MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL

TUESDAY, December 18, 2018

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:00 p.m. by Mayor Catalano in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Catalano, Vice Mayor Pierce, Councilmembers Diaz (arrived at 7:13 p.m.), Wan and Wolfe. Councilmembers absent: None. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Community Development Director Mindy Gentry, Finance Manager Kevin Mizuno, Maintenance Supervisor Jim Warburton, and City Clerk Janet Calderon.

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

3. **CONSENT CALENDAR**

Mayor Catalano pulled Item 3(e) as she received a speaker card regarding this item. Councilmember Wan requested Item 3(i) be pulled from the Consent Calendar for separate discussion.

It was moved by Vice Mayor Pierce, seconded by Councilmember Wolfe, to approve the Consent Calendar Items 3(a) through 3(d), and 3(f) through 3(h). (Passed; 4-0 vote).

(a) Information Only – No Action Requested.
1. Contra Costa County Library's announcement of its holiday closures for operation of the Clayton Community Library in 2019.

2. Written notification by Transwestern Property Company West, Inc., of its termination of the Exclusive Sales Listing Agreement with the City concerning its commercial list and market of site-specific City-owned real properties in the Clayton Town Center.

3. Press Release – City Council accepting citizen applications for one (1) vacant Planning Commissioner term of office expiring June 30, 2020.

(b) Approved the minutes of the City Council's regular meeting of December 4, 2018.

(c) Approved the Financial Demands and Obligations of the City.

(d) City Council approved cancellation of its regularly-scheduled Council meeting of January 2, 2019.

(f) Adopted Resolution No. 45-2018 approving the Notice of Completion of the City Hall HVAC Replacement Project (CIP No. 10444) performed by Servi-Tech Controls, Inc., and authorize the City Clerk to record the Project's Notice of Completion.

(g) Adopted Resolution No. 46-2018 approving the Notice of Completion of the Collector Street [Keller Ridge] Repave Project (CIP No. 10425) performed by VSS International, Inc., and authorize the City Clerk to record the Project's Notice of Completion.

(h) Adopted Resolution No. 47-2018 approving the Notice of Completion of the 2018 Neighborhood Street Repave Project (CIP No. 10436) performed by Sierra Nevada Construction, and authorize the City Clerk to record the Project's Notice of Completion.

Consent Calendar Items Pulled

(e) Rescind a December 4, 2018 consent calendar action (Item 3(d)) and award actual low-bid contract to Waraner Bros. Tree Service in the amount of $176,567 for the removal of seventeen (17) large Eucalyptus trees in selected open space and creek side areas of the city.

Nancy Topp inquired if notification was made to the occupants residing near the areas or the residents in large of Clayton regarding this intent to remove. If so, where and when? Ms. Topp inquired if Save Mt. Diablo were notified because they own the property that is immediately between El Portal Drive and Regency Drive below Seminar Hill and may have a comment regarding the trees. Ms. Topp noted she spoke with Mr. Napper before the meeting who explained the findings of the arborists but she wanted to know if all parties were in agreement on the condition of these trees. It does not seem sufficient a reason removing the trees because they are not native and are messy; she wanted to know where the documentation indicating the trees are "not sound" is located.

City Manager Napper noted this objective goes back a number of years but mostly in recent months of people complaining about the Eucalyptus trees in these specific open space areas. He noted "messy" is a subjective word as they are prone to shedding limbs, and some bark as well. Primarily, the ones that have been selected were determined by complaints received of their location. As indicated they are non-native to Clayton as the City did not plant them however the City has been trying to maintain them. According to the arborist, further trimming will not enhance the safety anymore and each needs to be removed. Residents near the locations are primarily concerned about the potential fire hazard, especially given the recent Northern California fires. The City did not notify the community or Save Mt. Diablo regarding this matter as the trees are located on City property. However, should the contract be awarded to the actual lowest bidder, neighbors will be notified as there will be some disruption due to the noise using chainsaws.

Councilmember Wan asked for clarification of the safety concern regarding these Eucalyptus trees, excluding the fire issue, perhaps from the trees falling?

Mr. Napper responded the City had several Eucalyptus trees that have fallen into the creek on Cardinet Trail in recent years. There originally were eighteen (18) Eucalyptus trees slated for removal but one was removed this last year as that particular tree actually fell over and it was a significant chore to get to its creek and trail location. Another concern regarding Eucalyptus trees is they randomly shed their limbs. A fact many people may not know is "The Grove" park downtown is actually named after the Eucalyptus trees that were once there but were removed as they were a public safety issue. Mr. Napper noted he did speak with Ms. Topp ahead of time noting there is a public sidewalk on Regency Drive adjacent to several Eucalyptus trees which also has residents on Petar Court backing up to that creek; many have shared their fire concerns and expressed removal of the trees. At least one nearby resident contacts the City each year requesting the open space Eucalyptus trees next to his home be trimmed because of the safety, debris and fire concern.

Councilmember Wan inquired if there was an assessment of similar trees in the area located in City-owned land?

Mr. Napper advised these trees were primarily identified by complaints arising from residents. Maintenance staff went out with certified arborists to determine if the trees could be saved or if they needed trimming. The arborists confirmed the trees that were identified should be removed.

Ann Stanaway, 1553 Haviland Place, expressed her continued concerns for public safety and the City not clearing the fire lanes. She is okay with the trees being removed due to a public safety issue; however she is still concerned with the continued blocking of fire lanes, opening the City to lawsuits when first responders are not able to access and do their work at any fire site. She does not understand why one public safety concern trumps her concern over the safety in the fire lanes.

