



**City of Lafayette**  
**Minutes**  
**City Council**  
**Planning Commission**

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Lafayette Library and Learning Center – Community Hall  
3491 Mount Diablo Boulevard, Lafayette, California

May 14, 2018  
6:30 p.m.

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***6:30 to 7:00 pm Musical Performance - The Julia Burke Memorial Flute Choir – Stanley Middle School Music Department***

**1. CALL TO ORDER**

Mayor Tatzin called regular City Council meeting to order at 7:00 p.m.

**2. ROLL CALL**

Present: City Council: Mayor Tatzin; Vice Mayor Burks, Councilmembers Anderson, Mitchell and Samson

Planning Commission:

Staff Present: Steven Falk, City Manager; Mike Moran, Engineering and Public Works Director; James Hinkamp, Transportation Planner; Payal Bhagat, Senior Planner; Mala Subramanian, City Attorney; Joanne Robbins, City Clerk

**3. ADOPTION OF AGENDA**

ACTION: It was M/S/C (Mitchell/Anderson) to adopt the agenda. Vote: 5-0 (Ayes: Anderson, Burks, Mitchell, Samson and Tatzin; Noes: None).

**4. PLEDGE OF ALLEGIANCE** – Kathy Merchant led in the Pledge of Allegiance.

**5. PUBLIC COMMENTS**

Mayor Tatzin prefaced the item, by stating he and Councilmember Samson will need to leave the meeting when public comments involving PG&E and tree removal/trimming are made under Item 6; Public Comments.

IVOR SILVER, referred to errors the City has made in promoting the 315 apartment complex should No on L win on the ballot in June. The City has indicated that 85% of the costs of “YES on L” have been paid for by concerned residents, but in fact 97% of this has been paid by the contractor/developer. He asked

why the Council is apparently approving a \$3 million payment to the developer for development of the soccer field, using taxpayer monies. He cited fear generated by the 315 apartment development regardless of what happens on the ballot, which is also false. He said the apartment project has never been approved by the City of Lafayette, and under the City's General Plan, the property is low density, single-family residential zoning with a maximum of 2 homes per acre.

In focusing on the recent 2016 EIR, it identified no less than 13 adverse impacts which the builder has had not or cannot mitigate. Also, Lafayette voters have the right to reject the apartments by a referendum and the Council or the developer cannot simply move freely ahead without this approval.

Mayor Tatzin referred to the comment about the \$3 million payment, he suggested Mr. Silver research how the amount was arrived at, review the process agreement, a copy of which is included in the agenda packet under Item 8B as well as on the City's website.

Councilmember Samson asked Mr. Silver if it is true that he is one of two Ivor's in the City, and contrary to what is on NextDoor.com, Ivor Samson is on the City Council and Ivor Silver is not, and Mr. Silver confirmed.

#### Recusal:

Mayor Tatzin recused himself given the following comments regarding PG&E and tree trimming/removal, stating he has a PG&E a gas transmission line under the road in front of his home, and trees may be affected. Councilmember Samson recused himself as well, stating he represents a client in litigation against PG&E and also as a result of past employment he receives compensation from PG&E, and both temporarily left the Chambers.

MIKE MUNNELLY, presented his son's character counts of how people, corporations and elected officials should behave. They should not deceive and have the courage to do the right thing. He attended a PG&E workshop and had questions and concerns. They provided photographs of roots damaging pipelines but he has heard otherwise that they do not invade metal, and that there are other methods of inspection.

He commented that people are burning fossil fuels, and he questioned why PG&E was not reducing fossil fuels, which led to the fact that they are increasing the size of the gas transmission pipeline along St. Mary's Road to Moraga. If there is a problem with the pipeline, he questioned why it could not be left internally and suggested reducing the new pipeline's diameter as another solution, which the Council should also hold them to do the right thing, and asked that the Council consider this.

DAVE KOSTERS, said he also attended the PG&E Open House on Wednesday and said statements by PG&E are not true. One person he spoke with was a PG&E Specialist in gas emergency response and he told him that it is not company policy to routinely shut down a high pressure transmission line, and there are situational factors they take into consideration. He said they even do welding on an active high pressure line, which was surprising. He contacted the federal regulator FEMSA and they were dismayed and aghast at what PG&E said and told him what PG&E states is completely opposite of what he was told last summer.

Another reason PG&E states it is requiring tree removal is that tree roots impact transmission lines. The inconvenient fact is that over the last 20 years in the FEMSA federal records, anywhere in the U.S. there

has not been a single instance of a tree causing a problem that was reportable to FEMSA associated with buried pipelines. After PG&E launched their tree removal program, they commissioned a consulting company called Dynamic Risk that studied the hazards of tree roots, buried pipelines and the study was published in 2014 and it did not support the case of needing to remove trees.

He said Gina Dawson did some research and found an earlier study that was not published but was sent to the CPUC which states that if trees are cut down and the roots are not removed, the decaying material releases carbon dioxide and that produces a corrosive factor that is known by experts to interfere with pipeline integrity, and there have been industry studies of this. He had other very troubling examples and asked that PG&E be held accountable for this.

GINA DAWSON, said the Community Pipeline Safety Initiative is a serious misnomer. The agreement the City signed is not about the unique character of Lafayette, does little to address pipeline safety concerns here, and said she and her husband walked with PG&E on the Lafayette-Moraga Trail and saw exposed pipeline, mismarked trees, steep Creekside slopes that could be further susceptible to soil erosion if trees are removed, and she felt sick to her stomach. A year later, she is still very upset, angry and scared. The initiative is not about bringing pipeline safety upgrades to the community and if it was, PG&E would have identified and prioritized pipeline safety concerns specifically to Lafayette's gas infrastructure and ideally would have been transparent in presenting the priority of pipeline safety and maintenance projects, which has not been the case.

Instead, PG&E came to Lafayette with a cookie-cutter program rolled across all cities sitting on top of their 6,750 miles of transmission pipeline. Trees are important to the community so residents dug in to question the necessity for tree removal when there are other pipeline concerns like the exposed pipeline, lack of testing on vintage pipelines, lack of verification that external corrosion testing is completed, lack of historic maintenance records, lack of remote or automatic shut-off valves, etc. Many of these are similar factors relevant to the San Bruno explosion.

The fact that PG&E prioritized an unregulated, discreditable, discretionary tree removal program as a community pipeline safety initiative in Lafayette when there is a serious lapse in regulatory compliance safety upgrade are reprehensible. PG&E rolled out the tree removal program in the shadow of the San Bruno tragedy, yet no tree was ever mentioned as obstructing first responder access to the emergency scene. It was PG&E's lack of ability to identify the problem and shut off the gas flow in a timely manner that kept emergency responders from safe entry and response operations. It was PG&E's criminally negligent maintenance operations that contributed to the severity of that incident.

She communicated with Contra Costa Fire Marshal Marshall and Fire Chief Jeff Karman, although both support measures to quick access to emergency scenes, they do not explicitly endorse this tree removal program. PG&E's misrepresentation of local responder endorsement is reprehensible. Another reprehensible and dishonest element of the CPSI is the treatment of affected residents. Two dozen or so residents who own almost half of the trees at stake has an undue and unfair burden to shoulder and deciding to agree to lose cherished trees in the name of community safety. The thing is, individual residents are not responsible for community pipeline safety—PG&E is. She thinks an important note is other residents in other cities who have gone through this are actually being threatened with litigation by PG&E if they do not make an agreement. She trusts that the City of Lafayette does not want to position its residents into that same scenario. She asked to reach an agreement and restore trust in the City's leadership and City management.

MICHAEL DAWSON, said one year ago people asked him if their pipeline is safe and he used to say yes. But, after what he has learned over the past year he cannot answer that any longer. Believing pipelines are safe requires trust in the operator and trust in the manner in which it has operated. Perhaps the Council thought so too when it voted for the tree agreements. In a City staff report, PG&E was allowed to proceed with its major tree removal project under LMC Section 6-1705.b.5 to “protect the health, safety and general welfare of the community”. However, PG&E has shown their approach with the CPSI program is simply to justify and re-justify the need to remove trees without undertaking the priorities which will actually make the pipeline safer.

He asked the Council if they knew that the PIPA organization they cite as rationale to cut trees is simply their own trade organization, similar to a tobacco institute. His new saying he uses is “PG&E can be trusted to act earnest but they are not earnest with their trust.” Over the past year, it has been shown that PG&E’s rationale for the tree cutting agreement was misrepresented in order to justify the program. They recently found the 2013 PG&E study that Mr. Kosters referred to which warned, in part, that the real dangers of decomposing roots to the pipeline integrity is real and PG&E’s claims of first-responder access were again undercut at last week’s Open House with a sole firefighter they featured on a large sign and an easel confirmed with the group that he really did not support PG&E’s tree program.

He said PG&E confirms they have an aging pipeline on the Moraga Lafayette Trail with untested wells, an exposed pipeline, no automatic shut-off valve, they have never tested Lafayette’s pipelines internally and they experience a large number of dig in accidents. Their top two priorities are cutting down trees and increasing customers to Moraga. The rumor is that PG&E will come back to the City for another presentation, but he asked what more will slides and more misrepresentation do to increase residents’ trust and safety. He guaranteed that after this meeting they will have more PG&E brochures but will be no safer than they are today.

They at Save Lafayette Trees and many other individuals have done everything possible to demonstrate to the City Council that PG&E’s claims were misrepresented to the Council from the beginning and the ball is in the Council’s court, and safety concerns are literally at the Council’s feet. Unless PG&E comes voluntarily to the table now to start a new agreement, it is the Council’s duty as City representatives to act to restore the public’s trust and safety. They cannot be clearer and asked the Council to work with the community, hold PG&E accountable and rescind the agreement.

ALISON HILL, said she does not know the exact distance but she is a very short distance up the hill from the main pipeline and a bit further from the exposed piece of pipeline which has concerned her for many years when it just had a small sticker on it. Last year, PG&E put many danger and warning signs around that exposed pipeline. She went to their presentation and spoke with Councilmember Anderson there on Wednesday and had specific questions, including the exposed pipeline. PG&E representatives said there is a lot of exposed pipelines under bridges and other areas, and they said this is in a minor ditch. She read what PG&E handed out which said they will underground that later this year; however, it has been like this for a long time.

She said her other question to PG&E was when the pipeline was tested and how was it tested. She would think this would be relevant information PG&E would have at a public meeting and they did not have it there and they suggested she fill out a request form to receive it. She received a letter thanking her for attending the meeting and a statement that said they are researching it. She was very concerned about the lack of specific information, both in PG&E’s documentation and at the meeting.

There was a lot of talk about concern and safety but when getting to details like where the shut-off valves are located, she thinks there is one where Newell Avenue meets Olympic Boulevard and one on the edge of Briones, this is a long way with many residents living in between those areas. She said it does not seem to her that trees are affecting pipeline safety but rather the age of the pipeline and lack of information and testing.

MARYANN HOISINGTON, said one does not have to live in this part of area to know the right-of-way that PG&E has notoriously mismanaged. When residents move here they find out after the first year. She thinks PG&E is using the San Bruno explosion to scare everybody, and what they are doing is rush to make improvements and to ease residents about this scare. But, what they are not doing is being careful. She was shocked after reading the agreement with PG&E and the City because usually the City does things carefully and look into what the city is doing, but PG&E is just asking residents and the City to sign away and likened it to a hostage situation based on fright. She asked that the Council look again and rescind what it has already done and asked to do something that makes sense. She asked not to just jump on the bandwagon but to reconsider the matter.

Noted Present:

Mayor Tatzin and Councilmember Samson returned to the dais.

***Convene Planning Commission (Item continued from 4/23/2018)***

**6. CONSENT CALENDAR**

- A. **TP08-18 Diana & Peter Schlosser (Owners), R-20 Zoning: Request for a Category I Tree Permit to remove a 30" diameter Coast Live Oak tree on a vacant parcel on Reliez Station Lane, APN 185-450-016.**

Recommendation: Adopt Planning Commission Resolution 2018-07 Approving TP08-18 Diana & Peter Schlosser (Owners), R-20 Zoning: Request for a Category I Tree Permit to remove a 30" diameter Coast Live Oak tree on a vacant parcel on Reliez Station Lane, APN 185-450-016.

