1. CALL TO ORDER

Mayor Anderson called regular City Council meeting to order at 5:30 p.m.

2. ROLL CALL

   Present: Mayor Anderson; Tatzin, Burks, Mitchell, Samson (arrived late).

   Absent: None

   Staff Present: Steven Falk, City Manager; Tracy Robinson, Administrative Services Director; Niroop Srivatsa, Planning and Building Services Director; Greg Wolff, Assistant Planning and Building Services Director; Payal Bhagat, Senior Planner; Juliet Hansen, Public Art Committee Staff Liaison; Julia Kopman-Norton, Assistant Planner; Mala Subramanian, City Attorney; Joanne Robbins, City Clerk

3. ADOPTION OF AGENDA

Vice Mayor Tatzin confirmed that Items 9A and 9C will be deferred to a future meeting.

ACTION: It was M/S/C (Tatzin/Mitchell) to adopt the agenda, as amended. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Burks, and Mitchell; Noes: None; Absent: Samson).

4. PUBLIC COMMENT

HENRY KIM, reported that AT&T was building a 225 square foot or 15x15 cell base station in an R20 zone which is 10 feet away from his property line at 777 Moraga Road. According to SB 57 the cell station must be approved within 90 days and he learned it did not require a public hearing. The site will be 30 feet from his house and his family will be looking directly down at it.

He spoke about the dangerousness from speeding along Moraga Road and several near misses, stated once AT&T is in they must sub-lease to other wireless facilities such as T-Mobile, Sprint and Verizon which makes this a commercial operation in a residential zone, and he requested a public hearing be held.
Councilmember Mitchell asked if Mr. Kim discussed this with City staff and whether the matter will be heard by any of the City’s commissions. Mr. Kim said he and his wife spoke with Mr. Cass previously and the matter has been turned over to Julia Koppman-Norton. Councilmember Mitchell suggested discussing this with staff to be kept aware of the process.

Recusal: Vice Mayor Tatzin disclosed that his home is located on a street where one of the high pressure PG&E lines operates and he has been advised by the City Attorney that he needs to recuse himself on all discussions which he did previously, will do this evening and also on the May 22nd hearing, and he left the meeting.

MICHAEL DAWSON, said he began the petition to stop PG&E’s removal of trees in the City. Since he spoke at the last Council meeting, much has happened. Over 1,600 signatures and comments have been received which is very powerful. They have a new website, Facebook presence, Twitter, 8th graders who will start an Instagram account, and these are things done from passion from their heart as what the agreement is doing is wrong for the City of Lafayette.

They also put up poster on trees and he thinks it is ashamed that the City is trying to hide this in a way that makes the agreement go through easier, allows for trees to be cut down with a minimal amount of impact and hides the public awareness of what is occurring in backyards to trees people really care about. Since the last meeting, many people have come forward from around the state of California, the County of Santa Cruz has been successful in stopping PG&E’s tree program and they have helped them, and material from his letter of May 5th provides some data as to why this is wrong. They have had 6 attorneys come to them with professional opinions about what they think is going wrong in this instance, two first responders who is here tonight who will talk about PG&E’s comments which is false. In fact, pictures they show are completely dangerous and illegal and they would never follow those procedures. A Vice President of Chevron has contacted them stating they do not cut down trees around their pipelines and do not understand why PG&E does. They have also had several engineers educate him about the pipelines and everything he learns makes me scared because there is no oversight for safety. PG&E is cutting trees that look good to address the public’s concern about San Bruno, but PG&E does not want to talk about the wells that actually created that explosion.

LAURA LEVANDOWSKI (CEDED TIME TO MICHEAL DAWSON)

Mr. Dawson outlined four reasons why they believe this agreement is wrong and why it should be stopped immediately, and why the May 22nd meeting is premature with PG&E, as the agreement needs more review. He highlighted a point that PG&E has claimed in the letter of agreement with the City that “PG&E has warranted that tree roots may cause damage to pipes by exposing them to corrosion. In an effort to prevent this potential damage, PG&E is proposing to remove a number of trees in the City.” He said PG&E is saying it is tree roots and this is in their letter of agreement. In every marketing material PG&E sends out including the City website and all letters they are sending to customers, they never mention the word “tree roots” anywhere. They changed it to “access” in the past couple of months and say “access” is needed for the pipeline which is false as well. The fact that the problem is purely tree roots is something they know is false and they know it is false because it is in their own report.

The summary of the report states in part, “There is insufficient data collected in the study to substantiate or eliminate a direct cause or linkage between the presence of tree roots and the external
corrosion, initiation or growth.” Another point, “Available data provides no direct evidence that this presence of live tree roots in contact with pipe increases the susceptibility to the initiation of stress corrosion cracking.” Also, “There is insufficient data collected in the study to draw any conclusions as to whether the presence of dead tree roots in contact with pipe has any impact on the corrosion.” Therefore, they do not know if they cut down trees whether it will corrode less, the same or more and they simply do not know. This is why they are no longer using the materials and he was pretty sure they wrote the copy for the City’s website which has their contact information. Given this and more information that hopefully will be brought to light today, he requested the City stop this agreement. He thinks the Council needs to reconsider the May 22nd meeting, look at the matter more clearly, allow public input during that process and they need to have more information. He said many people are in this room to help the City Council because he thinks collectively the Council is on their side and he would like to get them there.

Councilmember Burks asked Mr. Dawson what he meant by re-thinking the May 22nd meeting. Mr. Dawson said he has heard second hand that PG&E will be coming on May 22nd and doing a presentation. He thinks the Council needs to re-visit facts about the agreement before inviting PG&E to come and provide more of their marketing materials which will confuse the facts.

KENT FICKETT, Orinda resident and frequent user of the regional park systems’ trails, said he has professional experience in pruning large utility projects including gas pipelines, have worked in the Governor’s Office of Planning and Research advising state agencies and local governments on compliance with CEQA, is the Vice President of the Mt. Diablo Audubon Society. He provided the Council with a package for more detailed review and formally requested the City reconsider their actions based on the March 27th staff report on this matter and asked to initiate a formal CEQA review must as the County of Santa Cruz has done.

Staff has done a great job in working with PG&E and the Council has discretionary requiring CEQA, which PG&E did not want to undertake. Staff worked with PG&E to try to create an exemption option and the option selected is flawed and he has provided language in the packet regarding this.

He said CEQA is about letting decision-makers see all implications of a project and find the least impactful alternative for a project. He was not anti-PG&E or anti-pipelines, but he believes in this case there are less impactful alternatives that could be considered. For example, along the Lafayette Bike Trail, if there are locations along that trail where pipelines exist or parallels that trail, PG&E could easily go in and install a new pipe right under the bike path and position it, cover it, return the bike path and then shift the gas from the old line to the new line without removing trees or the old pipe. In the long term, the City would have a new upgraded pipeline they know is current. The City would have plenty of right-of-way on either sides, but because of the selected process, it does not give the Council an opportunity to explore whether this is feasible or whether it could work or apply. Therefore, on behalf of his interests, he asked that the Council reconsider its action and he would be happy to work with staff and the Council on a productive approach with CEQA to try and make this project move forward.

MARY ROSSI FUCHS, said she has two trees on her property which were tagged and then untagged and read two quotes from a Lamorinda Weekly article dated April 9, 2014: “This is the most hand-fisted effort I have ever heard; Mike Anderson. “It might be easier to move the pipelines that move the trees; Councilmember Mark Mitchell.” She echoed previous comments and said the most disturbing thing about the PG&E tree removal process is the withholding of information, inadequate public disclosure
that PG&E has taken away from residents of Lafayette, and the erroneous alternative facts that they put out regarding the pipeline, the reasons they feel they need to remove it and what they will do about it.

She said Mr. Dawson addressed the tree roots being dangerous, but they are looking for water and not gas. Also, scientific studies have shown that the tree roots actually enhance the soil and provide a more stable environment, particularly on slopes where she understands some of the trees are tagged which are the 272 slated for removal.

Faulty welding is a scare tactic PG&E is using to drum up fear about another San Bruno and they then change their position to tree roots and then aerial accessibility to avoid interference or coverage issues. She suggested they use drones and/or shut off valves. She also said there is erroneous information about first response and access to pipelines and what PG&E was suggesting is in violation of federal and fire district procedures.

HOWARD FUCHS (CEDED TIME TO MARY)

Ms. Fuchs continued, stating residents have seen two maps, one of which was very old which she assumes was the original 1000 tree removal project. She thought it was the poorest example of a map she had ever seen. She also said nothing is tagged or identified, and one of the trees on her property was painted red and blue and she could find nothing about tagging and what it means as to whether they will be saved or cut down. Last Friday, PG&E came out with a new map and residents received a letter in response to her husband’s letter to the City Manager and PG&E, and in PG&E’s letter it mentioned the possibility of using herbicides or basically poison on the tree stumps once they are cut down.

Therefore, Ms. Fuchs asked that the City Council listen to its constituents because this petition is snowballing and people are appalled at what they are hearing. She concluded by respectfully requesting that the Council recapture that spirit it addressed in April 2014 and do the right thing, which is to save Lafayette’s trees.

Councilmember Mitchell said the Council has heard from PG&E that after the March 27th letter they are conducting outreach to those who have trees on their property slated for removal. He asked if Ms. Fuchs had been contacted at all.

Ms. Fuchs said no; she does not remember how she heard about it; however, the trees are located adjacent to her property which is a right-of-way easement across the bike trail.

Noted Present/Recusal:
City Attorney Subramanian announced that Councilmember Samson had arrived at 5:50 p.m., and because he also has a conflict of interest because of a PG&E pension he has left the room and will re-join the meeting after public comments.

MICHAEL ANTHONY, said one thing great about Lafayette are its trees. PG&E indicates it wants to talk about tree replacement and restoration. He questioned how they plan to replace a 100 or 200 year oak tree and he thought it would be easier to replace the pipeline instead of an oak tree. He deals with ethics and being truthful, positive and helping others and he heard that the Council made an agreement with PG&E where the City will receive $500,000. If the City takes this money and put it out of question,
he asked if the Council would be more inclined to represent its residents or PG&E. He questioned where the City’s ethics are and values, and he asked why the City took $500,000 without bending over backwards to talk to people who voted the Council into office.

City Manager Falk clarified for the record that the City has a tree protection ordinance and in the ordinance there is a formula that is prescribed for calculating the amount of money for someone who cuts down a tree that must pay the City. The $474,000 was arrived at purely as a result of applying this formula. There was no negotiation, no inclination or suggestion that this was in any way a payoff or buy-out. It was a strict application of the formula in the Municipal Code and which has been in place for years. Also, the money collected as a result of this formula must be reserved in a special account for the purpose of planting more trees in the City of Lafayette.

SHARON RICHARD, said she heard a PG&E spokesperson give an analogy about why they need to cut down the City’s trees; “There is a reason you can never park a car in front of a fire hydrant. It’s that in the event of an emergency they need access and they need it quickly.” She agrees with the need to get to the fire hydrant, but she disagrees with the analogy, as it would be more like the fire department saying, people can’t park their car within 5 feet of where there might be a water pipeline below the street. Furthermore, with a gas explosion, first responders are not going to rush to the point of rupture. Again, a break in a gas line is nothing like a fire hydrant.

In responding to the San Bruno tragedy, the first thing PG&E needed to do was shut down the gas. According to government officials, it took 95 minutes to shut down the gas and this is because there were no automatic shut off valves. In 2011, federal investigators found numerous defective welds in the pipeline and as PG&E increased the pressure in the pipes to meet growing energy demand, the defective welds were weakened until they failed. Lastly, PG&E was found negligent with their inspections and according to residents who smelled natural gas for days before the explosion, there was also no system for early leakage detection. Therefore, in her mind there are critical lessons to take away from the tragedy in San Bruno and she officially noted that not one of those has anything to do with trees.

All residents in Lafayette want to understand what is being done about the real safety precautions, which are the things people really want to know about. She asked about the status of the auto shut off valves. She asked if these are on the pipelines and if not, when they would be installed. Secondly, she asked about the status of inspections of gas lines, and when have inspections last been done? She heard one person say that some pipes were not inspected since 1963, and she asked that PG&E discuss this. Thirdly, she asked what, if anything, was being done to provide early detection of leakage of gas lines to avoid another San Bruno incident.

In summary, these are the questions that Lafayette residents really want to know and as far as she can see, it has nothing to do with trees. Therefore, she hoped that the Council could see its way to reconsider its position.

STEVE RICHARD, said he heard about this decision a couple of weeks ago and he has learned a lot about it. He has lived in Lafayette for 18 years and has never been more upset about any City plans or decisions over that time. One might wonder about why be upset over a couple of hundred trees, but in the last couple of weeks he has asked many questions about how removing the trees relates to people’s safety, about maintenance, about what will PG&E be able to do that they are not doing now, about federal regulations, pegging, have asked questions about first responders and things they will not be
able to do that they could do before, and the bottom line is that he has not heard one single concrete, defensible, confirmed reason that removing trees enhances safety. There is no relationship he has found with removing the trees and safety and this is why he is so upset.