Councilmember Wolfe inquired on the location of the blocked Fire Lanes?

Ms. Stanaway advised the blocked fire lanes are located in the Westwood Subdivision 6001; all of the streets are designated fire lanes because they are too skinny although there are signs indicating no parking anytime and there is also red zones. The people on Haviland Court park in the fire lane and encroach in the fire lanes all the time. There are several chiefs that have gone ahead and proposed fixes with one having the curb painted red to deter people from parking at the red curb; however people are still parking at the red curb.

Vice Mayor Pierce advised historically, back in the late 80s before the City purchased what is now known as The Grove park, the trees were cleared in that area as one of the trees that overhung the parking lot at Village Market shed a very large limb onto someone's brand new Cadillac they had just picked up that day, crushing the car. That was enough incentive to realize those trees were severely damaged after examination of the inside of the fallen limb.

Councilmember Wolfe added when he resided on Lydia Lane a tree had fallen on his fence; he was glad he was not in his backyard when that occurred. The Eucalyptus trees to be removed are located along the trails which are frequently used and confirmed that they will not be replaced.

City Manager Napper confirmed the City did not plant the Eucalyptus trees and the taxpayers are incurring an expense to maintain them; they are really not trees the City would plant along these ways. They are also in some open space areas backing up to properties whose owners are concerned in general about vegetation; once you plant a tree you have to continue to trim a tree whether you are a private property owner or you are a public property owner.

Mayor Catalano asked for clarification on the trees located on Regency Drive; there are other trees located there. Mr. Napper responded yes, that is true.

Councilmember Wan inquired on whether the City plans to assess the issue of similarly situated trees. Mr. Napper advised first there are citizens' eyes and ears that notify the City of such concerns. Secondly, the Maintenance Department workers visually inspect trees in terms of general condition as they walk the trails and perform clearance work. Is there an overall plan for inspection of certain trees during a 5 year period or 7 year period? No. Staff would prefer not to incur this expense of $176,000 yet there is not an articulated plan; a visual inspection of all trees every two or three years.

(Councilmember Diaz arrived at 7:13 p.m.)

It was moved by Vice Mayor Pierce, seconded by Councilmember Wolfe, to approve Consent Calendar Item 3(e). (Passed; 5-0 vote).

__Consent Calendar Item Pulled__

3(i) Adopted Resolution No. 48-2018 approving the purchase and outfitting of a used 2015 Ford F250 truck in the total net amount of $39,787.43, declaring a 2000 Ford F350 as property surplus to the City's needs and authorizing its disposal by the City Manager for trade-in value, and allocating $39,787.43 from the FY 2018-19 Capital Equipment Replacement Fund (CERF) to complete the acquisition.

Councilmember Wan inquired on the overall status of the fleet as it seems reasonable that every once in a while vehicles need to be replaced and wanted to know the catalyst in selecting this vehicle to be replaced.

City Manager Napper advised this particular truck is for the Maintenance Department which has a total of nine (9) vehicles. Of those nine vehicles, seven (7) of them are 2006 year models or older; the newest inventory is a 2011 and a used 2015 just purchased. As noted in the staff report, there is a Capital Equipment Replacement Fund (CERF) whereby vehicles are amortized over an expected life or usefulness; all seven of those vehicles, including the 2000 model recommended for replacement. have been fully amortized. Now why is this request coming out of cycle? The reason is when the budget was put together in mid-spring our Maintenance Supervisor who was retiring did not look in terms on what was going to occur in the following fiscal year. The City's new Maintenance Supervisor is very energetic and starting to assume ownership of the fleet and the vehicles, maintaining them at greater standards. The dual cab F350 has broader wheel wells over the rear tires; because it is not driven enough and wider than the F250 when some of our maintenance workers drive it they are unable to access areas the F250 has been able without damaging its sides. When the new Maintenance Supervisor came onboard one his assigned tasks was to assess the fleet inventory to ensure we are not over fleeted. Since his review of the fleet inventory he has sectored off the city into two sections by creating two crews that are solely responsible for those areas. Part of the reason for the request is to transport personnel so they are able to remain in the field as opposed to shuttling workers back and forth. For instance: just this week we did not have advanced notice when the court assigned work alternative program individuals to our work site; they need to be shuttled out to a site and brought back accordingly. Ironically, the 2015 truck being proposed for purchase would be one of the newest vehicles in the Maintenance fleet.

Councilmember Wan inquired of the typical cycle which the vehicles are rotated out of inventory; is it as needed or a planned commissioned time? City Manager Napper responded after the vehicle is amortized, assessment is made to determine if the vehicle is still useful or needs replacement. In the Maintenance Department seven out of the nine vehicles are 2006 or older; the vehicles are utilized as long as possible. When it reaches a point where it is needs repairs that exceed the trade-in value, replacement is then scheduled if sufficient monies are available. In this instance, the 2000 truck is valued at approximately $6,000 by this dealer, offering more than other dealer at $3,000.

Councilmember Wan inquired if there is any other dually in the fleet? Maintenance Supervisor Warburton advised there is one other dually in the fleet with a utility body; he has no intention to purchase any other dually for City Maintenance purposes. Mr. Warburton prefers the F250 series as it has the same pulling power as a dually without the broader bed.

It was moved by Councilmember Wan, seconded by Vice Mayor Pierce, to approve Consent Calendar Item 3(i). (Passed; 5-0 vote).

