

## **Law and Legislature Meeting November 7, 2023, at 6:30 p.m.**

Members Present: Robert Cote, Sue Muncey, Ryan Paisley, Mary Ellen DeBenedictis, Shaun Flatter, and Nick Smith

Mr. Paisley brought the meeting to order at 6:30 p.m. at Clayton Town Hall. Mr. Paisley wanted to thank everyone right off the bat for making time on your Tuesday night and coming out here.

### **Discuss and Vote to Recommend that Council Adopt Ordinance 2023-18 – An Act to Amend Article 3.3-1.14 of the Clayton Municipal Code Related to Miscellaneous Parking**

Mr. Paisley stated this is very simple. In the miscellaneous section of our ordinance, there is a little ambiguity as to whether it applies to RV's and campers, and we are trying to fix that. We are codifying that and directly saying that it applies to RV's and campers. Mr. Paisley stated this is an issue that the town encountered before where this kind of thing was discussed. We are formally putting it into the ordinance. Before I open this up for discussion, I do want to thank Lt. Scott and the Chief for bringing this issue to our attention. This is an issue that has been going on in the developments. They have been taking a leadership role and trying to get it handled, and we hope that this ordinance will help with that. Mr. Paisley opened it up for discussion stating this makes RV's and campers applicable to the miscellaneous parking section and it gives them 72 hours to get one off the street as opposed to 24 hours. Ms. DeBenedictis stated she thought we already did this. Mr. Smith agreed. Mr. Paisley stated he looked and there is nothing on Municode and nothing in the minutes online. Ms. DeBenedictis stated maybe it wasn't specified. She stated she knows we talked about trailers and work trailers and everything else on the street. Mr. Smith stated he thought we did. Mr. Paisley stated whatever the case maybe it never made it into the orders from what he can find. Mr. Cote stated he had a chance to sit down with the Code Enforcement Officer and the Chief of Police regarding this as well and the problem that they saw and why we all conversed about it before we brought it to you and the committee's attention is just the uncertainty as to what utility trailer means. From everything that he could dig up, all this is through word of mouth, which isn't that valuable. The assumption was utility trailer would cover that, but it really doesn't. Mr. Cote stated he would also like to thank in addition to the Police Department for helping out quite a bit on this, but I also received a lot of good feedback from our Code Enforcement Officer on this one. Mr. Paisley said yes, certainly he will receive that credit. Mr. Paisley stated he was unaware of his involvement, but thank you. Mr. Cote stated the police department and him converts a lot on the specific situation where the RV or the camper is actually placed. Mr. Cote stated the Code Enforcement Officer, the Chief, and himself sat down and had a good game plan for moving forward especially with this. It clears everything up. Ms. DeBenedictis stated I think you are right. We thought it was covered under utility trailer. It is better to spell it out. Mr. Paisley stated it will solve any ambiguity. It is fair because there is a lot of people that have RV's and campers. They are going to have to park it at some point on the street because you are coming home from a trip. I think 72 hours is fair. You can park it on the street for three (3) days. Mr. Flatter stated 72 hours is the key because you know RV people. They will come home. They will go to the trailer the next day to unload and take it to

their storage lot . If you use utility trailers every day, you really never run into that 24 hour issue unless you take a day off or the weekend. You have it sitting in front of your house Saturday and Sunday then go back to work Monday. You reset the clock. Mr. Flatter thinks the key is 72 hours. The RV camper thing – if you can park it, unload it, and get it to its parking spot then. Mr. Smith asked if there is anything in this section where it states if they store it on their property it had to be on hardscape? He remembers that coming up in prior meetings also. It had to be on hardscape or stone. Ms. DeBenedictis stated she remembers that. We talked about this in the last 10 years. Mr. Paisley stated he could not find the minutes for when this was discussed. Mr. Flatter asked if it was an HOA thing. Mr. Smith stated it was definitely here about five to six years ago. If somebody does park their camper in their side yard and the grass just grows up around it, that is why they were trying to avoid it and have it parked on stone or something of that nature. Mr. Paisley stated you might not have to run into that too much if it is not there for over 72 hours. Mr. Smith stated this says it can't be on the street. They can park it on the side of their house and leave it there. Mr. Paisley stated if we need to address it, he would prefer to not tangle those two issues into one and do that as a separate individual one. Mr. Smith stated he was fine with what he sees here. Mr. Paisley stated he actually received some comments from people in some of the neighborhoods that were concerned about this. Once they found out that we were making it unambiguous that it applied to RV's and campers, they were happy because this is a problem they have been having over in the developments. Mr. Paisley stated if there are no further questions, he would take a motion to recommend Council adopt Ordinance 2023-18.

***Mr. Smith made a motion to recommend the Council to adopt Ordinance 2023-18 An Act to Amend Article 3.3-1.14 of the Clayton Municipal Code Relating to Miscellaneous Parking. Ms. DeBenedictis seconded the motion. Motion carried unanimously.***

**Discuss and Vote to Recommend that Council Adopt Ordinance 2023-19 – An Act to Amend Article 1.1-1 of the Clayton Municipal Code Related to Building Permits**

Mr. Paisley stated for these next two (2) ordinances he wanted to send a huge shout out to the Code Enforcement Officer. He took time to meet with code enforcement officials all over the state and did a lot of research on what other towns were doing and what the county was doing and really invested a lot of resources into getting a building permit code that was both up to date and sound for what the town needed. He deserves a lot of credit for that. He also took time to meet with the Town Manager and himself and go over everything and review it. He certainly deserves a shout out for that. Mr. Paisley stated quite frankly, this ordinance deletes everything that we had before and creates a brand new building permit section. He leaves it open to committee on the two (2) options you want to explore on this. If you had time to review it, we can discuss problem points or if you would like, he would be happy to go line by line. Mr. Smtih asked Mr. Cote to scroll down for a minute just to read. Mr. Smith stated he understands there is another ordinance that we are discussing on permits and licensing. Is there anything that we are removing out of here that is being addressed in permits and licensing or is there something that is being removed that is not being addressed into a separate ordinance to my knowledge? Mr. Paisley stated he didn't believe so because the old building section was rather antiquated. As you can see before here it basically defines what a building permit is, what constitutes a building permit, and then requires them to go to Kent County. The permit would be the second portion

of 1.1-1.3 and then the extension and then failure to comply. There was not very much within that ordinance, but the extension is covered in here per the length of the permit issuance. There are provisions for what happens if you don't comply with what we have under this new ordinance. Mr. Paisley stated he is happy to go chapter by chapter. Mr. Smith stated that is not necessary. Mr. Cote stated the summary tells you what you need a permit for and what you don't need a permit for. Mr. Smith stated this is strictly building permits we are talking about here. He is just clarifying because there are so many more other permits that aren't on here. He assumes they are covered somewhere else? Mr. Paisley stated once you move into B you have your exemptions. The exemptions are broken down into a few different sections. There are building exemptions and a few others as you move along. Mr. Cote stated the biggest example he can give you right now is under building number one, one storage attached accessory - structures used as tool and storage sheds, playhouses, and similar uses. Provided the floor area does not exceed 24 sq.ft. So 24 sq.ft. could be as simple as something that is 4 x 6. Similar municipalities in the area, Kent County, does not require a building permit for a shed that is less than 300 sq.ft., but I don't think that makes sense for what we are trying to do here in town. That is why 24 sq.ft. was recommended. Mr. Flatter stated so we are saying any shed that is larger than 6 x 4 you have to come to the town and get a building permit. Mr. Cote stated or any combination of 24. Just so it gives them a target. Mr. Smith asked about shingles. So it has to have 25% of the sheathing being replaced? That being the layer under the shingles correct? So they can replace all the shingles and not need to get a permit. Mr. Cote stated yes, that is industry standard. Mr. Cote stated if you pull off your old roof and you notice a 14 x 8 sheet of plywood sheathing has water damage to it - you want to replace that one and it doesn't equal 25% of the entire roof, you can replace it. Once you hit that threshold of 25% or more, now you are altering the structure. The sheathing is what solidifies the roof and holds everything together. If you only replace 25% or less of the sheathing, it's industry standard that it is not affecting the structure of the roof. Ms. DeBenedictis asked about painting. Mr. Paisley stated no that is an exemption. Mr. Smith asked about the contractor having a license. Mr. Paisley stated that is in the next ordinance. Mr. Smith stated what if they don't need a permit and they don't have a license. Mr. Cote stated he understands where the Mayor is coming from, but there is no way for us to police that. He stated he talked about this in length to the Code Enforcement Officer and the studying that he did and looking at similar municipalities, it is industry standard. Mr. Smith stated the resident does have to bear the burden of making sure that whoever they hire is contracted. Mr. Paisley asked if they were comfortable with moving on. Mr. Smith stated yes. Mr. Cote pointed out the paragraph - makes any contractor that needs to perform anything that is important or structurally important in order to protect that resident is captured in that paragraph. Mr. Paisley had everyone examine five through nine. Mr. Smith stated the playground accessory equipment is only for family dwellings correct? Anything that is a communitive would need to be inspected I assume? Mr. Cote stated that is the way he interprets it. So a new development park - yes. Mr. Flatter stated no fixtures, case counter and partitions not over 5'9". Mr. Cote stated he didn't question that number. It was from the Code Enforcement Officer. Mr. Flatter stated he is very detailed oriented. Mr. Cote stated extremely, which is good for his position. Mr. Paisley moved on to plumbing. Mr. Smith stated these all fall under the exemptions. Mr. Paisley moved on to gas exemption. Mr. Flatter asked what does approval of equipment mean. That doesn't alter approval of equipment? Mr. Paisley stated from his understanding. Something that would jeopardize the safety of whatever - furnace or stove. Something that is insignificant is not going to make it dangerous to use. Mr. Smith stated it means that the parts you are replacing has to be recommended by the manufacturer. Mr. Flatter stated like an elbow. An elbow in your gas line somewhere that made out of the same