He wondered that in PG&E’s entire history there has been a single case of a tree being given as a reason for an inability to meet an inspection requirement or is the cause of a line failure or that impacted emergency response time. He has searched the Internet and found no case. He does not pretend to be an expert, but PG&E has not convinced him that one single tree needs to come down, and the City has negotiated with the idea they need to come up with a win/win, but he sees this as a sell-out. The City is getting money, PG&E is taking trees for no reason and it is not the deal the community wants. There are many other communities that have negotiated to hold off on having trees cut down. Palo Alto and Santa Cruz are having no trees removed, Danville might have one tree coming down, and this is the deal that Lafayette wants. Residents love their trees more than Palo Alto or more than any other community in the Bay Area and this is the deal he will fight for.

SCOTT HONEGGER, said he has over 200 feet of property boundary along the Regional Trail Bike Path and there is a 12” diameter high pressure distribution main that services Moraga that runs along two sides of his property including along the entire side along the bike path. According to the City’s action with the agreement, PG&E has been permitted to remove up to 18 trees immediately adjacent to or on his property, 8 of which appear to be protected by City ordinance.

He said an image of Ms. Canales’ staff report from the March 27th meeting shows the largest tree to be removed and in the distance shows a picture of his fence. He questioned procedurally what has occurred with respect to noticing the March 27th meeting. He was never directly noticed prior to the meeting by the City and is aware of many other private property owners directly affected and also not noticed. The way the agreement plays out is there are probable procedural violations because the failure to give this notice to a private property owner whose property and the value thereof could be directly or indirectly affected by the action taken by the City to authorize a third party to take trees off of property. This is almost like a virtual or de facto taking of property without due process and he finds no required procedural guarantee by which PG&E must pay just compensation. He said PG&E can take private property in the way of trees property by property.

He also did not receive prior notice about the matter from PG&E. They send notices all the time such as looking at branches which interfere with power lines and he questioned why they would not send him a prior notice that they will be removing several trees on his property and adjacent to his property. They did not give prior notice as they knew he would object, tell neighbors, contact the Creeks Committee and complain to the City Council.

Mr. Honegger also stated, in terms of notice and opportunity to be heard, Councilmember Burks is not aware that for over 10 years that I was on the City’s Creeks Committee and I personally penned communications to Ms. Canales wanting the Creeks Committee to be notified of any action of any kind regarding the tree removal program, and no notice was ever given.

JIM LEACH, said PG&E wants to lower their cost of monitoring and maintaining their existing natural gas pipelines by removing hundreds of priceless trees in the community. He asked the Council to consider this within the context of what must be done in the coming decades to control global warming. Climate scientists tell us GHGs must be reduced in the next two decades if they are to have any chance of
avoiding a global catastrophe. Emissions of methane must be stopped during exploration and extraction of fossil fuels. This also commonly escapes into the atmosphere through distribution networks and when used in homes for cooking and heating. We also know we must eliminate carbon dioxide that result from burning fossil fuels such as natural gas. In other words, we will have to stop the exploration, extraction, distribution and use of natural gas.

Fortunately, we have the technology to replace one’s home use of natural gas with electric cooking and heating devices parred by renewable energy. It will take some time to come to senses in recognition of these facts and to gradually make the transition, but there is no mistaking that these changes must be made well before mid-century. Many trees selected for removal have been here for well over 100 years and many younger trees will live many hundred years into the future if we simply let them alone. The trees support a multitude of species and enrich our lives in countless ways. It seems that this destruction of what little is left of our natural eco-systems in support of an energy source that will be obsolete in a few decades is short sighted and irresponsible.

TRACY FARRINGTON, said he recently heard about this situation and became interested as he is a frequent user of the Lafayette-Moraga Trail. He is a member of the Mt. Diablo Audubon Society and as an avid birder with a deep and abiding interest in the preservation of habitat, especially critically important habitat, the loss of which would be significant and consequential. The proposed tree elimination including 216 dedicated as heritage trees would be both significant and consequential. Not even an in depth accounting of bird diversity along the trail and in the Lafayette Reservoir Watershed shows there are greater than 100 species that depend upon the habitat and 40+ that actively nest. These grand old trees are essential to the many thousands of migrating song birds that pass through each spring and fall. Their stop over visits to these trees provides significant amounts of nutrients, many insects and larva vital to their need to arrive on their nesting grounds in robust condition, physically prepared for the rigors of courtship, nest building and reproductive responsibilities. The old growth heritage trees offer more diverse resources than much younger smaller trees. They provide enormous trunk branch and canopy area allowing for utilization by huge numbers of birds. With such enormity comes the availability of numerous nest sites for both cavity nesters and species who build platforms and cups, etc. We should not overlook at this junction that in addition to the many songbirds, we have several species of both hawks and owls that regularly use available nest sites, raptors as protected birds.

The loss of all of this habitat biomass will have a significant impact which has not been properly taken into account and addressed and it absolutely needs to be. The public needs to be made aware in a timely and open fashion that also provides a suitable interval for response and commentary. He asked how in the absence of any urgent circumstance or compelling reason the Council could sit before the public and willingly allow and approve the destruction of what is surely for all residents a heritage in common. Preservation and perpetuity would leave for all residents quite an enviable legacy in common.

KIKI STACK, said she owns a salon across the street and has been in business for 30 years. Her husband Tom is a realtor in the area and also the Vice President of the Town Hall Theater Board. They both have a vast connection to this general area and he wanted her to make sure she said they plan on making sure that as many people as possible know about this issue. She sat and listened to great comments and it does not seem logical that residents should accept payment for these trees that make up the environment that residents live and enjoy. She is disappointed that there was not push back because if we push back and take just the information that has been gathered thus far and spoken of tonight and
utilize it, it seems to her that a better solution can be arrived at than cutting down trees and then in turn poisoning with herbicide the trunks and the soil and wildlife that would come with that.

She said she was not sure what or how the agreement was developed, as she thought protected trees were protected, but she guessed there is a price. She asked if this money is needed for the beautiful trees and the environment people live in and she strongly disagrees with the agreement. She tends to put her opinion out in the public to as many people as she can and to help grow this movement and gather more signatures on the petition to stop what is happening and utilize this information and come to whatever it takes to be safe.

KIM OVERAA (CEDED TIME TO GINA DAWSON)

GINA DAWSON, echoed her husband’s contention that they appreciate the work of the Council and also that they think the agreement was done in good faith; that PG&E is asking to cut trees down for the issues of public safety. However, she believes this agreement was not made with proper diligence by the City in terms of verification of PG&E’s claims that taking down the trees does cause a public safety liability. The trees are being monitored now and have been in place for hundreds of years, and she questioned whether there was converse evidence that shows people are not safe at this time. She did not think the logic made sense and materials she has seen provided by PG&E for this agreement looks to her like a marketing initiative brochure. She knows years ago PG&E approached the City with a similar proposal for many other trees. Mayor Anderson banded together with 6 or 7 East Bay Cities to oppose this. A few years later, this program has a different name and it is important to understand the difference such that gave the Council the impetus to make the agreement.

The other due diligence factor is community input. If this was done at the time PG&E approached the City during negotiations times, but the City Manager said there was no negotiation, this makes her question what due diligence was done.

She asked what are “less impactful methods” the Council may have looked into or asked PG&E to provide to the City before the agreement was settled on for removing trees. Also, she questioned PG&E follow-up in terms of outreach and notification to residents that their trees are being removed, the process and mitigation processes. She said neighbors gathered over the weekend and they agree there has not been any of this. She did not think the Council wanted PG&E to be the City’s face to its residents because it sounds as if there is no process. Many private residents stand to lose prized trees that are hundreds of years old which are giant and iconic to a neighborhood. Possibly PG&E rang doorbells or dropped flyers off stating they would contact residents later, but this is not right. She thinks it is therefore very important that due diligence is also paid to that aspect. She questioned whether or not PG&E was holding up its end of the agreement and she thinks it should be. She wants to make sure due diligence that was not put into making the agreement will now be underway to stop the agreement and look into what has been said in alternative methodologies to make people safe or to ensure the pipeline is safe, including automatic shut-off valves, ground inspections as opposed to clearing rows of trees, and finding out more specificity.

Ms. Dawson also said one due diligence item she and her husband are trying to work on with PG&E if they cannot stop the agreement is determining a way to exempt trees from the list. They have heard that there are instances where trees have been exempted for removal and have been monitored. To her this makes no sense, given that if trees are proposed to be removed for safety reasons, all trees
should remain if they can be monitored. She will work with them on a tree-by-tree basis as City Council advised at the time this was previously discussed, and she is hoping to add all of them on the list. She also spoke with Greg Wolff in hoping to make that process easier, and reiterated there was no notification. She said cutting is supposed to begin in June which is only one month from now and this is a scary thing for people who have no information or any way to defend their trees. Lastly, she asked for due diligence in making sure that before the agreement is executed, everything is done by the Council to represent residents in stopping the agreement.

Jorge Torres, thanked the Council for their service and thinks they are flexible in listening to residents when they show up in force and have the capability to make good decisions. He asked the Council if they would allow him to cut off their hand if he gave them money for a facelift which is his analogy. This is the decision that is being taken by negotiating a payoff of PG&E of $500,000 in exchange for removal of trees. He is disturbed because he knows Councilmembers are volunteers, but the City Manager is perhaps the highest paid manager in California and deals are created like this, like Measure C and ideas to build the park and high density development. This is contrary to everything Lafayette residents want—preservation of open space, nature and trees, and low density construction. He did not trust PG&E at all and they have proven over and over that they are trying to make a buck and spend as little as possible to repair the pipelines instead of cutting down heritage trees, and he said he plans to notify as many people as he can.

Kim Curiel, said she is speaking for the trees and has heard there was no EIR done on the matter. When her family purchased their home in 2003, they were required to provide a map of each of the heritage trees and present this to the DRC and City Council and agree not to cut down any of the trees, and that they were to protect all of them and how their home would not impact the trees. To have the City come and skirt this process is disturbing and is saddened. She also speaks for the birds and cutting down trees in June is their prime nesting period. She said birds will be impacted now and in the future which is very wrong, and she asked the Council to rethink the agreement.

Kevin Foster, said he is a 20 year resident and he emphasized the lack of notice given to residents. He found out when a PG&E employee knocked on their door about 15 days ago and they referenced a letter which they never received from the City or from PG&E. The issue has been uproar throughout the community and they have two, 100 foot redwood trees in their front yard and there are many bird species that live in these trees; bluebirds, hawks, as well as many others. He asked the Council to consider the lack of notice and he asked that due diligence be done to make the right decision on what is an extremely important matter.

He reiterated the interest in also understanding shut-off valves. Their road was paved a couple of years ago and PG&E conducted a visual inspection of the pipe on their property right next to where the redwood trees are. He was present at the time and they dug a big hole, looked at the pipe, everything looked good and they went about their business. They now have monthly helicopters that are labeled "Pipe Inspection" that fly over the neighborhood and conduct inspections. He thinks much of this is about reducing the costs to maintain the gas network and the cost of inspections going forward. It would be easier for PG&E to cut down trees and then have the public perceive they are doing more.

He said soon after learning about this, he had dinner with a former executive of PG&E and told him about it. He also confirmed the cost issue. His personal recommendation to him was to continue to keep pushing back and PG&E will accommodate monitoring of the pipes and will not require removal of
trees. He referenced San Bruno when he had worked there and issues were much different than what PG&E is trying to prevent here.

Mr. Foster said he suggested residents ask for a pressure test. He was not sure lines near his home have ever been pressure tested, and this should be asked for to understand whether there are any problems or to determine whether PG&E was just being overly cautious. Lastly, he suggested less evasive techniques to address the problem, and thinks there must be technology that can be used to monitor the pipes on an on-going basis rather than cutting the trees down.

ANGUS COYLE, Director for the Community Pipeline Safety Initiative, said the main thing he wanted to get across was it is very impactful and emotional in hearing comments from the community tonight. What he wants to relay is that there is no rush to act here. PG&E would like to work with the community, as it is clear they have some work to do. The Lamorinda area is home to many PG&E employees and they also enjoy trails and he understands the character where the trees embark upon the trail and community. They want to explore every option available which they have begun in the community, and it is clear they have some work ahead of them. They would like to continue the dialogue to see what can be accomplished together with residents, especially those concerned and are very passionate about the issue.

He said ultimately as a pipeline operator PG&E is responsible for the safe operations of the pipeline, are responsible for those living in and around the pipeline and this will always be their foremost concern. While they cannot compromise on safety, he thinks they can find a mutual understanding and path moving forward. To this end, they will be holding an answering center this week and next week along the Lafayette-Moraga Trail and at the Reservoir. He and PG&E care about the community and they look forward to working with the Council and residents.

Councilmember Mitchell said while the Council cannot discuss the matter this evening, he said Mr. Coyle has been invited to the next City Council meeting, and he asked if PG&E’s safety representatives will be able to attend that meeting.