4. RECOGNITIONS AND PRESENTATIONS – None.

5. REPORTS

(a) Planning Commission – Commissioner AJ Chippero indicated the Commission's agenda at its meeting of December 11, 2018 included approval of a Use Permit at St. John's Episcopal Church to allow a preschool to operate Monday through Friday for a maximum of 60 children ranging from 2 to 5 years of age. This item was conditionally approved unanimously, 4-0.

Commissioner Chippero also indicated the agenda included approval of a Development Plan and Vesting Tentative Map Time Extension for the Creekside Terrace Mixed Use Project through January 6, 2020. This item was approved unanimously, 4-0.

Councilmember Wan inquired on why continue to approve the Creekside Terrace Development Plan and Vesting Map? Community Development Director Gentry responded the *Clayton Municipal Code* allows only one-year extensions to occur of entitlements or approvals. For this project, the City is the underlying property owner and project sponsor; there is value in those entitlements for potential future negotiations with the development community. Potentially, one may be interested in purchasing the land with those approvals to build what was originally approved by the Council in July 2010.

Councilmember Wan inquired on how much the development is allowed to deviate from the entitlement that was granted before they lose value? Ms. Gentry advised it depends on the whether or not the deviations are determined to be significant or not. There is an underlying California Environmental Quality Act environmental review approval on that project; depending on what was contemplated as part of those approvals it depends on how much the potential proposed project deviates from the approval.

Councilmember Wan inquired who is responsible for making the assessment if it is significant or not? Ms. Gentry advised typically that responsibility is done by herself as the Community Development Director.

Councilmember Wan inquired if there are established guidelines for making the assessment or it is more of judgement call. Ms. Gentry advised it depends on what level changes are going to be proposed; typically, as staff tends to err on the side of conservatism and likely if there is something to be considered that is significant, the proposal would be presented to the appropriate hearing body for consideration.

Councilmember Wan is unsure of what the City gains in continuing these approvals; he inquired if there is a limit to how many times the extension could be approved? Ms. Gentry responded she would be under the privy of the Planning Commission on whether or not to continue those entitlements; however, the real property decision maker is the City Council. The City Council has the opportunity to not to pursue those entitlements as a real property decision and not a land-use decision. City Manager Napper added the permit has been extended by the Planning Commission action to January 6, 2020. Staff has been moving forward with past consensus doing so was direction from the City Council. If there is a question of continuing that direction, the City Council, who is the property owner of those three properties, would need to direct staff accordingly.

Councilmember Wan inquired if there were to be a developer to purchase and develop this land, they would typically incur the cost of demolishing the buildings. However, he understands the City is demolishing those buildings for various safety and attractive nuisance concerns.

City Manager Napper responded the City had hoped, during the time period for the land use entitlements ultimately obtained by the City through today, that a developer would be interested and by the granting of the property and entitlements the developer would indeed demolish the buildings, saving the taxpayers' money. However, since that objective has not yet occurred, the buildings were not intended to be for there for such a long period of time. They are presently uninhabitable and the City has incurred expenses of $7,700 to tie up and remove the utilities. Mr. Napper added he receives periodic complaints, primarily from parents of children who drop off and pick up at that location for the elementary school, if they do not arrive by the school's release time they often find their kids playing in the back or on the bungalows. While it is considered an attractive nuisance, by law this information means the City has been placed on actual notice. Secondly, we do not want kids hanging out behind buildings where the police are unable to see them from the street.

Mayor Catalano added just because a site plan is approved, it does not require a developer or property owner to develop the property; it preserves the options.

Councilmember Wan remarked by continuing the entitlements does it crowd out the potential interest of other land-use or alternative uses? He remains unsure of what the City gains from continuing the entitlements for as long as they have.

Mayor Catalano added there is always value in having a City-owned site that is entitled, which is worth much more than a site that is not entitled. She also noted this discussion has not been agendized for this evening. City Attorney Subramanian concurred; if it is desired to speak more about this item she suggested placing this item on a future agenda.

(b) Trails and Landscaping Committee – Meeting held on December 10, 2018.

(c) City Manager/Staff

City Manager Napper announced there is a vacancy on the Planning Commission; additional information can be found on the City's website and on the City's posting boards. If anyone is interested, one of the requirements is they must be a registered voter of Clayton. The application can also be found on the City's website or one may be requested by contacting City Hall. The application filing deadline is January 10th as interviews are anticipated to take place prior to the regular City Council meeting of January 15th.

He also noted City Hall closes the week between Christmas Eve Day and New Year's Day, which is a regular holiday, resulting in City Hall [3rd Floor] closed until January 2, 2019. Police field services and Maintenance crews will remain operational and available for emergencies.

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

Councilmember Diaz attended the Contra Costa County Mayors' Conference, met with the State Senator to discuss post-election matters, and met with Assemblyman Tim Grayson.

Councilmember Wolfe indicated "No Report".

Councilmember Wan noted he has been reading formation documents and has been conducting research on the Oakhurst Geological Hazard Abatement District.

Vice Mayor Pierce attended the Balfour Road Ribbon Cutting, the Bay Area Council Economic Institute meeting, several Metropolitan Transportation Commission meetings, the Transportation Partnership and Cooperation (TRANSPAC) Board meeting, and the Association of Bay Area Governments workshop "CASA Project" by the Committee to House the Bay Area.

Mayor Catalano attended the Contra Costa County Mayors' Conference, the Clayton Historical Society's 8th Annual Christmas Homes Tour, and the Trails and Landscape Committee's meeting.

(e) Other – None.

