of our current review processes and the factors we consider when determining if a jurisdiction has met their diversion goals.

**AB 939 review:** As part of the review process, CalRecycle investigates the extent to which a jurisdiction has tried to meet the diversion requirements through its selected diversion programs, and the reasons it has failed to implement some or all of those diversion programs. Staff uses the criteria in the Enforcement Policy to assess the specific conditions that may have prevented a jurisdiction from meeting its 50 percent equivalent per capita disposal target, and whether a good faith effort was made by the jurisdiction to meet the requirements. The analysis for a jurisdiction that is not meeting its 50 percent target includes considering availability of markets and specific criteria can be found here: [CIWMP Enforcement Policy Part II, pages 4 and 11.](#)

**Mandatory Commercial Recycling (MCR) and Mandatory Commercial Organics Recycling (MORe) review:** CalRecycle also reviews jurisdictions' implementation of their MCR and MORe

programs. If a jurisdiction has not been able to implement a commercial recycling program that is appropriate for the jurisdiction and meets the needs of its businesses, CalRecycle looks at a number of factors in assessing whether the jurisdiction has made a good faith effort to implement these programs. These factors include the impact of markets and the efforts the jurisdiction has made to investigate local and regional marketing options and recycling opportunities with the private sector. More specifics can be found in the [CIWMP Enforcement Policy Part II, page 22 re: MCR and 28-29 re: MORe](#), and [PRC 42649.3\(1\)\(5\)](#) and [42649.82\(h\)\(6\)](#) and 14 California Code of Regulations §18839.

#### **Health and Safety Considerations Associated with Storage**

We understand that National Sword is causing back-ups and longer storage times of processed recycled materials at solid waste facilities and recycling centers. Solid waste facility operators can [discuss potential permitting options](#) or request a Solid Waste Local Enforcement Agency to grant a temporary waiver of storage restrictions. The waiver would allow additional amounts of recyclables and longer timeframes to store recyclables at the solid waste site as long as the additional storage does not create public health and safety or environmental issues. The [process for requesting and processing a temporary waiver](#) is found in state solid waste regulations. In addition, public health and safety is a priority at solid waste facilities and recycling centers. Several industry sources have published best management practices for the storage of baled recyclable materials. We've provided a synopsis of these practices below:

#### **Have a Storage Management Operations Plan describing procedures for receiving, storing, and shipping baled recyclables.**

- Unload baled recyclables by forklift and stack in a specific storage area in a configuration that provides for long-term stability. If applicable, stacked bales may be overlapped or staggered to improve the stability of the stacks. Height of the bales should be no greater than four bales high.
- The bale storage area should allow forklift operators to safely move materials and allow for the safe loading of trailers that are picking up bales of materials.

#### **To prevent contact with storm water, and to control vectors and nuisance, the following may be employed:**

- Limit bale contact with the ground (e.g., on pallets and/or tarps)
- Maintain facility cleaning, housekeeping and litter control
- Remove putrescible material, if observed
- Maintain heavy equipment to ensure no oil or fuel leakage occurs; clean up spills or leaks immediately
- Establish a first in/first out material handling process
- Where necessary, place berms or other structures to divert storm water from coming into contact with bales

#### **Fire Hazard Mitigations:**

- Consult with your local fire district to employ fire hazard mitigations
  - Keep adequate heavy equipment available on-site: (e.g., front loaders, bulldozers, water trucks, bobcats), fire hoses, dedicated fire pump and water tanks, and fire extinguishers.
  - Identify a maximum size of the storage area including length/width/height.
  - Maintain appropriate spacing between piles and the perimeter, maintain fire lanes
  - Inspect piles daily for potential fire hazards
  - Monitor pile temperatures at least once a week
- Coordinate with the Local Enforcement Agency and any local or state authorities responsible for the regulatory oversight of the facility.

For further information on best practices for storing materials, here are some additional resources from [Waste 360](#) and [Environmental Protection Authority, Victoria](#).

### **Reducing Waste and Increasing Domestic Infrastructure**

Reducing the generation of waste before it enters the waste stream reduces costs and conserves resources. Manufacturers, consumers, and governments all have a role to play in reducing waste. For example, manufacturers can reduce unnecessary packaging on products, consumers can choose to use reusable instead of single use, disposable products, and local government can procure products with recycled content. Waste prevention has the potential to reduce reliance on foreign markets, as there is no need to export what California has not generated. We will continue to work with you and all stakeholders to develop waste prevention opportunities and policies. With that said, we will continue to generate a significant amount of materials in California. Upstream solutions will need to be paired with the development of domestic processing and manufacturing for us to successfully manage our recyclables.

Building infrastructure to handle the materials we collect now, and the even greater amounts we will need to collect when SB 1383 goes into effect, is a daunting long-term task that will take years to achieve. Given the unpredictability of the marketplace, it's even more important that state and local governments and the private sector begin making siting and investment decisions now to develop more domestic (California and the U.S.) infrastructure for manufacturers using recycled content feedstock.

As CalRecycle communicated in January, we are committed to using our [available resources](#) to help build a more robust materials processing infrastructure in California. CalRecycle currently provides funding through its greenhouse gas (GHG) grant and loan programs and Recycling Market Development Zone program (RMDZ), and we work closely with the Governor's Office of Business and Economic Development (GO-Biz) to assist manufacturers that want to site or expand their operations in the state. Over the past four years, the GHG grant program has provided \$86 million in funding to 31 recycling projects and the GHG loan program has provided \$1.5 million in funding for two projects for construction, renovation, and expansion of new in-state capacity. The RMDZ loan program has provided \$145 million in funding to 192 recycling manufacturers in the state, since inception of the RMDZ loan program in FY 1993-94. There is increasing enthusiasm from companies interested in utilizing California's waste stream to make new products such as compost, biofuels, fibers and plastics. I urge you to take advantage of these.

Another opportunity to support manufacturers using recycled content feedstock is for jurisdictions to ensure their General Plan includes these types of facilities in their land use element. Just last year the California Governor's Office of Planning and Research (OPR) completed the first comprehensive update to the General Plan Guidelines (GPG) since 2003 ([General Plan Guidelines Update, Completed August 2, 2017](#)). One of the major changes includes an expanded section addressing the need for additional recycling, anaerobic digestion, composting, and manufacturing facilities in the land use element. This new guidance provides examples for local jurisdictions to use when updating their General Plans. Additional information is on the [OPR General Plan Guidelines website](#). You can stay informed about GPG-related information by [signing up for the GPG email list](#).

May 8, 2018  
Page 5

**Next Steps**

CalRecycle will host a workshop in Sacramento in early June to encourage dialogue and share information about the impacts of China's import policies. Workshop details will be posted on our [National Sword website](#). We will use this convening as an opportunity to discuss changing market dynamics, impacts on facilities, domestic capacity for processing and manufacturing using recycled content, and to identify other short and long-term solutions to the current recycling challenges. This is not the first time the international recycling commodities market has faced a major disruption and it won't be the last. California must capitalize on these disruptions and turn them into an opportunity to strengthen our environmental resilience and our economy. This will require us to reassess product design, materials collection, and processing systems. I look forward to working with you to build a more sustainable recycling infrastructure in California.



**Scott Smithline**  
Director

# ISSUE BRIEF



**National  
Waste & Recycling  
Association**  
Collect. Recycle. Innovate.

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JUL 02 2018

City of Clayton

## China's Changing Policies on Imported Recyclables

April 2018

### Overview

The Recycling industry has been very successful at providing environmental benefits including diverting material from landfills, conserving natural resources, and reducing greenhouse gas emissions by displacing the use of raw materials. This success was accomplished through the combined efforts of both the public and private industry to collect, sort, bale and market the recyclables to their end-markets.

For years, China has been the single largest consumer of recyclable materials generated in the United States. In 2016, approximately 41% of paper recovered in North America was exported with about a quarter of recyclable paper exported to Chinese mills. Similarly, over 20% of post-consumer bottles and 33% of non-bottle rigid plastics from the U.S. were exported in 2015. The European Union exports over 95% of its plastic to China, and the US and the EU are the largest exporters of recovered paper into China. China consumed over 50% of the world's recycled paper and plastic in 2016.

Over the past year, China has taken a number of steps, including establishing bans and imposing strict quality standards, to restrict recyclable materials imported into China. These measures are already having significant impacts on recycling within the U.S., and the rest of the world. Because so much material had previously been absorbed by China, this decision leaves much of the material without sufficient end markets.

It may be some time before alternative markets can be developed to fully replace China. In the meantime, recyclers are struggling to manage recyclables in a manner that maintains current programs at economically viable levels.

### Background

1. In February, as part of China's broader "National Sword" campaign, customs enforcement began a one-year crack down on illegal smuggling of "foreign waste."
2. On July 18, 2017, China notified the World Trade Association (WTO) of its intent to ban 24 materials from being imported. These include post-consumer plastic and mixed paper effective January 1, 2018.

3. On November 15, 2017, the Chinese government announced a new quality standard for material limiting prohibitive to 0.5 percent. This requirement applies to all paper and paperboard materials, even those that are not banned (such as ONP or OCC) effective March 1, 2018.

4. On March 6, 2018, the Chinese Government announced a special action campaign entitled "Blue Sky 2018" focused on the banned materials. This campaign is targeted at cracking down on smuggling of the banned materials.

5. The China Council for International Cooperation on Environment and Development (CCICED) released a paper stating that a further stop to material imports will be in place by 2019. This international advisory body that includes some top Chinese officials signals that recycling restrictions from China may become tighter, not looser in the future.

### Impact to U.S. Recycling

Higher costs and lower revenues:

- **Lower revenues due to depressed commodity prices.** The loss of the Chinese export markets has disrupted recyclable markets leading to lower revenues as some materials must be sold at significantly lower prices, sometimes even negative. As a result, the overall revenues from the combined recycling stream is depressed.
- **Higher processing costs.** In order to meet the new quality standards, MRFs are slowing down the lines and adding sorters. Processing at some facilities has been changed from negative sorts to positive sorts resulting in more effort to produce less salable material. These measures are reducing throughput and driving processing costs higher.
- **Higher transportation costs.** Regulatory requirements, a booming economy and a tight labor market already contributed to increased domestic freight costs. However, as material is diverted to international ports outside of China, shipping costs are also increasing as the backhaul advantage dissipates.

- **Higher capital costs.** To meet the higher quality standards, some MRFs are also accelerating and increasing capital expenditures.
- **Availability of outlets.** The ability of other markets, both domestic and the remaining Asian export market, to absorb all the recyclables have been severely strained. Some materials have not been able to find an economically viable end market. With few markets available, incidents of stockpiling (or landfilling) material have been reported.
- **Stockpiling issues.** Due to storage capacity issues, stockpiling is not a viable option. Warehousing is also an issue due to availability of space and costs of facilities. In either case, processed bales can deteriorate over time which creates unacceptable safety hazards and unmarketable recycled product.
- **Regional variations.** The impact varies by region and local markets across the country.
- **Development of new outlets.** With time, new outlets for markets are expected to develop. The timeline of new market development, however, is uncertain due to its dependence on establishing new facilities and infrastructure.
- **Review contracts.** Recycling requirements may need to be amended through force majeure provisions as this is a global situation. In addition, both recyclers and municipalities should review contracting provisions to ensure fair and equitable contracts. NWRA and SWANA worked together to develop a Joint Advisory on Designing Contracts for Processing of Municipal Recyclables along with two attachments. These documents should be utilized to inform future contracts.
- **Talk with regulators.** States may need to approve temporarily suspensions of recycling requirements where there is no market.

## Communications Strategy

- **Develop a communication plan appropriate for your market area.** Make sure to be transparent in messaging providing clear information about the severity of the issue but avoid overstating it. Convey the commitment to working with customers and regulators. Provide recommendations on what should be recycled and how to minimize contamination.
- **Contact your state regulatory agency to ensure that they are aware of the issue.** Ensure key stakeholders know that we have been working at the federal level. Be careful in communicating the serious ramifications of this issue, while recognizing that there is significant uncertainty.
- **Consider engaging local industry groups to help with the messaging.** Work with your state's industry associations to convey a single message to cities "from the industry."
- **Communicate with transparency to your customers, and work to shore up the long-term benefits of recycling to reduce public backlash.** Although the U.S. exports a significant amount of recyclables, domestic markets do exist and may expand, perhaps as a direct result of China's actions.
- **This is a good time to develop and execute public education programs focused on quality.** Recycling the right materials correctly will help minimize the negative impacts of the current market constrictions. Work with local governments to focus messaging around recycled paper, cardboard, bottles and cans, and how to reduce contamination at the curb.

## Actions to take

- **Ensure High Quality Recyclables -** High quality material is more likely to find a market. The new 0.5 percent prohibitives limit is far below any existing international standard. However, high quality material will be welcomed by both domestic and international markets. Focus on core recyclables to reduce contamination and avoid adding new products to the recyclable stream while trying to improve quality.
- **Work with the entire industry.** This is a global and an industry-wide issue, not a local or individual company issue. Our industry will benefit if we work together with city and state officials to develop solutions in the near term, and to work together for longer term solutions.
- **Communicate.** It is important to communicate with recycling partners to focus on quality and to develop solutions for your communities. See the communications strategy below for more suggestions.

## For More Information:

Anne Germain  
 NWRA Vice President of Technical and  
 Regulatory Affairs  
 202-364-3724  
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5/14/2018

Recycling, Once Embraced by Businesses and Environmentalists, Now Under Siege - WSJ

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BUSINESS

## Recycling, Once Embraced by Businesses and Environmentalists, Now Under Siege

Local officials raise fees and send recyclables to landfills as economics erode

By Bob Tita

May 13, 2018 7:00 a.m. ET

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City of Clayton

The U.S. recycling industry is breaking down.

Prices for scrap paper and plastic have collapsed, leading local officials across the country to charge residents more to collect recyclables and send some to landfills. Used newspapers, cardboard boxes and plastic bottles are piling up at plants that can't make a profit processing them for export or domestic markets.

"Recycling as we know it isn't working," said James Warner, chief executive of the Solid Waste Management Authority in Lancaster County, Pa. "There's always been ups and downs in the market, but this is the biggest disruption that I can recall."

U.S. recycling programs took off in the 1990s as calls to bury less trash in landfills coincided with China's demand for materials such as corrugated cardboard to feed its economic boom. Shipping lines eagerly filled containers that had brought manufactured goods to the U.S. with paper, scrap metal and plastic bottles for the return trip to China.

As cities aggressively expanded recycling programs to keep more discarded household items out of landfills, the purity of U.S. scrap deteriorated as more trash infiltrated the recyclables. Discarded food, liquid-soaked paper and other contaminants recently accounted for as much as 20% of the material shipped to China, according to Waste Management Inc.'s estimates, double from five years ago.

The tedious and sometimes dangerous work of separating out that detritus at processing plants in China prompted officials there to slash the contaminants limit this year to 0.5%. China early this month suspended all imports of U.S. recycled materials until June 4, regardless of the quality. The recycling industry interpreted the move as part of the growing rift between the U.S. and China over trade policies and tariffs.

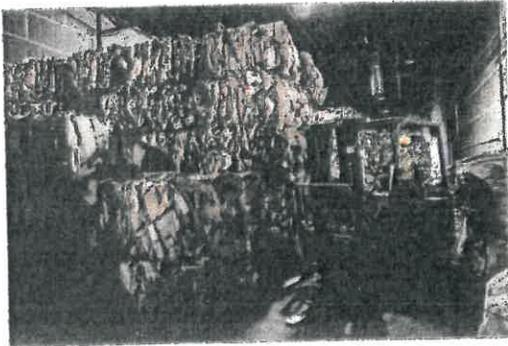
The changes have effectively cut off exports from the U.S., the world's largest generator of scrap paper and plastic. Collectors, processors and the municipal governments that hire them are reconsidering what they will accept to recycle and how much homeowners will pay for that service. Many trash haulers and city agencies that paid for curbside collection by selling scrap said they are now losing money on almost every ton they handle.

The upended economics are likely to permanently change the U.S. recycling business, said William Moore, president of Moore & Associates, a recycled-paper consultancy in Atlanta.

"It's going to take domestic demand to replace what China was buying," he said. "It's not going to be a quick turnaround. It's going to be a long-term issue."

The waste-management authority in Lancaster County this spring more than doubled the charge per ton that residential trash collectors must pay to deposit recyclables at its transfer station, starting June 1. The higher cost is expected to be passed on to residents through a 3% increase in the fees that haulers charge households for trash collection and disposal.

The additional transfer-station proceeds will help offset a \$40-a-ton fee that the authority will



Cal-Waste Recovery Systems plans to invest more than \$6 million on new sorting equipment to produce cleaner bales of recyclables. PHOTO: MAX WHITTAKER FOR THE WALL STREET JOURNAL

start paying this summer to a company to process the county's recyclables. Before China raised its quality standards at the beginning of this year, that company was paying Lancaster County \$4 for every ton of recyclables.

Mr. Warner may limit the recyclable items collected from Lancaster County's 500,000 residents to those that have retained some value, such as cans and corrugated cardboard. He said mixed plastic isn't worth processing.

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"You might as well put it in the trash from the get-go," he said.

Environmentalists are hoping landfills are only a stopgap fix for the glut of recyclables while the industry finds new

markets and reduces contaminants.

"Stuff is definitely getting thrown away in landfills. Nobody is happy about it," said Dylan de Thomas, vice president of industry collaboration for the Recycling Partnership in Virginia. "There are very few landfill owners that don't operate recycling facilities, too. They'd much rather be paid for those materials."

Pacific Rim Recycling in Benicia, Calif., slowed operations at its plant early this year to meet China's new standard. But company President Steve Moore said the more intensive sorting process takes too long to process scrap profitably. Pacific Rim idled its processing plant in February and furloughed 40 of its 45 employees.

"The cost is impossible. We can't make money at it," Steve Moore said. "We quit accepting stuff."

China stopped taking shipments of U.S. mixed paper and mixed plastic in January. Steve Moore said mixed-paper shipments to other Asian countries now fetch \$5 a ton, down from as much as \$150 last year. Other buyers such as Vietnam and India have been flooded with scrap paper and plastic that would have been sold to China in years past.

Dave Vaccarezza, president of Cal-Waste Recovery Systems near Sacramento, Calif., intends to invest more than \$6 million in new sorting equipment to produce cleaner bales of recyclables.

"It's going to cost the rate payer to recycle," he said. "They're going to demand we make our best effort to use those cans and bottles they put out."

Sacramento County, which collects trash and recyclables from 151,000 homes, used to earn \$1.2 million a year selling the scrap to Waste Management and another processor from scrap. Now, the county is paying what will amount to about \$1 million a year, or roughly \$35 a ton, to defray the processors' costs. Waste Management paid the county \$250,000 to break the revenue-sharing contract and negotiate those terms.

County waste management director Doug Sloan expects those costs to keep climbing. "We've been put on notice that we need to do our part," he said. The county hasn't yet raised residential fees.



China stopped taking shipments of U.S. mixed paper and mixed plastic in January. Cal-Waste Recovery Systems workers sift through recycled trash. PHOTO: MAX WHITTAKER FOR THE WALL STREET JOURNAL

**'There's always been ups and downs in the market, but this is biggest disruption that I can recall.'**

—James Warner, chief executive of the Solid Waste Management Authority

Some recyclers said residents and municipalities need to give up the “single-stream” approach of lumping used paper and cardboard together with glass, cans and plastic in one collection truck. Single-stream collections took hold in the waste-hauling industry about 20 years ago and continue to be widely used. Collecting paper separately would make curbside recycling service more expensive but cut down on contamination.

“We’re our own worst enemies,” said Michael Barry, president of Mid America Recycling, a processing-plant operator in Des Moines, Iowa, of single-stream recycling. “It’s almost impossible to get the paper away from the containers.”

Even relatively pure loads of paper have become tough to sell, Mr. Barry said, noting the domestic market for paper is saturated as well. He stockpiled paper bales at Mid America’s warehouse, hoping prices would improve. They didn’t. He has trucked 1,000 tons of paper to a landfill in recent weeks.

“We had to purge,” he said. “There’s no demand for it.”

Write to Bob Tita at [robert.tita@wsj.com](mailto:robert.tita@wsj.com)

*Appeared in the May 14, 2018, print edition as 'Recycling Firms Hit by Crushing Economics.'*

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# China's Changing Import Regulations— What Does It All Mean?



Brought to you by:



Other resources of interest:

[The China Conundrum](#)

[ISRI, NWRA, SWANA Respond to China's Finalized Contamination Standard](#)

[China's Import Regulations - What You Need to Know](#)

There's a new normal in the world of recycling. Once the largest importer of post-consumer recyclables, China decided it didn't want "foreign garbage" inundating its country anymore.

So, it instituted a waste import ban on 24 kinds of solid wastes in January 2018; a new contamination standard of 0.5 percent went into effect in March—and even more restrictions may be coming down the pike. Needless to say, it's a tough time for the U.S. recycling industry as it scrambles to find both short-term and long-term solutions.

As a stakeholder, what do you need to know about this new and evolving situation? Below, we've rounded up articles and other resources to help answer your most pressing questions.

In addition to providing key points from the linked articles, we've also interspersed takeaways from "China's Import Regulations - What you need to know," a session

filmed live at WasteExpo 2018 featuring the following speakers: Dylan DeThomas, vice president of industry collaboration, The Recycling Partnership; Mark Reiter, assistant vice president and chief lobbyist, Institute of Scrap Recycling Industries (ISRI); and Susan Robinson, director of public affairs, Waste Management. We're all in this together.

### **What caused this sudden change to China's waste import regulations?**

In 2017, China notified the World Trade Organization (WTO) of its intent to forbid 24 kinds of solid wastes by the end of the year and to lower contamination thresholds. The rationale was to stop "foreign garbage" from inundating China, and the moves were characterized as environmentally driven.

Though the moves seemed sudden, DeThomas reminds us that trouble with the Chinese market has been brewing for some time.

It was around the turn of the 21st century when China started consuming recyclables in significant volumes from the U.S.—and it wanted these materials, even paying a premium. Slowly, however, materials recovery facilities (MRFs) started sending lower quality scrap and trash due to a lack of regulations.

As Chinese consumers were continuing to purchase these "dirty" materials, a media scandal erupted after photos were circulated of



“a 2016 documentary called ‘PLASTIC CHINA’ garnered much attention and caused deep embarrassment to the Chinese government yet again.”

disgusting-looking paper bales coming from Europe. In response, the government pushed back and passed a solid waste law in 2008, which led to “Green Fence” (a customs enforcement protocol that took place during 2013), effectively resetting the quality level of what China would accept.

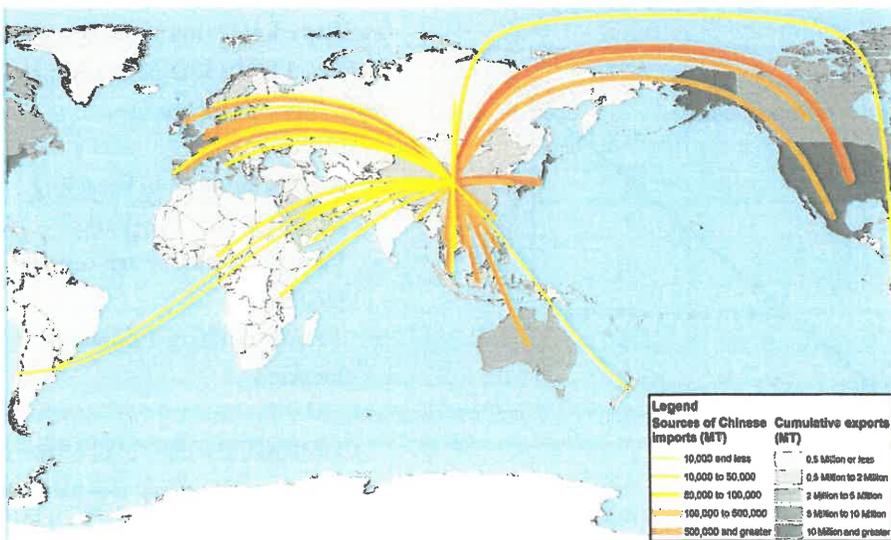
More recently, a 2016 documentary called “PLASTIC CHINA” garnered much attention and caused deep embarrassment to the Chinese government yet again. The film depicted the lives of two families who make a living recycling imported plastic waste. Ultimately, this film may have been the straw that broke the proverbial camel’s back—leading China President Xi Jinping to push for the current ban and emphasizing phrases like “Chinese dream” and “beautiful China” along with a desire for environmental improvement.

DeThomas says that this “still is a political issue just as it was in 2013.”

In response to the 2017 announcement that China would soon institute a ban and lower contamination thresholds, three major waste and recycling associations—the Solid Waste Association of North America (SWANA), the Institute of Scrap Recycling Industries (ISRI), and the National Waste & Recycling Association (NWRA)—submitted multiple filings and feedback regarding those intentions. They urged modifications and delays, but the Chinese pushed forward. The associations expressed their responses as below:

“SWANA is disappointed the Chinese government did not modify its waste import restrictions in response to the serious concerns raised by North American, European and Asian governmental authorities and associations. We support the efforts to improve the environment in China, but these extraordinary restrictions are already adversely impacting recycling programs throughout North America.”  
—David Biderman, executive director and CEO of SWANA.

“ISRI is very disappointed to see the Chinese government finalizing its Environmental Protection Control Standards ... We continue to be supportive of the Chinese government’s drive to improve the environment in China, but we continue to hope that such support can be realized through collaboration that achieves China’s environmental improvement goals without impairing



trade of high-quality, specification-grade scrap commodities required by China’s manufacturing sector.”

—Robin Wiener, president of ISRI.

“NWRA has always supported China’s efforts to improve its environment. However, we believe there are better ways to achieve those goals than to tighten restrictions on imported recyclables. We have said before that the 0.5 percent standard would be nearly impossible for our members to meet, and it could cause some short-term disruptions in the industry. However, it could also present opportunities as our members continue to adjust.” —Darrell Smith, president and CEO of NWRA.

SWANA, ISRI and NWRA have all pledged to continue following developments related to this issue and their impact on the industry—as well as to work closely with governments, stakeholders and the public and private sectors on education efforts and contamination reduction efforts.

**What exactly are “National Sword” and “Blue Sky 2018”?**

“National Sword” was an initiative that took place in 2017, which inspected Chinese recyclables processing facilities and shuttered many of the smaller ones.

We are now in the midst of “Blue Sky 2018,” scheduled to run March through December of 2018. China’s customs authority, the General Administration of Customs of the People’s Republic of China, has announced this period of special actions against foreign garbage smuggling.

Zhang Guangzhi, spokesperson for the General Administration of Customs, said that the organization is fully committed to “investigating a number of large-scale smuggling cases of wastes, eradicating a number of smuggling gangs and cutting off a number of smuggling routes and chains of rubbish, and resolutely blocking ‘foreign rubbish.’”

Though it’s impossible to know exactly what China is thinking, it is assumed that some of its ultimate goals with these programs are:

- A consolidation of recycling facilities into “Eco-Parks”
- Larger, cleaner, better-regulated facilities
- To bolster its own domestic markets

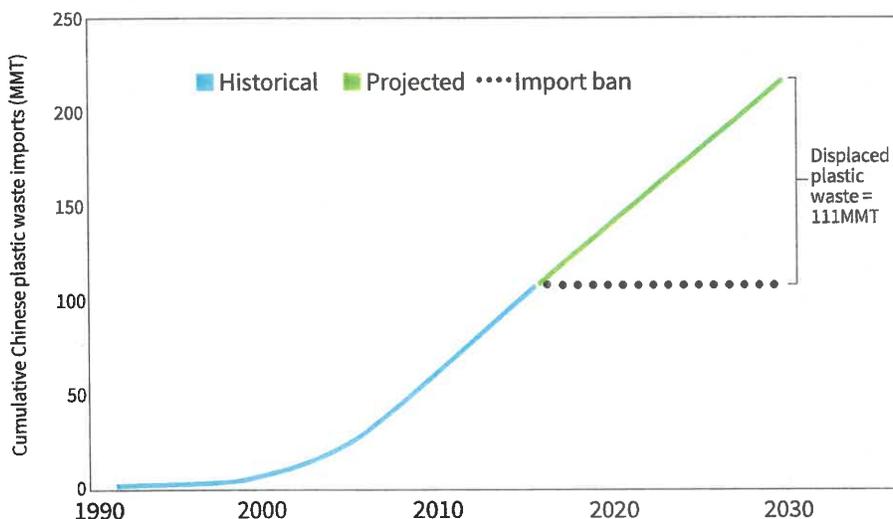
Consequently, due to all of the new regulations, U.S. exporters are seeing more inspections at ports both here

**Other resources of interest:**

[Chinese Customs Authority Launches “Blue Sky 2018”](#)

[How National Sword is Upending Exports](#)

[Impressions and Insights from WasteExpo 2018](#)



**Other resources of interest:**

[The China Conundrum](#)

[SWANA Provides Update on How China's Waste Import Restrictions are Impacting Recycling Programs](#)

[Industry Builds the Future of Recycling Amid China Ban Woes](#)

[China: One Year On](#)

and in China, as well as rejected loads.

**What is the magnitude of the impact on the U.S. recycling industry?**

ISRI put the U.S.' total scrap export market to China at \$5.6 billion last year. And from West Coast ports, recyclables export (mostly to China) was the single biggest export—24 percent of the total. Needless to say, a number of states and localities are in a bind.

There has thus far been a lack of other markets for some of these materials, which has depressed their costs and resulted in them being stockpiled or sent to the landfill. “Without action from the federal government, this could shake public confidence in recycling and create long-term consequences,” said Smith.

One other illustration: in 2016, China consumed 28.5 million tons of paper, more than 13 million of which

is now banned. That means there are more than 13 million tons of paper on the global market looking for a place to go. Between the banned material and the 0.5 percent contamination standard, there is an oversupply of paper and a demand for higher quality product at a lower price point.

**What are some of the biggest challenges for recyclers in the U.S.?**

Mark Reiter, assistant vice president and chief lobbyist at ISRI, categorizes the main challenges as below:

- Meeting strict quality standards
- Inspection inconsistencies
- Market competition from China

Robinson adds that:

- Supply is inelastic, producing an unfortunate mismatch between supply and demand. MRFs are expected to recycle curbside materials regardless of end markets, which is obviously presenting challenges at the moment.
- Consumers, whether they are aware of these new regulations or not, expect whatever they put into their recycling carts to be recycled—and, they expect the service to be “free.”

**What have been some specific effects of the ban so far?**

*Waste Dive* has been tracking the effects of China's scrap import policies across the U.S. since 2017, offering a



Other resources of interest:

[What Chinese Import Policies Mean for All 50 States](#)

[Recyclables in Seattle are Being Landfilled Due to China's Restrictions](#)

[Waste Management Feels Impact of China's Contamination Standard, Import Ban in Q1 2018](#)

state-by-state breakdown and updates on its website. On the whole, Southern states are feeling the least effect; Western states the most.

For instance, hundreds of tons of mixed paper recyclables in the greater Seattle area are being sent to landfills. And Republic Services, which processes the recyclables from Seattle and other surrounding cities, is seeking permission to send even more.

Biderman reminds us of the overall significance of the changes: "A year ago, more than 200,000 tons of mixed paper and about 75,000 tons of scrap plastics were sent to China, and now, in the first quarter of 2018, nearly zero tons were sent due to the new restrictions."

**What can municipalities and recyclers do?**

Robinson advises that this is the beginning of "the next recycling

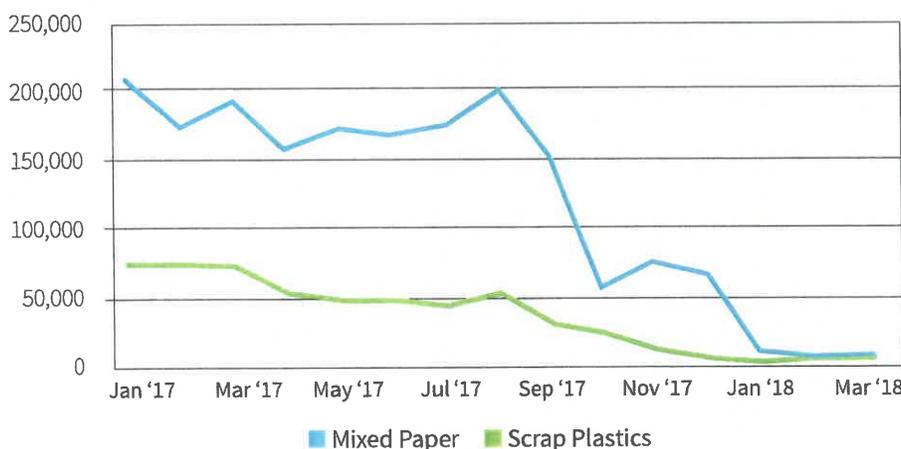
industry." In light of the current ban and regulations, and the fact that China intends to phase out imports of all recyclables by 2021, she urges the following actions:

- Work on quality; partner with local stakeholders; look for solutions.
- Remember why we recycle—not to divert the material but to "create a valuable product that offsets the use of virgin resources."
- Create programs that prioritize actions for the greatest environmental good for the long run.
- Educate residents and businesses to "recycle right," not just "recycle often." We have to reduce confusion on the part of people using recycling containers and services.

The National Recycling Coalition (NRC) elaborates that, "Residents may be unsure about what can and cannot be recycled, and cities and companies don't all accept the same materials for recycling. This confusion often leads to 'wishful recycling' from residents and business that want to do the right thing, but this concept actually hurts the economy and environment more than anything because it can mix a dirty product in with a clean, recyclable product, resulting in contamination."

From Biderman's perspective: "In the short term, we need to prioritize education, update technology in MRFs, identify new markets for

**U.S. Exports to China of Scrap Plastics & Mixed Paper**



## Other resources of interest:

[NRC Calls for U.S. Recycling Improvements Amid China Crackdown](#)

[Industry Associations Respond to China's Expanded Waste Import Ban](#)

[Thailand Temporarily Halts Imports of Plastic Waste, E-waste](#)

[Could Standardized Recycling Labels Be the Solution to Overcoming the Industry's China Ban Woes?](#)

materials and be more transparent about costs associated with recycling as well as the revenue that's generated from the sale of recyclable material.”

For tools, webinars and further resources, visit [RecyclingPartnership.org](#). The organization also provides infrastructure grants and consulting for communities to better their recycling programs.

### **What are some of the longer-term implications for recycling operations in the U.S.?**

NRC has recently explained that the recent moves from China have shined a light on the United States' poor recycling efforts—and that citizens can no longer pretend that waste diversion equals recycling. It is calling for the U.S. to improve these efforts as soon as possible.

Toward that end, Recycle Across America, a nonprofit dedicated to expediting environmental progress

and helping people understand the importance of recycling, is pushing for society-wide standardized labels on recycling bins.

“Around 2009, contamination was such a large issue, and China was already starting to warn the U.S. about the importance of keeping its recyclables clean,” noted Mitch Hedlund, founder and executive director of Recycle Across America. “Fast-forward to 2013, and China officially warns the U.S. with its Green Fence policy to restrict the amount of recyclables it would buy from the U.S. until the country cleans up the materials. Nothing was done about it, so now, in 2018, China is banning certain materials, which is causing everyone to finally wake up about this issue.”

NRC is calling for every aspect of the industry to work together, and it's working through collaboratives, its series of Market Development Workshops and Quarterly Market Calls to take the necessary steps to turn recycling into an industry with quality products.

On top of the existing problems and bans, China's Ministry of Ecology and Environment (MEE) says more changes are coming. Sixteen types of solid waste, including compressed car scraps and scrapped ships, will be banned from import beginning December 31, 2018, and another 16 types, including stainless-steel scraps, will be banned beginning December 31, 2019.



**Other resources of interest:**

**NRC Calls for U.S. Recycling Improvements Amid China Crackdown**

**ISRI Advocacy Delivers for Recyclers in Latest Tariff Measures**

**Vietnam Temporarily Suspends Scrap Plastic Imports**

“The announcement serves as a timely reminder that no one should be expecting China to roll back the recently implemented waste import restrictions, and that we need to support domestic, job-creating recycling markets here in the U.S.,” said Biderman.

Wiener also commented on the announcement: “The Chinese government’s announcement will have an impact on more than 676,000 metric tons, worth about \$278 million, in U.S. scrap commodity exports to China in the first year and another 85,000 metric tons worth more than \$117 million in the second year. Although we anticipated more import restrictions would be announced, we remain concerned about the effect these policies have on the global supply chain of environmentally friendly,

energy-saving scrap commodities and will instead promote an increased use of virgin materials in China, offsetting the government’s intent to protect the environment.”

**Are there any silver linings?**

Despite the array of both short- and longer-term challenges, the Chinese import ban does give U.S. recyclers the chance, and imperative, to clean up their act as well as get innovative and creative.

Among the opportunities that are presenting themselves:

- Growth for companies that will consume plastics
- A chance to invest in domestic processing capacity for plastics
- Opportunities to sell into India, Canada, Mexico and Southeast Asia

We need to find more uses for our materials, both domestically and abroad. And make sure the materials are of the highest possible quality.

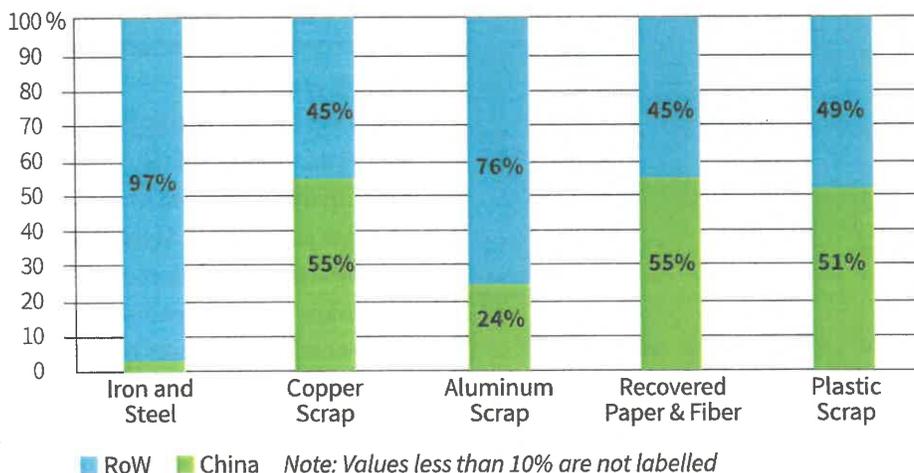
**How does the recent talk of tariffs and the escalating trade war impact all of this?**

The bottom line is that, “We are in the midst of global uncertainty when it comes to trade policies impacting the recycling industry,” said Wiener.

**What’s next?**

As we’ve witnessed, and in the words of Leone Young, principal of LTY ERC, LLC, “China is not bluffing.”

**Mainland China’s Share of Global Imports for Selected Recycled Comodities, 2016**



Source: UN Comtrade Database

## Other resources of interest:

[Why Your Recycling May End Up in Landfills](#)

[China Stops Buying the World's Trash, Leaving 120 Million Tons Up for Grabs](#)

[SWANA Provides Update on How China's Waste Import Restrictions are Impacting Recycling Programs](#)

[The China Conundrum](#)

The recycling industry has to face this new normal head on, work together, improve its processes and capabilities, educate customers and find new markets for its materials. Many advocates hope the recent changes will force more domestic recycled product markets to develop, but this will take time.

Hopefully, and ultimately, a challenge like this encourages our smartest and most innovative companies to find solutions and see the possibilities in this crisis.

As noted by Jim Fish, president and CEO of Waste Management, "... We simply cannot continue with the model in its current state." Municipalities and recyclers that are able to quickly adapt will set themselves up for success.

Concludes Robinson: "As the cost of recycling increases, maybe we should start focusing more on upstream recycling, which is really where we get the most environmental benefits.

Recycling is one tool in the toolbox to achieve the goal of improving the environment, and we need to focus on recycling correctly ... By bettering our education efforts and improving the quality of materials, we can maneuver through this market challenge and create a better future for recycling." ●

**Visit [Waste360.com](http://Waste360.com) for continuing coverage of this important topic.**





Agenda Date: 9-04-2018

Agenda Item: 8a

Approved: 

Gary A. Napper  
City Manager

# AGENDA REPORT

**TO:** HONORABLE MAYOR AND COUNCIL MEMBERS

**FROM:** MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR 

**DATE:** SEPTEMBER 4, 2018

**SUBJECT:** SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING CHAPTER 17 – “ZONING” OF THE CLAYTON MUNICIPAL CODE TO RESTRICT AND REGULATE PAROLEE HOMES (ZOA-08-16)

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## RECOMMENDATION

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

- A. Motion to have a second reading of Ordinance No. 483 by title and number only and waive further reading; and
- B. Following the City Clerk's reading, by motion adopt Ordinance No. 483 to amend the Clayton Municipal Code Chapter 17 – “Zoning” to restrict and regulate parolee homes in the following General Plan designations: Multifamily Low Density (MLD), Multifamily Medium Density (MMD), and Multifamily High Density (MHD), subject to a conditional use permit (ZOA-08-16) (**Attachment 1**).

## BACKGROUND

At its meeting on July 17, 2018, the City Council introduced the subject Ordinance, which proposed to limit locations and regulate parolee homes through public-noticed conditional use permit hearing(s) and to sites only within the multifamily General Plan land use designations: Multifamily Low Density (MLD), Multifamily Medium Density (MMD), and Multifamily High Density (MHD), as identified on the General Plan Map. At its meeting, the

City Council amended the Ordinance to require a notification distance for any public hearing relating to a parolee home to match its selection of the 500 foot sensitive-use buffer. The Council also requested, for consideration at its subsequent meeting, additional maps illustrating a buffer distance around sensitive uses at 750 feet and 1,000 feet in order to understand the specific details and net effects of a larger buffer distance.

Following receipt of the additional maps and a public hearing held at its last meeting on August 21, 2018, the City Council re-introduced the Ordinance with the following two amendments: 1) increase of the buffer distance of parolee homes from sensitive uses to 1,000 feet and 2) increase of the public hearing notification radius for any public hearing relating to a parolee home to 1,000 feet from any proposed parolee home and requiring the notice to be placed in a local newspaper and on the City's website, ten days prior to the hearing (**Attachment 2 and 3**).

### **ENVIRONMENTAL**

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

### **FISCAL IMPACTS**

There will be no direct fiscal impacts to the City with the adoption of this Ordinance.