material. Mr. Cote stated it varies like a part that doesn't alter the structure or the operation of it. Mr. Flatter stated so don't put a PVC pipe on a copper pipe. Mr. Cote stated don't change the material and don't replug your gas to your fire water heater. Mr. Paisley asked if anyone had any questions about exemptions as a whole. He moved on to emergency repairs. Mr. Cote stated this gives the ability in off hours or off days and something is seriously going wrong with the residence, home, or business that gives them the ability to start the work and make sure that as soon as the Town Hall is open, they file a building permit. Mr. Paisley went on to repair 1.4 with no objections. Mr. Paisley went to 1.5 Public Service Agency. Mr. Smith asked about Artesian and Chesapeake. Mr. Cote stated the permit shall not be required. Mr. Paisley moved to the next section. You need to apply for your permit. Mr. Paisley moved on to section 1.7. This discusses if you are required to get some other kind of approval (i.e. – fire marshal). You need to have that ironed out first when getting your permit prior to us issuing a permit. This is their responsibility not ours. Mr. Paisley stated next is the timeline of issuing a permit. He thinks it would be hard to put it on the town to give a definite limit, but certainly we are going to keep it reasonable given your unique circumstances and not keep you waiting an inconsiderate amount of time. Mr. Cote stated we didn't want to paint ourselves into a corner. Mr. Paisley stated Subsection A basically states you cannot have any other violation with the town and you cannot be delinquent on any obligation. Mr. Paisley spoke about the time limit on the application which is giving them 180 days which is 6 months. Mr. Smith stated that is if they applied and issued a permit. They have that amount of time to act on it. Mr. Paisley read the case for a permit for any proposed work shall be deemed to have been abandoned in 100 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued. Mr. Smith stated this is without permit? Mr. Paisley stated this is for the application process itself. Mr. Flatter stated so if I come and say I want to build a deck and you do it in two to five days or whatever. I don't come back in 180 days. At 181 days you have to refile? Mr. Smith asked when they are paying for the permit. Mrs. Muncey stated they apply, but she doesn't know the total cost from First State. Mr. Paisley thanked Mr. Cote and the Office Manager for bringing this up. Some people will apply for a permit. The Office Manager does her due diligence and sends it for inspection and we are then issued a cost and then the resident never pursues the permit. To remedy that if you submit an application you have to pay the review fee upon submittal. Mr. Smith stated we don't always know what the review fee will be. This is saying they have to pay in advance. Mr. Paisley stated once the application has been submitted, the owner is responsible for paying it. Mrs. Muncey gave an example with a pool permit. The person didn't pursue the permit, but he town was obliged to pay the bill from First State. Mr. Smith asked if there was an enforcement side to this. Mr. Paisley stated with this subsection report, regardless of status, once the application has been submitted to the town, the owner applicant shall be responsible for paying the permit review fee. Mr. Smith stated once this has been approved, what is the enforcement steps? Mr. Flatter asked what are we talking \$20 or \$200? Mrs. Muncey stated the review fee could be \$30 to \$40 for something small. Inspections could be \$145+. Mr. Paisley asked when they come in and get a permit and they go through all the steps they are still issued that fee correct? Or do we absorb the fee? Mrs. Muncey stated when they come in to pick up their permit they are charged the fee for First State plus the town's fee. Mr. Paisley asked what our fee was. Mrs. Muncey stated \$60. Mr. Flatter stated why don't we charge \$60 on the application. If they don't come back we are not taking such a big hit. Mr. Smith stated it was a good idea; however, it would no longer be a permit fee. It would be an application fee. Mr. Paisley stated what if the application is denied? Mr. Smith stated that is why you have to rename it – an application fee. They are paying to apply. That doesn't necessarily mean they are approved. Mr. Paisley stated he thinks you have the right

idea. If you are going to use the town's resources to try and get this project and then you abandon it, we need to be compensated for the expenditure. We have people who have invested time into this. Mr. Flatter likes the idea of an application fee. That will deter people from submitting a permit just in case. Ms. DeBenedictis agreed with it. We have done the work. Mr. Smith stated he assumes there is a written application being filled out. Doesn't make sense to apply the \$60 at the end as an application fee. The application sheet would have to inform them that you know beyond this application fee any review costs will be forwarded on at the time the permit is issued. That way it gives us the opportunity to cover some of our losses. \$60 would cover most reviews if they walked away. Mr. Paisley asked if somebody contracted someone to do the plans and they were not right, do they have to pay to resubmit plans? Mrs. Muncey stated no First State doesn't re-charge me. They give the opportunity for the plans to be corrected. Mr. Paisley was still concerned about being charged again. If the permit is denied, I would have to repay. Mr. Smith stated he wouldn't think so. Mrs. Muncey stated basically your permit is put on hold and it is not approved until the information is correct. Mr. Smith stated they would have to submit an amendment, but it is still the same application. Mr. Paisley stated in that case they wouldn't have two (2) application fees. Mr. Paisley asked Mr. Cote if the Code Enforcement Officer ever mentioned if other towns worked on an application fee as opposed to a permit fee. Mr. Cote stated he did not. It is very easy to insert if that is the way the committee wants to go. Mr. Paisley asked another question. Under Title 4 permanent licensing – we have this permit which is under this title. We will also have the business and contractor licenses. We have a solicitation. The application process for those permits will it have to change as well if we are using the same fee for everything? Mr. Smith stated he doesn't know that we are. Mr. Flatter asked if we have the same issue. Mr. Smith stated it is not the same cost when it comes to contractors and business licenses. Mr. Paisley stated what I'm saying is with the other permits – issue what they all have to change to application fees because of this, so it can all go into the same account under permits and everything? Mr. Smith stated just so I am understanding your question so I am not answering it wrong – you are asking me as far as the contractors and licensing. Mr. Paisley stated fees for other permits under Title 4. There is a permit for like solicitation. Mr. Smith stated such as what? Mr. Paisley stated and other stuff by changing us from a permit fee to an application fee, does that throw off the accounting side of it because it is two separate fees going into what was previously the same thing? Mr. Smith stated he doesn't think so. He doesn't think that is an issue at all. Ultimately the other ones you are speaking of we are issuing a permit. It doesn't need to be checked. The contractor comes in and he presents the proper information. He gets his permit and pays right then. It is not the same process. Ms. DeBenedictis stated for soliciting, they are told different. Mr. Smith stated they are paying to solicit. Mrs. Muncey stated we don't want people to solicit in town. Mr. Smith stated well then they are not going to get it. Mr. Paisley stated so everyone is fine with this change. Mr. Smith asked where it states we charge \$60 for the application fee. Mr. Cote stated it is not in here. We have a fee and rate structure that is approved by Council. Mr. Smith stated that is something that would have to be changed. Mr. Flatter stated in lieu of putting the \$60 we have a rate structure right? Does that change annually or only as needed? Mr. Cote stated the ordinance will overrule a fee structure. It is almost like a notice. Mr. Flatter asked what happens if the fee goes up to \$80? Mr. Smith stated we have to readdress the order. Mr. Flatter stated we then now have to come and change this. Instead we can put in the applicant will be required to pay the application fee. Instead of putting the dollar amount in they just say you must pay the application fee upon submittal. Mr. Smith stated prevailing application. It would be like a prevailing application. Mr. Paisley stated the application fee established in the rate structure. Mr. Smith stated then we have to go back to the rate structure and