6. PUBLIC COMMENT ON NON - AGENDA ITEMS

Brian Buddell, inquired on the City's use of glyphosate based herbicides, also known as Round-Up or Ranger. The State of California has recognized these herbicides as a known carcinogen. Recently, a lawsuit was filed against the manufacturer of Round-Up in San Francisco resulting in an award of $289 million including punitive damages; reduced to $78 million by Judge Suzanne Ramos Bolanos. Mr. Buddell's concern is Clayton's use of a glyphosate-based herbicide as a weed killer; after discussion with the city manager it seems to be limited to median areas and not so much in contact with pets and people, which is a good step. Mr. Buddell believes the City is still potentially exposed to liability, by its own workers who at some point may file a workers compensation claim or a more serious claim based on exposure to this herbicide as it has been linked to the development to non-Hodgkin lymphoma. Although it is a very efficient weed killer and probably nothing out there that is as good, there are some alternatives. Mr. Buddell recommends and requests the City looks to adopt a resolution or ordinance which bans the use of glyphosate-based weed killers within Clayton and look for a suitable alternative, if nothing else than to shield itself from liability.

Ann Stanaway, 1553 Haviland Place, thanked Mr. Buddell adding the Westwood Park Landscape Maintenance Agreement with the HOA has its contractor applying Round-Up. It is in Westwood Park where children, residents and pets all sit around in Westwood Park and utilize the areas where "Round-Up" is applied routinely.

7. PUBLIC HEARINGS

(a) Public Hearing to consider the Introduction and First Reading of a proposed City-Initiated Ordinance No. 484 amending Clayton Municipal Code Section 17.92 (Inclusionary Housing Requirements) for the purpose of incorporating rental housing projects into this local housing requirement.

Community Development Director Gentry provided a brief background beginning with August 2016 when the City Council adopted an Ordinance to implement inclusionary housing requirements on new homeownership or for-sale housing only. The Ordinance specifically precluded rental units due to state law and the outcomes of two specific court cases *Palmer/Sixth Street Properties v. City of Los Angeles* and *California BIA v. City of San Jose*. The *Palmer* Case no longer required developers to construct affordable housing units; the court concluded the inclusionary housing ordinances conflicted with and were preempted by the vacancy decontrol provisions of the Costa-Hawkins Rental Housing Act, which allowed residential landlords to set the initial rents.

In the *California BIA v City of San Jose* case it resulted in the determination inclusionary housing ordinances do not constitute an unjust taking of property; the result of the court's decision allowed jurisdictions to allow to adopt inclusionary housing ordinances but only for home ownership or for-sale development projects due to the implications of the *Palmer* decision.

In September 2017, Governor Brown signed into law AB1505, known as the "Palmer Fix," which restores the authority to cities and counties to require the inclusion of affordable housing into new rental housing projects thereby superseding the court's decision in the *Palmer* case. AB1505 also requires alternative means of compliance such as in-lieu fees, land dedication, offsite construction or the acquisition or rehabilitation of existing units.

On April 17, 2018 the City Council directed staff to prepare an Ordinance to include rental housing projects into the City's inclusionary housing requirements as allowed for by AB1505 and essentially apply the same standards that were applied to home ownership projects, and housing types that are defined and counted by the State Department of Housing and Community Development (HCD).

Ms. Gentry advised state law requires local governments identify and plan for the existing and projected housing needs of all economic segments of the community in its Housing Element. State law also requires HCD to allocate the anticipated needs to regions throughout the state. For the Bay Area, HCD provides the regional need to the Association of Bay Area Governments (ABAG) which then allocates the Regional Housing Needs Assessment (RHNA) to the cities and counties within the ABAG region.

Clayton was allocated a total of 141 new housing units for this housing element cycle which is 8 years; the break down is 51 very-low income units, 25 low-income units, 31 moderate-income units and 34 above moderate-income units. Since the start of this Housing Element cycle the City has issued 2 permits for low-income units which were for two accessory dwelling units, and 8 permits issued for above moderate-income units which were the two housing developments located at Verna Way and the St. John's subdivision. Staff noted the income ratio of the required inclusionary housing units have yet to be determined by the City Council and has been identified in the Ordinance and staff has subsequently initiated a policy discussion for Council to establish the appropriate amount for both affordable housing in lieu fee as well as determine the appropriate affordability ratio of very low-income and moderate-income units to achieve compliance with the City's inclusionary housing requirements.

Given Clayton's RHNA status and the state's clear repetitive declarations of housing unit issues statewide concern coupled with the legislators' push for local governments to identify actions that will make sites available for affordable housing as well as assist the developments as such housing the City's state-certified Housing Element identified an implementation measure to require residential property projects of ten or more units to provide a minimum of 10% of the units to be affordable housing units. The adoption of the inclusionary housing ordinance implements the goals and policies of the Housing Element by codifying the requirements and providing details of the process and the standards for both the City and the developers to follow. Adoption of the inclusionary housing ordinance to incorporate residential rental units, as allowed for by AB 1505, will further the City's goals of accommodating its fair share housing allocation and help fulfill its Housing element policies.

A majority of the amendments in the proposed ordinance are mainly to incorporate rental housing units in addition to the previously established for-sale housing units as well as to specify the Ordinance applies to dwelling units defined and counted by HCD. Other proposed changes include providing more discretion to the City Council regarding the approval process as it pertains to the use of alternative in lieu of constructing the affordable housing units onsite; also, the very low-income category was also added as an option for rental housing units. This was specifically precluded in the inclusionary housing ordinance due to concerns of income requirements in order to maintain a home for home ownership purposes.

