



AGENDA

REGULAR MEETING

* * *

CLAYTON CITY COUNCIL

TUESDAY, October 15, 2013

6:00 P.M.

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

Mayor: Julie K. Pierce
Vice Mayor: Hank Stratford

Council Members

Jim Diaz
Howard Geller
David T. Shuey

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

*** CITY COUNCIL ***

October 15, 2013

6:00 P.M.

1. **CALL TO ORDER THE CITY COUNCIL** – Mayor Pierce.
2. **CLOSED SESSION**
 - (a) *Government Code Section 54957.6, Conference with Labor Negotiator*
Instructions to City-designated labor negotiator: City Manager.
 1. Employee Organization: Clayton Police Officers Association (CPOA).
 2. Employee Organization: Undesignated Miscellaneous Employees Unit.

Report out from Closed Session: Mayor Pierce.

7:00 P.M.

3. **PLEDGE OF ALLEGIANCE** – led by Mayor Pierce.
4. **CONSENT CALENDAR**

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

 - (a) Approve Financial Demands and Obligations of the City
 - (b) Set Tuesday, November 5, 2013 at 5:30 p.m. in Hoyer Hall at the Clayton Community Library, 6125 Clayton Road, as the date, time and location of a joint workshop of the City Council and its Planning Commission for review of proposed policies concerning the state-required City Housing Element update for Years 2014-2022.
 - (c) Adopt a Resolution supporting proposed state legislation (SB 405; Padilla) in calendar year 2014 which would phase out or prohibit single-use retail carryout plastic bags in California.

5. RECOGNITIONS AND PRESENTATIONS

- (a) Proclamation declaring October 2013 as “Domestic Violence Awareness Month”.

6. REPORTS

- (a) Planning Commission – Chair Gregg Manning.
(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

7. 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.

8. PUBLIC HEARINGS – None.

9. ACTION ITEMS

- (a) Consider the Introduction and First Reading of proposed City-initiated Ordinance No. 451 amending Chapters 1.14, 1.18, 1.20, 8.08 and 17.72 of the *Clayton Municipal Code* concerning code enforcement procedures and regulations.
(Community Development Director)

Staff recommendations: 1) Receive the staff report; 2) Receive public comments; 3) Following Council discussion or any amendments to the proposed Ordinance, approve a motion to have the City Clerk read Ordinance No. 451 by title and number only and waive further reading; and 5) By motion, approve Ordinance No. 451 for Introduction with findings the action does not constitute a project under CEQA.

- (b) Second Reading and Adoption of proposed City-initiated Ordinance No. 450 amending portions of Title 17 – Zoning of the *Clayton Municipal Code* to establish regulations for the operation of cottage food businesses in residential zones.

(Community Development Director)

Staff recommendations: **1)** Receive the staff report; **2)** Receive public comments **3)** Following Council discussion or any amendments to the proposed Ordinance, approve a motion to have the City Clerk read Ordinance No. 450 by title and number only and waive further reading; and **4)** By motion, adopt Ordinance No. 450 with findings the action does not constitute a project under CEQA.

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

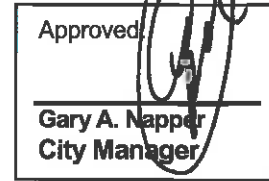
- 11. ADJOURNMENT** – the next regularly scheduled City Council meeting is November 5, 2013.

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Agenda Date 10/15/2013

Agenda Item: 4(a)



STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: Jennifer Giantvalley, Accounting Technician

DATE: 10/15/2013

SUBJECT: INVOICE SUMMARY

RECOMMENDATION:

Approve the following Invoices:

10/11/2013 Cash Requirements Report	\$ 156,706.76
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Total:	\$ 156,706.76
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Attachments:
Cash Requirements Report dated 10/11/2013 (3 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
All City Management Services, Inc.								
All City Management Services, Inc.	10/15/2013	9/13/2013	32496	crossing guard services Sept. 1-14, 2013	\$420.93	\$0.00		\$420.93
				Totals for All City Management Services, Inc.:	\$420.93	\$0.00		\$420.93
American Fidelity Assurance Company								
American Fidelity Assurance Company	10/15/2013	9/16/2013	B047497	Suppl. Ins. October 2013	\$156.64	\$0.00		\$156.64
American Fidelity Assurance Company	10/15/2013	9/30/2013	845259A	ISA October 2013	\$849.10	\$0.00		\$849.10
				Totals for American Fidelity Assurance Company:	\$1,005.74	\$0.00		\$1,005.74
AT&T/ CalNet 2								
AT&T/ CalNet 2	10/15/2013	9/22/2013	September	Phone bill September 2013	\$1,846.74	\$0.00		\$1,846.74
				Totals for AT&T/ CalNet 2:	\$1,846.74	\$0.00		\$1,846.74
Best Best & Kreiger LLP								
Best Best & Kreiger LLP	10/15/2013	10/7/2013	711848	Retainer - September	\$8,000.00	\$0.00		\$8,000.00
Best Best & Kreiger LLP	10/15/2013	10/7/2013	711849	Retainer - Admin/Personnel - Benefits	\$412.50	\$0.00		\$412.50
Best Best & Kreiger LLP	10/15/2013	10/7/2013	711850	Downtown Economic Development	\$165.00	\$0.00		\$165.00
				Totals for Best Best & Kreiger LLP:	\$8,577.50	\$0.00		\$8,577.50
CalPERS Retirement								
CalPERS Retirement	10/15/2013	9/30/2013	9/29/13	Retirement PPE 9/29/13	\$21,428.63	\$0.00		\$21,428.63
CalPERS Retirement	10/15/2013	9/30/2013	9/24/13	City Council ending 9/24/13	\$369.48	\$0.00		\$369.48
				Totals for CalPERS Retirement:	\$21,798.11	\$0.00		\$21,798.11
CCWD								
CCWD	10/15/2013	9/11/2013	C Series	Water 7/9/13-9/9/13	\$59,743.84	\$0.00		\$59,743.84
CCWD	10/15/2013	10/8/2013	D Series	Irrigation	\$33,674.72	\$0.00		\$33,674.72
				Totals for CCWD:	\$93,418.56	\$0.00		\$93,418.56
Clean Street								
Clean Street	10/15/2013	9/30/2013	72021	Monthly Sweep Fee September	\$3,500.00	\$0.00		\$3,500.00
				Totals for Clean Street:	\$3,500.00	\$0.00		\$3,500.00
Contra Costa County Animal Svcs Dept								
Contra Costa County Animal Svcs Dept	10/15/2013	9/30/2013	ASD M5699	Second Quarter Installment - Animal Control S	\$14,597.25	\$0.00		\$14,597.25
				Totals for Contra Costa County Animal Svcs Dept:	\$14,597.25	\$0.00		\$14,597.25
Contra Costa County Sheriff - Forensic Svc Div (Lab)								
Contra Costa County Sheriff - Forensic S	10/15/2013	9/18/2013	CLPD-1308	Toxicology August 2013	\$550.00	\$0.00		\$550.00
				Totals for Contra Costa County Sheriff - Forensic Svc Div (Lab):	\$550.00	\$0.00		\$550.00
CSAC Excess Insurance Authority								
CSAC Excess Insurance Authority	10/15/2013	10/1/2013	14400942	October - December - 26 employees	\$312.00	\$0.00		\$312.00
				Totals for CSAC Excess Insurance Authority:	\$312.00	\$0.00		\$312.00
Globalstar LLC								
Globalstar LLC	10/15/2013	9/16/2013	10000000050644670	Service 8/16-9-15	\$54.66	\$0.00		\$54.66

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
Totals for Globalstar LLC:					\$54.66	\$0.00		\$54.66
Nicole Grau								
Nicole Grau	10/15/2013	10/8/2013	25928	Deposit refund EH 9/28/13	\$1,000.00	\$0.00		\$1,000.00
				Totals for Nicole Grau:	\$1,000.00	\$0.00		\$1,000.00
Health Care Dental Trust								
Health Care Dental Trust	10/15/2013	10/3/2013	165597	Dental November 2013	\$3,068.80	\$0.00		\$3,068.80
				Totals for Health Care Dental Trust:	\$3,068.80	\$0.00		\$3,068.80
Jarvis Fay Doportto & Gibson, LLP								
Jarvis Fay Doportto & Gibson, LLP	10/15/2013	9/16/2013	5675	CCC PTAf for 6/1/13-8/31/13	\$26.15	\$0.00		\$26.15
Jarvis Fay Doportto & Gibson, LLP	10/15/2013	9/16/2013	5673	Chevron Property Tax Dispute 6/1/13-8/31/13	\$15.95	\$0.00		\$15.95
				Totals for Jarvis Fay Doportto & Gibson, LLP:	\$42.10	\$0.00		\$42.10
Arlene Kikkawa-Nielsen								
Arlene Kikkawa-Nielsen	10/15/2013	10/2/2013	October	Library Volunteer Coordinator Services Octob-	\$900.00	\$0.00		\$900.00
				Totals for Arlene Kikkawa-Nielsen:	\$900.00	\$0.00		\$900.00
LarryLogic Productions								
LarryLogic Productions	10/15/2013	10/2/2013	1363	City Council Meeting 10/1/13	\$350.00	\$0.00		\$350.00
				Totals for LarryLogic Productions:	\$350.00	\$0.00		\$350.00
MailFinance (Neopost Leasing)								
MailFinance (Neopost Leasing)	10/15/2013	10/6/2013	NA244793	Lease Payment 11/7/13-12/6/13	\$113.60	\$0.00		\$113.60
				Totals for MailFinance (Neopost Leasing):	\$113.60	\$0.00		\$113.60
Neopost (add postage)								
Neopost (add postage)	10/15/2013	9/27/2013	9/27/13	Postage added to meter	\$300.00	\$0.00		\$300.00
				Totals for Neopost (add postage):	\$300.00	\$0.00		\$300.00
PERMCO, Inc.								
PERMCO, Inc.	10/15/2013	10/7/2013	10089	Retainer - General Services	\$2,992.25	\$0.00		\$2,992.25
PERMCO, Inc.	10/15/2013	10/7/2013	10090	CAP Inspection	\$41.50	\$0.00		\$41.50
PERMCO, Inc.	10/15/2013	10/7/2013	10090	CAP Inspection	\$41.50	\$0.00		\$41.50
PERMCO, Inc.	10/15/2013	10/7/2013	10091	2013 Pavement Rehabilitation Project	\$190.63	\$0.00		\$190.63
PERMCO, Inc.	10/15/2013	10/7/2013	10092	PG&E Replace Gas Lines in Dana Hills	\$124.50	\$0.00		\$124.50
PERMCO, Inc.	10/15/2013	10/7/2013	10093	Diablo View Middle School Safety Signage	\$383.00	\$0.00		\$383.00
PERMCO, Inc.	10/15/2013	10/7/2013	10094	Oak Creek Canyon	\$300.00	\$0.00		\$300.00
				Totals for PERMCO, Inc.:	\$4,073.38	\$0.00		\$4,073.38
PG&E								
PG&E	10/15/2013	9/20/2013	9/20/13	Service 8/21/13-9/19/13	\$11.36	\$0.00		\$11.36
				Totals for PG&E:	\$11.36	\$0.00		\$11.36
Riso Products of Sacramento								
Riso Products of Sacramento	10/15/2013	9/18/2013	114442	CONTID006613-03 9/18/13-10/17/13	\$94.86	\$0.00		\$94.86

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
Sprint Comm (PD)				<i>Totals for Riso Products of Sacramento:</i>	<u>\$94.86</u>	<u>\$0.00</u>		<u>\$94.86</u>
Sprint Comm (PD)	10/15/2013	9/29/2013	703335311-142	Service 8/26/13-9/25/13	\$260.69	\$0.00		\$260.69
				<i>Totals for Sprint Comm (PD):</i>	<u>\$260.69</u>	<u>\$0.00</u>		<u>\$260.69</u>
Watch Guard								
Watch Guard	10/15/2013	9/17/2013	SRJNV0007776	Repair unit DV10-125017 GP 44512	\$241.36	\$0.00		\$241.36
				<i>Totals for Watch Guard:</i>	<u>\$241.36</u>	<u>\$0.00</u>		<u>\$241.36</u>
YP (Advertising)								
YP (Advertising)	10/15/2013	9/23/2013	9/23/13	advertising	\$169.12	\$0.00		\$169.12
				<i>Totals for YP (Advertising):</i>	<u>\$169.12</u>	<u>\$0.00</u>		<u>\$169.12</u>
GRAND TOTALS:					\$156,706.76	\$0.00		\$156,706.76



Agenda Date: 10/15/13

Agenda Item: 4(b)

Approved:

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY MANAGER

DATE: 15 OCTOBER 2013

**SUBJECT: SET DATE, TIME AND LOCATION OF A JOINT WORKSHOP
WITH PLANNING COMMISSION REGARDING CITY HOUSING ELEMENT**

RECOMMENDATION

It is recommended the City Council, by minute motion, set Tuesday, 05 November 2013 at 5:30 p.m. in Hoyer Hall at the Clayton Community Library, 6125 Clayton Road, Clayton, CA 94517 as the date, time and location of a joint workshop with its Planning Commission to discuss preliminary matters and policies associated with the state-required update to the Clayton Housing Element covering the 8-year period of 2014-2022.

BACKGROUND

As required by state law, the City has a Housing Element to its General Plan which covered the 5-year time period from 2008-2013. The City's current Housing Element was approved and certified with conditions by the California State Department of Housing and Community Development (HCD), an often difficult certification to receive. To facilitate this cycle of a required update covering the years 2014-2022, the City Council awarded a consultant contract to PMC in May 2013 to commence our internal process to generate a new City housing element. Ms. Jennifer Gastelum, who facilitated and prepared the City's HCD-certified Housing Element, is again the lead consultant working with the City staff to produce and obtain another HCD-certified City Housing Element well before the imposed deadline of December 2014.

JOINT WORKSHOP WITH PLANNING COMMISSION

As in the previous cycle it is beneficial for the City Council and its Planning Commission to meet jointly in a scheduled public joint workshop to receive information from our PMC consultant as to the housing objectives and policies expected by HCD in housing elements for 2014-2022. This joint session is valuable in imparting such housing element policy expectations in advance of a housing element draft document, and to receive feedback on various housing policy options and local alternatives for inclusion in the final document.

During the Joint Workshop, no final actions are requested or approved but general instructions and guidance are provided to the PMC consultant and Community Development Department staff as to the prospective provisions and policies to be inserted into the City's Housing Element update. This process aids the assurance that all parties engaged in the drafting, review and ultimate approval of the City's Housing Element update are working toward a similar set of housing policy expectations and outcomes.