ACTION: It was M/S/C (Burks/Samson) to adopt the Consent Calendar. Vote: 4-1 (Ayes: Tatzin, Burks, Mitchell, and Samson; Noes: Anderson).

***Adjourn the Planning Commission***

**7. PRESENTATIONS**

- A. **Steven Falk, City Manager**  
**Introduce Eric Singer, Assistant Planner**  
Recommendation: Receive and file.

City Manager Steven Falk introduced new Assistant Planner Eric Singer and gave a background of Mr. Singer's past experience, noted he will receive his Master's degree in Urban Planning in a week, and said he served as a planning intern for the City of San Rafael.

Mayor Tatzin and Councilmembers, staff and audience members welcomed Mr. Singer.

- B. **Jumana Nabti, BART Manager of Access Programs**  
**Scoop Carpool Program at Lafayette BART Station**  
Recommendation: Receive and file.

Jumana Nabti, BART Manager of Access Programs, provided a PowerPoint presentation of the Scoop Carpool Program at the Lafayette BART station which has been open for one week and provided the following highlights:

- The motivation for the program was to improve efficiency of parking resources.
- They have 48,000 parking spaces and have 38,000 on a waiting list for monthly permits system-wide. Daily permits are reserved a couple of weeks in advance and most of the first come first served lots fill by 7:45 a.m., with Lafayette's lot filling by 7:00 a.m.
- They seek to increase the number of people in each vehicle coming to those parking spaces.
- There are some operational reasons for trains to spread loading a bit further out into the peak.
- The Scoop Carpool Program is partnership program between BART, MTC's 511 carpool program and Scoop, and Scoop technologies which is an app for carpool matching in the Bay Area.
- They have a grant from the Federal Transit Administration which is a mobility on-demand sandbox grant, which helped to expand the program.

She described how to download the Scoop app and type in a BART station as a person's destination they would get guaranteed parking until 10:00 a.m. when carpooling with Scoop. Users would schedule a carpool trip on a Scoop app by 9:00 p.m. for the a.m. commute, by 3:30 p.m. for the evening commute, and a few minutes after that time cut-off a message is sent as to whether a person has matched into a carpool. If someone is matched, Scoop provides the license plate of the driver to BART and a placard to print out and place on the dashboard. If a person cannot be matched in the evening if they began their commute in the a.m., Scoop will guarantee a ride home.

She said BART has done significant marketing, which she described and has been working with Lafayette staff, as well. She displayed the 14 stations Scoop was currently open in and those they are planning to open next. They collect data for some stations and they have seen an average growth rate of 11% but they are early to be able to see data for Lafayette; however, since starting the program in January, they have had over 48,000 person trips through the program for all stations they have open. Their highest Scoop station is Dublin/Pleasanton and next highest is Orinda, so they are hoping Lafayette will also have high usage.

Regarding next steps, they will be adding stations, adding parking fees into the app so people can easily pay for parking through the app and they are negotiating with Scoop for the next contract which will start July 1<sup>st</sup>.

Mayor Tatzin asked if a carpool is recognized as 2 or 3 people. Ms. Nabti said carpools are 2 or 3 people and it depends on how the matching algorithm matches the person, and BART requires 2 people for a carpool.

Vice Mayor Burks asked for the number of individual spaces will be lost when this comes on-line.

Ms. Nabti noted the program is already on-line and some spaces are out of commission for the construction, but no spaces will technically be lost. They are able to guarantee parking partially by taking some day use reserved permits off-line, but for monthly permits they have found there is a certain percentage that do not show up each day. In the past they have not done anything with those spaces and they revert to first come first served at 10:00 a.m.

Vice Mayor Burks asked that BART let the City know if the program gets to a point if individual spaces are being given up for Scoop spaces.

Ms. Nabti said they do this already and said they use single day reserved parking for this program. They would be using this parking for the Scoop program, but she was not sure about the number of spaces for Lafayette. It is a way to get more people to the station using the same number of spaces.

Vice Mayor Burks asked again to let staff know if any spaces have been replaced with Scoop spaces.

Ms. Nabti again said they do not have dedicated Scoop spaces, as they are all within the permit section which is more highly enforced, and she would estimate there are 10-15 single day permits where someone can reserve a couple of weeks in advance and they are not telling anyone that they can no longer use their monthly permit, but if they do run into a situation where they are actually lost, she will reach out to the City.

Councilmember Mitchell asked if there are a certain number of spaces reserved for this program or he asked if it is based on the number of people who apply the previous day.

Ms. Nabti said because all of the permit spaces revert to first come first served parking at 10:00 a.m. and after that they are not guaranteed, they have reduced the number of daily reserve permits for this program, but usually the number of people using the program is above that which is primarily due to monthly permits that do not happen to use them that specific day. It is essentially using unused spaces, and they wanted to take advantage of that gap for everyone's benefit.

Councilmember Mitchell asked for more information about the actual numbers when Ms. Nabti returns with information to staff. Also, he asked when the parking lot would be finished, and Ms. Nabti said she was not sure but said hopefully soon.

Mayor Tatzin said for Orinda which may be comparable to Lafayette, he asked for the number of Scoop drivers they get per day. Ms. Nabti said she believes they are getting approximately 30 people going to the station per day, or about 15 cars. In Dublin/Pleasanton, they are getting about 150 people per day which is by far the highest and their program began last January, so they hope all stations get that busy.

Mayor Tatzin said when Ms. Nabti returns with information about responses to Vice Mayor Burks' questions, he also asked Ms. Nabti to provide data about how many more riders the Scoop cars are provided than they would have gotten typically with the mix of single occupancy vehicles and dual occupancy vehicles that would have otherwise accommodated those spaces.

Ms. Nabti asked if he meant increased ridership. Mayor Tatzin said that could be influenced by other things, but it was more a question of how many more riders they get out of those parking spaces for Scoop drivers.

Ms. Nabti said she thinks their average is about 1.1 people per parking space without the program and is about 1.9 with the program.

Mayor Tatzin said in looking at Orinda, of the people who say they are willing to provide a ride or who request a ride, he asked what is the approximately match percentage.

Ms. Nabti said she was not sure what this was for Orinda, as they do not get this data. She said it has been anywhere from about 60% to 80% for various Scoop programs and places. It varies, but it is definitely higher than almost any other program they have seen. It also allows people to be very flexible in their carpooling behavior so someone can carpool on Tuesday but not on Wednesday.

Mayor Tatzin and Councilmembers thanked Ms. Nabti for her presentation and confirmed she would provide follow-up information to Mr. Hinkamp.

## **8. CONSENT CALENDAR**

Mayor Tatzin requested removal of Item 8.B and 8.F. Councilmember Samson requested removal of Item 8.A.1. Councilmember Anderson suggested taking Item 8.B public comment after adoption of the Consent Calendar.

**ACTION:** It was M/S/C (Burks/Anderson) to approve the Consent Calendar Items C, D and F. Vote: 5-0 (Ayes: Tatzin, Burks, Anderson, Mitchell, and Samson; Noes: None).

- A. **City Council Minutes**
  - 2. **April 26, 2018**  
Recommendation: Approve.
  - 3. **April 30, 2018**  
Recommendation: Approve.
  
- C. **Resolution 2018-25 Authorizing Participation in the 2018 SunShares Program and authorize the City Manager to sign the letter of commitment to the Business Council on Climate Change to participate in the program.**  
Recommendation: Adopt Resolution 2018-25 Authorizing Participation in the 2018 SunShares Program and authorize the City Manager to sign the letter of commitment to the Business Council on Climate Change to participate in the program.
  
- D. **Status Update on Pilot Dockless Bike Share Program**  
Recommendation: Receive and file.
  
- E. **Review of Draft Countywide Bicycle and Pedestrian Plan**  
Recommendation: Authorize the Mayor to forward letter with Plan comments to CCTA.

Item Removed from the Consent Calendar:

- B. **Supplemental Informational Update Regarding whether Terraces of Lafayette 315 Unit Apartment Project could be subject to a General Plan Amendment and Referendum.**  
Recommendation: Receive and file.

City Attorney Mala Subramanian said as the Council will recall staff had originally given an informational update provided at the April 9<sup>th</sup> Council meeting. She received some additional questions about whether the Terraces of Lafayette apartment project would be subject to a referendum. Therefore, this is a supplemental item for the Council's informational purpose. The report is consistent with the limitations in the Salinas vs. Vargas case which allows for informational reports to assist the City Council with the operation of its services.

As the Council is aware, a referendum applies only to legislative acts. The Terraces of Lafayette apartment project sought several permits including a land use permit, a hillside development permit, design review, a grading permit and a tree permit. In accordance with established case law, these permits are administrative and not legislative acts, and therefore, not subject to referendum.

The Terraces of Lafayette apartment project was deemed complete in 2011. The City Council certified the EIR in 2013 and then in an effort to resolve concerns and establish a path for consideration of a lower density project, the City and the applicant entered into a process agreement. By the terms of the process agreement, it tolled and suspended the processing of the apartment project while the City Council considered the Homes at Deer Hill project.

Under the process agreement, the applicant had the option to terminate the agreement if the Council did not approve the Homes at Deer Hill project or in the event there was an appeal, challenge or referendum, that has not been resolved in a manner that is acceptable to the applicant in the applicant's sole discretion.

In the event that the applicant exercises this option to terminate the process agreement, the City would need to immediately resume processing the apartment project. No new application will be submitted by the applicant. As the Council is aware, as part of processing the Homes at Deer Hill project, the Council approved a General Plan Amendment that changed the General Plan designation from APO which permits Multiple Family Residential of up to 35 units per acre to Low Density Single-Family Residential, which permits single-family residential of up to 2 units per acre.

Although a General Plan Amendment or Rezoning is a legislative act subject to referendum, the Terraces of Lafayette apartment project, should the Council review that project, does not require a General Plan Amendment or Rezoning. The project was deemed complete in 2011 when the property had a General Plan and zoning designation of APO. Any subsequent change to the General Plan, including the one just mentioned which changed it from APO to the current Single-Family Residential Low Density designation would not be a basis for denial of the project under the Housing Accountability Act. Therefore, no legislative act that is subject to referendum is required for the applicant to develop the apartment project.

Councilmember Anderson said he has a question about the zoning currently in place now at that site. His sense was that the zoning change happens with the passage of Ordinance 641; that it is not an independent act. He asked if this is accurate or inaccurate.

Ms. Subramanian said Ordinance 641 included a rezone of the property to R-20 so that is the subject of the referendum. Right now, the current zoning of the property is APO.

Councilmember Anderson said it sounds like if Ordinance 641 is not passed then there is no change to the current zoning which is APO, and Ms. Subramanian confirmed.

Councilmember Anderson asked if there is no action the Council has taken that has changed the zoning. Ms. Subramanian said no; because Ordinance 641 will not have been approved.

Councilmember Anderson asked and confirmed that Ordinance 641 contains the zoning change to lower density, and he asked if there was any way to have a referendum on the apartment project because there is no legislative act that has to occur.

Ms. Subramanian said correct; in order for a referendum to occur there needs to be a legislative act.

Councilmember Anderson noted that the Council has not actually approved that project, and Ms. Subramanian confirmed that the Council has not actually considered it. The application was deemed complete in 2011. The Council certified an EIR but did not review or approve or deny the apartment project.

Councilmember Anderson asked if that review and approval be a legislative act, and Ms. Subramanian said the only items for the Council to consider are those she referenced earlier, which are the land use permit, the hillside development permit, design review, a grading permit and a tree permit. All of these are administrative and not legislative acts, and therefore, not subject to a referendum.