### **ATTACHMENTS**

1. Ordinance 483 [pp. 7]
2. August 21, 2018 City Council Staff Report [pp. 133]
3. Excerpt of Minutes from the August 21, 2018 City Council Meeting [pp. 9]

# ATTACHMENT 1

## ORDINANCE NO. 483

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON ADOPTING AMENDMENTS TO CLAYTON MUNICIPAL CODE, TITLE 17 - ZONING IN ORDER TO RESTRICT AND REGULATE PAROLEE HOMES IN THE FOLLOWING GENERAL PLAN DESIGNATIONS: MULTIFAMILY LOW DENSITY, MULTIFAMILY MEDIUM DENSITY, AND MULTIFAMILY HIGH DENSITY, SUBJECT TO A CONDITIONAL USE PERMIT

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

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

**WHEREAS**, the City and surrounding communities have seen an increased interest in the establishment of group homes for parolees and probationers. This interest is due, in part, to AB 109 and the increase number of parolees, probationers and others subject to post-release supervision. These uses may concentrate in residential zoning districts; and

**WHEREAS**, citizens of the City have expressed significant concerns regarding the impacts that a proliferation of parolee/probationer homes may have on the community, including, but not limited to, increased crime, impacts on traffic and parking, excessive delivery times and durations, commercial and/or institutional services offered in private residences, more frequent trash collection, daily arrival of staff who live off-site, loss of affordable rental housing, violations of boardinghouse and illegal dwelling unit regulations, obvious business operations, secondhand smoke, and nuisance behaviors such as excessive noise, litter, and loud offensive language; and

**WHEREAS**, the City adopted an interim zoning ordinance to establish a temporary moratorium on the establishment and operation of parolee and probationer homes in order to study appropriate regulations for these uses; and

**WHEREAS**, California experiences high recidivism rates, with approximately 60-70% of parolees being re-arrested within three years of release;<sup>1</sup> and

**WHEREAS**, crime and nuisance-related concerns may be alleviated through public review of the facility's operational and management plans, house rules, services and staffing plans, as well as buffers from sensitive children-oriented uses, including schools, daycares, parks, youth centers, and libraries, and from businesses selling alcohol; and

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<sup>1</sup> Cal. Dept. of Corrections, CALIFORNIA PRISONERS AND PAROLEES 2010: Summary Statistics On Adult Felon Prisoners and Parolees, Civil Narcotic Addicts and Outpatients and Other Populations (2011) p. 90, at: [https://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Annual/CalPris/CALPRISd2010.pdf](https://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/CalPris/CALPRISd2010.pdf); see also, Public Policy Institute of California, *Realignment and Recidivism in California* (December 2017), p.3, at: [http://www.ppic.org/wp-content/uploads/r\\_1217mbr.pdf](http://www.ppic.org/wp-content/uploads/r_1217mbr.pdf)

**WHEREAS**, in response to concerns that residential neighborhoods not become institutionalized with parolee homes and that residents of parolee homes fail to integrate into the community, the ordinance would ensure that parolee homes are separated from other parolee homes as well as other quasi-institutional uses, including hospitals, group homes, emergency shelters, and supportive or transitional housing, to avoid an overconcentration of such uses in residential neighborhoods; and

**WHEREAS**, other public health, safety, and welfare concerns may be alleviated through enforcement of existing regulations and discretionary review of proposed land use applications; and

**WHEREAS**, following the results of this planning and research process, the City now desires to adopt permanent regulations to restrict parolee and probationer housing to Clayton's multi-family residential General Plan designations subject to the granting of a conditional use permit and the conditions, regulations and limitations stated herein.

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

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

**Section 2. Amendment to Clayton Municipal Code – Zoning Definitions.** Section 17.04.155 entitled "Parolee Home" is hereby added to the Clayton Municipal Code, Chapter 17.04 to read as follows:

**"17.04.155 Parolee Home.**

"Parolee Home" means any residential or commercial building, structure, unit or use, including a hotel or motel, whether owned and/or operated by an individual or for-profit or non-profit entity, which houses two or more parolees, that is not operated as a single housekeeping unit, in exchange for monetary or non-monetary consideration given and/or paid by the parolee and/or any individual or public/private entity on behalf of the parolee."

**Section 3. Amendment to Clayton Municipal Code – Zoning Definitions.** Section 17.04.156 entitled "Parolee" is hereby added to the Clayton Municipal Code, Chapter 17.04 to read as follows:

**"17.04.156 Parolee.**

"Parolee" shall include probationer, and shall mean any of the following: (1) an individual convicted of a federal crime, sentenced to a United States Federal Prison, and received conditional and revocable release in the community under the supervision of a Federal parole officer; (2) an individual who is serving a period of supervised community custody, as

defined in Penal Code Section 3000, following a term of imprisonment in a State prison, and is under the jurisdiction of the California Department of Correction, Parole and Community Services Division; (3) a person convicted of a felony who has received a suspension of the imposition or execution of a sentence and an order of conditional and revocable release in the community under the supervision of a probation officer; and (4) an adult or juvenile individual sentenced to a term in the California Youth Authority and received conditional revocable release in the community under the supervision of a Youth Authority parole officer. As used herein, the term "parolee" includes parolees, probationers, and/or persons released to post-release community supervision under the "Post-release Community Supervision Act of 2011" (Penal Code Section 3450 et seq.) as amended or amended in the future."

**Section 4. Amendment to Clayton Municipal Code – Zoning Definitions.** Section 17.04.186 entitled "Single Housekeeping Unit" is hereby added to the Clayton Municipal Code, Chapter 17.04 to read as follows:

**"17.04.186 Single Housekeeping Unit.**

"Single housekeeping unit" means that the use of the dwelling unit satisfies each of the following criteria:

1. The residents have established ties and familiarity and interact with each other.
2. Membership in the single housekeeping unit is fairly stable as opposed to transient or temporary.
3. Residents share meals, household activities, expenses, and responsibilities.
4. All adult residents have chosen to jointly occupy the entire premises of the dwelling unit; and they each have access to all common areas.
5. If the dwelling unit is rented, each adult resident is named on and is a party to a single written lease that gives each resident joint use and responsibility for the premises.
6. Membership of the household is determined by the residents, not by a landlord, property manager, or other third party.
7. The residential activities of the household are conducted on a nonprofit basis.

8. Residents do not have separate entrances or separate food-storage facilities, such as separate refrigerators, food-prep areas, or equipment.”

**Section 5. Amendment to Clayton Municipal Code – Multiple Family Residential District Regulations.** Clayton Municipal Code Section 17.20.030, entitled “Permitted Uses-Principal” is hereby amended and restated (new text in underline) as follows:

**“17.20.030 - Permitted Uses—Principal.**

The principal permitted uses in the multiple family residential districts shall be as follows:

- A. Duplex, triplex, townhouses, apartments and other multifamily structures meeting and not exceeding the density limits set by the applicable General Plan Land Use Designation;
- B. Supportive housing and transitional housing;
- C. Single family dwelling units only with a Conditional Use Permit (See Section 17.60.030.B.5).
- D. Employee housing providing accommodations for six (6) or fewer employees, provided that a conditional use permit is obtained. Such permit shall be reviewed and issued under the same procedures and in the same manner as that permit issued for single family dwelling units (See Section 17.60.030.B.5).
- E. Parolee homes only with a Conditional Use Permit (See Section 17.60.030.B.7).”

**Section 6. Amendment to Clayton Municipal Code – Use Permits.** Clayton Municipal Code Section 17.60.030, Subdivision (B), related to Residential Related Uses requiring a use permit, is hereby amended to add subdivision (7) to read as follows:

“7. Parolee homes on land designated as Multifamily Low Density (MLD), Multifamily Medium Density (MMD) and Multifamily High Density (MHD) on the General Plan Land Use Map. (See Section 17.36.086).”

All other provisions contained in Section 17.60.030 of the Clayton Municipal Code shall remain in full force and effect.

**Section 7. Amendment to Clayton Municipal Code – General Regulations.** Clayton Municipal Code, Section 17.36.086 entitled “Standards for Parolee Homes” is hereby adopted to read as follows:

**“17.36.086 – Standards for Parolee Homes.**

Parolee homes are only permitted with a conditional use permit on land designated Multifamily Low Density (MLD), Multifamily Medium Density (MMD) or Multifamily High Density (MHD) on the General Plan Land Use Map and in either a Planned Development (PD) zoning district or in a Multiple Family Residential zoning district (M-R, M-R-M, or M-R-H), subject to the development standards of the zone. Parolee homes must also meet the following objective development standards:

A. Location requirements:

1. A parolee home shall be located a minimum distance of at least one thousand (1,000) feet from any public or private school (preschool through 12<sup>th</sup> grade), licensed daycare, library, public park, hospital, group home, business licensed for on- or off-sale of alcoholic beverages, youth center, emergency shelter, supportive or transitional housing when measured from the exterior building walls of the parolee home to the property line of the sensitive use.
2. A parolee home shall be located a minimum distance of 1,000 feet from any other parolee home.

B. The application for a discretionary use permit for a parolee home shall include the following additional information:

1. Client profile (the subgroup of the population of the facility is intended to serve such as single men, families, etc.);
2. Maximum number of occupants and hours of facility operation;
3. Term of client stay;
4. Support services to be provided on-site and projected staffing levels; and
5. Rules of conduct and/or management plan.

C. Multifamily housing projects with 25 units or less shall be limited to one parolee home unit. Multifamily housing projects with more than 25 units shall be limited to two parolee home units. For purposes of this subsection, “multifamily housing project” means a building designed or used for more than two (2) dwelling units sharing common walls on one lot, including apartments and condominiums, but not including attached single-family homes or townhomes.

D. On-site staff supervision shall be required during all hours of the parolee home operation and the supervision shall not be provided by an active parolee.

E. Any change in operating conditions that were approved in the conditional use permit shall require the immediate submittal of an application to modify the conditional use permit.”

- F. Notice Requirement. In addition to any other requirements of Chapter 17.64, notice of any public hearing regarding a parolee home shall be mailed or delivered to all property owners within 1,000 feet of the proposed parolee home, as measured from the subject property lines, at least ten (10) days prior to the hearing. Notice of any public hearing shall also be published at least one time in a local newspaper and posted on the city website at least ten (10) days prior to the hearing.

**Section 8.** **CEQA.** This Ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment as the Ordinance relates to permit procedures for parolee housing in existing multi-family residential land use designations.

**Section 9.** **Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

**Section 10.** **Effective Date and Publication.** This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution by the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause the amendments adopted in Sections 2 through 7 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a regular public meeting of the City Council of the City of Clayton held on August 21, 2018.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular public meeting thereof held on September 4, 2018 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Keith Haydon, Mayor

ATTEST

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

APPROVED AS TO FORM

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

APPROVED BY ADMINISTRATION

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

I hereby certify that the foregoing Ordinance was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on September 4, 2018.

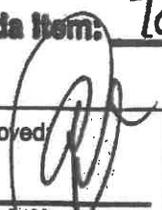
\_\_\_\_\_  
Janet Calderon, City Clerk

# ATTACHMENT 2



Agenda Date: 8-21-2018

Agenda Item: 7a

Approved:   
Gary A. Napper  
City Manager

## AGENDA REPORT

**TO: HONORABLE MAYOR AND COUNCIL MEMBERS**

**FROM: MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR **

**DATE: AUGUST 21, 2018**

**SUBJECT: AN ORDINANCE AMENDING CHAPTER 17 – “ZONING” OF THE CLAYTON MUNICIPAL CODE TO RESTRICT AND REGULATE PAROLEE HOMES (ZOA-08-16)**

### RECOMMENDATION

It is recommended the City Council consider all information provided and submitted, open the noticed Public Hearing and allow and consider all public testimony, close the Public Hearing, and if determined to be appropriate, take one of the following actions:

- A. Motion to have a second reading of Ordinance No. 483 by title and number only and waive further reading; and

Following the City Clerk's reading, by motion adopt Ordinance No. 483 to amend the Clayton Municipal Code Chapter 17 – “Zoning” to restrict and regulate parolee homes in the following General Plan designations: Multifamily Low Density (MLD), Multifamily Medium Density (MMD), and Multifamily High Density (MHD), subject to a conditional use permit (ZOA-08-16) (Attachment 1).

Alternatively, if the Council wishes to make any significant changes to the Ordinance, such as amending the buffer distance from designated sensitive-use sites, then it is recommended the Council take the following actions:

- B. Following closure of the Public Hearing, subject to any changes by the City Council, adopt a motion to have the City Clerk read the amended Ordinance No. 483 by title and number only and waive further reading; and

Following the City Clerk's reading, by motion approve Ordinance No. 483, as amended, for Introduction to amend the Clayton Municipal Code Chapter 17 – "Zoning" to restrict and regulate parolee homes in the following General Plan designations: Multifamily Low Density (MLD), Multifamily Medium Density (MMD), and Multifamily High Density (MHD), subject to a conditional use permit (ZOA-08-16), subject to any changes by the City Council.

## **BACKGROUND**

At its meeting on July 17, 2018, the City Council introduced the subject Ordinance, which proposes to limit locations and regulate City-permitted parolee homes to sites only within the multifamily General Plan land use designations: Multifamily Low Density (MLD), Multifamily Medium Density (MMD), and Multifamily High Density (MHD), as identified on the General Plan Map (**Attachment 2**), subject to a conditional use permit (**Attachment 3**). At the meeting, the City Council changed the language in the Ordinance to require a notification distance for any public hearing relating to a parolee home to match the 500 foot sensitive-use buffer, which is now reflected in Section 17.36.086.F.

### **Buffer Distances**

In addition to the increased public notification distance, the Council also requested additional maps showing a buffer distance around sensitive uses at 750 feet and 1,000 feet at its next meeting during consideration whether to adopt the Ordinance (**Attachment 4**). The attached map shows: a 500 foot buffer (in green), a 750 foot buffer (in yellow), and a 1,000 foot buffer (in red) along with the multifamily designated areas, as identified in the proposed Ordinance. The map specifically focuses on the Town Center area because this is the area where the different buffer distances will have a discernable impact.

It is noted the public park in the Stranahan neighborhood was inadvertently left off the sensitive-use 500 foot buffer map presented at the City Council's July 17, 2018 hearing. Since this public park is not shown on the City's land use maps nor is a park designation identified on the planning maps, it was overlooked by staff. By adding the Stranahan Park into the 500-foot buffer map, it removes the majority of the six parcels located south of the Town Center as an acceptable location, subject to approval of a use permit, for parolee housing, including fully removing the three parcels involved in the proposed 81-unit Clayton Senior Housing project (The Olivia on Marsh Creek) as an acceptable location.

With the larger 750 and 1,000 foot buffers, four of the six multifamily areas identified on the General Map become automatically excluded due to the restrictions of the proposed Ordinance: 1) the multifamily area adjacent to Kirker Pass Road, 2) the old Fire Station site on Clayton Road, 3) Chaparral Springs II (smaller area off of Indianhead Way), and 4) the area south of the Town Center. Regardless of the discussed buffer distances, the area around Keller Ridge Drive remains a location due to the lack of known sensitive uses in the surrounding area. Therefore, the area around the Town Center is the focus of the buffer

map due to the concentration of sensitive uses in the Town Center and the location of the remaining multifamily areas (two off Indianhead Way, and one south of the U.S. Post Office).

As shown on the map, the 1,000 foot buffer excluded all multifamily designated areas except for the location adjacent to Keller Ridge Drive and a limited portion of a residential complex on Indianhead Way (Chaparral Springs I). With application of the 750 foot buffer, more of the complex on Indianhead Way becomes available, creating a larger pool of units for the location of a parolee home. Conversely, the application of a 1,000 foot buffer produces a greater risk exposure to the City because locating a parolee home in Clayton may be challenging, given the limited number of possible units on Indianhead Way as well as the possible existence of a sensitive use such as a licensed daycare locating in either the Keller Ridge area or in Chaparral Springs I or its surrounding neighborhood.

With these newly-plotted buffer maps and the calculation of buffer distances using enhanced County software, the proposed 500-foot buffer does not differ much from the 750-foot buffer. However, the newly-plotted 750-foot and 1,000-foot buffers remain incrementally more risky than the 500-foot buffer; the 1,000-foot buffer might not leave a realistic possibility of locating a parolee home.

**1,000-Foot or Larger Buffer with Additional Permitted Zoning Designations**

If the Council wishes to consider a 1,000 foot or larger buffer and provide for more sites for enhanced legally-defensible purposes than as shown in the attachment, the Ordinance must be further amended. This directive would necessitate a change in the recommended General Plan land use designations from the sole selection of the multifamily land use designations to add the selection of a single-family residential district. This action would result in tradeoffs that could be considered less favorable to the City Council and the community.

Staff specifically chose the various "multifamily" General Plan land use designations for the following reasons: 1) limited variety of land use choices (e.g. Clayton does not contain industrial areas); 2) the multifamily designated areas represent the smallest geographic area of any residential land use, while still providing a minimum, reasonable number of acceptable locations to withstand a legal challenge; and 3) multifamily residential designations are more intensive in its land uses than single-family land use districts.

If the City Council were to select this latter option, this change would require the redrafting of the Ordinance because it is significant in nature, and the redrafted Ordinance must be sent back to the Planning Commission for consideration. Furthermore, this change to the Ordinance would also result in a short term gap whereby all residential areas of the city once again become available to the opening a parolee home as the City would not have any regulations or restrictions in place once the moratorium expires on October 3, 2018.

**Additional Information**

After the Ordinance was introduced at the City Council meeting on July 17, 2018, staff received a number of questions from the public, which are addressed in **Attachment 5 – Questions Answered**. Attachment 5 also provides insight by illustrating policy and legal considerations that were explored by staff during the drafting of the proposed Ordinance, demonstrating why certain issues were or were not addressed within the proposed Ordinance or were reserved for a project-specific use permit.

**ENVIRONMENTAL**

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

**FISCAL IMPACTS**

There will be no direct fiscal impacts to the City with the adoption of this Ordinance.

**ATTACHMENTS**

1. Ordinance 483 [pp. 7]
2. General Plan Land Use Map [pp. 1]
3. Excerpt of the Staff Report and Minutes from the July 17, 2018 City Council Meeting [pp. 109]
4. 500-, 750-, and 1000-Foot Buffer Map [pp. 1]
5. Questions Answered [pp. 10]

# **ATTACHMENT 1**

## **ORDINANCE NO. 483**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON ADOPTING AMENDMENTS TO CLAYTON MUNICIPAL CODE, TITLE 17 - ZONING IN ORDER TO RESTRICT AND REGULATE PAROLEE HOMES IN THE FOLLOWING GENERAL PLAN DESIGNATIONS: MULTIFAMILY LOW DENSITY, MULTIFAMILY MEDIUM DENSITY, AND MULTIFAMILY HIGH DENSITY, SUBJECT TO A CONDITIONAL USE PERMIT**

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

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

**WHEREAS**, the City and surrounding communities have seen an increased interest in the establishment of group homes for parolees and probationers. This interest is due, in part, to AB 109 and the increase number of parolees, probationers and others subject to post-release supervision. These uses may concentrate in residential zoning districts; and

**WHEREAS**, citizens of the City have expressed significant concerns regarding the impacts that a proliferation of parolee/probationer homes may have on the community, including, but not limited to, increased crime, impacts on traffic and parking, excessive delivery times and durations, commercial and/or institutional services offered in private residences, more frequent trash collection, daily arrival of staff who live off-site, loss of affordable rental housing, violations of boardinghouse and illegal dwelling unit regulations, obvious business operations, secondhand smoke, and nuisance behaviors such as excessive noise, litter, and loud offensive language; and

**WHEREAS**, the City adopted an interim zoning ordinance to establish a temporary moratorium on the establishment and operation of parolee and probationer homes in order to study appropriate regulations for these uses; and

**WHEREAS**, California experiences high recidivism rates, with approximately 60-70% of parolees being re-arrested within three years of release;<sup>1</sup> and

**WHEREAS**, crime and nuisance-related concerns may be alleviated through public review of the facility's operational and management plans, house rules, services and staffing plans, as well as buffers from sensitive children-oriented uses, including schools, daycares, parks, youth centers, and libraries, and from businesses selling alcohol; and

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<sup>1</sup> Cal. Dept. of Corrections, CALIFORNIA PRISONERS AND PAROLEES 2010: Summary Statistics On Adult Felon Prisoners and Parolees, Civil Narcotic Addicts and Outpatients and Other Populations (2011) p. 90, at: [https://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Annual/CalPris/CALPRISd2010.pdf](https://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/CalPris/CALPRISd2010.pdf); see also, Public Policy Institute of California, *Realignment and Recidivism in California* (December 2017), p.3, at: [http://www.ppic.org/wp-content/uploads/r\\_1217mbr.pdf](http://www.ppic.org/wp-content/uploads/r_1217mbr.pdf)

**WHEREAS**, in response to concerns that residential neighborhoods not become institutionalized with parolee homes and that residents of parolee homes fail to integrate into the community, the ordinance would ensure that parolee homes are separated from other parolee homes as well as other quasi-institutional uses, including hospitals, group homes, emergency shelters, and supportive or transitional housing, to avoid an overconcentration of such uses in residential neighborhoods; and

**WHEREAS**, other public health, safety, and welfare concerns may be alleviated through enforcement of existing regulations and discretionary review of proposed land use applications; and

**WHEREAS**, following the results of this planning and research process, the City now desires to adopt permanent regulations to restrict parolee and probationer housing to Clayton's multi-family residential General Plan designations subject to the granting of a conditional use permit and the conditions, regulations and limitations stated herein.

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

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

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3. Residents share meals, household activities, expenses, and responsibilities.
4. All adult residents have chosen to jointly occupy the entire premises of the dwelling unit; and they each have access to all common areas.
5. If the dwelling unit is rented, each adult resident is named on and is a party to a single written lease that gives each resident joint use and responsibility for the premises.
6. Membership of the household is determined by the residents, not by a landlord, property manager, or other third party.
7. The residential activities of the household are conducted on a nonprofit basis.

8. Residents do not have separate entrances or separate food-storage facilities, such as separate refrigerators, food-prep areas, or equipment.”

**Section 5. Amendment to Clayton Municipal Code – Multiple Family Residential District Regulations.** Clayton Municipal Code Section 17.20.030, entitled “Permitted Uses-Principal” is hereby amended and restated (new text in underline) as follows:

**“17.20.030 - Permitted Uses—Principal.**

The principal permitted uses in the multiple family residential districts shall be as follows:

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

B. Supportive housing and transitional housing;

C. Single family dwelling units only with a Conditional Use Permit (See Section 17.60.030.B.5).

D. Employee housing providing accommodations for six (6) or fewer employees, provided that a conditional use permit is obtained. Such permit shall be reviewed and issued under the same procedures and in the same manner as that permit issued for single family dwelling units (See Section 17.60.030.B.5).

E. Parolee homes only with a Conditional Use Permit (See Section 17.60.030.B.7).”

**Section 6. Amendment to Clayton Municipal Code – Use Permits.** Clayton Municipal Code Section 17.60.030, Subdivision (B), related to Residential Related Uses requiring a use permit, is hereby amended to add subdivision (7) to read as follows:

“7. Parolee homes on land designated as Multifamily Low Density (MLD), Multifamily Medium Density (MMD) and Multifamily High Density (MHD) on the General Plan Land Use Map. (See Section 17.36.086).”

All other provisions contained in Section 17.60.030 of the Clayton Municipal Code shall remain in full force and effect.

**Section 7. Amendment to Clayton Municipal Code – General Regulations.** Clayton Municipal Code, Section 17.36.086 entitled “Standards for Parolee Homes” is hereby adopted to read as follows:

**“17.36.086 – Standards for Parolee Homes.**

**Parolee homes are only permitted with a conditional use permit on land designated Multifamily Low Density (MLD), Multifamily Medium Density (MMD) or Multifamily High Density (MHD) on the General Plan Land Use Map and in either a Planned Development (PD) zoning district or in a Multiple Family Residential zoning district (M-R, M-R-M, or M-R-H), subject to the development standards of the zone. Parolee homes must also meet the following objective development standards:**

**A. Location requirements:**

- 1. A parolee home shall be located a minimum distance of at least five hundred (500) feet from any public or private school (preschool through 12<sup>th</sup> grade), licensed daycare, library, public park, hospital, group home, business licensed for on- or off-sale of alcoholic beverages, youth center, emergency shelter, supportive or transitional housing when measured from the exterior building walls of the parolee home to the property line of the sensitive use.**
- 2. A parolee home shall be located a minimum distance of 1,000 feet from any other parolee home.**

**B. The application for a discretionary use permit for a parolee home shall include the following additional information:**

- 1. Client profile (the subgroup of the population of the facility is intended to serve such as single men, families, etc.);**
- 2. Maximum number of occupants and hours of facility operation;**
- 3. Term of client stay;**
- 4. Support services to be provided on-site and projected staffing levels; and**
- 5. Rules of conduct and/or management plan.**

**C. Multifamily housing projects with 25 units or less shall be limited to one parolee home unit. Multifamily housing projects with more than 25 units shall be limited to two parolee home units. For purposes of this subsection, “multifamily housing project” means a building designed or used for more than two (2) dwelling units sharing common walls on one lot, including apartments and condominiums, but not including attached single-family homes or townhomes.**

**D. On-site staff supervision shall be required during all hours of the parolee home operation and the supervision shall not be provided by an active parolee.**

**E. Any change in operating conditions that were approved in the conditional use permit shall require the immediate submittal of an application to modify the conditional use permit.”**

- F. Notice Requirement. In addition to any other requirements of Chapter 17.64, all property owners within 500 feet of the proposed parolee home, as measured from the subject property lines, shall be notified of any public hearing regarding a parolee home.

**Section 8. CEQA.** This Ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment as the Ordinance relates to permit procedures for parolee housing in existing multi-family residential land use designations.

**Section 9. Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

**Section 10. Effective Date and Publication.** This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution by the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause the amendments adopted in Sections 2 through 7 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a regular public meeting of the City Council of the City of Clayton held on July 17, 2018.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular public meeting thereof held on September 18, 2018 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Keith Haydon, Mayor

ATTEST

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

APPROVED AS TO FORM.

APPROVED BY ADMINISTRATION

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

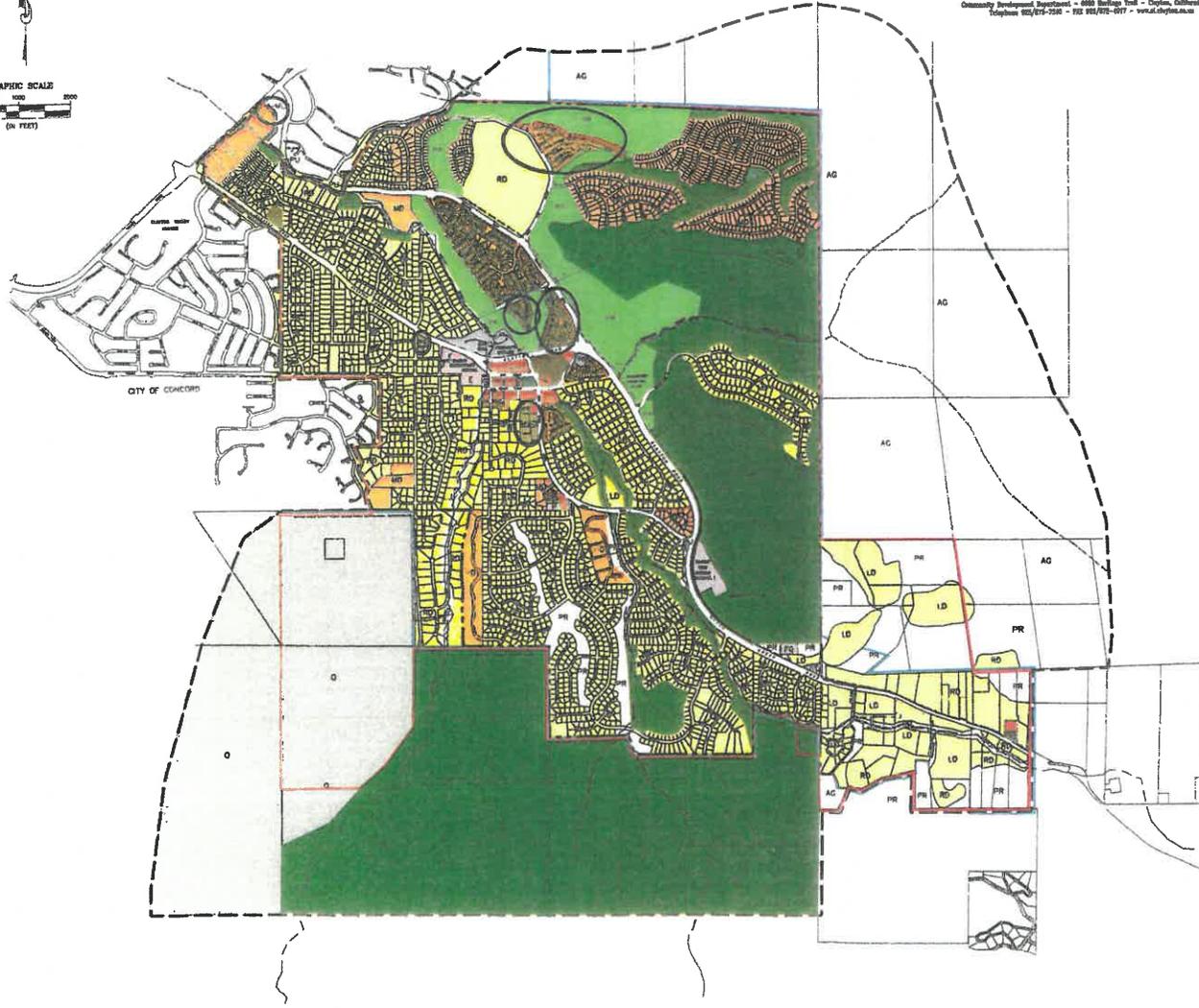
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Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on September 18, 2018.

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

# ATTACHMENT 2

## GENERAL PLAN DIAGRAM



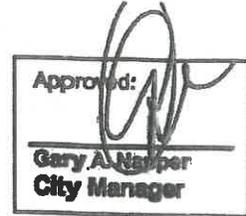
### LEGEND

- |  | RESIDENTIAL  | UNITS/GROSS ACRE |
|--|--|------------------|
| RD   | RURAL ESTATE   | (0 TO 1.0)       |
| LD   | SINGLE FAMILY LOW DENSITY                              | (1.1 TO 3)       |
| MD   | SINGLE FAMILY MEDIUM DENSITY                           | (3.1 TO 5)       |
| HD   | SINGLE FAMILY HIGH DENSITY                             | (5.1 TO 7.5)     |
| MFLD   | MULTIFAMILY LOW DENSITY                                | (7.6 TO 10)      |
| MMD  | MULTIFAMILY MEDIUM DENSITY                             | (10.1 TO 15)     |
| MHD  | MULTIFAMILY HIGH DENSITY                               | (20)             |
| Inst. Density                                      | INSTITUTIONAL DENSITY                                  | (7.6 TO 20)      |
| <b>COMMERCIAL</b>                                  |  |                  |
| Town Center  | TOWN CENTER  |                  |
| Worker Corridor                                    | WORKER CORRIDOR  |                  |
| Convenience Commercial                             | CONVENIENCE COMMERCIAL                                 |                  |
| <b>COMMUNITY FACILITIES</b>                        |  |                  |
| CV   | CULTURAL CENTER  |                  |
| PO   | PUBLIC/QUASI-PUBLIC                                    |                  |
| I  | INTERMEDIATE SCHOOL                                    |                  |
| E  | ELEMENTARY SCHOOL                                      |                  |
| P  | PRIVATE SCHOOL   |                  |
| <b>OPEN SPACE</b>                                  |  |                  |
| PR   | PRIVATE OPEN SPACE                                     |                  |
| Public Park/Open Space/Open Space and Recreational | PUBLIC PARK/OPEN SPACE/<br>OPEN SPACE AND RECREATIONAL |                  |
| AG   | AGRICULTURE  |                  |
| Q  | QUARRY   |                  |
| Private Open Space (Golf Course)                   | PRIVATE OPEN SPACE (GOLF COURSE)                       |                  |
| TRAILS   |  |                  |
| <b>BOUNDARIES</b>                                  |  |                  |
| City Limits  | CITY LIMITS  |                  |
| Sphere of Influence                                | SPHERE OF INFLUENCE                                    |                  |
| Urban Limit Line                                   | URBAN LIMIT LINE                                       |                  |
| Planning Area                                      | PLANNING AREA  |                  |

DATE	RESOLUTION NUMBER	AMENDMENT
7/17/85	22-88	ADOPTION OF CLAYTON 2000 GENERAL PLAN
3/6/87	21-87	KELLER BANCH
3/2/88	13-88	CRYSTONE ESTATES
4/17/90	25-90	DAKWOOD SUBDIVISION
8/15/93	43-93	DOUGLAS ROAD
2/21/95	06-95	MARSH CREEK CIRCLE
8/28/95	43-95	MARSH CREEK ROAD SPEEDUP PLAN
12/1/95	04-98	DIABLO VILLAGE
7/18/99	48-2000	MARSH CREEK ROAD/CLAYTON ROAD
6/1/04	23-2004	DOWNTOWN PARK
7/16/05	03-05	CITY HALL / COMMUNITY LIBRARY
4/8/05	13-2005	DAK CREEK CANYON
12/21/04	63-2004	DIABLO POINT
3/8/07	08-2007	TOWN CENTER AND VICINITY
4/2/12	11-2012	OLD MARSH CREEK ROAD/CLAYTON ROAD

# ATTACHMENT 3

Agenda Date: 7-17-2018  
Agenda Item: 7b



## AGENDA REPORT

**TO: HONORABLE MAYOR AND COUNCIL MEMBERS**

**FROM: MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR**

**DATE: JULY 17, 2018**

**SUBJECT: PUBLIC HEARING TO CONSIDER THE INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 17 – "ZONING" OF THE CLAYTON MUNICIPAL CODE TO RESTRICT AND REGULATE PAROLEE HOMES (ZOA-08-16)**

### RECOMMENDATION

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

- 1) Following closure of the Public Hearing, subject to any changes by the City Council, adopt a motion to have the City Clerk read Ordinance No. 483 by title and number only and waive further reading; and
- 2) Following the City Clerk's reading, by motion approve Ordinance No. 483 for Introduction to amend the Clayton Municipal Code Chapter 17 – "Zoning" to restrict and regulate parolee homes in the following General Plan designations: Multifamily Low Density (MLD), Multifamily Medium Density (MMD), and Multifamily High Density (MHD), subject to a conditional use permit (ZOA-08-16) (Attachment 1).

## **BACKGROUND**

Issues with overcrowding and high rates of recidivism within the State of California's corrections and prison system have been percolating for over a decade. In 2006, Governor Schwarzenegger issued Proclamation 4278 declaring a state of emergency with regards to its prisons. During this time, the total inmate population was at an all-time high of more than 170,000 inmates and due to prison overcrowding more than 15,000 inmates were being housed in camps, hallways, gymnasiums, classrooms, and other common areas as well as out-of-state contract prisons. Further, in 2007, a report, *Solving California's Correction Crisis: Time is Running Out*, issued by the Little Hoover Commission, an independent state oversight agency, determined the failing correctional system to be the largest and most immediate crisis facing policy-makers (Attachment 2). The report's notable recommendations included shifting the responsibility and accountability for offender reintegration to the communities as well as to expand local capacity within the county jail system, amongst others.

In May 2011, the United States Supreme Court determined California's overcrowded prisons were a violation of the Eighth Amendment's ban on cruel and unusual punishment (*Brown, et al. v. Plata, et al*) (Attachment 3). The Supreme Court upheld the decision by the lower court, which found that "an inmate in one of California's prisons needlessly dies every six or seven days due to constitutional deficiencies." This decision by the Supreme Court mandated California to reduce its prison population in the State's prisons by more than 30,000 inmates, or 137.5% of design capacity, within two years.

## **ASSEMBLY BILL 109**

The State of California had several options to comply with the court-mandated reduction of its prison population such as new construction, transfers out of state, and/or using county facilities; however, the State legislature chose the latter, to relocate a portion of its prison population to county facilities. More specifically, the State legislature, in response to the Supreme Court's decision, passed Assembly Bill 109, the Public Safety Realignment Act, which went into effect on October 1, 2011 (Attachment 4).

The passage of AB 109 represented a significant and massive change to the California criminal justice system. AB 109 prospectively transferred the responsibilities for supervising and housing specified inmates and parolees from the California Department of Corrections and Rehabilitation (CDCR) to each of the counties with a goal to reduce recidivism. Under AB 109 (or Realignment), it allows newly-convicted low-level offenders (non-violent, non-serious, non-sex offenders) to serve one's sentence in county jails instead of state prisons or to receive an alternative sanction such as electronic monitoring. AB 109 also expanded the role for post-release supervision (also known as parole) of these offenders by transferring the supervision responsibility from the state to the counties, known as Post-Release Community Supervision (PRCS). PRCS enacted a larger reliance on "community-based punishment", to reduce recidivism. These programs include community-based residential programs, mandatory community service, home detention with electronic monitoring, day

reporting, work in lieu of confinement, mandatory residential or nonresidential substance abuse treatment programs, amongst others.

County-level supervision does not include:

- Inmates paroled from life terms to include third-strike offenders;
- Offenders whose current commitment offense is violent or serious, as defined by California Penal Code Section 667.5(c) and 1192.7(c);
- High-risk sex offenders, as defined by CDCR;
- Mentally disordered offenders; nor
- Offenders on parole prior to October 1, 2011.

#### STATE INCARCERATION PROGRAMS

It should be noted: California has one of the most expensive prison systems in the entire world with the current average cost, according to the California Legislative Analyst's Office, of about \$71,000 per year to incarcerate an inmate in prison, and those costs are going up to approximately \$80,000 per inmate under the FY 2018-19 budget (Attachment 5). Over 75 percent of those costs are for security and inmate health care. In addition, the average annual cost has increased about 45 percent due to employee compensation, increased cost of health care, and operational costs related to additional prison capacity to reduce prison overcrowding.

Due to these exorbitant costs associated with housing inmates and those costs rapidly increasing, the State of California is steadily moving away from incarceration as its public policy. For example, Propositions 47 and 57 reduced the penalties for some crimes from felonies to misdemeanors and increased the use of parole and good behavior opportunities for felons convicted of nonviolent crimes, respectively. These two propositions have decreased the number of inmates being incarcerated by the State and the County through the reclassification of crimes as well as the use of alternative custody options in lieu of serving time in jail. Both at the federal and state levels, the trend and the push has been to decrease the country's incarceration rate, which is the highest of any nation worldwide. There has also been a shift from incarceration to parole, which redirection results in more community based supervision. This paradigm shift from mass incarceration places a greater burden at the local level, and this City must be better prepared for anticipating these individuals within the community.

The State of California has several programs to assist pre- and post-release offenders in successfully returning to his/her original community. These programs and services are delivered through alternative custody arrangements such as residential services, outpatient, and drop-in centers. These alternative custody programs allow those eligible to serve the remainder of one's sentence or be paroled into the community rather than serve additional time in state prison. Given the State of California's reposition from incarceration due to its high associated costs as well as failure of the correctional system with high rates of recidivism, it is anticipated and expected the use of community residential programs is

bound to increase both at the state and the county level as the outcome of trickle-down court mandates and state policy implementations.

**CONTRA COSTA COUNTY'S IMPLEMENTATION OF AB 109**

In response to AB 109, the Contra Costa County Board of Supervisors initially adopted the Contra Costa County Realignment Implementation Plan (**Attachment 6**). The Implementation Plan indicates that it is a work in progress with continued discussions regarding strategies to minimize incarceration of the AB 109 population such as remodeling the County's bail process, holding early disposition hearings, and increasing the use of electronic monitoring. The Plan acknowledges its attempt to meet the stated legislative objectives within its limited funding allocation, but admits it falls short and cannot provide a full complement of incarceration, supervision, and rehabilitative/re-entry services contemplated by AB 109 due insufficient funds. Further, the County has indicated the current levels of funds from the State are inadequate to manage the Community Corrections Partnership budget, which is the group charged with implementing AB 109, and the County is having to continue to withdraw from its reserves to fund the difference and will continue to do so for the foreseeable future.

One of the outcomes of the Implementation Plan is to provide a system of alternatives to post-conviction incarceration, where appropriate, to not overburden the County's detention facilities; therefore, these individuals will be "realigned" to living in a community rather than serving time in jail. One of the County's Implementation Plan strategies indicates additional bed space will be reserved for AB 109 clients provided in partnership with local community-based organizations; it acknowledges the Sheriff has the ability to offer home detention with an electronic monitoring program for inmates being held in lieu of bail in the County Jail or another County correctional facility. AB 109 also required the County to utilize AB 109 funds to build partnerships with local health and social service agencies and community based services to provide supportive services designed to facilitate successful reentry and to decrease the rates of recidivism.

According to the County's *Public Safety Realignment Report for FY 16/17*, the County, over the past several years has focused on formalizing partnerships between different law enforcement agencies, health and social service agencies, and AB 109-contracted community based organizations (**Attachment 7**). These partnerships have resulted in a higher number of referrals to reentry support services. More specifically, in FY 2016-17 there were key changes and refinements to the County's approach to AB 109, which increased investments in housing services and supports to address the high cost of housing. The Annual Report also illustrates there is an increase in the number of AB 109 clients doing residential substance abuse treatment programs as well as an increased need in acute residential detoxification services.

The Annual Report further acknowledges the County will need to undertake a comprehensive planning process to guide the County's parole reentry system as a whole, not just those individuals limited to AB 109, which will be studied under the *Reentry Strategic*

**Plan for 2018-2023.** This five-year Strategic Plan, which has yet to be adopted by the Board of Supervisors, will address not only those under AB 109, but will include all individuals regardless of AB 109 status because the County identified a need for an inclusive reentry system. Further, the County granted approval to expand access to AB 109-funded services to any returning resident; therefore there will be an increase in demand for housing and services beyond the requirements of AB 109 for these individuals within the communities of Contra Costa.

Clayton city staff reached out to the Contra Costa County Sheriff's Office and to the Office of Reentry and Justice (ORJ). ORJ was created in 2017 as a 2.5 year pilot program to align and advance the County's public safety realignment, reentry, and justice programs and is mainly funded by AB 109 (Attachment 8) to further determine how the County was implementing AB 109 as well as to compile additional information for the Council to consider regarding this matter.

The ORJ has indicated there is a lack of compiled information regarding parolees and probationers. Staff was able to receive some information regarding the number of parolees by jurisdiction, which is provided in the table below; but ORJ staff has indicated there is no information by jurisdiction for individuals on probation. The table below clearly demonstrates the existing momentum and the shift in public policy is achieving reduction in incarceration rates; it also shows there are far more parolees in other communities within in Contra Costa County than within Clayton. The dramatic decrease in parolees between 2014 and 2017 is largely due to the passage of Proposition 47, which reclassified certain felonies to misdemeanors.

Jurisdiction	# of Active Parolees 11/3/14	# of Active Parolees 12/1/17
Alamo	1	1
Antioch	142	77
Bay Point	21	15
Bethel Island	7	6
Brentwood	10	13
Byron	1	1
Clayton	19	5
Concord	45	54
Crockett	4	1
Danville	3	1
Discovery Bay	1	1
El Cerrito	4	3
El Sobrante	17	7
Hercules	12	2
Knighten	1	0
Lafayette	1	1
Martinez	83	46
Oakley	19	14

Pacheco	2	3
Pinole	12	5
Pittsburg	98	33
Pleasant Hill	4	3
Richmond	190	84
Rodeo	7	4
San Pablo	47	22
San Ramon	9	2
Walnut Creek	10	5
<b>Totals</b>	<b>775</b>	<b>410</b>

In addition, ORJ staff did indicate there were no individuals under AB 109 supervision reporting a Clayton address at this time; however there were individuals under juvenile supervision, court supervision, and traditional probation.

Additionally, ORJ staff provided that the County does not directly operate any residential homes for parolees; the County is relying on community based programs for the provision of services and housing, as indicated above. In reviewing the budget for AB 109, Contra Costa County is currently housing some inmates under alternative custody scenarios, such as placement in shelters, recovery residences, and residential treatment facilities (Attachment 9). For example, the County has 30 clients at a day reporting center in Richmond and that program has relationships with providers to house to some of the participants. Also, under AB 109, the County rents beds from different residential treatment providers that may have all or a portion of their clientele made up of formerly incarcerated individuals as well as rents beds at homeless shelters.

The County currently houses individuals at five locations in Concord, three in Antioch, two in Pittsburg, one in Bay Point, and one in Martinez. These facilities are typically operated by a community based non-profit organization, and staff from the Contra Costa County Sheriff's Office has indicated these types of alternative custody placements will only be more prevalent due to the increasing costs of housing inmates in the County jail, the shift of lower level offenders not being incarcerated, and AB 109 services being expanded to all parolees/probationers that are Contra Costa County residents. Therefore, it is anticipated there will be an increase in these types of residential uses catering to parolees, which could conceivably locate in all communities, including Clayton. This will also more than likely lead to the expansion of existing non-profits and the creation of new non-profits due to availability of grant funding from programs associated with the implementation of AB 109 and the expansion of those services County-wide.