change the application fee. Mr. Paisley stated isn't that done in the budget resolution what the minimum fee will be? Mr. Smith stated the annual budget. We don't address business licenses or anything like that. Mrs. Muncey stated we just put in the budget what we think we might get in there. Mr. Flatter asked does that make sense from your seat? Mr. Smith stated yeah. They have a rate chart to go to that says application fee. Mrs. Muncey stated it is on the website. Mr. Cote read the applicant will be required to pay the current application fee as established in the town's fee schedule at the time the application is filed. Mr. Smith stated that is good. Mr. Cote was trying to summarize all this. The minimum fee that we charge for any building permit right now is \$60. It is always going to be \$60 and up. So what we are trying to establish here in the discussion that we have had is from now on that minimum \$60 will be collected upfront and any additional fees due to review will need to be paid by the applicant prior to us handling a permit. Mrs. Muncey stated we will just have to put that on the building permit application so they understand that. Mr. Cote stated as long as we are not raising or lowering any fees and just the wording on the fee structure, I would ask Council's permission that I can take care of that if I don't lower any money or raise any money and just change the wording. I would ask for you to trust me to do that. Mr. Smith stated he has no issue at all. Mr. Flatter stated the permit review fee is not the application fee. Mr. Smith stated that is a whole separate charge. If we send it to First State to review and First State bills us – that is the review fee. Mr. Paisley stated you could be a resident and think that you are getting charged two separate fees – is it the same thing? Mr. Smith stated well it is in fact two separate fees and to separate them as such. Mr. Paisley stated what I mean is it says application fee plus any other related fees. Now this is saying other related fees too. Mrs. Muncey stated that section right there is only going to apply if it goes to First State. Mr. Smith stated they are still responsible for that cost. Mr. Flatter stated all permit review fees. Mr. Cote stated it just covers everything. Mr. Paisley stated from my personal preference I have no problem with what we've done, but I just thought it would be better for them to pay all at one time. Mr. Smith stated we don't know what that is. But now you have to come pay beforehand. There was discussion back and forth about the fee and the resident coming in twice. Mr. Flatter stated it is keeping people honest and not wasting people's time. Mr. Paisley stated he is just looking at the guy that is doing everything right that now has to be burdened by coming into Town Hall twice on two separate occasions to pay because of 1% of people. Mr. Cote stated he already does have to come to Town Hall twice. Once to file the application and then once to come back to pick it up and pay for it. That is how it works now right. Mrs. Muncey agreed. Mr. Paisley stated he gets that. Mr. Flatter stated all we are doing is moving the \$60 to cover the town's time to process it. Ms. DeBenedictis stated the thing is she is taking the time to process it and he says I don't want it and I'm not paying for it. So you have lost all that money. Mr. Flatter stated now you are spending more resources by code enforcement, legal, etc. Mr. Paisley moved on to the validity of the permit. Mr. Smith said you are going to have to read that to me. Mr. Paisley read: To be a permit for an approval of any violation of the provisions of this chapter of, or of any other ordinance or laws of the town permits presuming to give authority to violate or cancel the provisions of this chapter, or any other ordinances or laws of the Town of Clayton shall not be valid. The issuance of a permit based on construction documents and all their data shall not prevent the Town of Clayton from requiring the correction of errors in the construction documents and other data. The Town of Clayton is also authorized to prevent occupancy or use of a structure where any construction work is done in violation of the town code, approved plans, or written directive of the Town of Clayton. Mr. Paisley stated basically you can use the permit that we are issuing you to break an ordinance, zoning code, state law, or anything that pertains to a well-known state law but a town law that pertains to. Mr. Flatter stated isn't

that the job, the permit? Mr. Smith stated that is my concern. If I am doing a job exactly as indicated on the approved permit and it is wrong. Who's fault is that? Mr. Paisley stated he sees this as a protection thing. Mr. Smith stated we send it out to review to make sure it is in accordance with the building code standards, but someone on our end has to make sure what they are doing is not a violation of any ordinance we have. Mr. Cote stated so specifically if I send something out to First State to approve, they don't care what our ordinance states. All they care about is does it meet the International Building Code. Mr. Cote stated the setbacks and all of that is by First State Inspection Agency. I don't review setbacks and neither does the Code Enforcement Officer. Mr. Paisley stated he thinks the keyword in that whole provision is Contra. You can't take what we have given you a permit to do and manipulate or misrepresent that as a way to do something else and which is a violation. Mr. Smith stated I can understand. Mr. Paisley stated you cannot manipulate what we have given you a permit to do and do something you shouldn't be. Mr. Smith stated he assumes due diligence was done on the Town's side before they issued the permit. Mr. Cote stated they do as it relates to setbacks, whether it be side yard, front yard, rear yard, they do look at all that. So when a permit comes into us, we look at that as well. So that does answer the question on whether we're looking at the ordinance in the town. He stated let me give an example and I think the best one for this, the issuance shall not be construed to be a permit for or an approval of any violation of any of the provisions of this chapter or any other ordinance of the laws of this town. So let's say someone with the town, we will just say me, I'm the one that looks at it and the setback is supposed to be 10' on the side yard for a primary structure or I want to say and don't quote me, I'm just giving an example, 5' for an accessory structure to the side and to the side and rear and it was 4'. So that is a violation of an ordinance, a violation of the zoning ordinance of the town. So what we are saying here is just because we overlooked that, doesn't mean that issuing the permit makes it okay. Mr. Cote stated the issuance of a permit is based on construction documents and other data shall not prevent the Town of Clayton from requiring the correction of errors in the construction documents and other data. Let's say someone at First State makes a mistake as human being make mistakes. So let's say they make a mistake and then down the road when they're out there doing one of their level inspections on that property they notice something is completely out of whack and it could be a matter of life and death to an inhabitant. The structure absolutely has to be corrected and this is the clause that allows us to be able to enforce that if a mistake was to be made, It doesn't say allocate blame or funding or who's responsible. It just strictly gives the ability to validate that permit. Ms. DeBenedictis stated that is something we should catch before it gets too far. Mr. Cote stated we should yes. Mr. Paisley stated you're absolutely right, but I think too, he mentioned that we are all humans. Everybody has a bad day and you miss something. Everyone, even the best. Mr. Flatter stated don't think with code we can do that though I don't think we can with code. Here's the thing – say the town code is and I'm going to use your example, your setback is 5' for your shed. Say it's a 10 x 12 so you gotta get a permit right. But maybe the county is 3'. So the county looks at it and says you're 5' its pretty good keep going. Or you're exactly at 3' you are good to go. Comes back to the town. The town issues it. It goes out. Its set at 3'. The town comes by and says you're 3' off it needs to be 5'. Mr. Cote says who's fault is that? The county doesn't inspect anything. Mr. Flatter states the Code Enforcement Officer goes out and sees the shed is 3' off of a boundary and it is 5' for the town. Hypothetical right? Who is at fault? I wouldn't be at fault if I am the homeowner because I said I want to put it at 3'. It was approved at 3'. It wasn't caught that it should be at 5' but now what? This is telling me that even though I said it was 3', I did my due diligence and I did everything proper. Now you are telling me that I now have to pay for somebody to come out and move my shed and fix it all because it wasn't caught?