Councilmember Anderson summarized Ms. Subramanian's comments, stating that if the Terraces apartment project the Council is looking at, those are the only things the Council would have to approve for that project to move forward which are all basically permits, and Ms. Subramanian confirmed.

Councilmember Anderson asked what leverage the Council has on that application beyond that. He asked if there was anything the Council could do beyond those permits in terms of changing the scale of the project. Ms. Subramanian said the applicant is the one who submitted that application and it is the applicant who has requested that project. In terms of reviewing it, because it is under the Housing Accountability Act, it is very limited in terms of the Council's ability to reduce the density or deny the project without making a specific adverse impact finding.

Mayor Tatzin said he has asked the Planning Director and City Attorney in the case Measure L fails to place an agenda item on the June 11<sup>th</sup> agenda to discuss the process for changing the zoning to make it consistent with the current General Plan. The City would still have that obligation because at that point, the APO zoning that Councilmember Anderson referred to would be inconsistent with the General Plan and the City is supposed to make it consistent. They could start the process to do that on June 11 and if it fails, they will get a report on how to do that.

Councilmember Anderson noted that the application is based on the APO so he asked if it may very well go forward even if the Council changes the zoning. Ms. Subramanian confirmed.

Mayor Tatzin stated at this point the Council does not know if Measure L will pass or not and does not know what the applicant will do if it fails. The only thing the Council can do is do what they are legally required to do which is to make the zoning consistent with the General Plan. If the applicant wants the Council to look at the apartment project, he is sure there will be significant comments about that.

Councilmember Mitchell said if the applicant voluntarily changes the apartment application, he asked if that would trigger a different outcome in regard to a legislative act. As he understands it, they are dealing with the various permits.

Ms. Subramanian said the example of when the applicant voluntarily changed the project was when there was a new application submitted for the Homes at Deer Hill and that did require legislative acts. It required the General Plan Amendment and the zoning change.

Councilmember Mitchell said if the applicant decides he wants to move forward with the apartment project but voluntarily reduces the number of units to some extent, he asked if this would still limit the Council's discretion to these permits.

Ms. Subramanian said yes; reducing the unit count from 315 to a lower unit count would not change the discretionary permits. They would all be the administrative permits listed.

Councilmember Anderson said the Council came up with 13 non-mitigatable impacts on that project. The Housing Accountability Act as he remembers does have an allowance to deny a project if there is a significant impact on the public health and safety because of the project. He asked if any of those 13 non-mitigatable impacts rise to the level of allowing the Council to deny that project.

Ms. Subramanian said she has not looked at this in some time, and recommended not discussing this because it would be something to discuss if it were to return as an apartment project application that was resumed.

Mayor Tatzin opened the public comment period.

Public Comments:

BERYL SILVER (ceded time to Laurel Stanley)

LAUREL STANLEY, read a letter which has been emailed to the Council from her neighbor who had to leave early: "I am writing you as a concerned resident. I have been following the controversial homes at the Deer Hill project and Terraces of Lafayette before that for some time. I live behind Acalanes High School in one of the many neighborhoods that would be dramatically impacted by development of this site. Several weeks ago, I was targeted over and over by a "Yes on L" campaign ad in my Facebook feed. I was surprised to see the scale of marketing I observed from a campaign that introduced themselves as a group of residents who care about the future of Lafayette. As the campaign posted various renderings, links and a video advertisement, large numbers of comments started to collect from residents, many of them making thoughtful and seemingly well-researched arguments against Yes on L. Many residents rightly pointed out that the primary message of the campaign was based on trying to influence votes through fear. Any observer unfamiliar with the many complex details of the situation could reasonably assume based on the campaign messaging that the 315 apartments proposed would be a foregone conclusion if they vote No on L. I added my voice to the conversation when I discovered at the end of their Yes on L ad video, it was disclosed that 'major funding for the campaign came from the developer himself'. I made comments pointing this out and I found it deeply problematic that the campaign would be presenting itself simply as a group of residents when it clearly was overwhelmingly funded by an outside interest that has significant financial stake in the outcome of our vote. Within about a day, all of my comments had been deleted from Facebook and I have been blocked by Yes on L from further

engaging in their campaign through Facebook. I have since become aware of large numbers of other Lafayette residents whose voices have also been suppressed by Yes on L's scrubbing of their comments on their posts. Last Thursday morning, May 10, 2018 I attended a coffee tour downtown that was advertised in the event section of the Yes on L website. My intent was to engage real people and get a better understanding of who was running this campaign. When I arrived, there was an active discussion going on so I simply listened for a while. When I had an opening, I did disclose that I was leaning towards No on L and I stated I felt they were acting in bad faith by deleting comments and blocking Lafayette residents from a public page that they had themselves made open to comments.

I also took the opportunity to point out that I felt the major funding source of the campaign made it difficult to trust them, as they were impartial sources of facts and information on this issue. The woman who seemed to be the host of the coffee and who, based on how she was phrasing her comments, I assumed to be a fellow Lafayette resident defending the monitoring of the Facebook page as being within their rights and painted our Lafayette community as having been extremely nasty and abusive in their comments. This is not something I have observed to be the case, but I cannot claim to have seen every comment that has been posted and deleted. She also snapped at me and I quote, '85% of our donations have come from individual Lafayette residents.' I'm not an expert on City government or political campaign management. I'm just a Lafayette resident and mom who loves this town and my neighborhood and am very concerned about what this proposed development would do to the quality of my family's life here in Lafayette. What concerns me deeply is the manner in which Yes on L presents themselves in public forums and disingenuous nature in which they continue to conduct themselves. I discovered after the coffee tour on Thursday that the woman I interacted with is in fact the Principle of Pleasanton-based Alliance Campaign Strategies who is being paid by the funds of the O'Brien Group and has donated to Yes on L to manage the campaign.

It was reported by the East Bay Times and is a matter of public record that 90% of the Yes on L campaign has been funded by O'Brien Land Company and not by Lafayette residents as was told by the campaign manager. The individual looked me in the eye and lied to me. It troubles me that so many of our City Council has endorsed this measure with your names and titles given how the Yes on Campaign is funded and has conducted itself. A large number of Lafayette residents who have come out in fierce opposition to this should, in my opinion, inspire the City to take a neutral stance at the very least rather than trying to influence the vote in favor of outside interests, especially when it is operating in a way that has them lying and attempting to silence the voices of our community who happen to disagree with key elements of this proposed development. Thank you for your time, Cindy Diali."

Ms. Stanley said Cindy is one of her neighbors and she believes she is being truthful. From her own presentation, she wanted to take issue as well with these mailers. She thinks it is totally inappropriate for City elected officials to be taking sides on a campaign, especially one that was brought about by a referendum.

CHERYL MACDONALD said she is here as a citizen who is struggling with this issue. It is very complicated and is coming from someone who has come to a lot of meetings, observed and listened and has participated a lot. In saying this, as much as she has researched, looked at Next Door, read materials and has been present for meetings and as much as she is struggling, she can only imagine what citizens in Lafayette that have not been attending, researching and coming to meetings would be puzzling with. She encouraged the City Council to have a public debate sooner than later because people are already casting their ballots. She would love very much to have a greater understanding of this issue before she places her vote. She considers her vote very important. This is a big issue and will affect the City for

decades to come. She asked to talk about the fact this is right around a school, environmental issues, kids, traffic, roundabouts, and it is complicated with all of its legalities. She asked the Council to consider having a public debate soon and she thinks there is an auditorium where the Council can schedule this in a very short time. The facts are out with little need to prepare, and she thanked the Council.

GARY GARFINKLE said as the Council knows he is the attorney for Save Lafayette that represented that organization in the successful appeal that was recently decided and what has caused Measure L to be on the ballot. He received the City Attorney's update just a couple of days ago and he has prepared a response which he emailed to each Councilmember late this afternoon. It is a very detailed letter and he will not review all of it, but virtually everything the City Attorney stated tonight is not correct. He detailed the reasons why it is not correct in the letter and he strongly urged the Council to review it when they have time and it goes into substantial detail.

In summarizing, if Measure L is defeated and the Terraces apartment project were to be resurrected, it would be fatally inconsistent with the current General Plan, and the City Attorney's advice that the General Plan would be deemed irrelevant by the process agreement and the Housing Accountability Act (HAA) is not correct. He explained this in his letter as to both the process agreement and the HAA and he could answer any questions about it.

Secondly, the HAA does not even come close to mandating approval. In addition to the fact that the Council has already certified 13 unavoidable, significant adverse impacts and 5 of those are health and safety matters, the Council can deny it. In fact, there is case law indicating the Council has to.

PAUL MELMED (ceded time to Gary Garfinkle)

Mr. Garfinkle continued, stating as he understands it, the City is currently in compliance with the Housing Element requirement and this is another ground for denying a project, despite the HAA. In his opinion, because of the adverse impacts, the Council would have a terribly difficult time approving it. Third, in the event that the Council was to approve it, it would indeed be subject to a referendum or meritorious litigation or both. The suggestion that the legislative versus adjudicatory or administrative dichotomy would prevent the citizens from bringing another referendum is not correct. He noted the earlier April 9<sup>th</sup> letter and this letter as well both go into substantial detail as to why that is not the case. They have had the California Supreme Court recently confirm that even if the HAA were deemed to restrict the City Council that type of restriction does not apply to the people's power. That is now a very well established principle of California law.

In light of the fact that the Court of Appeal has already held that the City improperly interfered with the people's referendum power, any attempt to do that again is going to be viewed with a high degree of suspicion. The Supreme Court has already established that any referendum is to be liberally construed to support the people's power and any restriction on the people's power is to be narrowly constructed. As stated in his April 9<sup>th</sup> letter and again in different facets in this letter, the ample reason that if the Council were to approve it, it would be subject to both referendum and meritoriously litigation.

Councilmember Mitchell commented that he has not read Mr. Garfinkle's email today and he asked for a printed copy to leave with staff.

Mayor Tatzin stated he had a chance to review the letter and said he appreciates Mr. Garfinkle's efforts in putting it together.

STEVE DIETSCH said he works at a real estate investment firm in San Francisco and is familiar with the many things the Council has been challenged with. In general, he is in agreement with the premise of what the Council has tried to do around finding affordable housing, looking for ways to create community parks, ballfields and other things. He is a proponent for those things in the community. He thinks in this case, he finds it very difficult to support a measure that has this kind of impact in Lafayette. When looking at this Deer Hill development, Pleasant Hill Road and the thoroughfare that is from not only Lafayette residents but other communities going to BART and schools and the amount of congestion and existing safety issues, even though this is a scaled down version, to him this is increasing what is already a very difficult problem in the community.

He said his wife was in an accident on Deer Hill Road about a year ago where she was rear ended by someone at 3:15 p.m. going 50 mph. It not only hit her car but 4 other cars, 2 of whom were high school students at Acalanes. When he looks at what is happening with this proposed development, they are making what already is a bad situation that much worse and he believes they are not thinking through all ramifications and dealing with this in a responsible way. He is a parent of 2 children at Stanley Middle School. One of the reasons they live here are because of great school, open space and a wonderful community. He thinks they need to be protective of the community when looking at developments. He thinks the Council has done a great job in many of the things that have happened downtown, but when looking at this development, where it is and the impact of putting a park where there are kids out on fields that are impacted by noise pollution, air pollution from existing traffic and making it worse, it makes no sense to him why the Council would contemplate putting this type of development at this location. There are other places to look for that would make a lot more sense to do something that is, in fact, needed.

JODY MCCULLOUGH said Councilmember Samson is his hero. He is a lone voice on the Council and said yesterday he prevented him from being in a car accident. He referred to fiduciary duty when working for a City and he said part of this involves avoiding anything that has even an appearance of impropriety. Here there is a Yes on L campaign which is 97% funded by the developer with \$60,000 from the developer, \$2,000 from someone else, and here is the material with the Mayor's name and title on it. Unfortunately, Carol Singer, Chair of the PTR Commission, etc. He said the City's officials are supposed to be neutral on this. They can say they are doing it as private citizens but their titles are on all of the material. Some of the things the Yes on L campaign is doing are pretty disgusting. He was not sure if the Council realizes just how tawdry this looks and said in the first time in his life he is embarrassed to be a citizen of Lafayette and he hopes to get past this and he hopes Measure L is defeated.