ORJ staff also indicated there are several private organizations that run homes for the parolee/probationer population and they "... are under the radar since communal housing is not required to report its existence to anyone." The proposed City Ordinance's objective is to prevent these private organizations from "flying under the radar" within the City of Clayton

and would geographically restrict their location and regulate how they operate as well as require these private organizations to apply for a City use permit.

#### **PLANNING COMMISSION HEARING**

On May 22, 2018, the Planning Commission held a public hearing and recommended the City Council deny the proposed Ordinance which would result in the City Council not taking action on the proposed Ordinance and maintaining the status quo (Attachment 10 and 11). During the public hearing there were over 20 speakers with such comments as: the City should ban parolee housing outright, slow the implementation of the regulation of parolee homes, consideration should be given to increasing the buffers contained in the Ordinance, and the adoption of the proposed Ordinance would be inviting parolees to locate in Clayton. The Planning Commission indicated it had concerns with parolee homes being able to locate anywhere in Clayton and not subject to regulations, which statement is the current state of law in Clayton; however, it expressed the Ordinance should be refined yet the Commission did not provide any direction to staff regarding those refinements.

#### **DISCUSSION**

The Clayton Municipal Code is currently silent and does not address parolee homes. Therefore, under present conditions, if an organization, individual, and/or State or Contra Costa County grantee sought to locate a parolee home in the City of Clayton, the use would be permitted by right. "Permitted by right" means a parolee home would be able to locate in any residential district without a buffer between it and a sensitive use and would not be subject to any regulations or controls beyond those of a typical residential use. Further, if the organization were a non-profit, even a City business license would not be required, leaving our community exposed and without any type of notification or control regarding a parolee home.

On August 5, 2016, the City of Clayton received an inquiry from a non-profit County contractor/grantee (Mz. Shiriez). The query was searching for a community to house a facility where a use permit would not be required in order to operate what it described as a transitional housing program to assist individuals, many that have been previously incarcerated (Attachment 12). Given the Clayton Municipal Code was silent on parolee housing, this prompted City staff and the City Council, in compliance with State law (Government Code Section 65858), on October 16, 2016 to immediately adopt an urgency ordinance placing an interim moratorium on the establishment, construction, and operation of parolee homes and community supervision programs. As allowed for by State law, the moratorium was continued twice by the City Council with the last and final moratorium set to expire on October 3, 2018 (Attachment 13). After having the opportunity to research this issue, City staff is now returning to the City Council with a proposed Ordinance for consideration to appropriately restrict and regulate these types of land uses.

**IMPACTS OF AB 109 AND THE DECLINE OF INCARCERATION RATES TO CLAYTON**

A city, including Clayton, does not have control over how the State or Contra Costa County manages, directs, and supervises correctional and rehabilitation services; however a city does retain control over its land uses. The shift at the national and state level to decrease mass incarceration, the flux and fluidity regarding correctional services both at the State and at the County level due to the mandated reduction of the State prison population along with the County's implementation of AB 109 coupled with an inquiry from a County grantee for housing services has each raised a concern about the City's vulnerability regarding the placement of parolee homes within this city.

Please note: even though staff received the above inquiry in August of 2016, there are currently no requests or applications for parolee homes that have been submitted for consideration or are pending upon the expiration of the moratorium. The operator that inquired (Mz. Shirtez) regarding the placement of a home for parolees in Clayton subsequently opened a facility in Pittsburg. Therefore, there is no current interest from that particular organization. Should the moratorium expire without a regulatory ordinance in place, there is no foreseen immediate risk that staff is currently aware of; however, there could be long term risk if the City Council does not take action restricting and regulating this land use.

But when our interim moratorium automatically expires, if an ordinance is not adopted City staff has no formal process to be notified or know if a parolee home is established within any of our residential districts, since there would not be any local regulations in place. These factors result in Clayton having fewer regulations than other neighboring communities, which could then make our city more attractive to operators. Further consideration is referenced to County Supervisor Federal Glover's comments, in which he indicated, "...most nonprofits operate on very meager financial resources. The fee for a land use permit may be too burdensome for agencies and prevent them from providing services to the formerly incarcerated..." Alternatively, if local regulations are in place and then should a situation arise where a private organization catering to parolees establishes a home without City approval, the enactment now of the proposed Ordinance provides the City with a regulatory mechanism in order to take the necessary action to abate.

Clayton does have several inherent factors which highly decrease the likelihood of parolee homes wishing to be located within our city:

- 1) Low number of parolees originating from the community (state law requires the formerly incarcerated return to the communities of their last legal address);
- 2) Lack of convenient access to public transit;
- 3) Lack of rehabilitation services and programs to assist those that have been previously incarcerated (these services and programs tend to be established in communities with a higher number of parolees such as Richmond, Concord, and Antioch);
- 4) High cost of housing and land in Clayton; and

- 5) High rates of owner-occupied homes, which drastically reduces the possibility of a property owner renting a residential unit to such programs.

Even with all of these factors that decrease the likelihood of parolee homes locating in Clayton, City staff has highlighted vulnerability in the City's existing Municipal Code. Clayton does not have some of the protections regarding a larger breadth of land use classifications, such as group housing, to rely upon to regulate these uses. The proposed Ordinance is a legally defensible approach, which would help to close the vulnerability gap pertaining to this type of land use. If a regulatory ordinance is not established, parolee homes can locate anywhere in the city without any regulations, and without a public hearing process. Given the information presented above, the state's and county's reliance on community based supervision and on rehabilitative programs in the local community is only going to increase, and Clayton should be aptly prepared.

#### OTHER JURISDICTIONS

As part of this process, staff contacted other jurisdictions within the County regarding how this land use would be classified and handled.

Pleasant Hill: The Pleasant Hill Municipal Code classifies parolee homes as an unlicensed "care facility" and requires a use permit in all zoning designations, both residential and commercial. Pleasant Hill does not have established buffers or other regulations contained within its Municipal Code to further restriction such operations. Regulations of these facilities would be likely addressed during the use permit process; however there are no buffers prohibiting these uses adjacent to sensitive uses.

Walnut Creek: The Walnut Creek Municipal Code (WCMC) identifies parolee homes, depending on how they are operated, either as "Congregate Living Facility" or "Group Residential". "Congregate Living Facilities" (services are provided in the home) are prohibited in single-family and duplex residential districts but require a conditional use permit within the multifamily zoning designations. "Group Residential" (services are not provided in the home) uses are prohibited in the single-family and duplex residential districts, but are permitted by right in the multifamily zoning designations. Walnut Creek does not have buffers prohibiting these uses adjacent to sensitive land uses or to further restriction operations.

Danville: These facilities would be classified as "Group Homes" within Danville's Municipal Code. Group Homes with six or fewer residents would be permitted by right and those with seven or more would require a conditional use permit. Danville does not have buffers prohibiting these uses adjacent to sensitive land uses or to further restriction operations.

Concord: These facilities would be classified as "group housing". Group housing is not allowed in the zoning districts that are predominately single-family residential and

would require a use permit in Concord's Residential Medium (11 to 33 units per acre) and Residential High (33 to 100 units per acre) districts. The Concord Municipal Code does not have established buffers or other regulations contained within its Municipal Code to further restrict such operations. Regulations of these facilities would be likely addressed during the use permit process; however there are no buffers prohibiting these uses adjacent to sensitive uses.

Oakley: Following a training attended by a councilmember regarding the regulation of parolee homes, the City of Oakley adopted an ordinance in 2014. The adopted ordinance regulates and restricts parolee housing to two multifamily zoning districts, subject to a use permit. Its ordinance also contains operational restrictions, development standards as well as buffers around sensitive uses, similar to the proposed Clayton Ordinance. City staff has indicated no inquiries have been made to establish a parolee home in Oakley since the adoption of its ordinance. Oakley's ordinance is based on Riverside's, which has become a "model ordinance" for cities choosing to regulate this land use.

Pittsburg: This type of land use would be considered a "group home" and would be allowed in the multifamily zoning districts, subject to the approval of a conditional use permit. The Planning staff indicated the City of Pittsburg has not taken any action specific to parolee homes, but revisions to its Code to manage these type of uses is on their radar for consideration. The group home land use classification does not have a required buffer between sensitive land uses or operational or development standards as proposed in the subject Ordinance. Specifically regarding Mz. Shirlez's parole housing establishment, Pittsburg's planning staff was unsure if or how it was permitted to operate and would be looking into it.

Antioch: Restrictions and regulations for parolee homes, along with the County's community supervision programs pertaining to the transition of the reentry of incarcerated persons, were adopted in June of 2014 to respond and to control land uses pertaining to the implementation of AB 109. Parolee homes are allowable in the industrial zoning districts subject to a use permit and also require a buffer around sensitive land uses.

In summary, each jurisdiction classifies and deals with parolee homes differently; however the majority of jurisdictions have some type of land use classification that addresses communal living situations. Most of the surveyed cities require a use permit, which is greater regulation than what currently exists in Clayton. Presently these uses would be permitted by right in Clayton and not subject to any regulations beyond a typical residential use. Even fewer jurisdictions have codified buffers around sensitive uses, additional operational regulations, or development standards in order to maintain land use control.

## **PROPOSED ORDINANCE**

The proposed Ordinance would restrict parolee homes to only be allowed to locate within the multifamily General Plan land use designations: Multifamily Low Density (MLD), Multifamily Medium Density (MMD), and Multifamily High Density (MHD), as identified on the General Plan Map, subject to a conditional use permit as well as additional regulations identified in the Ordinance. These land uses are located in various places throughout the City, which are more specifically identified on the General Plan Land Use Map, which is contained in Attachment 14 to this staff report.

In addition to the General Plan designation locations, parolee homes would only be permitted with a conditional use permit in either a Planned Development (PD) zoning district or in a Multiple Family Residential zoning district (M-R, M-R-M, or M-R-H). The conditional use permit process would require a public hearing, whereby property owners within a 300-foot radius would be individually notified. A notice would also be placed in a newspaper of general circulation and a notice would be posted on the City's community posting boards. The use permit application would be reviewed and analyzed by staff and then be subject to a discretionary review and public hearing by the City's Planning Commission.

The proposed Ordinance provides clear definitions of what constitutes a parolee home and a parolee. Further, single housekeeping units would not be subjected to the regulations and there are eight criteria as to what constitutes a single housekeeping unit. Namely, the residents need to have established ties and interact with each other; membership of the household is determined by the residents and not the landlord; each adult resident is named on the lease; and residents do not have separate entrances or food-prep and storage areas, amongst others.

Not only have locational requirements been proposed, but also numerous objective standards have also been incorporated into the Ordinance to mitigate or minimize any impacts, such as requiring onsite supervision 24 hours a day seven days a week. A parolee home cannot be located within 500 feet from any school, daycare, library, park, hospital, group home, or a business licensed for the on- or off-sale of alcoholic beverages, or emergency shelter, amongst others. It also must not be located within 1,000 feet of another parolee home to minimize geographic overconcentration. As part of the use permit application process, the proposed Ordinance requires additional information such as the client profile, maximum number of occupants, and a management plan.

Lastly, multifamily housing projects with 25 units or less are limited to one parolee housing unit and housing projects with 25 units or more are limited to two parolee housing units. These thresholds would be applicable in apartment and condominium style buildings.

It should be noted, as part of the use permit process additional conditions of approval, beyond what is contained in the proposed Ordinance could be added to mitigate any possible impacts associated with the specific application. These conditions would be

considered on a case-by-case basis, which would be determined by the applicant's proposal and the location of the facility.

#### **MODIFICATIONS TO THE DRAFT ORDINANCE**

Following the May 22, 2018 Planning Commission meeting, staff conducted additional studies and in consultation with the City Attorney's office, refined its proposal to increase the buffer from sensitive uses from the originally contemplated 300 feet (**Attachment 15**) to a recommended distance of 500 feet (**Attachment 16**). Staff originally suggested 300 feet based on existing Municipal Code buffers for other uses such as emergency shelters. In response to the community input at the Planning Commission hearing, staff reviewed the differences in the maps between a 300-foot buffer and a 500-foot buffer. In light of the high recidivism rates in the parolee population, staff feels the larger 500-foot buffer is justified. The City Attorney's office indicated this approach would be legally defensible given there are still two to three feasible locations wherein parolee homes could possibly locate, as opposed to the three to four that was previously recommended. By expanding the buffer to 500 feet, this eliminates the multifamily designated area closest to the elementary school and further separates parolee homes from locating near the library and The Grove Park. However, any increase beyond a 500-foot buffer starts to become increasingly difficult to accommodate the two to three feasible locations for a parolee home.

Added to the proposed Ordinance is a requirement to provide onsite supervision 24 hours a day seven days a week. A modification to the definition of parolee home was made which was the deletion of the requirement that the definition did not apply to any state licensed care facility or residential treatment facility serving six or fewer persons.

#### **ALTERNATIVES**

**OPTION 1:** Regulate the Land Use (Approve the proposed regulatory Ordinance as it is currently drafted).

This is the most legally defensible option while still providing the community with a level of protection for public safety by regulating these types of uses. The adoption of the proposed Ordinance would also remove a gap and vulnerability in the City's existing Municipal Code pertaining to parolee homes. Most jurisdictions already have mechanisms and land use categories in place to classify and manage these land uses, whereas Clayton does not.

In addition, the City Council could also direct staff to make modifications to the proposed Ordinance regarding the various proposed regulations or to change the allowable General Plan or zoning designations from the proposed multifamily districts to another district. For example, relocating this use to the single-family zoning districts could accommodate larger buffer zones around sensitive uses, but would open the location of parolee homes to a much larger geographic region in Clayton.

**OPTION 2: Maintain the status quo (Take no action).**

In the absence of regulatory action, this inaction would allow any organization, County or State grantee/operator, or program to establish a parolee home in any residentially zoned location within the Clayton city limits, without any land use regulations or development standards, located adjacent to sensitive uses, and without a public hearing process. The City would only become aware of the existence of a parolee home after it had already been established and operational, likely by neighborhood inquiries or complaints. If the City were then to rush and quickly enact local regulations after a parolee home had been established, the existing use would be considered legal non-conforming or "grandfathered-in" and the City would have no legal grounds to remove the parolee housing use from its established location.

**OPTION 3: Prohibit Parolee Housing (Direct staff to draft an ordinance banning parolee homes from operating within the City of Clayton).**

Some cities, which are the exception, have taken a more aggressive approach regarding parolee homes. The City of Newport Beach (in 2008) and the City of Colton (in 2010) each banned parolee homes or have limited the number of parolees to one in a Boarding, Lodging, or Rooming House, respectively. Most cities that have decided to directly confront the issue of parolee homes have decided to regulate it, as is proposed for Clayton (Riverside, Oakley, Desert Hot Springs, Norco, Fontana, amongst others).

The selection of Option 3 could result in legal exposure for the City. There is no law specifically prohibiting a ban on parolee housing, no bright-line rule, or legal precedence; however, given the fact the United States Supreme Court has mandated the State of California reduce its prison population and the State summarily enacted AB 109 as law, City staff and legal counsel have serious concerns whether a decision to ban parolee housing would prevail in the courts. Doing so would result in a costly expense for Clayton to undertake a legal challenge (hundreds of thousands to over a million dollars in legal costs, and Clayton could also be responsible for the other party's legal fees if the City did not prevail). Due to there being no legal precedence, City staff has concerns regarding the selection of this Option because Clayton's ban could become the legal test case for this issue, which would incur large legal costs associated with the challenge.

In terms of public policy: if more cities start to ban parolee housing it then would make it difficult for the State and subsequently the counties to fulfill its mandated obligation under AB 109 to manage the incarcerated populations, thereby placing the State in a position to either pass legislation forcing cities to allow for parolee housing and/or result in a lawsuit challenging those cities that have prevented the placement of parolees.

Further, such local prohibition would not preclude civil rights organizations from filing a lawsuit, such as the ACLU (which is well aware of the Realignment in California and has

even produced a report, *Public Safety Realignment: California at a Crossroads*, on an in-depth review of all 53 available county realignment implementation plans). As a harbinger to staff's warning the ACLU sent a letter to the City of Antioch when it was drafting its regulations regarding the implementation of AB 109 asserting the adoption would likely result in a disproportionate impact to African Americans (**Attachment 16**) and therefore is discriminatory and may violate State law, which prohibits those public entities receiving state funds from racial discrimination. While Antioch and Clayton are seemingly very different communities in regards to this issue, the point is that civil rights groups are paying attention to local government actions in this regard and the ACLU is not at all reticent about filing lawsuits. As a small city with limited financial resources, Clayton, if it adopts a ban, could become the favored guinea pig by such groups, a legal test case or made an example (set case law) if our local ban were to be challenged and not prevail in the courts.

### **ENVIRONMENTAL**

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

### **FISCAL IMPACTS**

There will be no direct fiscal impacts to the City with the adoption of this Ordinance or the selection of any of the proposed alternatives. However, Option 3 does pose a risk to the financial capacity of the City.

### **ATTACHMENTS**

1. Ordinance No. 483 [pp. 7]
2. Executive Summary - *Solving California's Correction Crisis: Time is Running Out* [pp. 4]
3. U.S. Supreme Court Syllabus for *Brown, et al. v. Plata, et al.* [pp. 6]
4. California Department of Corrections and Rehabilitation Assembly Bill 109 Fact Sheet [pp.4]
5. Legislative Analyst's Office Annual Cost to Incarcerate an Inmate in Prison [pp. 2]
6. *Contra Costa County 2011/12 Public Safety Realignment Implementation Plan* [pp. 19]
7. Excerpt from *Public Safety Realignment Report for FY 16/17* [pp. 8]
8. Overview of the Office of Reentry and Justice [pp.1]
9. Excerpt from AB 109 Budgets [pp. 4]
10. Excerpt from the May 22, 2018 Planning Commission Staff Report [pp. 3]
11. Excerpt from the May 22, 2018 Planning Commission Minutes [pp. 10]
12. August 5, 2016 Email Inquiry from Mz. Shirlez [pp. 2]
13. Excerpt from the October 3, 2017 City Council Staff Report and Minutes [pp. 10]
14. General Plan Land Use Map [pp. 1]
15. 300' Radius Map [pp. 1]
16. 500' Radius Map [pp. 1]
17. Letter from the ACLU to Antioch [pp. 4]

## **ATTACHMENT 1**

### **ORDINANCE NO. 483**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON ADOPTING AMENDMENTS TO CLAYTON MUNICIPAL CODE, TITLE 17 - ZONING IN ORDER TO RESTRICT AND REGULATE PAROLEE HOMES IN THE FOLLOWING GENERAL PLAN DESIGNATIONS: MULTIFAMILY LOW DENSITY, MULTIFAMILY MEDIUM DENSITY, AND MULTIFAMILY HIGH DENSITY, SUBJECT TO A CONDITIONAL USE PERMIT**

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

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

**WHEREAS**, the City and surrounding communities have seen an increased interest in the establishment of group homes for parolees and probationers. This interest is due, in part, to AB 109 and the increase number of parolees, probationers and others subject to post-release supervision. These uses may concentrate in residential zoning districts; and

**WHEREAS**, citizens of the City have expressed significant concerns regarding the impacts that a proliferation of parolee/probationer homes may have on the community, including, but not limited to, increased crime, impacts on traffic and parking, excessive delivery times and durations, commercial and/or institutional services offered in private residences, more frequent trash collection, daily arrival of staff who live off-site, loss of affordable rental housing, violations of boardinghouse and illegal dwelling unit regulations, obvious business operations, secondhand smoke, and nuisance behaviors such as excessive noise, litter, and loud offensive language; and

**WHEREAS**, the City adopted an interim zoning ordinance to establish a temporary moratorium on the establishment and operation of parolee and probationer homes in order to study appropriate regulations for these uses; and

**WHEREAS**, California experiences high recidivism rates, with approximately 60-70% of parolees being re-arrested within three years of release;<sup>1</sup> and

**WHEREAS**, crime and nuisance-related concerns may be alleviated through public review of the facility's operational and management plans, house rules, services and staffing plans, as well as buffers from sensitive children-oriented uses, including schools, daycares, parks, youth centers, and libraries, and from businesses selling alcohol; and

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<sup>1</sup> Cal. Dept. of Corrections, CALIFORNIA PRISONERS AND PAROLEES 2010: Summary Statistics On Adult Felon Prisoners and Parolees, Civil Narcotic Addicts and Outpatients and Other Populations (2011) p. 90, at: [https://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Annual/CalPris/CALPRISd2010.pdf](https://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/CalPris/CALPRISd2010.pdf); see also, Public Policy Institute of California, *Realignment and Recidivism in California* (December 2017), p.3, at: [http://www.ppic.org/wp-content/uploads/r\\_1217mbr.pdf](http://www.ppic.org/wp-content/uploads/r_1217mbr.pdf)

WHEREAS, in response to concerns that residential neighborhoods not become institutionalized with parolee homes and that residents of parolee homes fail to integrate into the community, the ordinance would ensure that parolee homes are separated from other parolee homes as well as other quasi-institutional uses, including hospitals, group homes, emergency shelters, and supportive or transitional housing, to avoid an overconcentration of such uses in residential neighborhoods; and

WHEREAS, other public health, safety, and welfare concerns may be alleviated through enforcement of existing regulations and discretionary review of proposed land use applications; and

WHEREAS, following the results of this planning and research process, the City now desires to adopt permanent regulations to restrict parolee and probationer housing to Clayton's multi-family residential General Plan designations subject to the granting of a conditional use permit and the conditions, regulations and limitations stated herein.

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

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

**Section 2. Amendment to Clayton Municipal Code – Zoning Definitions.** Section 17.04.155 entitled "Parolee Home" is hereby added to the Clayton Municipal Code, Chapter 17.04 to read as follows:

**"17.04.155 Parolee Home.**

**"Parolee Home" means any residential or commercial building, structure, unit or use, including a hotel or motel, whether owned and/or operated by an individual or for-profit or non-profit entity, which houses two or more parolees, that is not operated as a single housekeeping unit, in exchange for monetary or non-monetary consideration given and/or paid by the parolee and/or any individual or public/private entity on behalf of the parolee."**

**Section 3. Amendment to Clayton Municipal Code – Zoning Definitions.** Section 17.04.156 entitled "Parolee" is hereby added to the Clayton Municipal Code, Chapter 17.04 to read as follows:

**"17.04.156 Parolee.**

**"Parolee" shall include probationer, and shall mean any of the following: (1) an individual convicted of a federal crime, sentenced to a United States Federal Prison, and received conditional and revocable release in the community under the supervision of a Federal parole officer; (2) an individual who is serving a period of supervised community custody, as**

defined in Penal Code Section 3000, following a term of imprisonment in a State prison, and is under the jurisdiction of the California Department of Correction, Parole and Community Services Division; (3) a person convicted of a felony who has received a suspension of the imposition or execution of a sentence and an order of conditional and revocable release in the community under the supervision of a probation officer; and (4) an adult or juvenile individual sentenced to a term in the California Youth Authority and received conditional revocable release in the community under the supervision of a Youth Authority parole officer. As used herein, the term "parolee" includes parolees, probationers, and/or persons released to post-release community supervision under the "Post-release Community Supervision Act of 2011" (Penal Code Section 3450 et seq.) as amended or amended in the future."

**Section 4. Amendment to Clayton Municipal Code – Zoning Definitions.** Section 17.04.186 entitled "Single Housekeeping Unit" is hereby added to the Clayton Municipal Code, Chapter 17.04 to read as follows:

**"17.04.186 Single Housekeeping Unit**

"Single housekeeping unit" means that the use of the dwelling unit satisfies each of the following criteria:

1. The residents have established ties and familiarity and interact with each other.
2. Membership in the single housekeeping unit is fairly stable as opposed to transient or temporary.
3. Residents share meals, household activities, expenses, and responsibilities.
4. All adult residents have chosen to jointly occupy the entire premises of the dwelling unit, and they each have access to all common areas.
5. If the dwelling unit is rented, each adult resident is named on and is a party to a single written lease that gives each resident joint use and responsibility for the premises.
6. Membership of the household is determined by the residents, not by a landlord, property manager, or other third party.
7. The residential activities of the household are conducted on a nonprofit basis.

8. Residents do not have separate entrances or separate food-storage facilities, such as separate refrigerators, food-prep areas, or equipment."

**Section 5. Amendment to Clayton Municipal Code – Multiple Family Residential District Regulations.** Clayton Municipal Code Section 17.20.030, entitled "Permitted Uses-Principal" is hereby amended and restated (new text in underline) as follows:

**"17.20.030 - Permitted Uses—Principal.**

The principal permitted uses in the multiple family residential districts shall be as follows:

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

B. Supportive housing and transitional housing;

C. Single family dwelling units only with a Conditional Use Permit (See Section 17.60.030.B.5).

D. Employee housing providing accommodations for six (6) or fewer employees, provided that a conditional use permit is obtained. Such permit shall be reviewed and issued under the same procedures and in the same manner as that permit issued for single family dwelling units (See Section 17.60.030.B.5).

E. Parolee homes only with a Conditional Use Permit (See Section 17.60.030.B.7)."

**Section 6. Amendment to Clayton Municipal Code – Use Permits.** Clayton Municipal Code Section 17.60.030, Subdivision (B), related to Residential Related Uses requiring a use permit, is hereby amended to add subdivision (7) to read as follows:

"7. Parolee homes on land designated as Multifamily Low Density (MLD), Multifamily Medium Density (MMD) and Multifamily High Density (MHD) on the General Plan Land Use Map. (See Section 17.36.086)."

All other provisions contained in Section 17.60.030 of the Clayton Municipal Code shall remain in full force and effect.

**Section 7. Amendment to Clayton Municipal Code – General Regulations.** Clayton Municipal Code, Section 17.36.086 entitled "Standards for Parolee Homes" is hereby adopted to read as follows:

**"17.36.086 – Standards for Parolee Homes.**

**Parolee homes are only permitted with a conditional use permit on land designated Multifamily Low Density (MLD), Multifamily Medium Density (MMD) or Multifamily High Density (MHD) on the General Plan Land Use Map and in either a Planned Development (PD) zoning district or in a Multiple Family Residential zoning district (M-R, M-R-M, or M-R-H), subject to the development standards of the zone. Parolee homes must also meet the following objective development standards:**

**A. Location requirements:**

- 1. A parolee home shall be located a minimum distance of at least five hundred (500) feet from any public or private school (preschool through 12<sup>th</sup> grade), daycare, library, public park, hospital, group home, business licensed for on- or off-sale of alcoholic beverages, youth center, emergency shelter, supportive or transitional housing when measured from the exterior building walls of the parolee home to the property line of the sensitive use.**
- 2. A parolee home shall be located a minimum distance of 1,000 feet from any other parolee home.**

**B. The application for a discretionary use permit for a parolee home shall include the following additional information:**

- 1. Client profile (the subgroup of the population of the facility is intended to serve such as single men, families, etc.);**
- 2. Maximum number of occupants and hours of facility operation;**
- 3. Term of client stays;**
- 4. Support services to be provided on-site and projected staffing levels; and**
- 5. Rules of conduct and/or management plan.**

**C. Multifamily housing projects with 25 units or less shall be limited to one parolee home unit. Multifamily housing projects with more than 25 units shall be limited to two parolee home units. For purposes of this subsection, "multifamily housing project" means a building designed or used for more than two (2) dwelling units sharing common walls on one lot, including apartments and condominiums, but not including attached single-family homes or townhomes.**

**D. On-site staff supervision shall be required during all hours of the parolee home operation.**

**E. Any change in operating conditions that were approved in the conditional use permit shall require the immediate submittal of an application to modify the conditional use permit."**

**Section 8. CEQA.** This Ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment as the Ordinance relates to permit procedures for parolee housing in existing multi-family residential land use designations.

**Section 9. Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

**Section 10. Effective Date and Publication.** This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution by the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause the amendments adopted in Sections 2 through 7 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a regular public meeting of the City Council of the City of Clayton held on July 17, 2018.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular public meeting thereof held on September 18, 2018 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

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Keith Haydon, Mayor

ATTEST

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

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

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

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

I hereby certify that the foregoing Ordinance was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on September 18, 2018.

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

# ATTACHMENT 2

## *Executive Summary*

California's correctional system is in a tailspin that threatens public safety and raises the risk of fiscal disaster. The failing correctional system is the largest and most immediate crisis facing policy-makers. For decades, governors and lawmakers fearful of appearing soft on crime have failed to muster the political will to address the looming crisis. And now their time has run out.

State prisons are packed beyond capacity. Inmates sleep in classrooms, gyms and hallways. Federal judges control inmate medical care and oversee mental health, use of force, disabilities act compliance, dental care, parolee due process rights and most aspects of the juvenile justice system. Thousands of local jail inmates are let out early every week as a result of overcrowding and court-ordered population caps. The State may soon face the same fate.

The Governor declared a state of emergency. But even that didn't bring action, only more reports to federal judges that underscore the fact that the State's corrections policy is politically bankrupt. As a result, a federal judge has given the State six months to make progress on overcrowding or face the appointment of a panel of federal judges who will manage the prison population.

For years, lawmakers and government officials have failed to do their jobs. This failure has robbed the State of fiscal control of the correctional system and placed it in the hands of federal courts.

The court-appointed receiver for inmate medical care has threatened to "back up the truck to raid the state treasury" - if that is what it will take to bring the system into constitutional compliance.<sup>1</sup>

The receivership has set up a parallel management structure between the courts and the California Department of Corrections and Rehabilitation (CDCR) that impedes the State's ability to attract and retain the exceptional leadership required to guide the State out of the quagmire. In 2006, the department saw two secretaries resign abruptly before the current secretary was appointed in November. In testimony before a federal judge, both former secretaries stated that politics trumped good policy in correctional reform efforts. A nationally recognized correctional administrator told the Commission that no one

## **LITTLE HOOVER COMMISSION**

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with the competency and leadership skills required to succeed as secretary would be willing to take the job under these circumstances.

Unlike other states, California relies almost completely on CDCR to improve correctional outcomes. It fails to tap the resources of other agencies that could assist in reducing crime and improving chances for offenders to improve themselves before they are released.

Despite the rhetoric, thirty years of "tough on crime" politics has not made the state safer. Quite the opposite: today thousands of hardened, violent criminals are released without regard to the danger they present to an unsuspecting public.

Years of political posturing have taken a good idea - determinate sentencing - and warped it beyond recognition with a series of laws passed with no thought to their cumulative impact. And these laws stripped away incentives for offenders to change or improve themselves while incarcerated.

Inmates who are willing to improve their education, learn a job skill or kick a drug habit find that programs are few and far between, a result of budget choices and overcrowding. Consequently, offenders are released into California communities with the criminal tendencies and addictions that first led to their incarceration. They are ill-prepared to do more than commit new crimes and create new victims.

Not surprisingly, California has one of the highest recidivism rates in the nation. Approximately 70 percent of all offenders released from prison are back within three years - mostly due to parole violations, many of which are technical in nature. California's parole system remains a billion dollar failure.

If the problems are not fixed, the consequences will be severe. While many Californians and their policy-makers have heard or read about the corrections crisis, few are aware of how serious the crisis has become and what the consequences will be. The fiscal ramifications will affect funding for virtually every other government program - from education to health care.

Governor Schwarzenegger proposed an ambitious plan in December 2006 to increase the number of prison cells, expand space in county jails and establish a sentencing commission. That is an encouraging start, but insufficient given the seriousness of the situation that requires immediate action and demonstrable results.

Once, policy-makers had ample opportunities to make choices that could have put the State on a different path. Now, policy-makers are down to just two:

- The Governor and the Legislature can summon the political will to immediately implement reforms to improve the corrections system to ensure public safety and eliminate federal involvement.
- Or, they must turn over the task to an independent commission – free from political interference – with the authority to fix this broken system.

It will not be easy and change will not happen overnight. It will require cooperation and courage on the part of the Governor and the Legislature. And the solutions will require skillful and determined implementation.

The top priority should be to take back control of the prison medical system, by developing a plan to work with an organization such as Kaiser Permanente or a university that can run the system for the State. This is a critical step in restoring confidence that the State can run the entire system and demonstrate the professional competence needed to attract top managers.

The State must immediately take action to improve its management of the correctional population and implement the recommendations made by this and other commissions, including expanding in-prison programs, improving prisoner reentry, and reallocating resources to community-based alternatives. The State must use all of its human resources, not just the personnel of the Department of Corrections and Rehabilitation.

The State must re-invent parole, moving to a system of post-release supervision for certain prisoners to ensure public safety.

At the same time, the State should begin a comprehensive evaluation of its sentencing system by establishing an independent sentencing commission to develop guidelines for coherent and equitable sentencing guided by overarching criminal justice policy goals. This is not a short-term solution, but a way to create rational long-term policy. Critics who suggest that a sentencing commission is code for shorter sentences are misinformed. Other states have used sentencing commissions to lengthen sentences for the most dangerous criminals, develop community-based punishment for nonviolent offenders and bring fiscal responsibility to criminal justice policies.

As they start the process, the Governor and Legislature should set goals and targets and insist on performance management to meet them. These reforms must not be allowed to fail in implementation, as they have

## ***LITTLE HOOVER COMMISSION***

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before. From start to finish, policy-makers must provide consistent support and oversight. In doing so, they can demonstrate progress to the public and the courts and begin to rebuild confidence in the State's ability to manage this critical responsibility.

Each of these proposals presents opportunities to fix a portion of California's corrections system. But they must be undertaken together, guided by a comprehensive strategy. Each reinforces the others as California embarks on changing the culture of its corrections system and restoring its status as a national model of success.

***Recommendation 1: The Governor and Legislature should immediately implement a comprehensive strategy to reduce prison overcrowding and improve public safety in California communities. Specifically, the Governor and the Legislature should:***

- Implement prior reform recommendations.*** Policy-makers do not need to further research solutions. They must immediately implement the evidence-based recommendations made by this Commission and others over the past two decades in order to regain control of major areas of prison operations where court intervention exists and avoid additional court intervention. To improve the performance of the correctional system, policy-makers must re-invent parole; expand educational, vocational and substance abuse treatment programs in prisons; reallocate resources to expand local punishment alternatives; and, expand judicial discretion.
- Establish a corrections inter-agency task force.*** The State should establish an inter-agency task force to develop partnerships with CDCR to bolster in-prison and reentry programs with a goal of reducing recidivism and improving public safety. The inter-agency task force should include all government entities that currently or potentially could assist offenders in improving their education, getting a job, finding housing, getting photo identification or a driver's license or treating an addiction or mental health problem.

***Alternative Recommendation: If the Governor and Legislature are unwilling or unable to advance these critical correctional reforms, they should turn the job over to a board of directors with the power and authority to enact reforms. Specifically:***

- The board should be an independent entity modeled after the federal Base Realignment and Closure Commission with members appointed by the Governor and legislative leaders.

# ATTACHMENT 3

(Slip Opinion)

OCTOBER TERM, 2010

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## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

## SUPREME COURT OF THE UNITED STATES

### Syllabus

BROWN, GOVERNOR OF CALIFORNIA, ET AL. *v.*  
PLATA ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURTS FOR  
THE EASTERN AND NORTHERN DISTRICTS OF CALIFORNIA

No. 09–1283. Argued November 30, 2010—Decided May 23, 2011

California's prisons are designed to house a population just under 80,000, but at the time of the decision under review the population was almost double that. The resulting conditions are the subject of two federal class actions. In *Coleman v. Brown*, filed in 1990, the District Court found that prisoners with serious mental illness do not receive minimal, adequate care. A Special Master appointed to oversee remedial efforts reported 12 years later that the state of mental health care in California's prisons was deteriorating due to increased overcrowding. In *Plata v. Brown*, filed in 2001, the State conceded that deficiencies in prison medical care violated prisoners' Eighth Amendment rights and stipulated to a remedial injunction. But when the State had not complied with the injunction by 2005, the court appointed a Receiver to oversee remedial efforts. Three years later, the Receiver described continuing deficiencies caused by overcrowding. Believing that a remedy for unconstitutional medical and mental health care could not be achieved without reducing overcrowding, the *Coleman* and *Plata* plaintiffs moved their respective District Courts to convene a three-judge court empowered by the Prison Litigation Reform Act of 1995 (PLRA) to order reductions in the prison population. The judges in both actions granted the request, and the cases were consolidated before a single three-judge court. After hearing testimony and making extensive findings of fact, the court ordered California to reduce its prison population to 137.5% of design capacity within two years. Finding that the prison population would have to be reduced if capacity could not be increased through new construction, the court ordered the State to formulate a compliance plan and submit it for court approval.

## Syllabus

**Hold:**

1. The court-mandated population limit is necessary to remedy the violation of prisoners' constitutional rights and is authorized by the PLRA. Pp. 12–41.

(a) If a prison deprives prisoners of basic sustenance, including adequate medical care, the courts have a responsibility to remedy the resulting Eighth Amendment violation. See *Hutto v. Finney*, 437 U. S. 678, 687, n. 9. They must consider a range of options, including the appointment of special masters or receivers, the possibility of consent decrees, and orders limiting a prison's population. Under the PLRA, only a three-judge court may limit a prison population. 18 U. S. C. §3626(a)(3). Before convening such a court, a district court must have entered an order for less intrusive relief that failed to remedy the constitutional violation and must have given the defendant a reasonable time to comply with its prior orders. §3626(a)(3)(A). Once convened, the three-judge court must find by clear and convincing evidence that "crowding is the primary cause of the violation" and "no other relief will remedy [the] violation," §3626(a)(3)(E); and that the relief is "narrowly drawn, extends no further than necessary. . . , and is the least intrusive means necessary to correct the violation," §3626(a)(1)(A). The court must give "substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." *Ibid.* Its legal determinations are reviewed *de novo*, but its factual findings are reviewed for clear error. Pp. 12–15.

(b) The *Coleman* and *Plata* courts acted reasonably in convening a three-judge court. Pp. 15–19.

(1) The merits of the decision to convene are properly before this Court, which has exercised its 28 U. S. C. §1253 jurisdiction to determine the authority of a court below, including whether a three-judge court was properly constituted. *Gonzales v. Automatic Employees Credit Union*, 419 U. S. 90, 95, n. 12. Pp. 15–16.

(2) Section 3626(a)(3)(A)(i)'s previous order requirement was satisfied in *Coleman* by the Special Master's 1995 appointment and in *Plata* by the 2002 approval of a consent decree and stipulated injunction. Both orders were intended to remedy constitutional violations and were given ample time to succeed—12 years in *Coleman*, and 5 years in *Plata*. Contrary to the State's claim, §3626(a)(3)(A)(i)'s reasonable time requirement did not require the District Courts to give more time for subsequent remedial efforts to succeed. Such a reading would in effect require courts to impose a moratorium on new remedial orders before issuing a population limit, which would delay an eventual remedy, prolong the courts' involvement, and serve neither the State nor the prisoners. The *Coleman*

## Syllabus

and *Plata* courts had a solid basis to doubt that additional efforts to build new facilities and hire new staff would achieve a remedy, given the ongoing deficiencies recently reported by both the Special Master and the Receiver. Pp. 16–19.

(c) The three-judge court did not err in finding that “crowding [was] the primary cause of the violation,” §3626(a)(3)(E)(i). Pp. 19–29.

(1) The trial record documents the severe impact of burgeoning demand on the provision of care. The evidence showed that there were high vacancy rates for medical and mental health staff, e.g., 20% for surgeons and 54.1% for psychiatrists; that these numbers understated the severity of the crisis because the State has not budgeted sufficient staff to meet demand; and that even if vacant positions could be filled, there would be insufficient space for the additional staff. Such a shortfall contributes to significant delays in treating mentally ill prisoners, who are housed in administrative segregation for extended periods while awaiting transfer to scarce mental health treatment beds. There are also backlogs of up to 700 prisoners waiting to see a doctor for physical care. Crowding creates unsafe and unsanitary conditions that hamper effective delivery of medical and mental health care. It also promotes unrest and violence and can cause prisoners with latent mental illnesses to worsen and develop overt symptoms. Increased violence requires increased reliance on lockdowns to keep order, and lockdowns further impede the effective delivery of care. Overcrowding’s effects are particularly acute in prison reception centers, which process 140,000 new or returning prisoners annually, and which house some prisoners for their entire incarceration period. Numerous experts testified that crowding is the primary cause of the constitutional violations. Pp. 19–24.

(2) Contrary to the State’s claim, the three-judge court properly admitted, cited, and considered evidence of current prison conditions as relevant to the issues before it. Expert witnesses based their conclusions on recent observations of prison conditions; the court admitted recent reports on prison conditions by the Receiver and Special Master; and both parties presented testimony related to current conditions. The court’s orders cutting off discovery a few months before trial and excluding evidence not pertinent to the issue whether a population limit is appropriate under the PLRA were within the court’s sound discretion. Orderly trial management may require discovery deadlines and a clean distinction between litigation of the merits and the remedy. The State points to no significant evidence that it was unable to present and that would have changed the outcome here. Pp. 24–26.

(8) It was permissible for the three-judge court to conclude that

## Syllabus

overcrowding was the "primary," but not the only, cause of the violations, and that reducing crowding would not entirely cure this violation. This understanding of the primary cause requirement is consistent with the PLRA. Had Congress intended to require that crowding be the only cause, the PLRA would have said so. Pp. 26-29.

(d) The evidence supports the three-judge court's finding that "no other relief [would] remedy the violation," §8626(a)(3)(E)(ii). The State's claim that out-of-state transfers provide a less restrictive alternative to a population limit must fail because requiring transfers is a population limit under the PLRA. Even if they could be regarded as a less restrictive alternative, the three-judge court found no evidence of plans for transfers in numbers sufficient to relieve overcrowding. The court also found no realistic possibility that California could build itself out of this crisis, particularly given the State's ongoing fiscal problems. Further, it rejected additional hiring as a realistic alternative, since the prison system was chronically understaffed and would have insufficient space were adequate personnel retained. The court also did not err when it concluded that, absent a population reduction, the Receiver's and Special Master's continued efforts would not achieve a remedy. Their reports are persuasive evidence that, with no reduction, any remedy might prove unattainable and would at the very least require vast expenditures by the State. The State asserts that these measures would succeed if combined, but a long history of failed remedial orders, together with substantial evidence of overcrowding's deleterious effects on the provision of care, compels a different conclusion here. Pp. 29-33.

(e) The prospective relief ordered here was narrowly drawn, extended no further than necessary to correct the violation, and was the least intrusive means necessary to correct the violation. Pp. 33-41.

(1) The population limit does not fail narrow tailoring simply because prisoners beyond the plaintiff class will have to be released through parole or sentencing reform in order to meet the required reduction. While narrow tailoring requires a "'fit' between the [remedy's] ends and the means chosen to accomplish those ends," *Board of Trustees of State Univ. of N. Y. v. Fox*, 492 U. S. 469, 480, a narrow and otherwise proper remedy for a constitutional violation is not invalid simply because it will have collateral effects. Nor does the PLRA require that result. The order gives the State flexibility to determine who should be released, and the State could move the three-judge court to modify its terms. The order also is not overbroad because it encompasses the entire prison system, rather than separately assessing each institution's need for a population limit. The *Coleman* court found a systemwide violation, and the State stipulated to systemwide relief in *Plata*. Assuming no constitutional violation

## Syllabus

results, some facilities may retain populations in excess of the 137.5% limit provided others fall sufficiently below it so the system as a whole remains in compliance with the order. This will afford the State flexibility to accommodate differences between institutions. The order may shape or control the State's authority in the realm of prison administration, but it leaves much to the State's discretion. The order's limited scope is necessary to remedy a constitutional violation. The State may move the three-judge court to modify its order, but it has proposed no realistic alternative remedy at this time. Pp. 33–36.