Mr. Coyle proposed that given the level of interest here, if they could step back and determine what the right time is for that step, given there is a lot of information, questions, and issues to discuss. He did not want to set an artificial timeline and rush things to put pressure on the process. Therefore, he asked the Council’s permission to engage in the community and return at some time.

Councilmember Mitchell asked if there would be any tree removal until next steps are taken, dialogue and feedback. Mr. Coyle stated there are residents in the community who have signed agreements with them and have different views from those in the room. They also must respect their wishes through this process. They are already committed to doing tree-by-tree reviews with some of the concerned residents so they would not start work in those areas until they go through that process. They will take the time necessary to engage and get this right before starting any work.

Mayor Anderson said he is glad to hear that Mr. Coyle was affected by the testimony heard tonight, but what bothers him the most is that he is confused about how the City got this far when two years ago, the Council asked if there were other alternatives, and now Mr. Coyle has stated there are alternatives. He was not present at the meeting, but he does not understand what happened and why these were not brought forward earlier in the process.
He said he feels there has been a lack of integrity to the discussions that occurred because his sense is that this was something PG&E had to do in this particular way, and that this was essential for the safety of the community. In that guise, there is not a lot of conversation to be had, and the City would like PG&E to follow the City’s tree ordinance which they have done. They mitigate this by paying for those trees removed. The number of trees was reduced from approximately 1,000 to 270 trees after over a year of negotiation. He questioned why now is PG&E saying there are options and he asked what has happened.

Mr. Coyle said he would like to explore working further with the community. The main thing that needs to occur is an exchange of information at a level that has not occurred yet. He does not know that there are options and he would like to hear more from the concerned residents, but he was not aware of options relating to unacceptable trees from an engineering standpoint. There are certainly options on the timing and options with respect to engagement. He would like to walk the areas slated for tree removal with concerned residents and review it with experts. He was not committing there were options, as he does not know, but he needs to explore this further.

Mayor Anderson said if PG&E does not know whether there were alternatives or options, this is more than what was heard at the last meeting. He thinks it will be very essential that PG&E take the lead in explaining this to people. If May 22rd seems like it is not the right time, given speakers like Mr. Dawson has prepared a lot of good information and suggests it may be too soon, he has no problem with pushing date out, but he wants to be sure everyone has full access to Mr. Coyle and PG&E representatives in this process. He asked to have PG&E get out in front of an actual meeting, identify a date and location where people can show up and expect to discuss the issue, and would appreciate PG&E’s help in setting a date for this in the future.

DAMON PELLEGRINI, said he is a Fire Captain with San Ramon Fire Protection District and he is speaking as a resident. He appreciates PG&E and does a lot of work with them on calls, whether electrical or gas. This is in no way a slam on PG&E, but said these trees cannot be removed. He has spent weeks researching this and works under the DOT Emergency Response Guide when he goes to calls to residences with ¾” house line or a transmission or distribution line. They isolate and deny entry and they evacuate the residence. They wait for the auto shut off valve to kick in or wait for PG&E to arrive on scene to shut down the valve. The only way they go into a situation is if it is a life safety emergency. He said firefighters signed up to lose their lives for people and in saying this, he is trying to “peel away the onion” to determine the real issue.

He spoke with Whitney, a representative from PG&E present tonight, and what it comes down to is roots and accessibility. He can take his fire engine and make any access point on that trail and he has done this dozens of times for injuries, a leaky main on the trail or a gas leak. He has no issues in making access. Therefore, PG&E’s issue regarding accessibility to the trail is inaccurate. At every cross section of a street there is a pole that he has a key to or he has bolt cutters where he can access a trail.

He said the roots provide a structure for the pipelines and with earthquakes and moving soil, the roots provide stability for the pipelines. He is surprised that the City, who has conducted so many independent studies about children, noise, or decibels in parks, has not done an independent study on how to mitigate this situation. The pipes were installed when there were train tracks running down through Lafayette, Moraga and Oakland and the pipeline was installed next to residence’s fences. The
pipeline needs to be moved and natural gas gets blown out through pressure and wants to find the lowest possible area. It creeps along, goes to sewers, and ignition sources are homes and vehicles.

CHRISTIE CLARK CEDED HER TIME TO DAMON PELLEGRINI.

Mr. Pellegrini said when there is a leak of any sort of natural gas it is an ignition source. His vehicle is an ignition source as well as a home. That pipeline being so close to resident’s fences is because the railroad ran on the bike trail that people enjoy so much daily. There are alternatives to this, but PG&E does not want to pay for it. In looking at the latest in plastic pipes that are earthquake resistant and move with clay soils, this is an absolute alternative, but they do not want to pay for it. It comes down to dollars and sense because PG&E is in the business of making money. If the Council wants to protect its residents, this is the alternative to look into because the Hayward fault has not given way in 140 years and when it does, the pipes will not live through it. However, the new technology with new pipelines has a good chance of withstanding it. Therefore, if the Council wants to protect people, it is not trees and has nothing to do with trees. The pipeline needs to be moved and it should not be near those fence lines but they had no alternative at the time, and he asked that the Council do the right thing.

KATHRYN SPENCE CHOUDURY, said she uses the trail and goes to the Reservoir and the issue is about birds and animals which will be so severely impacted. The heritage oak trees are very important for the birds and animals. She leads the Audubon Christmas Count each year for the San Pablo Ridge Team, is a birder and has been doing this for 15 to 20 years and oak woodlands are declining in California. In talking about how important they are, it is all about their habitat value. She was going to request an environmental review before 217 heritage trees are removed. Nesting season goes into August and she does not know why PG&E was planning to cut the trees during the summer, and she questioned why they wouldn’t wait until August. She was not even sure it was legal, as trees are not supposed to be touched during nesting season. The trees have large cavities, acorns, roosting and nesting and they provide cover and it is all about the habitat value.

ROB STURM, said he does not live on the trail and unlike some he has no direct interest in the property values of his home but like many of the more than 1,600 people who have signed the petition, he spends time on the trail with his children and they all enjoy it. He also appreciates the work the City and Council has done in the area of making this a very green environment. They were one of the leaders and at the forefront of joining MCE and the Council takes great credit for that and he loves it. He listened to three Councilmembers during the Measure C campaign talk about the importance of open space and residents are collectively leaning in the same direction here in appreciating what they have in town.

Just at the last Council meeting he spent time listening to the Council provide awards for schools and businesses in the community for their sustainability. Having said that he sees this as an opportunity for the City Council and the community to join together to forge a much better solution than the path they are on currently. By virtue of working in the insurance industry, more than passing familiarity with PG&E and particularly the issue of the San Bruno fire and explosion, he cannot get into the details but he spent almost three years of his professional existence involved in that matter and he never once heard once a word about tree roots. He thinks this is a red herring and is not an issue here. Candidly, PG&E has some very good people and he has friends who work for PG&E and yet PG&E is in a unique situation having been criminally convicted for misconduct both before and after the San Bruno fire and he personally believes for what it is worth that this is much more of an effort of them seeking to demonstrate that they are doing something and less an effort to do something that will be effective.
There are a number of very fine multi-national gas and electric companies local to the community and he has never personally heard of any of those large entities that move great volumes of gas seeking to raise trees in an effort to protect their gas lines. Given the PG&E representative is here, he and the community would personally appreciate either PG&E directly identifying which trees in a public manner so the community can walk down the path and know which trees are subject to being cut or otherwise allow the community to do so without them removing signs.

NEIL ZELIN, stated the move by PG&E to remove multiple trees has both community issues and many people have spoken tonight about that, but also specific resident issues that he thinks needs to be supported by the City. There are 5 trees on his property that are slated to be removed, and several are very mature oaks which have vital importance to him as a functional nature as solar prevention, slope stabilization and aesthetic and property value. He said there has been very little discussion about the trees until recently, and last night he received a flyer from www.savelafayettetrees.org which is emerging very rapidly.

He spoke with PG&E today who discussed replacing the trees with 15 gallon replacements; a $500 issue with multiple calculators. He is a lay person, but the value of the trees is roughly $50,000 so there is a wide disparity between what is being offered and he does not support them cutting down the trees for many reasons and whatever negotiations take place between the City and PG&E, those individuals bearing the greatest burden also need to be represented and treated fairly should this proceed in a course no one wants.

BRYAN RISTOW, said he uses the trail with his family and shaded parts with trees are much more enjoyable in the hot summer. He appreciates PG&E being here to talk over things, but he wanted to say he values the City Council in doing everything possible to save all trees. Even if someone signed that their tree can be removed, he thinks the community values their trees and the trail is great for the community instead of driving around. He hoped the Council can therefore do whatever it can to save all of the trees.

Mayor Anderson said the plan has been to actually agendize this at the next meeting on May 22nd. He is hearing from PG&E representative Mr. Coyle and from Mr. Dawson that this might be too early. What the Council will do is hold conversations and figure out a better date which will be noticed as usual through the City’s website. If residents sign up to receive notice, they will get a direct notice of all Council meetings and agendas and reports via email. He recommended residents do this because there are always interesting topics on their agendas.

He said he appreciates all of the time and effort residents have put into this matter and he thinks there is an inclination that the City might be able to do better than what they thought was the best they could do given the urgency of the situation. He thanked everyone and said the Council will continue in its meeting.

Noted Present:
Vice Mayor Tatzin and Councilmember Samson returned to the meeting and were noted as present.

5. CLOSED SESSION
The City Council adjourned to Closed Session at 6:56 p.m. to consider the following matters:

A. Conference with Legal Counsel - Existing Litigation (Gov. Code 54956.9(d)(1).
Sonja Trauss and San Francisco Bay Area Renters Federation v. City of Lafayette,
Case Number MSN 15-2077

6. REPORT FROM CLOSED SESSION – 6:00 p.m.

The City Council reconvened in Open Session at 6:00 p.m. and Mayor Anderson reported no action was taken.

7. PLEDGE OF ALLEGIANCE – Mayor Anderson led in the Pledge of Allegiance.

8. PUBLIC COMMENT - None

9. PRESENTATIONS
   A. Sarah Owowitz, Attorney Best, Best & Krieger
      CEQA Training Workshop
      Recommendation: Receive and file.

   This item was deferred to a future agenda.

   B. Niroop Srivatsa, Planning & Building Services Director
      American Planning Association 2017 Great Places in California Award to the City of Lafayette
      Recommendation: Receive and file.

Planning and Building Services Director Niroop K. Srivatsa reported that the American Planning Association has awarded the City of Lafayette the 2017 Great Places in California Award. She quoted a sentence from their report; “The jury was highly impressed with the City’s efforts to concentrate growth in its increasingly vibrant downtown area and to preserve the surrounding hillsides as a natural sustainable multi-purpose resource that defines the City’s character. Lafayette is the first northern section recipient of this award.”

Ms. Srivatsa said Lafayette resident Steve Noack called staff and suggested the City apply because the General Plan is all about preserving hillsides and encouraging growth in the downtown. She recognized City Manager Falk for doing an outstanding job in drafting the application and she presented the award to the City Council. A round of applause followed.

Mayor Anderson stated it is great to be honored and he thanked Ms. Srivatsa, planning staff, great commissions and those who live and volunteer in the City who care enough and make Lafayette such a great place.

   C. Design Review Commission and Planning Commission
      Annual Update and Work Plan for 2017-2018

   This item was deferred to a future agenda.
D. David Williams, Board Member Central Contra Costa County Sanitary District
Update from the Central Contra Costa Sanitary District
Recommendation: Receive and file.

David Williams, Board Member, Central Contra Costa Sanitary District (CCCSD), said he appreciates being invited to provide an update of activities at CCCSD, and he hoped to be able to address any questions.

He presented a PowerPoint presentation, stating CCCSD was formed in 1948 and is a wastewater agency with the mission to protect public health and the environment and they adhere to their main values which he displayed. They strive to be a high-performing organization with good customer service, regulatory compliance, all at reasonable rates.

Five members of the Board are elected at-large and the Board has decided to designate certain cities within their service area to be the key contacts with each of the Board Members, and he represents Lamorinda.

CCCSD is a wastewater agency that collects and treats all wastewater from Central County of 480,000 residents, 3,000 businesses, a large service area, notably 1,540 miles of sewer system ranging from small residential sewers up to very large interceptors 8 feet in diameter. They treat on average 32 million gallons per day, have been recognized nationally and are in their 19th year of 100% permit compliance with the National Pollutant Discharge Elimination System (NPDES), known as the Clean Water Act. This permit is issued from the state through delegation from the Environmental Protection Agency (EPA).

He presented their service area down to San Ramon where the bulk of this is where they provide collection and it flows much by gravity to their treatment plant at the intersection of Highway 4 and I-680 in Martinez. He pointed to the Mountain View Sanitary District which is small district island within CCCSD’s service area where they collect and treat their own wastewater. They operate under contract to treat Concord’s wastewater, but they do their own collection.

