

MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL
TUESDAY, March 20, 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, Community Development Director Mindy Gentry, and City Clerk/HR Manager Janet Brown.

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

3. **CONSENT CALENDAR**

Mayor Haydon noted Item 3 (e) contains a typo which will cause the minutes to be approved “as amended.”

It was moved by Vice Mayor Shuey, seconded by Councilmember Catalano, to approve the Consent Calendar with the amendment on Item 3 (e).

Councilmember Pierce noted before the vote that she approves of Items 3 (a) through 3 (d) but must recuse herself from voting on Item 3(d). City Attorney Subramanian added Councilmember Pierce is recusing herself from that vote as Councilmember Pierce is a Board Member of the Clayton Historical Society. Councilmember Pierce confirmed she is a Board Member of the Clayton Historical Society.

Motion passed (5-0 vote), except for a 4-0-1 vote on Item 3(e) with Councilmember Pierce abstaining.

- (a) Approved the minutes of the City Council’s regular meeting of March 6, 2018.
- (b) Approved the Financial Demands and Obligations of the City.
- (c) Adopted Resolution No. 9-2018 setting the City’s Equivalent Runoff Unit (ERU) real property parcel assessment levy in FY 2018-19 at current rates to pay for local storm water/clean water programs and series required by the unfunded federal and state-mandated National Pollution Discharge Elimination System (NPDES) Program (storm water pollution prevention).
- (d) Adopted Resolution No. 10-2018 approving the City’s 2017 Annual Progress Report regarding its HCD-certified Housing Element.
- (e) Adopted Resolution No. 11-2018 approving a Lease Agreement with the Clayton Historical Society for its continued use of City property for the Clayton Museum and exterior ground improvements.

4. **RECOGNITIONS AND PRESENTATIONS** – None.

5. **REPORTS**

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

City Manager Napper announced there are two (2) vacancies in the City organization for the positions of Senior Maintenance Worker and Office Assistant/Code Enforcement Officer, who assists at the public counter at City Hall.

Mr. Napper also announced there are still several citizen advisory board opportunities available to represent the City on volunteer boards, such as the County Library Commission. Applications and more information are available on the City website and at City Hall.

Mr. Napper also announced a Community Meeting taking place on April 4th at 7:00 p.m. in Hoyer Hall held by Fulcrum Development, the City-selected prospective developer, who will share information on its proposed senior care facility on the City's vacant property in Clayton's downtown.

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

Councilmember Catalano announced the Clayton Business and Community Association Scholarship Committee is still accepting student applications, and the Clayton Business and Community Association is in need of volunteers for its upcoming Art & Wine Festival taking place on April 28 and 29.

Vice Mayor Shuey indicated "No Report".

Councilmember Pierce noted she attended six Metropolitan Transportation Commission committee and Board meetings, four Association of Bay Area Government Board meetings, the TRANSPAC committee meeting, the joint meeting of Metropolitan Transportation Commission and Association of Bay Area Governments meeting, and the California Council of Governments Association meeting in Monterey.

Councilmember Diaz indicated he attended a Clayton Business and Community Association pre-meeting for the annual Art & Wine Festival scheduled for April 28 and 29, 2018.

Mayor Haydon attended the County Connection Finance Committee meeting, the Black Diamond Mines Stairway Ribbon-cutting ceremony, the County Connection Board meeting, and the Meals on Wheels Champion event.

- (e) Other – None.

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

Ann Stanaway, 1553 Haviland Place, expressed her unhappiness with the intemperate remarks made by Vice Mayor Shuey at the last meeting regarding ADA access issues on the replacement playground equipment scheduled for North Valley Park. She noted she has complained since 2007 about ADA noncompliance of the City and the City's contempt attitude toward public safety in general.