(2) The three-judge court gave “substantial weight” to any potential adverse impact on public safety from its order. The PLRA’s “substantial weight” requirement does not require the court to certify that its order has no possible adverse impact on the public. Here, statistical evidence showed that prison populations had been lowered without adversely affecting public safety in some California counties, several States, and Canada. The court found that various available methods of reducing overcrowding—good time credits and diverting low-risk offenders to community programs—would have little or no impact on public safety, and its order took account of such concerns by giving the State substantial flexibility to select among the means of reducing overcrowding. The State complains that the court approved the State’s population reduction plan without considering whether its specific measures would substantially threaten public safety. But the court left state officials the choice of how best to comply and was not required to second-guess their exercise of discretion. Developments during the pendency of this appeal, when the State has begun to reduce the prison population, support the conclusion that a reduction can be accomplished without an undue negative effect on public safety. Pp. 37–41.

2. The three-judge court’s order, subject to the State’s right to seek its modification in appropriate circumstances, must be affirmed. Pp. 41–48.

(a) To comply with the PLRA, a court must set a population limit at the highest level consistent with an efficacious remedy, and it must order the population reduction to be achieved in the shortest period of time reasonably consistent with public safety. Pp. 41–42.

(b) The three-judge court’s conclusion that the prison population should be capped at 137.5% of design capacity was not clearly erroneous. The court concluded that the evidence supported a limit between the 130% limit supported by expert testimony and the Federal Bureau of Prisons and the 145% limit recommended by the State Corrections Independent Review Panel. The PLRA’s narrow tailoring requirement is satisfied so long as such equitable, remedial judg-

## Syllabus

ments are made with the objective of releasing the fewest possible prisoners consistent with an efficacious remedy. Pp. 42-44.

(c) The three-judge court did not err in providing a 2-year deadline for relief, especially in light of the State's failure to contest the issue at trial. The State has not asked this Court to extend the deadline, but the three-judge court has the authority, and responsibility, to amend its order as warranted by the exercise of sound discretion. Proper respect for the State and for its governmental processes require that court to exercise its jurisdiction to accord the State considerable latitude to find mechanisms and make plans that will promptly and effectively correct the violations consistent with public safety. The court may, e.g., grant a motion to extend the deadline if the State meets appropriate preconditions designed to ensure that the plan will be implemented without undue delay. Such observations reflect the fact that the existing order, like all ongoing equitable relief, must remain open to appropriate modification, and are not intended to cast doubt on the validity of the order's basic premises. Pp. 44-48.

**Affirmed.**

KENNEDY, J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined. ALITO, J., filed a dissenting opinion, in which ROBERTS, C. J., joined.

# ATTACHMENT 4

California Department of  
Corrections and Rehabilitation



fact sheet



For Informational Purposes  
December 19, 2013

(916) 445-4950

## 2011 Public Safety Realignment

*The cornerstone of California's solution to reduce prison overcrowding, costs, and recidivism*

In 2011, Governor Edmund G. Brown Jr. signed Assembly Bill (AB) 109 and AB 117, historic legislation to enable California to close the revolving door of low-level inmates cycling in and out of state prisons. It is the cornerstone of California's solution to the U.S. Supreme Court order to reduce the number of inmates in the state's 33 prisons to 137.5 percent of original design capacity.

All provisions of Assembly Bill (AB) 109 and AB 117 were prospective and implementation of the 2011 Realignment Legislation began October 1, 2011. ***No inmates currently in state prison were or are transferred to county jails or released early.***

Prior to Realignment, more than 60,000 felon parole violators returned to state prison annually, with an average length of stay of 90 days. On September 30, 2011, the felon parole violator population was 13,285; by the end of November 2013, that population was down to 25 due to the fact that most felon parole violators now serve revocation time in county jail.

Under Realignment, newly-convicted low-level offenders without current or prior serious or violent offenses stay in county jail to serve their sentence; this has reduced the annual admissions to less than 36,000 a year. Prior to Realignment, there were approximately 55,000 to 65,000 new admissions from county courts to state prison.

Overall, the diversion of low-level offenders and parole violators to county jail instead of state prison since October 2011 has resulted in a population decrease of about 25,000.

### Funding of Realignment

AB 109 provides a dedicated and permanent revenue stream to the counties through Vehicle License Fees and a portion of the State sales tax outlined in trailer bills AB 118 and Senate Bill 89. The latter provides revenue to counties for local public safety programs and the former establishes the Local Revenue Fund 2011 (Fund) for counties to receive the revenues and appropriate funding for 2011 Public Safety Realignment.

This funding became constitutionally guaranteed by California voters under the passage of Proposition 30 in 2012.

\$400 million was provided to the counties in the first partial fiscal year of Realignment, growing to more than \$650 million last year and more than \$1 billion in 2013-2014.

The following trailer bills were signed to secure sufficient funding for counties:

- AB 111
  - Gives counties additional flexibility to access funding to increase local jail capacity for the purpose of implementing Realignment.

- **AB 94 (2011 Realignment Legislation Addressing Public Safety)**
  - Came into effect upon the passage of AB 111.
  - Authorizes counties that have received a conditional award under a specified jail facilities financing program to relinquish that award and reapply for a conditional award under a separate financing program.
  - Lowers the county's required contribution from 25 percent to 10 percent and additionally requires CDCR and the Corrections Standard Authority to give funding preference to those counties that relinquish local jail construction conditional awards and agree to continue to assist the state in siting re-entry facilities.
- **AB 118**
  - Outlines the financial structure for allocating funds to a variety of accounts for realignment.
  - Establishes the Local Revenue Fund 2011 for receiving revenue and appropriates from that account to the counties.
  - Directs the deposit of revenues associated with 1.0625 percent of the state sales tax rate to be deposited in the Fund.
  - Establishes a reserve account should revenues come in higher than anticipated.
  - The reallocation formulas will be developed more permanently using appropriate data and information for the 2012-13 fiscal year and each fiscal year thereafter.
  - Implements sufficient protections to provide ongoing funding and mandated protection for the state and local government.
  - The smallest of counties that benefited from the minimum grant each received approximately \$77,000 in 2011-12.
- **SB 89**
  - Dedicates a portion (\$12) of the Vehicle License Fee to the Fund.
  - Revenue comes from two sources: freed up VLF previously dedicated to DMV administration and VLF that was previously dedicated to cities for general purpose use.
  - Estimated total amount of VLF revenue dedicated to realignment was \$354.3 million in 2011-2012.
- **SB 87**
  - Provided counties with a one-time appropriation of \$25 million to cover costs associated with hiring, retention, training, data improvements, contracting costs, and capacity planning pursuant to each county's AB 109 implementation plan.

#### **Local Planning Process**

The Community Corrections Partnership (CCP), which was previously established in Penal Code § 1230, developed an implementation plan for their respective county. The Executive Committee from the CCP members is comprised of the following:

- Chief probation officer
- Chief of police
- Sheriff
- District Attorney
- Public Defender
- Presiding judge of the superior court (or his/her designee)
- A representative from either the County Department of Social Services, Mental Health, or Alcohol and Substance Abuse Programs, as appointed by the County Board of Supervisors.

### **Community, Local Custody**

AB 109 allows non-violent, non-serious, and non-sex offenders to serve their sentence in county jails instead of state prisons. However, counties can contract back with the State to house local offenders.

Under AB 109:

- No inmates are transferred from state prisons to county jails.
- No state prison inmates are released early.
- All felons sent to state prison prior to the implementation of Realignment will continue to serve their entire sentence in state prison.
- All felons convicted of current or prior serious or violent offenses, sex offenses, and sex offenses against children will go to state prison.
- There are nearly 70 additional crimes that are not defined in the Penal Code as serious or violent offenses but at the request of law enforcement and district attorneys were added as offenses that would be served in state prison rather than in local custody.

### **Post-Release (County-Level) Community Supervision**

CDCR continues to have jurisdiction over all offenders who were on state parole prior to the implementation date of October 1, 2011. County-level supervision for offenders upon release from prison includes current non-violent, current non-serious (irrespective of priors), and some sex offenders. County-level supervision does not include:

- Inmates paroled from life terms to include third-strike offenders;
- Offenders whose current commitment offense is violent or serious, as defined by California's Penal Code §§ 667.5(c) and 1192.7(c);
- High-risk sex offenders, as defined by CDCR;
- Mentally Disordered Offenders; nor
- Offenders on parole prior to October 1, 2011.

Offenders who meet the above-stated conditions continue to be under state parole supervision.

In all 58 counties, the Probation Department is the designated agency responsible for post-release supervision.

CDCR must notify counties of an individual's release at least one month prior, if possible. Once the individual has been released, CDCR no longer has jurisdiction over any person who is under post-release community supervision. Currently, CDCR is working to ensure counties receive inmate packets 120 days prior to the ordered release date.

No person shall be returned to prison on a parole revocation except for those life-term offenders who paroled pursuant to Penal Code § 3000.1 (Penal Code § 3056 states that only these offenders may be returned to state prison).

### **Parole Revocations**

As of October 1, 2011, all parole revocations are served in county jail instead of state prison and can only be up to 180 days.

As of July 1, 2013 the parole revocation process is now a local court-based process. Local courts, rather than the Board of Parole Hearings, are the designated authority for determining parole revocations.

**Contracting back to the state for offenders to complete a custody parole revocation is not an option.**

**Only offenders previously sentenced to a life term can be revoked to prison.**

**The Board of Parole Hearings continues to conduct:**

- **Parole consideration for lifers;**
- **Medical parole hearings;**
- **Mentally disordered offender cases; and**
- **Sexually Violent Predator cases.**

**AB 109 also provides the following under parole:**

- **Allows local parole revocations up to 180 days**
- **Authorizes flash incarceration at the local level for up to 10 days**

**Inmates released to parole after serving a life-term (e.g., murderers, violent sex offenders, and third-strikers) will be eligible for parole revocation back to state prison if ordered by the Board.**

**Effects on Conservation Camps**

- **Conservation camps are currently at capacity**
- **CDCR is currently working with CAL FIRE and the counties to use county inmates to help fill the vacancies.**

**Effects on Female Population**

**As a substantial portion of female offenders fall under the definition of non-serious, non-violent, and non-sex-offenders, the female inmate population at CDCR has dropped by a third, approximately 3,100 inmates.**

**The California Prisoner Mother Program (CPMP) in Pomona will remain open. CPMP was designed for pregnant or parenting women, convicted of a low-level offense, with children under the age of six, who could participate in a community substance abuse treatment program while caring for their children.**

**The Female Rehabilitative Community Correctional Center in Bakersfield will stay open until its contract expires in 2018. The facility currently has 75 beds available for women who were convicted of a non-serious, non-violent, and non-sex offense and who have 36 months or less to serve of their sentence. However, as that population diminishes based upon AB109, the FRCCC will begin housing Civil Addicts for the duration of the contract.**

**The Division of Juvenile Justice**

**There were no changes to DJJ during the 2011 realignment.**

**CDCR Adult Programs**

**As CDCR's population changes due to Realignment, the Division of Adult Programs will utilize projection information to review appropriate programming to address offender needs. While exact dates for program adjustments are still under evaluation, Adult Programs is dedicated to serving as many offenders as possible by maximizing existing resources.**

**###**

## REPORTS BY POLICY AREA

Capital Outlay, Infrastructure

Criminal Justice

Economy and Taxes

Education

Environment and Natural Resources

Health and Human Services

Local Government

State Budget Condition

Transportation

Other Government Areas

[Back to All CJ FAQs](#)

## How much does it cost to incarcerate an inmate?

### California's Annual Cost to Incarcerate an Inmate in Prison

2016-17

Type of Expenditure	Per Inmate Costs
Security	\$32,019
Inmate Health Care	\$21,582
Medical care	14,834
Psychiatric services	3,359

6/11/2018	Legislative Analyst's Office
Pharmaceuticals	2,143
Dental care	1,246
<b>Facility Operations and Records</b>	<b>\$7,025</b>
Facility operations (maintenance and utilities)	4,334
Classification services	1,788
Maintenance of inmate records	723
Reception, testing, assignment	145
Transportation	24
<b>Administration</b>	<b>\$4,171</b>
<b>Inmate Food and Activities</b>	<b>\$3,484</b>
Food	2,082
Inmate employment	823
Clothing	354
Inmate activities	102
Religious activities	123
<b>Rehabilitation Programs</b>	<b>\$2,437</b>
Academic education	1,237
Cognitive Behavioral Therapy	823
Vocational training	377
Miscellaneous	\$93
<b>Total</b>	<b>\$70,812</b>

- It costs an average of about \$71,000 per year to incarcerate an inmate in prison in California.
- Over three-quarters of these costs are for security and inmate health care.
- Since 2010-11, the average annual cost has increased by about \$22,000 or about 45 percent. This includes an increase of \$7,900 for security and \$7,200 for inmate health care. This increase has been driven by various factors, including (1) employee compensation, (2) increased inmate health care costs, and (3) operational costs related to additional prison capacity to reduce prison overcrowding.

Last Updated: March 2017



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# ATTACHMENT 6

**Contra Costa County  
2011/12 Public Safety Realignment**

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## **Contra Costa County 2011/12 Public Safety Realignment Implementation Plan**

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### **Executive Committee**

**Diana Becton, Presiding Judge**

**Cynthia Belon, Health Services**

**Phillip Kader, Chief Probation Officer (Chair)**

**Robin Lipetzky, Public Defender**

**David Livingston, Sheriff-Coroner**

**Chris Magnus, Chief, Richmond Police Department**

**Mark A. Peterson, District Attorney**

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## Introduction

The Community Corrections Partnership (CCP) has been developing and refining this document since Assembly Bill 109 became law in late June 2011. This responsibility has not been taken lightly. We have spent many hours of meeting virtually every week since early July and many additional hours developing this CCP Plan. We have had excellent attendance of the voting members. We have attended training seminars, held several community forums and invited anyone interested to attend our weekly meetings.

It has become abundantly clear that the only plan that should be offered is one that continues as a work in progress. There are ongoing discussions involving interventions that could impact the State projections, and service opportunities that may decrease the number of incarceration beds and probation supervision cases. There is continued discussion regarding strategies to minimize incarceration of the AB 109 population, such as remodeling the County's bail-process, holding early disposition hearings, and increasing the use of electronic monitoring, to name but a few. The CCP will convene a community advisory group of members who will review data on outcomes, provide input on community needs and assessments of implementation, and advise on community engagement strategies. The CCP will meet with this group periodically to receive and discuss the group's input and advice. The CCP supports the implementation of County Re-Entry Strategic Plan and will participate in meetings to implement the strategic plan while gathering input on strategies to integrate realignment with broader re-entry policies and programs.

There is simply no way to know at this time if our planning assumptions will bear out. We have completed this Plan by carefully weighing all the possibilities and coming to a reasoned conclusion with the initial information we have studied. We offer this Plan fully understanding that it will be reviewed and likely modified during monthly meetings of the CCP. We expect that the careful collection of relevant data will inform our proposals to reallocate resources, if necessary, as well as provide early indications of the effectiveness of our case management.

There are several things we do know unequivocally. The prior funding from the State to offset the cost of incarcerating those pending state parole revocation hearings (\$777,000 a year) will no longer exist beginning October 1, 2011. We know that the 20 to 30 parolees previously transferred from our jail to prison every week will remain in County custody. We know that 20 to 30 people released from prison every month will be placed on Post-Release Community Supervision provided by our Probation Department rather than on State Parole.

Criminal Justice Realignment is a paradigm shift for California counties. No longer will it be enough for each criminal justice partner to focus on its own distinct mission within the justice system. Achievement of realignment goals will depend on the commitment and collaboration of all justice partners towards a combined mission, while recognizing the critical role that each justice partner plays in achieving positive outcomes.

The CCP is committed to doing the best job we can with the resources we have been provided. We are also prepared to adjust our Plan to ensure the best utilization of the limited revenue forwarded to us from State. Finally, we remain committed to vigorously search for the

**very best alternatives and aggressively engage our communities in our effort to best serve our county.**

## Executive Summary

### *Overview.*

The California Legislature passed the Public Safety Realignment Act (Assembly Bills 109), which transfers responsibility for supervising specific low-level inmates and parolees from the California Department of Corrections and Rehabilitation (CDCR) to counties. Assembly Bill 109 (AB 109) takes effect October 1, 2011 and realigns three major areas of the criminal justice system. On a prospective basis, the legislation:

- Transfers the location of incarceration for lower-level offenders (specified non-violent, non-serious, non-sex offenders) from state prison to local county jail and provides for an expanded role for post-release supervision for these offenders;
- Transfers responsibility for post-release supervision of lower-level offenders (those released from prison after having served a sentence for a non-violent, non-serious, and non-sex offense) from the state to the county level by creating a new category of supervision called Post-Release Community Supervision (PRCS);
- Transfers the housing responsibility for parole and PRCS revocations to local jail custody

AB 109 also tasked the local Community Corrections Partnership (CCP)<sup>1</sup> with recommending to the County Board of Supervisors a plan for implementing the criminal justice realignment, which shall be deemed accepted by the Board unless rejected by a 4/5<sup>th</sup> vote. The Executive Committee of the CCP is composed of the County Probation Officer (Chair), Sheriff, Coroner, a Chief of Police (represented by the Richmond Police Chief), District Attorney, Public Defender, Presiding Judge of the Superior Court or designee, and Health Director as agreed by the County Administrative Officer.

This document is the criminal justice realignment implementation plan developed and recommended by the CCP Executive Committee. The Executive Committee has met almost every week since early July. The plan attempts to meet the stated legislative objectives within a very limited funding allocation, as described below, under "Assumptions". While we would like to be able to say that this is a comprehensive plan to deliver the full complement of incarceration, supervision, and rehabilitative/re-entry services contemplated by AB 109, the limited state allocation simply does not provide sufficient funds for everything we would like to include in this plan. Consideration was also given to provide supportive social and rehabilitation services to those offenders released from prison as well as those sentenced by the local courts and those spending custody time in the local jail.

### *Planning Assumptions.*

As this dramatic and multi-dimensional criminal justice realignment (being an initiative that would have, under normal circumstances, required years of collaborative planning) was

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<sup>1</sup> The Community Corrections Partnership was previously established under SB 678.

literally developed in a matter of months, the Executive Committee had to make a number of assumptions where definitive answers are currently unavailable:

**State Funding Formula.** The funding amount allocated to each California County is based upon the number of non-violent, non-sexual, non-sex offenders sentenced to state prison by each county, rather than on the number of arrests or other contributing factors. Historically, Contra Costa County has sentenced fewer offenders to state prison per capita than many other counties and, consequently, finds itself "under-funded" compared with other counties that have historically sentenced proportionally more offenders to state prison. While making no value judgment on the sentencing practices of other counties, the state funding formula for 2011/12 realignment ironically rewards those counties that contributed most to state prison crowding. As a result of concerns expressed by this County and other disadvantaged counties, the state has agreed to reconsider the funding formula for future years. Therefore, we must emphasize that this plan is only relevant for the period October 1, 2011 through June 30, 2012. Any planning beyond June 2012 must be contingent on a yet to be determined funding formula.

**Length of Confinement.** Although the State Department of Finance has projected that the terms of confinement for parole revocations will be on average 30 days, the Sheriff's Office anticipates that a more realistic average term of confinement for planning purposes should be 60 days (the maximum term). Contra Costa County currently has unutilized and unstaffed bed space within its detention facilities. In anticipation of the coming new offender population, beds within the West County Detention Facility and the Marsh Creek Detention Facility will be inspected and staffed, adding considerably to the costs of the Implementation Plan.

**Budget.**

The amount allocated to the County is \$4,572,950. The following is a breakdown of the recommended allocations, which are described in greater detail in the AB 109 Criminal Justice Realignment Budget for 2011/12, which is being transmitted to the Board in a separate item today:

Table 1. Contra Costa County AB 109 Spending Plan, FY2011-2012

Agency	FY2011-2012 (9-Month) Budget	Percent of Total FY2011-2012 (9-Month) Budget
Sheriff's Office	\$2,489,750	54.4%
Probation Department	\$1,900,000	21.9%
Health Services	\$893,109	19.6%
Office of the Public Defender	\$120,591	2.6%
District Attorney Office	\$67,500	1.5%
Total	\$4,572,950	100%

### *New Population Estimates.*

AB 109 will place newly released non-violent, non-serious, non-sex offenders under County supervision and will keep new lower-level offenders in local custody rather than state prison. For Contra Costa County, the new population estimates are:

**Post-Release Community Supervision (PRCS) population.** Between October 2011 and June 2012, it is estimated that 215 offenders will be released from prison and returned to the County at a rate of approximately 24 offenders per month.

**Lower-level offenders serving county jail sentences.** It is expected that over 60 new offenders will be added to the county jail population during the nine-month implementation period. The average length of sentences that will be served by these newly sentenced offenders is unknown and unpredictable at this time.

**New mandatory probation supervision population.** It is expected that a large number of the local sentenced AB 109 population will also be sentenced to a period of mandatory probation supervision to follow their county jail sentence. The size of this population and the average length of the term of probation supervision are as yet unknown.

**New county jail population of parole/PRCS/probation violators.** Beginning November 1, 2011, large numbers of parolees will be serving their sentences in local jail facilities rather than in state prison. In FY 2010-2011 1,276 new parolees were sent to state prison on parole revocations from Contra Costa County. These offenders will now remain in local custody. The actual rates of incarceration and the average length of the sentences to be served remain unknown at this time.

### *Implementation Strategies.*

The Community Corrections Partnership has crafted strategies to protect the community and provide services to AB 109 offenders.

- The *Sheriff's Office* will open housing units within two of its three detention facilities to accommodate the increasing number of offenders that must be incarcerated, and expand its electronic monitoring program to supervise offenders within the community.
- The *Probation Department* will create a specialized unit to supervise and case manage the offender population, developing an individualized treatment plan for each offender and providing or referring probationers to a full range of community supervision services.
- For those AB 109 offenders who require assistance, *Health Services* will provide substance abuse treatment, mental health services, and homelessness prevention services through its Behavioral Mental Health Clinic, Behavioral Health Homeless Program, and community-based residential and outpatient drug programs. Additional bed space will be reserved for AB 109 clients provided in partnership with local community-based organizations.

- The *District Attorney's Office* will provide victim advocacy services, helping connect victims with relevant services. They will also gather information about the impact of the crime for the purposes of setting bail and release conditions (when appropriate) to assist in reducing local incarceration rates.
- The *Office of the Public Defender* will conduct a social history and needs assessment of clients pre-disposition and, pursuant to PC 1203.4 (clean slate), will assist in the filing of petitions for probationers to have their records cleared at the end of their terms of probation when eligible and in conjunction with the other justice partners.
- Staff members from each of the CCP agencies will participate in required orientations for PRCS offenders as they return to the community from state prison. During these meetings, CCP agencies and community-based organizations will provide information on service availability and the possible consequences of law violations.
- The CCP will meet monthly between October 2011 and June 2012 to monitor and evaluate the Implementation Plan. Particular emphasis will be placed on accuracy of client population estimates and costs, management information system development, responsiveness of offenders to offered services, identified gaps in the services and programs provided, and outcomes for AB 109 offenders. It is the Committee's intent to continue to refine the plan and reallocate resources as appropriate in the coming months.

#### *Proposed Outcomes.*

To gauge the effectiveness of AB 109 realignment in the county, the CCP will gather feedback from the partners on the effectiveness of the plan along with recidivism and quality of life outcomes for AB 109 offenders.

#### *Recommendations*

The Executive Committee submits the following recommendations to the Board of Supervisors, Contra Costa County:

1. **ACKNOWLEDGE** that State Criminal Justice Realignment is a work in progress, and that the plan recommended for adoption today may have to be adjusted in accordance with changing circumstances.
2. **RECOGNIZE** that the funding formula selected by the state to allocate realignment funding to local government provides insufficient funding to Contra Costa County for providing the expected continuum of incarceration, supervision, and rehabilitative/re-entry services contemplated under realignment.

3. **RECOGNIZE** that there is an ongoing need to secure funding for the County's Strategic Reentry Plan separate and apart from the funding allocated for criminal justice realignment.
4. **RECOGNIZE** that the plan recommended for adoption today is an implementation plan only and cannot be sustained on an annualized basis without increased state funding.
5. **ACKNOWLEDGE** that the Sheriff has the ability to offer a home detention program, as specified in section 1203.016 of the California Penal Code, in which inmates committed to the County Jail may voluntarily participate or involuntarily be placed in a home detention program during their sentence in lieu of confinement in the County Jail or other County correctional facility.
6. **ACKNOWLEDGE** that the Sheriff has the ability to offer an electronic monitoring program as specified in section 1203.018 of the California Penal Code, for inmates being held in lieu of bail in the County Jail or other County correctional facility.
7. **ADOPT** the Implementation Plan recommended herein as the Contra Costa County 2011/12 Public Safety Realignment Implementation Plan as required by PG1230.1 and the Post-Release Community Supervision strategy as required by PC3451 (as added by the Post-Release Community Supervision Act of 2011 contained in AB 109).

## Overview of 2011 Public Safety Realignment Act (AB 109)

The goals of The Public Safety Realignment Act are to restructure supervision and incarceration, address the overcrowding problem in California's prisons, and reduce the cost of the centralized state prison system. AB 109 transfers responsibility for supervising low-level inmates and parolees (those convicted of non-serious, non-violent, or non-sex offenses) from the California Department of Corrections and Rehabilitation to counties. Implementation of AB 109 is scheduled to begin October 1, 2011.

AB 109 amends Section 1230.1 of the California Penal Code to read: "Each county local Community Corrections Partnership established pursuant to subdivision (b) of Section 1230 shall recommend a local plan to the County Board of Supervisors for the implementation of the 2011 public safety realignment. (b) The plan shall be voted on by an executive committee of each county's Community Corrections Partnership consisting of the Chief Probation Officer of the county as chair, a Chief of Police, the Sheriff, the District Attorney, the Public Defender, a presiding judge or his or her designee, and the department representative listed in either section 1230 (b) (2) (G), 1230 (b) (2) (H), or 1230 (b) (2) (I) as designated by the county board of supervisors for purposes related to the development and presentation of the plan. (c) The plan shall be deemed accepted by the County Board of Supervisors unless rejected by a vote of 4/5ths in which case the plan goes back to the Community Corrections Partnership for further consideration. (d) Consistent with local needs and resources, the plan may include recommendations to maximize the effective investment of criminal justice resources in evidence-based correctional sanctions and programs, including but not limited to, day reporting centers, drug courts, residential multi-service centers, mental health treatment programs, electronic and GPS monitoring programs, victims restitution programs, counseling programs, community service programs, educational programs, and work training programs."

**Target Population:** The post-release community supervision population, released from prison to community supervision, is the responsibility of local probation departments. This population includes non-violent, non-serious, non-sex offenders with or without a prior conviction for a serious or violent offense or a sex-offender registration requirement. The population that will serve their prison sentences locally includes the non-violent, non-serious, non-sex offender group. Upon full implementation of AB 109 in Contra Costa County it is estimated that the annual average daily population of AB 109 offenders will be approximately 450. These offenders will require a range of supervision, sanctions, and service resources. These offenders become a local responsibility on October 1, 2011 when AB 109 is implemented.

- o **Local Post-Release Community Supervision:** Offenders released from state prison on or after October 1, 2011 after a sentence for an eligible offense shall be subject to, for a period not to exceed 3 years, post-release community supervision provided by a county agency designated by that county's Board of Supervisors. The Probation Department is the designated community supervision agency in Contra Costa County.
- o **Revocations Heard and Served Locally:** Post-Release Community Supervision and parole revocations will be served in local jails (by law the maximum revocation sentence is up to 180 days). The Courts will hear revocations of Post-Release Community

Supervision offenders. The Board of Parole Hearings will conduct parole violation hearings until July of 2013 when this responsibility shifts to local courts.

- o Changes to Custody Credits: Most jail inmates will now earn custody credits that equal the amount of custody days served (day for day credit).
- o Alternative Custody: Penal Code Section 1203.018 authorizes electronic monitoring for inmates being held in the county jail in lieu of bail. Eligible felony inmates must first be held in custody for 60 days post-arraignment, or 30 days for those charged with misdemeanor offenses. Any program implemented under this penal code section will be in collaboration with the District Attorney's Office and the Superior Court of Contra Costa County.
- o Community-Based Accountability: Emphasizes the use of a range of community-based consequences other than jail incarceration.
- o Evidence-Based Practices: Emphasizes the use of supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or post-release supervision.

#### Local Planning and Oversight

#### COMMUNITY CORRECTIONS PARTNERSHIP

In the last two years, there have been statewide efforts to expand the use of evidence-based practices in sentencing and probation practices, and to reduce the state prison population. SB 678 (2009) established a Community Corrections Partnership (CCP) in each county, chaired by the Chief of Adult Probation, charged with advising on the implementation of SB 678 funded initiatives. AB 109 (2011) established an Executive Committee of the CCP charged with the development of a 2011 Realignment Plan that will recommend a countywide programming plan for the realigned population, for consideration and adoption by the Board of Supervisors.

The CCP Executive Committee will advise on the progress of the Implementation Plan. Chaired by the Chief Probation Officer, the CCP Executive Committee will oversee the realignment process and advise the Board of Supervisors in determining funding and programming for the various components of the plan. Voting members of the Executive Committee include: a Judge (appointed by the Presiding Judge); Chief Probation Officer; County Sheriff-Coroner; District Attorney; Chief of Police; Public Defender; and Director of County Social Services/Mental/Public Health (as determined by the Board of Supervisors).

#### Budget

Contra Costa County's share of the block grant dollars is \$4,572,950 million over FY2011-2012 beginning October 2011. The planning process has revealed that this amount is inadequate to comprehensively provide for the needs of the AB 109 offender population. The

protection of the community and case management of the clients rely on effective and swift responses to the needs of the clients while being mindful of the needs of the victims and our neighborhoods. Realignment also recognizes that delivery of evidence-based services and structures is most effective at reducing recidivism and improving public safety. However, there is a significant gap between this proposal and budget, and the best opportunities to provide a meaningful and comprehensive approach to Realignment. Facing these constraints, the partners have developed a budget based on the State's distribution pursuant to the established allocation. There is also an added projected annual budget that suggests the actual costs for a full fiscal year as noted below. These figures will exceed the expected annual budget for the next fiscal year. There is significant concern that adjustments to the FY2011-2012 Budget will adversely affect this plan. Among the Community Corrections Partnership, the funding will be divided as follows:

**Table 2. Contra Costa County AB 109 Spending Plan: One-Time Costs, FY2011-2012, and Projected Annual Budget.**

Agency	One-Time Costs	Percent of Total One-Time Costs	FY2011-2012 (9-Month) Budget	Percent of Total FY2011-2012 Budget	Projected Annual Budget	Percent of Projected Annual Budget
Sherriff's Office	\$252,500	76.3%	\$2,489,750	34.4%	\$3,224,717	64.7%
Probation Department	\$70,175	21.7%	\$1,000,000	21.9%	\$1,436,182	17.8%
Health Services	\$0	0%	\$895,109	19.6%	\$1,169,626	14.5%
Office of the Public Defender	\$0	0%	\$120,591	2.6%	\$160,788	2.0%
District Attorney Office	\$0	0%	\$67,500	1.5%	\$90,000	1.1%
<b>Total</b>	<b>\$322,675</b>	<b>100%</b>	<b>\$4,572,950</b>	<b>100%</b>	<b>\$8,081,293</b>	<b>100.0%</b>

(Detailed budgets for each Agency have been presented to the Board of Supervisors.)

**Proposed Implementation Strategies**

AB 109 offenders will come from one of two sources: (1) individuals released from state prison that would have normally been placed on parole and (2) offenders who will no longer be eligible to be incarcerated in state prison, but who may do time in county jail. These offenders may also have their jail sentences followed by a period of probation supervision. Even with the fiscal challenges noted above, the Contra Costa County criminal justice stakeholders will address the needs of criminal offenders returning to the community from state prison and those diverted away from state prison. The proposal stresses the use of enhanced resources that include but are not limited to the Sheriff's Office, Probation, Health Services, District Attorney, Public Defender, Superior Court, and community partners.

## SHERIFF'S OFFICE

The Sheriff's Office expects impacts to its facilities and programs to be greater than projected by the State of California. During the fiscal year 2010-2011, the Sheriff's Office had 1,276 inmates transfer to the State to serve parole violations. In addition, the Sheriff's Office sent 505 inmates to the State for new prison commitments.

The State has projected that the terms of confinement for parole violations will go from an average of four months to an average term of 30 days. All parole violations that would have been served back in prison will now be served in local custody (with the exception of those offenders on parole for "life" terms). Furthermore, the Board of Parole Hearings maintains jurisdiction over the pre-October 1, 2011 parolees until 2013. Thus, the impacts of local control of the offenders and their related consequences and opportunities will not fully be realized until after July 1, 2013.

The Sheriff's Office will assume the term of confinement for offenders at 90 days. With this assumption the Sheriff's Office will see an impact of 106 inmates per month for the first three months, or 318 inmates. In addition, the impacts of local sentencing and local violations are assumed at 12 per month (the three year ramp up average expected by the State). After 90 days, the Sheriff's Office expects an inmate population increase of 354 inmates.

The Sheriff's Office manages the three county jail facilities - Martinez Detention Facility, Marsh Creek Detention Facility, and the West County Detention Facility. In anticipation of the increase in the inmate population, the Sheriff's Office will open a new housing unit within the Marsh Creek Detention Facility. This unit will have a 60 bed capacity and will be used to house AB 109 (non-serious, non-violent, and non-sex) offenders locally. Additionally, the Sheriff's Office anticipates an increase the population of the West County Detention Facility by an estimated 200 inmates.

In collaboration with the Community Corrections Partnership and prior jail operational practices there are many service opportunities for those incarcerated locally. The Sheriff's Office, various County Departments (Office of Education, Probation, Health and Human Services), and several community-based organizations have provided opportunities for offenders in custody. These services are transitional in focus and help provide for successful re-entry. These include but are not limited to:

- GED preparation and testing
- High school diploma completion
- English as a Second Language training
- Computer application and design
- Parenting classes
- Re-entry / transitional services
- Woodshop / woodworking skills
- Engraving/sign/vehicle detailing shop
- Landscaping
- Library services

- Legal Research Services
- Proud Father Classes
- Alcoholics' and Narcotics' Anonymous classes
- Domestic Violence Prevention classes
- Veteran Affairs
- SSA/SSI Homeless Outreach Collaborative
- U.C. Davis Immigration Law Center

The Sheriff's Office will also enhance its electronic monitoring (EM) program currently provided through its Custody Alternative Facility (CAF) program. The Sheriff's Office will hire additional staff to monitor AB 109 offenders. It is expected that the number of monitored EM inmates will increase by about 100 (a 30% increase in inmate counts). Offenders in EM pay \$0-41.50 per day for supervision. Fees are waived or reduced for inmates unable to pay.

Electronically monitored offenders meet with program staff weekly to review their required scheduled appointments, review the geographic areas that are "off limits" to them, and submit samples for urinalysis. Monitored offenders may be outfitted with a standard GPS monitor that allows the tracking of whereabouts (location and time) or an enhanced SCRAM unit, which is a trans-dermal blood alcohol monitor that is typically used with 2<sup>nd</sup> and 3<sup>rd</sup> time DUI offenders, and includes RF (house arrest) monitoring.

After offenders have been convicted and remain in custody to serve their sentences, they can apply for County Parole after the sentencing judge has approved County Parole as an option. The cost and program implementation are similar to the EM program if placed into County Parole by the County Parole Board.

A small number of AB 109 offenders may be given county parole. This option is reserved for inmates that are serving custody time in County Jail. After approval from the sentencing judge for this option, the case will be forwarded to the County Parole Board which consists of the Deputy Probation Officer, a Sheriff's Office Manager, and a member of the public approved for appointment by the Presiding Judge.

If a sentence is less than 30 days, inmates will be assigned Work Alternative where offenders pay \$16/day for supervision, and work off their sentences while they are out of custody.

#### PROBATION

The Probation Department estimates there will be 250 prison released offenders during the first year of the Realignment and is projected to grow to 350 during the second year of the Realignment. The Department will be responsible for administering programs directed to the post-release community supervision population. The Department will provide or refer probationers to a full range of community supervision services including:

- Pre-release "reach-in" services (assessments and supervision planning pending release from county jail)

- Case management
- Intensive community supervision (with routine home visits)
- Cognitive behavioral interventions (both pre-release and after released from jail)
- Restorative justice programs (both pre-release and after release from jail),
- Urinalysis testing
- Residential substance abuse treatment
- Outpatient behavioral health treatment
- Community service
- Family strengthening strategies
- Referral to education vocational training/employment services and housing resources
- Imposition of up to 10 days jail ("flash incarceration") as a sanction for violating supervision conditions

Post-release community supervision will not exceed three years, and individuals may be discharged following as little as 6 months of successful community supervision. Probationers may be revoked for up to 180 days; all revocations will be served in the local jail. Post-release community supervision will be consistent with evidence-based practices demonstrated to reduce recidivism. The Department may impose appropriate terms and conditions, appropriate incentives, treatment and services, and graduated sanctions.

Probation has and continues to invest heavily in establishing evidence-based supervision and intervention practices proven effective in reducing recidivism and improving outcomes. Central to evidence-based practice are the concepts of risk, need and responsivity (the practice of assessing and identifying criminogenic risk factors contributing to ongoing criminal behavior, which can be changed through application of culturally, developmentally, and gender appropriate interventions, teaching new skills and building on offender strengths to mitigate criminality). The Department uses the National Council on Crime and Delinquency's (NCCD) Criminal Assessment & Intervention System (CAIS) to guide the level of supervision provided to each probationer.

Probation will create a specialized unit that will provide intensive probation supervision to the AB 109 population. Each probationer will be administered the CAIS and will have an individualized treatment plan. Probation anticipates gradually deploying seven (7) deputy probation officers (DPOs) to provide services to the AB 109 population. The Department anticipates having DPOs based in West County, Central County, and East County to ensure contact is community based. The number of DPOs assigned to the unit will increase as appropriate.

A system of rewards and responses is being developed for use with the post-release community supervision population, and ultimately will drive intervention decisions with all offenders under supervision. The use of rewards and response decisions will guide the DPO regarding the type of intermediate sanction to impose in responding to violations. Successfully implementing AB 109 will require developing an effective violation hearing process combined with consistent imposition of graduated sanctions in response to violations of supervision conditions.

As AB 109 probationers are initially likely to be high-risk as evidenced by their Correctional Assessment and Intervention System (CAIS) scores. The Department will require DPOs to provide intensive probation supervision at a ratio of clients to DPO of 50:1.

Collaborative case planning is the focal point of this active engagement approach involving the offender, his/her family, the DPO, law enforcement and multiple service providers (such as housing, employment, vocational training, education, physical health, behavioral health, and pro-social activities). Individual factors such as strengths, risk factors, needs, learning style, culture, language, and ethnicity are integral to determination of appropriate interventions and services. The individualized treatment plan will determine the level of supervision and identify the types of evidence-based treatment and services the probationer needs to successfully avoid re-offending and increase pro-social functioning and self-sufficiency.

#### HEALTH SERVICES

Some AB 109 offenders will have substance abuse problems, mental health problems, and/or will be homeless. These conditions will require intervention to facilitate the offender's re-integration into the community and prevent recidivism. Health Services will provide services to AB 109 offenders through its Behavioral Health Division, which includes homeless, mental health, and alcohol and other drug services.

Health Services estimates that during the first nine months of AB 109's implementation in Contra Costa County, approximately 50 offenders will require mental health services. With its share of the funding Health Services will fund a registered nurse (0.5 FTE), a licensed clinical specialist (1.0 FTE), a portion of a psychiatrist's time (0.25 FTE), and a clerk (0.5 FTE) within the mental health outpatient clinics. These staff members will provide mental health treatment and medication management services to AB 109 offenders with mental health needs. Additionally, Health Services will provide psychotropic medication and laboratory services to the offenders.

Health Services will also fund an SSI Coordinator (.5 FTE), fund shelter beds (8 beds per night, per year), and transitional housing (2 spaces per night, per year) within the Behavioral Health Homeless Program. Health Services estimates that seventy (70) offenders will be provided housing services during the first nine months and estimates that eighty-five (85) offenders will be provided housing services during the second year.

The total number of AB 109 offenders requiring drug treatment services in Residential Drug Facility is unknown at this time. A total of 48, 90-day episodes in residential alcohol and other drug treatment will be made available for clients requiring alcohol and other drug treatment through Behavioral Health Alcohol and Drug Services.

During the first 9-months of AB 109 Implementation in Contra Costa County approximately \$396,000 (or 99% of the total allocation) will be paid to community-based organizations providing housing, residential alcohol and drug treatment services within Contra Costa County.

#### DISTRICT ATTORNEY OFFICE

Realignment will significantly impact the workload of the Contra Costa County District Attorney Office (DAO) and the sentencing options available to resolve cases. First, the DAO will be responsible for reviewing, charging, and prosecuting violations of post-release community supervision.

Second, DAO prosecutors will need to make more court appearances and engage with cases for longer periods. The number of appearances per case will likely increase before sentencing as getting agreement on appropriate sentences may be protracted.

Third, the DAO must develop expertise in alternative sentences and work closely with criminal justice partners to ensure effective sentencing without reliance on incarceration. As prison will not be available as a sentence option for many offenses, relying on jail sentences will overburden the jail system. DAO will need to develop creative and effective sentencing options based on the offender's risks and needs.

To address these challenges, DAO will add a Criminal Justice System Victim Advocate who will assist victims of crime as part of the Public Safety Realignment. In compliance with Marsy's Law, the Victim Advocate will: (1) assist the victim to obtain a criminal protective order; (2) contact the victim to gather input for setting bail and release conditions during the case; (3) be a liaison with the prosecutor for the duration of the case and disposition; (4) keep the victim informed of court dates, and sentencing hearings; (5) provide court support during court proceedings; (6) provide information concerning the disposition of the case including assisting the victim to register with the Contra Costa County Sheriff's Office's VINE program; (7) assist the victim with gathering information concerning restitution determination, obtaining a restitution order, assisting Probation with restitution information, and collection of restitution order and restitution fines; (8) assist the victim with understanding the process of incarceration in the county jail to serve prison sentences, release of inmates to community-based programs, and alternative post sentencing options; and (9) work with the victim, the prosecutor, and supervising probation officer to assure victim's safety concerns are heard and addressed.

#### OFFICE OF THE PUBLIC DEFENDER

The Office of the Public Defender also anticipates a significant impact on its practice due to the new AB 109 sentencing scheme. To assist in the provision of evidence-based rehabilitation in Contra Costa County, the Office will provide (1) pre-sentence needs assessments for AB 109 offenders and (2) Clean Slate services.

Many public defender clients will fall into the category of AB 109 offenders. These clients will now be eligible for sentences that can include a period of probation supervision following a period of incarceration. With the addition of a licensed social worker to the staff, the Office of the Public Defender will prepare needs-assessments for these clients that will facilitate appropriate case resolutions that address the specific reentry needs of the individual client. Identifying these needs at the pre-disposition stage will increase the chances that the individual

will succeed on probation and avoid re-offending. This information will be provided to Probation as appropriate to assist with post-release planning.

A related component of successful reentry for AB 109 offenders is Clean Slate assistance. Clean Slate is recognized as an important and effective step in removing barriers to employment for former offenders who have completed their probation terms and are seeking to reenter society. Under the new sentencing scheme, it is anticipated that more offenders will be eligible for clean slate expungements pursuant to Penal Code section 1203.4. Beginning February 1, 2012 the Office will help AB 109 offenders prepare and file the appropriate paperwork in court to have their records cleared. This assistance is expected to facilitate former offenders' efforts to find employment and housing, reduce recidivism, and improve public safety.

#### **SUPERIOR COURT**

Under AB 117, a budget trailer bill accompanying the 2011 Budget Act, the Superior Court's role in criminal realignment previously outlined under AB 109 has been substantially narrowed to handle only the final revocation process for offenders who violate their terms or conditions or post-release community supervision or parole. The Court will assume responsibility for post-release community supervision revocation hearings beginning October 1, 2011. AB 117 also delays the Court's role in revocation proceedings for persons under state parole supervision and serious violent parole violations until July 1, 2013.