LINDA MURPHY said she is here more for the No on L people and said she will be outside afterwards to speak with people. She was here 10 years ago with a small group trying to rezone the Deer Hill parcel from APO to low residential and said she has lived with this and followed this for 10 years. She is a lawyer so she reads everything related to housing and just to bring people back when this was happening, there were only 5 or 6 people who were coming before the Council to get the property rezoned. It was when the owner came through after the property, the Council agreed to rezone it to APO but before the actual rezoning happened is when Anna Marie Dettmer came in and filed the Terraces project for 315 apartment units. That is when the entire City showed up and began filling up the chambers. The 5 or 6 people would miss dinners with their families to be here and many people attended the meetings, and in response to that is when the City reached out and said let's stop, put it on

hold and negotiated the Homes at Deer Hill which was directly in response to everyone saying they do not want this to happen. They worked out a compromise and it had not been approved. It was simply a proposal, but the City acted in response to that so that is why people are here.

She said California is in a housing crisis and she read a few things out loud, stating Scott Wiener who is the State Senator from San Francisco, and housing and more housing is his mandate. Given the recent January 1, 2018 amendments to Government Code 65589.5, if the Council was to rezone this parcel, a change to the zoning or General Plan after that application is complete is not a reason to disapprove the housing project. There are many references to the environmental impact to this project. Again, she asked the Council not to think there will be a basis to deny a project, and she referred to the 560 page EIR she skimmed where housing was put right next to Hwy 24. The 90 foot limit was tripled to 260 feet, a 24-story building, and this is a great win/win compromise. It may not feel like it, but if this is not developed and if Measure L does not happen, the private property owner has a right to move forward with the Terraces project and it could be much more than what the City will get.

Councilmember Anderson said Ms. Murphy said the Council was going to rezone the property to APO.

Ms. Murphy clarified it was from APO/multi-family housing back in 2008 or 2009 when she was working to get low density residential with one house for every 5 acres. This 22 acre parcel was going to end up with 4 houses, but that final act never actually happened and that is when this application was filed was after the City agreed but before the plan formally changed, and this is why it will be governed.

Councilmember Anderson said he thinks this is very close to what he remembers, but the one piece he reminded Ms. Murphy was that there was actually a proposal that would have downzoned the property so there would have been a maximum of 14 homes on the property. People came out and said that was too many homes and that is why it went back to the Planning Commission to be downzoned even further. The owner of the property was supportive of the 14 homes, so that is one piece to remember. The Council had a shot, it responded and they took too much time getting it processed and they got the 315 units in response. He just wanted to clarify the APO and said he appreciates what Ms. Murphy is saying and he thanked her.

LINDA RIEBEL said others have eloquently described the health hazards and traffic hazards and something that she thinks has not been given enough attention is the response in emergencies to gridlock. The US Fire Administration reports in less than 30 seconds a small flame can get completely out of control and turn into a major fire. It only takes minutes for a house to fill with thick black smoke and become engulfed in flames. With a lot more cars coming back and forth around Deer Hill and Pleasant Hill Roads, she asked how emergency vehicles will get to Reliez Valley, Springhill and areas further north. Apart from fires, children fall into pools, seniors experience heart attacks or strokes, teenagers have car accidents needing medical care as quickly as possible. Even the delay of a few minutes can mean the difference between surviving an emergency and not. There are no mitigations possible. Springhill and Reliez Valley Road are local arterials that pass through narrow valleys. It is not possible to widen these roads and emergency vehicles would have a hard time getting by.

Like other people who have spoken tonight and at other venues, she really resents the dishonesty of the Yes on L campaign and that alone might make her vote against it. She does believe in infill. They do have a housing crisis and does not know what the answer is. She has seen Lafayette put up lots and lots and approve more multi-family units, so she thinks the City is doing its part, and she believes in infill. She first thought this compromise plan sounded like a good plan, but she has been learning more about

the health hazards. She thinks the City can do better and asked to find a different way to help the owner dispose of the property. She is entitled to sell it and make a profit but she thinks this is not the right way to do it.

MARILYN HERTZ (ceded her time to Paul Melmed)

PAUL MELMED read Mr. Caicedo's comments into the record: "Unfortunately I am out of town. I can't be present for this meeting. I've asked for my comments to be read on my behalf. My name is Andre Caicedo and I live on Quant Road. This campaign on Measure L has been contentious to say the least, ripe with political trade craft and trickery, whether that is issuing false or misleading statements, removing the opposition's campaign signs or having people pose as if they were residents, only to find out that they were paid political consultants is a dirty trick. It should come to no surprise that the developer is funding the campaign. What is surprising and disappointing is that they (you) are running a very dirty campaign and have been complicit having even endorsed it. At the same time, you ask us to trust you; 'This is the best plan for Deer Hill'. I don't think we should. I don't think it is. I think we need a second opinion. With all of the battles back and forth, the one thing we seem to agree upon is that this matter is much greater than stolen signs and political trade craft. Ultimately, we have to consider this vote on its merits. We will all bear the burden of these decisions and actions. I think it is ashamed we are rushing this vote in June which, again, I understand the political strategic value for you to do so, but don't at the same time ask us to trust you with this decision. This project crosses from Acalanes is the first of many dominos to fall. Next may be Acalanes Valley, Burton Valley with its impact to traffic may very well be next. Moraga Road, Happy Valley, St. Mary's Road, west Lafayette and the rest of downtown. Pay attention. We are all next. This explosive growth continues and we don't have the infrastructure to support it. The traffic is worse. Our schools are impacted and there is no end in sight. In terms of the agenda for Item 8B, he will listen to what is said tonight, but my fear is that you will all have painted yourselves in a corner. I hope that is not the case."

VAL DAVIDSON said fortunately for the Council, many of the previous speakers have addressed most of her comments. She, too, objects that most of the Council is elected members and appointed Commissioners have been the developer's support group while using your elected and appointed titles even though you were elected and/or appointed to represent the residents of Lafayette, not a resident of Hillsboro. She said that really bothers her. If Measure L passes, Lafayette will be setting precedence for future developers who will expect to use them too. You have bulldozed to the General Plan and the hillside and ridgeline ordinances, thus lowering the bar for future developers. The EIR was tragically flawed and if Susan Candell had been here tonight she would have delivered quite a good document for the Council to study about the science of that pollution. Now that the Council does know this up to date science, the Council must do something about it. They cannot have a children's sports field and tot lot get built based on old, imperfect EIR information.

Another area that she is concerned with is how Lafayette will mitigate the huge influx of housing that has already been approved though not yet built. Today at the City office, I counted about 350 new units that have been approved along the Mt. Diablo corridor and that does not even account for Deer Hill's 44 homes. She keeps hearing questions about where these children will go to school and keeps hearing they will be forwarded to Burton Valley Elementary School which is already at 800 children for a K-5 school, which is horrific. She asked how families will manage crossing through town to Burton Valley Elementary and she asked how they will manage with an eventual 900 students. She once heard it be called a "super school" but this is super bad for a K-5 school. She thinks this is outrageous. Burton Valley will have gridlock too and the children will never know their classmates. Her children were there when

there were 700 students and they never knew the kids in their grade level. By the time they hit Stanley they never knew who their neighbors were and who were not.

She asked that the Council slow down the development. The City's infrastructure is enormously inadequate now. The character and future of Lafayette is dependent on the outcome of this project. She asked not to deny the science of pollution or the obvious infrastructure insufficiency here.

SUZANNE ROGGE said she lives down the street from Acalanes High School and said she is making the assumption that the vote will move ahead the beginning of June and she is very concerned about this development on multiple points. What she would actually like to address is something that has taken place in this City Council meeting and that has to do with the identified 13 impacts of the 314 apartments that would be considered if this measure were defeated. She knows there is information out there on line that the 315 apartments are not necessarily automatically approved; however, it is out there in the public that people are fearful that if they vote no that is a likely potential. The Council talked about the 13 identified impacts and did not want the lawyer to further explore it, but it seems that for the sake of further transparency it should be explored and shared with the public so they know what the likelihood is of 315 apartments if they vote no. This is very, very relevant information in her mind. People need to know it is a gamble if they vote no, and they need to know what the risk factor is.

Mayor Tatzin said in response to Ms. Rogge's comments, he did not know how Measure L will go. Second, he does not know if Measure L is defeated what the developer will do; whether they will try and negotiate a new project or ask to bring the apartments back. He thinks after that, any decision finally made is not made by this Council but is probably made in court because whoever does not win is likely to sue.

## **BREAK**

Mayor Tatzin called for a brief recess at 8:45 p.m. and thereafter reconvened the meeting at 855 p.m.

## **9. OLD BUSINESS**

### **A. James Hinkamp, Transportation Planner**

#### **Pilot Project to Test 2<sup>nd</sup> Northbound Right-Turn Lane at Mount Diablo Boulevard and Moraga Road**

Recommendation: Authorize 90-day pilot project to test 2<sup>nd</sup> Northbound Right-Turn lane at Mount Diablo Boulevard and Moraga Road, from August through October 2018, inclusive of signal technology upgrades.

Transportation Planner James Hinkamp said the item before the Council is a proposal to test the second northbound right turn lane at Moraga Road and Mt. Diablo Boulevard. This would be a pilot project consistent with the recent approval of the Downtown Congestion Reduction Plan (DCRP) in which this is listed as the 12<sup>th</sup> strategy to be tested.

Staff has outlined the parameters for such a test in this report and as a summary it is proposed this test occur over approximately 90 days between late summer and fall of this year. That would provide time for staff to prepare and acquire the necessary materials and mobilization to conduct this test. As the Council is aware, the location is actually directly adjacent to this particular building and further west. It is proposed that several things occur as far as infrastructure. There would be some updated signage to direct drivers to a new lane striping that would allow for drivers to turn from what is now the center lane right onto Mt. Diablo Boulevard to Moraga Road. There would also be a disengagement of certain

pedestrian walk signs so there is not otherwise unsafe conflict between additional vehicles turning at that right hand turn.

Staff is also proposing that some signal technology upgrades could occur in tandem with the additional markings, striping and signage changes at the Mt. Diablo Boulevard and Moraga Road intersection. These signal technology upgrades would include changing out the existing controllers that actually operate the signal timing cycles to a more up to date version and this would achieve a cost benefit primarily in the data collection and monitoring aspect. This particular functionality would incur a one-time fee where the City, for several thousand dollars, could have proprietary access to that data using video detection through the new controllers and that one-time fee is the equivalent of having to ask a consultant to conduct those counts each and every time after that, so for a single cost the City could achieve a savings benefit.

There are some funding sources staff has identified to be able to accomplish this and as written in the fiscal impact section of the staff report, there is SB 1 loan repayments due to the City that could offset those costs as well as some Measure J money that staff has identified specifically set aside for downtown congestion improvements.

He concluded by stating the timing proposed is to begin in early August and there are already some traffic counts that staff has pre-emptively ordered to create a baseline to compare against prior to this pilot occurring. They would intend to use technology to replicate that data collection and return with an evaluation in October of this year, and he said he was available for questions.

Councilmember Anderson said he has been watching that intersection and people making the turn there. If someone is in the right hand lane with the intention of going to the freeway, people have a tendency to make the right-hand turn and drift directly over the left or north so they can slide into the turn lanes. He was very concerned that there needs to be something that keeps people from doing this because if another lane is added which will also be making the right turn and that person decides they want to go straight down Mt. Diablo Boulevard and they are not going there will be people colliding with each other. He knows Mr. Hinkamp talked about changing the markings, but it seems like something stronger is needed to keep people from doing what they do now where they will have every expectation if they are in the right lane that they can do that typical thing and that the one lane next to them hopefully is going in the same direction. But, if they are making a tighter turn, there could be problems.