To launch this update, a 5:30 pm session with the Planning Commission prior to the regular evening meeting date of the City Council was selected as the optimum time for the Joint Workshop. It is therefore necessary for the City Council to formally approve setting the date, time and location of this public Joint Workshop.

FISCAL IMPACT

Other than nominal staff expense to arrange the facility and prepare appropriate workshop materials, there is no direct cost to hold the Joint Workshop. PMC's consultant contract included this joint session in its scope of services.

Agenda Date: 10/15/13

Agenda Item: 4(c)

RESOLUTION NO. – 2013

**A RESOLUTION IN SUPPORT OF CALIFORNIA STATE
LEGISLATION WHICH WOULD PHASE OUT OR PROHIBIT
SINGLE-USE CARRYOUT RETAIL PLASTIC BAGS IN CALIFORNIA**

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

WHEREAS, each year in California more than 13 billion single-use plastic bags are handed out by retailers and only 3% of these bags are recycled; and

WHEREAS, plastic bags cause slow sorting and jam machinery at recycling centers costing Californians more than \$25 million each year to collect and bury the plastic bag waste; and

WHEREAS, according to a study commissioned by the U.S. Marine Debris Monitoring Program, plastic bags remain one of the top debris items found consistently during annual beach cleanups; and

WHEREAS, the Convention on Biological Diversity reports a total of 663 species have been affected by plastic marine pollution through entanglement or ingestion; and

WHEREAS, the United States Environmental Protection Agency (EPA) finds that reducing the use of an item is one of the most effective ways to save our natural resources and protect the environment, fish and wildlife; and

WHEREAS, a third of Californians are already subject to local laws phasing out the use of single-use plastic retail bags; and

WHEREAS, California State Senator Alex Padilla (20th District) has authored Senate Bill 405, which would prohibit grocery stores and large retailers from providing single-use carryout plastic bags to customers in 2015, and would expand that prohibition to convenience stores and food marts in 2016; and

WHEREAS, by prohibiting the free distribution of carryout plastic retail bags, SB 405 would help eliminate a major source of pollution in California; and

WHEREAS, the City Council of Clayton, California, has been concerned about this matter and interested in the elimination of retail-use plastic bags since 2008 and has previously gone on record numerous times supporting the merits and objectives of statewide legislation to prohibit or phase-out the continued retail use and distribution of single-use carryout plastic bags;

NOW, THEREFORE, BE IT RESOLVED that the City Council of Clayton, California does hereby approve the Recitals above as true and correct facts regarding this matter, and does herewith wholeheartedly support the authoring and passage of California state legislation, including Senate Bill 405 (Padilla), which will phase out or prohibit grocery stores, large retailers, convenience stores, and food marts from providing free single-use retail carryout plastic bags to consumers, and require those stores instead to have reusable bags available for consumer purchase and carryout use.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 15th day of October 2013 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CA

Julie K. Pierce, Mayor

ATTEST:

Laci J. Kolc, City Clerk

California State Senate

ALEX PADILLA
SENATOR, 20TH DISTRICT



Received

OCT 08 2013

City of Clayton

October 1, 2013

City of Clayton
Attn: City Council
6000 Heritage Trl
Clayton, CA 94517-1249

Dear Colleague,

I respectfully ask for your support of Senate Bill 405 which would phase out single-use plastic bags in California.

Each year in California, more than 13 billion single-use plastic bags are handed out by retailers. CalRecycle reports that only 3% of single-use plastic bags are actually recycled. The other 97% litter our streams, rivers and coastline, and endanger birds, marine life and wildlife. Plastic bags remain one of the top items found during annual beach cleanups.

Plastic bags also contribute to blight in our communities and clog local storm water systems. Because plastic bags take 1,000 years to degrade, their impacts are compounded every year. California local governments spend more than \$25 million each year to collect and bury plastic bag waste. And the plastic bags that do enter our recycling centers slow the sorting process and jam machinery.

Earlier this year, I introduced SB 405. This bill would enact a statewide phase out of single-use plastic bags in California. This legislation is supported by a broad coalition that includes grocers, environmentalists and many local governments.

Despite strong support, SB 405 fell 3 votes short of passage this year. I remain committed to this effort, but I need your help. SB 405 will face another vote early next year. Between now and then, I am respectfully asking you to put your city on record in support of SB 405. The City of Los Angeles took this step in June of this year and joined 80 other California cities and counties who support the phase out of single-use plastic bags in their communities.

Please join me in this effort. Attached, please find a sample resolution in support of SB 405, a copy of the bill, and a fact sheet with additional information. I look forward to working with you so that single-use plastic bags are soon phased out in our state.

Thank you for your time and consideration. Please feel free to contact me at (916) 651-4020 if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Padilla", written over a horizontal line.

ALEX PADILLA
State Senator, 20th District



Senator Alex Padilla

Fact Sheet

SB 405 – PADILLA Single-Use Bag Phase Out (as amended 05/24/13)

Summary

SB 405 would phase out single-use plastic bags in California grocery stores, convenience stores, liquor stores, and pharmacies.

Background

Each year in California, more than 13 billion single-use plastic bags are handed out by retailers. According to the United States Environmental Protection Agency, 88% of plastic bags and sacks are not recycled. In California, only 3% are recycled, according to CalRecycle. Plastic bags cause litter, slow sorting and jam machinery at recycling centers costing California more than \$25 million dollars each year to collect and bury the plastic bag waste. According to a study commissioned by the US Marine Debris Monitoring Program, plastic bags remain one of the top items found consistently during annual beach cleanups.

Plastic bags are also harmful to the environment killing thousands of birds, turtles and other species. Most plastics do not degrade. Although they represent only 2.2% of waste stream in California, plastic waste is the predominate form of marine debris. Plastics are estimated to compose 60-80% of all marine debris and 90% of all floating debris worldwide.

Plastics not only entangle marine life, they are also ingested by marine life and birds. Most plastic marine debris exists as small plastic particles due to excessive UV radiation exposure and subsequent photo-degradation. The Convention on Biological Diversity reports a total of 663 species have been affected by plastic marine pollution through entanglement or ingestion.

The California Coastal Commission reports that “birds, fish and mammals often mistake plastic for food. Some birds even feed it to their young. With plastic filling their stomachs, animals have a false feeling of being full, and may die of starvation. Sea turtles mistake plastic bags for jellyfish, one of their favorite foods. Even grey whales have been found dead with plastic bags and sheeting in their stomachs.”

The Scripps Institution of Oceanography at UC San Diego found evidence of plastic waste in more than 9% of the stomachs of fish collected in the North Pacific Subtropical Gyre and estimate that fish who reside in the intermediate ocean depths ingest 12,000- to 24,000 tons of plastic per year.

According to the United States Environmental Protection Agency, reducing the use of an item is one of the most effective ways to save our natural resources and protect the environment. To date, many local jurisdictions in California have enacted ordinances. The ordinances vary with some requiring a charge for paper carry-out bags and others banning both single-use plastic and paper

carryout bags. These ordinances have both eliminated the costs associated with plastic bags as well as substantially reduced the volume and costs associated with paper bags in communities.

For example, San Francisco, Los Angeles County, San Jose, and San Luis Obispo County are already experiencing the benefits of reducing the use of plastic bags. After just one year of implementation of its bag ordinance, the City of San Jose is reporting 50% cleaner creeks. Los Angeles County is reporting a 95% reduction of all single-use bags distributed, including a 30% reduction of paper bags.

Existing Law

Section 42254 and 42257 of the Public Resources Code requires large grocery stores to establish a plastic bag recycling program and sunsets on January 1, 2020.

Current California law is silent on the reduction of single-use plastic bags.

This Bill

This bill would:

- prohibit a store, on and after January 1, 2015, from providing a *single-use carryout bag* (i.e., paper, plastic, or other material) to a customer at the point-of-sale. (§42283(a))
- authorize a store, on and after July 1, 2016, to provide a *reusable grocery bag* (i.e., cloth or durable plastic) to a customer, which may be made available for purchase. (§42283(c)(1)).
- authorize a store to make a *recyclable paper bag* available for purchase at the point of sale. (§42283(d)).
- specifies standards for reusable grocery bags. (§42281)

- allows ordinances adopted prior to September 1, 2013 to continue to be enforced. (§42287 (b)).
- prohibits any local agency from enforcing an ordinance related to single-use carryout bags after January 1, 2014. (§42287 (b))
- allows local agencies to only amend the cost associated with the recyclable paper bag for existing ordinances (§42287 (c))
- authorizes the California Department of Resources, Recycling, and Recovery to inspect and audit a reusable bag producer. (§42282 (a)).

Support

5 Gyres Institute
Azul
BagIt
Board of Supervisers
California Coastkeeper Alliance
California Coastal Coalition
California Resource Recovery Association
California State Lands Commission
Californians Against Waste
Central Contra Costa County Solid Waste Authority
City of El Cerrito
City of Long Beach
City of Palo Alto
City of Sacramento
City and County of San Francisco
City of Sunnyvale
City of San Francisco
Clean Water Action
Clean Water California
Contra Costa Clean Water Program
County of Los Angeles
County of San Mateo
Environment California
Greater San Fernando Valley Chamber of Commerce
Green Sangha

Green Vets Los Angeles
GreenWaste Recovery
Heal the Bay
Humboldt County Board of Supervisors
Humboldt Waste Management Authority
LMV Productions
Los Angeles County Board of Supervisors
Los Angeles County Integrated Waste
Management Task Force
Napa Valley CanDo Environment Group
National Hispanic Environmental Council
Natural Resources Defense Council
Pacifica's Environmental Family
Planning and Conservation League
Plasticbaglaws.org
Republic Services
Santa Clara County Board of Supervisors
Save Our Shores
Seventh Generation Advisors
Sierra Club California
Surfrider Foundation
Team Marine – Santa Monica High School
The Northern California Recycling Association
Turtle Island Restoration Network
United Food & Commercial Workers Western
States Council
William C. Velazquez Institute
Zanker Road Resource Management

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE APRIL 2, 2013

SENATE BILL

No. 405

Introduced by Senator Padilla
(Coauthor: Senator Leno)

February 20, 2013

An act to add Chapter 5.3 (commencing with Section 42280) to Part 3 of Division 30 of, and to repeal Section 42285 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 405, as amended, Padilla. Solid waste: single-use carryout bags.

Existing law, until January 1, 2020, requires an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store.

With specified exceptions, this bill, as of January 1, 2015, would prohibit stores that have a specified amount of dollar sales or retail floor space from providing a single-use carryout bag to a customer. *The bill, on and after July 1, 2016, would additionally impose this prohibition on convenience food stores, foodmarts, and certain other specified stores.* The bill would require *all* of these stores to meet other specified requirements regarding providing recycled paper bags, compostable bags, or reusable grocery bags to customers.

~~The bill, on and after July 1, 2016, would additionally impose these prohibitions and requirements on convenience food stores, foodmarts, and certain other specified stores.~~

The bill would require a reusable grocery bag that a store is required to sell on and after July 1, 2016, to meet specified requirements. A

violation of that requirement and the requirements that would be imposed upon grocery bag producers to submit certain laboratory test results would be subject to an administrative civil penalty assessed by the Department of Resources Recycling and Recovery. The department would be required to deposit these penalties into the Reusable Bag Account, which would be created in the Integrated Waste Management Fund, for expenditure by the department, upon appropriation by the Legislature, to implement those requirements.

The bill would require the department, by January 1, 2017, to submit a report to the Legislature regarding the implementation of the bill's provisions. The bill would repeal this report requirement on January 1, 2018.

The bill would allow a city, county, or city and county, or the state to impose civil penalties for a violation of the bill's requirements. The bill would require these civil penalties to be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action, and would allow the penalties collected by the Attorney General to be expended by the Attorney General, upon appropriation by the Legislature, to enforce the bill's provisions. The bill would provide that these remedies are not exclusive, as specified.

The bill would declare that it occupies the whole field of the regulation of reusable grocery bags, single-use carryout bags, and recycled paper bags and would prohibit a local public agency, on and after January 1, 2014, from enforcing or implementing an ordinance, resolution, regulation, or rule adopted on or after September 1, 2013, relating to those bags, unless expressly authorized. The bill would allow a local public agency that has adopted such an ordinance, resolution, regulation, or rule prior to September 1, 2013, to continue to enforce and implement that ordinance, resolution, regulation, or rule, but would require any amendments to that ordinance, resolution, regulation, or rule to be subject to state preemption.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 5.3 (commencing with Section 42280)
- 2 is added to Part 3 of Division 30 of the Public Resources Code, to
- 3 read:

1 CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

2
3 Article 1. Definitions

4
5 42280. For purposes of this chapter, the following definitions
6 shall apply:

7 (a) "Department" means the Department of Resources Recycling
8 and Recovery.

9 (b) "Postconsumer recycled material" means a material that
10 would otherwise be destined for solid waste disposal, having
11 completed its intended end use and product life cycle.
12 Postconsumer recycled material does not include materials and
13 byproducts generated from, and commonly reused within, an
14 original manufacturing and fabrication process.

15 (c) "Recycled paper bag" means a paper carryout bag provided
16 by a store to a customer at the point of sale that meets all of the
17 following requirements.

18 (1) (A) Except as provided in subparagraph (B), contains a
19 minimum of 40 percent postconsumer recycled materials.

20 (B) An eight pound or smaller recycled paper bag shall contain
21 a minimum of 20 percent postconsumer recycled material.

22 (2) Is accepted for recycling in curbside programs in a majority
23 of households that have access to curbside recycling programs in
24 the state.

25 (3) Has printed on the bag the name of the manufacturer, the
26 country where the bag was manufactured, and the minimum
27 percentage of postconsumer content.

28 (d) "Reusable grocery bag" on and after July 1, 2016, means a
29 bag that meets the requirements of Section 42281.

30 (e) "Reusable grocery bag producer" means a person or entity
31 that does any of the following:

32 (1) Manufactures reusable grocery bags for sale or distribution
33 to a store.

34 (2) Imports reusable grocery bags into this state, for sale or
35 distribution to a store.

36 (3) Sells or distributes reusable bags to a store.

37 (f) (1) "Single-use carryout bag" means a bag made of plastic,
38 paper, or other material that is provided by a store to a customer
39 at the point of sale and that is not a recycled paper bag or a reusable
40 grocery bag that meets the requirements of Section 42281.

1 (2) A single-use carryout bag does not include either of the
2 following:

3 (A) A bag provided by a pharmacy pursuant to Chapter 9
4 (commencing with Section 4000) of Division 2 of the Business
5 and Professions Code to a customer purchasing a prescription
6 medication.

7 (B) A nonhandled bag used to protect a purchased item from
8 damaging or contaminating other purchased items when placed in
9 a recycled paper bag or reusable grocery bag.