#### **COMMUNITY CORRECTIONS PARTNERSHIP COLLABORATIVE OFFENDER ORIENTATION MEETINGS**

Staff members from each of the CCP agencies will participate in required orientations for AB 109 offenders as they return to the community from state prisons or county jail. These presentations will allow CCP agencies and community-based organizations to share information on the array of housing, mental health, substance use prevention, employment development, transportation, and other services available within Contra Costa County to offenders. The orientations will also provide an opportunity for District Attorney, Probation, Public Defender, Sheriff's Office, and local police, to share the possible consequences for law violations.

#### **PERIODIC COMMUNITY CORRECTIONS PARTNERSHIP MEETINGS**

The Contra Costa County CCP will meet monthly throughout the first nine months of the AB 109 implementation to make adjustments to this Implementation Plan and allocation of funding based upon unfolding circumstances and conditions. The Committee is particularly concerned about the accuracy of initial estimates regarding client populations, the accuracy of the initial costs estimates, management information system development, responsiveness to offered services, over-all outcomes, and quality of life for AB 109 offenders.

### Proposed Outcomes

Contra Costa County justice stakeholders – the community, Sheriff's Office, Probation, the Superior Court, the Public Defender, District Attorney's Office, and Health Services – are committed to reducing recidivism and increasing public safety. This Realignment Plan seeks to further these goals by:

- Managing the additional responsibilities resulting from AB 109.
- Implementing a system that protects public safety and utilizes best practices in recidivism reduction.
- Developing a system that uses alternatives to pre-trial and post-conviction incarceration where appropriate.

To gauge effectiveness, the Community Corrections Partnership will gather outcome data likely to include:

- Feedback from CCP partners on the effectiveness of the Realignment Plan
  - Strengths of the local realignment
  - Challenges to the local realignment
  - Recommendations to enhance local realignment
- Recidivism outcomes for AB 109 clients
  - Number of arrests for technical violations
  - Number of arrests for new law violations
  - Number of convictions for technical violations
  - Number of convictions for new law violations
  - Number of flash incarcerations
  - Number of days detained in jail for flash incarcerations
  - Number of county jail sentences for new law violations
  - Number of days sentenced in county jail for new law violations
  - Number of probation revocations
  - Number of clients completing probation
  - Number of clients sentenced to state prison
- Quality of life outcomes for AB 109 clients
  - Number and percent of clients maintaining sobriety as evidenced by urinalysis test results
  - Number and percent of clients with appropriate housing
  - Number and percent of clients working (full-time)
  - Number and percent of clients working (part-time)
  - Number and percent of clients enrolled in MediCal
  - Number and percent of clients completing Clean Slate

# ATTACHMENT 7



Contra Costa County  
Public Safety Realignment Annual Report: FY 16/17

## County Department, Division, and Program Impacts (FY 16/17)

Public Safety Realignment shifted the responsibility of housing and supervising certain individuals incarcerated for lower-level offenses from the state to the County, and also required that the County use AB 109 funding towards building partnerships between County departments, divisions, and programs to provide coordinated and evidence-based supervision of, and services for, the AB 109 reentry population. The sections below summarize how AB 109 has impacted County departments, divisions, and programs by highlighting the volume and types of supervision and services provided to the AB 109 population across the County.

### Behavioral Health Services

**Table 1: Funding Allocation for BHS**

Program Expenditure	FY 15/16	FY 16/17
Staff	\$ 1,011,070	\$ 1,092,651
Operating	\$ 903,646	\$ 1,150,781
Total	\$ 1,914,716	\$ 2,243,433

The BHS Division combines Alcohol and Other Drugs Services ("AODS"), the Homeless Program, Forensic Mental Health Services, and Public Benefits into an integrated system of care. BHS partners with clients, families, and community-based organizations to provide services to the AB 109 population. While BHS provided services for the reentry population prior to the start of AB 109, Realignment resulted in an increased focus on and funding for serving these clients. The sections below demonstrate the number of AB 109 individuals receiving services from each department, division, and program over the course of the 2016/17 fiscal year.

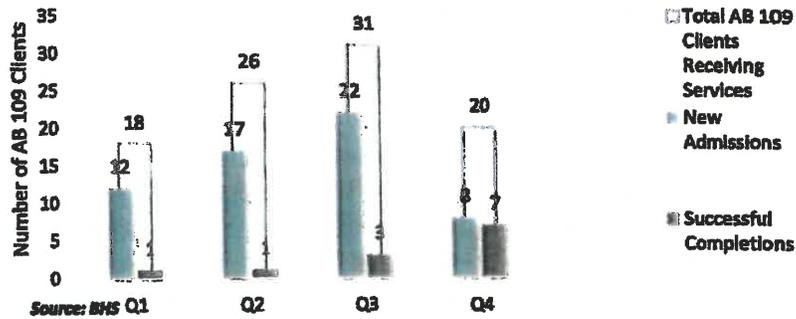
### Alcohol and Other Drugs Division

The AODS division of BHS operates a community-based continuum of substance abuse treatment services to meet the level of care needs for each AB 109 client referred. As shown in Figure 1, AODS provided outpatient services to an increasing number of AB 109 clients throughout the first three quarters of FY 16/17. During the entire FY, 59 clients were admitted to outpatient treatment and 12 successfully completed outpatient treatment services.



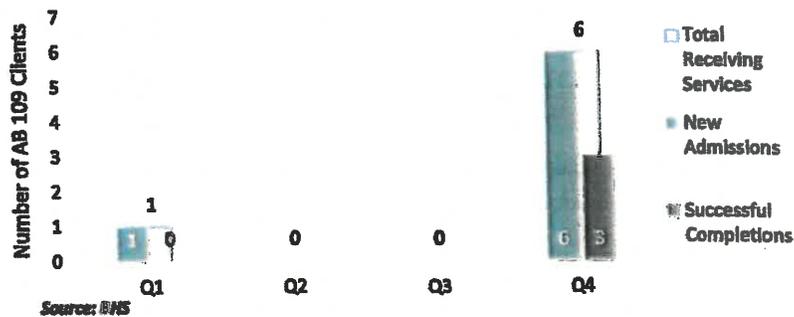


Figure 1: Outpatient Treatment Services



For AB 109 clients in need of acute withdrawal services, AODS provides residential detoxification treatment. During FY 16/17, AODS providers admitted 7 AB 109 clients to residential detox. As shown in Figure 2, 3 clients successfully completed residential detox during that year.

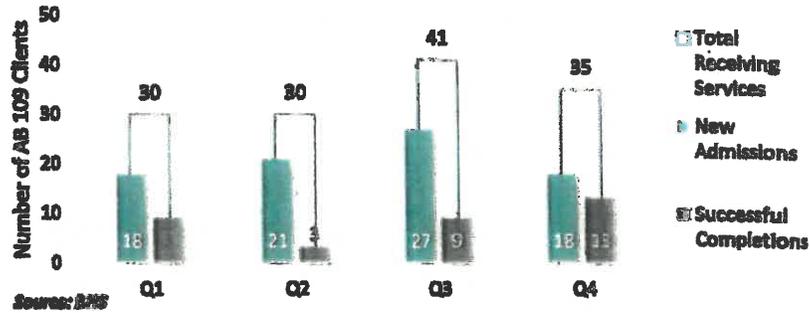
Figure 2: Residential Detoxification Services



AODS also provides residential substance abuse treatment to clients on AB 109 supervision. As shown in Figure 3, AODS provided residential treatment services to an increasing number of AB 109 clients for the first three quarters of the year. During FY 16/17 the County admitted 84 AB 109 clients to residential treatment, and 34 clients successfully completed residential services. Additionally, the number of clients completing services increased in the fourth quarter .



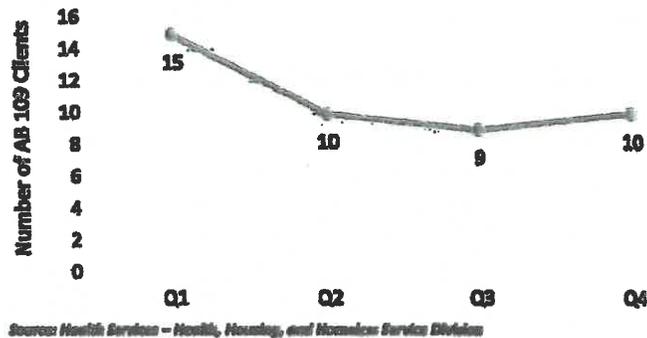
**Figure 3: Residential Treatment Services**



**Homeless Program**

In FY 16/17, the County's Homeless Program<sup>2</sup> served 15 AB 109 individuals in the first quarter, 10 in the second, 9 in the third, and 10 in the fourth, as shown in Figure 4.

**Figure 4: AB 109 Individuals provided Homeless Services**

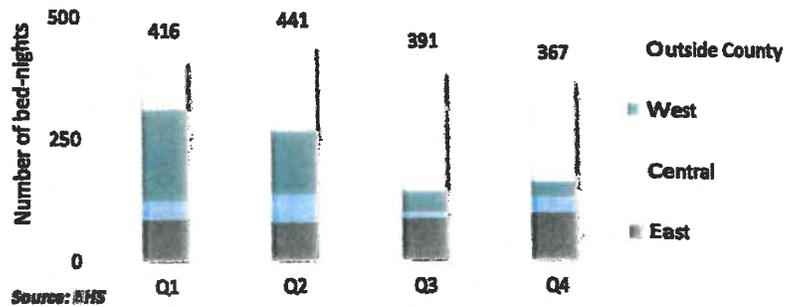


The total number of bed-nights utilized by the AB 109 population are provided in Figure 5 below, which shows 1,615 bed-nights were utilized both in and out of the county during the fiscal year.

<sup>2</sup> Although the County's Homeless Program is listed in the Behavioral Health Services section of this report, please note that Homeless Services are actually provided through the Homeless Program's association with the Health, Housing, and Homeless Services Division.



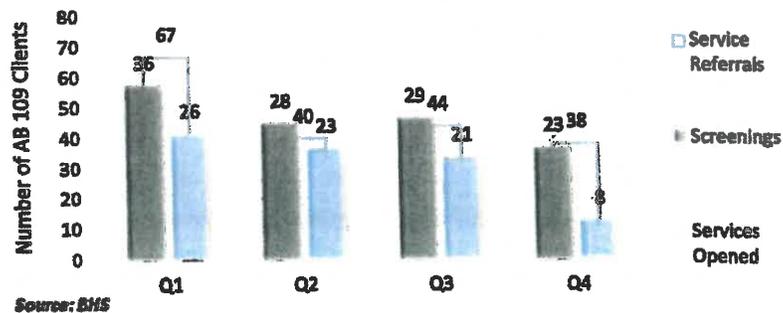
**Figure 5: Total bed-nights utilized by AB 109 population**



**Mental Health Division**

Forensics Mental Health collaborates with Probation to support successful community reintegration of individuals with co-occurring mental health and substance related disorders. Services include assessment, groups and community case management. As indicated in Figure 6, Probation referred 189 AB 109 clients to Forensic Mental Health services, of whom 116 received mental health screenings, and from which 78 opened services.

**Figure 6: Clients referred to, screened for, and received Forensic Mental Health services**



**Public Benefits**

BHS also assists AB 109 clients with applying for public benefits, including Medi-Cal, General Assistance, CalFresh, and Social Security Disability Income/Supplemental Security Income ("SSDI/SSI"). Figure 7 displays the number of AB 109 clients assisted with applications for Medi-Cal in FY 16-17, and the number of applications approved by the State.





**Contra Costa County**  
**Public Safety Realignment Annual Report: FY 16/17**

Participated in 2 modules	10	11	17
Participated in 3 modules	4	11	15
Participated in 0 modules	0	2	2
Completed 1 module	6	10	16
Completed 2 modules	6	9	15
Completed 3 modules	4	9	13
Completed Auto Training Program Completions		4	4
Total participants no longer in program due to court or criminal involvement	1	1	2
Total participants no longer in program due to lack of engagement	2	1	3
Other reasons:			
Needs could not be met	0	2	2
Death	0	1	1

**Mz. Shirliz Transitional**

Mz. Shirliz Transitional provides clean and sober transitional housing and support services to formerly incarcerated individuals. Support services include mentoring, weekly house meetings, and connections to local organizations for other needed services. Clients are required to attend NA/AA meetings through NA and AA a minimum of 3 times per week. Most clients arrive at Mz. Shirliz employed or working with partner agencies to find employment. Mz. Shirliz received \$150,000 out of the Network's \$820,000 budget to provide these services.

**Table 18: Mz. Shirliz Transitional: Program-Specific Outcomes**

Mz. Shirliz Transitional	Number of AB Clients	Number of Other Clients	Total Number of Clients
Referred to services	25	16	41
Enrolled in services	6	8	14
Assessed pre-release for post-release service needs	0	0	0
Provided a service provision plan	0	0	0
Received housing counseling	4	3	7
Received rent payment assistance	0	0	0
Received rental deposit assistance	0	0	0
Received utility payment assistance	0	0	0
Moved in to transitional housing	6	10	16
Received transportation assistance	0	0	0
Received credit counseling	0	0	0
Received legal services	0	0	0
Received job finding assistance	0	0	0
Received case/care management	0	0	0
Received clothing support	1	0	1
Received court support	0	0	0
Attended recovery meetings	6	8	14





<b>Completions</b>			
Total participants no longer in program due to failure to meet program requirements	1	3	4
Total participants no longer in program due to court or criminal involvement	0	0	0
Total participants no longer in program due to lack of engagement	0	0	0
Total participants no longer in program due to absconding	0	0	0
Total participants no longer in program due to relocation or case transfer	0	0	0
Successfully completed the program	1	0	1
Other reasons:			
Probation revoked	0	0	0
Needs could not be met	0	0	0
Disagreement with rules/parsons	0	0	0
Death	0	0	0
Other	0	1	1

**Men and Women of Purpose**

Men and Women of Purpose (“MWP”) provides employment and education liaison services for the County jail facilities, for which the program facilitates employment and education workshops every month at the County’s jails and works with Mentor/Navigators to assist the workshop participants with the documentation required to apply for employment, education, and other post-release activities. MWP also provides pre- and post-release mentoring services for West County using the organization’s evidence-based program Jail to Community model. The program provides one-on-one mentoring, as well as weekly mentoring groups that focus on employment and recovery. Men and Women of Purpose received \$50,000 out of the Network’s \$820,000 budget to provide these services.

**Table 19. Men and Women of Purpose: Program-Specific Outcomes**

MWP	Number of AB 109 Clients	Number of Other Clients	Total Number of Clients
<b>Referred to Men and Women of Purpose (Employment and Placement Services)</b>	<b>35</b>	<b>80</b>	<b>115</b>
Participated in workshops	34	49	83
Enrolled pre-release	36	27	63
Enrolled post-release	27	38	65
Learned of program through pre-release workshop attendance	32	60	92
Assessed pre-release for post-release service needs	65	54	119
Provided Service Provision Plan	45	53	98
Obtained documents successfully:	59	98	157
Birth certificate	13	5	18
California ID	28	69	97
Social Security Card	22	30	52
California Driver’s License	51	108	159





**SHELTER Inc.**

SHELTER, Inc. operates the County's AB 109 Short and Long-term Housing Access Program. This program assists incarcerated and formerly incarcerated persons who are referred to them under the AB 109 Community Programs to secure and maintain stabilized residential accommodations. Shelter, Inc. provides a two-phased approach to clients seeking housing assistance. Before the program refers clients to the Housing Services section, the staff conducts social service assessments/intake procedures to ensure that clients will have success. The program places the majority of their clients into transitional housing situations (such as room or apartment shares) to allow them time to develop the resources for stable housing.

**Table 25: SHELTER, Inc.: Program-Specific Outcomes**

SHELTER, Inc.	Number of AB 109 Clients
Referred to services	277
Enrolled in services	104
Provided a service provision plan	104
<b>Completions</b>	
Total participants no longer in program due to failure to meet program requirements	10
Total participants no longer in program due to court or criminal involvement	1
Total participants no longer in program due to lack of engagement	4
Total participants no longer in program due to absconding	0
Total participants no longer in program due to relocation or case transfer	0
Successfully completed the program	8

**Reach - Housing**

REACH Housing provides housing placement services to formerly incarcerated women at their Naomi House facility. Additional services include support groups, employing training, anger management, and parenting classes. REACH Housing also partners with other local county homeless agencies to provide additional housing opportunities to their cliental. REACH housing provided no services to AB 109 clients in FY 16/17.

**Table 26: Reach Fellowship: Program-Specific Outcomes (Housing Services)**

Reach Fellowship	Number of AB 109 Clients	Number of Other Clients	Total Number of Clients
Referred to services	0	10	10
Enrolled in services	0	7	7
Participated in workshops	0	6	6
Enrolled pre-release	0	5	5





## Looking Ahead

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Contra Costa County has responded to Public Safety Realignment in a manner that has allowed the County to provide supervision and services to the AB 109 population, while building a collaborative reentry infrastructure to support the reentry population's successful reintegration into the community. The County has followed best practice models in establishing access to services through the West County Reentry Success Center's "one-stop" model and the Central & East Network Reentry System's "no wrong door" approach. The launch of the Office of Reentry and Justice (ORJ) in January 2017 is evidence that the County sees its Public Safety Realignment, reentry, and justice work as a high priority.

In FY 17/18, the County will undertake a comprehensive planning process to develop a Reentry Strategic Plan to guide the County's reentry system as a whole, including but not limited to AB 109-funded services. As the County has continued to implement Public Safety Realignment, the need for an inclusive reentry system that provides access to individuals regardless of their AB 109 status has become apparent, with the County granting approval to expand access to AB 109-funded services to any returning resident. The five-year strategic plan will begin with a needs assessment to identify key strengths and needs in the reentry system. This needs assessment will build on recommendations born from AB 109 evaluations over previous years. The County will then engage stakeholders in defining priority areas, goals, and strategies to address gaps and needs in the reentry system. The Reentry Strategic Plan will serve as the County's guiding document for reentry programs and services for 2018-2023.

# ATTACHMENT 8

## Office of Reentry and Justice

The Office of Reentry and Justice was officially launched in January 2017 as a 2.5 year pilot project of the County Administrator's Office to align and advance the County's public safety realignment, reentry, and justice programs and initiatives; it is primarily funded by AB 109 Public Safety Realignment revenues from the state. It has oversight of the Youth Justice Initiative, the development of the countywide Ceasefire Program, the Racial Justice Task Force and the AB 109 Community Programs.

The scope and responsibilities of the ORJ include:

- coordinating a broad array of reentry, public safety realignment, and justice-related services;
- facilitating collaborative efforts around policy development, operational practices and supportive services;
- advancing knowledge of relevant issues, research and best-practices in the fields of reentry, public safety realignment, and justice;
- fostering capacity-building and partnership development;
- leading the procurement process and contract management for community-based reentry service providers;
- identifying and developing new initiatives and funding opportunities to support the work;
- supporting legislative advocacy;
- managing data and evaluation of funded services; and
- conducting public outreach, information sharing and community engagement.

### Contact Us

**Lara DeLaney**  
Sr. Deputy County  
Administrator,  
Director of ORJ  
Email

1122 Escobar Street  
Martinez, CA 94553

Ph: 925-335-1097

**Hours**  
8 a.m. - 5 p.m.  
Monday - Friday

### ORJ Calendar

**Mon, Jul 9 CCP**  
**Community**  
**Advisory Board -**  
**Outreach and**  
**Community**  
**Engagement**  
**Committee Read**  
**On**

**Thu, Jul 12 CCP**  
**Community**  
**Advisory Board -**

Contra Costa County Community Corrections Partnership  
2018/19 AB109 Budget Proposal Form

Department: Behavioral Health Division

ATTACHMENT 9

Description of Item	Program/Function	Ops. Plan Inst. #	2018/19 Status Quo <sup>1</sup>		2018/19 Baseline Request <sup>2</sup>		2018/19 Program Modification Request <sup>3</sup>		2018/19 Total Funding Request	
			Current Allocation	FTEs	Funding Request	FTEs	Funding Request	FTEs	Total Funding Request	FTEs
<b>SALARY AND BENEFITS</b>										
Patient Financial Specialist			133,396	1.50	137,398	1.50			137,398	1.50
Case Managers Homeless			101,754	2.00	104,807	2.00			104,807	2.00
Registered Nurse			185,683	1.00	190,325	1.00			190,325	1.00
Mental Health Clinical Specialists			423,125	3.00	435,819	3.00			435,819	3.00
Community Support Workers			133,185	2.00	137,181	2.00			137,181	2.00
Psychiatrist			58,240	0.20	59,696	0.20			59,696	0.20
Clerk			80,591	1.00	83,009	1.00			83,009	1.00
Evaluators/Planners			43,166	0.30	44,461	0.30			44,461	0.30
Program Supervisors			40,200	0.30	41,406	0.30			41,406	0.30
Substance Abuse Counselor			103,994	2.00	107,114	2.00			107,114	2.00
		Subtotal	1,503,394	13.30	1,541,214	13.30			1,541,214	13.30
<b>OPERATING COSTS</b>										
Homeless Shelter Beds			100,000		100,000				100,000	
Transitional Housing (AODS)			133,488		133,488				133,488	
Residential Drug Facility (AODS)			446,996		446,996				446,996	
Outpatient (AODS)			130,071		130,071				130,071	
Lab & Pharmacy			127,379		127,379				127,379	
Mental Health Services					49,350				49,350	
Deputy Sheriff			47,000		22,448				22,448	
Vehicle Operating (ISF Fee)			22,448		10,200				10,200	
Travel Expenses			10,200		58,752				58,752	
Occupancy Costs			58,752							
		Subtotal	1,078,334		1,078,334				1,078,334	
<b>CAPITAL COSTS (ONE-TIME)</b>										
e.g. Vehicle Purchases (2)										
		Subtotal								
		Total	2,573,668	13.30	2,619,548	13.30			2,619,548	13.30

1. FY 2018/19 Status Quo Request reflects the FY 2017/18 Funding Allocation.
2. FY 2018/19 Baseline Request should reflect the cost of continuing programs in the FY 2018/19 Status Quo column in 2018/19 dollars.
3. FY 2018/19 Program Modification Request should reflect proposals for the cancellation of existing programs and/or funding of new programs for FY 2018/19.

ATTACHMENT D

**OPENING COSTS - \$1,029,934**

**Shelter Beds**

Ten beds are dedicated for homeless AB109 clients on a first come, first served basis. Shelter services include meals, laundry, case management, healthcare, and other support services.

**Recovery Residences (Sober Living Environment)**

Four beds are dedicated to AB109 clients who are homeless and have recently graduated from residential or outpatient substance use disorders treatment programs at Wilkens House. Residents may stay for up to 24 months and will receive a variety of self-sufficiency services and recovery supports.

**Residential Treatment**

Residential Substance Use Disorders (SUD) treatment will be provided for up to 95 clients with an estimated number of 6550 bed days. These services will be provided in the community by Discovery House - a county operated program, and through other community-based SUD providers under a contract with Behavioral Health's Alcohol and Other Drug Services. With the implementation of the Drug Medi-Cal (DMC) Waiver, ADD anticipates an increase on the number of clients projected to be served as we transition from current length of stays which are typically 90-days, to a client-centered treatment approach in alignment with the American Society of Addiction Medicine (ASAM) Criteria. The ASAM Criteria determines client placement in SUD treatment across levels of care based on individual needs and client's readiness for treatment.

**Outpatient Treatment**

Outpatient treatment will be available for up to 48 clients. Outpatient services will be provided through community-based SUD providers under a contract with Behavioral Health's Alcohol and Other Drug Services. Outpatient services consist of individual and group counseling sessions. Similar to residential treatment, under the provisions of the DMC Waiver client placement in outpatient services is determined by the ASAM Criteria based on individual needs and client's readiness for treatment. Accordingly, the duration of treatment is driven by medical necessity rather than a fixed length of stay. Outpatient treatment accompanied by Recovery Residences, promote client self-sufficiency, health and recovery.

Contra Costa County Community Corrections Partnership  
2018/19 AB109 Budget Proposal Form

Department: Community Advisory Board

Description of Item	CONTRACTED PROVIDER	Ops. Plan Item #	2018/19 Status Quo Allocation <sup>1</sup>		2018/19 Baseline Request <sup>2</sup>		2018/19 Program Modification Request <sup>3</sup>		2018/19 Total Funding Request	
			Current Allocation	FTEs	Funding Request	FTEs	Funding Request	FTEs	Total Funding Request	FTEs
<b>COUNTYWIDE SERVICES</b>										
Employment (West/East)	Rubicon Programs	5.3b	1,100,000	9.30	1,100,000	9.30			1,100,000	9.30
Employment (Central/East)	Goodwill Industries	5.3b	900,000	7.20	900,000	7.20			900,000	7.20
Housing	Shelter Inc.	5.3c	980,000	6.85	980,000	6.85			980,000	6.85
Female Housing (West)	Reach Fellowship International	5.3c	50,000	1.00	50,000	1.00			50,000	1.00
Peer Mentoring	Men and Women of Purpose	5.4a	110,000	2.25	110,000	2.25			110,000	2.25
Family Reunification	Center for Human Development	5.4b	90,000	1.40	90,000	1.40			90,000	1.40
Legal Services	Bay Area Legal Aid	5.4c	150,000	1.80	150,000	1.80			150,000	1.80
One Stops	<i>see below</i>	5.2b	<i>see below</i>	12.13	<i>see below</i>	12.13			<i>see below</i>	12.13
CAB Support	Via Office of Reentry & Justice	3.3	7,201	-	7,201	-			7,201	-
		<b>Subtotal</b>	<b>3,387,201</b>	<b>41.93</b>	<b>3,387,201</b>	<b>41.93</b>	<b>-</b>	<b>-</b>	<b>\$ 3,387,201</b>	<b>41.93</b>
<b>NETWORK SYSTEM OF SERVICES</b>										
Network Management	HealthRIGHT360	5.2b 3.3, 4.1, 5.1	605,000	6.10	605,000	6.10			605,000	6.10
<i>Contracted Services</i>										
Sober Living Homes	Mz. Shirliz		150,000	1.80	150,000	1.80			150,000	1.80
Auto Repair Training	Fast Eddie's Auto Services		65,000	1.20	65,000	1.20			65,000	1.20
Emp. & Ed. Liason (women)	Reach Fellowship International		15,000	0.25		0.25				0.25
Emp. & Ed. Liason (men)	Men and Women of Purpose		60,000	2.60	60,000	2.60			60,000	2.60
Transition Planning (women)	Centerforce		45,000	0.75	60,000	0.75			60,000	0.75
		<b>Subtotal</b>	<b>940,000.0</b>	<b>12.70</b>	<b>940,000</b>	<b>12.70</b>	<b>-</b>	<b>-</b>	<b>\$ 940,000</b>	<b>12.70</b>
<b>REENTRY SUCCESS CENTER</b>										
Operation and Management	Rubicon Programs	5.2b 3.3, 4.1, 5.1	525,000	2.50	525,000	2.50			525,000	2.50
Connections to Resources	Rubicon Programs		15,000		15,000				15,000	
		<b>Subtotal</b>	<b>540,000</b>	<b>2.50</b>	<b>540,000</b>	<b>2.5</b>	<b>-</b>	<b>-</b>	<b>540,000</b>	<b>2.5</b>
<b>Cost of Living Adjustment</b>										
4% COLA Increase					194,688				194,688	
		<b>Total</b>	<b>\$ 4,867,201</b>	<b>57.13</b>	<b>\$ 5,061,889</b>	<b>57.13</b>	<b>\$ -</b>	<b>-</b>	<b>\$ 5,061,889</b>	<b>57.13</b>

1. FY 2018/19 Status Quo Request reflects the FY 2017/18 Funding Allocation.
2. FY 2018/19 Baseline Request should reflect the cost of continuing programs in the FY 2018/19 Status Quo column in 2018/19 dollars.
3. FY 2018/19 Program Modification Request should reflect proposals for the cancellation of existing programs and/or funding of new programs for FY2018/19.

Please provide a narrative describing the Status Quo programming that will be provided with the budget requests identified above.

**DEPARTMENT:** Community Advisory Board

**PROGRAM NARRATIVE:**

**2018/19 Status Quo Request**

CAB continues to recommend that CCP invest significant funds in community programs to continue development of the local non-profit services sector. The CCP should therefore continue to support community based programs. Funding these programs is consistent with the nationwide effort of justice reinvestment. Staying this course will ensure our communities gain the capacity to provide reentry services with high levels of quality and fidelity, and is the best way to achieve lasting reductions in recidivism and long term enhanced public safety outcomes.

As CAB submits this 2018/2019 AB109 Budget Request, we have considered the previous budget increase and acknowledge that the funded agencies have only completed a year of programming under their most recent contracts. As part of this status quo budget request, CAB recommends that the CCP Executive Committee fund each of the funded reentry service areas at an amount that is no less than what was allocated for each program during the current fiscal year.

CAB is also aware that last year marked a shift in the recommendation on how to best spend money that was previously spent to develop and support the Reentry Resource Guide. With much consideration, CAB asked that the Network and Center work together to develop a communications strategy that would inform the public about the reentry services available in the community, and direct people to the Center and Network to ensure they are "Connected to the Resources" they need. Jointly, the two entities pledged to:

- 1) create and circulate quarterly newsletters for the people incarcerated in Contra Costa Detention facilities,
- 2) facilitate countywide community events to inform the reentry population and their families of the services available, and
- 3) recruit volunteers to engage the public in the reentry work being done in the community.

To date, this collaboration has led to the release of the first edition of the Contra Costa Reentry Voice in August 2017. The second edition is currently in the works, as are efforts to accomplish the other two communications strategies mentioned above. Because this effort is still in its infancy, CAB is recommending continued funding for the joint communications effort between the Network and Center.

The recommended status quo funding amounts are as follows:

Employment Support and Placement Services: \$2,000,000  
 Housing Services: \$1,000,000  
 Peer Mentoring: \$150,000  
 Family Reunification: \$90,000  
 Civil Legal Services: \$150,000  
 Network System of Services: \$940,000  
 Reentry Success Center: \$525,000  
 Center/Network Joint Communications Strategy \$15,000

**2018/19 New Funding Requests**

**Additional Funding Increase of 4%**

The Community Advisory Board (CAB) continues to recommend that CCP invest significant funds in community programs to continue development of the local non-profit services sector. CAB therefore requests a 4% COLA increase in funding for community programs that amounts to \$194,688. Funding these programs is consistent with the nationwide effort of justice reinvestment. Staying this course will ensure our communities gain the capacity to provide reentry services with high levels of quality and fidelity, and is the best way to achieve lasting reductions in recidivism and long term enhanced public safety outcomes.

# ATTACHMENT 10

## PLANNING COMMISSION STAFF REPORT

**Meeting Date:** May 22, 2018

**Item Number:** 5.b.

**From:** Mindy Gentry   
Community Development Director

**Subject:** Ordinance to Conditionally Allow Parolee Homes in Multifamily General Plan Land Use Designations (ZOA-08-16)

**Applicant:** City of Clayton

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### REQUEST

The City of Clayton is requesting a public hearing for the Planning Commission to consider and make a recommendation to the City Council on a City-initiated Ordinance, amending Title 17 - "Zoning" of the Clayton Municipal Code (CMC) for the purpose of conditionally allowing parolee homes in the Multifamily Low Density (MLD), Multifamily Medium Density (MMD), and Multifamily High Density (MHD) General Plan designations (ZOA-02-18) (Attachment A).

### PROJECT INFORMATION

**Location:** Citywide

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

**Public Notice:** On May 10, 2018, a public hearing notice was published in the Contra Costa Times and on May 11, 2018 a public hearing notice was posted at designated locations in the City.

### BACKGROUND

On October 1, 2011, the Public Safety Realignment Act (Assembly Bill 109) went into effect transferring responsibility for supervising specified inmates and parolees from the California Department of Correction and Rehabilitation to counties. The Contra Costa County Board of Supervisors adopted the Contra Costa County Realignment Plan on October 4, 2011. The County's Realignment Plan called for the establishment of community programs for employment support and placement services, mentoring and family reunification services, short and long-term housing access, and civil legal services. Due to the passage and implementation of AB 109, there are concerns regarding the possible increased use of parolee homes for offenders to be released from prison to serve the remainder of their sentence within the community, which could result in a higher number of these facilities within the community.

The California Department of Correction and Rehabilitation in its *2015 Outcome Evaluation Report – An Examination of Offenders Released In Fiscal Year 2011-2012* (Attachment B) indicates the recidivism rate in Contra Costa County for years one, two, and three following release is 43.4 percent, 46.7 percent, and 48.8 percent respectively. These rates raise public safety concerns regarding the operation or establishment of parolee homes within the City of Clayton and without further review of the facility's operational and management plans and services and staffing plans as well as the establishment of buffers from sensitive uses, it could result in impacts to the community.

On August 5, 2016, the City of Clayton received an email from a non-profit County contractor/grantee searching for a facility where a use permit would not be required in order to operate what they described as a stable living environment/transitional housing program to assist individuals that have been previously incarcerated as part of the Contra Costa Reentry program. Given the Clayton Municipal Code was silent on parolee housing, this prompted the City Council, in compliance with State law (Government Code Section 65858), on October 16, 2016 to adopt an urgency ordinance placing an interim moratorium on the establishment, construction, and operation of parolee homes. As allowed for by State law, the moratorium was continued twice by the City Council with the last and final moratorium set to expire on October 3, 2018. After having the opportunity to research this issue, City staff is now returning to the Planning Commission with a proposed Ordinance for consideration to appropriately regulate these types of land uses.

#### **DISCUSSION**

The proposed Ordinance would allow parolee homes to locate within the multifamily General Plan land use designations: Multifamily Low Density, Multifamily Medium Density, and Multifamily High Density, as identified on the General Plan Map, subject to a conditional use permit as well as the regulations identified in the Ordinance. These land uses are located in various places throughout the City, which are more specifically identified on the General Plan Land Use Map, which is contained in Attachment C to this staff report. In addition to the General Plan designation locations, the parolee homes are only permitted with a conditional use permit in either a Planned Development (PD) zoning district or in a Multiple Family Residential zoning district (M-R, M-R-M, or M-R-H). The use permit process is a public hearing process, whereby property owners within a 300-foot radius would be individually notified; a notice would also be placed in a newspaper of general circulation; and a notice would be posted on the City's community posting boards. The use permit application would then be subject to a discretionary review by the City's Planning Commission.

The Ordinance provides clear definitions of what constitutes a parolee home and a parolee. Further, single housekeeping units would not be subjected to the regulations and there are eight criteria as to what constitutes a single housekeeping unit. Namely, the residents need to have established ties and interact with each other; membership of the household is determined by the residents and not the landlord; each adult resident is named on the lease; and residents do not have separate entrances or food-prep and storage areas, amongst others.

Not only have locational requirements been proposed, but also numerous objective standards have also been incorporated into the Ordinance to mitigate or minimize any impacts. A parolee home cannot be located within 300 feet from any school, daycare, library, park, hospital, group home, or a business licensed for the on- or off-sale of alcoholic beverages, or emergency shelter, amongst others. It also must not be located within 1,000 feet of another parolee home. As part of the use permit application process, the Ordinance requires additional information such as the client profile, maximum number of occupants, and a management plan.

Lastly, multifamily housing projects with 25 units or less are limited to one parolee housing unit and housing projects with 25 units or more are limited to two parolee housing units. These thresholds would be applicable in apartment and condominium style buildings.

It should be noted, as part of the use permit process, that additional conditions of approval, beyond what is contained in the proposed Ordinance, could be added to mitigate any possible impacts associated with the specific application. These conditions would be considered on a case-by-case basis, which would be determined by the applicant's proposal and the location of the facility.

#### **RECOMMENDATION**

Staff recommends that the Planning Commission consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, adopt Resolution No. 03-18, recommending City Council approval of the proposed Ordinance to amend the Clayton Municipal Code to conditionally allow parolee homes in the following General Plan land use designations: Multifamily Low Density, Multifamily Medium Density, and Multifamily High Density (Attachment A).

#### **ATTACHMENTS**

- A. Planning Commission Resolution No. 03-18, with attachment:  
Exhibit 1 – Draft Ordinance Amending Title 17 – “Zoning” to Conditionally Allow Parolee Homes in General Plan Multifamily Land Use Designations
- B. *2015 Outcome Evaluation Report – An Examination of Offenders Released in Fiscal Year 2011-2012*
- C. General Plan Map with Highlighted Multifamily Land Use Designations

# ATTACHMENT 11

James Gamble indicated the following:

- This ordinance is part of Agenda 21.
- Look at other communities in the area where high density housing is being developed around heavy transit areas.

James Jacques indicated that he disagreed with the representative of the Grand Oaks project asking for RCFEs to be exempt from the requirements of AB 1505.

The public hearing was closed.

Commissioner Cloven moved and Vice Chair Altwal seconded a motion to adopt Resolution No. 02-18, recommending City Council approval of an Ordinance amending the City's Inclusionary Housing Requirements. The motion passed 4-0.

- 5.b. **ZOA-08-16, Municipal Code Amendment, City of Clayton.** A request by the City for the Planning Commission to consider and make a recommendation to the City Council regarding amendments to the Clayton Municipal Code to conditionally allow parolee homes in the following General Plan land use designations: Multifamily Low Density, Multifamily Medium Density, and Multifamily High Density.

Director Gentry presented the staff report.

Commissioner Gail inquired what would happen after the City's parolee home moratorium expires on October 3, 2018?

Director Gentry responded that, after the parolee home moratorium expires on October 3, 2018, there would be no codified requirements established in the City's Municipal Code to regulate parolee homes which would allow parolee homes to potentially be located anywhere in Clayton.

Commissioner Cloven had the following questions:

- So the City could possibly be in legal jeopardy if we established a ban on parolee homes? Director Gentry responded "yes."
- So it is in our best interest to establish codified provisions which regulate parolee homes? Director Gentry responded "yes" and added that the City cannot establish regulations that are so prohibitive that, by default, it prevents these types of uses from locating in Clayton.
- Is my understanding correct that the parolee homes would still have to be reviewed individually before the Planning Commission on a case-by-case basis under the guise of a use permit? Director Gentry responded "yes."
- In the instance that we were to review a use permit for a parolee home, what latitude do we have to require certain things like a management plan? A management plan is one of the requirements in the draft Ordinance.
- Could we require that there be a person living at the parolee home for supervisory purposes who is not a parolee? That is one possibility that could be considered on a case-by-case basis and included as a condition of approval.

- Are there a maximum number of parolees that can live in a parolee home based on the number bedrooms in that home? Due to a court case out of Southern California, the number of parolees would be dictated by the California Building Code which may include, but not be limited to, such calculations as number of occupants per bedroom and number of occupants on a square footage basis in the rest of the home.
- According to the provisions of the draft Ordinance, in a three-bedroom townhouse theoretically six parolees could live there? Director Gentry responded that was correct.
- If a use permit were conditionally approved for a parolee home, is there a way the City could review the parolee home on an annual basis? Director Gentry responded that could be included as a condition of approval.
- Is there a fee the City could charge to cover the cost of policing and annual reviews? Director Gentry responded that, beyond costs for staff time in the processing of the use permit and follow-up annual inspections as directed by the use permit conditions of approval, the City would not be able to charge for additional calls for service or strain on the police department because those types of things are already assumed in the property taxes.
- What are single housekeeping units? Director Gentry responded that an example of single housekeeping units would be where a parolee owns a living unit and invites a friend who is a parolee to live in the home. The regulation of these types of households could tread into questionable legal territory in regards to what defines a housing unit and how the government wants to define family.
- So, theoretically, a single family dwelling unit could be considered as a single housekeeping unit? Director Gentry indicated that was correct and, in addition, a multifamily dwelling unit could also be considered as a single housekeeping unit.
- Of the rules and criteria related to parolee housing, one item was that membership is determined by the residents of the parolee home and not by a management company so, if the residents were all parolees, they could choose which parolee could live with them in the parolee home, correct? Director Gentry responded that was correct.

Vice Chair Altwal had the following questions:

- Is the City being required by the State to pass this Ordinance? Director Gentry responded that the City is not being required by the State to pass this Ordinance. Rather, this is a preemptive recommendation of staff and in response to AB 109 in order to prevent parolee homes from locating anywhere in Clayton and to allow the City some control over where they are located.
- If the City does not pass this Ordinance, the parolee home could locate anywhere in the Clayton that they want to and we would not have any control over the parolee home? Director Gentry indicated that was correct as the parolee home would then be considered as a typical residential unit and the parolee home could locate anywhere in Clayton without any regulations and without any public hearings process, resulting in the City relinquishing all control over parolee homes.

- Only federal crime parolees can live in the parolee home? Director Gentry responded that all parolees would be allowed to live in the parolee home, based on the definition of a parolee as contained in the draft Ordinance that has a large umbrella definition that encompasses essentially anyone that is on parole.
- Can the City limit the type of parolees living in the parolee home, for instance prohibiting sex offender parolees as opposed to petty theft parolees? Director Gentry responded that she would defer to legal counsel, Heather Lee, a representative from the City Attorney's Office.

Ms. Lee responded that the City prohibiting a particular class of people would run the risk of legal challenge and could result in the ensuing court case being a test case for this issue.

Director Gentry indicated that this draft Ordinance is an attempt by staff to be proactive as a result of the City receiving an inquiry regarding this issue. So, rather than allowing parolee homes to locate within Clayton without the community's consideration, the intent of the draft Ordinance is that, in the instance that there is a County program seeking to locate a parole home in Clayton, then at least the City would have a say in where the parolee home is located, how the parolee home can operate, and ensuring that the parolee home is subject to a public hearing process. Staff is hoping that the draft Ordinance will be preemptive and will enable the City to have control over where parolees get housed and how they get housed.

Vice Chair Altwal had the following questions:

- How would this Ordinance stop a parolee home from being located anywhere in Clayton? Director Gentry responded that the Ordinance would prevent a County re-entry program contractor from renting a home without a public hearing and without being subject to location controls; however, the Ordinance would not prevent a situation where someone owns a home and invites family members or friends who are parolees to move into the home.
- Regarding the radius area around a parolee home, can we increase the unit of radius area measurement from a foot to a yard? Director Gentry indicated that, increasing the buffer area from feet to yards would raise the legal questionability of the Ordinance as this would affect the numbers of possible parolee home locations available in Clayton. Legal counsel has indicated a minimum of three to four available locations would be legally defensible and increasing the unit of measurement would reduce the number of locations available and would, by exclusion, essentially be a Citywide ban of parolee homes.
- So a ban on parolee homes constitutes discrimination? Director Gentry said that was correct.

Chair Wolfe inquired what would happen if the City established a ban on parolee homes? Director Gentry responded that, if the City banned parolee homes, it would open the City up to discrimination lawsuits.

Commissioner Gall inquired that, if a parolee has family living in Clayton, could they just move into the family home? Director Gentry explained that this Ordinance would address parolee homes that would be established as part of the County's re-entry program.

The public hearing was opened.

Mike Clifton indicated the following:

- Clayton is too small to manage parolee homes.
- Catering to parolees is not in the City's best interest.
- Allowing them to use multifamily units, which, are more affordable, make Clayton more attractive to parolees.
- We should only allow them to use single-family residential housing units, which are more expensive, and may be a way to discourage parolee homes from locating within Clayton.
- This Ordinance makes it appear to the County that we are inviting parolees to move to Clayton.

Chair Wolfe had the following comment and question:

- It would appear that if the City does not pass some sort of regulations, we would be in a difficult situation.
- What do we know about the number of parolees in Clayton? Director Gentry indicated that, according to County statistics which take into consideration the entire zip code of 94517 which is a much larger area than the City of Clayton, there are 20 parolees who consist of 9 adults and 11 juveniles.

Sarah Riley indicated the following:

- I have been a police officer in Oakland for 16 years.
- I moved out to Brentwood to avoid running into parolees who were people I arrested in a grocery store.
- I then moved to Clayton to get out of Brentwood and after Brentwood allowed parolees to move in, then my home was burglarized.
- These parolees are arrested for violent offenses and then, when they moved into parolee homes, their offenses are represented as something more benign than they actually are.