He presented their annual budget stating in the operations and maintenance side it has been relatively flat. They divide their CIP into treatment plant, collection system, and general improvements and recycled water. They have many assets they need to maintain, protect and upgrade of almost $4 billion. Most is in the pipe in the ground and a large part of it is the treatment plant in Martinez with smaller parts for recycled water and general improvements.

Mr. Williams presented their past infrastructure investments, which is averaging $30 to $35 million a year broken into four major categories of funding the treatment plant, collection system, recycled water and general improvements. Over the last several years they have been focused quite a bit on their collection system, are in the midst of a comprehensive master plan which will review all facilities and this will have some impacts on their CIP.

Every sewer system in the country has joints and they age and have some sanitary sewer overflows at some point. The standard is zero and everybody strives to do this, and CCCSD is one of the top performing collection agencies in California. By investing in upgrades and on-going maintenance they have been able to reduce sewer overflows to a fairly low level.
Main drivers in the comprehensive wastewater master plan are the aging infrastructure where pipes have been in the ground since 1948. They need to ensure capacity to plan for future growth, make sure they meet all existing and future regulations, and look at sustainability.

Mr. Williams discussed key master findings to date, as follows:

- Aging infrastructure
- Site constraints
- Capacity constraints
- Future regulations and issues with nutrient loadings in the Bay
- Increased demand for recycled water
- Processing of solids
- Energy self-sufficiency
- Increases in effectiveness and efficiencies through optimization

In looking at projections 10 years out, they are now in the planning stages, will then prepare design and then construction. There is a fair amount of work in the treatment plant proposed with a focus on the collection systems in the ensuing 8 years.

Regarding rates, CCCSD just sent out its Proposition 218 notices and single family residents would pay $530/year, multi-family is $513 which is a 5.5% increase from last year, and commercial, industrial and schools is based on metered volumes and for schools, on the number of pupils. They approved 5.5% for FY 2018 and up to a maximum of 7% which is re-evaluated on an annual basis.

National Association of Clean Water Agencies (NACWA) which represents almost all major wastewater agencies in the country and they maintain an index. He displayed the various rate increases which are considerably above CPI. Even though CCCSD is above the San Francisco CPI, they are a fair amount lower than the national average. This is because treatment infrastructure installed in the late 1970’s under the Clean Water Act is reaching the end of their useful life and need infrastructure investment.

With regard to Lafayette, there are several projects, and he pointed to the maps distributed to the Council showing they will do 8,400 linear feet at 12 different locations under the Lafayette Sewer Renovation Phase 11. The Council will see that open cuts are typically done in streets where there are public rights-of-way and they try to do the least disruptive work possible for backyard sewers and trench technology is used, which he described and fortunately do not have much impact on trees.

The cost of renovation projects in 2018 is $3.7 million and in 2017 they will be undergo larger diameter pipeline inspections, 3, 24” diameter sewer replacement projects beginning in 2020, and then a service area-wide sewer system master plan to determine projects from 2020 to 2027 spending close to $34 million on sewers.

They have a household hazardous waste collection facility at their main treatment plant which is convenient. People can take old batteries, paint, solvents, florescent light bulbs, and there have been 32, 391 visits in 2016, with 26.3% of Lafayette residents participating, and they are pleased with the amount of household hazardous waste which is recycled as opposed to disposed of in landfills or in the sewer system, and there are 13 drop-off sites for pharmaceuticals and collected over 16,000 pounds in 2016, with 496 pounds from Lafayette.
They also have recycled water. He noted wastewater is a source of recycled water and they treat it and clean it so it can be recycled. Zone 1 service area is for irrigation purposes such as parks, golf courses, and large scale landscaping. Their most recent addition was the Hilton Hotel and they would like to see this expand, but they need cooperation and collaboration with water purveyors or EBMUD and Contra Costa Water District.

In the height of the drought they established a residential recycled water fill station so people could get a tote in the back of a pickup, get 300 gallons per trips located at the household hazardous waste facility. They had an initial overwhelming response to this with long backup lines, and they corrected this to being able to get in and out within 15 minutes. There were almost 29,000 district-wide visits, with 11,000 from Lafayette.

He spoke of a campaign involving a 17 ton grease burg that was in a London sewer as a result of wipes being thrown in the toilet which do not disperse like toilet paper. There is grease in wastewater and it congeals with these wipes and causes many maintenance problems. There is public education and programs, and they are very involved in getting this message out. They have a monthly newsletter that goes out which asks people not to put wipes in toilets.

Mr. Williams concluded with his presentation and said he was available for questions.

Councilmember Burks stated he visited the HHW collection facility on a few occasions and it is outstanding and great for the community. Regarding work in Lafayette, he asked how homeowners have been engaged that are impacted with this work.

Mr. Williams stated their PIO is in the audience, but he noted they notify homeowners well in advance of any project, use door hangers and public outreach and then keep in contact with them through the construction process.

Emily Barnett, Community Services and Intergovernmental Relations Manager, stated they like to say they come to your door and send residents a letter in advance, send another letter and usually conduct a door to door visit depending upon the severity of impact to a home. They have a local phone number and someone answers the phone, and they like to communicate with customers one-on-one that way and are very accessible.

Vice Mayor Tatzin thanked Mr. Williams and Ms. Barnett and asked for introductions of others present, and Mr. Williams introduced their General Manager Roger Bailey.

Vice Mayor Tatzin referred to the graph displayed regarding future infrastructure costs and the amount of money being put into the treatment facility. He asked how much of this was rebuilding and how much was adding capacity.

Mr. Williams stated much of it is in the rebuilding part of it. In their solids handling which is initially going to be a big part of that, they are very unique in the San Francisco Bay Area in that they have their solids that come from their treatment process which are incinerated. Air pollution regulations are getting very strict and the furnaces need to be rebuilt and are reaching their capacity. New regulations will come in the outer years which may not increase capacity but increase levels of treatment.
Vice Mayor Tatzin said Mr. Williams discussed a bit about how the district took action to benefit its customers who were suffering from the effects of the drought by offering recycled water. He asked how the drought affects CCCSD’s operations, if at all.

Mr. Williams stated the drought does impact their operations and in fact, it impacts all wastewater operations. In California he is involved with organizations and flows have gone down at wastewater treatment plants, but they still have 32 million gallons a day that are being treated and by and large, the bulk of that goes out to Suisun Bay, so there is the potential for recycling. When getting into the irrigation part of recycling and stringing purple pipe, it is very expensive as it gets farther away to pick up the last demand, so they are looking at things like water transfers where they will treat water to be used locally at refineries and free up water elsewhere, or other innovative recycling efforts.

Vice Mayor Tatzin stated he knows BCDC and other organizations are looking at the impacts of sea level rise, and he asked if CCCSD is affected by these forecasts.

Mr. Williams stated he thinks everyone feels it is coming but it is not clear as to when and how much. Interestingly, the Regional Water Quality Control Board is having all agencies in the Bay Area doing a regional study right now focused on nutrients. As part of that, they are also required to look at individual impacts on treatment facilities for sea level rise. There are interesting things wastewater treatment plants can do such as building horizontal levies, feed it with recycled water that keeps plants nourished for growth, and these levies combat sea level rise, in addition to protecting facilities in low service areas. He noted part of the study is that every plant is reviewing impacts of sea level rise and determining what can be done about it.

Councilmember Mitchell referred to recycled water and graphs show future years. He cited a fair amount of variability in the amount of recycled water and asked why this might be as he felt recycled water might go up in droughts.

Mr. Williams said he did not believe there was a slide on recycled water, but it is very much seasonally dependent. In a drought there would be less variability, but last year with the wet weather season from 2016 to 2017, recycled water use would drop way off during that time.

Councilmember Mitchell referred to page 7 which shows $867 million of future improvements, and he asked if this was infrastructure costs.

General Manager Roger Bailey stated part of what they are doing is to plan for the City of Concord Naval Weapons Station development coming in and planning figures are included to understand this cost must be recovered from the developer. The treatment plant will have to be expanded to the extent that the development is going to be as big as projected and they want to be sure CCCSD is ready to serve them. They will provide water to Contra Costa Water District who will then provide water to the development, and basically they will wholesale it to the water district and they will retail it to City customers. This is where they see the large jump in purple pipe water.

Councilmember Mitchell stated he had the opportunity to talk with Mr. Bailey about the Shell pipeline which the District acquired and he informed him that much of the control goes through EBMUD. He
asked if there was a means of assessing the condition of this pipeline that goes from Martinez through Lafayette and Moraga and out toward Oakland.

Mr. Williams explained that when CCCSD acquired the Shell pipeline with the intent of using it for recycled water, there was an assessment done of that pipeline many years ago, but there are section missing and it used to be a high pressure petroleum pipeline so it is lined and coated. They have worked with EBMUD and if they are able to use this to purvey water to their customers, they could assist in providing that recycled water, but it needs a fair amount of rehabilitation in order to use it.

Councilmember Mitchell stated the Palos Colorados project is proposing 126 homes in Moraga, and he asked if they have investigated recycled water.

Mr. Williams said he was not sure they have recently, but when the Shell pipeline was acquired, it makes it much more cost effective for recycled water when there are big demands. There will be a golf course at Palos Colorados, the Gateway project years ago with a golf course and luxury homes, and the Gateway project went away and Palos Colorados got downsized, so he believed this as something EBMUD would look at.

Mr. Bailey said he can call on their engineer to provide the Council with an update on the condition of the Shell pipeline.

Vice Mayor Tatzin said one of his other roles is that he sits on LAFCO and one goal established at their strategic planning session in 2013/2014 was to ask the agencies we work with to close their islands where there is no service. The best agency in the county responding to their request has been CCCSD, and he thanked the District.

Mayor Anderson stated he has one of the projects CCCSD is doing in Lafayette in his backyard and he received immediate contact, good service, and people returning telephone calls, so he very much appreciated the work done on the ground.

10. CONSENT CALENDAR

Councilmember Mitchell asked to remove Item 10B.

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

A. City Council Minutes
   1. March 1, 2017 Tri-Cities Meeting
      Recommendation: Approve.
   2. April 24, 2017
      Recommendation: Approve.

C. Settlement Agreement and Release entered into by Sonja Trauss, San Francisco Bay Area Renters Federation, City of Lafayette, O'Brien Land Company, LLC and Anna Maria Dettmer as Trustee of the AMD Family Trust to resolve litigation associated with the Homes at Deer Hill
Project
Recommendation: Authorize City Manager to execute the Settlement Agreement and Release.

11. OLD BUSINESS
A. Payal Bhagat, Senior Planner
   Request by Linda Rimbach to Reduce the Fee to Appeal Three Design Review Applications on
   Hoedel Court (DR17-16, DR18-16 and DR19-16)
   Recommendation: Deny the request.

Senior Planner Payal Bhagat stated the item before the Council tonight is a request to reduce the appeal fee to review the decision made by the DRC on the design of three new single family residences on Hoedel Court. California law requires that fees for government services be no more than necessary to cover the reasonable cost of the governmental activity. Unlike planning applications, appeals are not subject to requirements of the Permit Streamlining Act and therefore, there is no limit within which a decision must be rendered.

Staff has found that recent appeals have required an average of 5 public hearings and in most cases the appeals have had more hearings than the original application. Based on past experiences staff finds that the appeal fee in this case is a reasonable estimate of the City’s cost of processing the subject request. Given this reason and other rationale outlined in the staff report, staff recommends that the City Council deny the request. She concluded and stated she was available for questions.

Mayor Anderson stated this appeal cost relates to the Planning Commission. If it was appealed again, he asked if there would be another cost or would that be included in the estimate the Council is given now.

Assistant Planning Director Greg Wolff stated there would be a separate fee to process that separate appeal. Mayor Anderson clarified that each appeal has a 75% cost attached to it and this has been done for quite some time.

Vice Mayor Tatzin said the appeal fee discussed is inclusive of the tree permit. There were two approvals given to the DRC for the design and the tree permit. He asked if it was possible to appeal one of those actions and not the other.

Ms. Bhagat stated yes, but the decision of the DRC was to look at the design and placement of the homes on newly cleared lots. There are significant trees on this property so the design of the homes would impact whether or not trees were being removed or preserved. Therefore, it is a hand-in-hand review.

Vice Mayor Tatzin asked if someone could choose to appeal the house decision but not the tree permit.

Mr. Wolff explained that the two are inextricably linked because the proposal being appealed proposes the removal of trees and he does not see a way in this case to separate the two. If the subject trees were somehow separate from the development site and would not be affected by the home design, this could be appealed and discussed separately.

Vice Mayor Tatzin said he understands this is an appeal of three approvals and he asked if someone could appeal just one of the homes. Ms. Bhagat stated yes; and the fees would be different for that.
Councilmember Burks asked if the City Council has ever granted a similar request for reduction in the fee to make the appeal, and Ms. Bhagat stated not to her knowledge.

Councilmember Samson quoted from the staff report; “The neighbors are appealing three separate land use entitlements.” He asked if there were common issues of fact or law related to all three such that it is essentially one piece of work rather than three pieces of work.