10 (g) "Store" means a retail establishment that meets any of the
11 following requirements:

12 (1) A full-line, self-service retail store with gross annual sales
13 of two million dollars (\$2,000,000) or more, and that sells a line
14 of dry groceries, canned goods, or nonfood items, and some
15 perishable items.

16 (2) Has at least 10,000 square feet of retail space that generates
17 sales or use tax pursuant to the Bradley-Burns Uniform Local Sales
18 and Use Tax Law (Part 1.5 (commencing with Section 7200) of
19 Division 2 of the Revenue and Taxation Code) and has a pharmacy
20 licensed pursuant to Chapter 9 (commencing with Section 4000)
21 of Division 2 of the Business and Professions Code.

22 (3) Is a convenience food store, foodmart, or other entity that
23 is engaged in the retail sale of a limited line of goods, generally
24 including milk, bread, soda, and snack foods, and that holds a Type
25 20 or Type 21 license issued by the Department of Alcoholic
26 Beverage Control.

27 Article 2. Reusable Grocery Bags

28
29
30 42281. (a) On and after July 1, 2016, a reusable grocery bag
31 that is sold pursuant to subdivision (c) of Section 42282 42283
32 shall meet all of the following requirements:

33 (1) (A) Be designed and manufactured to withstand, at a
34 minimum, 125 uses.

35 (B) For purposes of this paragraph, "125 uses" means the
36 capability of carrying a minimum of 22 pounds 125 times over a
37 distance of at least 175 feet.

38 (2) Is machine washable or made from a material that can be
39 cleaned and disinfected.

1 (3) Have printed on the bag, or on a tag attached to the bag that
2 is not intended to be removed, and in a manner visible to the
3 consumer the following information:

- 4 (A) The name of the manufacturer.
- 5 (B) The country where the bag was manufactured.
- 6 (C) A recycling symbol or end-of-life management instructions.
- 7 (D) The percentage of postconsumer recycled material, if any.

8 (4) Does not contain lead, cadmium, or any other heavy metal
9 in toxic amounts. This requirement shall not affect any authority
10 of the Department of Toxic Substances Control pursuant to Article
11 14 (commencing with Section 25251) of Chapter 6.5 of Division
12 20 of the Health and Safety Code and, notwithstanding subdivision
13 (c) of Section 25257.1 of the Health and Safety Code, the reusable
14 grocery bag shall not be considered as a product category already
15 regulated or subject to regulation.

16 (5) Complies with Section 260.12 of Part 260 of Title 16 of the
17 Code of Federal Regulations related to recyclable claims if the
18 reusable grocery bag producer makes a claim that the reusable
19 grocery bag is ~~recyclable~~ *recyclable*.

20 (b) In addition to the requirements in subdivision (a), a reusable
21 grocery bag made from plastic shall meet all of the following
22 requirements:

23 (1) On and after July 1, 2017, be made from a minimum of 20
24 percent postconsumer recycled material, except as provided in
25 subdivision (d).

26 (2) In addition to the information required to be printed on the
27 bag or on a tag, pursuant to paragraph (3) of subdivision (a), all
28 of the following information shall be printed on the bag, or on a
29 tag that complies with that paragraph:

30 (A) A statement that the bag is a reusable bag and designed for
31 at least 125 uses.

32 (B) Instructions to return the bag to the store for recycling or
33 to another appropriate recycling location.

34 (c) A plastic reusable grocery bag that also meets the
35 specifications of the American Society of Testing and Materials
36 (ASTM) Standard Specification for Compostable Plastics D6400,
37 as published in September 2004, is not required to meet the
38 requirements of paragraph (1) of subdivision (b), but shall be
39 labeled in accordance with the applicable state law regarding
40 compostable plastics.

- 1 (d) If a plastic reusable grocery bag producer is unable to obtain
2 sufficient amounts of postconsumer recycled material to comply
3 with this article because of unavailability, the producer shall
4 include the greatest amount of postconsumer recycled material
5 possible in the reusable grocery bag even if this amount is less
6 than required by paragraph (1) of subdivision (b) and shall indicate
7 the percentage that is postconsumer recycled material.
- 8 42282. (a) The department may inspect and audit a reusable
9 grocery bag producer subject to this article with all costs associated
10 with the audit being paid for by the reusable grocery bag producer.
- 11 (b) Upon request by the department, a reusable grocery bag
12 producer shall submit laboratory test results from independent,
13 accredited (ISO/IEC 17025) laboratories to the department
14 validating the reusable grocery bag meets the requirements of
15 Section 44281 for each type of reusable grocery bag that is
16 manufactured, imported, sold, or distributed in the state and
17 provided to a store for sale or distribution.
- 18 (c) The department may test any reusable grocery bag
19 manufactured by a reusable grocery bag producer and provided to
20 a store for sale or distribution for compliance with this article and
21 the regulations adopted pursuant to this article.
- 22 (d) The department may enter into an agreement with other state
23 entities that conduct inspections to provide necessary enforcement
24 of this article.
- 25 (e) Notwithstanding Section 42285, a violation of this article
26 shall be subject to an administrative civil penalty assessed by the
27 department in an amount not to exceed five hundred dollars (\$500)
28 for the first violation. A subsequent violation may be subject to
29 an increased penalty of up to five hundred dollars (\$500) per
30 violation, not to exceed five thousand dollars (\$5,000) per violation.
- 31 (f) The department shall deposit all penalties collected pursuant
32 to subdivision (e) for a violation of this article into the Reusable
33 Bag Account, which is hereby created in the Integrated Waste
34 Management Fund. The moneys in the Reusable Bag Account
35 shall be expended by the department, upon appropriation by the
36 Legislature, to assist the department with its costs of implementing
37 this article.

Article 3. Single-Use Carryout Bags

42283. (a) On and after January 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, shall not provide a single-use carryout bag to a customer at the point of sale.

(b) On and after July 1, 2016, a store, as defined in paragraph (3) of subdivision (g) of Section 42280, shall not provide a single-use carryout bag to a customer at the point of sale.

(c) (1) On and after July 1, 2016, a store shall make available for purchase by a customer reusable grocery bags that meet the requirements of Section 42281.

(2) On and after July 1, 2016, a store shall not sell or distribute a reusable bag at the point of sale that does not meet the requirements of Section 42281.

(d) A store may make available for purchase at the point of sale a recycled paper bag.

(e) Notwithstanding any other law, on and after January 1, 2015, a store shall provide a customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code and a customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutions Code with a reusable grocery bag or a recycled paper bag at no cost at the point of sale.

(f) Notwithstanding subdivisions (a) and (b), a store may make available for purchase at the point of sale a compostable bag that, at a minimum, meets the American Society for Testing and Materials (ASTM) Standard Specification for Compostable Plastics D6400, if, in the jurisdiction where the compostable bag is sold, both of the following requirements are met:

(1) A majority of the residential households in the jurisdiction have access to curbside collection of foodwaste for composting.

(2) The governing authority for the jurisdiction has voted to allow stores in the jurisdiction to sell to a consumer at the point of sale a compostable bag at a cost not less than the actual cost of the bags.

Article 4. Reporting Requirements

42284. (a) On or before January 1, 2017, the department shall submit a report to the Legislature in accordance with Section 9795 of the Government Code regarding the effectiveness of this chapter and recommendations for statutory changes to increase effectiveness, which shall include all of the following:

(1) A compilation of state cleanup data to evaluate pollution reduction.

(2) Recommendations to further encourage the use of reusable grocery bags by customers and stores.

(3) An evaluation of the requirements for reusable grocery bags specified in Section 42281.

(4) Distribution of recycled paper bags.

(5) Number and type of violations.

(b) The department shall coordinate with other state and local agencies in compiling this report to maximize existing efforts and resources in the areas of litter reduction, water quality, and environmental protection.

(c) Pursuant to Section 110231.5 of the Government Code, this section is repealed on January 1, 2018.

Article 5. Enforcement

Article 4. Enforcement

42285. (a) A city, a county, a city and county, or the state may impose civil liability in the amount of five hundred dollars (\$500) for the first violation of this chapter, one thousand dollars (\$1,000) for the second violation, and two thousand dollars (\$2,000) for the third and subsequent violations.

(b) Any civil penalties collected pursuant to subdivision (a) shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action. The penalties collected pursuant to this section by the Attorney General may be expended by the Attorney General, upon appropriation by the Legislature, to enforce this chapter.

(c) The remedies provided by this section shall not be exclusive and shall be in addition to the remedies that may be available

1 pursuant to Chapter 5 (commencing with Section 17200) of Part
2 2 of Division 7 of the Business and Professions Code.

3
4 Article 5. Preemption

5
6 42287. (a) Except as provided in subdivision (c), this chapter
7 is a matter of statewide interest and concern and is applicable
8 uniformly throughout the state. Accordingly, this chapter occupies
9 the whole field of regulation of reusable grocery bags, single-use
10 carryout bags, and recycled paper bags, as defined in this chapter.

11 (b) On and after January 1, 2014, a city, county, or other local
12 public agency shall not enforce against a store, as defined in
13 subdivision (g) of Section 42280, or otherwise implement, an
14 ordinance, resolution, regulation, or rule adopted on or after
15 September 1, 2013, relating to reusable grocery bags, single-use
16 carryout bags, or recycled paper bags, as defined in this chapter,
17 unless expressly authorized by this chapter.

18 (c) A city, county, or other local public agency that has adopted,
19 prior to September 1, 2013, an ordinance, resolution, regulation,
20 or rule relating to reusable grocery bags, single-use carryout bags,
21 or recycled paper bags may continue to enforce and implement
22 that ordinance, resolution, regulation, or rule that was in effect
23 before that date. Any amendments to that ordinance, resolution,
24 regulation, or rule on or after January 1, 2014, shall be subject
25 to subdivision (b), except a city, county, or other local public
26 agency may amend that ordinance, resolution, regulation, or rule
27 with regard to the amount that a store shall charge with regard
28 to a recycled paper bag.

Agenda Date: 10/15/13

Agenda Item: 5(a)

DECLARING

OCTOBER 2013

DOMESTIC VIOLENCE AWARENESS MONTH

WHEREAS, violence against women and children continues to become more prevalent as a social problem due to the imbalance of power in gender and age; and

WHEREAS, the problems of domestic violence are not confined to any group or groups of people but cross all economic, racial, and societal barriers and are supported by societal indifference; and

WHEREAS, over 30 years ago, STAND! For Families Free of Domestic Violence realized that domestic violence was an issue in Contra Costa County and vowed to reduce violent occurrences; and

WHEREAS, STAND! For Families Free of Domestic Violence has been striving to educate and bring awareness to this problem by working with community and faith based organizations, and schools, serving 10,000 clients annually; and

WHEREAS, STAND! For Families Free of Domestic Violence is a multi-service agency providing: a 24 hour crisis line, emergency and transitional shelter, legal advocacy, children and teen programs, counseling, support groups, employment training, batterer's treatment program, and educational prevention programs; and

WHEREAS, STAND! For Families Free of Domestic Violence is the sole provider of comprehensive domestic violence service in Contra Costa County and is taking action to end violence in its communities.

NOW THEREFORE, I, Julie K. Pierce, Mayor, on behalf of the Clayton City Council, do hereby proclaim October 2013 as "Domestic Violence Awareness Month" and urge my fellow citizens to educate themselves as to preventative and awareness measures to reduce, report and eliminate domestic violence in our community.



Agenda Date: 10/15/13

Agenda Item: 9(a)

Approved:

Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CHARLIE MULLEN, COMMUNITY DEVELOPMENT DIRECTOR 

DATE: OCTOBER 15, 2013

SUBJECT: CONSIDERATION OF AN ORDINANCE AMENDING PORTIONS OF THE CLAYTON MUNICIPAL CODE CONCERNING CODE ENFORCEMENT PROCEDURES AND REGULATIONS (ZOA-05-13).

RECOMMENDATION

Staff recommends the City Council receive and consider the staff report, receive any public comment; by motion have the City Clerk read the Ordinance (Attachment 1) by title and number only and waive further reading; and following the City Clerk's reading, the City Council by motion approve the introduction and first reading of the Ordinance.

BACKGROUND

A recent code enforcement case and associated appeal hearing brought attention and focus on the City's antiquated code enforcement procedures and regulations and the need to cleanup some procedural wording, establish and clarify responsibilities and incorporate better cost recovery measures. Due to the infrequency of having to invoke such proceedings, the recent incident brought to light the need to update our procedures. For example, the referenced appeal hearing cost the City \$1,200 for an independent appeal hearing officer, non-inclusive of additional significant City Attorney and staff hours. The current administrative appeal fee of \$53 did not come close to recovering the actual cost impacts this appeal hearing imposed on the City (i.e. general taxpayer) concerning a single property owner issue. Plus, the City prevailed on this code enforcement matter yet current Municipal Code procedures did not allow the City (or a prevailing party) to recover some or all of its costs.

The proposed Ordinance amendments are intended to implement a fairer cost recover procedure as well as update code enforcement procedures to more current practices.

DISCUSSION

The proposed City-initiated Ordinance to amend portions of the *Clayton Municipal Code* would specifically amend sections of Chapter 1.14 Enforcement, Chapter 1.18 Administrative Citations, Chapter 1.20 General Penalty, Chapter 8.08 Nuisances and Chapter 17.72 Enforcement and Penalty. The following is a summary of proposed section amendments, while the specific amendments are fully contained in the Exhibits of the attached draft Ordinance.

Chapter 1.14 Enforcement

The proposed amendments to this Chapter would provide an option for the Code Enforcement Officer to issue a Courtesy Notice of Violation with a correction period of between ten (10) and twenty (20) days depending upon the nature and/or severity of the violation, versus the current 20 day only provision. Staff often receives comments from complaining parties that it takes too long for some types of violations to be resolved, such as boats or RV's parked in driveways or garbage cans on the street. This amendment will still allow staff to issue a Courtesy Notice of Violation, but will provide the City options to seek shorter time periods for voluntary compliance.

Chapter 1.18 Administrative Citations

The proposed amendments to this Chapter would expand upon, define and/or address the following areas:

- Define and clarify the responsible person for violations.
- Increase the administrative fines for repeat violations to the maximum limits provided by State law.
- Expand upon, define and clarify the appeal process of administrative citations.
- Expand upon, define and clarify the payment of fines and recovery costs related to an administrative decision of the appeal hearing officer.
- Provide and define a process for the potential waiver of advance deposits of the fine and appeal fee for those persons who are financially unable to, as required by State law.

Chapter 1.20 General Penalty

The proposed amendments to this chapter would establish and define the process for the City to initiate civil action (i.e. file a lawsuit) on cases and to recover attorney's fees and costs related to administrative citations.