James Jacques indicated the following:

- I am also a police officer.
- Clayton is very attractive since it is a safe community.
- Children in Clayton commonly walk home from school. As a result, the 300-foot radius is not a large enough distance to provide safety for our children.
- We should not only be concerned with one parolee, but instead we should be concerned with a whole group of parolees living together. Birds of a feather flock together, so we want to avoid inviting a criminal element into Clayton where whole groups of parolees are living together.
- The City should do nothing right now, and wait for the lawsuit to come.

Vice Chair Altwal confirmed that, if the City does nothing, it is not the lawsuit that concerns us but rather the fact that parolee homes could be potentially located anywhere in Clayton, correct? Director Gentry indicated that was correct.

Colleen Van Ostrive indicated the following:

- What has stopped parolee homes from coming into Clayton thus far?
- Clayton is only 5 square miles in area. Allowing 6 parolee homes in Clayton would be an average of more than one parolee home per square mile.
- I ask that the Planning Commission make it as difficult as possible for parolee homes to move into Clayton.

Chair Wolfe inquired if the email the City received regarding parolee homes was sent just to the City of Clayton. Director Gentry responded that the email was sent out to many more jurisdictions than just Clayton. As a result of the email, staff thought it prudent to establish some sort of regulations in order to make it more restrictive for parolee homes to locate within Clayton. This arose from the County re-entry program, which was established by the County in October 2011 due to the United States Supreme Court upholding the State of California Court ruling mandating that California reduce its prison population.

Chair Altwal inquired if the City can extend the moratorium beyond the expiration date in October 2018? Director Gentry responded that, no the City cannot extend the moratorium more than three times, and the City's third extension will expire in October 2018.

Commissioner Cloven asked if any other cities in the County have parolee home regulations? Director Gentry responded that Pleasant Hill, Antioch, and Oakley have established regulations for parolee homes.

Chair Wolfe inquired if there is a legal notification system for a parolee being released into our community? Director Gentry responded that there currently is no legal notification system.

Kathy Bengel indicated the following:

- She is opposed to the draft Ordinance.
- Her neighbor could not make it to the meeting tonight and her neighbor wanted to pass along her concerns related to an increase in crime that may occur as a result of parolee homes being established in Clayton.
- Could we locate a parolee home out on Marsh Creek Road?

Director Gentry indicated that the Marsh Creek Road area is located in the unincorporated Contra Costa County area, outside of Clayton, and would be under the County's jurisdiction.

Matt Foley indicated the following:

- Been in law enforcement for 15 years.
- To respond to Commissioner Cloven's comment about school teachers living in affordable housing units, I have met many occupants of Section 8 houses and, not once, have I met a school teacher living in them.
- The City is not being exclusionary since parolees can already locate within the City.

- Governor Jerry Brown has a parolee release rate of 87% for parolees that have committed serious crimes, in some case these parolees are lifers. In the past these criminals would not have been released. To compare, former Governor Arnold Schwarzenegger only had a parolee release rate of 27%.
- These parolee are cloaked are lesser offenders when in fact they are animals that have committed serious crimes.
- The City should establish another level of approval so the County cannot so easily establish these types of homes within Clayton.
- Would a business license be required for a parolee homes.

Director Gentry responded with the following comments:

- The radius distances for buffering purposes were proposed by City staff to prevent parolee homes from establishing near schools, parks, and other sensitive-use areas.
- The purpose of this Ordinance is to establish another level of approval that would give the community the opportunity to review parolee homes and provide feedback to the Planning Commission regarding whether or not the use is acceptable in the location it is proposed.
- Yes, the parolee home would be required to obtain a City business license.

Chair Wolfe asked what the City Attorney's office thinks of possible legal challenges staff's proposed buffer zones? Ms. Lee responded that staff has worked with legal counsel to develop a defensible way of identifying buffers and an appropriate number of locations to provide a reasonable set of regulations that could be legally defensible.

Maria Arvizu indicated the following:

- This is our community and we should be able to dictate what does and does not happen here.
- We should establish something like Megan's Law.
- We should be able to list parolees in a database who are moving to Clayton and have their pictures and the crimes they committed.
- Parolee homes should not be located in Clayton.
- A curfew should be placed on parolees living in Clayton.

Vice Chair Altwal inquired if there is a way to establish a curfew for parolees living in Clayton? Ms. Lee responded that, as with any land use regulation, we have to have a rational, legal basis for establishing a curfew which we may not have the authority to do given the State's laws superseding our own. We are talking about land use regulations and restrictions on property use. Some of these parolee home-related concerns are a police matter and do not fall under the purview of the Planning Commission.

Brain Fitzgerald indicated that the City should have each parolee home apply on a case-by-case basis which would allow us to deny the parolee home.

Commissioner Cloven inquired what are the Planning Commission's options regarding the requirements of a land use permit? Director Gentry responded that the Planning Commission would review any possible impacts to the surrounding community as it pertains to public health and safety and, based on that analysis, the Planning Commission would have to make certain findings in order to deny a use permit. The Planning Commission would, as part of the use permit process, have the ability to regulate hours of operation, parking, traffic, and other such typical land use considerations that would be associated with a proposed development.

Commissioner Cloven indicated that it is incumbent upon us to be as restrictive as possible in order to protect the safety of our community.

Director Gentry indicated that staff's discussion with legal counsel included creating a set of regulations in the Municipal Code that would be as restrictive as possible but still be within the confines of the law.

Fiona Hughes indicated the following:

- Since the email was sent to other jurisdictions, it would seem like the sender of the email is fishing for easy communities to establish parolee homes in.
- We should respond to the sender of the email that Clayton is not a viable location for parolee homes.
- We do not want to end up flagging our City as a parolee destination.

Director Gentry indicated that the sender of the email has not expressed further interest in locating parolee homes in Clayton.

Vice Chair Aitwal inquired if the City's business license process would be another way to regulate parolee homes? Director Gentry indicated that the City's business license process is merely a taxation mechanism and would not be an option for regulating parolee homes.

Kristin Moore indicated the following:

- Only three communities in Contra Costa County have mandated zones for parolees.
- All the other communities in Contra Costa County have not taken a stance on parolee homes, so why should we?
- There are four locations identified for parolee homes in Clayton that are in close proximity to our schools.
- It is as if we are putting a target on our back and our children's backs to invite parolees into town.
- It is mind boggling that we are even considering this.

David Thys indicated the following:

- I have spent a career in law enforcement.
- I understand where the City is coming from regarding legal challenges.
- I think the citizens of Clayton would welcome a challenge.

Chair Wolfe asked what the City of Antioch has established as a buffer zone for parolee homes? Director Gentry responded that the City of Antioch would not be applicable in this case since they have required that parolee homes be located in Industrial districts and there are no Industrial districts in Clayton.

Paul Henshaw expressed concerns that the buffer zone around a parolee home could prohibit the establishment of a pre-school.

Catherine Harrell indicated the following:

- Part of why we live in Clayton is because we have a safe community.
- I disagree with parolee homes being located within 300 feet of schools. We should increase the buffer distance.
- We should not put parolee rights above the safety of our children. Our children should come first.

Marci Longchamps indicated that we should not be one of the first cities to participate in this program.

John Kranci indicated the following:

- I am a retired police officer.
- I support increasing the buffer distance.

Chair Wolfe inquired what would a legal challenge cost the City? Director Gentry said, depending on the nature of the lawsuit, the fiscal impact could range from the tens of thousands to the hundreds of thousands.

James Gamble indicated the following:

- This item should not be on the agenda.
- What is attractive about establishing parolee homes in Clayton when Concord has many other zoning options such as Industrial districts.
- This is a social justice entity pushing for parolee homes.

Wendy Laughlin indicated the following:

- Parolee homes would impact in-home day cares which are needed.
- It is a privilege to live in Clayton.
- It is not fair that parents have to work hard to afford their homes in Clayton while parolees can just move in easily.

Alisa Bowron indicated that she is in opposition to the draft Ordinance since the City Council will not have a level of control over parolee homes.

Director Gentry indicated that, without the establishment of an Ordinance, parolee homes could potentially locate anywhere whereas, with the establishment of an Ordinance, the City would have control over the location of parolee homes, have the ability to regulate them, and subject them to a public hearing process.

Maria Arvizu, representing her husband Victor Arvizu, indicated that parolees moving to Clayton should be subject to some sort of registration process.

Director Gentry indicated that, currently, an individual who is a parolee could theoretically be located anywhere in Clayton. Alternatively, the Ordinance would specifically address the County's re-entry program.

Chuck Blazer indicated the following:

- Staff is way off base with this Ordinance.
- I have seen parolee homes destroy neighborhoods.
- I have concerns with parolee homes contributing to prostitution, drugs, theft, and other crimes.
- We do not want parolees looking at Clayton as an option for moving into.
- Parolee homes increase violence, blight, and crime in general.
- You have heard from your citizens tonight and you should not be making a decision tonight.

Tom Finnegan indicated the following:

- I think the City should not reply to the email.
- I am in favor of an Ordinance that would double or triple the buffer zone distances and make it next to impossible for parolee homes to move to Clayton.
- We should analyze the impacts parolee homes have as a public nuisance that could lower property values and make them build-only proposals.

Vice Chair Altwal inquired about requiring parolee homes being allowed as build-only projects? Director Gentry responded that requiring parolee homes to be build-only projects would make the parolee homes so cost prohibitive that the City would legally default to being too restrictive.

Frank Gzvidia indicated the following:

- We live in a State that ignores the Federal government; why should we cater to the State?
- I do not understand how one email triggered all this staff time and work in preparing the draft Ordinance.
- We should have input from our Police Department.

Ryan (no last name given) indicated the following:

- I love this community.
- I am a police officer and have seen parolee homes destroy communities.
- I would like to know who sent the email.
- We should table this item until we have more information.

Director Gentry indicated that the email is public record and was sent from a program manager representing a transitional housing/stable living environment for persons previously incarcerated and the program manager was looking for jurisdictions to locate in that did not have a use permit process already established.

The public hearing was closed.

Vice Chair Altwal indicated the following:

- I want to thank staff for all their hard work and bringing this item to our attention.
- My home in Clayton was burglarized 6 years ago.

- We should not make a decision tonight.
- We should not regulate it until a parolee home attempts to move into Clayton and then we are forced to regulate it.

Commissioner Gall indicated the following:

- I want to thank everyone for being here this evening and would like to express to the audience that their concerns are Planning Commission concerns as we are also members of this community and we have children and grandchildren.
- We have an obligation to the City Council to make a recommendation.
- We have some time so we should take a closer look at this issue.
- I do not think we should recommend approval right now.

Commissioner Cloven indicated the following:

- I see a need to do something.
- I would not want a parolee home locating next door to my residence and not be able to do anything about it.
- I think it would be good for the City to be able to review a land use permit for a parolee home and have codified regulations that would require the submittal of plans and a management plan.
- I am concerned that we are inviting parolee homes to Clayton but I am also concerned that, without regulations, parolee homes can locate anywhere in our community.
- I think the draft Ordinance needs to be refined and we should take more time to review this issue.

Chair Carl Wolfe indicated the following:

- My concern is that, if we do not do something today or not do something today, we open the City up to legal challenges.
- I can see there is a definite level of discomfort from the community regarding the draft Ordinance.
- I am not sure we have enough information to make an educated decision on the draft Ordinance.

Vice Chair Altwal moved and Commissioner Cloven seconded a motion to adopt Resolution No. 03-18, recommending City Council denial of an Ordinance amending the Clayton Municipal Code to conditionally allow parolee homes in the following General Plan land use designations: Multifamily Low Density, Multifamily Medium Density, and Multifamily High Density. The motion passed 4-0.

**6. OLD BUSINESS**

None.

**7. NEW BUSINESS**

None.

# ATTACHMENT 12

**Mindy Gentry**

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**Subject:** FW: Zoning Inquiry

**From:** Mz Shirleyz Transitional [mailto:mzshirleyz@gmail.com]  
**Sent:** Friday, August 05, 2016 12:09 PM  
**To:** msikela@cl.dayton.ca.us  
**Subject:** Zoning Inquiry

Good afternoon,

We are a 501 (c) (3) non-profit who operates a SLE/Transitional home and we are looking at re-locating from San Mateo County to your city. We have been awarded a grant from Contra Costa County to assist with the Re-entry Network in helping reduce recidivism. We are writing you to find out the zoning laws around where in your city we would be able to operate our program without having to go through a use permit process.

We are including pertinent information that should help you determine where we would fit into your community and if additional information is needed we are more than happy to provide what you need to make this determination.

Our non-profit has been in business since 2009 and has operated in San Mateo and Santa Clara Counties in both residential and residential/commercial without the requirement of a use permit. We assist people who are in recovery from alcohol and drug use, many that have been previously incarcerated.

- The lessee is usually the non-profit or the Director, Shirley Lamarr (Are the codes different for renting a property versus owning the property?)
- Residents are not listed on the lease due to confidentiality issues.
- Depending on the size of the property we wish to operate with 6-8 residents of which 1-2 senior members will be House Managers.
- Staff is present 24/7 to monitor the house
- Residents share household chores but do not share household expenses.

- Residents are not allowed to bring any personal vehicles with them. Only staff will have vehicles on site.
- We are involved in the communities we reside in and we live together as an extended family.
- The average stay of a resident is 3-6 months. This allows them time to be grounded, obtain a job and move to permanent housing.
- Residents are referred by the Contra Costa County Re-entry Network
- We do not accept pedophiles or persons with previous sex crimes
- We do not do any AOD services on-site. All services are referred to outside agencies.
- We have always developed and maintained great working relationships with all city and county departments. We have always developed great relationships with our neighbors and our landlords and we have reference letters at our disposal.

We would appreciate an answer as soon as possible as we would like to make this transition as quickly as possible.

If you have any questions please feel free to contact Ann Baldetta, Executive Assistant to the Director at (650) 669-5420 or the Director, Shirley Lamarr at (650) 218-8256.

Thank you for your help

Ann

# ATTACHMENT 13

Agenda Item: 10-05-2017



Agenda Item: <u>7b</u>
Approved: 
Gary A. Napper City Manager

## STAFF REPORT

**TO:** HONORABLE MAYOR AND COUNCIL MEMBERS

**FROM:** MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR *MG*

**DATE:** OCTOBER 3, 2017

**SUBJECT:** ADOPTION OF AN INTERIM URGENCY ORDINANCE EXTENDING THE PROHIBITION OF THE ESTABLISHMENT, CONSTRUCTION, AND OPERATION OF COMMUNITY SUPERVISION PROGRAMS AND PAROLEE HOMES (ZOA-08-16)

### RECOMMENDATIONS

It is recommended 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. Hold a Public Hearing to consider public comments regarding the proposal to adopt Interim Urgency Ordinance No. 479.
2. Motion to have the City Clerk read the Interim Urgency Ordinance No. 479 by title and number only and waive further reading; and
3. Following the City Clerk's reading, by motion adopt the Interim Urgency Ordinance No. 479 by 4/5ths affirmative vote of the full City Council to continue the prohibition on the establishment, construction, and operation of Community Supervision Programs and parolee homes for an additional one year period (ZOA-08-16) (Attachment 1).

### BACKGROUND/DISCUSSION

On November 1, 2016, following a public hearing and pursuant to Government Code Section 65958, the City Council adopted an Interim urgency ordinance (Ordinance No. 469) prohibiting the establishment, construction, and operation of Community

**Supervision Programs and parolee homes for a period of forty-five (45) days (Attachment 2).**

On December 6, 2016, following a public hearing, the City Council extended the moratorium (Ordinance No. 472) of these uses for a period of ten (10) months and fifteen (15) days to provide staff with additional time to research, analyze, and draft regulations regarding these issues (Attachment 3). Due to the uses associated with the County's Community Supervision Program, including parolee homes, and these uses not being defined within the Clayton Municipal Code, the Council had concerns regarding the potential for negative impacts to public health, safety, and welfare, particularly if there were a dense concentration of parolee homes or service providers or these uses were to be located near sensitive uses such as parks, schools, or day care centers.

#### **DISCUSSION**

Ordinance No. 472 is an Interim ordinance, which is in effect for ten (10) months and fifteen (15) days and will expire on October 21, 2017. California Government Code Section 65858(a) allows the City of Clayton to adopt an interim urgency ordinance for forty-five (45) days and then may extend the urgency ordinance for ten (10) months and fifteen (15) days with a third extension of up to one year. The additional time, one year, provided by the subject Ordinance, allows the extra time for City staff to research, study, and draft regulations. This is the last extension allowed by State statute and during this final one-year timeframe, staff must conclude its research and analysis, and then draft proposed regulations for both the Planning Commission's and City Council's consideration.

#### **ENVIRONMENTAL**

Adoption of the urgency Ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because this activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA.

#### **FISCAL IMPACT**

There is no direct fiscal impact; however there will be staff time associated with the preparation of the necessary ordinance to address recent state law regarding the Community Supervision Program and parolee homes.

**ATTACHMENTS**

1. Ordinance No. 479 [5 pp.]
2. Excerpt of the Staff Report and Minutes from the November 1, 2016 City Council Meeting [4 pp.]
3. Excerpt of the Staff Report and Minutes from the December 8, 2016 City Council Meeting [20 pp.]

**ORDINANCE NO. 479**

**AN URGENCY ORDINANCE MAKING FINDINGS AND EXTENDING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT, CONSTRUCTION, AND OPERATION OF PAROLEE HOMES AND COMMUNITY SUPERVISION PROGRAMS FOR A PERIOD OF ONE YEAR**

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

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

**WHEREAS, Government Code Section 65858 provides that for the purpose of protecting the public safety, health and welfare, a City Council may adopt, without following the procedures otherwise required prior to the adoption of a zoning ordinance, as an urgency measure, an interim ordinance, by a vote of four-fifths (4/5) majority, prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time; and**

**WHEREAS, the City of Clayton ("City") and surrounding communities have seen and experienced an increased interest in the establishment of group homes and community supervision programs for parolees and probationers; and**

**WHEREAS, this interest is due, in part, to AB 109 and the increased number of parolees, probationers and others subject to post-release supervision. Specifically, the 2015 Outlook Evaluation Report – An Examination of Offenders Released In Fiscal Year 2010-11 Report by the California Department of Corrections and Rehabilitation (CDCR), indicates the statewide recidivism rate of offenders is 44.6 percent with 80 percent of those offenders returning to prison within the first year of release. The CDCR report indicates the percentage of recidivism after one, two, and three-year periods within Contra Costa County are 43.4, 46.7, and 48.8 respectively; and**

**WHEREAS, citizens of the City have expressed significant concerns regarding the impacts that a proliferation of parolee/probationer homes may have on the community, including, but not limited to, impacts on traffic and parking, excessive delivery times and durations, commercial and/or institutional services offered in private residences, more frequent trash collection, daily arrival of staff who live off-site, loss of affordable rental housing, violations of boardinghouse and illegal dwelling unit regulations, obvious business operations, secondhand smoke, and nuisance behaviors such as excessive noise, litter, and loud offensive language; and**

**WHEREAS, due in part to AB 109, the City anticipates receiving requests for the construction, establishment and operation of Community Supervision Programs (as defined below) within the City. However, this use is not defined in the Clayton Municipal Code and applying current commercial zoning regulations may not take into account potential impacts of Community Supervision Programs on the surrounding community such as loitering and**

increased calls for service and particularly impacts on sensitive uses such as schools and parks; and

**WHEREAS**, the City has commenced a study of appropriate regulations for these uses, but additional planning and research are necessary before the City can adopt any permanent regulation; and

**WHEREAS**, any parolee/probationer homes or community supervision programs established prior to the adoption of comprehensive regulations may do so in areas that would be inconsistent with surrounding uses and would be immediately detrimental to the public peace, health, safety, and welfare; and

**WHEREAS**, should those uses be allowed to proceed, such uses could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations regarding these uses; and

**WHEREAS**, the City Council at its regularly scheduled meeting on November 1, 2016 adopted Ordinance No. 469, pursuant to California Government Code 65858, establishing a forty-five (45) day moratorium on the establishment and operation of Parolee Homes and Community Supervision Programs; and

**WHEREAS**, the circumstances and conditions that led to the adoption of Ordinance No. 469 have not been alleviated and continue to create concerns; and

**WHEREAS**, the City Council at its regularly scheduled meeting on December 6, 2016 adopted Ordinance No. 472, pursuant to California Government Code Section 65858(a), extending the interim urgency moratorium for ten (10) months and fifteen (15) days after meeting the notice requirements pursuant to Government Code Section 65090 and a public hearing has complied with the public hearing noticing requirements of Government Code Section 65858(a); and

**WHEREAS**, the circumstances and conditions that led to the adoption of Ordinance No. 469 and 472 have not been alleviated and continue to create concerns; and

**WHEREAS**, the City has complied with the public hearing noticing requirements of Government Code Section 65858(a) to consider and adopt the time extension of the current moratorium by enactment of Urgency Ordinance No. 479; and

**WHEREAS**, Government Code Section 65858(a) allows an interim urgency ordinance to be extended for one year after meeting the notice requirements pursuant to Government Code Section 65090 and a public hearing.

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

**Section 1.** **Recitals and Findings.** The above recitals are true and correct and are hereby incorporated into this Ordinance. The Council further finds and determines the staff report for this Ordinance describes the measures taken to alleviate the conditions that led to the adoption of the Ordinance No. 479. This staff report is hereby adopted and approved by the Council as required by Government Code section 65858(d).

**Section 2.** **Moratorium.** In accordance with the authority granted to the City Council of Clayton, California, under Government Code Section 65858, from and after the date of this Ordinance, no use permit, variance, building permit, business license or other applicable entitlement for use or expansion of an existing use shall be approved or issued by the City for the establishment or operation of a Parolee Home or Community Supervision Program for a period of one year. For purposes of this ordinance, Parolee Home shall be defined as "any residential or commercial building, structure, unit or use, whether owned and/or operated by an individual or for-profit or non-profit entity, which houses between two or more parolees, unrelated by blood, marriage, or legal adoption, in exchange for monetary or non-monetary consideration given and/or paid by the parolee and/or any individual or public/private entity on behalf of the parolee. Parolee Home shall not mean any state-licensed residential care facility."

For purposes herein, Community Supervision Program shall be defined as "any facility, building, structure or location, where an organization, whether private, public, institutions of education, not for-profit, or for-profit, provide re-entry services, excepting housing, to previously incarcerated persons or persons who are attending programs in-lieu of incarceration including, but not limited to: employment support and placement services, peer and mentoring services, and resource centers. Included in this definition are services provided to Parolees."

Parolee shall include probationer, and shall mean any of the following: "(1) an individual convicted of a federal crime, sentenced to a United States Federal Prison, and received conditional and revocable release in the community under the supervision of a Federal parole officer; (2) an individual who is serving a period of supervised community custody, as defined in Penal Code Section 3000, following a term of imprisonment in a State prison, and is under the jurisdiction of the California Department of Correction, Parole and Community Services Division; (3) a person convicted of a felony who has received a suspension of the imposition or execution of a sentence and an order of conditional and revocable release in the community under the supervision of a probation officer; and (4) an adult or juvenile individual sentenced to a term in the California Youth Authority and received conditional revocable release in the community under the supervision of a Youth Authority parole officer. As used herein, the term parolee includes parolees, probationers, and/or persons released to post-release community supervision under the "Post-release Community Supervision Act of 2011" (Penal Code Section 3450 et seq.) as amended or amended in the future."

**Section 3.** **Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be

unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

**Section 4. CEQA.** The City Council finds, under CEQA Guidelines section 15061(b)(3), that this Ordinance is exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Contra Costa in accordance with the CEQA Guidelines.

**Section 5. Effective Date and Publication.** This Ordinance shall become effective immediately upon adoption if adopted by at least a four-fifths vote of the City Council and shall be in effect for one year from the date of adoption. This Ordinance shall be published or posted as required by law.

**PASSED, APPROVED and ADOPTED** by the City Council of the City of Clayton, California at a regular public meeting thereof held on the 3<sup>rd</sup> day of October, 2017, by the following four-fifths affirmative vote:

**AYES:** Mayor Diaz, Vice Mayor Haydon, Councilmembers Catalano, Pierce and Shuey.  
**NOES:** None.  
**ABSENT:** None.  
**ABSTAIN:** None.

THE CITY COUNCIL OF CLAYTON, CA

  
Jim Diaz, Mayor

**ATTEST**

  
Janet Brown, City Clerk

Urgency Ordinance No. 479  
Page 5 of 5

APPROVED AS TO FORM



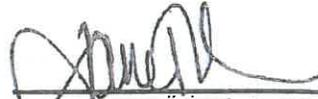
Malathy Subramanian, City Attorney

APPROVED BY ADMINISTRATION



Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly adopted and passed at a regular public meeting of the City Council held on October 3, 2017.



Janet Brown, City Clerk

**7. PUBLIC HEARINGS**

- (a) Consider the Introduction and First Reading of Ordinance No. 478 amending Chapter 15.09 of the *Clayton Municipal Code* to adopt the 2016 California Fire Code with changes, additions and deletions as allowed by State law.  
(Community Development Director)

Community Development Director Mindy Gentry presented the staff report noting the Contra Costa County Fire Protection District provides fire protection services to the city of Clayton with staff recommending ratification of the District's Fire Code Ordinance providing consistency in the application and enforcement of building and housing standards. Ms. Gentry noted the changes to the fire code included amendments for when automatic sprinkler systems are required for private and charter schools; updated requirements for standby EMS personnel for large events; additions to include the Fire Districts weed abatement program; and updated requirement for fire access roads. Ms. Gentry introduced Mr. Robert Marshall from the Fire District to answer any questions the city council may have.

Mayor Diaz opened the Public Hearing.

Robert Marshall, Fire Marshall, Contra Costa County Fire Protection District, advised a majority of changes made to the 2016 Fire Code have been carried forward from the last update. The standby EMS requirement was made due to the fire department was not an ambulance provider at the time and the language needed to be updated to reflect this change. The automatic sprinkler system requirements were added to private and charter schools greater than 2,000 square feet.

Mayor Diaz then closed the Public Hearing.

It was moved by Councilmember Shuey, seconded by Councilmember Pierce, to have the City Clerk read Ordinance No. 478, by title and number only and waive further reading. (Passed; 5-0 vote).

The City Clerk read Ordinance No. 478 by title and number only.

It was moved by Councilmember Shuey, seconded by Councilmember Pierce, to approve Ordinance No. 478 for introduction with findings the adoption will not have a significant adverse effect on the environment and is therefore exempt under CEQA. (Passed; 5-0 vote).

- (b) Consider the adoption of Urgency Ordinance No. 479 placing an interim local moratorium on the operation or establishment of parolee homes and community supervision programs within the city of Clayton.  
(Community Development Director)

Community Development Director Mindy Gentry presented the staff report noting this would extend the moratorium for one (1) year. This would be the last extension allowed by State statute, and would allow staff time to conclude its research and analysis, then draft regulations for both the Planning Commission and City Council to consider. The Ordinance is in repose to AB109 transferring the parolee responsibility from State to local jurisdictions. Staff concerns include the potential for negative impacts to public health, safety and welfare, particularly if there were a dense concentration of parolee

homes or service providers or if these uses were to be located near sensitive uses such as parks or schools. The County's Community Supervision Program, including parolee homes are not defined in the Clayton Municipal Code.

Councilmember Catalano inquired on when it is anticipated for this item to be brought back to City Council?

Ms. Gentry advised this item will be brought back in spring 2018 for City Council consideration.

Mayor Diaz asked if there has been any interest in anyone wanting to open up a Parolee residence?

Ms. Gentry advised there was one inquiry back in November 2016, however there has not been any other interest or follow up from that provider or any other providers.

Mayor Diaz opened the Public Hearing; no comments were offered. Mayor Diaz then closed the Public Hearing.

It was moved by Vice Mayor Haydon, seconded by Councilmember Pierce, to have the City Clerk read Ordinance No. 479, by title and number only and waive further reading. (Passed; 5-0 vote).

The City Clerk read Ordinance No. 479 by title and number only.

It was moved by Vice Mayor Haydon, seconded by Councilmember Pierce, to approve Ordinance No. 479 for introduction with findings the Ordinance is not subject to the California Environmental Quality Act because this activity is not considered to be a project and it can be seen with certainty that it will not have a significant effect or physical change to the environment. (Passed; 5-0 vote).

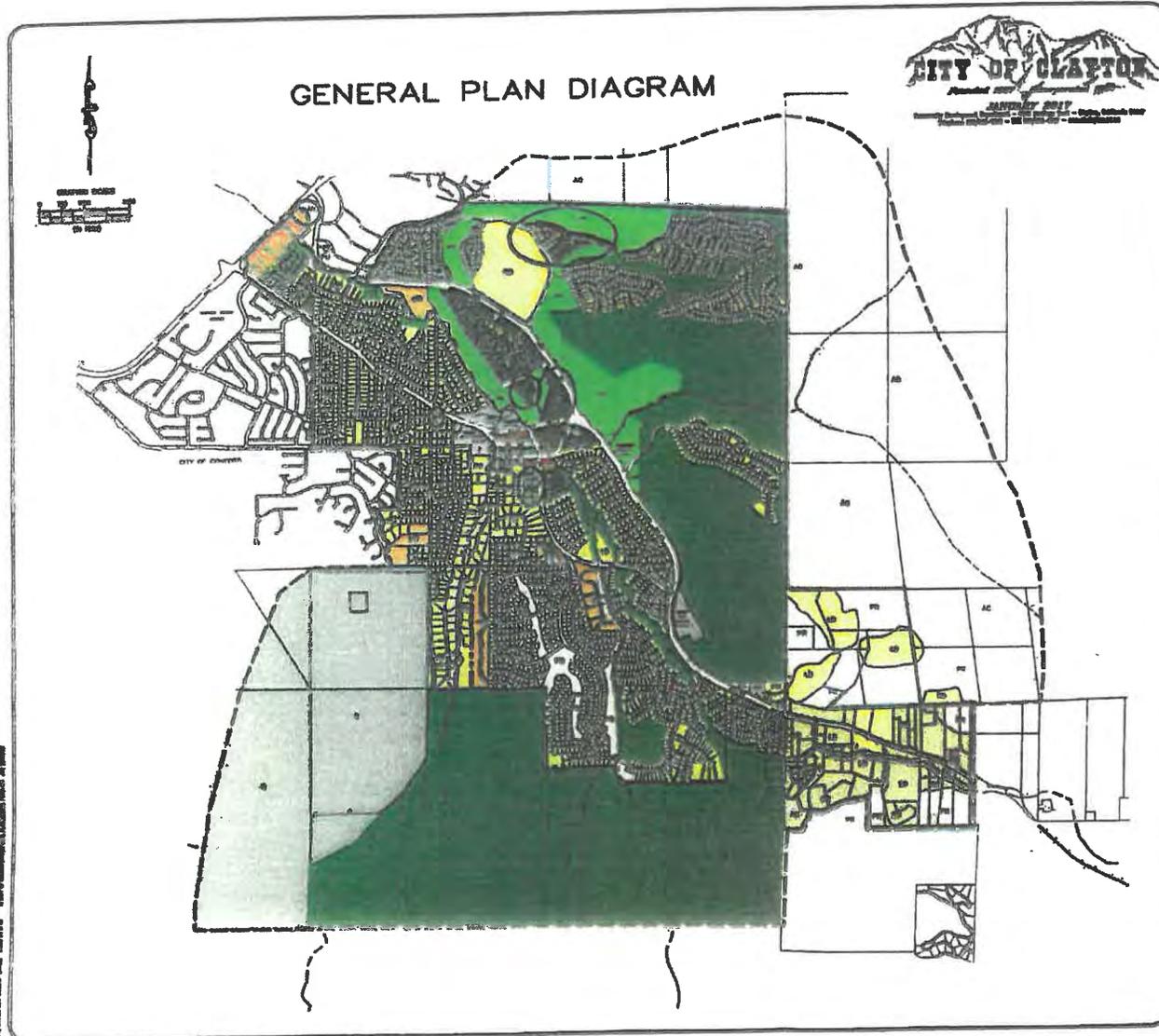
**8. ACTION ITEMS**

- (a) Policy discussion of encroachments into the public right-of-way and fence locations for exterior side setbacks.  
(Community Development Director)

Community Development Director Mindy Gentry noted in the month of September city staff initiated two code enforcement cases regarding the construction of retaining walls and fencing in the public right-of-way and were constructed without building permits. The right-of-way at 199 Montaire Parkway is approximately 5 feet 6 inches from the back of the sidewalk; the unpermitted retaining wall that was constructed is approximately 2 feet from the back of the sidewalk and exceeds 36 inches in height, requiring a building permit. A wooden fence was also placed on top of the retaining wall, exceeding the six foot total height requirement, wall plus fence, and the fence does not comply with the setback requirement of 5 feet from the property line.

Ms. Gentry noted the second code enforcement case is located at 401 Wright Court with a violation of a fence located on top of a retaining wall with total height exceeding the six foot height requirement; violation of setback location requirements; the wall and fence are located within the public right-of-way; and was constructed without building permits.

Ms. Gentry noted the components of these two cases have brought to light violations occurring citywide with discussion needed to address encroachments into the public



**LEGEND**

**RESIDENTIAL**

- RD SINGLE DETACH. (0 TO 1.0)
- SR SINGLE FAMILY LOW DENSITY (1.1 TO 2)
- SD SINGLE FAMILY MEDIUM DENSITY (2.1 TO 5)
- SH SINGLE FAMILY HIGH DENSITY (5.1 TO 20)
- SDH DENSELY POP. DENSITY (2.0 TO 10)
- SDM DENSELY MEDIUM DENSITY (10.1 TO 15)
- SDH DENSELY HIGH DENSITY (16)
- SDM MULTIFAMILY DENSITY (17.0 TO 20)

**COMMERCIAL**

- TC TECH CENTER
- WC WORK CENTER
- CC COMMERCE CENTER

**COMMUNITY FACILITIES**

- CS CULTURAL CENTER
- PC PUBLIC/COMM-FACILITY
- SP SPORTS FACILITY
- CL CLUSTERED SCHOOL
- PS PUBLIC SCHOOL

**OPEN SPACE**

- PO PUBLIC OPEN SPACE
- FO FOREST PARK/OPEN SPACE/OPEN SPACE AND RECREATION
- AG AGRICULTURE
- Q QUARRY
- PO Private Open Space (Self-Created)

**UTILITIES**

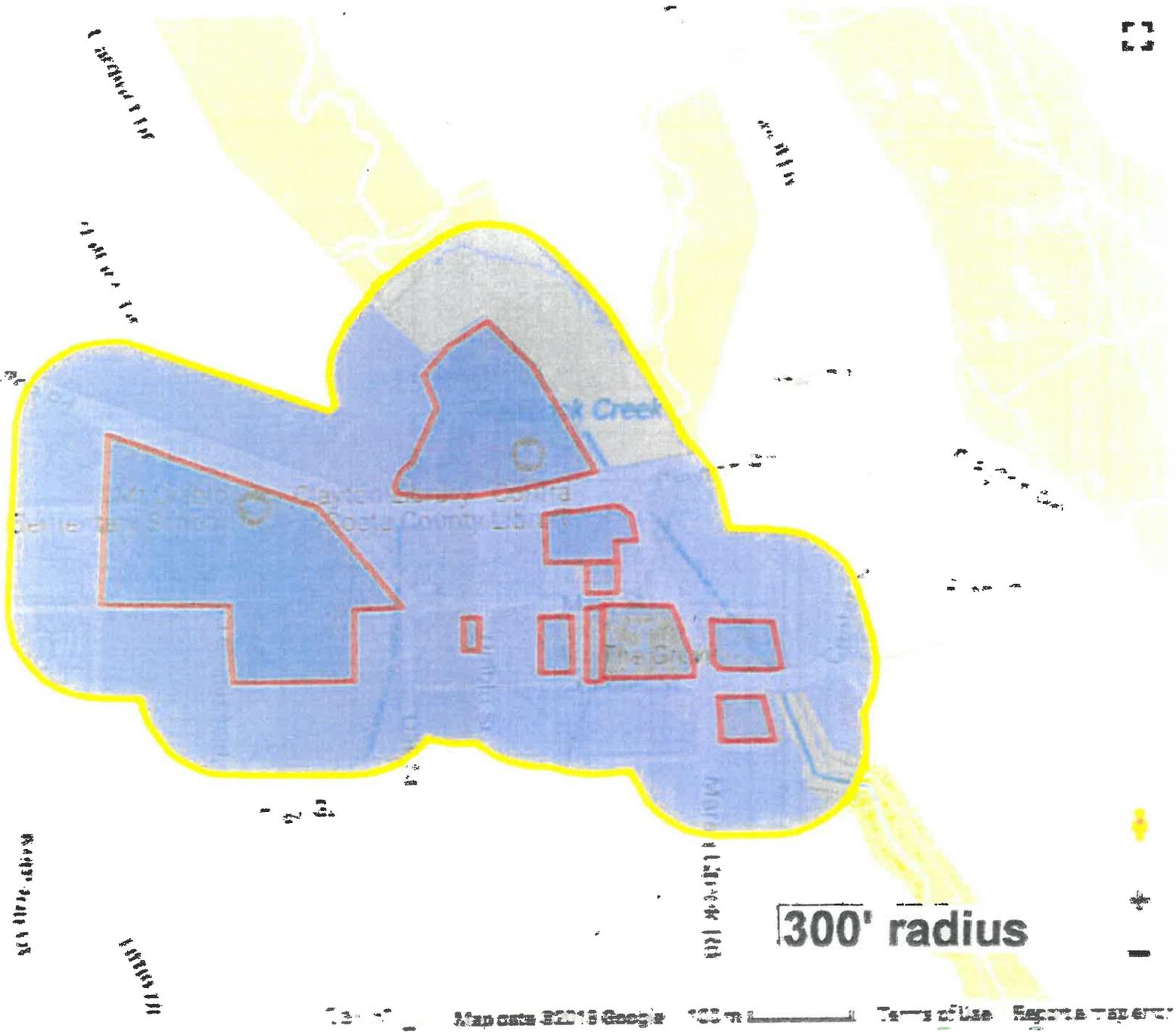
- City Water
- Service of Sewerage
- Electric Line Line
- Planning Area

DATE	REVISION NUMBER	DESCRIPTION
1/12/00	00-00	ADOPTION OF CLAYTON 2000 GENERAL PLAN
5/25/07	07-07	ADJUSTMENT
3/2/09	09-09	ADJUSTMENT
1/17/10	10-10	ADJUSTMENT
5/15/10	10-10	ADJUSTMENT
3/21/10	10-10	ADJUSTMENT
5/20/10	10-10	ADJUSTMENT
12/1/10	10-10	ADJUSTMENT
3/10/10	10-10	ADJUSTMENT
5/1/11	11-11	ADJUSTMENT
10/10/11	11-11	ADJUSTMENT
1/2/12	12-12	ADJUSTMENT
12/21/11	11-11	ADJUSTMENT
1/2/12	12-12	ADJUSTMENT
1/2/12	11-11	ADJUSTMENT

PUBLIC WORKS AND UTILITIES DEPARTMENT  
 1000 W. CLAYTON AVENUE, CLAYTON, MISSOURI 63044

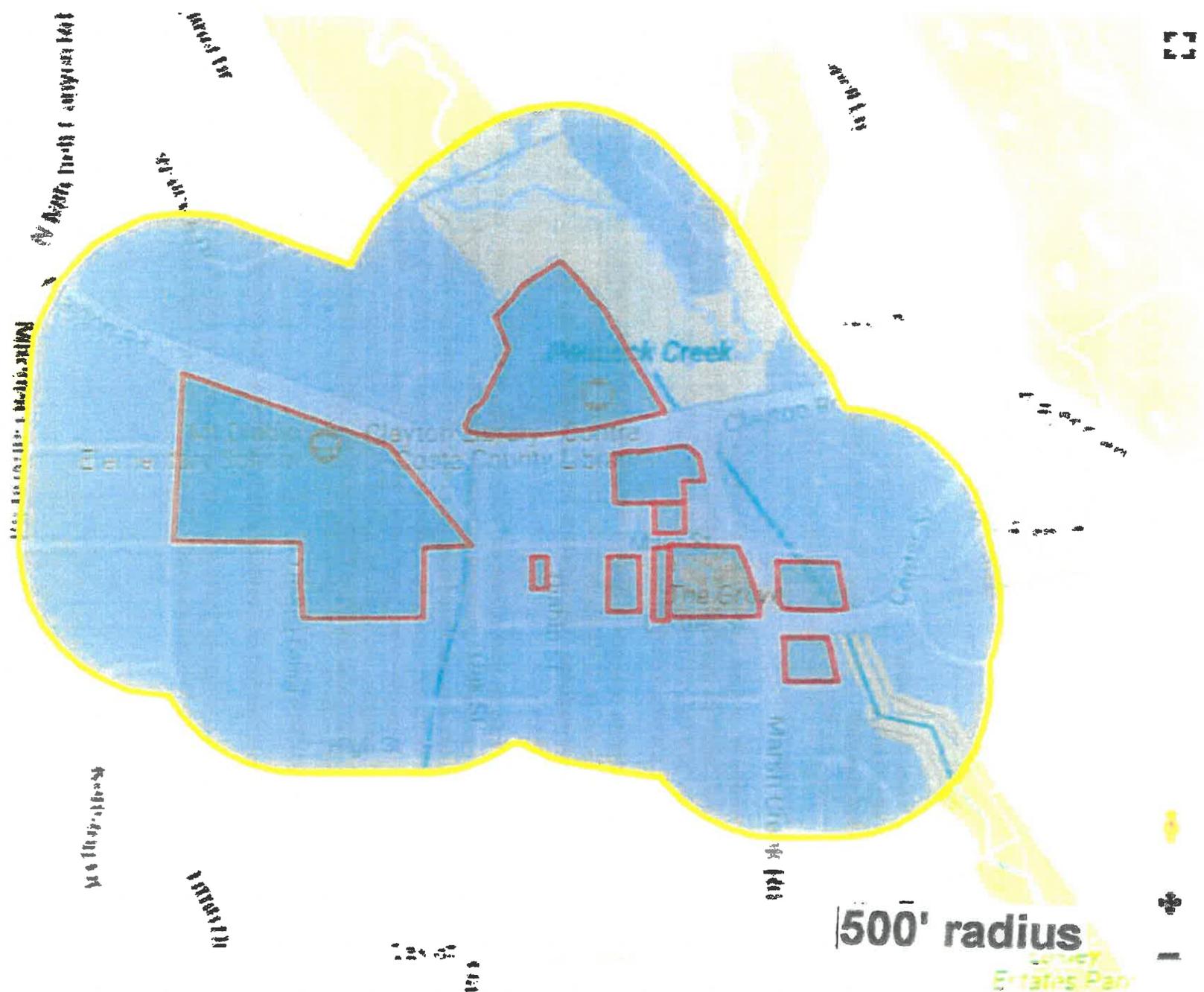
# ATTACHMENT 15

Map data 2018 Google



300' radius

# ATTACHMENT 16



500' radius

# ATTACHMENT 17



April 17, 2013

Planning Commission  
City of Antioch  
P.O. Box 5007  
Antioch, CA 94531

Dear Commissioners:

We urge you to reject the resolution adopting the proposed Zoning Ordinance amendments that would restrict the operation of the Community Supervision Programs in the City of Antioch. The proposed zoning restrictions are contrary to the legislative intent of AB 109 and in possible violation of state and federal law.

The proposed ordinance is contrary to the goals of the 2011 Realignment legislation, which mandates the use of community-based alternatives to incarceration that have been demonstrated to reduce recidivism. This legislative intent is codified in the language of the Realignment legislation:

California must reinvest its criminal justice resources to support community-based corrections programs and evidence-based practices . . . Realigning low-level felony offenders who do not have prior convictions for serious, violent, or sex offenses to locally run community-based corrections programs, which are strengthened through community-based punishment, evidence-based practices, improved supervision strategies, and enhanced secured capacity, will improve public safety outcomes among adult felons and facilitate their reintegration back into society.