Mr. Hinkamp said the concern is something staff has also raised internally in preparation for this test. It is also what is called the weaving effect where drivers who believe they are headed towards a certain destination use a certain lane position to get to that destination but then may have to mingle with other traffic that has a different objective, either going through or going the other way and certainly there is potential for delay. Staff intends to monitor this as well and in addition to not only restriping the lane going northbound on Moraga Road, they are proposing some additional touches that would guide the driver through the intersection and continue to stay in that lane.

He then displayed a visual graphic and said where the mouse is tracking they propose a solid line to make it demonstrably clear that the driver must stay in this position, and in carrying through about two vehicle lengths. He pointed out that these are intentionally solid lines.

Councilmember Samson said if he understood the problem, Councilmember Anderson is concerned that cars in the right hand lane will drift over into the left, and he briefly explained his concern of drivers drifting and the risk of drivers running into each other.

Councilmember Mitchell said the signal hardware has a video component and he asked if this something staff can actually see or he asked if it was a digital reader.

Mr. Hinkamp said staff would be able to grab actual live feeds of what is going on. They would not necessarily have the capability of a traffic management center where they are actually manipulating a feed in real time, but they would be able to review it.

Councilmember Mitchell said there is the anticipated closure of St. Mary's Road and that would be occurring during the summer period. He asked if this will affect the data counts and said the configuration has been modeled to improve traffic flow and asked whether staff could accelerate the schedule to implement this sooner during higher peak travel with St. Mary's Road closure or asked if there was a certain amount of time to acquire the hardware.

Mr. Hinkamp said his understanding is that the vendor is equipped to supply the hardware, but he doubts staff would be able to push this much more before July. He said the primary concern from staff's point of view is what he would call the 'traffic slack' in the summer when peak period may not be as pronounced as when in September or October greater volumes are typically observed and therefore the greatest impact could be had at this intersection, and staff thinks it would be valuable to understand what level of impact these particular changes would have with the greatest sample size available.

Councilmember Mitchell said with the closure of St. Mary's Road, many of the people from Moraga will take Reliez Station Road to Pleasant Hill Road and he suspects the summer drop-off will be less on Moraga Road because of that. He said it would be his preference to accelerate the schedule if possible.

Vice Mayor Burks said physical barriers blocking the crosswalk and asked for more detail about what those will be to block people from actually crossing the street.

Mr. Hinkamp explained that staff has not identified the exact equipment but they do have equipment that has been used to this effect in the past such as cordoning off at the Art and Wine Festival which are orange temporary K-rail, and those could be water-filled. These have been effective in traffic control for both vehicles and pedestrians and have been used with moving vehicles and pedestrians as well. Staff also intends to put up unmistakable signage that would be at eye level with directional arrows saying this is not the place to cross and indicate there are alternatives east and west, similar to a construction zone.

Vice Mayor Burks asked and confirmed that the pilot cost is \$75,000. He said the original estimate to do this permanently was \$100,000 to \$200,000. He asked how much of that \$75,000 could remain permanent, and asked if they might look at \$175,000.

Mr. Hinkamp said if these were to be implemented the City will have already spent \$75,000 and regarding how much additional cost the City might incur may just be in routine maintenance of signal, and this is usually budgeted as part of the City's Public Works budget, and he did not foresee that as being a significant sum.

Vice Mayor Burks asked if the \$75,000 and some maintenance costs would take care of this strategy if the Council decided to move forward with this as a permanent solution. Mr. Hinkamp said yes, but the only other upgrade may be some additional striping or marking such as if they foresee there are some behavior changes that may have been unexpected or staff receives feedback that there could be one more additional measure that would be good to have in the pavement. For example, if this is determined a success that there is a highway emblem placed in the pavement, this would be an additional cost from a striping and marking perspective, but he did not have the actual costs on hand. He would say that the significant majority of the project cost would be absorbed through this pilot.

Vice Mayor Burks said he has interviewed his daughter who is a Stanley student and she says that many of her classmates will, instead of walking down and crossing Mt. Diablo there, will go down to First Street and cross there. He asked if additional measures will be put in place there for safety at all during the pilot or perhaps longer walk times or signs, noting many kids will be going that way to get up to get frozen yogurt at Whole Foods.

Mr. Hinkamp said this can be something to consider. Staff had anticipated including signage that would say "this is your pedestrian detour". If they are sent to another spot the plaza would be the spot to access. As far as pedestrian timing, staff can consider tweaking that if they see a greater number of pedestrians crossing at that location and this has been done before at various downtown intersections.

Vice Mayor Burks asked staff to pay close attention to it because he believes there will be many kids crossing there.

Councilmember Anderson added that there may be just certain times of the day where it might be worthwhile to consider the school and traffic and it may make this problem go away.

Mayor Tatzin said he did not know how many vision-impaired people use the crosswalk that will be blocked and typical signage could be confusing. He suggested considering an assessment of how to approach that. He said certainly from the DCRS they understood from Mr. Hinkamp's work and the consultant's work that this is likely to result in reduction of vehicle travel time and historically when the City has considered this in the past, the trade-off has always been benefitting the cars and hurting the pedestrian friendliness of the downtown.

In his sense of going through this, he suggested using more evaluation of what happens to the pedestrians. He would therefore like a better sense of what are the travel patterns of pedestrians because it makes a little bit of difference whether they are trying to go from the corner at the plaza to Safeway or to Bank of America and back and he thinks they might rather cross Moraga Road north of Mt. Diablo Boulevard than at the crosswalk at the south leg, but he would like to understand what is the pedestrian pattern now, what does it become, what happens to their travel time, how many are there, and thinks a more robust evaluation of pedestrian impacts because ultimately when the City makes this permanent, that is the trade-off.

He also said when the light is red now people can make a right turn on red. He asked if the City will allow right turns from the center lane as well on red or not. If not, he asked how this will be signaled.

Mr. Hinkamp said this will be something they will need to consider, especially with the California Vehicle Code. He did not recall certain circumstances when drivers can and cannot turn on red. He thinks there may be legal constraints, but in terms of signalization it can be something staff will be sure to address.

Mayor Tatzin asked that the signals be made clear and then figure out what people are actually going to do. If he is in the center lane and he wants to turn right and the person to his right is turning right and there is a right turn arrow line, he would want to know that he could as well.

In situations like this where there are two right hand turn lanes, for example the off-ramp from I-680 to Ygnacio Valley Road has two right turns and the off-ramp from I-680 to Treat Boulevard has two right hand lanes and they have the same weaving issue. He suggested staff reach out to some neighboring jurisdictions to see how they have addressed the concern identified and whether they think the proposal for the solid white line works or does not, and if it does not, what to do instead.

Councilmember Mitchell said in following up on the Vice Mayor's comments, he suspects there will be an additional cost if they move forward with this to make the pedestrian barriers more permanent and attractive. He imagines there will be an additional cost there. Also, he had a conversation with a BPAC member and he pointed out that many kids do come up First Street when they are coming from school. As the Vice Mayor pointed out, it can be expected that they want to be sensitive to that crossing at First Street and Mt. Diablo Boulevard.

Mayor Tatzin said staff's recommendation is that the Council authorize a 90-day pilot for the second northbound right turn lane from August or earlier if possible for a subsequent 90 days.

ACTION: It was M/S/C (Mitchell/Burks) to authorize a 90-day pilot for the second northbound right turn lane from August or earlier if possible for a subsequent 90 days. Vote: 5-0 (Ayes: Tatzin, Burks, Anderson, Mitchell, and Samson; Noes: None).

## 10. STAFF REPORTS

### A. Steven Falk, City Manager

#### *These resolutions have been requested by the League of California Cities*

1. **Resolution Opposing the Tax Fairness, Transparency and Accountability Act of 2018**  
Recommendation: Approve and authorize the Mayor to sign a Resolution Opposing the Tax Fairness, Transparency and Accountability Act of 2018.
2. **Resolution Supporting SB3 Veterans and Affordable Housing Bond Act of 2018**  
Recommendation: Approve and authorize the Mayor to sign a Resolution Supporting SB3.
3. **Resolution Supporting Proposition 69 Requires That Certain New Transportation Revenues be Used for Transportation Purposes – Legislative Constitutional Amendment**  
Recommendation: Approve and authorize the Mayor to sign a Resolution Supporting Proposition 69.
4. **Resolution Supporting Proposition 68 Bonds Funding Parks, Natural Resources Protection, Climate Adaptation, Water Quality and Supply and Flood Protection**  
Recommendation: Approve and authorize the Mayor to sign a Resolution Supporting Proposition 68.

City Manager Falk stated these four items were all requested by the League of California Cities and the draft resolution is the model resolution that the League forwarded to staff.

Vice Mayor Burks said he has serious problems with supporting opposing Item 1's particular measure. Californians are among the most heavily taxed people in the country and he did a lot of research on Item 1's resolution. As a request for these moving forward, he asked for more information in the staff report

such as the language of the measure itself or the pro/con arguments available on-line, and Mr. Falk agreed to do this in the future.

Vice Mayor Burks said he will quote one comment that he read last night that he agrees with: "Politicians, state and local government and special interests have promised that taxpayer money will be spent for a specific purpose in California only to divert its use once the money starts coming in." He believes personally this has been a very big problem in this state, and the purpose of this measure is to ensure that taxpayers have the right and ability to effectively balance new or increased taxes, fees, charges or other government revenues with rapidly increasing costs that Californians are already paying for housing, food, gasoline, energy, health care, education and other basic costs of living.

His question is a statement more than any which is how the Council can oppose a measure that is trying to improve tax fairness, transparency and accountability, stating this does not seem right to him. Frankly, he knows this almost appears pro forma, but they have two people tonight to speak on the matter and virtually no public input and a staff report which is fairly short. Therefore, he thinks it is important to have a better understanding of this new ballot measure before the people of Lafayette and the City Council commits to an actual position on this because there is a lot of talk, feeling and emotions around taxes in the State of California, and confidence at the state level of where residents' tax money is going. He then asked how this measure would benefit Lafayette.

Mr. Falk said he was not prepared to answer the question and has not studied the measure either. The League of California Cities blasted this out at the end of last week and asked that Councils approve these resolutions and he agreed he should have printed off the bills and analysis and attached those to each of the four staff reports. If the Council would like, he would recommend continuing these to the next meeting and he can provide more analysis and the bills themselves.

Councilmember Anderson said he appreciates the comments for Item 1, but he personally knows more about Item 4 and Items 2 and 3 look okay to him. He asked if the Vice Mayor was not supportive of acting on any of these.

Vice Mayor Burks clarified he was not supportive based on the research he has done of opposing Item 1's measure. The others he was supportive of the staff recommendation.

Councilmember Anderson said he supported continuing the first item as the City Manager suggested returning with more information, and then take the others up.

Councilmember Samson said he would agree with Item 1's matter needs to be continued to receive more information. He was bothered by the League using the American Beverage Association as a pejorative association, but he has issues and is prepared to speak to the other three.

Mr. Falk said his recommendation is to continue all four items to May 29, allow him and the City Clerk to work to print off the full legislative text, analysis and provide more information so the Council can have a comprehensive discussion about all four measures.

Councilmember Anderson asked if there was any support for the other three items, and Councilmember Samson said he did not have enough information to consider Items 1 and 2. He feels he did have enough information about Item 3 and 4.

Councilmember Mitchell said he also need more information particularly on Item 2; the Housing Affordability Bond Act goes into detail on higher density and a couple of other issues that he does not have enough information on and he was prepared to move forward on Items 3 and 4.

ACTION: It was M/S/C (Anderson/Mitchell) to continue Items 1 and 2 for more information. Vote: 5-0 (Ayes: Tatzin, Burks, Anderson, Mitchell, and Samson; Noes: None).