Chapter 8.08 Nuisances

The proposed amendments to this Chapter would expand upon, define and/or address the following areas:

- Incorporate and reference specific sections in the Zoning Code related to nuisances and penalties.
- Clarify the City's ability to seek cost recovery of violations that require immediate abatement.
- Clarify a property owner's responsibility to abate and correct a nuisance violation.
- Expands, defines and clarifies the City's abatement authority and process of nuisance violations.

- Establish an abatement hearing process for nuisance violations.
- Expand upon, define and clarify the nuisance appeal process including notice of decisions, findings, failure to abate and owner/responsible party.
- Establish liability of costs, a lien procedure to collect abatement costs, special assessment procedures and the ability to treble the costs of abatement for repeat nuisance offenses.

Chapter 17.72 Enforcement and Penalty.

The proposed amendments to this Chapter would clean up redundancy between Code sections.

The proposed amendments to the *Clayton Municipal Code* have been drafted and reviewed by the City Attorney and City staff. A final “clean” copy of the amendments are contained and shown in their entirety in the Exhibits of Attachment 1. Attachment 2 displays the amendments in a redlined version to allow the City Council and the public to fully examine all the proposed text deletions and additions.

CEQA

Pursuant to California Environmental Quality Act (CEQA) Guideline 15061(b)(3) it can be seen with certainty there is no possibility the proposed amendments to the *Clayton Municipal Code* may have a significant effect on the environment, and therefore it is not subject to CEQA.

FISCAL IMPACT

Some staff time as well as printing cost have and will be associated with the preparation of this Ordinance. If approved, staff will bring back an amendment to the City’s Master Fee Schedule to add a time and material deposit fee for Appeals of Administrative Citations, which would in turn allow for better cost recovery of Administrative Citation Appeal Hearings for the prevailing party.

Attachments:

1. Draft Ordinance No. 451 – Regarding Code Enforcement Procedures and Regulations
2. Redlined Version of Proposed Ordinance

ORDINANCE NO. 451

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON,
AMENDING CHAPTERS 1.14, 1.18, 1.20, 8.08 AND 17.72 OF THE CLAYTON
MUNICIPAL CODE REGARDING CODE ENFORCEMENT.**

THE CITY COUNCIL

City of Clayton, California

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

WHEREAS, the City Council believes that enforcement of the Clayton Municipal Code, other ordinances adopted by the City, conditions of entitlements and terms and conditions of City agreements are matters of local concern and serve important public purposes;

WHEREAS, this Ordinance will update and streamline the City's various code enforcement tools and procedures to help protect the public health, safety and welfare.

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

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

Section 2. Amendment. Sections 1.14.010, 1.18.010, 1.18.020, 1.18.040, 1.18.080 and 1.18.100 and Subsection C of Section 1.20.010 of the Clayton Municipal Code are hereby amended to read in full as set forth in Exhibit A, incorporated by this reference. Section 1.18.150 of the Clayton Municipal Code is hereby deleted and of no further force or effect. Sections 1.20.020 and 1.20.030 of the Clayton Municipal Code are hereby added to read in full as set forth in Exhibit A.

Section 3. Amendment. Chapter 8.08 of the Clayton Municipal Code is hereby amended to read in full as set forth in the attached Exhibit B, incorporated by this reference.

Section 4. Amendment. Chapter 17.72 of the Clayton Municipal Code is hereby amended to read in full as set forth in the attached Exhibit C, incorporated by this reference.

Section 5. 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 6. Conflicting Ordinances Repealed. Any ordinance or part thereof, or regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that

may be inconsistent with the provisions of this Ordinance.

Section 7. 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 of the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause Section 2 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 October 15, 2013.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular meeting thereof held on November 5, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Julie K. Pierce, Mayor

ATTEST

Laci J. Jackson, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

Malathy Subramanian, City Attorney

Gary A. Napper, City Manager

DRAFT

I hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Clayton held on October 15, 2013, and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on November 5, 2013.

Laci J. Jackson, City Clerk

EXHIBIT A

Amendment. Section 1.14.010 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

1.14.040 Optional Courtesy Notification of Violation and Reinspection.

If a violation of the code is verified in accordance with Section 1.14.030, the responsible City personnel or a designated enforcement officer may at his or her discretion notify the owner and occupant of the property on which the violation has occurred in writing, by regular mail, of the nature of the violation and the specific code sections violated and provide the owner and occupant between ten (10) to twenty (20) days to correct the violation depending upon the nature and/or severity of the violation.. Such courtesy notice shall state that a citation will be issued unless the violation is discontinued. In mailing the courtesy notice, the City shall rely on the most recent ownership and address information available from the County Assessor.

Following the expiration of the courtesy notice period, the property shall be reinspected by the responsible City personnel or a designated enforcement officer. Any on-site reinspection shall be conducted in accordance with Chapter 1.12 of this code. If the violation has been corrected, no further action shall be taken.

Amendment. Section 1.18.010 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

Section 1.18.010 Issuance of Administrative Citation.

Notwithstanding the provisions of Chapters 1.14 and 1.22 of the Municipal Code, whenever a City employee or any other person designated by the City, City Manager, or by law with authority to enforce ordinances or the Municipal Code determines that a violation of an ordinance or the Municipal Code has occurred, that designated employee or other person shall have the authority to issue an administrative citation to any person responsible for the violation. A responsible person includes any individual or legal entity who is the owner, tenant, co-tenant, lessee, sub-lessee, occupant or other person with any right to possession of the real property, owner or authorized agent of any business, company or entity, or the parent or the legal guardian of any person under the age of eighteen years, who causes, permits or maintains a violation of this code, its adopted codes or applicable state codes. In the case of a continuing violation where the violation pertains to signage, building, plumbing, electrical, or other similar structural or zoning

issues, that do not create an immediate danger to health or safety, the City shall provide the responsible person with a reasonable time as indicated on the citation to correct or otherwise remedy the violation to the reasonable satisfaction of the City employee or other person who issued the citation prior to the imposition of a fine. Each administrative citation shall contain the following information:

- A. The date of the violation and correction date, if applicable.
- B. The address or description of the location where the violation occurred.
- C. A description of the violation, including the section(s) of the ordinance or Municipal Code that was violated.
- D. An order prohibiting the continuation or repeated occurrence of the ordinance or Municipal Code violation described in the citation.
- E. The amount of the administrative fine.
- F. A description of the administrative fine payment process, including time for payment.
- G. A description of the administrative citation hearing process, including the requirements to request a hearing.
- H. The name and signature of the employee or other person issuing the citation.

Amendment. Section 1.18.020 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

Section 1.18.020 Amount of Administrative Fines.

The amount of administrative fines shall be as follows:

- A. An administrative fine not exceeding one hundred dollars (\$100) per day for a first violation.
- B. An administrative fine not exceeding two hundred dollars (\$200) per day for a second violation of the same ordinance or Municipal Code section within twelve (12) months. However, a second violation of the same provision of a local building and safety code within one year shall be subject to a fine not exceeding five hundred dollars (\$500).

C. An administrative fine not exceeding five hundred (\$500) per day for each additional violation of the same ordinance or Municipal Code section within twelve (12) months. However, a third violation of the same provision of a local building and safety code within one year shall be subject to a fine not exceeding one thousand dollars (\$1,000).

Amendment. Section 1.18.040 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

Section 1.18.040 Appeal Hearing Request.

A. Any person receiving an administrative citation may request an appeal hearing to contest the citation. Any request for an appeal hearing must be filed in writing with the City Clerk within thirty (30) days of issuance of the citation and shall state the appellant's reason and grounds for the appeal. The hearing request shall be included with a deposit of the fine amount and the appeal hearing fee as set by resolution of the City Council.

B. Any person who requests a hearing who is financially unable to make the advance deposit of the fine and appeal fee as required in this Section may file a request for deposit waiver. The request shall be filed with the city manager at or before the hearing request is filed. The city manager or designee shall issue the deposit waiver if the cited party submits to the city manager or designee a sworn affidavit, or declaration under penalty of perjury, together with any supporting financial documents or materials, demonstrating to the satisfaction of the city manager or designee, the person's actual financial inability to deposit with the city the full amount of the fine and appeal fee in advance of the hearing. The city manager or designee shall issue a written determination listing the reasons for his or her determination to issue or not issue the deposit waiver. The written determination of the city manager or designee shall be final, and shall be served upon the person who applied for the deposit waiver. In the event the deposit waiver is rejected, the person requesting hearing shall pay the advance deposit of the fine and appeal fee within three (3) business days of the determination. Failure to do so shall abandon the hearing request.

Amendment. Section 1.18.080 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

Section 1.18.080 Payment of Fine after Final Administrative Decision.

A. If the final administrative decision of the Hearing Officer affirms the issuance of the administrative citation, then the fine and appeal fee amount on deposit with the city shall be retained by the city.

B. If the Hearing Officer determines that the administrative citation should be upheld and the fine and appeal fee have not been deposited pursuant to an advance deposit hardship waiver, the Hearing Officer shall set forth in the decision a payment schedule for the fine and fee.

C. If the Hearing Officer determines that the administrative citation should be canceled or reduced and the fine was deposited with the city, then the city shall promptly refund the amount.

Amendment. Section 1.18.100 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

Section 1.18.100 Recovery of Administrative Fines and Costs.

On behalf of the City, the city manager may collect any past-due administrative citation fine, appeal fee, or late payment charge by use of all available legal means and the choice of one remedy does not affect the city's ability to use alternative remedies. This includes recovery through small claims court and the placement of the amounts as a lien or special assessment upon real property owned by the person. The City shall follow the procedures set forth in Chapter 8.08 for collecting unpaid fines, charges and fees as liens or special assessments.

Amendment. Subsection C of Section 1.20.010 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

C. Except in cases where a different penalty is prescribed by ordinance, any person convicted of an infraction for violation of an ordinance of the City of Clayton is punishable pursuant to California Government Code Section 36900 by the following:

1. A fine not exceeding one hundred dollars (\$100) per day for a first violation.
2. A fine not exceeding two hundred dollars (\$200) per day for a second violation of the same ordinance within one year. However, a second violation of the same provision of a local building and safety code within one year shall be subject to a fine not exceeding five hundred dollars (\$500).
3. A fine not exceeding five hundred dollars (\$500) per day for each additional violation of the same

ordinance within one year. However, a third violation of the same provision of a local building and safety code within one year shall be subject to a fine not exceeding one thousand dollars (\$1,000).

Amendment. Section 1.20.020 of the Clayton Municipal Code is hereby added to read in full as set forth below:

Section 1.20.020 Civil Action.

The city attorney, by and at the request of the city council or city manager, may institute an action in any court of competent jurisdiction to restrain, enjoin or abate the condition(s) found to be in violation of the provisions of this code, including its adopted codes, or any ordinance as provided by law. The city attorney, by and at the request of the city council or city manager, may institute an action in any court of competent jurisdiction to collect a civil debt owing to the city. Attorneys' fees may be recoverable in such action pursuant to Section 1.20.030.

Amendment. Section 1.20.030 of the Clayton Municipal Code is hereby added to read in full as set forth below:

Section 1.20.030 Attorneys' Fees and Costs.

A. Notwithstanding anything in this code to the contrary, the city may only recover its attorneys' fees in any administrative proceeding or special proceeding commenced by the city to abate a public nuisance, to enjoin violation of any provision of its ordinances and this code, including its adopted codes, or to collect a civil debt owing to the city, if the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In these cases, the prevailing party shall be entitled to recover all costs incurred therein. These costs shall include reasonable attorneys' fees and costs of suit, expressly including, the payment of any third party hearing officer's fees and costs. In no action, administrative proceeding or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

B. The city shall be considered a prevailing party entitled to attorneys' fees under subsection A when it can demonstrate that:

1. Its proceeding was the catalyst motivating the defendant to provide the primary relief sought;

2. The proceeding was meritorious and achieved its result by "threat of victory;" and
3. The city reasonably attempted to settle the matter before initiating the proceeding.

EXHIBIT B

Chapter 8.08

NUISANCES

Sections:

- 8.08.010 Specific nuisances prohibited.
- 8.08.020 Abatement--By repair, rehabilitation, demolition or removal.
- 8.08.025 Abatement Immediate
- 8.08.030 Abatement--City not restricted.
- 8.08.040 Property owner responsibilities.
- 8.08.050 Notice to abate nuisance conditions.
- 8.08.060 Manner of conducting abatement hearing.
- 8.08.070 Issuance of decision, findings and order.
- 8.08.080 Abatement by enforcement officer if nuisance is not abated.
- 8.08.090 Abatement by owner/responsible party.
- 8.08.100 Abatement--Record of cost.
- 8.08.110 Liability for administrative abatement costs.
- 8.08.120 Lien procedure.
- 8.08.130 Special assessment procedure
- 8.08.140 —Recording notices.
- 8.08.150 Order for treble costs of abatement.
- 8.08.160 Abatement--Civil or criminal proceedings.
- 8.08.170 Violation of abatement order--Penalty.

Section 8.08.010 Specific Nuisances Prohibited.

It is declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises in the city to maintain such premises in such manner that any of the following conditions are found to exist thereon:

- A. Buildings or structures which are abandoned, boarded up, partially destroyed, left unreasonably in a state of partial construction and/or unused for a period in excess of six (6) months;
- B. Unpainted buildings causing dry rot, warping and termite infestation;
- C. Broken windows constituting hazardous conditions and inviting trespassers and malicious mischief;
- D. Overgrown vegetation causing detriment to neighboring properties or property values;
- E. Dead trees, dry dead shrubs, combustible refuse and waste, or any material growing upon the streets, sidewalks, or upon private property within the city, which by reason of their size, manner of growth, and location, obstruct a public right of way, endanger public health or safety,

or constitute a fire hazard to any building, improvements, crops or other property, or when dry will, in reasonable probability, constitute such a fire hazard.