7. **PUBLIC HEARINGS**

- (a) Public Hearing to consider the Introduction and First Reading of a proposed City-initiated Ordinance No. 481 amending Chapter 8.14 (Regulation of Smoking) of the *Clayton Municipal Code*.
(Community Development Director)

Community Development Director Gentry presented the staff report noting during the City's previous consideration on regulation of commercial cannabis uses, the City Council directed staff to bring back an update to the City's smoking ordinance to more thoroughly address the smoking and ingestion of cannabis. While examining the City's current smoking ordinance, staff determined more wholesale changes would be necessary and desirable as the ordinance has not been updated since 1993. Ms. Gentry then outlined specifics of the proposed ordinance:

a. Definition of Public Place.

State law did not provide a clear definition so staff is recommending a local definition: "A public place means any area, whether publicly or privately owned, to which the public has access by right or invitation, expressed or implied, whether by payment of money or not and regardless of any age requirement." 'Public place' would not include tobacco shops or private smokers' lounges.

b. Smoking in City Facilities.

Smoking would be prohibited in all City buildings, vehicles, property, parks, trails, the corporation yard, and all other enclosed and unenclosed areas operated by the City.

c. Prohibition of Smoking.

The proposed Ordinance provides more stringent regulations than State law to preclude smoking from all enclosed places of employment that are currently exempt from State law such as patron smoking areas and long term health care facilities, theatrical production sites, except for tobacco shops or smoking lounges; however these shops would have to meet certain criteria such as no one under the age of 21, no consumption or sales of any food or drink, and the shop would have to be located in a freestanding building. Other proposed places that smoking would be prohibited are enclosed public places, enclosed and unenclosed service areas such as an ATM or lines to purchase tickets, unenclosed areas include dining area, recreational areas, public events such as the Fourth of July Parade, Oktoberfest, and within 25 feet of The Grove public park.

d. Multifamily Housing.

Due to smoke migrating from neighboring apartments and condominiums through cracks in shared wall, vents, and open windows involuntarily subjecting others to secondhand smoke; these proposed regulations would prohibit smoking in all multifamily common areas both enclosed and unenclosed as well as inside these housing units. The HOA or management company may designate an outdoor smoking area as appropriately signed

and marked away from children. It is also proposed to prohibit smoking inside of these multifamily units including unenclosed balconies, porches decks, patios, garages and carports. Upon adoption, these particular regulations would take effect immediately for any new multifamily units, with existing units a phased-in compliance by May 1, 2019. Landlords would be required to disclose the smoking regulations in the lease terms or rental agreements.

e. Cannabis.

State law prohibits the use of cannabis anywhere smoking tobacco is prohibited, specifying the smoking of cannabis is prohibited on all owned or leased City property including parks, open space, trails; within 1,000 feet and in or upon the grounds of a school, daycare or youth center; and while driving or riding in a vehicle, boat, vessel or aircraft. The ingesting of cannabis is also prohibited in any public place.

f. Enforcement and Penalties.

Enforcement would be by the Clayton Police Department; however, a member of the public can bring a civil action in any court and upon demonstration of proof of the violations do exist the court shall grant appropriate relief including damages or injunction.

Ms. Gentry advised the City received a note of support for its proposed ordinance from the Contra Costa County Tobacco Prevention Coalition comprised of thirty (30) organizations and individuals within the county.

Lastly, staff recommends a few changes in the ordinance language tonight, as recommended by legal counsel, with the first change the replacement of a recital to clarify federal prohibition on cannabis and concerns regarding secondhand smoke from cannabis uses. Secondly, clarifying a mobile home and mobile home park is not considered to be a mobile home by unit residence. Thirdly, requiring the application notification requirements apply to both rental and home ownership and require the notification to include associated penalties. Lastly, a language change that will allow for modifications or changes to State law in regards to how penalties for violating this section of the Municipal Code will be applied. For example, State law for cannabis currently only allows violations to be infractions and not on the level of a misdemeanor.

Councilmember Diaz requested clarification on the 25' boundary around The Grove park, especially during the concerts as a number of people attend who smoke and they typically gather around a tree in the adjacent parking area; with the proposed 25' extending to the center of the adjacent street, where would we direct these people to smoke? Ms. Gentry advised they may go across the street so long as they are outside of the 25' boundary. The impetus for this boundary is existing State law prohibition within 25' of a tot lot or playground; with this particular area there is an exemption under State law that allows for smoking on a public sidewalk.