Mr. Smith stated that is where he is struggling. We are questioning the validity of a permit. I mean we're issuing the permit and then we are saying well we can question this. Mr. Paisley stated hang on here because there is a critical lens to look through this. If you are doing something to a wall in your home or say you're doing a window which wouldn't be applicable. But hear me out – I get a permit to do this window, but in addition to that I do the wall that is surrounding the window. What we are saying is you cannot construe the permit that we have given you to do this. One thing to do other stuff as well because look the main word in that is to me is construed. It's manipulate. What we have given you authority to do in order to do something else. Mr. Smith stated he hears what you are saying and that make sense because we gave them authority to put that shed 3'. If they put it at 3' they are not manipulating what we approved. Mr. Paisley asked how many errors do we think we make to where this is actually happening? Mr. Flatter stated he thinks all it is going to take is one. You do one big enough add-on addition to a house or something like that. It is okay by Kent County, but it is not okay by the town. That could be very cumbersome. Mr. Smith stated he agrees with the first section because the first section you are veering off of what you submitted. I am struggling with this part. Other data shall not prevent the template from requiring a correction or error in the construction document. Mr. Flatter stated couldn't that leave the town open for legal actions at that point? We are saying we are human and I get it everybody is but in turn if I'm the homeowner I have documentation signed by you saying I can do this and the whole point of me getting a permit is to allow me to do this. I am not going to be financially responsible for it because I've already paid to have it put per your document. Mr. Paisley stated this is going to take a committee recommendation and my request would be that we get these three ordinances that we are doing over to the Town Solicitor for his review prior to the Council Meeting. If it were up to me, I would like to have the Town Solicitor here for these kinds of situations. Mr. Smith stated he will leave on the agenda for next week. We will make sure the Town Solicitor gets an advanced version of this. Mr. Cote stated we can strike through anything on the agenda. To review all three documents before Monday night's meeting might be tough. Mr. Smith stated it can stay on Monday night's meeting. It could be tentatively approved pending a review from the Town Solicitor. Mr. Cote asked if we could tentatively approve an ordinance. Mr. Smith stated he believes you can. The only way it is not approved is if he makes an adjustment. Then it has to come back. Mr. Paisley asked how many permits do we do this time of year. Mrs. Muncey stated it varies – some weeks I have none and some I have five. Mr. Smith stated it is minimal. Between now and February it is minimal. Mr. Paisley said so it is not like this is a huge issue. We are just delaying this until December. How about we send it to the solicitor with the summary of the opposing viewpoint to this section and I'll wait on his review. We will keep it on the Council agenda and then if it needs to be struck we can explore another option. Mr. Cote asked if we have the opposing viewpoint documented. Mr. Paisley moved on. So this is the time limit that you have time limitation of the permit all construction coverage and construction covered by the building permit shall be completed, pass inspection, and obtain the certificate of occupancy within 12 months of receiving the approved permit. Basically, you have 12 months to get everything done, inspected, and get your certificate of occupancy. But as you will see as we move through, 12 and 13 there are opportunities for extensions. Is everyone okay in the abstract of 1.111? Let's move to 12. So basically you have six (6) months to get underway. Mr. Smith is okay with it. We don't run into a scenario where a developer puts in a permit and it takes him that long to get started right? Mrs. Muncey stated Lenape Builders. Mr. Smith stated they put in an application to build a home and don't start building it. Mr. Paisley stated how common? Mrs. Muncey stated they don't build many homes. Mr. Smith asked what the penalty is for an extension? Mrs. Muncey stated it is the minimum permit fee of



\$60. Mr. Paisley stated so basically you have to pay for another permit. Mrs. Muncey stated you are giving them another 12 months to get the work done. Mr. Paisley stated that changes to three (3) months. Mrs. Muncey stated that is different than before. Mr. Paisley stated to get your extension, you will need to have at least 75% of your work done and you pursued your permit in good faith. You should have an extension approved by the Town Manager or the Code Enforcement Officer. Mr. Smith stated so to get an extension you have 75% of your work completed, but what if you are looking to get an extension and you didn't start? Mr. Paisley stated if you didn't start your permit would have expired. You have six (6) months to get started. At the end of the 12 month period if you need a three (3) month extension, you are going to have to have at least 75% done. You need to pursue this job in good faith. You can get a permit and just sit around. Mr. Smith stated so if you got a permit and it expired in six (6) months, it is a complete reapplication process. Mr. Paisley stated that is his understanding because the permit will become invalid. Mr. Paisley stated if there is no questions, lets move to suspension and revocation of the permit. The Town Manager and/or their designee is authorized to suspend or revoke a permit issued under the provisions of this code whether the permit is issued in error or on the basis of incorrect and inaccurate or incomplete information or in violation of any ordinance, regulation, or provision of this. Mr. Flatter stated a lot of examples at the end what would be an issuance in error? Mr. Paisley stated perhaps in his mind if you submitted an application for a permit and then we came to find out that the work you are actually pursuing was not reflected on your application, which would be an error. Mr. Cote stated a person comes in, fills out an application, we send it to First State. Before First State gets back to us, we issue a permit meaning First State didn't review. That is an error. It is not the only error, but that is an error. That is an example of an error. Then the basis of incorrect, inaccurate, or incomplete information – so if the information on the actual permit application or if any of the drawings or materials are incorrect or in any violation of ordinance, regulations, or provisions of this code. To give, I mean someone has to have the ability to suspend or revoke. Mr. Flatter stated 100%. He just didn't know what in error meant. Mr. Cote stated he is the person that is here. If you want it to be me great. If not, whatever you guys want to do. Mr. Smith stated he was reading it in as far as the error. Because we issued the permit in error, you know I like to play the other side. If we issued a permit in error and the Code Enforcement Officer goes out there the day they are pouring concrete and stops them. Somebody just ate a significant cost. Where does that put us? Are we liable for that? Mr. Paisley stated this is authorized. It doesn't say Town Manager or designee. It is saying you have the ability to. I mean at the end of the day that is why you trust and hire. Mr. Flatter stated you can be put on a suspension. Mr. Smith stated I assume something of that significance is going to go from the Code Enforcement Officer to the Town Manager and get addressed in the proper manner. I am okay with the way it is written. As long as it is you know with the anticipation of being handled properly. Mr. Flatter stated I think you are right with the in error. That kind of gives you a little leniency on situations like that. That kind of gives you a little leniency in your office. Mr. Paisley stated you have to display your permit at the site. You have to pay your fee. You can't work before you get your permit. If you have done some work and never got a permit, well guess what, now you have to get your permit but you also need to pay a fee of \$250 for not getting your permit. Mr. Smith stated he assumes there was never any charge for that before. They just came in and filed a permit. Mr. Paisley stated then there is a related fee clause under here that is fairly standard. We will not move to the inspection side of this. So basically you have to get your site inspected. Lets move to preliminary inspection. Fairly simple. Then the other inspections as required. You then have your final inspection. The authority of the town to contract as we do with First State. You are putting the responsibility of the homeowner to notify the town when they are ready for inspection.

Moving on to debris and rubbish. We will move to the requirement of a certificate of occupancy. The certificate is issued by the code official and/or their designee. You then have revocation of a certificate of occupancy. Moving on to service utilities – your gas and electric. No person shall make connections from a utility source of energy, fuel, or power to any building or system that is regulated by this code for which a permit is required. The Town Manager or code official is authorized to have temporary connections when needed and then authority to disconnect a service utility. Mr. Smith asked specific as to what utility we are authorized to disconnect? Mr. Paisley stated which is a utility source of energy, fuel, or power. Mr. Smith asked if we have the authority to disconnect gas. Mr. Paisley said to a property. Mr. Smith asked about the water. Mr. Paisley stated he doesn't know. This is how he interprets it. If gas is supplied by Chesapeake Utilities he thinks this would give us the authority to call Chesapeake Utilities and say there is a major risk hazard at this location. You need to shut off the gas. That is the way I interpret it. Mr. Flatter stated 1,2, and 3 are all different. Three just says the authority to authorize disconnection of utility service. So it is kind of on us to know who we can disconnect. It doesn't specify energy, fuel, or power. Mr. Paisley stated next is your appeal provision. So basically if there is an appeal that is raised for the decision of the code official. This outlines that it goes to the Board of Appeals which I believe is standard practice. They can adopt their own rules of procedure for conducting business and that their decisions are final. It gives them ten days to apply in writing for an appeal. This is ten days after the decision of the code official. Mr. Paisley moved to the purpose of the appeal. That section reads an application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder has been incorrectly interpreted to provisions of this code do not fully apply or are an equal good or better form of construction is proposed. That is all pretty standard. Qualifications for the Board and the Board of Appeals may consist of members who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the town. Members of the Board of Appeals shall not rule or vote on matters in which they have a personal or business interest. The appointment provides for the appointment of that official during the term of appointment of a member of the town claim Board of Appeals properly appointed any change of residency from within the town will have no effect on the validity of the appointment and the person who appointed may continue to serve until they resign or the Mayor appoints a new person. The code official basically is under the obligation to carry out the decision of the Board of Appeals which is standard. Mr. Smith stated it says the Board of Appeals may consist of members who are qualified correct? Mr. Paisley stated it was just a discussion point that came up. We came to the conclusion that you didn't want to handcuff yourself. Options are limited. Lets move to violations and penalty. So what is unlawful, which is obviously to do any of the work that has been here and described in conflict or in violation of this article, this ordinance. First under this ordinance the code official gives a notice of the violation to the responsible party. It shall give them the notice to stop whatever they are doing. Furthermore , going to three, it lays out the prosecution of the violation which is obviously the authority to request legal counsel which would be our solicitor to begin the proper course of action. Now violations for the penalty for violations. So under this it is a \$50 a step program. It is \$50 for the first offense, \$100 for your second offense, \$250 for the third offense. Basically each day the violation continues shall constitute a separate offense. The \$50 mandatory fine is mandatory, not subject to suspension. Mr. Paisley had a question about the third offense. Should that read \$250 for any third or additional offenses? What about the fourth offense? Mr. Smith stated he is struggling. If I violate you on day one is day two the second offense? Mr. Paisley stated if you are continuing to operate after being given notice or continue to pursue whatever legal action that we've informed you to stop. If we tell you