F. Attractive nuisances dangerous to children in the form of:

1. Abandoned and broken equipment,
2. Hazardous pools, ponds and excavations, and
3. Neglected machinery;

G. Broken or discarded furniture and household equipment in yard areas for unreasonable periods;

H. Clotheslines in front yard area;

I. Any violation of chapter 17.76 of this code;

J. Packing boxes and other debris stored in yards and visible from public streets for unreasonable periods;

K. Neglect of premises:

1. To spite neighbors, or
2. To influence zone changes, or
3. To cause a detrimental effect upon nearby property or property values, or
4. Which results in paper, refuse, trash and other debris being blown upon or otherwise carried to adjacent privately or publicly owned properties or public streets and deposited and scattered thereon;

L. Maintenance of premises in such condition as to be detrimental to the public health, safety or general welfare or in such manner as to constitute a public nuisance as defined by Civil Code Section 3480;

M. Property including but not limited to building exteriors which are maintained in such condition as to become so defective, unsightly, or in such condition of deterioration or disrepair that the same causes appreciable diminution of the property values of surrounding property or is materially detrimental to proximal properties and improvements. This includes but is not limited to the keeping or disposing of or the scattering over the property or premises of any of the following:

1. Lumber, junk, or debris, or
2. Abandoned, discarded or unused objects or equipment such as furniture, stoves, refrigerators, freezers, cans or containers, or

3. Stagnant water, or excavations, or
4. Any device, decoration, design, fence, structure, clothesline or vegetation which is unsightly by reason of its condition or its inappropriate location;

N. Maintenance of premises so out of harmony or conformity with the maintenance standards of adjacent properties as to cause substantial diminution of the enjoyment, use, or property values of such adjacent properties;

O. Property maintained (in violation to others) so as to establish a prevalence of depreciated values, impaired investments, and social and economic maladjustments to such receipts from such particular area are inadequate for the cost of public services rendered therein.

P. Anything that is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or that unlawfully obstructs the free passage or use, in the customary manner, of any stream or any public park, sidewalk, pathway, square, street, highway, or other public place.

Q. Any activity that supports the development, attraction, or harborage of vectors, or that facilitates the introduction or spread of vectors, including but not limited to the following (for the purposes of this subsection, "vector" means any animal capable of transmitting the causation agent of human disease or capable of producing human discomfort or injury, including, but not limited to, mosquitoes, flies, mites, ticks, other arthropods, and rodents and other vertebrates):

1. Any artificial alteration of property, excluding water, from its natural condition, resulting in it supporting the development, attraction, or harborage of vectors, with the presence of vectors in their developmental stages on the property being prima facie evidence that the property is a public nuisance; or
2. Any water that is a breeding place for vectors, with the presence of vectors in their developmental stages in the water being prima facie evidence that the water is a public nuisance.

R. Any violation of title 17 (zoning) of this code, the provisions of any code adopted by reference by this code; permits issued by the City; conditions of development approval; or ordinances and regulations adopted by the City.

S. Repeated disruptive activities including, but not limited to, disturbances of the peace and quiet of the neighborhood of which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area, public drunkenness, drinking in public, harassment of passerby, sale of stolen goods, public urination or defecation, theft, assaults, battery, acts of vandalism, excessive littering, illegal parking, loud noises, traffic violations, curfew violations, or police detentions and arrests.

T. Any use of land in the incorporated area of the city not permitted under title 17 (zoning) of this code or any building or structure erected, constructed, altered, moved or maintained contrary to title 17 (zoning) of this code.

Section 8.08.020 Abatement--By repair, rehabilitation, demolition or removal.

All or any part of premises found, as provided in this chapter, to constitute a public nuisance shall be abated by rehabilitation, demolition, or repair pursuant to the procedures set forth in this chapter.

Section 8.08.025 Abatement Immediate.

Notwithstanding and in addition to any other remedy available under this Chapter, or any other Municipal Code section or City ordinance, or other federal, state or local law regulation, if a public nuisance as defined in this Chapter exists and constitutes an immediate threat to public health or safety, the City may summarily and without hearing abate such nuisance at the expense of the persons creating, causing, committing, or maintaining the nuisance. The expense of abatement of the nuisance may be collected in the same manner as other abatement costs in this Chapter. Notice of the summary abatement shall be provided to the owner or any other responsible party as provided for in this Chapter the same day or as soon as practical. Such notice shall include a provision authorizing the owner or responsible party to dispute the existence of the nuisance conditions before the hearing officer in the same manner as a general nuisance hearing.

Section 8.08.030 Abatement--City not restricted.

The procedures set forth herein shall not in any manner, however, limit or restrict the city from enforcing city ordinances or abating public nuisances in any other manner provided by law.

Section 8.08.040 Property owner responsibilities.

It shall be the duty of the owner, and of responsible party occupying or having charge or control of any parcel of land, improved or unimproved, to maintain such parcel of land free of any nuisance and/or nuisance conditions at all times. The same responsibility extends to the public rights-of-way or public land, related to any vehicle, vessel, structure, machinery, container, refuse, debris or other item found to be or having been under the charge or control of a property owner, responsible party, or last registered or documented owner. Any owner or responsible party shall be responsible for the removal or correction of any nuisance or nuisance conditions and the costs for such removal or correction.

Section 8.08.050 Notice to abate nuisance conditions.

A. When the enforcement officer finds that a nuisance condition exists upon any premises in the city, he or she may, or upon the direction of the city council or city manager shall, serve a notice to abate upon the owner or responsible party in possession or having control of the premises upon which the condition exists, directing him or her to abate or cause the nuisance condition(s) upon the premises to be abated on or before a specified compliance date. The notice shall also state that the responsible party may file a written request for a hearing with the city clerk to dispute the alleged conditions within thirty days of the notice.

B. The enforcement officer shall post one copy of the notice in a conspicuous place on the property in question and shall deliver one copy of the notice to the owner or responsible party in

possession or control of the property upon which the nuisance condition exists either in person or by certified mail, with a return receipt requested.

C. The failure of the owner or responsible party to actually receive the notice shall not affect in any manner the validity of any proceedings pursuant to this chapter.

D. In the event the responsible party files a timely request for an abatement hearing, the city clerk shall schedule the hearing. The hearing shall be conducted within forty-five days of receipt of the request unless otherwise agreed to in writing by the parties. The city clerk shall send written notice of the location, time and date of the hearing at least ten days in advance of the hearing date.

E. In the event the responsible party fails to appeal the notice, the nuisance conditions shall be deemed confirmed. Such failure shall also constitute a failure to exhaust available administrative remedies.

Section 8.08.060 Manner of conducting abatement hearing.

In the event a hearing is timely requested pursuant to section 8.08.050, the hearing shall be conducted pursuant to the following procedures:

A. At the time and place designated in the notice of hearing, the hearing officer shall hear and consider all relevant evidence, including but not limited to, applicable staff reports, oral evidence, physical evidence and documentary evidence regarding the alleged nuisance, and proposed method of abatement. The hearing may be continued from time to time.

B. Failure of the owner or responsible party to appear at the hearing shall be deemed a waiver of the right to a hearing and an admission by the owner or responsible party of the existence of the nuisance condition charged. In the event of such failure to appear, the hearing officer may order that the nuisance condition be abated by the enforcement officer. Such failure to appear shall also constitute a failure to exhaust available administrative remedies.

C. The city shall bear the burden of proof to demonstrate, by a preponderance of the evidence, that a nuisance exists and that the proposed mechanism for abatement is appropriate. The city need not demonstrate that the proposed mechanism for abatement is either the most appropriate or least expensive.

D. The hearing shall not be conducted according to the formal rules of evidence. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state. However, irrelevant or unduly repetitious evidence may be excluded.

E. Prior to conclusion of the hearing, if the owner or responsible party is present, the hearing officer may request the owner or responsible party to sign a consent to enter and perform work. The permission given shall be used only if the nuisance condition is determined to exist and is not abated by the schedule of correction specified in the hearing officer's decision.

F. If the owner or responsible party does not provide written consent, entry onto the property may be made by obtaining verbal permission from the owner or a responsible party, or by means of an inspection warrant, or by any other lawful manner.

G. The City Manager shall designate the hearing officer(s) for nuisance hearings. Hearing officers may be employees of the City, including the City Manager, or any other person qualified to hear such matters.

Section 8.08.070 Issuance of decision, findings and order.

A. Within ten days after the conclusion of the hearing, the hearing officer shall issue a written decision. The decision shall set forth the factual findings made by the hearing officer, a conclusion as to whether a nuisance condition exists, the manner of abatement, including an order that such nuisance (if one is found to exist) be abated by the city and a schedule of correction or the date by which the abatement shall be completed.

B. If the hearing officer determines that a nuisance exists which has not been corrected within the time period specified in the notice to abate nuisance conditions, the hearing officer shall so find in the decision, and may include in the decision any or all of the following:

1. An order to correct, including a schedule of correction where appropriate;
2. An order to pay abatement costs, including administrative costs incurred to date, as provided in this chapter.

C. Failure to issue a decision in ten days shall not affect the validity of such decision.

D. The decision shall be mailed by certified mail with a return receipt requested to the owner and shall be mailed to the enforcement officer. A copy of a summary of the decision and any order it contains shall also be posted on the property by the enforcement officer in a conspicuous location.

Section 8.08.080 Abatement by enforcement officer if nuisance is not abated.

Upon receipt of the hearing officer's decision if: (i) no schedule of correction has been issued, or (ii) upon the failure of the property owner to comply with such schedule if a schedule was included, if the nuisance condition has not been abated the enforcement officer shall forthwith abate, or cause to be abated, the nuisance condition upon the premises. The enforcement officer is authorized to enter upon private property for this purpose, consistent with the provisions of the U.S. Constitution.

The cost of abatement shall become a personal obligation of the property owner and responsible party and may be collected in any legal manner, expressly including as lien or special assessment pursuant to the procedures set forth in this Chapter.

Section 8.08.090 Abatement by owner/responsible party.

A. Any owner or responsible party may, at his/her/its own expense and prior to the scheduled abatement hearing, abate a declared nuisance condition in accordance with the

provisions of the notice sent by the enforcement officer; provided that all necessary permits are first obtained. If the enforcement officer determines that the nuisance condition has been abated prior to the hearing, the hearing proceedings shall be terminated. If any abatement referenced in this section takes place after the specified compliance date, but prior to date set for hearing, termination of the hearing shall only take place upon the owner or responsible party's payment of outstanding penalties, administrative and/or abatement costs.

B. Any owner or responsible party may also request the city to abate a declared nuisance condition on his/her/its property. However, the owner or responsible party making the request shall be responsible for the payment of all penalties, abatement costs and/or administrative costs incurred by the city. The request for the city to perform the abatement shall be in writing and include a written consent to enter and perform work. Any such request shall be deemed an agreement to pay for the costs of such abatement, including but not limited to any penalties, administrative costs, and an agreement that such costs may be collected as a lien upon the property. The abatement hearing proceedings shall thereafter be terminated.

Section 8.08.100 Abatement--Record of cost.

In the event the city abates the nuisance, the enforcement officer shall keep an account of the cost (including incidental expenses) of abating such nuisance on each separate lot, or parcel of land where the work is done and shall create an itemized report in writing showing the cost of abatement and rehabilitating, demolishing or repairing of the premises, buildings or structures, including any salvage value relating thereto. The term "incidental expenses" shall include, but not be limited to, the actual expenses and costs of the city in the preparation of notices, specifications and contracts, and in inspecting the work, and the costs of printing and mailing required under this chapter. Costs shall be recovered through a lien, special assessment or other procedures as permitted by law. Liens and special assessments may only be imposed if the property owner received the notice to abate.

Section 8.08.110 Liability for administrative abatement costs.

A. In addition to liability for the costs of abatement itself pursuant to Section 8.08.100 and this section of this chapter, the owner and/or responsible party shall also be liable for any expenses and administrative abatement costs incurred by the city, county or any related agency incurred after the initial inspection and identification of the nuisance. Administrative costs shall be included in the records and reports in the same manner as abatement costs under Section 8.08.100

B. The administrative costs may include any and all costs incurred by the city in connection with the matter before the hearing officer, including but not limited to, costs of investigation, city staffing costs incurred in preparation for the hearing and for the hearing itself, including but not limited to the fees and costs of the city's consultants, and costs for all re-inspections necessary to enforce the notice to abate nuisance conditions.

C. In the event that the city is entitled to recover its attorneys' fees and costs, such fees and costs shall be collected at the same time and pursuant to the same procedures as administrative costs pursuant to this section.

Section 8.08.120 Lien procedure.

In the event the City decides to collect abatement costs as a lien, it shall impose such lien pursuant to this section:

A. Upon receipt of the itemized report referenced in Section 8.08.100, the city clerk, or his or her designee, shall serve notice of the lien in the same manner as summons in a civil action in accordance with Code of Civil Procedure Section 415.10 *et seq.* If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation in Contra Costa County. The period of notice commences upon the first day of publication and terminates at the end of the tenth day, including therein the first day. Publication shall be made on each day on which the newspaper is published during the ten day period.

B. The notice shall inform the owner of the pending lien and inform the property owner of the public hearing where the city council will consider imposing the itemized report as a lien against the property. The hearing shall be conducted no less than ten days from service of the notice.

C. At the hearing and after considering the relevant evidence, the city council may adopt a resolution confirming the itemized report and directing the city clerk to record a lien against the property in the Contra Costa County recorder's office and, from the date of recording, shall have the force, effect and priority of a judgment lien.

D. The lien shall identify:

1. The amount of the lien;
2. The city as the agency on whose behalf the lien is imposed;
3. The date of the abatement order or notice;
4. The street address, legal description and assessor's parcel number of the parcel on which the lien is imposed; and
5. The name and address of the recorded owner of the parcel.

E. In the event that the lien is discharged, released or satisfied, through either payment or foreclosure, notice of the discharge containing the information specified in subsection D shall be recorded by the city clerk.

F. A lien may be foreclosed by an action brought by the city for a money judgment.

G. The city may recover from the property owner any costs incurred in the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

Section 8.08.130 Special assessment procedure.

In the event the City decides to collect abatement costs as a special assessment, it shall impose such special assessment pursuant to this section:

A. The property owner shall be invoiced for the amount stated in the itemized report referenced in Section 8.08.100 which shall be due within thirty days. The invoice shall be sent certified mail to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. If payment is not received, the itemized report shall be submitted in writing to the city clerk no sooner than fifteen days of the invoice due date. Any such report may include the abatement costs, fees and penalties for any number of properties and abatements, whether or not such properties are contiguous.

B. If the invoice is not timely paid, the city clerk shall provide written notice to the property owner by certified mail, if the property owner's identity can be determined from the county assessor's or county recorder's records. The notice shall inform the owner of the pending special assessment, including the information set forth in subsection C, and the date, time and location of the public hearing where the city council will consider imposing the itemized report as a special assessment against the property. The hearing shall be conducted no less than ten days from service of the notice.

C. At the hearing and after considering the relevant evidence, the city council may adopt a resolution confirming the itemized report and assessing the report as a special assessment against the property. The city clerk shall then provide all documentation necessary to the county to enter such assessment. After entry, the assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. The property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrance for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

D. Subject to the requirements applicable to the sale of property pursuant to Section 3691 of the Revenue and Taxation Code, the city may conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent.

E. Notices or instruments relating to the special assessment shall be entitled to recordation.

Section 8.16.140 Recording notices.