ACTION: It was M/S/C (Anderson/Mitchell) to approve Item 3; authorizing the Mayor to sign Resolution Supporting Proposition 69. Vote: 4-1 (Ayes: Tatzin, Burks, Anderson, and Mitchell; Noes: Samson).

Councilmember Anderson moved and Councilmember Mitchell seconded approval of Item 3.

Councilmember Samson commented that he thinks there are other uses for which state money could be put and he thinks it addresses a want rather than a need, but would not oppose support of Proposition 68.

Mayor Tatzin said for the City very little money will flow back. In taking \$50 million of grants to cities with jurisdictions of 200,000 or less this is one category Lafayette can apply for, but its share will not be a lot. And, he personally was supportive but was not sure the City should put its name on it just because cities want a tangential benefit, but he asked to convince him otherwise.

Councilmember Anderson said use of these programs have competitive grants and his sense was there may be money available to go after which would not be there if the Council does not adopt the item. Because of the City's population they do not receive a big cut on a per capita basis but they do have a need for funding parks and open space and this is the chance to do some of that.

Vice Mayor Burks said this looked okay to him, but he had one question. Of the \$4 billion of the bond, he asked how much would be dedicated to actually improving parks and asked what the split was between parks, climate adaptation, water quality and supply and flood protection and natural resources.

Mr. Falk stated these requests came in after he had left last week.

Councilmember Anderson said the resolution has a breakdown of the monies available for each and he personally feels this is an opportunity for some money to become available to the City on a competitive basis but it will be small.

Mayor Tatzin said it looks like the City is eligible to compete for \$500 million which is about \$12 per capita or \$375,000 out of \$4 billion, but much of it consists of programs the state may need to do but it does not necessarily return to benefit the City here. Part of it is not what he would endorse personally versus what the City ought to endorse and too much of this might be outside of what the City is getting influence and benefit from.

ACTION: It was M/S/C (Anderson/Mitchell) to approve Item 4; authorizing the Mayor to sign Resolution Supporting Proposition 68. Vote: 4-1 (Ayes: Tatzin, Burks, Anderson, and Mitchell; Noes: Samson).

## **11. PUBLIC HEARINGS**

### **A. Payal Bhagat, Senior Planner and Mala Subramanian, City Attorney**

**Ordinance 656 ZT02-17 City of Lafayette (Applicant): City-initialed Zoning Text Amendment modifying Title 6, Part 1, Chapter 6-2, Article 3 – Decisions and Appeal, of the Lafayette Municipal Code**

Recommendation: Waive second reading and adopt Ordinance 656 as set forth in Option 1 entitled “An Ordinance of the City Council of the City of Lafayette Amending title 6, Part 1, Chapter 6-2, Article 3 of the Lafayette of the Lafayette Municipal Code Relating to Decisions and Appeals” as previously requested by the Council.

Ms. Subramanian stated the Council had asked staff at last meeting in April to bring back the ordinance which allows the Planning Commissioner or Councilmember who requested the appeal to be able to participate in the appeal.

Upon consultation with the City Attorney, staff has made that modification to Version #1 of the ordinance as well as Version #2. In addition, Councilmember Samson asked that an alternate version be considered which allows the Councilmember or Planning Commissioner to identify the specific finding, condition, requirement or other determination in the record that is the subject of the appeal and then that review would be limited to only the issues identified in the appeal. This is in the packet as Version #2 and this is for the Council’s consideration if the Council wishes to move forward with Councilmember Samson’s Version #2 of the ordinance, the ordinance would need to be re-introduced at a subsequent, duly noticed public meeting. If the Council would like to proceed with the ordinance the Council requested at the last meeting, this is before the Council as Version #1 and the second reading can be waived and the Council can adopt Ordinance 656 which is staff’s recommendation.

Councilmember Samson thanked the City Attorney for putting this together cogently. When he appealed the lot split on the property on Deer Hill, after realizing what the property owner had gone through in terms of delay and angst, he developed some empathy and thought that the appellate process was too broad. The property owner came in here not knowing what he was going to have to deal with, and he thought that was very unfair. Rightly or wrongly he analogized this to more of a judicial appeal where they cannot just say they do not like what the Trial Court did and they want the Appeals Court to hear it de novo. They must specifically identify errors that were made by the Trial Court, and the Appeals Court can only review those identified errors so the other side knows what they are dealing with and responding to. He thinks by having an appeal be open-ended and de novo, it is unfair to the property owner that is the subject of the appeal. He wanted to narrow the grounds and have specified issues identified so someone would know what they have to respond to.

Councilmember Mitchell referred to Option 1, but said under 6-22 there is a 5 calendar day period and a 14-calendar day period, and he asked if the City Attorney could address 6-22.6.a. and 1 & 2.

Ms. Subramanian said she thinks the difference here is the traditional appeal of the actions that Councilmember Samson just referenced is a 14 calendar day provision, but when appealing a Planning Commission’s recommendation against changing a property, or for instance there is a rezone where they first must be heard by a Planning Commission, they make a recommendation to the City Council. If they choose to recommend against changing the property from one designation to another, then under this Government Code section that needs to be done within 5 days. All other appeals such as the lot line adjustment would fall under 6-22.6.a.2 which is the 14 calendar day. She said she has not seen the City actually utilize this 5 days and very rarely does the City have appeals to begin with, but they have all fallen within the 14 day period.

Councilmember Mitchell asked what the reason is for the 5 calendar days. Ms. Subramanian said she could not say, but it is under that Government Code section.

Councilmember Mitchell said his second question was that back in the minutes on page 15 of 26 of April 9, he read the top of the page which states, "She thinks the de novo process is better because it allows the Council to look at the entirety of the picture." He asked if this was still Ms. Subramanian's point of view or going de novo.

Ms. Subramanian confirmed and said it is because if the Council is limited to one section of an ordinance or finding that was made, the Council cannot consider anything else under the second option. Her concern is that having seen how the Council handles hearings, there are different Councilmembers with different opinions and may not care so much about one issue but will care about other issues and then she will have to announce the Council cannot consider that and that the Council is limited to its review only on what was appealed.

Councilmember Mitchell asked if only the appealing member can define what those issues would be, and Ms. Subramanian confirmed, stating that would be part of the appeal request which is getting to Councilmember Samson's point. It gives the applicant some idea of what will be considered and only that will be considered. The flip side of it is that it limits the Council's ability to consider the rest of the application.

Councilmember Anderson stated he went through this and he appreciates the time spent to figure out how to make it easier for the applicant, but he really thinks the Council should stick with Option 1 because the basis there for the appeal is that the application is of such importance it should be reviewed by a higher reviewing body. This is just a very general statement; that you can make that statement and still sit in some decision of that because they have not indicated whether they have a bias one way or the other. When getting particular about the concerns the Councilmember has, this begins to create a bit of a problem for them to then sit in judgment if already they have said they have a problem with a particular thing.

This is his interpretation and it may not be legally well-founded. So, he thinks keeping it vague is better. He can also see a case in Version #2 where a Councilmember may appeal something because they do not like red awnings and he would not like brass rails so he wants this included too, so he will appeal on brass rails and the other Councilmember wants something other than red awnings. Suddenly then they have 5 appeals because everybody is trying to pick out as things they have a problem with, which will not work constructively. He thinks Option 1 will work, particularly if they are going to allow the person putting the appeal in place to act on it and actually sit in judgment of it because that is the place where they have a bit of a potential conflict.

Mayor Tatzin said his questions relate to Version #2. In a number of them, the first appearance is 6228.e which states, "A Councilmember appealing a decision is not disqualified, etc." but in Section 3 of the ordinance it states a City Councilmember or Planning Commissioner filing the appeal shall consult with the City Attorney to determine whether he/she may participate" which leaves the option they may not participate. But then in the actual exhibit it states they may, so he was confused.

Ms. Subramanian explained that the wording for Section E is intended to indicate that the appeal itself does not disqualify the Councilmember. The request the Councilmember has to consult with the City Attorney is because maybe they have said or have done other things other than the language of the

appeal that may disqualify them. If they have made comments in the public or emails that are not reflected in the email statement, this may disqualify the Councilmember.

Mayor Tatzin said in Version #2 if he goes to 6232 or the appeal from an action of the Zoning Administrator and they have a member of the public who may make an appeal which is de novo. A member of a commission must make a specified appeal, and he asked for the rationale for that.

Ms. Subramanian said they only changed the Planning Commission and Council. If the Council wants to go with Version #2 and keep them all with a limited focus, they can do so; however, a member of the public may not feel the same way about the limited de novo. They kept de novo open for the public, but if the Council does not want to do this, staff can modify it.

Mayor Tatzin said he believes Councilmember Samson may like to answer. It is limited for Planning Commissioners and Councilmembers but not limited for members of the public.

Councilmember Samson said he does not think it should be, and it is probably a glitch.

Mayor Tatzin asked if he would limit it for everyone, and Councilmember Samson said yes; and Version #2 should be consistent. He thinks this is a drafting mistake.

Ms. Subramanian said to be clear, Councilmember Samson did not get to see a version of this before it went into the packet.

Councilmember Samson said it should be consistent.

Mayor Tatzin said his reaction is that these occur pretty infrequently and he thinks that over his 3 decades he has appealed 2 or 3 things. And, sometimes he finds when the public appeals something in the Council's role they say they would just wait for the appeal, particularly when it comes in towards the end. Then, when the appeal is received, they see something the Councilmember wants to comment on that the person making the appeal did not.

He remembered a different kind of situation where it was the applicant who appealed a particular finding that was made and they wanted the Council to repeal the finding. The Council ended up on a de novo hearing turning down the entire application. He thinks it was a good decision in that case because it was a particularly unattractive building, but if he sees that they now must limit that, it either increases the burden on Planning Commissioners and Councilmembers to review everything that has been approved to figure out if they want to appeal it enough before the time to make sure all of their comments get in or, they are precluded. He thinks the Council is very busy and they might miss something, and he would be much more comfortable with language that said whoever appeals it is encouraged to be specific but it is a de novo hearing.

Councilmember Samson said he thinks there is a clash of policies and there is no absolute right or wrong. What is said in terms of the public participation or the public's ability to address things or even the Council's ability to address things on a broader scope he does not disagree with that, but it then comes to some degree at the expense of fairness to the applicant who ought to have some specified list of deficiencies so they know what they are dealing with, and it is a balance.

Mayor Tatzin agreed it was a balance and he guessed that in the end he comes down to the balance of encouraging the appellant to indicate what they want but not limiting the hearing body to that if they identify other things that warrant review.

Councilmember Anderson said in getting back to the City Attorney, if the Council is going to allow the appellant who is a member of the decision-making process to participate in that process, there was concern about a bias coming forward in the discussion of why he is appealing this, and this is what the Council talked about at the last meeting. He did not want Councilmember Samson to say that. If they begin to consider that now they will be back in the same place all over again.

Ms. Subramanian said this was her original concern. She tried to work with Councilmember Samson to narrow it and use the language referenced in the ordinance; however, if someone goes beyond that, they will have a problem and they now have not solved the problem she was trying to fix, so there is a balance.

Mayor Tatzin said if he looks at 6-22.8.3 as one example of the new language, it states, "The appeal shall only identify the specific findings, conditions, etc." He asked what happens if somebody or the Councilmember says he/she is appealing all findings, conditions, requirements and other determinations.

Ms. Subramanian said then that functionally becomes de novo.

Councilmember Anderson said there is nothing from preventing someone doing that; however, the whole intent here is to be much more specific about what the issue is. The problem with that is the person making the appeal cannot act because they are biased. So, they get back to the original question the Planning Commission asked which was, should the person appealing act as a decision-maker on that appeal.

Ms. Subramanian said it just depends on how much they put into that appeal. If they limit it to keeping it narrow without giving the "because" then they can act on it. But, if they start adding more language to it, which is why the word "only" is listed in there is because she does not want more to be identified. It is becoming a slippery slope and that is the balance. If someone is submitting the appeal very quickly and not paying attention and does not understand this background because they are now further down the road then mistakes can be made which will potentially disqualify the Councilmember.