See Cal. Penal Code § 17.5(a).

## Proposed Restrictions Constitute a De Facto Ban on Service Provision

The zoning restrictions placed on re-entry service providers under the proposed amendments are so onerous as to constitute a near de facto ban on necessary reentry service provision in the City of Antioch.

MICHELLE A. WELSH, CHAIRPERSON | DEBRA MCNALLY, AJAY KRISHNAN, FARAH BRELYI, ALLEN ASGH, VICE CHAIRPERSONS | KENNETH J. SUGARMAN, SECRETARY/TREASURER  
ABDI SULTANI, EXECUTIVE DIRECTOR | CHERRI BRYANT, DEVELOPMENT DIRECTOR | SHAYNA DELINGER, ORGANIZING & COMMUNITY ENGAGEMENT DIRECTOR | REBECCA FARMER, COMMUNICATIONS DIRECTOR  
ALAN SCHLOSSER, LEGAL DIRECTOR | MARGARET C. CROSBY, ELIZABETH GILL, LINDA LYE, JULIA MARINO MARS, LINNEA NELSON, MICHAEL FISHER, JORY STOBLE, STAFF ATTORNEYS  
PHYLLIDA WURLINGAME, ALLEN HOPPER, NATASHA HINSNER, NICOLE A. OZER, POLICY DIRECTORS | STEPHEN V. BOWNE, GENERAL COUNSEL

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA  
39 DRUMM STREET, SAN FRANCISCO, CA 94111 | T/415.621.2493 | F/415.255.1478 | TTY/415.863.7832 | WWW.ACLU.NC.ORG

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First, the prohibition on siting within 1500 feet of any public or private school, park, or recreation center, Section 9-5.3836(A), greatly reduces the ability of service providers to locate in populated parts of the city given Antioch's approximately 34 parks, more than 20 schools and numerous recreation centers. Pushing programs to the outskirts of the city barriers to avoid proximity to these "sensitive services" will erect barriers to access and will reduce the programs' effectiveness. Further, the prohibition on siting within 1500 feet of any other service provider, Section 9-5.3836(D), will eliminate participants' opportunity to access multiple types of services in one location, which can be crucial given some of the participants' likely lack of personal transportation options.

Second, the operational use requirements set forth in Section 9-5.3836(C) that are applicable to all service providers regardless of where they are located, are vague, burdensome and run the risk of rendering the prospective programs ineffective. The daytime hour restrictions on the services creates barriers to participation for those who work during the day, the mandate that no congregation be permitted outside the premises is overly vague, and the requirement for screened-off outdoor smoking areas may prove overly burdensome for a service provider to construct. Nor is there anything in the ordinance specifying how purported non-compliance with these requirements would be determined, how the provider could appeal such determination, nor the process by which a permit would be revoked upon a final determination of non-compliance. Such vagueness will create difficulties both in compliance with and enforcement of the amended code.

Third, the use permitting process required for a provider to locate in any zone where Business and Professional Office set forth at Section 9-5.3836(B), particularly the \$2,000 permit fee, is likely to prove prohibitive to many prospective service providers who are non-profits and community-based organizations with limited funds and limited capacity to navigate the lengthy process.

Finally, the non-use-permit-requiring locations set forth in Section 9-5.3836(A) fail to provide sufficient or viable options for service providers to locate. The East 18th Street area specified in (A)(3) is on the outskirts of the City and not easily accessible by public transportation (multiple bus transfers would be required), which will create barriers to participation by those without their own transportation. Further, the East 18th Street is largely undeveloped, with little available office space. Absent a service provider constructing its own facility, for which it is not likely to have the funds, there is therefore little in the way of viable siting opportunity. The potential of siting in the one available office complex in the area is made all the more difficult given the fact that no service provider will be permitted within 1500 feet of any other provider. Section 9-5.3836(D). Finally, the County service building described in (A)(1) is currently in use and does not contain additional space for new providers to locate.

The proposed zoning restrictions do not appear to be driven by any rational justification by the Planning Commission or City Council. Instead it appears that the intent of the code amendments is to severely restrict the ability of providers to provide crucial recidivism-reducing services to the people of Antioch. This is contrary to the intent of Realignment and will do nothing to decrease the rate of recidivism in the City or the County.

#### **Flawed Justification**

Recidivism rates in Antioch will not be reduced unless formerly incarcerated individuals reentering the community have access to evidence-based reentry services and programs. However, rather than focusing attention on increasing evidence-based services in the community, the City appears to be doing the opposite and is using inaccurate information to justify its opposition to such programs.

City councilmembers point to the supposed influx of formerly incarcerated people to Antioch and inaccurate accounts of increased recidivism rates to justify the creation of barriers to these necessary services, through the implementation of this ordinance.

First, there is no mass influx of criminals to Antioch; moreover, the AB 109 population is not migrating to the City. As under the parole system prior to the implementation of AB 109, individuals under Post-Release Community Supervision (PRCS) are returning to their home communities after release from prison. The only difference is that PRCS individuals are now supervised by the county probation department instead of by the state parole department.

Second, City Councilmembers are relying on false and inaccurate recidivism rates in their analysis of this population. It is too soon to accurately estimate recidivism rates under Realignment. Moreover, the newspaper accounts upon which the councilmembers rely are merely anecdotal. The fact is that under AB 109 recidivism rates are no worse than they were under the old system. The state prison and parole systems were doing a terrible job of preventing lower-level offenders from reoffending. Under Realignment, communities now have the opportunity to reduce recidivism rates by using the various evidence-based programs that this ordinance seeks to block.

#### **Racially Disparate Impact**

If implemented, this ordinance will likely disproportionately impact African Americans. Over the duration of Realignment African Americans have made up 40% (60 out of 149 individuals) of the AB 109 population in Antioch, despite making up only 17% of the total Antioch population.<sup>1</sup> Though the situations are not identical, the facts related to this proposed ordinance raise some similar concerns to those that prompted the ACLU of Northern California and other

---

<sup>1</sup> See Census Bureau data for 2010 (reporting 17,667 African Americans out of a total of 102,372 city residents).

public interest law firms to file *Williams v. City of Antioch*. As in *Williams*, where we believed that the targeting of Section 8 voucher holders by the Antioch Police Community Action Team adversely impacted African Americans, restricting access to Community Supervision Programs will similarly disparately affect African Americans. This is because African Americans are overrepresented in the City's AB 109 population. Under this theory, first developed in Title VII cases, statistical evidence that a policy, neutral on its face, has an adverse impact on a protected class will establish a *prima facie* case. No proof of discriminatory intent is required to prevail on this claim. *Pfaff v. HUD*, 88 F.3d 739, 745-46 (9th Cir. 1996).<sup>2</sup> Moreover, this zoning ordinance may violate Cal. Gov't Code § 11135, which prohibits racial discrimination by recipients of state funding. That statute's implementing regulations include a proscription against adverse impact, for which parties may state a claim, Cal Gov't Code § 11139; 22 Cal. Admin Code 98101(i)(1); *Darensburg v. Metro Transp. Comm'n*, 611 F. Supp. 2d 994, 1041-42 (N.D. Cal. 2009).

Given the myriad legal, policy and factual issues discussed above, we urge you to reject the proposed resolution to recommend the ordinance to the city council. Alternatively we request that you delay the vote on the resolution in order to allow time for meaningful research on the topic.

Sincerely,



Micaela Davis  
Criminal Justice and Drug Policy Attorney  
mdavis@aclunc.org



Jolene Forman, Esq.  
Criminal Justice and Drug Policy Fellow  
jforman@aclunc.org

<sup>2</sup> If plaintiffs establish adverse impact, the burden shifts to defendant to rebut the impact by showing that its policy or practice was justified by a legally sufficient, nondiscriminatory reason. *Pfaff*, 88 F.3d at 746-47.

control services contracted by the City through Contra Costa County Animal Control Services.

Mayor Haydon clarified animal control services in the city are provided by Contra Costa County; the intent of this Ordinance is to have local ordinances and enforcement that can be applied consistently throughout the region.

Mayor Haydon opened the Public Hearing for public comments.

Ann Stanaway, 1553 Haviland Place, applauds the City's consideration of amendments to Contra Costa County Animal Control Act. If adopted she finds anonymous reporting of code infractions can be abused by persons filing meritless claims by hiding malicious practices or hidden agendas. Ms. Stanaway prefers County Child Services reporting requirements as they collect confidential information for all complainants upon first contact; without such information criminal cases cannot be prosecuted; worse, law abiding citizens and their pets can be victimized for purely private gain, at the public's expense. The City must not support private gain from public resources. A member of the council found support for frivolous usage of certain services provided under the adoption of the Contra Costa County Animal Control Act would be in violation of their oath as the City's responsible manager of public resources.

Having no further public comments offered, Mayor Haydon closed the Public Hearing.

**It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to have the City Clerk read Ordinance No. 482, by title and number only and waive further reading. (Passed; 4-0 vote).**

The City Clerk read Ordinance No. 482 by title and number only.

**It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to adopt Ordinance No. 482 with the finding the adoption does not constitute a project under CEQA this activity will not have a significant effect or physical change to the environment. (Passed; 4-0 vote).**

- (b) Public Hearing to consider the Introduction and First Reading of Ordinance No. 483 amending Title 17 – Zoning of the Clayton Municipal Code to restrict and regulate parolee homes in the following General Plan designations: Multifamily Low Density (MLD), Multifamily Medium Density (MMD), and Multifamily High Density (MHD), subject to a conditional use permit.

Community Development Director Mindy Gentry provided background regarding issues with overcrowding and inmate recidivism which has been percolating for over a decade in the California prison system. In 2006, Governor Schwarzenegger declared a state of emergency regarding prisons as the inmate population was at an all-time high of more than 170,000 inmates. In May 2011, the United States Supreme Court determined California's overcrowded prisons were in violation of the Eighth Amendment's ban on cruel and unusual punishment. The decision mandated California to reduce its prison populations by more than 30,000 inmates within two years. The State Legislature chose to relocate a portion of its prison population to county facilities through the passage of Assembly Bill 109 that went into effect on October 1, 2011. AB 109 expands the role for post-release supervision of these offenders by enacting a larger reliance on "community-based punishment" to reduce recidivism. California has one of the most expensive prison systems in the entire world with a cost of \$71,000 per year per inmate, expected to increase to \$80,000 per inmate per year beginning FY 2018-19. This paradigm shift

from mass incarceration places a greater burden at the local level, and Clayton must be better prepared for anticipating these individuals within the community.

In response to AB 109, the County Board of Supervisors adopted the Contra Costa County Realignment Implementation Plan; to provide a system of alternatives to post-conviction incarceration, to not overburden the County's detention facilities. According to the County's *Public Safety Realignment Report for FY 16/17* the County has focused on formalizing partnerships between law enforcement agencies, health and social service agencies, and AB 109-contracted community based organizations. Clayton staff reached out to Contra Costa County Sheriff's Office and to its Office of Reentry and Justice for additional information where currently there are five (5) active parolees reporting addresses in Clayton under juvenile supervision, court supervision and traditional probation. No individuals under AB 109 are reporting an address in Clayton. The Office of Reentry and Justice reported the County does not directly operate any residential homes for parolees and are relying on community-based program operators for the provision of services and housing; advising there are several private organizations that run homes for the parolee/probationer population "under the radar since communal housing is not required to report its existence to anyone." The proposed Ordinance would prevent these private organizations from being established undetected while simultaneously restricting their location and regulating conditions for operation as well as require these private organizations to apply for a City use permit.

On May 22, 2018 the Planning Commission held a Public Hearing recommending the City Council deny the proposed Ordinance which accepting such action would result in the City Council not adopting the proposed Ordinance and maintaining the status quo of allowing such homes in any residential district. Over twenty (20) speakers addressed the Planning Commission with comments such as: the City should ban parolee housing outright, slow the implementation of the regulation of parolee homes, consideration should be given to increasing buffers, and adoption of the proposed Ordinance would be inviting parolees to locate in Clayton.

The current Municipal Code is silent and does not address parolee homes; under present conditions if an organization, individual, and/or State grantee sought to locate a parolee home in the city of Clayton, the use would be permitted by right, meaning it would be able to locate in any residential area of Clayton without a buffer between it and sensitive uses and would not be subject to any regulations or controls beyond those of a typical residential use. On August 5, 2016 the City received an email inquiry from a non-profit County contractor/grantee searching for a community to house a facility where a use permit would not be required to operate a transitional housing program to assist individuals that have been previously incarcerated as part of the Contra Costa County Reentry Program. This inquiry prompted City staff and the City Council to adopt a temporary moratorium, allowed by state law, to prevent any parolee homes from establishing within Clayton; this moratorium is set to expire on October 3, 2018 and cannot be extended under state law. The proposed Ordinance for consideration appropriately restricts and regulates these types of land uses.

Ms. Gentry noted that even though staff received an inquiry in August 2016, currently there are no requests or applications for parolee homes that have been submitted for consideration or are pending upon the expiration of the moratorium. The operator that originally inquired on the parolee homes subsequently opened such a facility in Pittsburg. Should the moratorium expire without a regulatory ordinance in place, there is no foreseen immediate risk that staff is currently aware of; however, there could be long term risk if the City Council does not take action restricting and regulating this land use. Clayton does not have any inherent control over how the State and County manages correctional and rehabilitative services; however it does control and maintains its land use authority. The shift to decrease incarceration, the flux and fluidity regarding correctional services raised concerns about the City's vulnerability for the possible placement of parolee homes. Inherently in Clayton, there are a low number of parolees

with a Clayton address, lack of convenient access to public transit, lack of rehabilitative services and programs to assist with reentry, high cost of housing, and high rates of owner-occupied housing. Ms. Gentry briefly compared the neighboring jurisdictions of Pleasant Hill, Walnut Creek, Danville, Lafayette, Concord, Oakley, Pittsburg, and Antioch noting how each has addressed parolee homes. In most cases, the City's proposed Ordinance would be more restrictive than currently found in those cities.

Ms. Gentry noted the proposed City ordinance would allow parolee housing in the six designated areas of Multifamily Low Density, Multifamily Medium Density, and Multifamily High Density, subject to a City use permit, requiring a public hearing with review and consideration by the Planning Commission. Multifamily housing projects with 25 units or less would be limited to one parolee housing unit, whereas multifamily housing projects with more than 25 units would be limited to two parolee homes. Parolee homes would be prohibited from locating within 500' of a daycare, school, library, park, hospital, group home, or a business licensed for the on- or off-sale of alcoholic beverages, or emergency shelters. Additionally, parolee homes could not locate within 1,000' of another parolee home and requires 24-hour onsite supervision.

Ms. Gentry presented three alternatives for the Councils consideration: 1. regulate parolee housing as proposed in the Ordinance; 2. take no action allowing parolee homes to locate in any residential district without any regulation; 3. outright ban parolee housing in Clayton. Staff has recommended the first alternative to restrict and regulate parolee housing to specific land use designations and subject to a City conditional use permit. Ms. Gentry noted Ms. Patty Grant from the Contra Costa County Sheriff's Office is available for specific questions the Council may have regarding the County's custody program and its implementation of AB 109.

Councilmember Catalano stated the City is currently and effectively regulating parolee housing by having enacted a moratorium Ordinance by the Government Code noted in the staff report. Councilmember Catalano noted the code establishes time limits and asked why we cannot just adopt another moratorium Ordinance or have we exhausted the time limits? Ms. Gentry advised the moratorium time limits have been exhausted and will automatically expire on October 3, 2018.

Councilmember Catalano referred to the staff report that at this time staff does not have any pending applications or requests that would be waiting for the expiration of the moratorium ordinance. Absent any action by the City Council this evening after October 3rd, an application would not be required for parolee housing and the use would be permitted in Clayton? Ms. Gentry responded yes, essentially it could be permitted as the Municipal Code does not address parolee housing as it is considered any other type of residential use and not reviewed any differently.

Councilmember Catalano inquired if the City decided to ban parolee housing in Clayton would it put the City at risk of a lawsuit and if so what is the likelihood the City would prevail? City Attorney Mala Subramanian advised it would be a case of first impression; as noted in the written and verbal staff report there is a real reason why most cities dealing with this issue are regulating it and not banning it. Ms. Subramanian stated it is strongly defensible to regulate parolee housing as proposed in the Ordinance regarding public health, safety, and welfare issues and secondary impacts of parolee housing; however banning it would put the City of Clayton in a very difficult position to defend it.

Councilmember Catalano noted in 2016 the voters were able to vote on this issue in Proposition 57 - allowing certain types of felons to be considered parolees, and she was curious how Clayton as a city voted on this particular matter. As a city we voted in favor of Prop 57 with 3,740 "yes" votes and 2,607 "no" votes. Is there any possibility on the horizon that would reverse this trend in the State by it building more prisons, or is this becoming more of an issue? Ms. Gentry advised the research that has been conducted and through conversations with the Contra Costa County Sheriff's Office, the trend is

going toward decreasing mass incarceration and going towards community-based supervision. There is a Senate bill currently in committee at the State legislature to eliminate any bail requirements; if they meet the criteria they will be awaiting pre-trial in the community rather than in county jail.

Councilmember Catalano stated the proposed Ordinance is to require any parolee home considering locating to Clayton must first obtain a conditional use permit and she inquired on the notification aspect of the process. Ms. Gentry advised if a community based organization submitted an application to the City for consideration of a parolee home and this proposed ordinance was in effect, City staff would analyze if the application could meet the findings located in the Municipal Code; if so, notification to all of the property owners within a 300' radius that surround the target property would occur; the proposed use would then be considered before the Planning Commission with notification in a newspaper of general circulation, and posting on the City's three posting boards. The Planning Commission has the ability to add additional conditions of approval and hear public comment; however its decision is always appealable to the City Council.

City Manager Napper added in addition to regulating the front end of a conditional use permit, those conditions have to stay in place and the operator must meet those conditions or a conditional use permit is subject to revocation due to violations.

Councilmember Diaz noted as a member of the League of California Cities Public Safety Policy Committee, every quarter legislators continually bring bills forward to increase the Realignment Act, and each time the Public Safety Policy Committee recommends the League and its cities vote against it. Councilmember Diaz requested clarification specifically to Clayton regarding the five (5) active parolees currently in Clayton: it was also stated there a number of them who have not listed their address in Clayton? Ms. Gentry clarified there are currently five (5) parolees who live within the city of Clayton; however none of them fall under the umbrella of AB 109. The Sheriff's Office of Reentry and Justice has stated they do not have numbers for those who are on probation by jurisdiction.

Councilmember Pierce commented if the Council chooses to take no action, there could be a home established next door to any one of us and we would never know it until there is a problem. Councilmember Pierce would rather know about it in advance and discourage the use through transparency by providing lots of notice about a process going forward so any prospective home operator can hear from the public when it wants to make its application. This community wants to protect itself by knowing what is going on in the community.

Mayor Haydon clarified currently the City is protected per the adopted moratorium Ordinance however it is due to expire on October 3. If the City Council chooses to take no action, then parolee homes can establish in Clayton with no required notification to the City. The second option would be to prohibit parolee homes all together. Mayor Haydon clarified that no city in Contra Costa County has decided to prohibit parolee homes all together. Mayor Haydon stated those are the two extremes. The remaining option would be to adopt restrictions to maintain control. Since the Planning Commission's review, the buffer zone for public notification increased from 300' to 500'; Mayor Haydon asked why wasn't a larger buffer zone been considered to 800' or 1,000'? Ms. Gentry advised the further expansion of the buffer could result in a ban through exclusion; there could be limited or no possibilities of a location, effectively constituting a ban.

City Attorney Mala Subramanian added if the buffer zone was expanded it would become a de facto ban, creating no options for an operator to have a location in Clayton.

Councilmember Pierce inquired if a 300' notice distance is standard? Ms. Gentry advised the 300' notice is a standard part of the Municipal Code's land use noticing.

Councilmember Pierce inquired on the ramifications if the public notification zone was expanded for this use, or would that be discriminatory? City Attorney Mala Subramanian advised the City could choose to provide notice beyond the 300' distance. Councilmember Pierce advised notices would also appear on the City's website through agenda posting, with the option of additional noticing through a page on the website if we wanted to.

Mayor Haydon inquired if the City Council chooses not to take action, and it was discovered that a parolee home was established, would the Council be allowed after the fact take action on that house and restrict or prohibit it after they have moved into the community? Ms. Gentry advised if the parolee home is established, it would be grandfathered in; the City would have no recourse or legal grounds to remove it from the community.

Mayor Haydon opened the Public Hearing for public comments.

Nancy Ahern, expressed many questions including is this a building being constructed or is the City buying someone's property to house parolees? She wondered the effect of property values on properties located around a parolee home; if this action is State or County mandated; and does the Marsh Creek Detention Center count for something?

Ms. Gentry responded the likelihood of a community organization or non-profit building something from the ground up is highly unlikely to occur as limited funds are granted by the county or state to a nonprofit; more than likely, they would probably try to locate in an existing structure. Ms. Gentry advised the Marsh Creek Detention Center is located in unincorporated Contra Costa County and not within the boundaries of the City. Mayor Haydon commented we are trying to protect what is within the city limits of Clayton. Ms. Ahern advised she is getting a lot of inaccurate information, and was told the Council was voting to have parolee housing in Clayton. Ms. Ahern noted we already have parolees in Clayton; if we safeguard ourselves then we cannot pull them out. Ms. Gentry added the City cannot regulate how the County or the State manages correctional rehabilitation services; parolees will always be a part of the community; however the City does retain control over its land uses and can prevent parolee homes from establishing anywhere without any controls. Ms. Ahern asked for confirmation the only way a parolee home would come to Clayton then would be through a rental or to build? Ms. Gentry advised if someone purchases a home in the proposed district or rents out a house or ground-up development in those designated areas would be the only way a parolee home could come to Clayton, and then by submitting a use permit application for review by the City Planning Commission.

Glenn Miller, inquired on the number of units allowed and asked how many areas are zoned with 25 units in Clayton? Ms. Gentry advised there are two locations; one would be prohibited because of the 500' buffer, and the other location is behind the U.S. Post Office, limited to two parolee homes as they cannot be located within 1,000' of one another. Mr. Miller also inquired in regards to money it would be prohibitive for someone to come in as an organization to build a parolee home, and if that person decided to sell that home, would the house in perpetuity become a parolee housing unit or does the conditional use permit go away with the sale of the property? Ms. Gentry advised if such a house was not backfilled with another parolee home operation and someone from the community purchased that home, then it would be 6 months the use permit would be applicable to that piece of property. If it were to lapse beyond the six months then it would no longer operate as a parolee home and must go through the public application and review process again. Mayor Haydon advised it is not a proposal; it is to address someone coming forth and asking for approval.

City Manager Gary Napper added all the concerns Mr. Miller just shared would be in place and spread throughout the entire city in any residential district if we do nothing.

Mr. Miller referred back to his time on the City Planning Commission and found it virtually impossible to approve these types of units. He suggested go back to the drawing board and see if you can come up with a larger buffer zone or use 65 units before a development could be considered.

John Kramci, 3001 Coyote Circle, personally has not seen anything positive come out of parolee housing or to reduce recidivism; they usually go back, there is no control of who comes to the property to visit regardless of what their parole states even when they can't associate with other convicted felons. Please remember: a parolee by definition is a convicted felon. Mr. Kramci's partner, Marci Longchamps, wanted to be here tonight but was unable due to a medical procedure. Mr. Kramci then read her note: *"I wanted to speak so badly tonight, unfortunately my health prevented me from being here. I am a retired school teacher and a nana to my 2 year old grandson. I strongly oppose any proposal that allows parolee housing into our community and I will stand firm in opposing any measures or proposals that encourage passage of this kind of thing. Our children, the elderly, all of us need to be protected and feel safe in our precious town of Clayton and especially in our own homes. As I sat in the doctor's office today, I read one of the sayings posted on the wall. I found it to be somewhat relevant tonight. It said 'The purpose of life is to be useful, to be responsible, to be compassionate, it is above all to matter to count and stand for something to have made some difference'. It is my hope that I have made a difference to you tonight. Please do the right thing and listen to your constituents and hear what we have to say. And let me shout out to everyone that has written to me in support and kindness. This is what our Clayton is all about, and it goes on to say I will see you all at the next Planning Commission meeting as well as the next City Council meeting."*

Frank Gavidia, 104 Gold Rush Court, indicated the City could still end up in court by the ACLU; if they think the City is being discriminatory they are going to challenge the Ordinance. Mr. Gavidia had a Form 990 4(e) by the nonprofit that contacted the City; it does not have a large budget or the resources to come out here and rent a property. Mr. Gavidia does not know of anyone willing to rent their house to a bunch of parolees or an organization who will have a bunch of parolees. The email received by the City from the nonprofit specifically stated they wanted to come to Clayton without a use permit, so they want to operate under the radar. Clayton is a small town that does not have the resources or the space to have to deal with this problem. Mr. Gavidia suggested an outright ban like the two cities that were listed in the staff report.

Mayor Haydon inquired of staff on which two cities outright banned parolee housing? Ms. Gentry advised the two cities were Newport Beach in 2008, and the City of Colton limited it to one parolee in the room and boarding requirements. No city in Contra Costa County has outright banned parolee housing. City Manager Napper added those cities banned them before the Realignment Act.

Brian Buddell, expressed his concerns with the City Council trying to take the easy way out, at the expense of the safety and concerns of citizens of Clayton. Mr. Buddell recently read in the *Clayton Pioneer* the City of Clayton has enough reserves to operate 4 years without collecting any taxes. Mr. Buddell referred to Council Member Diaz's recommendation of 1,000' buffer; why isn't that being considered? Mr. Buddell expects the safety of the city he resides in to be paramount; whether that's putting a senior center downtown, parolee housing, or anything else.

James Gamble, Prospector Place, inquired if costs were included for added police protection that is going to be needed or additional calls to these properties potentially and what is the clerical cost overhead that is going to be added to the City for this? Ms. Gentry responded there will be no direct fiscal impacts; it would be implementation of the Ordinance and as of right now they can locate anywhere without any notification to the City.

Mr. Gamble then asked if Ms. Gentry personally worked on the Antioch regulations while employed there? Ms. Gentry advised a different staff member worked on the regulations in Antioch. Mr. Gamble asked if Ms. Gentry called the police on people who showed up for the Fulcrum informational meeting when there were no chairs in the room? Ms. Gentry advised the police officers were asked to be in attendance due to a credible threat that was given to the developers so the police were not called by her or anyone except they were in attendance to ensure safety. Mr. Gamble inquired if he came down to City Hall can he obtain that information? Ms. Gentry advised if it is a matter of public record, then yes.

Ms. Subramanian advised Mayor Haydon she didn't feel this discussion is on the agenda and encouraged him to move on.

Bob Scrosati, 5181 Keller Ridge Drive, advised he used to live across the street from a local nonprofit state facility that housed four people who were incapable of handling their own lives. Although there were some regulations placed on that property by the state, inspections occurred on both the inside and outside of the home. Mr. Scrosati questioned the frequency of the County to perform inspections on these types of properties and on the education or training requirements a supervisor has on the regulation of a parolee? Mr. Scrosati prefers Option 1, but would like to know who has been trained to control these parolees and has consideration been made to duplexes and condos as they are occupied by young families with children?

Linda Cruz, 359 Chardonnay Circle, expressed her opposition to parolees coming to Clayton and she like the community as is. Ms. Cruz asked for a definition of multifamily low density, multifamily medium density; are those choices we want to put in the regulations? Ms. Gentry advised those are the General Plan designations that would be allowable subject to a use permit, and the rest of the city would be a prohibition.

Steve White, Morgan Territory Road, worked with parolees and as a retired police officer, the change of certain housing definitions caught his attention. Changes made to the General Plan could get Clayton in line with potential restrictive parolee realignment. Contra Costa County recently backed out of housing ICE inmates, so more parolees will be housed in the county.

Dena Stephens, Morningside Drive, resides next to a house that had someone living there with an ankle bracelet, a known drug dealer, known to the City, known to the police. Ms. Stephens expressed concerns of parolees having multiple friends that are probably not nice people. Clayton already has a limited police force of three (3) at the most on duty? Mr. Napper confirmed the deployment of the Police Department is three (3) per shift. Ms. Stephens thinks this is inadequate.

Rick Martin, 93 El Portal Place, indicated the reason he relocated to Clayton was because of similar problems in Walnut Creek where care homes located into neighborhoods; by state law, they are considered private homes. Mr. Martin inquired if a parolee has one of these homes is it considered a private home and not a business and how many would be allowed in a home? Ms. Gentry advised they would be located in a residential unit; two (2) per bedroom, based on the California Building Code allowance for occupancy. Mr. Martin stated the idea of no one able to afford these houses will come as a surprise as they can divide up a house by creating more bedrooms and bathrooms depending on how many parolees they want to house. This is why he moved to Clayton.

(Unidentified speaker). His family relocated to Clayton from Antioch because it got so bad there. The speaker indicated if the government is imposing this the City should outright ban it and if challenged, fight it. If the other two cities in California outright ban it and got under it, then Clayton can too.

Ann Stanaway suggested an outright ban for now and if challenged and too costly for the City to defend, revoke the ban and put in regulations.

Councilmember Catalano went over the proposed options: Option 2, to do nothing, we have a moratorium expiring October 3<sup>rd</sup>; we do nothing, parolee housing would be allowed anywhere, without any notice or process. Option 3 to ban it: she personally thinks that would be an invitation for a lawsuit risking City monies and resources, our budget is not that large. Option 1 to regulate: there are ways regulations can be very permissive, or they can be very restrictive as the staff is proposing by the requirement of a conditional use permit limited to only certain zoning districts.

Councilmember Diaz stated he believes in second chances, however not in this instance. His primary responsibility to represent the community is public safety for the community and all of the residents in Clayton, and he will not suggest wasting resources to challenge the state or the federal governments with their unlimited resources to come after Clayton if we choose to ban it, not regulate it or do nothing. Councilmember Diaz also confirmed our Police Department operates three people per day per shift; he noted recently around the corner of Kirker Pass and Oakhurst Drive there were ten (10) police cars due to a recent armed robbery at the Togos Restaurant in Concord. Guess who caught the robber? It wasn't the Concord Police Department; it was our eyes and diligent Clayton police officers who were on duty; they not only recovered the money, they took in custody of that individual, his rifle, and his bullets. If we do allow parolees, most likely other parolees will visit, increasing the probability that something negative can happen in this City. Councilmember Diaz would like to take some action on the buffer zone, whether it is 300', 500', 1,000' or 1,500'; he supports revamping of this characteristic to make it a little more challenging, protecting the Clayton community.

Brian Buddell said he does not feel Councilmember Diaz is representing Clayton's values, needs or safety, and his position as a public official is to do what the public tells him to do; the people want a ban, not a ban.

Councilmember Pierce advised parolee housing can be a lucrative business for somebody, understanding there is a subsidiary of \$1,200.00 per person housed in these homes. When this moratorium expires a parolee home can establish in Clayton without any notification to the City. She also wanted to correct a couple of statements: one was the City has four (4) years of budget reserves; that is incorrect, the City has one (1) year of budget reserve which is a little over \$5 million, which goes nowhere when one is fighting a lawsuit. In speaking with a great number of people regarding these proposed regulations, it was understood such regulations would protect Clayton. AB 109 is now state law, the County is implementing it, and they are contracting with non-profit and for-profit agencies looking for locations. City staff was alerted two (2) years ago before our temporary moratorium went into place, many of these groups want to avoid any type of public permitting process so they can fly under the radar to locate their facilities. Currently our Clayton Municipal Code does not define parolee homes at all. The Clayton Municipal Code allows group homes of six (6) or less anywhere in the community without a permit or notice; including senior care homes and small daycare homes. The City does not even know they exist unless there is a complaint. Without a specific definition in our code, parolee homes would be considered a generic group home, a generic residential use. Councilmember Pierce advised by passing this Ordinance, we get regulation of where these types of homes can be located with a very public transparent process including a use permit, and a broad public notice to the entire community published in the newspaper, mailed directly to neighbors, requirement of a public hearing, the ability to add appropriate conditions for community safety and the opportunity for residents to comment at those hearings.

Mayor Haydon addressed concerns many have shared as there is a community-wide interest in banning or limiting parolee housing in Clayton. The proposed ordinance

addresses a control on parolee housing in Clayton. With no regulation Clayton would likely become a place for parolee homes to locate. He thinks regulation is the best protection of Clayton.

**It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to modify Ordinance No. 483 to amend the notice requirements from 300' to 500', and to have the City Clerk read Ordinance No 483 by title and number only and waive further reading. (Passed; 4-0 vote).**

The City Clerk read Ordinance No. 483 by title and number only.

**It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to approve for Introduction the amended Ordinance No. 483 with the finding its adoption is not a project under CEQA and it will not have a significant adverse effect on the environment and therefore is exempt under CEQA. (Passed; 4-0 vote).**

The City Council further requested City staff provide maps at its next public meeting to illustrate additional buffer distances of 750' and 1,000' from designated sensitive use sites.

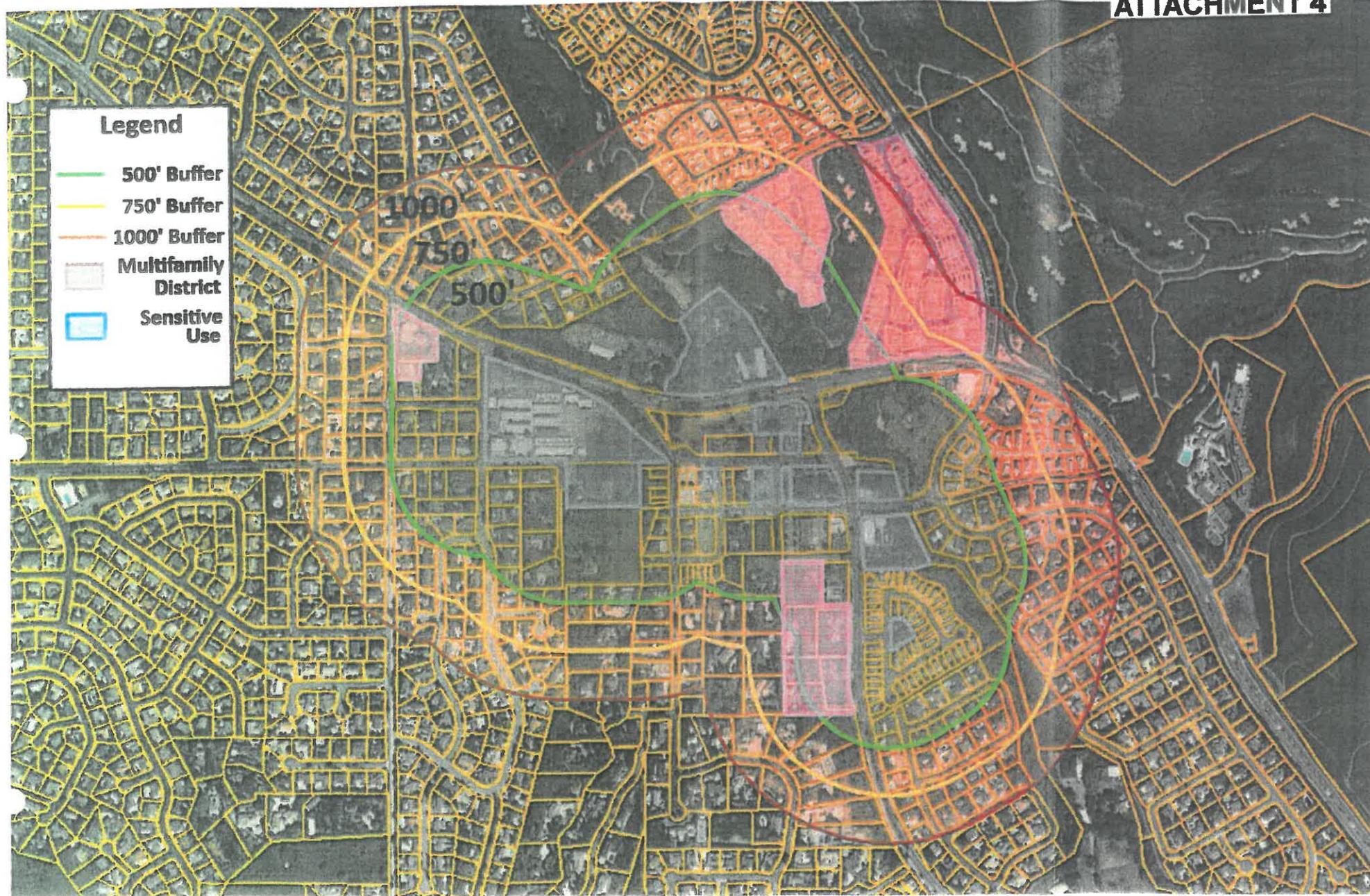
## 8. **ACTION ITEMS**

- (a) City Council discussion of its vacant opportunities for Clayton citizens to serve on various regional advisory committees/commissions.

City Manager Napper noted Mayor Haydon requested this agenda item and he advised there are several positions on regional boards to which the City is entitled to have representation. Mr. Napper remarked here seems to be some chronic difficulty with citizens applying for those volunteer positions. In the Staff Report it is indicated there is a vacancy on the Central Contra Costa Transit Advisory Committee County Connection (CCCTA); vacant since 2011, this position prefers someone interested in public transportation, preferably one that has used public transportation or has been rider. The second position is to represent Clayton on the Contra Costa Transportation Authority (CCTA) Advisory Committee; vacant since 2013, this position allows representation from every city in the county, including the County. This particular position receives reimbursement for mileage to and from its meeting. The final vacancy just occurred due to the recent resignation of Joyce Atkinson as the City's long-time representative on the County Library Commission; the Commission is requesting a replacement from Clayton to serve. The requirements for each position are that a person be at least 18 years old, and a resident of City from where the appointment is made. He noted volunteerism is always a difficult matter, especially without a stipend or compensation.

Mayor Haydon advised he wanted to address this need in an upcoming Mayor's Column in the local newspaper as a reminder of these types of opportunities. Currently, opportunities are posted on bulletin boards and announced at City Council meetings. Mayor Haydon would like to expand outreach efforts to generate more interest so we can have Clayton represented on these regional committees and he would like to continue mentioning these opportunities at City Council meetings.

Councilmember Pierce suggested reaching out to any of the groups the Council is a member of who have volunteers that do things. It doesn't seem like merely advertising the opportunities in the newspaper is generating interest.



**Legend**

- 500' Buffer
- 750' Buffer
- 1000' Buffer
- Multifamily District
- Sensitive Use

## ATTACHMENT 5

### QUESTIONS ANSWERED ON PAROLEE HOUSING

THROUGH AUGUST 16, 2018

#### 1. IS A 500-FOOT BUFFER A GUARANTEED DISTANCE THAT CANNOT BE CHALLENGED?

Nothing is guaranteed regarding a legal challenge; however the City Attorney believes that 500 feet is more defensible than 1,000 feet in Clayton due to the elimination and reduction of viable locations at the higher end of the buffer.

#### 2. WHAT RESOURCES ARE USED TO DETERMINE A BUFFER DISTANCE?

When determining a buffer distance, there are several considerations that take place. The first consideration would be what has already been established within the municipal code and if a buffer distance were to be different, then there would have to be justification as to the disparate treatment. Secondly, a buffer distance does have ramifications dependent on the size of the city; other cities may take advantage of bigger buffers given their larger geographic area and variety of land use designations.

#### 3. ARE SINGLE-FAMILY HOMES OUTSIDE OF THE MULTIFAMILY DISTRICTS ACCEPTABLE LOCATIONS FOR PAROLEE HOUSING UNDER THE PROPOSED ORDINANCE?

No. The multifamily land use designations as shown on the General Plan map and those locations in compliance with the parameters of the proposed Ordinance are the ONLY areas that would be an acceptable location for a parolee home to be considered, subject to approval of a use permit. In all other locations in the city, a parolee home would be prohibited.

#### 4. CAN PAROLEES BE AROUND OTHER PAROLEES?

That question is determined by the courts and/or probation, over which the City of Clayton has no control. The courts and/or probation set the parameters and conditions of parole. The City only has the authority to address the land use issue component or through law enforcement if a parolee is in violation of his/her parole.

#### 5. DOES AB 109 CONSIDER PRIOR ARREST HISTORY?

No. State law AB 109, passed by the legislature, does not consider prior arrest history nor does it take into consideration whether the parolee did a plea deal to decrease the severity of the charges. According to the State, AB 109 specifically deals with non-violent, non-serious, non-high risk sex offenders, which only makes up about 5% of the inmate population for Contra Costa County. AB 109 is only one component of this issue because private organizations catering to parolees could open a home as well as the State, through a non-profit organization. Also, the County is creating a strategic plan for all County residents (inmates), regardless of AB 109 status, to access AB 109 programs and services and is utilizing funds from AB 109 to facilitate that access.

Cities do not have control regarding the type of parolees released to the communities, this is under the authority of the courts and parole/probation; however Clayton does have the authority to regulate and restrict parolee housing to the maximum extent possible within the confines of the law.

**6. CAN ONSITE SUPERVISION BE REQUIRED 24/7?**

This requirement is included in the proposed Ordinance under Section 17.36.086.D (Attachment 1).

**7. CAN A CURFEW BE IMPOSED ON THE PAROLEES?**

The establishment of a curfew for parolees falls under the authority of the courts and/or parole, not with the City. There are times that curfews are enacted by local jurisdictions, such as for juveniles or during an emergency; however, establishing a curfew by the City to address land use issues with parolee housing is legally questionable. For example, a District Attorney tried to establish gang injunctions and enforce a curfew for known gang members in the City of Oxnard; however, the Court of Appeal determined the curfew was unconstitutional (*People ex rel. Totten vs Colonia Chiques*). Given the decisions by the courts finding curfews to be unconstitutional, this requirement is not recommended by staff.

**8. WILL THE CITIES (NEWPORT BEACH AND COLTON) THAT BANNED PAROLEE HOUSING NEED TO COMPLY WITH AB 109?**

The City of Newport Beach and the City of Colton are the only two cities in California, out of 482, that staff could locate, completely banning parolee housing (2008) and those cities are not exempt from this issue and could be challenged with a lawsuit. The prohibitions were implemented well before the advent of the SCOTUS ruling and the subsequent enactment of state law AB 109. There is no mandate or legal precedence that cities must allow parolee housing within their communities; however, given the public policy shift to decrease mass incarceration, all communities in California will likely be faced, on some level, with this very issue whether the cities are prepared or not.

If more cities decide to ban parolee housing and it became prohibitive or difficult for the intended placement of parolees, it could result in a lawsuit from the counties charged with implementing these changes, from the State, and/or from civil rights groups. If the State legislature has concerns about meeting the U.S. Supreme Court's mandate to reduce the prison population because cities are making it too difficult to place parolees, it could easily legislate and require all cities in California permit parolee housing under its terms and conditions.

As further evidence the shift in public policy is occurring, the State set aside an additional \$50 million in this year's budget (FY 2018-19), which was adopted in June, for additional community-based reentry and housing support for parolees. Further, in discussions with the Sheriff's Office, given what has transpired at the State level, they strongly believe incarceration is going to look very different in the next five to ten years. There is going to be a stronger reliance on community based supervision and programs with the stated objectives to decrease incarceration and recidivism.

## **9. WHY IS CLAYTON ADDRESSING THE ISSUE OF PAROLEE HOUSING?**

Clayton staff is being proactive by bringing this issue forward to the City Council for consideration. It is also being reactive, due to an e-mail inquiry received in August 2016, to put an ordinance in place to regulate parolee housing by limiting the location and the operation as well as require a public notification process. After the City's 2-year moratorium automatically expires on October 3, 2018, and if an ordinance is not adopted, there is no local law to restrict parolee homes from locating anywhere in Clayton (even directly adjacent to a school), without the City's knowledge, and they will be treated just like any other residential use. Nor would there be any type of mechanism in place for removal.