The enforcement officer may record and file any notices related to nuisance abatement proceedings in the office of the county recorder, as permitted pursuant to Government Code Section 38773.5.

Section 8.16.150 Order for treble costs of abatement.

Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated in accordance with the provisions of this chapter, except for conditions abated pursuant to section 17980 of the Health & Safety Code, relating to abandoned buildings, the court may order the owner to pay treble the costs of the abatement, as authorized by Government Code section 38773.7. Costs of abatement shall include, without limitation by reason of enumeration, all administrative costs of the city.

Section 8.08.160 Abatement--Civil or criminal proceedings when.

Nothing in this chapter shall be deemed to prevent the city council from ordering the city attorney to commence a civil or criminal proceeding to abate a public nuisance under applicable Civil or Penal Code provisions as an alternative to the proceedings set forth in this chapter.

Section 8.08.170 Violation of abatement order--Penalty.

Any person violating any abatement order issued pursuant to the provisions of this chapter is guilty of a misdemeanor or infraction as provided for in Section 1.02.010..

EXHIBIT C

Chapter 17.72

ENFORCEMENT AND PENALTY

Sections:

17.72.010 Nuisance declared-- Remedies cumulative.

17.72.020 Violation--Penalty.

17.72.010 Nuisance declared-- Remedies cumulative.

A. No land in the incorporated area of the city shall be used for any purpose not permitted under this title nor shall any building or structure be erected, constructed, altered, moved or maintained contrary to this title. Any use of land, building, or structure contrary to this title is unlawful and a public nuisance.

B. The remedies provided for in this chapter shall be cumulative and not exclusive.

17.72.020 Violation--Penalty.

Any person violating this title is guilty of a misdemeanor and on conviction shall be punishable by a fine of not more than one thousand dollars or by imprisonment in the county jail for not more than six months, or by both.

EXHIBIT A

Amendment. Section 1.14.010 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

1.14.040 Optional Courtesy Notification of Violation and Reinspection.

If a violation of the code is verified in accordance with Section 1.14.030, the responsible City personnel or a designated enforcement officer may at his or her discretion notify the owner and occupant of the property on which the violation has occurred in writing, by regular mail, of the nature of the violation and the specific code sections violated and provide the owner and occupant between ten (10) to twenty (20) days to correct the violation depending upon the nature and/or severity of the violation. Such courtesy notice shall state that a citation will be issued unless the violation is discontinued. In mailing the courtesy notice, the City shall rely on the most recent ownership and address information available from the County Assessor.

Following the expiration of the ~~twenty (20) day~~ courtesy notice period, the property shall be reinspected by the responsible City personnel or a designated enforcement officer. Any on-site reinspection shall be conducted in accordance with Chapter 1.12 of this code. If the violation has been corrected, no further action shall be taken.

Amendment. Section 1.18.010 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

Section 1.18.010 Issuance of Administrative Citation.

Notwithstanding the provisions of Chapters 1.14 and 1.22 of the Municipal Code, whenever a City employee or any other person designated by the City, City Manager, or by law with authority to enforce ordinances or the Municipal Code determines that a violation of an ordinance or the Municipal Code has occurred, that designated employee or other person shall have the authority to issue an administrative citation to any person responsible for the violation. A responsible person includes any individual or legal entity who is the owner, tenant, co-tenant, lessee, sub-lessee, occupant or other person with any right to possession of the real property, owner or authorized agent of any business, company or entity, or the parent or the legal guardian of any person under the age of eighteen years, who causes, permits or maintains a violation of this code, its adopted codes or applicable state codes. In the case

of a continuing violation where the violation pertains to signage, building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety, the City ~~may cancel~~shall provide the responsible person with a reasonable time as indicated on the citation within thirty (30) days of issuance, if the person responsible for the violation has corrected to correct or otherwise ~~remedied~~remedy the violation to the reasonable satisfaction of the City employee or other person who issued the citation prior to the imposition of a fine. Each administrative citation shall contain the following information:

- A. The date of the violation and correction date, if applicable.
- B. The address or description of the location where the violation occurred.
- C. A description of the violation, including the section(s) of the ordinance or Municipal Code that was violated.
- D. An order prohibiting the continuation or repeated occurrence of the ordinance or Municipal Code violation described in the citation.
- E. The amount of the administrative fine.
- F. A description of the administrative fine payment process, including time for payment.
- G. A description of the administrative citation hearing process, including the requirements to request a hearing.
- H. The name and signature of the employee or other person issuing the citation.

Amendment. Section 1.18.020 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

Section 1.18.020 Amount of Administrative Fines.

The amount of administrative fines shall be as follows:

- A. An administrative fine not exceeding one hundred dollars (\$100) per day for a first violation.
- B. An administrative fine not exceeding two hundred dollars (\$200) per day for a second violation of the same ordinance or Municipal Code section within twelve (12) months. However, a second violation of the same provision of a local building and

safety code within one year shall be subject to a fine not exceeding five hundred dollars (\$500).

C. An administrative fine not exceeding five hundred (\$500) per day for each additional violation of the same ordinance or Municipal Code section within twelve (12) months. However, a third violation of the same provision of a local building and safety code within one year shall be subject to a fine not exceeding one thousand dollars (\$1,000).

Amendment. Section 1.18.040 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

Section 1.18.040 **Appeal** Hearing Request.

A. Any person receiving an administrative citation may request ~~aan~~ appeal hearing to contest the citation. Any request for ~~aan~~ appeal hearing must be filed in writing with the City Clerk within thirty (30) days of issuance of the citation- and shall state the appellant's reason and grounds for the appeal. The hearing request shall be included with a deposit of the fine amount and the appeal hearing fee as set by resolution of the City Council.

B. Any person who requests a hearing who is financially unable to make the advance deposit of the fine and appeal fee as required in this Section may file a request for deposit waiver. The request shall be filed with the city manager at or before the hearing request is filed. The city manager or designee shall issue the deposit waiver if the cited party submits to the city manager or designee a sworn affidavit, or declaration under penalty of perjury, together with any supporting financial documents or materials, demonstrating to the satisfaction of the city manager or designee, the person's actual financial inability to deposit with the city the full amount of the fine and appeal fee in advance of the hearing. The city manager or designee shall issue a written determination listing the reasons for his or her determination to issue or not issue the deposit waiver. The written determination of the city manager or designee shall be final, and shall be served upon the person who applied for the deposit waiver. In the event the deposit waiver is rejected, the person requesting hearing shall pay the advance deposit of the fine and appeal fee within three (3) business days of the determination. Failure to do so shall abandon the hearing request.

Amendment. Section 1.18.080 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

Section 1.18.080 Payment of Fine after Final Administrative Decision.

A. If the final administrative decision of the Hearing Officer affirms the issuance of the administrative citation, the recipient of the citation shall pay the administrative fine to then the fine and appeal fee amount on deposit with the city within thirty (30) days after the date the final administrative decision is served shall be retained by the city.

B. If the Hearing Officer determines that the administrative citation should be upheld and the fine and appeal fee have not been deposited pursuant to an advance deposit hardship waiver, the Hearing Officer shall set forth in the decision a payment schedule for the fine and fee.

C. If the Hearing Officer determines that the administrative citation should be canceled or reduced and the fine was deposited with the city, then the city shall promptly refund the amount.

Amendment. Section 1.18.100 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

Section 1.18.100 Recovery of Administrative Fines and Costs.

On behalf of the City, the city manager may collect any past-due administrative citation fine, appeal fee, or late payment charge by use of all available legal means and the choice of one remedy does not affect the city's ability to use alternative remedies. This includes recovery through small claims court and the placement of the amounts as a lien or special assessment upon real property owned by the person. The City shall follow the procedures set forth in Chapter 8.08 for collecting unpaid fines, charges and fees as liens or special assessments.

Amendment. Subsection C of Section 1.20.010 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

C. Except in cases where a different punishmentpenalty is prescribed by ordinance, any person convicted of an infraction for violation of an ordinance of the City of Clayton is punishable pursuant to California Government Code Section 36900 by the following:

1. A fine not exceeding one hundred dollars (\$100) per day for a first violation.

2. A fine not exceeding two hundred dollars (\$200) per day for a second violation of the same ordinance within one year. However, a second violation of the same provision of a local building and safety code within one year shall be subject to a fine not exceeding five hundred dollars (\$500).
3. A fine not exceeding five hundred dollars (\$500) per day for each additional violation of the same ordinance within one year. However, a third violation of the same provision of a local building and safety code within one year shall be subject to a fine not exceeding one thousand dollars (\$1,000).

Amendment. Section 1.20.020 of the Clayton Municipal Code is hereby added to read in full as set forth below:

Section 1.20.020 Civil Action.

The city attorney, by and at the request of the city council or city manager, may institute an action in any court of competent jurisdiction to restrain, enjoin or abate the condition(s) found to be in violation of the provisions of this code, including its adopted codes, or any ordinance as provided by law. The city attorney, by and at the request of the city council or city manager, may institute an action in any court of competent jurisdiction to collect a civil debt owing to the city. Attorneys' fees may be recoverable in such action pursuant to Section 1.20.030.

Amendment. Section 1.20.030 of the Clayton Municipal Code is hereby added to read in full as set forth below:

Section 1.20.030 Attorneys' Fees and Costs.

A. Notwithstanding anything in this code to the contrary, the city may only recover its attorneys' fees in any administrative proceeding or special proceeding commenced by the city to abate a public nuisance, to enjoin violation of any provision of its ordinances and this code, including its adopted codes, or to collect a civil debt owing to the city, if the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In these cases, the prevailing party shall be entitled to recover all costs incurred therein. These costs shall include reasonable attorneys' fees and costs of suit, expressly including, the

payment of any third party hearing officer's fees and costs. In no action, administrative proceeding or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

B. The city shall be considered a prevailing party entitled to attorneys' fees under subsection A when it can demonstrate that:

1. Its proceeding was the catalyst motivating the defendant to provide the primary relief sought;
2. The proceeding was meritorious and achieved its result by "threat of victory;" and
3. The city reasonably attempted to settle the matter before initiating the proceeding.

EXHIBIT B

Chapter 8.08

NUISANCES

Sections:

- 8.08.010 ~~Conditions constituting nuisance~~ Specific nuisances prohibited.
- 8.08.020 Abatement--By repair, rehabilitation, demolition or removal.
- 8.08.025 Abatement Immediate
- 8.08.030 Abatement--City not restricted.
- 8.08.040 ~~Resolution declaring intent to conduct hearing~~ Property owner responsibilities.
- 8.08.050 ~~Resolution--Posting--Hearing notice~~ Notice to abate nuisance conditions.
- 8.08.060 ~~Resolution and~~ Manner of conducting abatement ~~hearing notice--Service and posting.~~
- 8.08.070 ~~Resolution and hearing notice--Form of proper service~~ Issuance of decision, findings and order.
- 8.08.080 ~~Hearing--Procedure~~ Abatement by enforcement officer if nuisance is not abated.
- 8.08.090 ~~Hearing--Planning commission decision--Report of findings~~ Abatement by owner/responsible party.
- 8.08.100 ~~Hearing--Action by city council.~~
- 8.08.110 ~~Council hearing--Written appeal.~~
- 8.08.120 ~~Council hearing--Date setting and notice.~~
- 8.08.130 ~~Council hearing--Action.~~
- 8.08.140 ~~Abatement--Resolution ordering--Service.~~
- 8.08.150 ~~Abatement--Noncompliance--Action by city.~~
- 8.08.160 ~~8.08.100~~ Abatement--Record of cost.
- 8.08.170 ~~Abatement--Assessment of~~ 8.08.110 Liability for administrative abatement costs against property--Lien.
- 8.08.120 Lien procedure.
- 8.08.130 Special assessment procedure
- 8.08.140 --Recording notices.
- 8.08.150 Order for treble costs of abatement.
- ~~8.08.180~~ 8.08.160 ~~Abatement--Civil or criminal proceedings.~~
- ~~8.08.190~~ 8.08.170 ~~Violation of abatement order--Penalty.~~

Section 8.08.010 ~~Conditions constituting nuisance~~ Specific Nuisances Prohibited.

It is declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises in the city to maintain such premises in such manner that any of the following conditions are found to exist thereon:

- A. Buildings or structures which are abandoned, boarded up, partially destroyed, ~~or~~ left unreasonably in a state of partial construction and/or unused for a period in excess of six (6) months;
- B. Unpainted buildings causing dry rot, warping and termite infestation;

C. Broken windows constituting hazardous conditions and inviting trespassers and malicious mischief;

D. Overgrown vegetation causing detriment to neighboring properties or property values;

E. Dead trees, dry dead shrubs, combustible refuse and waste, or any material growing upon the streets, sidewalks, or upon private property within the city, which by reason of their size, manner of growth, and location, obstruct a public right of way, endanger public health or safety, or constitute a fire hazard to any building, improvements, crops or other property, or when dry will, in reasonable probability, constitute such a fire hazard.

F. Attractive nuisances dangerous to children in the form of :

1. Abandoned and broken equipment,
2. Hazardous pools, ponds and excavations, and
3. Neglected machinery;

G. Broken or discarded furniture and household equipment in yard areas for unreasonable periods;

H. Clotheslines in front yard area;

I. ~~Garbage and/or garbage containers strewn over front or side yards and visible from public streets~~Any violation of chapter 17.76 of this code;

J. Packing boxes and other debris stored in yards and visible from public streets for unreasonable periods;

K. Neglect of premises:

1. To spite neighbors, or
2. To influence zone changes, or
3. To cause a detrimental effect upon nearby property or property values, or
4. Which results in paper, refuse, trash and other debris being blown upon or otherwise carried to adjacent privately or publicly owned properties or public streets and deposited and scattered thereon;

L. Maintenance of premises in such condition as to be detrimental to the public health, safety or general welfare or in such manner as to constitute a public nuisance as defined by Civil Code Section 3480;

M. Property including but not limited to building exteriors which are maintained in such condition as to become so defective, unsightly, or in such condition of deterioration or disrepair that the same causes appreciable diminution of the property values of surrounding property or is

materially detrimental to proximal properties and improvements. This includes but is not limited to the keeping or disposing of or the scattering over the property or premises of any of the following:

1. Lumber, junk, ~~trash~~ or debris, or
2. Abandoned, discarded or unused objects or equipment such as ~~automobiles~~, furniture, stoves, refrigerators, freezers, cans or containers, or
3. Stagnant water, or excavations, or
4. Any device, decoration, design, fence, structure, clothesline or vegetation which is unsightly by reason of its condition or its inappropriate location;

N. Maintenance of premises so out of harmony or conformity with the maintenance standards of adjacent properties as to cause substantial diminution of the enjoyment, use, or property values of such adjacent properties;

O. Property maintained (in violation to others) so as to establish a prevalence of depreciated values, impaired investments, and social and economic maladjustments to such receipts from such particular area are inadequate for the cost of public services rendered therein.