Mr. Wolff stated there are minor overlaps and commonalities. The three lots in question are all on the same street at the end of the dead end street so there would be an economy when discussing and describing the context of those three homes. Each of the home designs differs, as well as the lot circumstances and they are not the same home design repeated as one might see elsewhere.

Councilmember Mitchell echoed Councilmember Samson and Vice Mayor Tatzin’s comments, and asked and confirmed that it is the City’s policy to attempt to recoup City costs through the appeal fee and neither make a profit on it or subsidize it. He asked if there were economies of scale when appealing all three homes at the same time, and if so, has this been borne out in other appeals like Soldier Field or others, or he asked if there might be a way to quantify what economies might be realized.

Mr. Wolff said it would be difficult to quantify but certainly qualitatively, it would be a small economy of scale. The applicant in this case was not granted a fee reduction because three homes were being processed consecutively and similarly in the Soldier Field case where they were all part of the greater development, there were multiple homes being considered successively and neither the applicant or the appellants in that case were granted a reduction to reflect any significant economy of scale.

Mayor Anderson referred to the Soldier Field example and recalled that some of the lots went through fairly quickly and several lingered and had much more review in the appeal process, so each one was a different case.

Councilmember Samson asked and confirmed with Mr. Wolff that the City cannot charge more than the actual cost of service to recover the time and effort but could charge less than the actual cost incurred for that type of application.

Councilmember Mitchell asked and confirmed with Ms. Bhagat that the Council was ruling on the appeal fee policy and not the merits of this particular case.

Vice Mayor Tatzin said it sounds as if the DRC acted on Lots 1, 2 and 3 of 6 lots. He asked for the status of Lots 4, 5 and 6.

Ms. Bhagat stated these lots had previously approved entitlements that have since expired, and the applicant will have to resubmit to the DRC for approval of the remaining lots.

Vice Mayor Tatzin said he recalled at one point that for appeals, the City tracks the cost incurred with an appeal and several years ago the City went to a process of saying 75% which they believed was a reasonable average recognizing some variation, but that generally, 75% was a good estimate of what a typical appeal would cost.
Mr. Wolff confirmed, stating this applies more broadly and not just to appeals but all planning applications. He stated 20 years ago it was based on time and materials and the result was extraordinarily low cost recovery and so the Council moved 15 years ago to a flat fee system recognizing the reasonable cost to process that given application type.

Vice Mayor Tatzin further clarified he was not defending the past process but rather lending some color to Councilmember Samson’s point.

Mayor Anderson opened the public comment period.

Public Comments:

HERB WEISS, said he lives directly adjacent to Lot 1 and said he would like to speak to the point that the neighborhood should be granted a reduced application fee in their appeal against the designs in the new Hoedel Court subdivision because the DRC used the wrong standards in granting their approval. He explained that the conditions of approval for this subdivision are detailed and specific and going beyond the guidelines governing the City’s process. One condition stated that the lots in the subdivision “are to be considered an integral part of the existing neighborhood.” In looking at the transcript of the last meeting of the DRC, at least one Commissioner gave his approval on “the understanding that the 6 lots in the subdivision created their own neighborhood.”

Another condition of approval states “that the design of all proposed houses shall be in conformance with the general pattern of scale and development within the neighborhood.” Again, the Council can see that the DRC granted their approval based on a definition of neighborhood that constitutes all of the City of Lafayette and even spreads to some of the other cities. They did not grant approval based on the integral existing neighborhood. Their appeal for a reduced fee is based on the fact that there were mistakes made and with their early departure of their City planner, perhaps things fell through the cracks.

He thought the correct and fair thing to do would be to grant them an appeal at no cost because of these obvious violations. However, to support the process and make up some of the City’s costs the neighborhood raised just under $2,000 to pay for some of the staff time which they calculated at 10 hours. To close, he requested the Council to grant the reduced appeal fee.

Mayor Anderson said Mr. Weiss references not so much the application but a misapplication of conditions of approval as the basis for the appeal and the basis for the Council waiting the fee. He asked if there was any legal basis for this. His understanding is the DRC acts based upon information they are given and their ruling stands. If one wants to challenge their action, they file it through an appeal and it cannot be challenged as wrong because it did not adhere to certain conditions of approval.

City Attorney Mala Subramanian stated Mayor Anderson was correct and she also cautioned not discussing the merits of the appeal because this is exactly what this is going to. The process is to appeal it and have it heard as a de novo hearing and make the arguments the Council chooses to make. This is the correct process to follow and the Council should not be making any decisions based on the merits of the matter.
Mayor Anderson said he thinks the point that was raised is there is a sense on the part of those who are trying to get a waiver on their appeal cost that it was a misapplication of conditions of approval which is the issue, and that this requires an appeal. Ms. Subramanian confirmed this requires an appeal.

Mr. Weiss asked what happens if someone cannot afford an appeal. They raised money and want to appeal things that were in violation based on the transcript.

Mayor Anderson said in the past people have either changed or reduced the scale of their appeal so it is not three homes but one. Somehow they have managed to put together funds to do this and the Council has not approved waivers for reduction in the past.

Mr. Weiss asked that the Council consider this as there are clear violations.

JOHN WEAVER, stated the fees should be reduced in this case because it is a simple matter of fairness to the neighbor because it is one review and not three reviews. The question they have is consistent in that their comments made in the public meetings on March 13 and April 10 that the DRC missed a basic COA guideline and disregarded it even when called out. Neighbors consistently raised their hands and said it is basic fairness that the City cannot plunk houses down right next to existing houses and build them out to their maximum limits and then say they are in a separate neighborhood. It states, “The houses shall be in conformance with the general pattern of scale and development in the neighborhood.”

He lives in one of four houses on Hoedel Court and has a driveway. Of those four houses, one is 2,500 square feet and the other houses are 2,100 square feet. The approval has been made to construct houses that are twice as large that go out to the setback limits and he knows they cannot talk about their scale, but rules are rules and he questioned whether those COAs mean anything and this is the question they are asking. He would like to think that those COAs are there to protect the existing neighborhood and community. For the DRC to ignore those COAs and force the neighborhood to pay a fee that is exorbitant in comparison to other local communities is basically unfair, especially when neighbors are asking the Council to review existing comments already made. They are not raising a new objection. In all fairness, he asked that the Council reduce the appeal fees because in his opinion, they are completely arbitrary and not reasonable especially in this case. In this case, this fee should be reduced.

MAUREEN BIRDSALL, said she lives directly behind Lot 3 and said their request for a fee reduction should be granted on the basis of fairness to the residents. Lafayette’s fee of $9,300 far exceeds the appeal costs charged by other cities. They provided a list of appeal fees ranging from the low of $150 in Martinez and $300 in Danville to a high of $1,000 in Moraga and the highest of $1,500 in Orinda which is just to cover staff time. San Ramon reviews costs and bill out at their hourly rate.

The staff report states the City Council could be justified in denying their request and require a full fee of $9,300. This is the equivalent of 50+ staff hours, but they are asking for a review of the house designs as judged against the governing guidelines which they were denied in the original application process because the DRC used the wrong standard. Their situation is unique because here, the applicant paid a fee of $12,000 but the item was fast-tracked. It was placed on the DRC agenda as new business for one meeting and then placed on the DRC Consent Calendar for the second meeting. Therefore, residents never got the full hearing they were entitled to. They are in essence asking for the hearing that was already paid for with the original fee which covers 5 public hearings. This would not involve the use of
public tax dollars to subsidize the appeal as seen on staff report page 3 because the original fee has already been paid as well as the staff time. It is not fair or reasonable that neighbors should pay for the hearings that they were entitled to but denied.

Personally, she has been a resident of Lafayette for 20 years and she is very upset in how this process has been undertaken. She loves Lafayette but looks at what is happening behind her and feels like an outsider has come to their home and he is getting preferential treatment over the residents that have supported the City. She hoped that the Council will waive the fee entirely which she thinks is fair.

MIKE BIRDSALL, said their request for an appeal waiver should be granted because of errors that occurred on the project as it was passed with different Assistant Planners. The subdivision was approved in 2007 and neighbors have attended multiple meetings, but the project has been handled by various staff over the years. The approval of home designs was handled by an Assistant Planner who left the City after the April DRC meeting which approved the house designs. This was an involved subdivision approval process which involved four DRC meetings and six Planning Commission meetings which resulted in very detailed COAs which they felt very good about.

There were important COAs put in place to ensure these house designs blend with the existing neighborhood. Because staff was assigned the project shortly before leaving the City, she missed several important COAs. Instead she guided the DRC based on zoning laws and general Lafayette guidelines and not the neighborhood guidelines, failed to correct the DRC Chair when he made a fundamental misstatement that the 6 houses created their own neighborhood which they do not as they are all on the same street. Another DRC member said he thought the designs were consistent and cohesive in larger Lafayette. Staff failed to point out that was not correct and a fee reduction should be granted because staff errors contributed to the DRC using the wrong standard and not evaluating the house designs properly in the original application process.

Personally, he said he has seen two different situations where things have been missed. Prior to that meeting, neighbors had emailed Ms. Canales giving her more details about what they wanted only to find out that she had left the City and gone on to work for another City, but there was no forwarding or bounce back that these emails had not been handled. They only learned of this when they went to the meeting.

Also, after 10 years they have a great fence, but the fence was supposed to have been put in prior to any improvements being done and it somehow was included in the report that it was concurrent with the improvements. Therefore, there have been things missed over time and he requested a fee reduction on the appeal so they can properly appeal the matter.

LESLIE WEAVER, said the side of her home flanks Hoedel Court and she feels the fee to appeal should be reduced because of the number of points that have already been brought up and she reiterated what was stated. The DRC did not judge their application based upon conditions of approval which gave specific requirements. It had been stated by the DRC Chair that he understood the 6 lots to be its own neighborhood but in conditions of approval it states, “The lots created in this subdivision are considered to be an integral part of the existing neighborhood and need to be considered under the design review guidelines in this light.” Hoedel Court is a straight drive. There is no separate entrance designating these 6 houses as a distinct neighborhood. These homes should be in conformance with the general pattern
and scale and design within this existing neighborhood. Based upon the fact that they never had a fair hearing and review process, they would like to be granted a reduced appeal fee.

NORMAN KIBLE CEDED HIS TIME TO LINDA MURPHY.

LINDA MURPHY, said their request for a fee reduction should be granted for reasons of fairness, due process and equity and she said they are not here appealing the fee policy that Lafayette has adopted or attacking the fee structure. They are here specifically on this particular application in light of the particular errors that were made at the DRC level in conjunction with staff. This is not about the 75% being reasonable as a guideline, but about this particular case and the equities favoring this City Council granting a reduction of the appeal fee.

Page 2 of the staff report states that reducing the appeal fee would raise fairness concerns on the part of an applicant who submits an application and has a decision issued. Ideally, the appeal fee would support a balance between the applicant’s property rights and timely processing of the application with neighborhood and community interest. She disagreed with this analysis by staff because the California Government Code says nothing about the appeal fee being fair to the applicant. It is about making sure the City is reimbursed wholly for any costs; not making a profit and not being in the hole. The focus on fairness there was with the applicant and there is nothing in the staff report talking about fairness to neighbors and that is why neighbors are here.

Fairness occurs when the procedures established for review of a house design are applied. Unfairness occurs when the procedures are not followed. Granting a fee reduction here because the equities would not make the appeal process unfair, the applicant would have a full review before the Planning Commission with the proper standards being applied. She knows at least one City Councilmember was on the Planning Commission when going through this process. There were 6 Planning Commission meetings and 4 DRC meetings that came up with an extensive COAs for this 6-house subdivision entirely within an existing neighborhood. They went far beyond the standard Lafayette guidelines that apply so having a review process where the application is being judged by the right standards is not unfair to the applicant but it is fair to the residents who have not had that opportunity. This raises due process concerns where there is a procedure in place and it is not followed by the City, thereby depriving neighbors of the fair hearing they are entitled to. In this case, it looks that it was many staff handling the oversight.

In approving the subdivision in 2007, the Planning Commission made a finding under GCS 66474 that the site was suitable for the proposed development and it specifically noted that the proposed COAs required that the future development is subject to design review to ensure the new homes are compatible with the neighborhood. The subdivision approval was based on these COAs and these very detailed conditions mandate conformity with the pattern and scale of the existing neighborhood. Neighbors are having to appeal because the DRC did not apply the proper standard and again, it was by staff error, but if it was a situation where the DRC said they do not agree with the conditions at all or they do not like them and they did whatever they wanted to, in this situation, it would not be fair to the neighbors to burden them with a $9,000 fee when the DRC went rogue on the record and said they will not abide by them. Even though here it was not a deliberate and intentional aspect that impact on neighbors is the exact same thing. In the same situation neighbors have been denied due process, the hearing and the procedure that is expected when there is an original application and when there are original COAs that govern design review, and this goes to the procedure and not the merits.
Ms. Murphy stated this is a very unusual situation. She understands that staff is reluctant to recommend the fee reduction, is worried about setting precedent, making sure costs are covered with other applications, people have recognized the $12,000 fee already paid, that there was one meeting and one Consent Calendar item and it was streamlined in the past which there is most likely money left over from that, and it is an unusual situation where the very detailed COAs were overlooked by staff, ignored by the DRC and while intentionally, the equities weighed in favor of granting approval. She would say that any kind of legal challenge to a fee structure when there is a mechanism in place and where it has been unfair to residents and there are exceptions made to recognize inequities makes the fee structure as a whole much more defensible. Lastly, she distributed a document listing the COAs, design guidelines, and some of the comments that have been made.

