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*City Council*  
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August 21, 2019

VIA U.S. REGULAR MAIL AND  
REQUESTED EMAIL TO: [ctadmin@contracosta.courts.ca.gov](mailto:ctadmin@contracosta.courts.ca.gov)

Richard S. Nakano, Foreperson  
Civil Grand Jury 2018-19, County of Contra Costa  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553-0091

Re: City Response to Civil Grand Jury Report No. 1907

Dear Mr. Nakano:

Pursuant to a cover letter dated June 4, 2019 addressed to members of the Clayton City Council that transmitted a copy of the Civil Grand Jury's Report No. 1907, "Stormwater Trash Reduction," attached as required by applicable law is the City of Clayton's official response. This response was reviewed and authorized by the Clayton City Council at its public meeting held on August 20, 2019.

We appreciate the Civil Grand Jury's efforts in examining this subject.

Sincerely,

Tuija Catalano  
Mayor

Attachment: 1. City Reply to Civil Grand Jury Report No. 1907 [3 pp.]

cc: Honorable Clayton City Council Members  
Honorable Anita Santos, Judge of the Superior Court

CITY OF CLAYTON RESPONSE TO  
CIVIL GRAND JURY REPORT NO.1907  
"Stormwater Trash Reduction"

2018-19 CONTRA COSTA COUNTY CIVIL GRAND JURY

The City of Clayton, California provides the following response to Civil Grand Jury Report No. 1907, "Stormwater Trash Reduction", issued by the 2018-19 Civil Grand Jury of Contra Costa County, California, June 4, 2019. Pursuant to page 13 of the Report, this City is required to respond to Finding Nos. 1, 3, 6 and 9; and Recommendations Nos. 2, 3 and 4, adhering to format guidelines prescribed by the California Penal Code (Section 933.05).

FINDINGS

1. *The 2015 Municipal Regional Stormwater Permit requires most of the cities, towns, and the County to take action to reduce trash discharges by 80%, from 2009 baseline levels, by July 1, 2019.*

City Response

The City of Clayton agrees with this Finding. The City of Clayton notes it has taken prior actions and has exceeded the 80% reduction goal and has achieved a 99% reduction in trash discharges in FY 2014/15, years in advance of the deadlines.

3. *Using the formula prescribed in the Permit, Brentwood, Clayton, Concord, Danville, El Cerrito, Lafayette, Martinez, Moraga, Orinda, Pittsburg, Richmond, San Pablo, San Ramon, and Walnut Creek report that they have already reached their July 1, 2019 trash reduction goals.*

City Response

The City of Clayton agrees with this Finding. The City of Clayton has achieved a 99 % reduction in its trash reduction goal in FY 2014/15, years in advance of the deadline.

6. *Both the CCCWP and LAFCO report that unfunded federal and state mandated stormwater permit compliance programs are a challenge for cities, towns and the County.*

City Response

The City of Clayton agrees with this Finding.

9. *No narrative summary of the accomplishments, challenges, costs, and funds needed to fully comply with the Permit is provided in the required annual reports prepared by CCCWP, the County, and each city and town.*

City Response

The City of Clayton agrees with this Finding.

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## RECOMMENDATIONS

2. *The City/Town Councils of Antioch, Brentwood, Clayton, Danville, Moraga, Oakley, Orinda, Pleasant Hill, and San Ramon should consider limiting the use of Styrofoam containers in their communities by June 30, 2020.*

### City Response

The recommendation will not be implemented because it is not warranted or is not reasonable.

The City of Clayton through other actions has achieved a 99% reduction in its trash reduction goal in FY 2014/15. The implementation of a local ordinance would not modify or improve our already achieved compliance. The City of Clayton does not have many establishments that have such items, and does not have the staff resources to undertake establishing and enforcing a local ordinance which would be required. The City is monitoring state wide legislative efforts as we feel this is a better approach, similar to the state wide plastic bag ban, as these items also come from sources/locations outside of our city limits.

3. *The Board of Supervisors and all City/Town Councils should consider directing staff to provide a concise summary of their Annual Reports, citing their accomplishments, challenges, costs, and funds needed to fully comply with the Permit, by December 31, 2019.*

### City Response

The recommendation will not be implemented because it is not warranted or is not reasonable.

The City of Clayton already includes a narrative summary in its Fiscal Year Annual Budget covering accomplishments, challenges, costs, and future funds needed to comply with the Permit regulations, and it is included with the annual ERU levy report to the City Council. The SF Regional Water Quality Control Board establishes and prescribes the format and information for the Annual Reports. We are required to use their agreed to format. The Water Board eliminated the narrative summary information years ago as they divide up the permit sections to different Water Board staff to review and thus any summary is required to be provided by each section. Accomplishments on municipal operations are reported in section C-2, and the trash load reduction are reported in Section C-10 of the Annual Report.

4. *The Board of Supervisors and all City/Town Councils should consider identifying additional revenue sources to fully fund Permit requirements in order to comply with the Permit and avoid potential liability, by June 30, 2020.*

### City Response

The recommendation has been implemented.

The City currently is in compliance with the Permit. In the FY 19/20 City Budget, presented at the June 4, 2019 City Council meeting, information was conveyed regarding the unfunded mandate, funding constraints and options related to MRP permit compliance. Included was a new or increased future funding source will be needed, and would require

new state legislation, or property owner/voter approval for increased parcel fee or taxes, or use of its general fund with reduction in other non-mandated city services. This information was also provided at the City Council's January 15, 2019 and April 16, 2019 meetings.

Since the City reached its stormwater ERU parcel levy cap nineteen (19) years ago there have been 512 additional permit requirements mandated by the SF Regional Water Board, plus an annual State permit fee of apx. \$10,000 with no increase in revenue to offset the associated costs.

Since other members of the Clean Water Program have costs exceeding available revenue available from the ERU rate, a cost/revenue analysis was undertaken by the Clean Water Program to evaluate possible additional funding mechanisms for the added requirements of the MRP. The Clean Water Program attempted three times the pursuit of legislation to add stormwater to the definitions of other utilities such as sewer and water, however was not successful. It was after these state wide attempts failed, and the continuing increased requirements, that led to the undertaking of a new or increased levy rates. Since a Proposition 218 property owner approval action can increase the levied rates, the City Council authorized participation in a region wide Proposition 218 ballot in 2012 to establish increase levy revenues; unfortunately this measure did not pass (59% - No).

As other cities in the state are experiencing similar funding constraints, state legislation has been and continues to be pursued for new stormwater revenues. Although SB 231 did allow for consideration by the voters through a Prop. 218 process to address some Stormwater improvements; the legislation did not fully rectify the needs of local cities as it related to the permit mandates.

The City has and continues to work with other cities on a statewide basis to encourage and propose state legislation on stormwater funding options, as well as working regionally to reduce the number and cost of future permit regulations and State permit fees and evaluate options for revenue sources to fully fund permit requirements.

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