P. Anything that is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or that unlawfully obstructs the free passage or use, in the customary manner, of any stream or any public park, sidewalk, pathway, square, street, highway, or other public place.

Q. Any activity that supports the development, attraction, or harborage of vectors, or that facilitates the introduction or spread of vectors, including but not limited to the following (for the purposes of this subsection, "vector" means any animal capable of transmitting the causation agent of human disease or capable of producing human discomfort or injury, including, but not limited to, mosquitoes, flies, mites, ticks, other arthropods, and rodents and other vertebrates):

1. Any artificial alteration of property, excluding water, from its natural condition, resulting in it supporting the development, attraction, or harborage of vectors, with the presence of vectors in their developmental stages on the property being prima facie evidence that the property is a public nuisance; or
2. Any water that is a breeding place for vectors, with the presence of vectors in their developmental stages in the water being prima facie evidence that the water is a public nuisance.

~~Section 8.08.010 (Conditions Constituting Nuisance) of the Clayton Municipal Code is hereby amended to add new sections R. and S. which shall read as follows:~~

R. Any violation of ~~chapter~~title 17 (zoning) of this code, the provisions of any code adopted by reference by this code; permits issued by the City; conditions of development approval; or

ordinances and regulations adopted by the City.

S. Repeated disruptive activities including, but not limited to, disturbances of the peace and quiet of the neighborhood of which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area, public drunkenness, drinking in public, harassment of passerby, sale of stolen goods, public urination or defecation, theft, assaults, battery, acts of vandalism, excessive littering, illegal parking, loud noises, traffic violations, curfew violations, or police detentions and arrests.

T. Any use of land in the incorporated area of the city not permitted under title 17 (zoning) of this code or any building or structure erected, constructed, altered, moved or maintained contrary to title 17 (zoning) of this code.

Section 8.08.020 Abatement--By repair, rehabilitation, demolition or removal.

All or any part of premises found, as provided in this chapter, to constitute a public nuisance shall be abated by rehabilitation, demolition, or repair pursuant to the procedures set forth in this chapter.

Section 8.08.025 Abatement Immediate.

Notwithstanding and in addition to any other remedy available under this Chapter, or any other Municipal Code section or City ordinance, or other federal, state or local law regulation, if a public nuisance as defined in this Chapter exists and constitutes an immediate threat to public health or safety, the City may summarily and without ~~notice or~~ hearing abate such nuisance at the expense of the persons creating, causing, committing, or maintaining the nuisance. The expense of abatement of the nuisance ~~shall be a lien against the property on which it is maintained and a personal obligation against the property owner, in accordance with Section 38773.1 or 38773.5 of the California Government Code and Section 8.08.170 of this Chapter.~~ may be collected in the same manner as other abatement costs in this Chapter. Notice of the summary abatement shall be provided to the owner or any other responsible party as provided for in this Chapter the same day or as soon as practical. Such notice shall include a provision authorizing the owner or responsible party to dispute the existence of the nuisance conditions before the hearing officer in the same manner as a general nuisance hearing.

Section 8.08.030 Abatement--City not restricted.

The procedures set forth herein shall not in any manner, however, limit or restrict the city from enforcing city ordinances or abating public nuisances in any other manner provided by law.

Section 8.08.040 Property owner responsibilities.

It shall be the duty of the owner, and of responsible party occupying or having charge or control of any parcel of land, improved or unimproved, to maintain such parcel of land free of any nuisance and/or nuisance conditions at all times. The same responsibility extends to the public rights-of-way or public land, related to any vehicle, vessel, structure, machinery, container, refuse, debris or other item found to be or having been under the charge or control of a property owner, responsible party, or last registered or documented owner. Any owner or responsible

party shall be responsible for the removal or correction of any nuisance or nuisance conditions and the costs for such removal or correction.

Section 8.08.050 Notice to abate nuisance conditions.

A. When the enforcement officer finds that a nuisance condition exists upon any premises in the city, he or she may, or upon the direction of the city council or city manager shall, serve a notice to abate upon the owner or responsible party in possession or having control of the premises upon which the condition exists, directing him or her to abate or cause the nuisance condition(s) upon the premises to be abated on or before a specified compliance date. The notice shall also state that the responsible party may file a written request for a hearing with the city clerk to dispute the alleged conditions within thirty days of the notice.

B. The enforcement officer shall post one copy of the notice in a conspicuous place on the property in question and shall deliver one copy of the notice to the owner or responsible party in possession or control of the property upon which the nuisance condition exists either in person or by certified mail, with a return receipt requested.

C. The failure of the owner or responsible party to actually receive the notice shall not affect in any manner the validity of any proceedings pursuant to this chapter.

D. In the event the responsible party files a timely request for an abatement hearing, the city clerk shall schedule the hearing. The hearing shall be conducted within forty-five days of receipt of the request unless otherwise agreed to in writing by the parties. The city clerk shall send written notice of the location, time and date of the hearing at least ten days in advance of the hearing date.

E. In the event the responsible party fails to appeal the notice, the nuisance conditions shall be deemed confirmed. Such failure shall also constitute a failure to exhaust available administrative remedies.

Section 8.08.060 Manner of conducting abatement hearing.

In the event a hearing is timely requested pursuant to section 8.08.050, the hearing shall be conducted pursuant to the following procedures:

A. At the time and place designated in the notice of hearing, the hearing officer shall hear and consider all relevant evidence, including but not limited to, applicable staff reports, oral evidence, physical evidence and documentary evidence regarding the alleged nuisance, and proposed method of abatement. The hearing may be continued from time to time.

B. Failure of the owner or responsible party to appear at the hearing shall be deemed a waiver of the right to a hearing and an admission by the owner or responsible party of the existence of the nuisance condition charged. In the event of such failure to appear, the hearing officer may order that the nuisance condition be abated by the enforcement officer. Such failure to appear shall also constitute a failure to exhaust available administrative remedies.

C. The city shall bear the burden of proof to demonstrate, by a preponderance of the evidence, that a nuisance exists and that the proposed mechanism for abatement is appropriate. The city need not demonstrate that the proposed mechanism for abatement is either the most appropriate or least expensive.

D. The hearing shall not be conducted according to the formal rules of evidence. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state. However, irrelevant or unduly repetitious evidence may be excluded.

E. Prior to conclusion of the hearing, if the owner or responsible party is present, the hearing officer may request the owner or responsible party to sign a consent to enter and perform work. The permission given shall be used only if the nuisance condition is determined to exist and is not abated by the schedule of correction specified in the hearing officer's decision.

F. If the owner or responsible party does not provide written consent, entry onto the property may be made by obtaining verbal permission from the owner or a responsible party, or by means of an inspection warrant, or by any other lawful manner.

G. The City Manager shall designate the hearing officer(s) for nuisance hearings. Hearing officers may be employees of the City, including the City Manager, or any other person qualified to hear such matters.

Section 8.08.070 Issuance of decision, findings and order.

A. Within ten days after the conclusion of the hearing, the hearing officer shall issue a written decision. The decision shall set forth the factual findings made by the hearing officer, a conclusion as to whether a nuisance condition exists, the manner of abatement, including an order that such nuisance (if one is found to exist) be abated by the city and a schedule of correction or the date by which the abatement shall be completed.

B. If the hearing officer determines that a nuisance exists which has not been corrected within the time period specified in the notice to abate nuisance conditions, the hearing officer shall so find in the decision, and may include in the decision any or all of the following:

1. An order to correct, including a schedule of correction where appropriate;
2. An order to pay abatement costs, including administrative costs incurred to date, as provided in this chapter.

C. Failure to issue a decision in ten days shall not affect the validity of such decision.

D. The decision shall be mailed by certified mail with a return receipt requested to the owner and shall be mailed to the enforcement officer. A copy of a summary of the decision and any order it contains shall also be posted on the property by the enforcement officer in a conspicuous location.

Section 8.08.080 Abatement by enforcement officer if nuisance is not abated.

Upon receipt of the hearing officer's decision if: (i) no schedule of correction has been issued, or (ii) upon the failure of the property owner to comply with such schedule if a schedule was included, if the nuisance condition has not been abated the enforcement officer shall forthwith abate, or cause to be abated, the nuisance condition upon the premises. The enforcement officer is authorized to enter upon private property for this purpose, consistent with the provisions of the U.S. Constitution.

The cost of abatement shall become a personal obligation of the property owner and responsible party and may be collected in any legal manner, expressly including as lien or special assessment pursuant to the procedures set forth in this Chapter.

Section 8.08.090 Abatement by owner/responsible party.

A. Any owner or responsible party may, at his/her/its own expense and prior to the scheduled abatement hearing, abate a declared nuisance condition in accordance with the provisions of the notice sent by the enforcement officer; provided that all necessary permits are first obtained. If the enforcement officer determines that the nuisance condition has been abated prior to the hearing, the hearing proceedings shall be terminated. If any abatement referenced in this section takes place after the specified compliance date, but prior to date set for hearing, termination of the hearing shall only take place upon the owner or responsible party's payment of outstanding penalties, administrative and/or abatement costs.

B. Any owner or responsible party may also request the city to abate a declared nuisance condition on his/her/its property. However, the owner or responsible party making the request shall be responsible for the payment of all penalties, abatement costs and/or administrative costs incurred by the city. The request for the city to perform the abatement shall be in writing and include a written consent to enter and perform work. Any such request shall be deemed an agreement to pay for the costs of such abatement, including but not limited to any penalties, administrative costs, and an agreement that such costs may be collected as a lien upon the property. The abatement hearing proceedings shall thereafter be terminated.

Section ~~8.08.160~~ 8.08.100 Abatement--Record of cost.

In the event the city administrator or the city engineer abates the nuisance, the enforcement officer shall keep an account of the cost (including incidental expenses) of abating such nuisance on each separate lot, or parcel of land where the work is done and shall ~~render~~ create an itemized report in writing ~~to the city council~~ showing the cost of abatement and rehabilitating, demolishing or repairing of the premises, buildings or structures, including any salvage value relating thereto; ~~provided, that before the report is submitted to the city council, a copy of the same shall be posted for at least five days upon such premises, together with a notice of the time when the report shall be heard by the city council for confirmation. A copy of the report and notice shall be served upon the owners of the property, in accordance with the provisions of Section 8.08.070, at least five days prior to submitting the same to the city council. Proof of said posting and service shall be made by affidavit filed with the city clerk.~~ The term "incidental expenses" shall include, but not be limited to, the actual expenses and costs of the city in the

preparation of notices, specifications and contracts, and in inspecting the work, and the costs of printing and mailing required under this chapter. Costs shall be recovered through a lien, special assessment or other procedures as permitted by law. Liens and special assessments may only be imposed if the property owner received the notice to abate.

Section 8.08.110 Liability for administrative abatement costs.

A. In addition to liability for the costs of abatement itself pursuant to Section 8.08.100 and this section of this chapter, the owner and/or responsible party shall also be liable for any expenses and administrative abatement costs incurred by the city, county or any related agency incurred after the initial inspection and identification of the nuisance. Administrative costs shall be included in the records and reports in the same manner as abatement costs under Section 8.08.100

B. The administrative costs may include any and all costs incurred by the city in connection with the matter before the hearing officer, including but not limited to, costs of investigation, city staffing costs incurred in preparation for the hearing and for the hearing itself, including but not limited to the fees and costs of the city's consultants, and costs for all re-inspections necessary to enforce the notice to abate nuisance conditions.

C. In the event that the city is entitled to recover its attorneys' fees and costs, such fees and costs shall be collected at the same time and pursuant to the same procedures as administrative costs pursuant to this section.

Section 8.08.120 Lien procedure.

In the event the City decides to collect abatement costs as a lien, it shall impose such lien pursuant to this section:

A. Upon receipt of the itemized report referenced in Section 8.08.100, the city clerk, or his or her designee, shall serve notice of the lien in the same manner as summons in a civil action in accordance with Code of Civil Procedure section 415.10 et seq. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation in Contra Costa County. The period of notice commences upon the first day of publication and terminates at the end of the tenth day, including therein the first day. Publication shall be made on each day on which the newspaper is published during the ten day period.

B. The notice shall inform the owner of the pending lien and inform the property owner of the public hearing where the city council will consider imposing the itemized report as a lien against the property. The hearing shall be conducted no less than ten days from service of the notice.

C. At the hearing and after considering the relevant evidence, the city council may adopt a resolution confirming the itemized report and directing the city clerk to record a lien against the property in the Contra Costa County recorder's office and, from the date of recording, shall have the force, effect and priority of a judgment lien.

D. The lien shall identify:

1. The amount of the lien;
2. The city as the agency on whose behalf the lien is imposed;
3. The date of the abatement order or notice;
4. The street address, legal description and assessor's parcel number of the parcel on which the lien is imposed; and
5. The name and address of the recorded owner of the parcel.

E. In the event that the lien is discharged, released or satisfied, through either payment or foreclosure, notice of the discharge containing the information specified in subsection D shall be recorded by the city clerk.

F. A lien may be foreclosed by an action brought by the city for a money judgment.

G. The city may recover from the property owner any costs incurred in the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

Section 8.08.130 Special assessment procedure.

In the event the City decides to collect abatement costs as a special assessment, it shall impose such special assessment pursuant to this section:

A. The property owner shall be invoiced for the amount stated in the itemized report referenced in Section 8.08.100 which shall be due within thirty days. The invoice shall be sent certified mail to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. If payment is not received, the itemized report shall be submitted in writing to the city clerk no sooner than fifteen days of the invoice due date. Any such report may include the abatement costs, fees and penalties for any number of properties and abatements, whether or not such properties are contiguous.

B. If the invoice is not timely paid, the city clerk shall provide written notice to the property owner by certified mail, if the property owner's identity can be determined from the county assessor's or county recorder's records. The notice shall inform the owner of the pending special assessment, including the information set forth in subsection C, and the date, time and location of the public hearing where the city council will consider imposing the itemized report as a special assessment against the property. The hearing shall be conducted no less than ten days from service of the notice.

C. At the hearing and after considering the relevant evidence, the city council may adopt a resolution confirming the itemized report and assessing the report as a special assessment against the property. The city clerk shall then provide all documentation necessary to the county to enter such assessment. After entry, the assessment may be collected at the same time and in the same

manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. The property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

D. Subject to the requirements applicable to the sale of property pursuant to Section 3691 of the Revenue and Taxation Code, the city may conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent.

E. Notices or instruments relating to the special assessment shall be entitled to recordation.

Section 8.16.140 Recording notices.