Cities that have decided to address this issue directly have chosen to regulate it and have passed a version of the "model" ordinance which was originally drafted by the City of Riverside. Clayton's proposed Ordinance is based on this model ordinance.

## **10. HOW ARE OTHER CITIES DEALING WITH PAROLEE HOUSING IN CONTRA COSTA COUNTY?**

Two cities in Contra Costa County, Oakley and Antioch, have regulated parolee housing. Other cities such as Concord, Walnut Creek and Pleasant Hill already have regulations in place to address group living situations, such as parolee housing, and their regulations require a use permit yet do not contain buffers around sensitive uses or codified operational criteria. Other cities, such as Lafayette, do not have regulations in place, effectively allowing parolee housing to occur without restriction.

The public policy shift of reducing incarceration rates coupled with the State making funds available to reduce recidivism by relying instead on community supervision is currently evolving and is in the process of being rolled out by the State. Clayton's proposed regulation of parolee housing is preemptive to this new regulatory landscape and to new circumstances of the increased reliance on community based supervision.

## **11. WHY IS CLAYTON INVITING PAROLEES INTO THE COMMUNITY?**

This proposed Ordinance is to restrict the location and to regulate parolee homes that could potentially come into the community; the City is not inviting them or opening the community up to them. The lack of current local regulations, without the temporary moratorium, is a wide open door where parolee homes could locate in ANY residential zone without restrictions, without a public hearing process, and without an advance permit process.

## **12. WHAT INMATES FALL UNDER COUNTY SUPERVISION?**

County supervision does not include the following:

- Inmates paroled from life terms to include third-strike offenders;
- Offenders whose current commitment offense is violent or serious, as defined by California penal Code Section 667.5(c) and 1192.7(c);
- High-risk sex offenders, as defined by CDCR;
- Mentally disordered offenders; nor
- Offenders on parole prior to October 1, 2011.

The above offenders and parolees are the responsibility of the state.

**13. CAN CLAYTON BE SUED FOR BANNING PAROLEE HOUSING?**

Yes, possibly. If more cities adopt a ban, depending on how widespread, this could possibly result in lawsuits from parolee home operators, civil rights groups, counties, or the State (although the State is more likely to legislate because it's quicker, less expensive, and more powerful).

A local prohibition would not preclude civil rights organizations from filing a lawsuit, such as the ACLU (which is well aware of the Realignment in California and has even produced a report, *Public Safety Realignment: California at a Crossroads*, on an in-depth review of all 53 available county realignment implementation plans). As a harbinger to staff's warning the ACLU sent a letter to the City of Antioch when it was drafting its regulations regarding the implementation of AB 109 asserting the adoption would likely result in a disproportionate impact to African Americans and therefore is discriminatory and may violate State law, which prohibits those public entities receiving state funds from racial discrimination. While Antioch and Clayton are seemingly very different communities in regards to this issue, the point is that civil rights groups are paying attention to local government actions in this regard and the ACLU is not at all reticent about filing lawsuits.

**14. WILL VIOLENT PAROLEES BE COMING TO CLAYTON?**

Cities, including Clayton, do not get to individually select who comes to live in the community; cities only have the authority to control the land use. However, the more violent and serious offenders remain under State supervision and not County supervision. The County, through a non-profit organization, would be the entity more than likely, because of AB 109 funding, to want to open additional parolee homes around the County.

All cities are in a precarious predicament dealing with this issue and some have more protections in place than others. If the proposed local Ordinance (law) is not adopted before October 3rd, 2018, Clayton would be one of the communities that does not have any protections in place. Staff considers that status will indeed result in Clayton being more attractive to non-profit operators so they can fly under the radar and not have to seek approval from the City or announce their presence.

**15. CAN AN ADDITIONAL OR HIGHER FEE BE REQUIRED FOR PAROLEE HOMES DUE TO THE GREATER SCRUTINY REQUIRED FOR THE USE PERMIT?**

No. The City can only charge for staff time that is incurred reviewing a project application.

**16. CAN SEX OFFENDERS LOCATE IN A PAROLEE HOME?**

Again, Clayton does not get to select who comes to live in the community. The State of California had residency restrictions in place for sex offenders, under Jessica's Law, which prohibited sex offender parolees released from prison from residing within 2,000 feet of any school. In 2015, this blanket residency restriction was determined by the State Supreme Court to be unconstitutional and sex offender parolees are

now placed on a case-by-case basis as determined by a risk assessment, which is requested either by the courts or the Parole Board.

AB 109 inmates are described by the State as non-violent, non-serious, and non-high risk sex offenders and the County will not be supervising or housing high-risk sex offenders, that responsibility still remains with the State. Therefore, the likelihood of a sex offender being placed in parolee home by the County is extremely remote.

**17. CAN THE CITY REQUIRE THE USE PERMIT APPLICATION TO BE MADE BY THE OWNER?**

The City cannot determine or choose who the applicant is for the use permit; however, the property owner is required to be a signatory to the application.

**18. CAN THE CITY REQUIRE LIABILITY INSURANCE, NAMING THE CITY AS ADDITIONAL INSURED, WHICH WOULD ALSO BE AVAILABLE SHOULD ANY PAROLEE CAUSE PERSONAL INJURY OR PROPERTY DAMAGE?**

A public entity such as the City is generally not liable for injury caused by the issuance of permits (Cal. Gov. Code §818.4), so it is unnecessary to add the City to an operator's insurance policy. Further, the City does not require this of other private facilities.

**19. CAN QUARTERLY REPORTS OF PAROLEE'S TRANSITIONING IN AND OUT OF THE FACILITY BE REQUIRED?**

The Police Department already has access to a law enforcement database containing residency information for individual paroled inmates or inmates placed on post-release community supervision released in the jurisdiction.

**20. CAN PHOTOS OF PAROLEES BE REQUIRED TO BE ON FILE WITH THE POLICE DEPARTMENT?**

The Police Department already has access to this information, as required under the Penal Code, when an inmate is released in Clayton.

**21. CAN THE ORDINANCE REQUIRE THE LOCATION OF THE PAROLEE HOME, THE OWNER'S NAME, AND THE NAMES OF THE PAROLEES BE POSTED TO THE CITY'S WEBSITE?**

While the location and owner of the parolee home would be a matter a public record, posting this information permanently on the website does not appear to serve a land use function. Posting individuals names on the website could be considered an invasion of privacy.

**22. WHAT IS THE IMMIGRATION STATUS OF THE INMATES/PAROLEES?**

The State, through its California Department of Corrections and Rehabilitation, and Contra Costa County, through its Sheriff's Office, are the entities responsible for administering the incarceration and custody of individuals that have been convicted of a crime. Therefore, Clayton does not have statistics on the incarcerated or parolee population in regards to immigration status. The Sheriff's Office and the California

Department of Corrections and Rehabilitation may have additional information pertaining to the demographics of the inmate and parolee population.

**23. HOW MANY HOUSING FACILITIES WOULD CLAYTON ALLOW AND HOW MANY RESIDENTS PER FACILITY?**

It is hard determine how many total facilities and how many residents in each home as there are many factors to consider for an accurate representation. It depends on the size of the house (e.g. number of bedrooms), depends if there are sensitive uses in the neighborhoods, etc. There are limits in the Ordinance, for example, there cannot be another parolee home within 1,000 feet of another parolee home, so given the geographic size of each of the areas that has been identified within the City, there is probably only space for one home to locate in three out of the six identified areas given the restrictions and practicalities in the proposed Ordinance.

The occupancy restrictions are determined by the California Building Standards Code, which is also upheld by case law, preventing the City from being more restrictive regarding the number of individuals living within a home, unless the City makes expressed findings based on "local climatic, geological, or topographical conditions". (*Briseno v. City of Santa Ana*, 6 Cal.App.4th 1378, 1383 (1992)). The California Building Standards Code provides the following formula for occupancy calculations: "Every residential rental unit must have at least one room that is at least 120 square feet; other rooms used for living must be at least 70 square feet; and any room used for sleeping must increase the minimum floor area by 50 square feet for each occupant in excess of two."

**24. HOW MUCH WILL IT COST TO MAINTAIN THESE FACILITIES?**

The most likely scenario envisioned is the County, because of AB 109, will be the entity to seek parolee housing sites, through a non-profit organization. Therefore, it is anticipated the non-profit County grantee would be the entity responsible for overseeing the day-to-day operations of the home. The property owner, whether the parolee home is rented or purchased by the non-profit, will be the one ultimately responsible to maintain the property. Indirectly, the County, through a grant to a non-profit from AB 109 monies, would ultimately bear the costs of the facility. The City is not involved in the funding of such houses, nor would it receive funds to facilitate or accommodate the operation of community parolee housing.

**25. WHAT ARE THE ENVISIONED IMPACTS FOR SAFETY AND SECURITY?**

Parolees are monitored by his/her parole officer with restrictions placed on them by the courts or probation officer, which they are required to follow. Just as with anyone coming into Clayton or who resides in Clayton, the City cannot control human behavior and law enforcement will respond appropriately to any crimes being reported or committed.

**26. WHAT TYPE OF IMPACT WILL THIS HAVE ON PROPERTY VALUES?**

The City Clayton has limited control over property values as these are dictated through the market; however, the City does have some control over property maintenance through the regulations contained in its Municipal Code.

**27. CAN YOU PROHIBIT PAROLEE HOUSING IN AREAS WHERE THERE IS ONLY ONE ENTRANCE/EXIT POINT?**

The selection of Multifamily Districts as the proposed locations was for the following reasons: 1) limited variety of land use choices (e.g. Clayton does not contain industrial areas); 2) the multifamily designated areas represent the smallest geographic area of any residential land use, while still providing a minimum, reasonable number of acceptable locations to withstand a legal challenge; and 3) multifamily residential designations are more intensive in its land uses than single-family land use districts.

To address the access issue, there would be tradeoffs that may be less favorable to the community because there would have to be additional land use designations included in the Ordinance in order to prevent a de facto ban. The other land use designations would be single-family in nature and are generally much larger geographically, thereby providing additional possibilities beyond the currently proposed minimized locations.

**28. CAN THE CITY REQUIRE YEARLY RENEWAL OF THE USE PERMIT?**

A use permit is granted as a land use entitlement that runs with the land in perpetuity, unless the permit is revoked due to noncompliance with the conditions of approval or is determined to be a nuisance or the use is inactive for a specific period of time. Having to reapply yearly for the continued use is not legal because the use permit is considered to be a vested right and the power of the municipality is limited to circumstances where there is noncompliance with the use permit conditions or there is a public nuisance. However, a similar mechanism would be to conduct a periodic review to determine if the conditions of approval are being complied with and this type of requirement would be more applicable as a condition of approval on the use permit for the parolee home and would not typically be folded into the Ordinance.

**29. CAN THE BUFFER BETWEEN PAROLEE HOMES BE INCREASED?**

This could be considered; however, this distance would have to be analyzed in relation to the sensitive use-buffer distance in order to prevent a de facto ban.

**30. INCLUDE THE GOLF COURSE WITHIN THE DEFINITION OF PARK IN THE ORDINANCE?**

The Ordinance currently identifies sensitive uses as public parks due to children being present. The golf course is private and children do not have unbridled access to the golf course and by including the golf course, it would further restrict the possible locations and ultimately result in a de facto ban.

**31. CAN A GREATER DISTANCE BE REQUIRED FOR NOTIFICATION PERTAINING TO A PAROLEE HOME?**

A larger notification requirement, matching the 500' sensitive use buffer, was added to the proposed Ordinance at the July 17, 2018 City Council meeting, see Section 17.36.086.F (Attachment 1).

### **32. CAN THE CITY REQUIRE INSPECTIONS FOR HEALTH, SAFETY, AND CODE ENFORCEMENT?**

There are state statutory and local code provisions authorizing for inspections for health, safety and code enforcement purposes. (See e.g. CMC Chapter 8.08; Health & Safety Code 17970 et seq.) Generally, consent or an inspection warrant is required for a government inspection of private property, including business property. While parolees, as a condition of parole, may be subject to warrantless searches (Cal. Penal Code §3067(b)(3); *Samson v. California* (2006) 547 U.S. 843), it is not clear that this requirement could be extended to the operation of a parolee home based on the privacy interests of the property owner and operator. The courts have not looked favorably upon government permit conditions that require consent to warrantless inspections, and it is not recommended here. (*City of Los Angeles v. Patel* (2015) 135 S.Ct. 2443; *Camara v. Municipal Court of City and County of San Francisco* (1967) 387 U.S. 523.)

### **33. CAN THE CITY REQUIRE INCREASED TIMELINES FOR APPLICATION REVIEW, NUMBER OF HEARINGS, AND NOTICE REQUIREMENTS?**

The Planning Commission or City Council may continue a public hearing to another day if reasonably necessary to complete its consideration of an item. The proposed Ordinance has already increased the notice requirements beyond the minimums required by the Planning and Zoning Law. In regards of increasing the time for review, that would depend on whether a particular application is governed by the Permit Streamlining Act, which contains time limits for application review. Where the Permit Streamlining Act does not apply, then there is no strict time limit on the City's exercise of due diligence in the application review process. The Permit Streamlining Act applies to development projects "involving the issuance of a permit for construction or reconstruction but not a permit to operate." Assuming limited project-level funding for these types of uses, we would not expect that most applications for a parolee home would involve construction or reconstruction.

### **34. WHAT IS THE PROCESS WHEN SOMEONE WANTS TO COME IN AND ESTABLISH PAROLEE HOUSING?**

An operator of a prospective parolee home would fill out an application at City Hall indicating the location, which requires the real property owner's signature(s), assuming the operator is not the owner. City staff would examine the application as to whether the address indicated is eligible for such a land use by applying the buffer distances and other regulations in the ordinance (local law). If all buffer distances still makes the prospective site eligible and requirements of the Clayton Municipal Code are satisfied, notices would be mailed to real property owners within 500 feet of that location of a public hearing on the matter set before the City Planning Commission. The Planning Commission would be in charge of setting lawful conditions on the use permit to either approve it, or deny it with legal findings. The decision of the Planning Commission could be appealed by an aggrieved party (neighbor, or applicant).

### **35. WHAT IF AN HOA THROUGH ITS CC&RS PROHIBITS GROUP HOUSING?**

A city does not enforce CC&Rs of private property – those are primarily a civil matter between the real property owners and/or the HOA. Because of that hierarchy of law, a city zoning law does have greater

authority over a conflicting CC&R – but the HOA and/or its real property owners could then seek civil action against the property owner of the intended parolee home to halt its planned location.

### **36. IS IT EVITABLE CLAYTON WILL RECEIVE SOME AMOUNT OF PAROLEE HOUSING?**

Staff does not have a crystal ball and it is hard to work in absolutes without one, but it is believed that it is not inevitable that Clayton will end up with some form of parolee housing. The hope, from staff's perspective, is that this Ordinance passes and then it is put on the shelf to collect dust, but if someone does inquire, staff has a process to point to, where one did not exist before.

Clayton does have several inherent factors which highly decrease the likelihood of parolee homes wishing to be located within the city:

- 1) Low number of parolees originating from the community (state law requires the formerly incarcerated return to the communities of their last legal address);
- 2) Lack of convenient access to public transit;
- 3) Lack of rehabilitation services and programs to assist those that have been previously incarcerated (these services and programs tend to be established in communities with a higher number of parolees such as Richmond, Concord, and Antioch);
- 4) High cost of housing and land in Clayton; and
- 5) High rates of owner-occupied homes, which drastically reduces the possibility of a property owner renting a residential unit to such programs.

The proposed Ordinance would be one of the most restrictive in the County and given the above inherent factors of Clayton, these together would all act as a “belt and suspenders” approach by severely closing the door to these types of uses, but leaving the door open just enough for legal purposes. More than likely an operator would go look elsewhere because given the restrictions of the proposed Ordinance they would have to wait until a house in one the identified land use designations either came on the market or was available for rent and then would have to go through the scrutiny of a public review. Most landlords or sellers for residential uses are not going to wait around for a use permit to be acted upon by a local government (which typically take months), particularly given the current housing climate in California, which will be around for the foreseeable future. The County, through a non-profit organization, would be the entity more than likely, because of AB 109 funding, to want to open additional parolee homes around the County. These non-profit operators tend not to have large sums of cash that would be required to buy a home in Clayton and a savvy operator would not purchase a home on limited funds unless it was guaranteed they were able to operate, particularly because it would more than likely be grant funded.

### **37. HOW ARE OTHER CITIES, PARTICULARLY AFFLUENT ONES, SUPPRESSING PAROLEE HOUSING?**

Cities like Lafayette and Danville, where this type of housing is not regulated, could have parolee housing locate there without notice or knowledge. They are effectively in the same position as Clayton, if the status quo is maintained and the moratorium expires. However, market forces do play a large role because why would an operator rent or buy a house in an affluent community when they could get a house in Concord for

much less with the same amount of grant monies? The City will be in a better position in the unlikely chance that someone is interested in putting parolee housing in Clayton.

# ATTACHMENT 3

already over-taxed Bay Area voters cannot and will not be inclined to approve a tax measure for services already rendered; however, they are also concerned about the retirees who earned and will rely on their reasonable pensions and cannot afford a loss of their financial security in their retirement years. If the Council wishes, they can present a more detailed analysis at a later time. She noted the Council did not create this situation but it is their responsibility to address it. The quality of life in your community is at risk.

Ann Stanaway, 1553 Haviland Place, stated Council needs to take serious its constitutional duty to protect the public safety. Since Mr. Diaz impassioned homily at the last Council meeting, trumping his personal commitment to neighborhood safety and quality of life in Clayton, she felt the need to raise her voice in a follow-up representing voters in those neighborhoods that Councilmember Diaz professed to protect. How dare he rebuke us for questioning his fitness to protect incorporated Clayton. Every single member of this Council continually violates his and her oath of office by allowing violations of existing public safety ordinances to proliferate despite exhausted photographic evidence of California Fire Code violations. Our government's constitutional commitment to protect its citizens is nothing more than empty rhetoric.

Brian Buddell spoke in general terms with respect to proposed and future developments keep Clayton, as it is. Mr. Buddell located to Clayton, he moved here because he liked it the way it is, without multi-story residential or commercial buildings. Lately, there have been some proposals not consistent with what Clayton is about and he has received conflicting information about a proposed development over on High Street and Marsh Creek that he does not think fits within the General Plan. Please listen to people and do not let Clayton turn into Walnut Creek or downtown Concord.

Andy Li, introduced himself as a candidate for Contra Costa Community College Board, Ward IV, which includes San Ramon, Danville, Clayton, part of Antioch and Brentwood. His goal is to help the community reduce the stress for the students by creating an alternate pathway through the community college, help them succeed, by reducing mental stress and financial burden by promoting online courses and working with business owners to offer vocational training for local workers.

Jim Gamble, Prospector Place, echoed Mr. Buddell's remarks adding according to the City's website, the original plan was forty-four condos and now it is three stories high with eighty condos. Before something like that is considered, he wants people to be aware. We love Clayton the way it is; if our award winning trail system does not go away overnight, it goes away incrementally as developments start popping up.

## 7. PUBLIC HEARINGS

- (a) Consider the Second Reading and Adoption of proposed Ordinance No. 483 amending Title 17 – Zoning of the Clayton Municipal Code to restrict and regulate parolee homes in the following General Plan designations: Multifamily Low Density (MLD), Multifamily Medium Density (MMD), and Multifamily High Density (MHD), subject to a conditional use permit.  
(Community Development Director)

City Manager Napper Community Development Director Mindy Gentry had a previous commitment for this evening arranged back in January and he will provide the staff overview. He noted the Government Code process indicates how general law cities adopt local laws, otherwise known as ordinances. The introduction and first reading of an ordinance is done at the first public hearing. If the City Council does not approve the motion to read by title and number only, the City Clerk must then read the ordinance in

its entirety. Once the ordinance is adopted for Introduction, no earlier than 5 days after its introduction that ordinance is eligible to return for its Second Reading, at which its actual adoption can occur at that time. If that ordinance is adopted, then the new law (ordinance) normally, with few exceptions, takes thirty days to become effective.

City Manager Napper provided highlights of the proposed Ordinance regarding its Use Permit process, which is subject to a public hearing, is discretionary with the review and consideration by the Planning Commission. Should a parolee home applicant/operator wish to locate in Clayton, it would need to file an application with the City. If the applicant does not own the underlying real property, the application also requires the signature of the property owner in order to process the request. The proposed Ordinance includes prohibition for parolee homes to locate within 500' of a sensitive use. When the City received notification in 2016 by an operator wanting to open a parolee home in Clayton, City staff brought an ordinance to the City Council, an urgency ordinance placing a two year ban to allow staff to conduct more research. Unfortunately, the City is unauthorized to further continue the ban as the interim moratorium comes under the authority of California Government Code 65858 (a), which state law allows an urgency moratorium to be effective for a maximum two year period. In the absence of doing nothing, the City is faced with parolee homes coming to Clayton with no notification or local review. At its July 17<sup>th</sup> meeting the City Council included buffer zones of 500' from defined sensitive uses, and cannot to be located within 1,000' of another parolee home. Staff recommended the multifamily designations as there are not many such areas in the city as there are for single family dwellings or residential districts. The interest of the City is to regulate and limit the City's receivable of such a parole home operation. Additional components include multifamily housing projects of 25 units or less would be limited to one parolee home and multifamily housing projects with 25 or more units would be limited to a maximum of two parolee homes. At the last City Council meeting the City Council introduced the Ordinance but also asked staff come back and plot a 750' and a 1,000' buffer distance map. There is no state or local law that determines a specific buffer requirement or distance.

Vice Mayor Shuey inquired under the 500' buffer there are three opportunities for parolee housing to locate. Mr. Napper advised the areas for consideration are located at Indianhead Way, the Keller Ridge area, and the Shell Lane area.

Vice Mayor Shuey clarified the areas at Indianhead Way and Shell Lane are actually one opportunity because of the 1,000' buffer between parolee homes if they were to locate in that area. Mr. Napper concurred and further advised in those areas there may already be a group housing the City is unaware of, licensed by the state, or after the City Council adopts the Ordinance a particular sensitive use comes into play it would be part of the consideration when staff went to apply the distance criteria that is included in the ordinance. He noted none of the maps are an actual part of the proposed Ordinance; the maps were prepared to provide a visual of the areas that are multifamily high density and where possible parolee homes could go, and for the City Council to have a discussion on concerning what it feels is a legally defensible position of the City.

Vice Mayor Shuey asked if a daycare is located in a zone, would that area then be excluded in having a parolee home located in that area? Mr. Napper advised the City is notified of state-licensed daycare facilities, but another licensed daycare could show up in those areas, or other group housing or sensitive uses in those areas for the Planning Commission to consider during its review of a proposed parolee home.

Vice Mayor Shuey inquired if the 750' or the 1,000' buffer zone would reduce the opportunity to 2 locations and if our City Attorney is comfortable with only having 2 areas available for parolee housing? City Attorney Mala Subramanian advised in terms of the risk factor it goes back to the sensitive uses and ones we may not be aware of; she does consider it is still defensible to move from two versus three yet doing so does pose an

additional risk if a sensible use comes in knocking-out the proposed parolee home. However she does not consider it creates a de-facto ban.

Councilmember Catalano added most other cities have placed regulations on parolee housing and she conducted her own research for any examples of a de-facto ban. She located one in the City of Hesperia, California, where they had a group home definition prohibiting housing of two or more individuals on probation. In November 2015 a crime free rental housing ordinance was passed requiring landlords to evict any tenants that were involved in any criminal activity. In May 2016, that city was sued on both of these ordinances by ACLU and another entity, starting with the Supreme Court case talking about AB109 and Prop 47. In July 2016, a preliminary injunction was issued by the court preventing the City of Hesperia from enforcing its ordinances. In March 2017, that city decided to repeal the group home definition by urgency ordinance with the findings the ordinance was necessary for public peace, health and safety yet the cost for litigation may be so detrimental to the fiscal stability of the city that the city would only be able to provide less city services, such as police, fire, building safety and enforcement. The lawsuit was settled a year later with ACLU and the other entity at almost \$500,000, with \$470,000 in just attorney fees, which amounts did not include the city's own legal expenses that it incurred over the two years. In comparison, Hesperia has a population of 94,000 and its General Fund Budget is about \$26 - \$27 million per year. Clayton is about \$4.5 million per year.

Councilmember Pierce requested a clarification regarding group homes to explain the process and state law requirements for small daycares that are licensed by the state for 6 or less children. City Manager Napper responded state law allows for certain types of group housing to go into communities in residential zones without any permission or regulation by a city, provided the number of persons in that group housing is 6 people or less. When people say "how does the City not know about a group housing that is occurring in their neighborhood or in the city?", the City is usually first notified by the neighborhood at which point the City inquires with the state because licensed daycare of 6 persons or less is permitted by right. He noted different state agencies handle other types of adult group housing versus a different type of group housing, such as sober living environments, which can lead to over-concentration of state-permitted group housing in a particular neighborhood.

Councilmember Pierce noted she is trying to have a larger buffer zone to include any potential daycare of 6 or less in operation that would have the potential to eliminate a proposed location.

Mayor Haydon inquired if there would be any issue in expanding the public notification distance to 1,000'? Ms. Subramanian advised if there a 1,000' public notification that would be fine.

Mayor Haydon opened the Public Hearing for public comments.

Pat Hilts, resident of Chaparral Springs, expressed within the chosen area of Shell Lane are three women who live alone, and she cannot imagine having a resident in the court of one or more felons. Ms. Hilts noted it would be very uncomfortable for the residents and suggested felons reside nowhere close to the city but in an area that is more remote.

Ann Stanaway, 1553 Haviland Place, noted Clayton carries municipal JPA insurance to defray that cost of legal defense, and a prudent counsel would outsource review of our staff recommendation and welcome the professional scrutiny by professional knowledge experts like Goldfarb & Libman in Oakland. As constituents, citizens are not qualified to guide the City Council through the complexities surrounding compliance of this magnitude. This statutory compliance measure is a big deal with far reaching

consequences; reaching a ban now would record Clayton's reluctance and allow City Hall time to seek professional advice from the highest and best source.

Nancy Hughes stated nobody wants a criminal in their backyard. In Shell Lane's area, behind the units is open space. Anyone can slip down that hill through the parking space and have access to any of our backyards. There are 500 crimes that qualify for the prison realignment act; how will county parole officers provide supervision? What about sensitive areas? Ms. Hughes does not want felons in her neighborhood, and also expressed concerns over deflated home values.

Barbara Vogt, Coyote Circle, opposes any parolee housing in Clayton noting concerns of young children in her neighborhood and the sale of alcohol on the adjoining golf course. Ms. Vogt understands parolees need to access public transportation, noting Condor and Coyote are privately owned streets and are not patrolled regularly; it seems like we are more concerned for the safety of the parolees. Please protect our small community.

Jeff Wan stated the number one priority of the City Council should be the safety of its residents, but it is letting its fear of potential litigation paralyze its thought process rather than protect the city and protect the safety of Clayton residents. The citizens have been told by the Council there is a mandate by the state that claims there is a requirement to take up paroles in community-based programs in our neighborhoods. His research indicates no such mandate. Why didn't the City Council adopt the most restrictive ordinance possible at the July 17<sup>th</sup> City Council meeting? Even nearby Antioch and Oakley has a greater distance requirement. It's hardly persuasive the Council explored all possible actions in its due diligence; it forgot about the park of Stranahan Circle where they identified a potential location for parolee housing next to a park. If the proposed ordinance is the very best the City Council could come up with then, they are not trying hard enough. The Council should go back to the drawing board and take action to actually protect all Clayton residents and more heavily restrict or outright ban parolee housing in the city. We can do better, and that's why he is a candidate for City Council.

Jerry Koehne, Chaparral Springs, remarked Clayton is not just any other city, it's a community and everybody is here because we don't want to be Hesperia or Concord. We want Clayton be an all-inclusive safe community. When Mr. Koehne first moved to Clayton, there was trouble with landscaping and the voters voted to pay more taxes for the landscaping, the fountain and CBCA. Mr. Koehne suggested if City money needs to be raised to defend us, have a bake sale or sell something at the Saturday night concerts. We will all be there to do it to protect our community and live the way we wanted to, because that's why we moved here.

Kim Brazill echoed the last two speakers' comments.

Fred Fuld asked who is the non-profit organization that seeks to put a facility in Clayton? Mr. Napper advised he did not have that information readily however that operator ended up in Pittsburg to open a similar facility. Mr. Fuld asked would this organization be purchasing or renting these units? Mayor Haydon advised they would have either option. Mr. Fuld asked, as a homeowner of a rental property, if he were approached about renting his property for parolee housing, can he refuse? Mayor Haydon responded yes; this evening the City Council is reviewing the Ordinance that would control whether or not they could use the property in that manner, not binding the owner of the property the type of rentals they want to approve with their own property. Mr. Fuld noted on the county's level of supervision it excluded any listed high risk sex offenders as defined by CDDCR; would they will allow "low risk sex offenders," and what does that mean?

Richard Haile, Indianhead, advised somewhere between 80-90% of all felons indictments are out of court for pleading to a lesser offense so we are unaware of what they were really charged with when somebody moves in. Mr. Haile would like review of a well written ordinance and consider that model. He wondered with the two other cities which have banned this use, why has ACLU left them alone? Mr. Haile suggested sharing the risk equally across the city, not just in the areas where they cannot buy their influence.

Dan Hummer read AB109 and it said the county can still contract back with the state; is there a reason why Contra Costa County did not contract back with the state in regards to where these people be held and things like that? Mayor Haydon advised the county is still working on its plans and ordinances. Mr. Hummer also inquired if the county supervision could possibly raise taxes in Clayton? Mayor Haydon advised the council is reviewing the impacts of the ordinance itself within Clayton city limits.

Joanne Lederman is dumbfounded about the idea of putting parolee homes in the high density areas and if Clayton will allow parolees to avoid a potential lawsuit with the ACLU then this use should be citywide. Ms. Lederman stated it is absolutely unacceptable to target certain groups as you make second class citizens out of people who live in high density housing. The City has failed to consider if anyone who resides anywhere around the Keller Ridge area will have to disclose this when we sale our properties as we are located in a small targeted area where parolee homes can locate, decreasing our property values.

John Kranci, Coyote Circle, has seen firsthand what these parolees can do to a community; after spending 28 years on the streets of San Francisco and going into these houses the recidivism of them committing the crimes over and over again is unconscionable. Parolees do not want to be controlled and want do what they want and go where they want. Unfortunately Clayton does not have the staff in its police department to do anything about it. Make it impossible for these people.

Marci Longchamps, Coyote Circle, voiced her strong opposition to any kind of parolee housing, anywhere in Clayton. The Keller Ridge development currently has a playground area which can be defined as a sensitive area. How is this playground area overlooked? The Keller Ridge area and any other area are not suitable for parolees. Ms. Longchamps noted she is very passionate about this issue and believes when it comes to any conversation, regarding convicted felons living in Clayton there has to be a place for both emotions as well as facts.

Galina Milman, Eagle Peak Avenue, expressed her concern about the City statement the parolee housing business will not be using extra City funds as every parolee that comes through the system is going to review each case. For example, if a parolee sexual assaulted or raped someone younger than 14 they are considered a hard core parolee and are restricted 2 miles from any park, school or daycare. If they rape someone 14 years and 1 month old it is considered soft core parolee but in cases like this that is why we have a professional parolee officer who has had training to differentiate the difference. Our City police department does not have the work force to review each case and will have to hire extra people at about \$70,000 per year salary. A parolee officer makes \$70,000 - \$80,000 per year plus benefits. Are we ready to put it on our shoulders? Ms. Millman spoke about the golden standard in 2006 when 70% of California voted for Jessica's Law after a nine year old girl that was raped and killed by a parolee in Florida. In California it was decided to also place a 2,000' buffer around parolees; if Clayton cannot do an overall ban, and then have a 2,000' buffer because the golden standard exists.

Stacey Holz, Shell Lane, echoed the sentiment of her fellow community members that there needs to be more creativity sought and try harder and restrictions should be there, but not discrimination in the effort to avoid offending the ACLU, or felons, as she believes the City Council is at risk of discriminating against certain members of our community. We are a community and we need to share the burden and asked that the Council to please listen to its community members; we all moved here not because it is convenient to our work place. Clayton is amazing because we are a community that makes it amazing. Let's find a solution that works for everyone in Clayton because it is special; we are not going to be afraid to offend the devil because we want to be politically correct.

Brian Buddell attended the last City Council meeting and listened in great detail to the City Attorney present at that time she said "1,000' would be a total ban, a de-facto ban;" now we are hearing "no its not, its fine." He's hearing Councilmember Pierce there might be daycares there, but we don't know where they are. Council, we are talking about a piece of legislation that is possibly the most important piece of legislation in the 54 year history of Clayton. This is safety, this is a protection of Clayton, and Mr. Buddell does not want to see anyone hurt, regardless of the potential costs. Our safety has no cost, no budget and it should not have a ceiling. We need to protect, we need to be smart, we need to do it right.

Jim Gamble noted like a lot of the other speakers this buffer is ridiculous it should be 1,500' or 2,000' and regulate it or have an outright ban. Mr. Gamble also would like to know Mr. Wolfe's thoughts on this, if he has time.

Chuck Blazer attended the Planning Commission meeting thinking there would be some type of town hall meeting; instead there is a Council meeting. The *Clayton Pioneer* came out where the Mayor at the end of the article said the citizens just don't understand. Mr. Blazer provided scenarios of when a parolee home comes to a community syringes and baggies show up because of drug use that goes on day and night; rooms in the back of the house that have turned to brothels; parolees stealing all the mail from the community and all their neighbors and you hit that house you find it all piled in the living room; in the garage all the property stolen from the neighborhood is there, it will be worth the lawsuit. Mr. Blazer referred to a Penal Code those talks about a safe zone from schools of 1,500' from parolees. If Council is going to use something to beat a lawsuit, why not use a code that the state of California has already offered?

Jason Kirkham, Coyote Circle, commented as an echo to what many people have already said noting his family resides in targeted area and doesn't consider his residence a multifamily dwelling, it's his home. He is offended by the multifamily selection process. Mr. Kirkham is concerned about safety like everyone else and is a taxpayer with a vested interest in the value of his property, but more so he is interested in the safety of the community at-large. Mr. Kirkham is also concerned with the nature of the criminal backgrounds; as the nature of crimes has been redefined in recent years. When Mr. Kirkham was seventeen years old, he sold newspaper subscriptions in the summer of 1991 and came across a parolee, who was the person who kidnapped JC Dugard and happened to be standing on the front lawn of the house at the time he had her in his backyard.

Michael Gibson, Keller Ridge Drive, added he was not sure if the City Council was familiar with the contagion and opportunity effect in our community. He suggested looking into parole evidence on recidivism in contributing to these things, noting research suggests up to one half of the individuals released from prison return to prison within 3 years. How will the Council answer to the prospective victims in this room as to why it did not prevent this from happening.

Joanna Welch mentioned the recent incident of a woman whose neck was slashed and she was slaughtered on the BART platform by a parolee. Personally, she had a best friend from high school where there was a gentleman plead down 6 times; every time he had great attorneys that plead his charge down, the seventh time he abducted her friend and dismembered her, and to this day there isn't a day that goes by that Ms. Welch doesn't think of her. He even tried to plead down after he cut up her friend, finding her three years later in pieces, her parts all over. She cannot compare the fear mongering of the legal stuff to fear mongering of a woman's life whose throat was slashed or spread out over dumpsters. She knows these are huge heavy potential legal bills but there is not a lot of precedence for this. There are other councilmembers and also have media. Ms. Welch said these are not easy things and we are not asking too much for the safety of our children, the elderly and every one of us.

Sally Hitchcock, Coyote Circle, is concerned that if someone is living in her neighborhood it is very easy to get into our small backyards consisting of a patio. No one wants parolee housing here in Clayton, except maybe the parolees and their families; but to limit it from 11,000 people to a few hundred people exposed, that is not right.

Cheryl Morgan pointed out one of the clauses in Brown Act training is to avoid all appearances of conflict of interest. This issue has become pretty apparent to everyone here that the Council has opened itself to a Brown Act violation. Ms. Morgan noted a nearby trailer park is closing off access to felons, in Clayton Palms. Ms. Morgan knows the County is concerned about where they are going to house felons, with no answer. Has the County encouraged Clayton to do this because it needs new housing for felons?

Colleen Shipp is expressed her concerns as it was her dream to live in Clayton, and a year and a half ago her husband and she purchased a home on Coyote Circle, to raise their children there and she is saddened to think how our city of Clayton may be changing. Her father is a retired San Francisco police officer who encouraged her to come to Clayton because of the safety. We don't have the police in Clayton that are going to be able to patrol the area if we have these parolees.

Anthony Dimas, Easley Estates, added when one accumulates the loss in property values because of this action it will be a lot more than \$1,000,000. Might consider it more economical to litigate this if we do get sued than it would be to have these people lose much more than that in property value

Galina Milman expressed her biggest concern is in regard to infrastructure in Clayton; where will parolees obtain drug addiction center and employee agency and physiological help. Will Clayton spend money to build these facilities because in order for them to find the closest facilities they will have to travel through other cities? The whole purpose of having parolee housing is to be able to rehabilitate them.

Jim Gamble questioned the "No Fiscal Impact;" when he asked Ms. Gentry about that initially, she said there was none. With all these other people coming up here and talking about the costs on the infrastructure and impacts to the neighborhoods and all the other apparatus, he just thought it should be public record that Ms. Gentry did say there is no police cost.

Mayor Haydon closed the Public Hearing.

Councilmember Catalano this is not an issue that we brought or introduced; this is an issue we are dealing with through the Supreme Court decision and a state proposition. All of this is pressure from the top to all the cities in the state of California. A lot of other cities are larger cities that already had group housing ordinances when AB109 and Prop 47 passed, they already regulated group housing one way or another. Clayton's code is

silent on parolee group housing. Councilmember Catalano recited what other neighboring cities have done, many without buffer distances and regulations as was presented at the last City Council meeting by staff. The California Supreme Court has eliminated Jessica's Law buffer - it was ruled to be unconstitutional. The 1,500' Penal Code reference applies to a different context; in this context, when we talk about the radius we are talking about whether we are doing a ban or a de-facto ban or not. Her concern about potential litigation is there are costs involved; Clayton is not a big city and budgeted at about \$4.5 million; our police force is about 50% of our budget and she is not willing to sacrifice about \$2.5 million of the Police Budget to pay for a lawsuit. She also does not want a judge who does not live in Clayton to determine the local regulations for Clayton. Clayton has the ability to control its land use. Two cities adopted bans before AB 109 was passed by the state. The cost would take away from our resources but more so the potential outcome. If every city in California prohibits parolee housing, what is the state going to do? Councilmember Catalano advised the approval of an Ordinance establishes a process for a proposed parolee home, it would have to be noticed, a hearing at the planning commission, the planning commission would have to make a decision, there are findings in this conditional use Ordinance and it would impose additional requirements and the criteria the Planning Commission must determine the conditions and whether to approve it or approve it with conditions or deny it. This can be regulated just like every other city has done.

Councilmember Diaz thinks we need to do a lot more work on this. He is inclined, if moving the buffer zone out creates a de-facto ban, the Council should review what a 1,500' or 2,000' buffer looks like and if it eliminates the potential for a parolee home to establish here, then so be it.

Vice Mayor Shuey indicated we are elected to make hard decisions, good or bad; depending on who you are, you can never please 100% of the people 100% of the time. In the 16 years he has been on this Council, on multiple occasions we take a careful look at regulations and issues and try to make a determination on whether or not it was worth the fight. Almost every time there is a difficult decision imposed by the state, we have chosen to let the bigger cities fight those battles with the state. The Supreme Court has already ruled on the prison overcrowding and the state has said we have to do this certain thing to get rid of our overcrowded prisons, they have got to put these people somewhere: that somewhere is either counties or cities or both. He would rather know if there will be a parolee living next door to him and to regulate it and carefully do so through the use permit, and if it is violated, we can revoke. We fight the state, the ACLU, he did not believe the City can win because the Supreme Court has already ruled on overcrowded prisons and the state determined there is now a specific need and interest that they have. The City has narrow locations to the very limited options of multi-family; if we chose single family areas, that decision is giving more opportunities for felons to come into Clayton.

Councilmember Pierce said she has spoken to well over 100 residents who believe very strongly we have to regulate this as far and as tight as we can to discourage it. Nobody wants parolee housing in Clayton, what we disagree about is how to keep it out of Clayton. She asked if staff was unaware of a pocket park in the area of Keller Ridge and didn't know if it is classified as a legal park or not. City Manager Napper advised that presently as written, the Ordinance calls for public parks as sensitive sites, not private parks.

Councilmember Pierce remarked she is convinced the 1,000' buffer and 1,000' notice still allows two locations within town. If we strengthen the noticing process it allows us to make as much noise as much as we can about this potential. From what we know, these operating organizations want to fly under the radar and not let the public know they are there. The more the City locally requires on an applicant, such as the owner of the

property must be a signatory to the use permit application, it makes a very uncomfortable process. We are fighting for local control.

Mayor Haydon asked staff if the council is able to expand our park definition to include private parks as well. City Attorney Subramanian responded if Council were to do that, we would need to re-look at the maps and figure out how many actual locations we would have within the City. To this point, it was only analyzed for public parks as a sensitive use site. She was concerned if private parks would be included it would result in a de-facto ban.

Mayor Haydon commented he wanted to address the question of why the City did not take action earlier. It originated because an inquiry alerted the City to take a look at it. That particular organization ended up relocating to another area based on many factors. No other city has been advised to outright ban parolee homes. Mayor Haydon went over the three options presented at the last City Council meeting. The Council does not like the idea of parolees coming to Clayton; it is proposing the strictest conditions in Contra Costa County and he recommends expanding the buffer to 1,000' and similar noticing distance is an effective deterrent.

Councilmember Catalano wished to recall the moratorium expires in 30 days; the City needs two hearings prior to the Ordinance becoming effective. If we do not do anything today and October 4<sup>th</sup> comes along, we will have a parolee home allowed anywhere in Clayton without any restrictions. All of us live in the same community; one person mentioned "show me a mom in Clayton that isn't concerned about safety." We've talked a lot about the radius - there are a lot more requirements in the Ordinance.

Councilmember Pierce noted the Ordinance can be amended at any time.

City Manager Napper concurred that an ordinance can be amended by an ordinance; in fact the municipal code is amended all the time... He added the City is a part of the Municipal Pooling Authority and as one of his tasks he serves as the Vice President of the Municipal Pooling Authority, a Joint Powers Authority of 23 member cities. In its Memorandum of Coverage, legislative decisions of a land use nature are excluded from liability coverage by the Municipal Pooling Authority. Any exposure to litigation on this matter, the City would be on its own for defense funds.

Councilmember Diaz commented he is not prepared to approve the 1,000' buffer. He respectfully requested as a part of any motion that the City Council provide itself the opportunity in the Ordinance to re-address this down the line when there is more information we can research.

**It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to Re-Introduce Ordinance No. 483 with amendments for a 1,000' buffer from sensitive use sites, a 1,000' distance public hearing notice requirement for any associated parolee housing conditional use permit, and include requirements for published notice in the local newspaper and on the City website, and to have the City Clerk read Re-Introduced Ordinance No 483 by title and number only and waive further reading. (Passed; 5-0 vote).**

The City Clerk read Ordinance No. 483 by title and number only.

**It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to approve the Re-Introduction of Ordinance No. 483 with the finding its adoption is not a project under CEQA and it will not have a significant adverse effect on the environment and therefore is exempt under CEQA. (Passed; 4-1; Diaz - no).**

[The Council took a recess from 10:38 p.m. to 10:47 p.m.]