The impacts this Ordinance will have on projects currently in the development pipeline: currently there is one project that could be impacted, that is the Clayton Senior Housing Project which has been "deemed complete" by staff. However, the project does not have vested rights and therefore the proposed ordinance would be applicable to the project. Further, the 81-unit project is requesting a 35% Density Bonus under the state density bonus law which would produce 7 units dedicated to very low-income households. However, for this project case law would apply, clarifying jurisdictions are required to count the units granted under the density bonus law to be counted towards the inclusionary housing unit requirements meaning that the project will be meeting inclusionary housing requirements by default. The project is proposing 7 very-low income units and will be working with the requirements under the existing inclusionary housing ordinance, which would be 5.9 units currently proposed this evening. Therefore, it will not result in any additional impacts beyond what was already contemplated under Density Bonus law.

City Manager Napper asked Ms. Gentry to explain the meaning of the project being "deemed complete by staff." Ms. Gentry responded "deemed complete" is part of the Permit Streamlining Act which essential states that once an application has been submitted to a city, and the city staff determines there is adequate information to start to process that application. The verbiage does not mean the project has been approved or been before the hearing body of the city.

Ms. Gentry continued her presentation advising there is a staff recommendation however the City Council has options to choose to not take action on the proposed Ordinance thereby resulting in a partial implantation of its Housing Element. Staff believes the City has fulfilled its state requirements in the current ordinance because AB1505 allows but does not require jurisdictions to include rental housing in its inclusionary housing ordinance. However, by not including rental housing it could become the favored housing type over for-sale because it would not have the requirement of the set aside of below market rate units or the payment of an in lieu fee. In addition it does not preclude any future action by the state such as during the next state-mandated Housing Element cycle.

Councilmember Wan asked if we establish an in lieu fee does that payment satisfy the RHNA requirement? Ms. Gentry responded the in lieu fee payment will satisfy the inclusionary requirements but does not require the City to construct those units; only the actual construction of the units will satisfy the RHNA requirements.

Councilmember Wan asked if the Density Bonus covers the inclusionary requirement for the Clayton Senior Housing Project if it were at a different rate for example at 15% rather than 10%? Ms. Gentry responded it would probably be nine units, exceeding state density bonus law.

Councilmember Wan asked if the City is allowed to have a different inclusionary requirement for rental units versus the units for purchase. Ms. Gentry responded "yes," that is an option.

Councilmember Wan asked if the City does not include rental units in the inclusionary rule, can we favor development on units for purchase because that would help towards our RHNA requirement rather than renting units that would not.

Mayor Catalano added the City may get in trouble with the Housing Accountability Act pretty quickly if we started favoring one type of development over another.

City Attorney Subramanian advised prior to 11 and half months ago legally we were not allowed to require inclusionary housing units that were rental. Most of the cities that had inclusionary housing ordinances are updating them to include rental housing due to the Palmer Fix.

Councilmember Wan inquired if the Council does not pass the proposed ordinance, does it take away options they may have? City Attorney Subramanian responded if the City Council chooses not to apply Inclusionary Housing Requirements to rental housing, then it would not adopt the ordinance. If a rental project came before the Council and it complied with our zoning, general plan and other requirements, the Council could not prefer a single family home as opposed to the multifamily home. She considers the only issue before him is if you want to include rental units, the ordinance, or not.

Councilmember Wan asked at the 2014 meeting if it was determined the original ordinance would not result in adverse environmental impact, essentially was not CEQA applicable, does this proposed ordinance change that impact of that assessment at all or what was the basis for that? Ms. Gentry responded there was an initial Negative Declaration that was done to evaluate the possibility of environmental impacts of the City's Housing Element; there were no identifiable impacts, and substance of this particular ordinance was addressed during the adoption of that original environmental document back in 2014.

Vice Mayor Pierce requested clarification of Section 17.92.02 regarding "*any dwelling unit or residential development which is damaged or destroyed by fire or natural catastrophes so long as the use of the reconstructed building and number of dwelling units remain the same, and the cost of such rehabilitation constitutes no more than 50% of its reasonable market value at the time of destruction or damage.*" Assuming before the catastrophe the market value of a home is $1 million; rebuild costs cannot exceed 50% of the market value which would be $500,000.00? Ms. Gentry responded if the damage was greater than 50% of the market value, then it would apply.

Vice Mayor Pierce inquired on how the cost of the rehab of 50% was based? For example, if she had to rebuild her home from the ground up, the cost would exceed the 50% theoretically, which would mean the inclusionary zoning would apply to a single unit. Ms. Gentry responded this provision would only apply to units of ten or greater.

Vice Mayor Pierce then asked, for example, if Diablo Ridge burned down and had to be rebuilt and a developer came in instead of individuals doing it, it would probably cost more than the 50% of the fair market value to replace each home. Would that situation then apply to that neighborhood? Ms. Gentry commented if the rebuild were to be done by a single developer rather than by individual property owners, then the 50% rebuild rehabilitation cost would apply.

Vice Mayor Pierce does not know how it would apply to an existing development that did not already have affordable units. She thinks that's problematic. Before this item comes back, Vice Mayor Pierce asked for an answer to that question. Vice Mayor Pierce also requested the addition of occupancy permit requirements to 17.92.040. item 6. She also inquired on section 17.92.030; on item B, if there were consideration to include an in lieu fee for offsite to something more significant to encourage building of the units within the same project instead of farming them out somewhere else?