Councilmember Diaz inquired if a smoking area should be designated during the concerts to direct people there? Ms. Gentry advised staff will have to look into that suggestion; if we were to designate an area it must be on City property and not on private property and away from The Grove's playground area.

Councilmember Catalano inquired on the multi-unit development and lease provisions regarding the exception where the landlord could designate an unenclosed area as the designated smoking section in a common area where you can smoke; why would the landlord necessarily have the authority to designate the area? Why not a HOA or a property management company?

Ms. Gentry replied staff could amend the language to clarify it is the management company or HOA in addition to the landlord.

Councilmember Catalano further inquired on the dining areas including unenclosed areas; there is an exemption if the area is not used 100% of the open hours for access by general public? Would it then not be a dining area that could be used for smoking? Ms. Gentry responded this provision pertains to private restaurants such as the Oakhurst Country Club, which would fall under this provision with its dining area.

Councilmember Pierce inquired on sections 8.14.040 and 8.14.050 Prohibition and locations of Smoking; it seems when applying the restrictions the entire downtown area becomes prohibited from smoking. She wanted to clarify if that is the intent? Ms. Gentry advised that is not the intent.

Councilmember Pierce indicated the proposed ordinance reads, "... prohibited in all unenclosed areas owned or leased by the City including city parks, trails, recreational area, parking lots, corporation yards and the grounds of any building owned or leased by the city," which definition would include city streets, sidewalks, and the downtown corral. Private property is private property and dining establishments are considered public. Based on this language, there is no place in downtown where it is legal to smoke. If we are intending to ban smoking in all of downtown, we should state that.

Ms. Gentry responded that is not the intent of the ordinance since the Clayton Club is across the street and exempted from the ordinance where smoking could take place on its back deck, with the distinction restaurants earn gross receipts from food sales not alcohol, whereas the Clayton Club is designated as a bar therefore would not be captured in the ordinance.

Councilmember Pierce desired a map be prepared to see what areas are covered under the proposed ordinance, to know where it is and is not legal to smoke in the downtown, especially with the upcoming Concert season starting.

Mayor Haydon sought clarification if smoking is prohibited in unenclosed areas and limiting it to the dining areas, recreation areas, public events, and within 25', there are sections in town that unenclosed smoking would still be legal, such as Clayton Club in its patio. Ms. Gentry confirmed that statement is correct.

Mayor Haydon opened the Public Hearing.

Bruce George requested a definition of multifamily units and what does multifamily unit mean in this ordinance? Is it condominiums? Is it apartments? Is it townhomes? What is a multifamily unit by definition? His reason for asking is he resides in a townhome and there is a huge difference between townhome and condominiums. He is also a cancer survivor so for the most part he supports anything that is going to keep him from inhaling somebody else's garbage. Unfortunately, smokers have rights, too. In a townhome you own the dirt and building, with the property line between your left wall and your neighbors' right wall with a minimum of 1 chair space. If you take this ordinance and apply it to townhomes, you are infringing on the rights of smokers. If there was a definition of multifamily units in its truest form, it would exclude townhomes. The public areas could be worded to include townhome rear yards, but there is not a rear yard in our community that is not more than 25' from an adjacent home that has openings; there could be a nearby door, patio door or windows. There may be one or two end units that may be exempted from that restriction. Townhome interiors should be excluded and exteriors included.

William Colin, representing the Contra Costa Tobacco Prevention Coalition, expressed his support and the support of the Coalition to help assist the City. It has information on smoking laws recently passed in Contra Costa County and is still working with

neighboring cities on smoking ordinances. Passing this ordinance would be important for our children, as when his niece was three she got asthma for secondhand smoke from a neighbor living in an adjacent apartment. She is now eighteen years old and limited in outdoor activities because of her asthma. Mr. Colin expressed interest in creating a healthier community with the support of the Coalition.