~~If~~ The enforcement officer ~~determines there is a violation of this code~~ may record and file any notices related to nuisances, ~~he or she may file nuisance abatement proceedings~~ in the office of the county recorder, ~~a Notice of Pending Action~~ as permitted pursuant to Government Code Section 38773.5.

Section 8.16.150 Order for treble costs of abatement.

Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated in accordance with the provisions of this chapter, except for conditions abated pursuant to section 17980 of the Health & Safety Code, relating to abandoned buildings, the court may order the owner to pay treble the costs of the abatement, as authorized by Government Code section 38773.7. Costs of abatement shall include, without limitation by reason of enumeration, all administrative costs of the city.

Section ~~8.08.180~~ 8.08.160 Abatement--Civil or criminal proceedings when.

Nothing in this chapter shall be deemed to prevent the city council from ordering the city attorney to commence a civil or criminal proceeding to abate a public nuisance under applicable Civil or Penal Code provisions as an alternative to the proceedings set forth in this chapter.

Section ~~8.08.190~~ 8.08.170 Violation of abatement order--Penalty.

Any person violating any abatement order issued pursuant to the provisions of this chapter is guilty of a misdemeanor ~~and upon conviction shall be punishable by a fine of not more than five hundred dollars, by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment, or infraction as provided for in Section 1.02.010..~~

EXHIBIT C

Chapter 17.72

ENFORCEMENT AND PENALTY

Sections:

17.72.010 Nuisance ~~declared--Abatement--Remedies~~declared-- Remedies cumulative.
17.72.020 Violation--Penalty.

17.72.010 Nuisance ~~declared--Abatement--Remedies~~declared-- Remedies cumulative.

A. No land in the incorporated area of the city shall be used for any purpose not permitted under this title nor shall any building or structure be erected, constructed, altered, moved or maintained contrary to this title. Any use of land, building, or structure contrary to this title is unlawful and a public nuisance. ~~On order of the City Council, the City Attorney shall commence an action for the abatement and removal of any such nuisance and for an injunction preventing the further unlawful use of any land, building, or structure violating this title. In any such action, the City shall be entitled to recover all attorneys' fees and legal costs it incurs in the prosecution of said action.~~

B. The remedies provided for in this chapter shall be cumulative and not exclusive.

17.72.020 Violation--Penalty.

Any person violating this title is guilty of a misdemeanor and on conviction shall be punishable by a fine of not more than ~~three hundred one thousand~~ dollars or by imprisonment in the county jail for not more than ~~threesix~~ months, or by both.

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Agenda Date: 10/15/13

Agenda Item: 9(b)

Approved:

Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CHARLIE MULLEN, COMMUNITY DEVELOPMENT DIRECTOR *CM*
MILAN J. SIKELA, JR., ASSISTANT PLANNER *MS*

DATE: OCTOBER 15, 2013

SUBJECT: SECOND READING AND ADOPTION OF ORDINANCE NO. 450
AMENDING PORTIONS OF TITLE 17 OF THE CLAYTON MUNICIPAL
CODE, ESTABLISHING A DEFINITION AND REGULATIONS FOR
COTTAGE FOOD OPERATIONS FOR HOME-BASED BUSINESSES IN
CLAYTON (ZOA-03-13).

RECOMMENDATION

Staff recommends that the City Council receive any public comment; have the City Clerk read the Ordinance by title and number only and waive further reading; following the City Clerks reading the City Council may adopt Ordinance No. 450 (Attachment 1).

BACKGROUND

At its October 1, 2013, City Council meeting the attached Ordinance was introduced (see Attachment 2). No members of the public spoke on the proposed ordinance. The City Council then approved the introduction and first reading (by title only) of the attached Ordinance amending portions of Title 17 of the Clayton Municipal Code, establishing a definition and regulations for cottage food operations for home-based businesses, as recommended by staff and the Planning Commission.

DISCUSSION

The purpose of the proposed Ordinance to amend Title 17 of the Clayton Municipal Code is to implement the Health and Safety Code, as prescribed by AB 1616, while still allowing Planning Commission review of cottage food operation proposals, thus maximizing our discretionary local oversight.

Attachments:

1. Ordinance No. 450 – Establishing Regulations Cottage Food Operations.
2. October 1, 2013, City Council Staff Report (without attachments).

ORDINANCE NO. 450

AN ORDINANCE AMENDING PORTIONS OF TITLE 17 OF THE CLAYTON MUNICIPAL CODE ESTABLISHING A DEFINITION AND REGULATIONS FOR HOME-BASED COTTAGE FOOD OPERATIONS (ZOA-03-13)

THE CITY COUNCIL City of Clayton, California

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

WHEREAS, California State Assembly Bill 1616 became effective on January 1, 2013; and

WHEREAS, Assembly Bill 1616 amends the California Health and Safety Code to allow for home-based cottage food operations; and

WHEREAS, Assembly Bill 1616 and the California Health and Safety Code require that cities not prohibit home-based cottage food operations; and

WHEREAS, currently no provisions exist in the Clayton Municipal Code that address home-based cottage food operations; and

WHEREAS, the home occupation permit process listed in Clayton Municipal Code Title 17 is the process administered by the City to review and approve home-based businesses; and

WHEREAS, Title 17 of the Clayton Municipal Code does not have a definition or regulations for home-based cottage food operations; and

WHEREAS, pursuant to Assembly Bill 1616 and the California Health and Safety Code, amendments to Title 17 of the Clayton Municipal Code are proposed in order to provide a definition and regulations for home-based cottage food operations; and

WHEREAS, the Clayton Planning Commission held a duly-noticed public hearing on August 27, 2013, at which they continued the item to September 10, 2013, and then adopted Resolution No. 05-13 recommending City Council approval of the proposed Ordinance to amend Title 17 of the Clayton Municipal Code, establishing regulations for home-based cottage food operations; and

WHEREAS, the Planning Commission determined the proposed amendments to the Clayton Municipal Code are in general conformance with the Clayton General Plan; and

WHEREAS, the Clayton City Council, at regular public meetings on October 1, 2013 and October 15, 2013, held duly-noticed public hearings to review and consider an Ordinance amending Title 17 of the Clayton Municipal Code, establishing a definition and regulations for home-based cottage food operations; and

WHEREAS, the City Council has determined that, pursuant to California Environmental Quality Act (CEQA) Guideline 15061(b)(3), it can be seen with certainty that there is no possibility that these amendments to Title 17 of the Clayton Municipal Code may have a significant effect on the environment and, therefore, is not subject to CEQA; and

WHEREAS, proper notice of this public hearing was given in all respects as required by law; and

WHEREAS, the Clayton City Council has reviewed all written evidence and oral testimony presented to date on this local matter.

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

Section 1. The above recitals are true and correct and are hereby incorporated into this Ordinance.

Section 2. Section 17.04.070 of the Clayton Municipal Code, entitled “Building Height” is hereby renumbered as Section 17.04.062.

Section 3. Section 17.04.075 of the Clayton Municipal Code, entitled “Building – Main or Principal” is hereby renumbered as Section 17.04.064.

Section 4. Section 17.04.070 of the Clayton Municipal Code is hereby added to read in full as follows:

“17.04.070 Cottage Food Operation. “Cottage Food Operation” means an enterprise that is operated by a cottage food operator and may have a maximum of one (1) full-time equivalent cottage food employee, not including a family member or household member of the cottage food operator, within the registered or permitted area of a private home where the cottage food operator resides and where cottage food products are prepared or packaged for direct or indirect sale to consumers, as defined in California Health and Safety Code section 113758, and is subject to all applicable regulations, standards, definitions, and requirements of the California Health and Safety Code. No more than one (1) employee may work at the cottage food operation at any one time.”

Section 5. Section 17.71.030.B.5 of the Clayton Municipal Code is hereby added to read in full as follows:

- “5. Any home occupation permit request for a cottage food operation shall also comply with the following standards:
- a. A maximum of one (1) full-time equivalent cottage food employee, not including a family member or household member, is allowed in the conduct of the cottage food operation. No more than one (1) employee may work at the cottage food operation at any one time.
 - b. Approval by the Contra Costa County Environmental Health Department of the self-certification checklist for the cottage food operation and its approval of the cottage food operation itself are required as part of the application materials.
 - c. The cottage food operation shall comply with all applicable regulations, standards, definitions, and requirements of the California Health and Safety Code.
 - d. The cottage food operation shall not be subject to 17.71.020.B.4 and 17.71.020.B.5.”

Section 6. 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 7. Conflicting Ordinances Repealed. Any ordinance or part thereof, or regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this Ordinance.

Section 8. 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 of the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause Sections 2-5 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 October 1, 2013.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular meeting thereof held on October 15, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Julie K. Pierce, Mayor

ATTEST

Laci J. Jackson, 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 introduced at a regular meeting of the City Council of the City of Clayton held on October 1, 2013, and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on October 15, 2013.

Laci J. Jackson, City Clerk



Agenda Date: 10-1-13

Agenda Item: 8a

Approved:

Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CHARLIE MULLEN, COMMUNITY DEVELOPMENT DIRECTOR 
MILAN J. SIKELA, JR., ASSISTANT PLANNER 

DATE: OCTOBER 1, 2013

SUBJECT: PUBLIC HEARING TO CONSIDER AN ORDINANCE AMENDING PORTIONS OF TITLE 17 OF THE CLAYTON MUNICIPAL CODE, ESTABLISHING A DEFINITION AND REGULATIONS FOR COTTAGE FOOD OPERATIONS FOR HOME-BASED BUSINESSES IN CLAYTON (ZOA-03-13).

RECOMMENDATION

Staff recommends the City Council conduct a public hearing, receive and consider the staff report and any public comment; have the City Clerk read the Ordinance (please see Attachment 1) by title and number only and waive further reading; and, following the City Clerk's reading, the City Council approve the introduction and first reading of the Ordinance.

BACKGROUND

On January 1, 2013, Assembly Bill (AB) 1616 became effective. This legislation allows individuals to prepare and/or package certain foods in private residential kitchens. AB 1616 addresses flexibility in allowing individuals the ability to access healthier food choices (especially individuals that are subject to obesity and obesity-related diseases) as well as promoting increased economic opportunities through entrepreneur development and microenterprises. Some key components of AB 1616 include the following:

- Use of a residence for purposes of a cottage food operation shall not constitute a change of occupancy for the State Housing Law, or for purposes of local building and fire codes.
- A cottage food operation may have a maximum of one full-time cottage food employee not including a family member or household member of the cottage food operator.

- A cottage food operation shall not be open for business unless it is registered with the local enforcement agency and has submitted a completed, self-certification checklist approved by the local enforcement agency. The self-certification checklist shall verify that it conforms with the requirements of AB 1616, including the following requirements:
 - No cottage food preparation, packaging, or handling may occur in the home kitchen with any other domestic activities, such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment.
 - No infants, small children, or pets may be in the home kitchen during the preparation, packaging, or handling of any cottage food products.
 - Kitchen equipment and utensils used to produce cottage food products shall be clean and maintained in a good state of repair.
 - All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any cottage food products shall be washed, rinsed, and sanitized before each use.
 - All food preparation and food and equipment storage areas shall be maintained free of rodents and insects.
 - Smoking shall be prohibited in the portion of a private home used for the preparation, packaging, storage, or handling of cottage food products and related ingredients or equipment, or both, while cottage food products are being prepared, packaged, stored, or handled.
- A cottage food product shall not be a potentially hazardous food. The State Public Health Officer may add or delete food products to or from the following list. The list of nonpotentially hazardous foods shall include, but not be limited to, all of the following:
 - Baked goods without cream, custard, or meat fillings, such as breads, biscuits, churros, cookies, pastries, and tortillas.
 - Candy, such as brittle and toffee.
 - Chocolate-covered nonperishable foods, such as nuts and dried fruit.
 - Dried fruit.
 - Dried pasta.
 - Dry baking mixes.
 - Fruit pies, fruit empanadas, and fruit tamales.
 - Granola, cereals, and trail mixes.
 - Herb blends and dried mole paste.
 - Honey and sweet sorghum syrup.
 - Jams, jellies, preserves, and fruit butter that comply with the standard described in Part 150 of Title 21 of the Code of Federal Regulations.
 - Nut mixes and nut butters.
 - Popcorn.
 - Vinegar and mustard.
 - Roasted coffee and dried tea.
 - Waffle cones and pizelles.

Furthermore, AB 1616 adds wording to the California Health and Safety Code that states a city "shall not prohibit a cottage food operation" and has provided the following three options for city approval of such operations:

- Classify a cottage food operation as a permitted use of the residential property for zoning purposes; or
- Grant a nondiscretionary permit to use a residence for any food operation that complies with local ordinances; or
- Require a cottage food operation to apply for a permit to use a residence for its operation.

Planning Commission Action

On August 27, 2013 and September 10, 2013, the Clayton Planning Commission held public hearings to consider the Ordinance. Upon review of the item at their meetings of August 27th and September 10th, the Planning Commission determined that requiring a cottage food operation to apply for a permit to use a residence for its operation would be the appropriate method of reviewing and approving this type of use in a residence since this would provide the highest level of review by the City and the public. The Planning Commission concluded that placing the threshold for review and approval of cottage food operations at the Planning Commission level would afford the City the highest level of scrutiny for such proposals and that the City's home occupation permit process (which allows for home-based businesses) would be the vehicle to be used for review of cottage food operations.

DISCUSSION

In order to implement the State-mandated AB 1616 statutes, the Planning Commission and staff have recommended City Council approval of an Ordinance which would provide a definition for cottage food operations as well as regulations addressing home occupation permit requests for cottage food operations. The staff reports and minutes from the Planning Commission meetings of August 27, 2013 and September 10, 2013 are attached in order to provide more detail on the proposed Ordinance (please see **Attachments 3 – 6**).

These proposed amendments would show City compliance with the Health and Safety Code, as prescribed by AB 1616, while still allowing Planning Commission review of cottage food operation proposals.

CEQA

Pursuant to California Environmental Quality Act (CEQA) Guideline 15061(b)(3) it can be seen with certainty that there is no possibility that this zoning amendment to the Clayton Zoning Ordinance/Municipal Code may have a significant effect on the environment, and therefore it is not subject to CEQA.

FISCAL IMPACT

Negligible. Some staff time as well as printing costs have and will be associated with this Ordinance.

Attachments:

1. Ordinance No. 450 – Cottage Food Operations
2. Planning Commission Resolution No. 05-13 (without attachment)
3. September 10, 2013 Planning Commission Minutes (excerpt)
4. September 10, 2013 Planning Commission Staff Report (without attachments)
5. August 27, 2013 Planning Commission Minutes (excerpt)
6. August 27, 2013 Planning Commission Staff Report (without attachments)