Vice Mayor Burks said in getting back to 6-22.8.c, if a Councilmember were to only identify a specific finding, he asked if that would presume that Councilmember was not in favor of how the Planning Commission made that finding.

Ms. Subramanian said she thinks they can still vote on it if they just said they are appealing Resolution finding 2b period, but the question is if they add to it.

Vice Mayor Burks said he would be the appealing the decision of the Planning Commission on that finding, so he would imagine he would be biased.

Ms. Subramanian said she thinks a Councilmember or Planning Commissioner could do it. Again, it is just the issue of whether more is added, but if someone was precise and did not say why then she thinks they could get there.

Councilmember Mitchell moved the staff recommendation to waive the second reading and adopt Ordinance 656 as set forth in Version 1. Councilmember Anderson seconded the motion.

Councilmember Samson said this is not an issue about which he feels passionate. There are competing interests here and he recognizes what others have said.

ACTION: It was M/S/C (Mitchell/Anderson) to waive second reading and adopt Ordinance 656 as set forth in Option 1 entitled, "An Ordinance of the City Council of the City of Lafayette Amending title 6, Part 1, Chapter 6-2, Article 3 of the Lafayette of the Lafayette Municipal Code Relating to Decisions and Appeals" as previously requested by the Council.. Vote: 5-0 (Ayes: Tatzin, Burks, Anderson, Mitchell, and Samson; Noes: None).

## **12. ITEMS REMOVED FROM CONSENT CALENDAR**

### **A. City Council Minutes**

#### **1. April 23, 2018**

Recommendation: Approve.

Councilmember Samson said he was not in attendance and said he would abstain.

Councilmember Anderson said he was reflected as "Mayor" on page 7, second to the bottom paragraph starting with "Mayor Anderson".

ACTION: It was M/S/C (Mitchell/Anderson) to approve the April 23, 2018, as amended. Vote: 4-0-1 (Ayes: Tatzin, Burks, Anderson, and Mitchell; Noes: None; Abstain: Samson).

### **F. ROW01-18 Jackson, Hanley, & Harley (Owners), R-10 Zoning: Request for the abandonment of a slope easement over three properties on El Curtola Boulevard, Gladys Court, and Saranap Avenue, APNs 185-390-040-3, 185-391-041, 185-390-042.**

Recommendation: Adopt resolution 2018-26 authorizing Steven Falk, City Manager to sign quitclaim deeds.

Mayor Tatzin said his question is if abandoning the slope easements would create any opportunity for subdivision that does not now exist.

Ms. Subramanian said she did not have an answer, and Mayor Tatzin suggested continuing the item.

ACTION: It was M/S/C (Tatzin/Mitchell) to continue Item 8F. Vote: 5-0 (Ayes: Tatzin, Burks, Anderson, Mitchell, and Samson; Noes: None).

## **13. COUNCIL/COMMISSION REPORTS**

### **A. Councilmembers report on activities and consideration of matters a Councilmember wishes to initiate for placement on a future agenda.**

Vice Mayor Burks said he has a request for a future item which involves PG&E and the Community Pipeline Safety Initiative. He asked to be able to read from some remarks associated with his request

and suggested stopping him if he needed to stop for Mayor Tatzin and Councilmember Samson to leave the room.

Mayor Tatzin noted that he had a brief conversation with the City Attorney and suggested providing his request and if there is discussion, he may have to leave and if there is no discussion the Council will have agreed to place it on a future agenda.

Vice Mayor Burks said he would like to call for a public hearing where the Council would formally, by letter, request that PG&E appear side by side with their regulators, the CPUC and request that the CPUC would send appropriate representatives from their organization and he would like them to sit next to each other to specifically discuss how safe their pipeline infrastructure is in Lafayette right now and to tell the Council what they intend to do to mitigate any risks identified. He would be happy to work with City staff or the City Manager to engage with PG&E and the CPUC in advance of the meeting to ensure they knew exactly what the Council's expectations are. He has about three minutes of background why he is asking for this if the Council would like more information.

Councilmember Anderson said he would like to hear the background.

Recused:

Mayor Tatzin and Councilmember Samson recused themselves and left the Chambers.

Vice Mayor Burks explained that in the community's and the City's recent engagement with PG&E over the past year, which is more in the context of public safety at large associated with everything the City is doing with PG&E, their appearances before the Council here, the orientation, Open House held last week, he personally has found over the last several months with PG&E, whether it has been through discussions associated with the Pipeline Safety Initiative, the St. Mary's Road project, their response to inform members of the public on general pipeline safety questions and concerns have been overwhelmingly lacking in clarity, consistency, methodology and frankly professionalism. He would expect a lot more from this public utility. This has unfortunately led to what he would characterize as a deterioration of PG&E's credibility within the community to a degree and, certainly with him personally when it comes to understanding how safe they are as a community vis-à-vis their operated gas pipeline infrastructure in Lafayette.

When the City approved the CPSI agreement on March 27, 2017 he specifically asked Marvin Nushwat from PG&E Public Affairs the following, and he quoted from the approved minutes: "Incidental to the effort (CPSI), comment about PG&E's current safety assessment associated with the overall integrity of PG&E's pipelines within the City of Lafayette. Mr. Nushwat said they do review pipes, conduct leak surveys, aerial and foot patrols and constantly monitor the pipes. Those pipes in Lafayette are safe. If, for whatever reason they find an anomaly, they would communicate with the City and address the issue immediately". He went onto say, "Currently, there are no anomalies and they are confident the pipes are safe, but tree removal is more of a proactive effort and not reactive so they want to remove any threats moving forward so as not to have to return with any anomalies on the pipeline".

Over the past year he said the Council has heard from various members of the community and PG&E and many tonight and from PG&E about the age of the City's pipeline infrastructure and the inability to assess the integrity of the infrastructure. That has been told to the City by PG&E, by community members who have engaged with them that it is very old. So, the Council continues to hear information from various elements within PG&E that they do not appear they are coordinating with each other. They

appear stove-piped and the understanding of basic safety related questions posed by members of the public and the City government has been questionable in his opinion. It is very unfortunate and it gives him great pause and great concern and causes him to question very seriously Mr. Nushwat's response to him and the voracity of that response on March 27, 2017; that their pipes in Lafayette are indeed safe and when they find an anomaly they would communicate with the City and address the issue immediately.

He sent a note to the City Engineer today to ask if the City had been contacted recently or in the near past by PG&E by any anomalies and it was a very quick email and he did not get a chance to talk with the City Engineer, but the indication back from Mr. Moran was that this has not taken place recently, and he asked the City Manager to comment if he had any other information to add on this.

Vice Mayor Burks said he believes they have a credibility problem here and it is growing. Again, this is from a public safety standpoint. The Council heard speakers tonight, they heard Mr. Dawson again, Ms. Hill again, engaged with PG&E representatives last week at the Open House and they were not given clear answers around testing methodologies or testing timelines or the ability to test the City's infrastructure. They need facts and straight-forward answers to straight-forward questions, and he really believes the only way they are going to do this is to have PG&E appear with their regulators in front of the Council to answer their questions and to hear the public and their public comments, and to get into this in a detailed way to give residents in town that they are as safe as they can be.

Councilmember Anderson said he does not disagree with Vice Mayor Burks. He made some notes tonight and he is continuing to worry about the City's credibility as it relates to the overall process with trees. They are relying on PG&E to come across as knowledgeable, able to answer questions and they do not do that, which is also what Vice Mayor Burks is alluding to. He thinks if they will call for this, the Council should get its act together and make sure they can put this in a place and a way that all questions they have get addressed.

The problem he sees is that they are such a large organization where a certain person deals with a certain piece of pipe and another person deals with another kind of pipe, this person deals with the valve, and everybody is all split up. When asking one person they can tell people about what they do but not about the other. So, he suggested clearly defining exactly what the Council is looking for in terms that they will then be able to go back and gather the information from all the different places within their organization and present one cohesive answer about the problem the Council and residents are concerned about.

Therefore, he does not see this as a problem as something the Council pursues. He just thinks they need to be aware that this is going to be a lot of work on the Council's part upfront to make this useful and he was willing to help but it will not be an easy situation for them to have them come and explain themselves. The City will need to provide something to PG&E upfront that clearly provides them with what the City is looking for.

Vice Mayor Burks agreed, and said one of the comments he made before the Mayor and Councilmember Samson left was that he would be happy to work with staff and he would welcome help from Councilmember Anderson to come up to provide them with exactly what the City's expectations are. He absolutely agreed it will take a lot of work on their part, but the expectation from him is that PG&E would bring their "A team", and he would like to invite their regulators to be here. It is up to them

as to whether or not they show up but he would like there to be some accountability around this. It is only fair to provide them with what the City needs and to allow them to come and speak for themselves.

Councilmember Anderson asked then would the Council then suspend the tree operations until all questions are answered or would the Council allow that process to continue ahead, as it is a very important piece to this.

Vice Mayor Burks suggested comment from the City Attorney.

Ms. Subramanian stated the City has a tree agreement that has a process laid out where PG&E is supposed to submit information but the City has not received anything. So, nothing has actually moved forward in that regard.

Councilmember Anderson said they understand this, but PG&E is going to give the City that information and from their perspective these are two different stories—one is the trees which is a project they have money to do and the other is the City's lack of confidence in the rest of the safety items being done. They will want to keep those separate, and he asked if the Council will link them or separate them. He thinks they can begin to say that if this is their intention now in addressing this issue, and if it is not, they can say this one thing will happen and here is what PG&E needs to do, but then the Council is expecting they return and spend some time explaining this. He personally thinks they must link them because this is the wedge that has PG&E here or coming back to the City and they will not see PG&E again unless they need something from the City.

Mr. Falk stated he does not disagree with the Council's concerns and he shares them. He feels a need to manage expectations about what the Council might achieve with this meeting. He said he did an internship with PG&E and he has friends who work for the CPUC and is not aware of any instance when the CPUC will send a team of regulators out to a City Council meeting. It may occur but he has never seen this done in another city.

The second point he would make is that there is no one on his staff who is competent in gas pipeline dynamics. The City has heard from members of the public that there should be more automatic shut-off valves at different locations. There is no staff member who knows what the right distance, the right type of shut-off valve, or where they should be located. Likewise, there is no one on his staff with expertise around pipeline corrosion or cathodic protection. It is not in their skill set and so they will accommodate the Council's desire but he believes the Council will need to budget funds to hire an expert consultant who could serve as a manager of this project.

He noted that the Dawson's have actually been fantastic in leveraging PG&E into the position that they are because they have done research, they have time and are very bright, and frankly have more competence than anybody on his staff does. Therefore, if the Council does choose to pursue this, he will need the Council to give him a budget for an expert and then it would take some time to secure that person who could serve as a companion to staff to help organize this.

Councilmember Anderson said for him he does not know whether the City needs to be able to judge whether or not PG&E answers correctly or not and this is what the consultant would do. They simply need to get the answer, and this is how he sees this.

Mr. Falk said, however, staff will not know if the answer is correct or not.

Councilmember Anderson said they do need an answer and sometimes they are not getting one. The focus of their objective is that they want to know what the answer is and then he asked if the Council would judge it and that is a big question.

Vice Mayor Burks said he is not looking for a fact-checker. He wants to have faith in their public utility that they are going to bring the right people to answer the questions confidently and not sit up here and look at each other and bumble around. He thinks there will be many people in the room and PG&E will be compelled to bring their A team. The Council can provide them with questions in advance, but certainly the public will have a chance to comment. He does not think they need to hire an expert to do this. He thinks he and Councilmember Anderson or Councilmember Mitchell can get together and work on a framework for this meeting.

Ms. Subramanian said since this item is not on the agenda, she is hearing there is consensus to move forward.