Ms. Gentry responded staff is currently working with a consultant to determine the cost of an in lieu fee. Staff is anticipating a presentation made by both staff and the consultant seeking direction from Council of a policy decision with regards of how much the in lieu fee should be.

Mayor Catalano inquired if there is a decision to have an offsite in lieu fee in terms of the construction or leasing those offsite units a lot of times? She has seen language the offsite units have to have their certificate of occupancy issued prior to the primary project. She also believes there is a current nexus study regarding the in lieu fee. Mayor Catalano asked Ms. Gentry if she had an idea of the timing of the study or when she will come back with that information. Ms. Gentry responded she believes that information will come back in early 2019.

Mayor Catalano opened the Public Hearing.

Brian Buddell, inquired as to "why" and "why now" on the presumption the community and the people of Clayton generally do not favor or want more low-income housing in the City. He also felt the proposed Ordinance would likely increase the likelihood of more low-income housing in Clayton. Mr. Buddell pointed out that Ms. Gentry advised the City is already in compliance with the Housing Element requirements for low income housing; the current Housing Element extends to 2023 and five years from now the state may experience a drastic change, it may decide what's done now is not enough. He also is concerned by the question raised by Vice Mayor Pierce regarding if a building is destroyed by a fire and has to be reconstructed and how is that going to apply. Without having that concern addressed, he thinks passing the Ordinance for that reason alone is a mistake. He urges the Council to vote "no" on this ordinance and seek further clarification.

With no other speakers, Mayor Catalano closed the Public Hearing.

Vice Mayor Pierce remarked currently the City does not have a surplus of housing. We are required to have 141 units completed by 2022 to stay in compliance of the Housing Element; currently there are ten (10) units completed at this point. If rental housing is included in the inclusionary zoning, some of these units will be at an affordable rate to live in Clayton. Vice Mayor Pierce thinks a higher inclusionary percentage makes some sense but is okay with staying at 10%. Vice Mayor Pierce would rather have a higher in lieu fee. She also thinks this is good public policy as developments are proposed within our community, they are doing their fair share of trying to provide housing for everyone.

Councilmember Wan confirmed to comply with RHNA we need to have 141 units completed by 2022; isn't the requirement they need to be provided for and the actual building of the units are not required?

Vice Mayor Pierce replied the City has to plan for inclusionary housing units by making zoning choices to allow for them to be built; then the City is further judged on how the units were constructed and occupied. We also need to make our RHNA number culminate rather than rolling it each time; for example, if there were 500 units in one site and 10 were completed, and there was a new assignment to be completed, whatever was leftover in your previous RHNA assignment is added to your new RHNA assignment.

Councilmember Wan wanted to clarify as a matter of law whether or not the statement that we need to complete 141 units by 2022 or we would be out of compliance. The City has to provide zoning for the units but is not responsible for the actual building of the units. Vice Mayor Pierce responded the City is not legally responsible for the construction of the units; morally, they should be constructed.

Councilmember Wan inquired if this only applies to the Silver Oaks and the downtown properties? Ms. Gentry advised this would apply to any future development project that is to come forward; there are other vacant and underutilized properties in Clayton that this would also apply to. There are vacant properties off south Mitchell Canyon Road and the Easley Ranch land is underutilized.

Councilmember Wan commented he looked at the Housing Element noting there is a small number that had greater than 10 units. Ms. Gentry responded the properties identified in the Housing Element aren't necessarily inclusive of all properties in the city that could be considered underutilized; that listing was just used to plan and demonstrate to HCD that we are meeting our RHNA allocation, and we have a surplus of land inventory.

Mayor Catalano confirmed the proposed ordinance is setting policy at a policy level of having inclusionary requirements; they apply to ownership units, should they also apply to rental units? That is the question before Council, not a specific project. It is setting those perimeters to 10 or more units - what is the code and requirement.

Councilmember Wolfe asked if the rental units are to be built or are these existing properties? Ms. Gentry confirmed this requirement would apply for new development, unless there is reconstruction that exceeds 50% of fair market value.

Mayor Catalano advised there is a whole Housing Element aspect to provide a certain amount of affordable housing to ownership and apply to rental units; this is also if we choose not to do anything, to not apply it to rental properties we are making a policy statement effectively where we favor rental projects by not applying them to rental units. If it is the Council's preference, then be sure we should not apply this to rental housing, but she does not think we as a Council should be directing whether residential projects in our town are rental or ownership. The law changed due to the "Palmer Fix;" without that change we were not allowed to impose inclusionary requirements on rental projects, and now we are allowed and a lot of cities are making the change. She thinks it is fairly common using a 10% inclusionary requirement but we are starting to see some state legislation referencing different thresholds Senator Wiener just proposed legislation SB 50, a little bit different in that it's going to apply some income thresholds which is yet to be seen on what it is. In terms of affordable housing in Contra Costa County, "low income" is a fairly high household income. For example: a single teacher in our elementary or middle school probably does not have an income of $104,000; we are not talking about Section 8 housing, we are talking about people who actually work, earn a living but the housing costs and cost of living in the Bay Area are so high. Mayor Catalano does not want to make a policy statement favoring rental housing and steering projects towards escaping inclusionary unit requirements by constructing them over for-purchase units.

Councilmember Wan commented he doesn't think it would favor rental housing. In the rule if there is a greater than 15% requirement, that could trigger HCD's review.

Vice Mayor Pierce added if we are not producing the number of units the City is zoned for and have a high inclusionary number, HCD can require a feasibility study and see if our number is impeding construction; and if it is, they can require you to change it at the expense of the City.