Richard Haile noted he is also a cancer survivor and would like to add to the multifamily unit concern: what comes through the wall has a long duration and probably not worth worrying about if we can deal with the larger issue upfront. The definition of what a multifamily housing unit needs to be clarified to include what a townhome is and what a condominium or co-op is. In regard to cigar lounges and smoking shops and the preclusion of sale or consumption of food or liquor on premises, most cigar lounges serve wine and people bring in food, so it seemed to be a part of the ordinance aimed at excluding one from happening in Clayton. The last thing we need is a business that cannot operate. We need more clarification on where food and liquor work into this proposed ordinance.

Vice Mayor Shuey inquired if Mr. Haile is requesting smoking prohibited in townhomes and allowed in condominiums? Mr. Haile replied the primary reason for the ordinance is not clearly stated, defeating the purpose of the ordinance by controlling smoke within those tight environments, regardless of the quality of the wall in between those types of units.

Steve Barton, owner of the Clayton Club, Clayton resident and non-smoker since the early 1980s remarked he applauds the efforts the Council and City staff in generating an ordinance that is going to clarify this matter for everyone. He was hoping for this since vaping has come along. He has a concern in making allowances for customers who do smoke to have an area they can go to without leaving the City, and has heard different interpretation of this tonight. In the newspaper he read there is an intention to allow designated areas. At the Clayton Club people consume drinks which is considered dining based on the definitions in the proposed ordinance. He is keenly interested in designating a clearly understood smoking area that makes the regulations as he hopes are intended. If the Clayton Club were the only business that would benefit from this, it worries him about other businesses with outdoor areas wherein people congregate. Every business that has a social atmosphere needs to have a smoking area it can designate. It is not clear from the ordinance that sidewalks are excluded from State law. He would like to see people walk down the street when there is not a public event and be able to have a cigarette if they so choose; and designated large smoking areas so people can congregate removed from those who do not want to be around the smoke. He is happy to put up any signs to designate a smoking section. He specifically wants to know if people can smoke in the back or on the sidewalk in front of his property. We do need a map, and would like to work with the Community Development Director to determine the location for where his signs need to be placed. He also suggested the wording on any no smoking signage be clear and not subject to interpretation.

Mayor Haydon closed the Public Hearing.

Vice Mayor Shuey referred to Section K, definition of multifamily, and he believes it is being confused; it should read multiunit residence defining townhomes, duplexes, apartments, and condominiums.

Mayor Haydon allowed Bruce George to speak again. Mr. George indicated the problem with that approach is you are taking away what people have purchased by not allowing them to degrade their own interior units or homes. He is more for people's rights.

Vice Mayor Shuey noted he would also like to see an updated map to clarify where downtown businesses would be allowed to designate as smoking areas for its patrons; otherwise, they will lose business.

Councilmember Catalano inquired on vending machines; are we intending to not have a standalone unit anywhere? Do local businesses have this type of machine? Ms. Gentry responded currently there are no vending machines dispensing tobacco products; they are essentially unmonitored, and so somebody under the age of 21 could purchase cannabis or tobacco products if they were to be allowed.

Councilmember Pierce added she would like to make allowances for the smokers in town so they would not feel banned from the social activities in the downtown. We do not want anyone's health harmed, but we must have designated areas to smoke.

It was moved by Vice Mayor Shuey, seconded by Council Member Diaz, to continue the Public Hearing to the City Council meeting of April 17, 2018, and for staff to work on revisions to the proposed Ordinance and prepare a map of the Clayton downtown illustrating where people could smoke under the proposed restrictions.

Motion passed (5-0 vote)

8. **ACTION ITEMS** – None.

9. **COUNCIL ITEMS** – None.

10. **CLOSED SESSION** – None.

11. **ADJOURNMENT**– on call by Mayor Haydon, the City Council adjourned its meeting at 7:56 p.m.

The next regularly scheduled meeting of the City Council will be April 3, 2018.

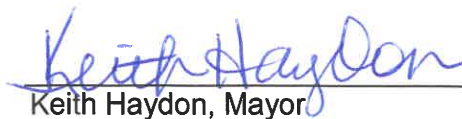
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Respectfully submitted,



Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL


Keith Haydon, Mayor

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