Mayor Anderson asked Ms. Murphy to provide the documents to the Clerk and he is worried that the matter is nearing the line of an interpretation of what was done by the DRC by neighbors and its inconsistency and that being put against the question of waiving fees. He knows Ms. Murphy is using this as a basis to allow this to become a different circumstance, but everybody who appeals feels that something went wrong in the process and this is why they appeal. Staff can review the document in the meantime and ensure they have something that is clearly different than the typical concern of someone making an appeal that warrants further review.

Councilmember Mitchell said Ms. Murphy seems to be stating that she is not talking about the merits of the case but about the process, and he asked the City Attorney if there is a difference.

Ms. Subramanian said she thinks merits and process are intertwined and it is a very slippery slope. The minute the Council begins discussion about that, it could potentially cause the Council from disqualifying themselves from hearing the appeal.

Councilmember Mitchell stated Ms. Murphy was asking for a different treatment at this case and he asked that whatever the Council arrives at tonight will be uniformly applied with all appeals in the future.

Ms. Subramanian said it would depend upon what the Council is doing, but if the Council decides at some point they would like to reduce the 75% or change the appeal policy, this would the recommendation across the board.

KATE MARTIN CEDED HER TIME TO LINDA RIMBACH.

LINDA RIMBACH, said she was born and raised in Lafayette and would like to address comments from the staff in the staff report. While this involves 3 houses, the issues with them are the same. They are as one whole application and staff mentioned this on the second page of the staff report which states, “reviewed as a whole” and this is what neighbors are asking the Council to do. Reviewing as a whole would be different than reviewing three different separate applications.

She said they are not debating whether or not the General Fund should cover the cost. The neighborhood would agree to pay an appeal process that is fair and equitable that covers staff time. This condition is different than many other appeals that the City sees. It is a major subdivision with infill that had detailed COAs and design review guidelines that were applied to this subdivision. She questioned
how many subdivisions that are part of existing neighborhoods Lafayette sees and thinks there were not that many. In fact, she cannot think of another and said many times they are set aside and they are a different or new neighborhood or a single family home on its own.

As mentioned, the concerns about the 3 lots are the same and honestly, neighbors are hoping that concerns will enlighten staff and the DRC that will actually cover all 6 homes. Neighbors are not challenging the entitlement of the development of 6 lots and they will make a lot of money regardless of the homes’ square footages. Therefore, in fairness to them, they will still have houses built. Neighbors are asking that the review of the house and the concern of the houses are the same across the board and that this be considered.

She said if 10 hours is not sufficient for review of the application, she asked what would be sufficient because $9,337.50 is excessive. She questioned whether the appeal fee for one house is sufficient to cover staff time, given all homes have the same concern, and this is what the neighborhood could commit to. To assume there will be 5 commission meetings and review of construction documents is not appropriate in this case and this is a unique situation. They want the City to be fair and be able to cover staff time but believe it would be fair for the neighborhood for the City to view the 3 lots as a whole and the appeal fee applied as one. She noted they considered appealing one lot but questioned which lot they would choose. They want the design guidelines and COAs applied uniformly across the subdivision and this is why they decided to appeal the decision that was heard at the same time, motioned at the same time and approved in one action. She reiterated that 3 houses were approved under one action and neighbors are asking for the same consideration and appeal it under one action, one appeal, and one action that applies to all three, as was done by the City.

Mayor Anderson returned discussion to the Council.

Councilmember Mitchell said the fee schedule is 75% of the application and he asked staff to supply additional information on how this is justified and why it is an appropriate amount. This policy has been enforced for some time and he asked to correlate the cost to the City in support of the 75% rule.

Mr. Wolff stated it is reflective of recent experience with processing appeals. As indicated in the report, appeals over the last 5 to 10 years have taken a greater amount of time and a substantial portion of the fee relates to coverage of the public hearing process which includes such things as noticing, staff time, report writing, distribution, meeting attendance, etc. They are taking on greater amounts of time from experience, and this was a factor in the Council’s decision to move from 50% to 75% to achieve greater cost recovery.

Councilmember Burks said in the staff report on page 2 of 3 it states that a decision to grant the fee waiver request or reduction of the fee should be based on something specific to the request and he asked for clarification of this statement.

Ms. Subramanian said if the Council is not going to do an overhaul of the entire fee policy and it would be specific to this application, the Council would need to determine why this application warrants a fee reduction as opposed to other appeals.

Mayor Anderson said the question seems to be the application of the COAs that relate to the subdivision. The Council has heard many appeals where people say there is a misapplication of some
aspect of the application process which is the basis for the appeal. He asked if this was different in this
case because of the change in staff.

Mr. Wolff said the staff reports that were prepared spoke to and evaluated the project against the COAs
from the tract and the design guidelines established via the tract process. Without getting into the
merits of it, that content was in the staff report and part of the overall consideration.

Vice Mayor Tatzin said he knows under certain circumstances a Councilmember can appeal a decision of
the Planning Commission and he does not think that appeal is through a decision of the DRC. He asked if
a Planning Commissioner appeal a decision of the DRC.

Ms. Subramanian said she did not think this was the case but she can confirm. She also thinks that the
time period for appealing the matter has passed. Even if it were the case, the time period has passed.
She will check this and return to Council with the answer.

Mayor Anderson stated appeals are always difficult. People have interpretations of actions that are
done by either the DRC or the Planning Commission that they have trouble with and they find
inconsistent with something and the appeal process is how that is normally processed. He is not aware
of any reduction or waiver of any fees over the years, so he cannot find himself supportive of the idea
that the Council will change in this case because of a change in staff or a sense from those wanting to
appeal that there was a misinterpretation of COAs because he has heard this on other appeals.

He was leaning toward maintaining the cost as is and probably following up on Ms. Rimbach’s query as
to the fact it might be useful for the appellant to pick one of the houses and appeal that. He asked if
neighbors can still appeal.

Ms. Subramanian said neighbors have filed a timely appeal. It is just that no one else has appealed.
Mayor Anderson added that no one has the money to pay for it. He asked if they could modify their
appeal to be one of the three homes.

Ms. Subramanian said it is her understanding that they did submit a timely payment for the entire cost
of the appeal in order to preserve their ability to appeal, and Ms. Bhagat confirmed. She stated the fee
is being held at this time to await decision from the Council.

Mayor Anderson said if the issue is not paying the full amount, he suggested that appealing one of the
three homes is the way to go and it sounds as if money is available for that.

Councilmember Mitchell stated there had been a policy change going from 50% to 75% to more
accurately reflect staff time. He is sure the City wants to charge a fair amount based on anticipated
costs, and he asked if the Vice Mayor had any input on how the decision was made to change the appeal
fee in the past.

Vice Mayor Tatzin said faulty recollection would suggest we look at some appeals that had come to both
the Planning Commission and the Council in the period prior to modification of the policy and laid out
some information about how much staff time was consumed and how many public meetings were held.
In thinking about several appeals that have come to the Council over the past couple of years, he
recalled one was decided in one meeting and some that were not decided for a couple of years and
many, many meetings. Based on this small recollection and recognizing it is an appeal to the Planning Commission as opposed to the DRC, he would conclude that the 75% is a reasonable estimate and in the form of the basis for the recommendation given to the Council at the time, which was approved at 75%.

Councilmember Samson said in following upon the Mayor’s comments, a number of people have alleged that the DRC made certain errors. They may or may not have and this goes to the substantive merits of the appeal and this is not before the Council. The only issue is the amount of fees to be charged for the appellant to get to that process itself. Allegations of error are not a basis for fee reduction because allegations of error are the very nature of an appeal itself and it has nothing to do with the fees.

The City has long had a policy of recovering costs of service. They cannot make a profit on anything but they recover the costs of service. Many years ago the Council examined what is charged for staff time on an hourly basis, how much is charged for copying materials, and the idea was to recover costs and not to make a profit or go into the hole. If he were any of the public speakers tonight, he was somewhat empathetic, given it is a lot of money for neighbors and individuals to come up with. One of the things important to recognize is that this is not simply a matter of looking at a transcript. The Planning Commission, if gotten to that point, will hear this de novo and will start with a clean slate and new materials will be presented. They will have to review starting from the beginning and it is not a matter of looking at a transcript. Therefore, there is considerable effort involved and he must defer to staff in their estimate of what the time expected to be consumed.

Similarly, both he and Councilmember Mitchell asked the question in a different way—is this really three separate appeals or is it one; can it be consumed into one or is there an economy of scale and the answer they heard back is that this is three separate cases. They all happen to be on the same street and the same location but the issues, based on the staff report, his understanding and Mr. Wolff’s comments, the issues are different. Therefore, this is something that must be taken into consideration, particularly when looking at reimbursing the actual costs that are going to be incurred by the City. It is the staff’s costs incurred in looking at three different appellant reviews that are starting from scratch before the Planning Commission and he does not see any basis to change in this case.

The process must ensure fundamental fairness for everybody and this is what rules are all about. Some people in any particular case, whether it is a bad call by a baseball umpire or the City Council, somebody feels aggrieved by a rule that they did not feel was fair to them. But, one of the speakers spoke about equity and equity to him means fair treatment for everybody and he thinks if the City reduces the cost below that which is actually incurred, then this asks others to subsidize the cost of an appeal and this is not equitable across the board to anybody else. It is not equitable to appellants in the past that have paid the full freight and not fair to people going forward that would pay the full freight. The rules must be fair to everybody and he has heard nothing tonight that gives him a basis for allowing the fee reduction in this case, and in fact, he thinks it would set a dangerous precedent.

Vice Mayor Tatzin echoed what others have said and to put a comment on the issue of a de novo hearing, he recalled many years ago a commercial developer got an approval for an office building in the downtown. They appealed the project to the City Council asking them to change on condition to make it slightly more favorable to them. The Council in a de novo hearing denied the entire project. Therefore, de novo hearings are what the Council says they are and they cannot limit what the Planning Commission does in an appeal hearing. They start from scratch and they can consider whatever they need to consider. Therefore, he asked if the City Attorney has obtained an answer to his question.
Ms. Subramanian said there is a process for a Planning Commissioner to appeal a decision but it is just a decision of the Zoning Administrator. Vice Mayor Tatzin asked if a Planning Commissioner or Councilmember could appeal a decision of the DRC. Ms. Subramanian said correct, and she noted the caveat that the City is in the process of overhauling this entire ordinance.

Vice Mayor Tatzin stated he concurred with fellow Councilmembers. He understands the difficulty and there may be some modest things that can be done, but he cannot support a change in the appeal fee policy. Experience shows that this is what appeals cost the City.

Councilmember Burks echoed Councilmember Samson’s comments in that this is a lot of money and he appreciates the efforts of the neighbors in coming before the Council, but again, specifically on the area of equity and people who have come before the Council and those in the future with appeals, he feels strongly that the fee represents City costs. What he has learned about previous appeals, he thinks the Council’s decision is absolutely unrelated to the merits of the appeal and he would agree with colleagues.

Councilmember Mitchell said Ms. Rimbach mentioned that they were perfectly fine with covering staff time which the Council wants to be fair about of charging a fair and reasonable amount. He asked many questions this evening and also today he called staff and asked many questions about how this is fair, why they think it is fair to charge this amount, and throughout the entire process, he has not heard staff come up with a reason why this is not a fair rate; that it seems to be what the City is incurring in costs and he must conclude on that basis that it is a fair allocation of staff time. Therefore, he was supportive of the staff recommendation.

Councilmember Samson moved and Councilmember Burks seconded to deny the request.

Councilmember Mitchell asked if it was timely for neighbors to file one appeal with fees re-adjusted as appropriate. Ms. Subramanian stated staff would allow the neighbors to retract one or more of the appeals and proceed with one. She thinks it would be done fairly quickly.

ACTION: It was M/S/C (Samson/Burks) to deny the request to reduce the Fee to Appeal Three Design Review Applications on Hoedel Court (DR17-16, DR18-16 and DR19-16). Vote: 5-0 (Ayes: Burks, Mitchell, Samson, Tatzin and Anderson; Noes: None).

B. Juliet Hansen, Staff Liaison Public Art Committee
   Public Art for the Roundabout at Pleasant Hill Road at Olympic Boulevard
   Recommendation: Approve David Mudgett’s “Resolve” for public art at the roundabout at Pleasant Hill and Olympic Boulevard, subject to a modified base design; direct staff to move forward with the project.