Ms. Gentry added if the City requires more than 15% of the total units to be affordable, at households of 80% of less than the area median income it could then trigger HCD's review of the City's inclusionary housing ordinance; but it only has the authority to do so if it meets the two triggers: if the City has failed to meet the 75% of its share of the RHNA for above moderate-income households over at least a 5 year period or the jurisdiction has failed to submit its progress report for at least two consecutive years with the last year not in compliance.

Councilmember Wan indicated he is opposed to how the proposed Ordinance is written and would like to eliminate the 10 unit line item that gives developers an option by right to do something. We are required to comply for a certain number of inclusionary units, in defining those units as owner occupied or for rent; he prefers owner-occupied units as it creates greater stability and investment in the community.

Mayor Catalano feels if the Council does not include rental housing, that void means the developer can come in and if required on ownership units only, they then are required to have one inclusionary unit per 10 units; however, if they are able to consider rental units without inclusionary affordable housing units, their profits would be higher. She does not want to steer public policy towards one type of project over another.

Councilmember Wan noted given the few places in Clayton for development that could become rental properties with over 10 units, he does not think that will be an issue in Clayton. Councilmember Wan would also like to staff to bring back an ordinance with a higher percentage of 15%, to see what that does.

Mayor Catalano clarified when putting a City-wide policy in place, the Code is set for all projects until an ordinance change is made.

Vice Mayor Pierce added there are several properties that are already zoned as Housing Opportunity Sites with a higher density, located at the corner of south Mitchell Canyon Road and Clayton Road with a potential of twenty units, Easley Ranch zoned for Single Family Low density, default would be to home ownership, and Silver Oak Estates zoned for single family detached medium density. Vice Mayor Pierce does not see the benefit of leaving rental units out of the overall picture.

Vice Mayor Pierce inquired the "by right by the developer for under 10 units," is that something required by law? Ms. Gentry advised the in lieu fee is not a requirement by law.

City Attorney Subramanian commented the suggestions provided this evening could be revised into the proposed Ordinance. If suggestions are significant, this item would require further review by the Planning Commission before coming back to the City Council for approval.

Councilmember Wolfe commented he would like to do what's best for the City and would like to do what is economically feasible; there needs to be some conclusion amongst ourselves with a viable number that works for us and are we going to get to the 141 unit requirement in time and what are the consequences if we do not.

Councilmember Wan added if there is a higher percentage for rental development property for those with lesser needs, they would be able to rent rather than purchase, so we are actually encouraging those folks to enter the City via a rental unit. Vice Mayor Pierce noted that option may discourage development. City Manager Napper added that statement is a post-construction consideration versus a pre-construction one. Councilmember Wan concurred with that analysis.

Mayor Catalano advised there were a few suggestions made to bring it back to the next meeting as a second reading to adopt, or amend the proposed ordinance.

It was moved by Vice Mayor Pierce, seconded by Councilmember Wolfe, to have the City Clerk read Ordinance No 484 by title and number only and waive further reading. (Passed; 5-0 vote).

The City Clerk read Ordinance No. 484 by title and number only.

It was moved by Vice Mayor Pierce, seconded by Mayor Catalano, to approve the Introduction of Ordinance No. 484 to amend Clayton Municipal Code Section 17.92 (Inclusionary Housing Requirements) for the purpose of incorporating rental housing projects into this local housing requirement, as allowed for by AB 1505 (ZOA-02-18), and as amended this evening. (Passed 4-1 vote; Wan, no).

8. ACTION ITEMS

(a) Presentation of the City's financial status report regarding its public employee pension system provided through the California Public Employees Retirement System ("CalPERS"), based on the latest actuarial data as of June 30, 2017.

Finance Manager Mizuno presented the report advising the City's pension administrator (CalPERS) annually publishes an updated actuarial report for each of the City's pension plans with the most recent ones published August 2018, dated June 30, 2017, including the Annual Required Contributions for FY 19-20. The purpose of this annual staff report is to provide an update on the City's pension plans and fiscal impacts to demonstrate accountability, transparency, and responsibility. Heightened awareness surfaced after the great recession of 2008 through several actions taken by the local City Council, the state legislature and CalPERS to address those matters. The City Council directed the City Manager and thereby staff to provide an analysis annually once these actuarial reports are published.

In lieu of Social Security the City of Clayton has participated in the California Public Employees Retirement System (CalPERS) since July 1, 1975. Five measures have been taken since that time to address the City's exposure to pension expenses: 1). The City proactively established a second tier in 2011, resulting in the closure of any new members to the Classic Plan; 2). In 2013, the state legislature adopted the Public Employee Pension Reform Act (PEPRA) creating a third tier for all new members of CalPERS; 3). Thereafter, CalPERS reduced the discount rate from 7.5% to 7% over a three year process from FY 2019-2021; 4). CalPERS implemented a fixed dollar unfunded actuarial liability (UAL) contribution requirement in FY 2016; and 5). The City in FY 2018 established a Pension Rate Stabilization Fund, an internal service fund that acts as a hedge against ARC contributions and hikes caused by any market fluctuations or actuarial assumptions approved by the CalPERS board. These reports are available to the public at www.calpers.ca.gov

Mr. Mizuno provided brief information about each safety and miscellaneous group tier. Currently, 56% of the City's employees are members of the PEPRA tier. He provided a summary of the contribution requirements of each of the City's six plans noting there used to be a Normal Cost, a percentage of payroll methodology for each dollar of pensionable income earned. That was a rate approved by CalPERS Board that said each employer was required to contribute that amount annually to its plan. Thereafter, in FY 2016, CalPERS also created a UAL fixed dollar amount to address the increases to the unfunded status of the Classic tier. The most important thing to note when reviewing the comparison table is the largest increase was noted in the Classic Plan for sworn police officers, approximately 26%.