to stop an illegal action and you continue to do it, that is a second offense on the next day if you continue to operate. Mr. Smith stated clerically speaking if the offense isn't resolved on day two even though I'm not working the offense is still there. I am not doing anything because you told me to stop. Is day two a second offense even though I am not working? The offense is still there. Mr. Flatter stated it is still considered your first offense. If you go back out and start working again that is your second offense. Mr. Paisley stated if we tell you to stop and you continue to operate that second day, that is the second offense because we told you yesterday to stop on whatever was illegal. Mr. Smith stated he is struggling with the fact that they are listing them as separate offenses because ultimately it is the same offense, right? On the second day if I am still working it is the same offense. I can see why the stepped increase because I'm screwing up the same thing again. And it is the same on the third? I don't know. Mr. Paisley stated in his eyes if you are putting up a large retaining wall and we say hey this isn't enough and stop. Then the Code Enforcement Officer is doing his ride around the next day and you are back out at your retaining wall. To me that is a separate offense. You have been told to stop. Mr. Smith stated they told you to stop on day one. Mr. Paisley stated and now the next day we come out and you are still working. Now you are at your second offense. We told you yesterday to stop. Mr. Smith stated you didn't fine me. Yesterday you just told me to stop. Mr. Paisley stated there is a penalty for that defined. Mr. Smith stated the penalties for violating the stop order correct. It think it makes our understanding right is the penalty for violating the stop order. Mr. Flatter stated the second one would be. So the way it could be read is \$50 for any first offense. \$100 for any second offense or continuation of initial offense. Then \$250 for any third offense or continuation of first or second offense. Just for clarification and understanding. Mr. Cote stated that is the way that we addressed it. It makes sense to the Code Enforcement Officer and myself, and this is what we are presenting. So if there is a recommendation to change it, we are all for it. Mr. Smith stated I'm not necessarily recommending to change. I'm looking for clarity here. Mr. Cote stated if he doesn't have a permit that is the first offense. He didn't have to, but he can. Mr. Smith stated so he is fining me there on the spot. But let's say he doesn't. He just tells me to stop, go get your permit. Get straightened out because its good. The Code Enforcement Officer is not going to drop a hammer on you for that. Now when he comes back and I'm still working on it am I at my first offense or did I just pass that and now I'm paying \$100? Mr. Cote stated if he gives you a verbal warning, that is not step number one. That is the way I see it. If I am the Code Enforcement Officer you are building that fence and I come out and say hey Mr. Smith your fence is being built improperly. It requires this. You are doing this. I need you to stop and correct it. At that point, I have the option to fine you if this is approved \$50 or I can say hey just get it taken care of. If I come back tomorrow it's not. I don't see it any different than a police officer choosing not to give a ticket. This is the way it was explained to me. So let's say I give you a warning today. You don't listen to me. I come back tomorrow. Well you didn't listen to me Sir so here is your \$50 price tag. Mr. Smith stated okay. Mr. Cote stated fence #1. Then if I come back two days later and you are still working or a day later or whatever that's offense 2/3/4 and that's the way this was explained to me. I understand if it doesn't make complete sense because we are not a lawyer, neither is the Code Enforcement Officer but we are doing the best we can with what we have. Mr. Smith stated he thinks the wording opens it up. It does because he doesn't have to give. Mr. Paisley stated or you mean it doesn't open on that right? Well that is may shall as you do. Mr. Smith stated no it says. Mr. Paisley stated unless discharging. Mr. Smith stated shall be subject to a fine. Mr. Paisley stated it should be may. May be subject to a fine according to the following schedule. Because shall gives no leeway. Ms. DeBenedictis stated we're not going any higher than \$250 for the third offense, day four would be \$250. Mr. Flatter stated and after that every is

another. Mr. Paisley stated I think we need to correct that. I need to say I think it needs to say \$250 for any third and additional offenses. What about the fourth offense? Mr. Smith stated well it says each day violation continues. It continues as a separate offense right? Mr. Paisley stated it doesn't say that the fine is for four offenses. Does it go less or go higher? It is not there. I would just say for any third and additional offenses. Mr. Smith stated I would agree. With that and the 4<sup>th</sup>, the fourth statement shouldn't be there because it doesn't specify what those additional days' charges are unless you want to just put \$250 on that also. Mr. Paisley stated what do you mean? Mr. Smith stated where it says each day. The violation is a separate offense so it is a concurrent offense after three. You can say it is \$250 or you could strike that and make #3 any third or. Mr. Paisley stated additional offense. Ms. DeBenedictis stated it becomes a separate offense. Mr. Paisley stated if you take four out then what is the definition of a separate offense? Mr. Cote stated number four explains what he explained a few minutes ago. That justifies it. Mr. Paisley stated I think four needs to stay. Mr. Cote stated this kind of explains hey I came to your house today. Violation \$50. I came day two and the violation is continuing meaning you are still building. So that is a separate offense so that means number two. And then if you are doing it again, number three. Mr. Smith stated so where I'm having to struggle is with four, where it says separate offense whereas the other ones are concurrent offenses meaning it is the same offense. You just keep doing it. But now it says it's a separate offense. So is it being separated from the other offenses? Is it starting over? Mr. Flatter stated so get rid of separate and put subsequent. Mr. Smith stated I don't know. Mr. Flatter stated by putting subsequent offense on number three each day that any violation continues shall constitute a subsequent offense. Mr. Paisley stated there you go. Mr. Smith stated now we are talking. That makes sense to me. Mr. Paisley stated if there is no objection move four up to one. The \$50 minimum fine is mandatory and not objective. Mr. Flatter stated by putting may in there, you are giving them a warning. Mr. Smith stated if you get that \$50 minimum it is not subject to suspension. Mr. Paisley moved to stop order. It is very simple. What is the authority to give a stop work order? The issuance of a stop work order is in writing and delivered to whoever is the main person. Once you have been given a stop work order you need to stop working. There is a similar set of offenses. Mr. Flatter asked if you want him to match above. Mr. Paisley stated it doesn't stop at \$250. It goes to \$500. Mr. Smith stated if they are violating a stop work order we don't want to tie the Code Enforcement Officer's hands. Mr. Paisley stated it gives him a range between \$500 and \$1,000. Repeat offenders we are not going to give you warnings. We are going to assess you. Mr. Smith stated he is confused. We already assessed them in step one. Mr. Paisley stated the fine is your first offense of \$50. Then it goes to \$100. Then it goes to \$250. Then it goes to a range of somewhere between \$500 and \$1,000 for the fourth offense. If you have reached your fourth offense, we are not going to keep giving you warnings. We are going to keep fining them. Mr. Smith stated he is fine with it. It makes sense. But there is no limitation to this number. Mr. Paisley stated between \$500 and \$1,000. You mean a cap, you mean overall? Well if you continue to operate after we've told you to stop. Mr. Smith asked if there was a maximum fine somewhere. Mr. Paisley stated the maximum fine is between \$500 and \$1,000. Mr. Smith stated that is \$1,000 each week. So he is getting away with working for seven days before we can hit him again. Is that how that reads? He disagrees with that. Mr. Paisley stated what if we said each day work continues? Mr. Smith stated every time you work, if you have been given a stop work order every day you work, is the continuous subsequent offense of that, as I see it, because if I knew I was going to if I'm doing a job that is that big and I'm into it and I can get it done in four days without getting hit again. Mr. Flatter stated it is mentioning repeat offenders shall not receive warnings which we just said we are not going to be. Mr. Paisley stated doing warnings. What I think he means is instead of giving you a written

statement that we've shout you down as we had to do prior. We're not going to do that. You have been at this point been informed multiple times and you continue to work after we shut you down. That is my reading of it unless I'm wrong. Mr. Smith stated I was kind of leaning towards that when I read it because most times you are dealing with a contractor. If he goes to his next job, he is a repeat offender. Mr. Cote stated the Code Enforcement Officer and I originally had it worded as each day, but we figured we were trying to just give a little bit of leniency to the residents with the amount of offenses. But after hearing opinions of this committee, I think the day probably makes more sense. Mr. Smith agreed. Mr. Cote stated that is where we originally started. Mr. Smith stated to keep the penalty rolling every day. Mr. Paisley moved to the synopsis. Mr. Paisley read: Clayton building permit ordinance that establishes permit requirements, including exemptions, repairs the application process, the town's responsibility and application time constraints as permits its validity, required approvals, extensions, expiration, suspensions, display requirements after the fact, permitting and related fees. Furthermore, the ordinance details inspection procedure responsibilities, the certificate of occupancy requirements, connection and disconnection to service utilities, and outlines ways and mechanisms to appeal decisions. Additionally, the act spells out violations and penalties stop building permits as well as the town's ability to have procedures for issuing a stop work order. Mr. Paisley would like to entertain a motion to recommend that Council adopts 2023-19.