Staff Liaison to the Public Art Committee Juliet Hanson stated before the City Council is consideration of public art in the roundabout. As the Council will recall, on November 14, 2016 the City Council authorized the Public Art Committee to invite a number of pre-selected artists to submit proposals for public art at the new roundabout at Pleasant Hill Road and Olympic Boulevard. Since that time the landscaping has been installed and is complete.
At that time, the Council authorized $150,000 for public art in the roundabout. In subsequent meetings, the Public Art Committee supported allocating $125,000 for the artist and the art piece and agreed to reserve $25,000 for a contingency in case there were unanticipated expenses by the City for installation and other costs. Of that, the Council also approved $500 honorariums for any of the artists not ultimately selected.

On January 20, 2017 staff issued an Invitation to Propose to a number of artists and received four proposals. In subsequent meetings, the committee narrowed its list to two finalists and finally down to one recommended artist who is present tonight.

During that period of time, the committee agreed to an extended public comment period for the two finalists and received a total of 121 comments via the City’s roundabout art page, a display at the Lafayette Library and Learning Center and also via individual emails.

On March 12, 2017 the Public Art Committee unanimously recommended David Mudgett’s “Resolve” subject to a modified base design and at this time the Council is being asked to approve the recommendation of the committee and direct staff to move forward with the project.

In the interest of full disclosure, all four proposals are included in the Council’s packet so the Council can see what the committee reviewed in full. Also, Mr. David Mudgett is related to Dennis Mudgett, a member on the Public Art Committee; however, Dennis Mudgett recused himself during all discussions and votes that took place regarding this project and did not participate.

Janice Peacock, Chair of the Public Art Committee, spoke to the merits of the art piece as recommended by the Committee, stating the committee is very excited about the piece. They received a lot of wonderful comments from the public about “Resolve” which is the recommended piece. They believe this piece will be great during the day as it casts interesting shadows in the roundabout area and at night with very dramatic lighting which will be interesting to view when driving by it. It is made of raw steel so it will be maintenance free, and if there was ever a problem with graffiti, it would be relatively easy to clean.

Chair Peacock said the committee also feels it fits very well with the rest of the pieces in their collection which is something the committee reviews; she introduced the artist, Mr. Mudgett.

Mayor Anderson asked if any Councilmembers had any questions.

Councilmember Burks commented that he is pleased that staff disclosed the relationship and recusal of the committee member, stating it is absolutely critical, given it is a sizeable commission of public funds.

Councilmember Mitchell said in looking at the materials submitted and the photographs, one of which shows the roundabout area with trees, it appears that the artwork is somewhat obscured by the trees, and he wondered how the selection process took into consideration. He also asked if the two proposed trees would obscure the artwork and also the issue of whether the artwork or landscaping is supposed to obscure vision through the roundabout to provide more safety.

Ms. Hansen stated she briefly spoke with Tony Coe, City Engineer, today about the landscaping and he confirmed that the landscaping is final and complete. He said eventually the oak trees would grow tall
enough such that they would rise above this piece. When the roundabout was designed, the landscape team knew there would be an art piece there and a space reserved for the art. It is her understanding this was taken into consideration.

Councilmember Mitchell asked and confirmed that the pedestal was proposed to be 5 feet and the committee requested it be a bit lower. The overall artwork is approximately 20 feet, and the small oak trees will take a while to surpass the sculpture.

Councilmember Mitchell asked if the trees would grow to about 30 feet, and Ms. Hansen said she was not involved in the original landscape design and did not know how large they get.

Artist David Mudgett said in addressing Councilmember Mitchell’s question, he said his graphic artist is a landscape designer and she took into consideration all plants slated to be installed in the roundabout. The trees will grow to be the size in the image at some point. He displayed what would be an accurate representation of what the art would look like in the future.

Mr. Mudgett stated what an honor it is to have been chosen by the Public Art Committee as the finalist in this project. He has been a metal fabricator for 35 years and a metal sculptor for more than 30 years. His career began at a large pipe fabrication shop where they built many monstrous fabrications. As an apprentice, he became skilled in layout, fabrication and welding as well as handling of large fabrications like these. It was at this pipe shop that he built his first sculpture, which is presently on loan in front of the Orinda Library.

With the urge to be self-employed, he put the pipe shop behind him and began a small metal fabrication business, specializing in physical fitness equipment. While design and construction offered new challenges, the fabrication soon became monotonous and he began diverting his attention to sculpture.

Mr. Mudgett then briefly displayed a portfolio of his works, first presenting private and functional pieces and concluded with public pieces and commissions. In keeping with the spirit and style of Lafayette’s public art collection and while speaking to math, science and nature he feels that “Resolve” will be a great fit for the roundabout and community. He presented a 1/7th model scale in order to study aesthetics, stability and the internal weldability of the modules, and he described the 8 modules, their faces and materials consisting of corten steel, stainless steel flanges and hardware, all of which he described. The model is presently shown on a 5 foot pedestal and the committee has expressed a desire to reduce the pedestal’s height which he will collaborate with them to do so. The sculpture itself will be 16 feet tall and most likely fastened to a 3 foot tall concrete pedestal that will reach a height of 19 feet from the soil surface. The pedestal will have a spread footing design with a very large part of its mass below grade which will offer greater stability in the event of a collision, and he noted a potential collision will also be factored into all connections.

In August and in coordination with the City, the pedestal will be installed and left to cure. Once installed and backfilled, protective boulders will be placed to slow any vehicles heading for the piece. In November the sculpture will arrive for installation and this will also be coordinated with the City. Once in place, the lighting will be installed using an array of low energy LED flood and bullet lights and this will be done last in order to orchestrate the best possible configuration.
Mr. Mudgett concluded his presentation and said in the interest of time he did not go through all details of his proposal, and he said he was available for questions. He thanked the City Council and the Public Art Committee for their time and consideration. Because art is so subjective, it is not an easy task deciding what to purchase with public funds.

Mayor Anderson asked and confirmed the pedestal would be 3 feet from the soil, and Mr. Mudgett would work with the committee to arrive at the final number or about half of what is displayed.

Mayor Anderson asked if the piece would be stable enough in case kids were to climb up on the sculpture. Mr. Mudgett said it will be very stable.
Vice Mayor Tatzin thanked Mr. Mudgett and the Public Art Committee for going through the process and ensuring that no one will return to indicate there was any conflict of interest. He asked and confirmed that Mr. Mudgett’s brother pushed him to get into art, given his fabrication work which he briefly described.

Vice Mayor Tatzin referred to lighting and he asked if lights would be placed inside the structure or on the ground and shining towards it, and he asked for pros and cons in each approach.

Mr. Mudgett said he has a meeting next week with a gentleman to discuss possibly lighting it from the inside which he thinks would look spectacular. He was not sure how challenging this would be as far as accessible and maintainable, but if it is a large challenge and hard to maintain in the long-term, they will go with exterior lighting and use bullet and LED lights that are in the ground.

Vice Mayor Tatzin noted climbing and vandalism may occur and he asked if corten steel is easy to clean. Mr. Mudgett said Corten steel begins its rust process in 18 to 36 months and the copper and chromium allowed into the steel will be on the surface layer. It has a life and is about 3 to 4 times more durable than regular steel and they would not want to put a coating on it, given its rich rustic color. If someone did decide to tag the piece, there is really no way to write on it, given there is not much surface area except for the pedestal. With Corten steel, the City can very easily use some “goof-off” and remove the paint, wire brush it and within a couple of weeks the color will fade right back to where it was, as layers slough off.

Councilmember Burks asked if there was any possibility that birds or animals will make their way into any of the cubes and be any sort of risk. Mr. Mudgett stated he also considered this and while he cannot predict the future, it would basically be a situation of putting a ladder up and using a blower to reach into any of the holes and remove anything out to clean it out.

City Manager Falk clarified that if an animal were to get into a cube, the City would likely work with animal control to remove it. They would need to provide a lift, but this could be worked out.

Councilmember Burks asked and confirmed with Mr. Mudgett that the patina from the rust would slowly drip down onto the piece and give it its own patina, and that he spoke with the committee regarding many options for concrete, concrete stamping, etc. He plans to bring options to the Art Committee and determine what would be the most complimentary surface to put on the pedestal. If the Committee is unhappy with the rust running down, it can be changed.
Councilmember Burks referred to the budget and $8,000 for contingency. He asked if Mr. Mudgett anticipated spending this and asked what it would represent. Mr. Mudgett said because there was only $500 for developing his proposal, he received prices on most everything for the piece and the contingency would cover anything such as lighting options or other items.

Councilmember Burks commented again that he was worried about animals getting into the cubes and he suggested arriving at a plan to address this. Mr. Mudgett noted animals may be discouraged, as metal gets very hot in the summer and very cold in the winter; however, he was not sure if animals could be a problem when the weather is nice.

Chair Peacock referred to the dodecahedrons and said they have an opening that connects to the next one, so each unit is not closed. She thinks this would diminish the number of animals that might spend any time inside of an enclosed area. Mr. Mudgett added that animals may find areas where they could build a nest, but because of the holes, most everything will work its way down.

Councilmember Mitchell referred to the context of the art and the landscaping around it and asked if Mr. Mudgett saw any conflicts with the trees. Mr. Mudgett said the artwork was designed around the landscape plan and his landscape designer reviewed this and determined that at some point, like all trees, they might need pruning if they start to impede the piece, but he did not see it as much of an issue.

Councilmember Mitchell referred to emails from Susan Candell in the back of the report and he asked staff to display a picture of the intersection. Ms. Hansen said this picture does not come across too well, but she displayed the digital computerized rendering of the landscape which Mr. Coe sent her that was from the engineering firm, but she was not sure if this is completely accurate or not.

Councilmember Mitchell said he suspects that if the City finds that the landscape is obscuring the artwork, the City could pay an in-lieu fee and remove the tree.

Mayor Anderson opened the public comment period. There were no speakers and he returned discussion to the Council.

Councilmember Burks moved to approve staff's recommendation, and Vice Mayor Tatzin seconded the motion.

Councilmember Samson said some time ago when he was semi-retired he spent some time at the Crucible in West Oakland and he has respect for Mr. Mudgett’s talent and he hopes he will take his comments in that context, but said he would be blunt. Art is subjective and he sees no connection in this to the City of Lafayette in what it says, how it relates, and in his taste as a representative of the community and elected to provide an opinion, he does not see this as an asset to the community and does not believe it is an appropriate expenditure of $150,000 of taxpayer money.

Mayor Anderson asked if there were any of the other artwork shown which gets closer to what Councilmember Samson thinks might be appropriate.

Councilmember Samson said honestly none of it spoke to him, and he thinks in that location with the backdrop of the hills and coming down Olympic Boulevard with the medians, some really nice
landscaping as has been proposed is good, and what he has seen detracts from the natural beauty of the landscaping and the overall setting itself. Mr. Mudgett stated he respected Councilmember Samson’s opinion.

Councilmember Mitchell said the more he sees the artwork the more he likes it and he likes the idea of the stains coming down on the stand. He still has a number of concerns, with public safety foremost. He could imagine high school kids wanting to climb it. He is actually concerned about the artwork being obscured by the trees and does not have a full understanding of how they would work together. He started out being skeptical of the artwork, but again, the more he sees it the more he likes it. And, he certainly understands Councilmember Samson’s opinion that it is an ideal location for landscaping and would simplify the matter.

Mayor Anderson said he can support the proposed sculpture, said it looks quite interesting, he gets the connection to “Over Easy” which is at the Marquee Townhomes with the same material and concept, but this takes it a bit farther. He thinks the comments about science, education and math made it work for him. He knows not everyone likes certain art, but thinks this is a piece that is straight-forward enough that people will be able to find something in it, and he supported the motion and second.

Vice Mayor Tatzin said he recalls reading the public comments in the staff report and some people have said none of the above and asked for just landscaping. Some people said they liked “Resolve”, some “Chameleons” which goes to prove that art to a large extent is in the eye of the beholder. His sense is he has looked at what has gone on in Lafayette by the Veterans Memorial Hall, this location, and he thinks the Council is looking at contemporary art of the 21st century as Lafayette’s guiding theme to the extent it has one, and people may or may not like that. He thinks if there was enough of it around it would begin to form a statement around that concept. He likes this and the idea of interior lighting is worth exploring, and he supported the installation. His recollection is that the piece can be moved, as well.

Mr. Mudgett confirmed and said the piece is modular. If a truck were to plow into the piece and bend the bottom three modules, any of the modules could be rebuilt and the entire piece would not need to be rebuilt. Also, it can be reconfigured and resembles Lego’s. It can be relocated to a park and lay it down horizontally if the City wanted to, and he would be open to all of this.

Vice Mayor Tatzin said it might strike him that a future Council might like the oak trees that are there and would conclude they would not trim them and the better thing to do is enliven another part of town with the sculpture organized the same way or differently, and Mr. Mudgett agreed.

Councilmember Mitchell asked if the City would be precluded from moving the art. Vice Mayor Tatzin stated it could be through contractual agreement that the Council would agree as a City to use the sculpture as they see fit over time.