Mr. Mizuno summarized the Employer Pension Cost Trend Analysis noting a decrease between FY 2012-2015 due to the payoff of the Classic Tier I public safety side fund. In two years it is expected to see a decrease of approximately $64,000.00 because of the anticipated payoff of the Classic Tier I Miscellaneous side fund. CalPERS has created a thirty year amortization schedule for the unfunded liability amounts; it is projected to be zero in thirty years from now, just like a home mortgage. The City simply does not have the funds to make the payoff any earlier.

Mr. Mizuno summarized the Tier I Unfunded Actuarial Liability Historical Trend obligations for past, present and future. The Tier II and PEPRA retirement plans are operating as designed, not necessitating further analysis at this time. To note as of June 30, 2017, CalPERS posted a return of 11.2% which exceeds their discount rate at that time, and recently as of June 30, 2018, CalPERS posted a return of 8.6%.

Councilmember Diaz inquired on how many Safety members the City currently employs? Mr. Mizuno responded the City currently has a total of twenty-seven full time employees, two of whom are prorated at 60%. There are eleven Safety employees; the remainder is classified as Miscellaneous members.

Councilmember Wan inquired if there is a cost built into the rates for retirees. Mr. Mizuno responded the retiree contribution requirement is built into the fixed dollar UAL payment calculated by CalPERS.

Councilmember Wan inquired if the City contributes to the Pension Rate Stabilization Fund on an annual basis? Mr. Napper responded the Pension Rate Stabilization Fund was established two years ago and has been contributed to on an annual basis from excess General Funds. It currently has a balance of $167,000. Mr. Mizuno added there is not an established rate; if the City had excess funds available after an audit it could be the Council's discretion to authorize a certain amount to the Pension Rate Stabilization Fund; policy has not been established for a certain dollar amount.

Councilmember Diaz wanted to know the differences between the safety Classic, Tier II and PEPRA members break down. Mr. Mizuno responded four members are in the Safety Classic plan and seven in the Safety PEPRA plan.

City Manager Napper added the Tier II plan enrollment depends on the member's status with CalPERS when they come into Clayton's plan. He noted a tidbit that was discovered today as a reason we are not rushing to pay off our UAL: Assistant to the City Manager Laura Hoffmeister found in 1999 the city manager at the time recommended the City contribute $1.4 million to pay off its UAL because the thinking at that time is when you do that your UAL disappears forever. Of course, CalPERS has proven that is not the case and that is why his assessment is do not rush to pay more to CalPERS than requested. The City pays fully each year what CalPERS require.

No action was taken.

(b) Review and approval of Mayoral determination of City Council ad-hoc committee, inter-governmental and regional board assignments for 2019.

Mayor Catalano presented the staff report noting after everyone's review of the City Council ad-hoc, committee, inter-governmental and regional board assignments, it was time to look at other assignments as well. Ms. Catalano thought it would be good for Councilmembers to take on other assignments and provide input to those committees. A number of recommendations were made in the packet and Mayor Catalano hoped for her colleagues' approval of her assignments for them.

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

Councilmember Diaz expressed his interests in having City elected officials be the first to have regional board positions assigned to them.

Councilmember Wan indicated his desire to have a brief description be created for each committee or board to assist in understanding the assignments. City Manager Napper responded that idea makes sense and staff will do so.

It was moved by Vice Mayor Pierce, seconded by Councilmember Wan, to approve the Mayor Catalano's proposed City Council member assignments for calendar year 2019. (Passed; 5-0 vote).

9. COUNCIL ITEMS

Councilmember Wan inquired if the Parolee Housing item had been confirmed and scheduled for an upcoming City Council meeting. He was advised the earliest this item would come back would be January 15, 2019. City Manager Napper responded after inquiry he had sent an email to Councilmember Wan indicating items he was tracking for the January 15th City Council meeting included the Parolee Housing item, noting he also sent an email on that question to Councilmember Diaz, as he is the lead on the Parolee Housing item, to determine if the January 15th City Council meeting would be an appropriate time to bring it back.

Councilmember Diaz indicated he will need more time to gather information on this item before it is brought back to the City Council for further discussion, and he will advise when it is ready. Councilmember Wan inquired if he could ask for the Parolee Housing items then as a future agenda item.

Councilmember Wan also requested a future agenda item to consider the semi-annual status of goals and objectives as directed by Council on achievements and outlines when achievement is expected. Councilmember Wan would like to review the items to determine, if they are still valid or if they should be eliminated; if there has been no activity for a certain period perhaps the goal should be dropped.

Vice Mayor Pierce wondered if Councilmember Wan's request would be best discussed at the upcoming Council Goals Setting Session explaining why some of those goals are there. The findings could be announced at an upcoming public meeting. Councilmember Wan responded he would still like the topic as a separate public report.

Mr. Napper added at its next meeting of January 15, 2019, an item would be coming for the City Council to set a special public meeting for its annual Council Goals Setting Session.

10. CLOSED SESSIONS – None.

11. ADJOURNMENT– on call by Mayor Catalano, the City Council adjourned its meeting at 10:05 p.m.

The next regularly scheduled meeting of the City Council is January 15, 2019.

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Respectfully submitted,

Janet Calderon

Janet Calderon, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

Tuija Cat

Tuija Catalano, Mayor

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