***Mr. Smith made a motion to send Ordinance 2023-19 to legal for review. When it comes back it is presented back to Council.***

Mr. Paisley stated he thought we were going to send it to Council and approve it tentatively. Mr. Smith stated he would rather go the other way and make a motion. Mr. Paisley asked if we were going to do that with all three ordinances.

***Mr. Smith made a motion that Ordinance 2023-19 and recommend Article 1.1-1 of the Clayton Municipal Code be forwarded to the Town Solicitor for review and brought back to Council upon his approval. Ms. DeBenedictis seconded the motion. Motion approved unanimously.***

Mr. Paisley stated the committee stands in recess at 8:23 p.m. Mr. Paisley stated we are back in session at 8:25 p.m.

**Discuss and Vote to Recommend that Council Adopt Ordinance #2023-20 – An Act to Amend Title 4 of the Clayton Municipal Code Related to Permits and Licensing and Business and Contractor Licenses**

Mr. Paisley stated there are a couple of things happening right off the bat here for administration purposes. Title 4 which was where all the permits and licensing was per title is just strictly becoming Licensing. Article 4.1 goes from permits to Business and Contractor Licensing as does the subsequent section. All of the previous information is gone. We are starting fresh. This is all thanks to the Code Enforcement Officer for his time, research, and effort to get it to this point. So all the old language is struck. Purpose – why do we need to have a business license? Definition – this spells out what a business is. What a person is. What is a premise? This is all standard. We then move on to license

requirements. You have to have a business license to operate, maintain, or otherwise engage in business in Clayton. It states you need to have a license. The license will be issued by calendar year not fiscal year. It requires that you have to have it in order for us to issue a license. You have to have a license from the state and have insurance. If you are in violation of this section the license we issue will be void and unaffected. Contact contents of the application. It gives the Town Manager the authority to establish the license application and the contents therein. Review and granting of the license – this will be by the Town Manager or the Code Enforcement Officer. They will consider things similar to the owner’s character, criminal history, business license history, and compliance with applicable laws. It requires before we can give a business license they obtain all necessary state approvals and it requires that you don’t have a pending violation with the town before we can give you your business license. Mr. Flatter asked if the town does background checks. How do we get ahold of criminal history? Mr. Paisley stated we have to for our employment aren’t we? Mr. Smith stated that is not applicable here. Mr. Cote stated not for business we don’t do. We do background checks for our employees. Mr. Smith stated criminal history is one that could get you in trouble especially with character. Mr. Flatter stated character and criminal history. Mr. Smith stated it is tough to identify. We could use it, but not necessarily have to have it there. The reason I question that is because you know there are bills being passed at the state level now that criminal history tends to benefit them and puts them at the top of the list because they have been adversely affected by said products. Mr. Flatter stated I think we are thinking the same but in determining approval. The Town Manager shall consider this so it is not saying we are going to reject you because of it, you are just saying that is one of our resources. Do we utilize? Mr. Cote stated if the area that we struck through will show the previous language that we have already had on the books, so could we look at what it used to say versus what it does say now? I think we have something very similar to this already just a different format. Ms. DeBenedictis stated you need to be careful. People will cover after you no matter what. Mr. Flatter stated if we don’t do background checks how do we get a criminal background? Mr. Paisley stated to their credit this was on the books part. Moving out to the purpose. Basically, why do we need to have a business license? Moving to the definition this spells out what a business is. Who a person is and who the licensee in addition to what does a premises which is all standard, what is a premise. Then we move on to license requirement. You have to have a license to operate, maintain, or otherwise engage in business in Clayton. The license will be issued by calendar year not fiscal year. It requires that you have in order for us to issue a license. You have to have a license from the state and have insurance. If you don’t, if you are in violation of this section, the license we issue will be void and unaffected. The contact contents of the application gives the Town Manager the authority to establish the license application and the contents therein. Review and granting the license – obviously, this will be by the Town Manager or the Code Enforcement Officer. They will consider things similar to the owner’s character, criminal history, business license history, and compliance with applicable laws. Before we issue a business license they must obtain all necessary state approvals and it requires that you don’t have a pending violation with the town before we can give you your business license. Mr. Flatter asked if the town does background checks. How do we get ahold of criminal history? Mr. Paisley stated we have to for our employment don’t we? Mr. Smith said yeah but that is not applicable here. Mr. Cote stated not for businesses we do not. We do background checks for our employees. Mr. Smith stated criminal history is one that could get you into trouble especially with that character. Mr. Paisley stated that was the current language. Mr. Flatter stated good moral character and making the decision council should consider. Mr. Flatter stated penal history, all convictions, reasons, therefore, and demeanor of applicants subsequent to this release. License history, general person

history, and other facts relevant to the general personal history of the applicant. Mr. Cote stated he feels like we cleaned it up a little bit. Mr. Flatter stated character I think could go. It could go either way, but I think the criminal because that would be my first thing that would be my first question is if I was reading this and I saw a criminal history. Are you doing a background check on me? How are you getting criminal history on me? Mr. Smith stated for employees they have to sign off for us to get a background check. Do the applicants do that? If not, how do we obtain it? Mr. Cote stated good question. Currently we are not there. Mr. Paisley asked do we say something to the effect? In determining approval the Town Manager or their designee. Determining approval the Town Manager shall consider the applicant or owners in ways permissible by applicable law or through information available and also raised by applicable law or something to that effect by basically saying in ways that the law permits. Mr. Flatter asked why do we even have to have it? Why do we have to have character and criminal history even on there? Do we look at their business license history? We talked about our specific business history. Mr. Cote stated so yes we do so without giving any specific examples on record in the event that there is a business in the Town of Clayton that does not pay for a business license in any given year when the next license comes up. That can be considered. Mr. Flatter stated so you can justify that business license history. You can speak to that if somebody walks in and says well what does that mean? And then compliance with all state, county, local laws, and ordinances with the US? Mr. Cote stated let's say Rob Cote isn't the Town Manager and I own a business in the Town of Clayton. I pay for license in year one. I pay for license in year two. Year three, I just don't feel like doing it. So I come back to you in year four and you say, well, you didn't pay me for year three and so now. Mr. Flatter stated I just don't know if its if we really have to put that in there. Mr. Smith stated he is struggling with criminal history. Mr. Cote stated so like I said at the beginning of tonight when our Code Enforcement Officer worked putting this and the past one together he utilized industry standards and local municipalities and other municipalities throughout the state as well as talking with county officials. This isn't something that we made up. This is something that is previously and currently being used across the state. I understand that the Town of Clayton doesn't need to do what everyone else is doing either, so it can easily be stricken if that is this committee's desire. Mr. Smith stated his concern is the criminal history side. If we run somebody's background without their approval. Mr. Cote stated he is not going to run anybody's background so he is with him. Mr. Paisley stated if there is no objection he asked that the owner's character and criminal history be stricken. Mr. Smith asked about the Better Business Bureau. Vetting through any complaints through the Better Business Bureau. Mr. Cote stated there is nothing in there that states that. Mr. Smith stated you take into consideration the comments and their Better Business Bureau record. I just don't know if it should be in the review process. Mr. Paisley stated hearing no objection it has to be stricken. Mr. Smith stated he doesn't have an objection on that and you are speaking just to the owner's character and criminal history. Mr. Flatter stated I would just get rid of character, comma, criminal history, because you are going to keep the business history part. Mr. Smith stated so in this process when somebody does apply do we verify their state license or do we physically verify they are insured. Mrs. Muncey stated right now they have to give us a state business license. We don't require insurance on the business at this time. Mr. Smith stated they wouldn't have gotten a state license if they weren't insured correct? Mrs. Muncey stated you can apply for a state license and not have insurance. Mr. Smith stated here it says they will need proof of insurance. Mrs. Muncey stated they are changing that. They are going to make them show us a certificate of insurance with their application. We are not doing that right now. It is just their State of Delaware business license. Mr. Cote stated and that is to protect. Mr. Smith thought it was redundant because that was done at the state