Councilmember Mitchell said he was not sure a subcommittee could be appointed on this portion of the agenda, but he is comfortable letting Councilmember Anderson and Vice Mayor Burks work with the City Manager and City Attorney. There is an agreement they have and many complications. The first thing that came to mind was to invite the CPUC and they would say they could book something in for the middle of next year. So, he thinks there are couple of steps that need ironing out and he would be comfortable for a subcommittee to pursue that with staff and the City Attorney.

Ms. Subramanian said they are in a unique situation since they have two Councilmembers who have a conflict because of the PG&E matter. When there is a conflict as a Councilmember, they are not considered part of the quorum, so right now the quorum is 3 members and if 2 members sit and meet with staff, this would be subject to the Brown Act. It is not that they cannot do it, but staff would be agendizing the matter.

Vice Mayor Burks referred to the City Manager's comment about the CPUC and said his goal is to extend an invitation. If they are not willing to come, they are not willing to come but it would be ideal if they did. The second would be that he would feel comfortable working with Councilmember Anderson in an agendized meeting format. The reason he is doing that is to bring these issues to light with the public and he thinks it should be a public process through and through.

Councilmember Anderson concurred.

Ms. Subramanian said it sounds like there will be a subsequent meeting of the two Councilmembers to talk about next steps that staff will agendize. And, to the extent Councilmember Mitchell wants to attend because it is agendized, staff can agendize it accordingly as a special meeting.

Mr. Falk noted that he and Councilmember Anderson are meeting with the Dawson's tomorrow morning and he asked for permission to relay this new development to the Dawson's, and Councilmembers concurred.

Noted Present:

Mayor Tatzin and Councilmember Samson returned to participate in the remainder of the meeting.

Councilmember Samson said while this may or may not be appropriate and something for the City Manager to address and possibly in conjunction with the Chamber of Commerce, but they have many retail vacancies as well as a number of other communities. He wondered what if anything was being done about it and what the City could do about it in order to encourage retail to move in.

Mayor Tatzin stated he has had conversations with Steve Cortese and he is just one landlord, but he agreed it would be a good idea to hear what the Council is hearing.

Mr. Falk agreed and said there are techniques to use. The most aggressive involve changes to the City's zoning code where parking requirements are changed to encourage Internet-proof retail, which at least as of today consists of restaurants, personal services, and things that cannot be purchased on the Internet such as hair and nail salons and fitness centers. He said he and the Planning Director have held this conversation and if the Council would like staff to prepare changes to the zoning ordinance that would encourage such uses, they can do this.

Mayor Tatzin suggested starting with a meeting where the City invites the Chamber to bring in retailers and property owners to have a discussion and let that move to some direction of what they might do, if anything, to applicable ordinance and guidelines.

Mr. Falk asked if the Council would like this scheduled as a workshop with the full City Council in the future, and Mayor Tatzin stated yes.

Councilmember Mitchell reported that he and Councilmember Anderson met with the Public Works Subcommittee, the Public Works Director and a group of concerned citizens primarily from the east end with concerns of potential landscaping and various improvements. He complemented Mr. Moran for addressing the couple of dozen points and they indicated to the group that they would be willing to meet with them in a month or so to see if they are making progress on those and he thought that discussions were helpful.

As an aside, he complemented Councilmember Anderson, stating he thinks he would make a great marriage counselor or hostage negotiator because when tensions rose, he handled this wonderfully.

Mayor Tatzin reported attending the Mayors' Conference with the City Manager and Councilmember Samson would be particularly disappointed he did not go because it was being held at the Cobra (car) Museum in Martinez.

## **B. Mayor Tatzin**

- 1. Update on AB2923 Transit-Oriented Development (TOD) Guidelines for BART Owned Land Recommendation:** Discuss and direct.

Mayor Tatzin stated the Council has reviewed the bill and sent a letter of opposition. Subsequent to that the League of California Cities organized a meeting with Assemblymember Grayson of Concord who is a co-author of the bill. There were Mayors and representatives of about 8 or 9 East Bay cities who attended both from Alameda and Contra Costa counties. No one was enthusiastic about the bill as written. Assemblymember Grayson took notes and his staff was on the phone in Sacramento and they took notes. He then said he would organize a meeting in Sacramento with himself, the other author, Assemblymember Chu and the local government staffs of the relevant committees. As of this afternoon, that meeting has not been scheduled and in the meantime, the bill has passed through at least one

committee if not two committees. There were some amendments made and there is a copy of the latest bill before the Council, and he was unsure of any further direction.

Councilmember Anderson noted he was in receipt of something published on May 1<sup>st</sup> which he confirmed was the most recent. There is nothing of substantial change and Mayor Tatzin noted it was one section that had some amendments.

Mayor Tatzin suggested no other action than attending a meeting, if called.

## **2. Regional Measure 3 – Bay Area Traffic Relief Plan**

Recommendation: Discuss and direct.

Mayor Tatzin noted this is another item on the June 5<sup>th</sup> ballot that would affect the 9 Bay Area counties and is put on by the Bay Area Toll Authority. It would raise the charges for select bridges, except for the Golden Gate Bridge, by \$1 over 3 times for a \$3 increase. There is an expenditure plan and in summary, the plan states that while a relatively high share of bridge tolls are paid by people who live in Alameda and Contra Costa Counties, they get less of a share of the expenditures made in their counties and some of the money is spent in counties where they go which is the argument.

Also, this is a way for the West Bay and South Bay Assembly members to support the bill. Since Senator Bell, in particular, is the Chair of the Senate Transportation Committee, he had a big role in drafting the legislation in these expenditure plans which are written in Sacramento and not the Bay Area.

At the same time, he thinks the sense of the City's representatives on MTC was this is probably as good as they are going to get because the legislation is authorized by the 9-county region and not just by Contra Costa and Alameda, and their half-cent sales tax in Contra Costa County failed. So this does provide the additional BART cars, some funding for I-680 and Hwy 4 interchange. It provides some funding for the transit bus on shoulder operations on I-680 which is one of the goals, and they already have money to do the southbound through HOT lane. The newspapers have endorsed it recognized it was not what they would have liked but better than the alternative of not having funds.

Vice Mayor Burks asked if there was any discussion regarding connecting BART between Walnut Creek and Pleasanton.

Mayor Tatzin said there have been analyses of doing that. It turns out that it is very expensive because BART trains do not turn on a dime. How the tracks must be curved to go from I-680 to the Pleasanton station is just very expensive. The other thing is that there are some communities, particularly Danville, which will fight BART going through Danville tooth and nail. It is not clear they would approve it even if they ran it underground through Danville. And, the price of going all the way from Walnut Creek to Pleasanton is billions and billions of dollars.

Vice Mayor Burks noted that in other parts of the country they are getting it done and traffic seems to be getting worse.

Mayor Tatzin asked the Council if they wanted to voice preferences or take no position.

Councilmember Anderson said he supports the measure personally. It is not giving the City much back, but the overall problem of traffic is the overall problem and the more they can do to help move people around better is a good thing.

Councilmember Samson said he respectfully disagrees with Councilmember Anderson. He thinks the distribution of revenues received is inequitable to the East Bay and he thinks coming on top of last year's gas tax increase, it is the wrong thing to do.

Vice Mayor Burks said he does not support it either.

Councilmember Mitchell said it is his understanding this is going on the ballot so he is comfortable letting the voters make their choice.

Mayor Tatzin said he happens to support it, but it sounds like there are not three votes and no motion, so he recommended taking no position, and Councilmembers concurred.

**C. Mayor Tatzin and Councilmember Anderson  
Resolution 2018-29 Appointing member to the Planning Commission**

Recommendation: Adopt Resolution 2018-29 appointing member to the Planning Commission.

Councilmember Anderson reported they have now interviewed 10 applicants for the Planning Commission and have 2 more scheduled next week. There have been many good candidates and they are staying with the idea that no one is being eliminated but they are trying to find those people who rise to the top and they feel they have one in Kristina Sturm. She did a great job in the interview, a great job on the Circulation Commission and she can be a good leader.

The other Planning Commissioners who were present in the interview process were also very excited to have her join. So, the recommendation would be for Kristina Sturm to join the Planning Commission and they will continue the process. There is a sense of other individuals who could possibly fill out their count of 7 but it is too early to decide yet, and they want to finalize the interviews before taking action. Therefore, he made a motion for Kristina Sturm to be appointed to the Planning Commission and Mayor Tatzin seconded his motion.

Vice Mayor Burks asked and confirmed that the current pool of candidates are still to be considered and are not disqualified.

Councilmember Anderson noted that one applicant did not live in Lafayette. Mayor Tatzin said they also had a couple of applicants who, had they been on the commission six months ago would have had to resign because their firms had applications before the Council. They believe it is an unusual circumstance, but the City has run into this once or possibly another time.

Councilmember Samson said in looking at the applicant's resumes, he was very pleased with all of the turmoil to see such a large group of what appears to be very qualified people.

Vice Mayor Burks stated he has worked with Ms. Sturm in the past when she was on the Circulation Commission and Crime Prevention Committee. He was on a few subcommittees and task forces with her and he thinks she is a fantastic choice.

ACTION: It was M/S/C (Anderson/Tatzin) to appoint Kristina Sturm to the Planning Commission. Vote: 5-0 (Ayes: Tatzin, Burks, Anderson, Mitchell, and Samson; Noes: None).

**D. Councilmember Samson and Vice Mayor Burks**

**Resolution 2018-27 Appointing one member to the Senior Services Commission**

Recommendation: Adopt Resolution 2018-27.

Councilmember Samson said they met with Dorothy Walker along with Dr. Beck and Don Jenkins 10 days ago and Ms. Walker was the only applicant and an extremely well-qualified and enthusiastic applicant and recommend her appointment.

ACTION: It was M/S/C (Samson/Burks) to adopt Resolution 2018-27 appointing Dorothy Walker to the Senior Services Commission. Vote: 5-0 (Ayes: Tatzin, Burks, Anderson, Mitchell, and Samson; Noes: None).

**E. Councilmember Anderson and Vice Mayor Burks**

**Resolution 2018-28 Appointing one member to the Creeks Committee**

Recommendation: Adopt Resolution 2018-29.

Councilmember Anderson stated they held an interview with Ronald Huff who was very interested in serving and he made a motion as the recommendation is to add him to the Creeks Committee. Vice Mayor Burks seconded the motion.

ACTION: It was M/S/C (Anderson/Burks) to adopt Resolution 2018-29 appointing Ron Hufft to the Creeks Committee. Vote: 5-0 (Ayes: Tatzin, Burks, Anderson, Mitchell, and Samson; Noes: None).

Mayor Tatzin announced that since the last Council meeting he had wanted to adjourn the meeting in memory of Doug Federighi, husband of former Councilmember, Mayor, Parking Commissioner and Planning Commissioner Carol Federighi and also in memory of Tom Cleveland, former Mayor who stepped down in 1985 and Planning Commissioner, who passed two days ago.

**14. WRITTEN COMMUNICATION**

**A. Letter from Mark Higgins resigning from the Environmental Task Force.**

Recommendation: Accept with regret.

ACTION: It was M/S/C (Mitchell/Anderson) to accept with regret the resignation of Mark Higgins from the Environmental Task Force. Vote: 5-0 (Ayes: Tatzin, Burks, Anderson, Mitchell, and Samson; Noes: None).

**15. CLOSED SESSION**

The City Council adjourned at 10:20 p.m. to Closed Session to consider the following matter:

**A. Conference with Legal Counsel - Existing Litigation (Gov. Code 54956.9(d)(1).)**

**Lori Fowler, Val Davidson, Rob Davidson, Jeanne Sommer, Scott Sommer, Avon M. Wilson and George Paul Wilson v. City of Lafayette, Case Number N-16-2322**

**16. REPORT FROM CLOSED SESSION**

Mayor Tatzin announced that there was no reportable action taken in Closed Session.

**ADJOURNMENT** 11:13 p.m. in memory of Tom Cleveland and Doug Federighi.

APPROVED:

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Don Tatzin, Mayor

ATTEST:

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Joanne Robbins, City Clerk