level. Mr. Cote stated as a former business owner in the State of Delaware I wasn't required to provide insurance. Mr. Smith stated he was fine with you requiring it. Mr. Paisley moved on to number six. License period and renewal. Basically the period of the license is until December 31 of each year until we begin again on January 1. Ms. DeBenedictis stated that is January 31. Mr. Paisley stated well that is for the renewal section. You have until January 1 to renew. It then lays out operating with an expired license shall be considered operating without a license and subject to the penalty. Mr. Cote stated because right now if that were to be going on in town we have no way to enforce that. Mr. Paisley stated Section D is the extension areas and obviously operating with that license. The license fee and again that is to the fee schedule. Eight is the general standard of conduct that of business or licensee shall comply with the first as obviously all laws of the state, county, and town you shall avoid all practices that adverse public health safety, and welfare. Nine is the standard display of your license. If you have a vehicle-based license, as for example a food truck, you have to keep a place that is visible and available upon request of the Code Enforcement Officer, Town Manager, or government acting official. Ms. DeBenedictis stated food trucks have to have State Board of Health. Mr. Paisley stated that is under the contractor licenses but I believe correct. The transfer of license – you cannot transfer. Then the provisions for suspension of a business license by the Town Manager or Code Official which is operating outside of the terms of this chapter. Sixty days late on renewing your business license – business and violation of ordinances of the town, state, United States is subject to a record review and evaluation to determine whether the action has or will have a negative impact on the operations of the Town of Clayton and/or the business district of the Town, the Fire Marshal, or an applicable jurisdiction authority has requested that business activity cease. Mr. Flatter stated we are saying you must file by January 31 for your renewing but it says your suspension of your license won't be until 60 days. Are you giving them that 29 day grace period? Is that what you are doing? Mr. Paisley stated you raise a very good point though. How is the business license suspended when it's already enacted. Mr. Smith stated or not to operating a license at that point. Mr. Paisley stated so like it says so a business license can be suspended if the business is more than 60 days. You are renewing your business license well you only have until January 31. That is only 31 days to renew it. So are you suspending a license? It's already been valid because it's invalidated on the 32<sup>nd</sup> day. Mr. Smith stated you haven't suspended. I don't think its applicable to the title meaning you can't suspend the business license that is expired. Mr. Paisley stated that is what he is questioning. So you have when the new period starts on January 1 you have until the 31<sup>st</sup> to renew. If you give them 60 days on the 1<sup>st</sup> of February. So at the end of February beginning of March you're suspending a license that is already inactive because it has been more than 30 days. Ms. DeBenedictis asked if somebody gets a business license in October do they have to get another one in January? Mr. Flatter stated yes it is not prorated. Mr. Cote stated the business is more than 60 days late in renewing its business license. So lets say you don't make the 31 January deadline but you come in February 1<sup>st</sup> or February 2<sup>nd</sup>. I am still going to issue the license. We are giving them a 31 day grace period. It should be renewed prior to the 1<sup>st</sup> of January. We are giving them 31 days. However, if they get to that 60 day mark which would be March 1<sup>st</sup> or 2<sup>nd</sup> depending on the year. So at that point their license will be suspended. I don't even have to consider renewing it. At that point, their license would be suspended because they would not have an active license. What I am saying is I don't have to give them one because they have exceeded 60 days. Mr. Paisley stated you are not letting them renew right? You are not letting them renew, now you are going back and reapplying. Mr. Smith asked about the cost. Mr. Paisley stated that is in the fee schedule which is \$50. Mr. DeBenedictis stated I come in October and say I want a business license and I pay the \$50. Then in January I pay another \$50 for the next year? Mr.



Cote stated if you open a business in October of 23 or even November of 23 where we are at right now, yes you will pay a full business license fee for the remainder of the year. When January 1 hits you will pay another \$50 or whatever that number is for the entire calendar year of 2024. That is where we said it wasn't prorated. Mr. Paisley stated that is current practice too correct? Mr. Smith stated that is not to say that they cannot come to Council or the Town Manager and say because we have done that in the past. We have waived that business license for that year and in January they would owe the \$50 for the next year. Mr. Smith stated he is struggling with the fact that it is in there under a suspension of license that is not active. Mr. Flatter stated he thinks that could be struck out. Mr. Paisley stated the precedence the principle he is going with here. I don't know that it needs to be struck as much as it might need to be reworded. Mr. Flatter stated here is my thing. I'm going to sound not nice. 1 January it is time to renew your business license. We are already giving you a 31 grace period. So you are technically operating without a business license for 31 days. And we are saying its okay. So we are already giving you 31 days to come to town and pay \$50. I don't see the necessity of extending another 29 days on top of that just out of the goodness of our heart. Mr. Cote stated the thought process was as we are trying to encourage businesses to come to Clayton and to remain in Clayton and we are trying to almost bend over backwards to give these business owners the ability to get here. Let's say there was a business in town or two that weren't complying. This even shows them that the town is trying to work with these folks but sooner or later we have to draw a line in the sand and 60 is what we came up with. I still agree with the Mayor that it doesn't probably belong in. Mr. Flatter stated so what if we strike through this let's get rid of the 60 day but put something on the after that January 31<sup>st</sup> day. A secondary extension may be received in writing or something like that. Mr. Paisley stated the Town Manager or their designee. Mr. Flatter stated so for a secondary extension so we are already telling you we are giving you one extension already or grace period. We will be entertained in writing to the Town Manager or designee up to the last day in February. Mr. Cote stated he sees where he is going. Mr. Smith stated he was thinking the same thing. Mr. Cote stated if the business reaches 60 days the Town Manager may consider not renewing the business license for the current calendar year. Mr. Flatter stated instead if you say 60 is that going to be March 2<sup>nd</sup> or March 1<sup>st</sup>. If you just say the final day or the last day in February. I am giving you two months out of a 12-month period to come in and give me \$50. Mr. Paisley stated what if you said the Town Manager may authorize an additional extension to the last day of February on a case by case basis. Mr. Cote stated he does not like case by case because if you do for one and don't do it for the other. How about we avoid all of this and change January 31<sup>st</sup> to the end of February. Mr. Smith asked when do we send out the fact that the business hasn't paid us? Mrs. Muncey stated I normally would go around the end of January. Mr. Cote stated this is something that the Code Enforcement Officer and I talked about. So even though the town may pass this ordinance and this is our suggestion that it does. This is what I have a question with and I want to get our solicitor to weigh in on. Because before I go and tell someone to seize operations I want to know that I can legally do that as long as its you know I want to make sure this is a legal ordinance. So do I have the right according to this document if approved to go down there and slap a red sticker on someone's business. Do I have the right to do that if the state has given them a business license? Mr. Paisley stated very good question. Mr. Smith stated he is going to be leaving it there for his approval. Mr. Cote stated so this paragraph Mrs. Muncey, 4.1-1.11 new paragraph did notice of suspension revocation. Once you run that by the solicitor to make sure that this does in fact allow the town to order someone to cease operations. Mr. Paisley stated January 1<sup>st</sup> the Town Hall is closed. The application for renewal must be received by the end of the next day which Town Hall is open for business. An application received after this update

are subject to a late fee of \$25. The only thing I would say is after it says the close of business on January 1<sup>st</sup> of each year maybe put or as provided and then cite whatever section where we gave that grace period. Mr. Smith stated the grace period is only a written application put in prior. They still have to ask for it. If they ask for the extension the Town Manager has the authority to waive that \$25 for the 30 days. Mr. Paisley stated following that operating with expired license three days after should be considered operating without a business license and subject to a fine. Mr. Smith stated that is what we just talked about. Is that \$25 considered a fee or a fine? Mr. Paisley stated that is a late fee. What if we give them a grace period. This still says that they are subject to a fine. Mr. Smith stated I would say even without the grace period because we hit them for \$25 on February 1<sup>st</sup> right. So come March now they've hit the 60 day mark or whatever, what is the requirement? If we said 60 days whatever the case may be then the fines kick in. Mr. Flatter stated his question is that operate with an expired license 30 days after expiration shall be considered? If they go to the Town Manager and say hey can I have an extension they are still operating outside that 30 days right? Mr. Smith stated right if they are asking for the question after 30 days. Mr. Flatter stated if they don't go to the Town Manager we are kind of giving them February for free. Mr. Smith stated yeah I would say we are. Mr. Flatter stated by giving them the 60 days kind of just allows us, the Town Manager, to do the extension and everything else to happen with it by 1 March. But by that date if you are operating. Mr. Paisley stated well technically February is not free because the \$25 isn't assessed until February 1<sup>st</sup>. Mr. Smith stated we need to figure out the process. As far as making sure that the notification goes out early in February saying they've just been hit with a \$25 penalty and then the fines will start assessing as of March. So what does that layout look like? Mr. Paisley stated it is a step program similar to what we did with the building permit. So \$50 for your first offense. Second offense is \$125. Third and additional is moving to \$250. Mr. Smith stated that offense is weekly. Am I reading that correct? Mr. Paisley stated if you don't have a business license you need to get that fixed. We come back the next week and you've made no effort to get your business license and you are still operating now we are moving to our second offense. Mr. Smith stated if they haven't rectified this in a month, we are talking about \$675 for one month? I am just making sure that the committee understands what we are hitting them with in this terminology. Mr. Paisley stated but you had a month. That is a couple notifications. Mr. Smith stated I can't say I disagree with it. I'm just saying. Mr. Paisley stated it is a lot of money. Mr. Smith stated we are trying to be strict, but be business friendly and fair you know. That is a lot of money. Mr. Flatter stated you are saying if they are still operating? Mr. Paisley stated right still operating. Mr. Smith stated now this is after you told them they can't. This is after we've told them they have to cease operation and they are operating. Mr. Paisley stated any person or business required to be licensed. Under this chapter who conducts a business within the town prior to obtaining the required license shall be fined and shall immediately assist and desist from doing business within the town until they have obtained the proper license. The fine shall not be a substitute for business license application. Each week the business continues to operate without a business license shall constitute a separate offense and shall be defined according to the following schedule. Mr. Smith said back up to B. We need to change that to 60 days instead of 30. Mr. Cote stated I thought we said not to do that a few minutes ago. Is that what we need to do now no 60s correct? Mr. Smith stated 60 because after 30 we are hitting them with the late charge of \$25. After 60 is when these fines start to kick in. Mr. Flatter stated don't want to fine them right? You are maybe doing that in 28 day 29 days extension with them through February. So the 60 days gets them into March before they are fined which gives them the first grace period and the second grace period coverage. Mr. Paisley said so if \$50 to \$125 then to \$250 is too much do we go \$50, \$100, \$150? Mr.

Smith stated yeah because I can't see. I mean at that point you are only a month maybe two months away from the business just walking away. I don't know what kind of business they are doing. I can't imagine they are doing much. If they can't pay the original \$50 figure. I'm just struggling. I mean what do you think? Ms. DeBenedictis asked how many businesses we have. Mr. Cote stated we only had about 12, 14 of them. For businesses you actually have to have a brick and mortar business in the town. Mr. Flatter stated so you are saying \$200 a month. Mr. Cote stated what we are saying is this because we are doing this now because even though we don't have a large number of businesses, we have businesses in town that are not playing by the current rules which were \$50 so we're increasing it and trying to make it more of a financial burden to try to entice them to do it because at the end of the day they are doing it and we have nothing to enforce. Mr. Paisley moved to cessation of operation. The Town Manager can order the cessation of operation if you are operating without a business license. Mr. Cote stated that is another one. So 4.1-1.12 penalties paragraph D to be verified by the town solicitor that it can actually be done. Verify with the Town Solicitor that the Town Manager can actually legally order the cessation of business without an approved kind of Clayton business license. Mr. Paisley moved to recovery of unpaid fees and penalties. So the amount of any unpaid penalty including unpaid business license fee shall constitute a debt owed to the town and the town may institute a civil suit or use any other lawful methods authorized by applicable law to recover any unpaid fee. Exemption. Basically it gives you an exemption if you have tried to remedy a violation within seven days of the date the notice of violation was delivered to the business. A business that files an appeal with the Town Council resolved in favor of the business. The appeals procedure. The Town Council shall provide any business appealing a determination of the Town Manager within 15 business days as written notice of the date, time, and place at which the Town Council shall sit to hear the business appeal. Such written notice shall be sent via certified mail, return receipt requested. Any hearing may be held as part of a regularly held Town Council meeting. The filing of appeal shall stay an enforcement action by the town to compel the business to cease operations. The business shall be permitted to continue to operate until a final decision is rendered by the Town Council. If the Town Council finds against the business, the business shall have five business days after decision of the Town Council to remedy the violations before the town takes legal action to compel the business to cease operations. The accrual violations and corresponding penalties shall not be stayed if an appeal was filed, but no penalty shall be assessed if the Town Council finds in favor of the business. If Town Council finds against the business, the Town Council may waive a portion not to exceed 50% of the accrued penalties if one of the violations is remedied within five business days. Following the decision of Town Council and the Town Council finds the appeal was filed by the business in good. Mr. Smith asked about the 15 business days. Mr. Paisley stated the Town Council shall provide any business appealing any determination of the Town Manager with 15 business days as written notice of the date, time, and place at which the Town Council shall sit and hear the business' appeal. Mr. Smith stated so we have to notify them within 15 days of when we're going to do it. Mr. Paisley stated yeah. Mr. Smith stated there is nothing stipulating this. Not a month and a half. There is nothing binding us to get done quickly as I see it. Mr. Flatter stated it just reads weird. Mr. Cote stated the Town Council shall provide any business a hearing a determination of the Town Manager with 15 business days' written notice of the date, time, and place at which the Town Council shall sit to hear the business's appeal. Mr. Paisley stated 14 basically gives the Town Manager or their designee the authority to make an inspection and investigate investigations reasonably necessary to enforce this chapter and to inspect those portions of the commercial premises that are open and visible to the public in order to ensure that the business is being conducted as specified by the license, by the licensee as

specified by the license. Yes and it is in compliance with all applicable building safety, zoning, and other town codes. All persons authorized by this chapter to inspect premises business have the authority to enter the premises to inspect at all reasonable times. Do we need to give notice? Mr. Smith stated you got to give notice if you need them to open the door. If it is open to the public, no. Mr. Paisley moved to 15. Here is contractor's license. Basically you got to have a contractor's license for all businesses and persons, including but not limited to contractors, subcontractors, food truck vendors including vehicle or utility trailer operations, utility companies, companies providing utility service within the town that are conducting business in a non- permanent structure capacity. Businesses operated out of a fixed structure, such as a building, are required to apply for a business license. Contractor's license shall follow the same standards and requirements for all subsections of this title with the following exemptions. License shall be valid for a period of 12 months from the date of issuance. Mr. Smith asked this is not calendar year? Mr. Paisley said correct. Mr. Smith stated that is a tough one to track. Mrs. Muncey stated it will be a lot easier. Your income will come throughout the year. Mr. Smith asked how do you know when the contractor's license expires? Mrs. Muncey stated she keeps track of it. I will review it and send them a letter a month prior saying your contractor's license is about to expire. Mr. Cote stated iWorq tracks it all. Mr. Paisley stated we are requiring the same thing as the business license. Mr. Smith stated there are a lot more of these. Mrs. Muncey stated there are hundreds of these. Mr. Flatter stated contractor licenses shall follow the same standards or requirements of all subsections of this title with the following exceptions. What following exceptions? Mr. Paisley stated C needs to become B1 because it is a subsection of B. It is not its own provision. A title needs to become article I think because title is all of Title 4 and there is a bunch of different licenses in Title 4. Mr. Smith asked what are you talking about? Mr. Paisley stated so where it says contractor's license shall follow the same standards and requirements of all subsections of this title. That Title 4. There is solicitation stuff in there. There is all kinds of stuff in there. I would just probably say article. The act remains Title 4 to deal with licensing and designates Article 4.1 to deal with businesses, business and contractor licensing, and removes the previous language. In addition, this ordinance spells out the purpose, definitions, and requirements for business license, as well as the contents of the application to review the license, its time period, renewal, and fees. Furthermore, it notes prohibitions against transferring the license and penalties for violations. This act also entails the suspension of a business license to appeals procedure inspections and requirements to display. Finally, the act contains a provision for contractor licenses, and I think we are going to send this to the solicitor for review which will be reflected in the motion if there is one.

***Mr. Flatter made a motion to send Ordinance 2023-20 an Act to Amend Title 4 of the Clayton Municipal Code Related to Permits and Licensing and Business and Contractor Licenses to the Town Solicitor to review and then send to Town Council. Ms. DeBenedictis seconded the motion. Motion carried unanimously.***

Mr. Paisley stated Councilman Carrow was excused from the meeting.

***Mr. Flatter made a motion to adjourn. Ms. DeBenedictis seconded the motion. Motion carried unanimously. Meeting adjourned at 9:15 p.m.***

Recording Secretary,

Sue Muncey