**ACTION:** It was M/S/C (Burks/Tatzin) to approve David Mudgett’s “Resolve” for public art at the roundabout at Pleasant Hill and Olympic Boulevard, subject to a modified base design; direct staff to move forward with the project. Vote: 4-1 (Ayes: Burks, Mitchell, Tatzin and Anderson; Noes: Samson).

**12. STAFF REPORTS**

A. Julia Koppman Norton, Assistant Planner
   MCE Clean Energy – Opt-Up for City-Owned Electricity Accounts
Recommendation: 1) Enroll City-owned electricity accounts in MCE’s “Deep Green” service and enroll the City’s solar/NEM account into MCE service once it has been trued up with PG&E; 2) Use the existing Environmental Task Force reserve account balance (011-341300) of $11,200 for needed monies for “Deep Green” service to be budgeted in a utility expense account for FY18; and 3) Return to Council prior to the end of FY18 to determine the source of ongoing funds for “Deep Green” service and policy direction on the additional fees incurred by “Deep Green” for the Library’s electricity account.

Recused:
Councilmember Samson recused himself from participating in the matter, noting while he does not have a financial interest or conflict under the code, he is involved in litigation representing a client where the viability of CCAs are at issue. He is filing documents to the PUC which take a particular position so he left the chambers.

Assistant Planner Julia Koppman Norton stated the item before the Council is a recommendation to enroll City-owned electricity accounts into MCE’s 100% renewable Deep Green service and to enroll the City’s solar net energy metering account into MCE service once it has been trued up with PG&E. Service with MCE began in September of 2016 and since that time all City-owned electricity accounts have been enrolled in MCE’s 50% renewable Light Green service with the exception of the solar account at the Library which has been opted out to PG&E.

In August, the Environmental Task Force unanimously recommended the Council enroll all of the City-owned electricity accounts in MCE’s Deep Green service and pay the premium for 100% renewable energy. By enrolling all City-owned accounts into 100% renewable electric generation, the City would be reducing annual GHG emissions by approximately 154 metric tons of CO2 equivalent which is equal to 338,905 pounds of carbon dioxide emissions. This would contribute to GHG emissions reduction targets established by both the City and the state.

Currently, there are 6 jurisdictions that have opted up to Deep Green in MCE’s service area including Belvedere, Fairfax, San Anselmo, Corte Madera, Larkspur and Novato, three of which made this switch in the past month in order to further their commitment to Climate Action Plan goals. Over the 7 months with MCE service, there have been no significant costs or costs savings, as MCE has a goal of providing stable and competitive rates. Deep Green service is approximately one penny per kilowatt hour extra, resulting in an estimated $10,239 in extra annual cost for the City based on rates back in September. Approximately half of this extra cost would be incurred by the Library’s accounts.

With these additional funds, MCE uses half of that extra penny per kilowatt hour towards their local renewable development fund that funds renewable generation projects within the service area such as the solar farm in Richmond, and half of that goes to MCE’s General Fund. If the City elects to opt up, the Council can also elect to opt back down to Light Green service at any time with no fee.

The Environmental Task Force has a reserve account that currently has $11,200 in it composed of funds accumulated annually by attending meetings for the East Bay Energy Watch. While these funds are not legally restricted to be used for environmental purposes, they have been separated into this reserve account with that intent.
Staff’s modified recommendation is to 1) enroll City-owned electricity accounts in MCE’s Deep Green service to be effective July 1, 2017 and enroll the City’s solar account in MCE service once trued up with PG&E; 2) use the existing Environmental Task Force reserve account balance for the need and monies for the first year of Deep Green service for FY18; and 3) return to Council prior to the following fiscal year to determine the source of on-going funds for Deep Green service and policy direction on the additional fees incurred by Deep Green for the Library’s electricity account.

Mayor Anderson referred to options and the matrix and said if the City switches the streetlight accounts only, the cost per year is about $2,000 more than what the City is paying now. He asked if it is correct that the City would hit its goal of reduction by doing that. It states reduction to 10,314 metric tons of CO2.

Ms. Koppman Norton pointed to the top of the column which is the goal to reduce CO2 by 10,314 metric tons, and this would lower that goal by only 28.7 tons. Mayor Anderson confirmed that in none of these the City actually closes the gap but simply moves the City somewhat closer.

Vice Mayor Tatzin recalled the biggest source of pollution for Lafayette is Highway 24 and the only thing that will get the City to its goal is changing vehicle technology. However, they can make contributions here and there and this is one of those. He said he spoke with Ms. Koppman Norton earlier today and he asked that when the City funds various transportation programs to get people out of single occupancy vehicles much of this is funded by BAAQMD and they have a cost per metric ton of reduction. He was curious as to how these costs per metric ton compare with those and said his initial sense is this is potentially a lot cheaper, but he wanted to make sure.

Ms. Koppman Norton stated they were not able to obtain an answer for this prior to the meeting.

Councilmember Mitchell asked if “cheaper” means “more bang for the buck” going in this direction, and Vice Mayor Tatzin said yes; in going in this direction it provides for more reduction in metric tons of pollution eliminated than some of the van pools do.

Vice Mayor Tatzin said the City pays one cent more per kilowatt hour and he asked how MCE uses that money. Ms. Koppman Norton stated half of the cent per kilowatt hour goes toward their local renewable development fund that funds new renewable projects within the service area and the other half goes towards their General Fund which goes towards contracts, procurement and general expenses.

Vice Mayor Tatzin said since they last met on Tuesday, the County Board of Supervisors opted to go with MCE, along with the cities of Moraga and Danville. Concord and Pittsburg have received recommendations from their Council subcommittees to join MCE. Oakley is considering it tomorrow evening, and he was not sure any city in Contra Costa County that will join Alameda County. One of the things that these other cities going with MCE creates is there are many parcels along the northern waterfront which the County is pushing for development which will become potentially available for energy production with MCE sponsored projects. Therefore, the City may have many opportunities within the county to use some of this money. It also opens up more opportunities for those customers who wish to go with the local solar option which not too many people have. Essentially, it is a way to get the equivalent of solar panels on a home without having them placed on a house.
Councilmember Mitchell referred to page 3 of 3 in the staff report item 3 which states “Allocate fines on waste management plans to the Environmental Task Force reserve.” He asked what the connection is between waste management fines and this and asked if there was a nexus.

Ms. Koppman Norton stated staff has modified that recommendation to not create the nexus between those two. Historically, the Environmental Task Force has reviewed how waste is processed in all development projects in the City that hit certain triggers. For projects that do not meet that waste diversion goal, fines are collected. Staff spoke earlier this week and determined they should probably not be making this nexus between finding projects that do not recycle and this positive environmental program. She then displayed the modified recommendation and noted that this was part of the original recommendation which has been removed.

Councilmember Mitchell stated in the original staff report, item 2 is the Environmental Task Force reserve balance account and he thinks staff had indicated that the $11,000 is primarily coming from East Bay Energy Watch which is about $1500 a year. Ms. Koppman Norton confirmed, stating it varies as low as $900 to $1,500 per year based on funding and attendance at quarterly meetings.

Councilmember Mitchell asked if the new recommendation was to use the $11,000 and any additional cost would come from the General Fund. Ms. Koppman Norton stated for this next fiscal year, the amount in the reserve account would cover more than needed for the first year and then staff would return to the Council to discuss where the funding would come from.

Councilmember Burks thanked staff and he said he spoke with staff today as well. In addition to protecting the environment, since they are going big with the next level of Deep Green he asked if there was anything else that is beneficial for the City such as tax benefits or any prioritization around grant funding. He asked if the City could claim any monetary advantage from the half cent that goes into the renewable development fund. Ms. Koppman Norton stated no, not that she was aware of. Councilmember Burks asked and confirmed that staff plans to publicize this so the community is aware of the positive benefits.

Mayor Anderson said since it is close to budget time, he asked if it makes more sense to add funding for this in the City’s budget to adhere to the transition and not take money from the reserve from the Environmental Task Force. He asked if this was an option considered by staff.

Administrative Services Director Tracy Robinson stated staff did not consider this. She reran numbers for the budget and there is not much extra funding. The Council had asked to add additional contingencies for the police station which took all of the excess and, in fact, the City must dip into reserves a bit. She believes this will be temporary until mid-year and the books are closed, but currently, the Council will be receiving a budget that already draws from the reserve.

Vice Mayor Tatzin stated he had some conversations along the same lines and said he thinks the Council ought to see the budget at the May 22nd meeting. The Finance Subcommittee met since the last meeting and reviewed a preliminary budget and the guidance they gave was to make it even less optimistic than it was.

Additionally, He said the Library is about half of the City’s electricity cost and the way their agreement with the Library Foundation works is that the City puts in a certain amount of money into operating the
Library and any difference is made up by the Library Foundation. If the City increases the cost of energy at the Library, unless they change their agreement, all they are really doing is saying to the Foundation is here is a larger bill and he would not want to do this without consulting them and receiving feedback.

The Library Foundation does not meet until the 4th Wednesday of the month and possibly what the Council should do is to continue this discussion until June or July after the budget has been adopted and until the Library Foundation has had a chance to comment and when the Council has a better sense of any changes made to the budget. He was not sure this was the item the Council wants to have to increase the City’s shortfall from their reserve target.

Mayor Anderson supported this and he was concerned about taking money out of the reserve for the Environmental Task Force for this one year to kick it off. He thinks the City needs a sustainable source to keep the Deep Green program going and he thinks continuing the item would allow for further consideration as to whether it is something to commit to at this time or in the future.

Vice Mayor Tatzin suggested one thing to consider is that the 511 money the City can apply for does deal with reducing air pollution. It might be interesting for staff to talk with James Hinkamp to see if there is any opportunity to switch the streetlight accounts to Deep Green on the argument that this is a traffic-related expense and it reduces air pollution, and that it may be more cost-effective than the other things the City does under the 511 program to reduce air pollution.

Councilmember Mitchell stated the East Bay Energy Watch contributes almost $1,500 on the upside and it is almost exactly what switching the streetlights would cost, so this would be a sustainable action and get the ball rolling and give the Council time to determine other ways to finance it. He supported continuance and making it part of the budget process, and he was also supportive of using it for streetlights, but was not prepared to go to the full approval step to Deep Green.

Mayor Anderson said possibly the best direction would be to see what comes from discussion regarding transportation related funding that could be applied and with that and this option of using the dollars that come in on a regular basis can be their source for streetlights, get through the budget process and review it again to see if they can expand it or make it larger and discuss this with the Library Foundation. He asked and confirmed that the City can phase this and he believes the City can implement Deep Green for streetlights, given that has a sustainable source.

ACTION: It was M/S/C (Tatzin/Mitchell) to continue the matter to July 24, 2017 and in the meantime direct staff to gather additional information on the potential applicability of the 511 program to help pay for costs, receive estimates as to the costs paid by the 511 program to save a metric ton of pollutants, and hold conversations with the Library Foundation about the impacts of a switch to the Library budget. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Burks, and Mitchell; Noes: None; Recused: Samson); Absent: None.

BREAK

Mayor Anderson called for a break at 9:57 p.m. and thereafter reconvened the regular meeting.

Noted Present:
Councilmember Samson was noted present to participate in the remainder of the meeting.

13. PUBLIC HEARINGS – None
14. ITEMS REMOVED FROM CONSENT CALENDAR
      Recommendation: Receive and file.

   Councilmember Mitchell said he spoke with City staff regarding how much money is available on
demand in one day and one week, and he asked staff two questions. He asked staff if there was ever an
example of when the City would need money on demand or the next day, and Ms. Wakeman said she
was unaware of any example of when the City would need money on demand. He also asked if there
was any State mandate that the City keep a certain amount of money on demand-ready, and she
responded no.

   Although the marginal increase in the amount of money the City would get by extending the maturity is
very small, he would rather receive more money than less money and he would direct the Finance
Subcommittee to work with staff regarding this.

   Mayor Anderson stated the subcommittee had this conversation with Ms. Wakeman and talked about
restructuring the laddering of the funds, so he thinks this is a good point and it is something on the list
to be done.

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

15. COUNCIL/COMMISSION REPORTS
   A. Councilmembers report on activities and consideration of matters a Councilmember wishes to
      initiate for placement on a future agenda.

   Mayor Anderson reported on the Mayors’ Conference held in Walnut Creek. He and Councilmember
Mitchell and City Manager Falk attended and a presentation was given about libraries from the new
County Library Administrator. He attended the Mayor’s Summit in Concord prior to this which involved 5
cities talking about what they can do to help each other out and homelessness with an interesting panel
discussion. He met with the Friends of the Library and he had an Eagle Scout Honor Court on Sunday
recognizing three new Eagle Scouts.

   Vice Mayor Tatzin said he reported that MCE is going to become the CCA of choice in Contra Costa with
the County selecting other cities which he reported on earlier. The only city at this time is San Ramon
and Orinda is not considering it at this time. He thinks they will broadcast the May MCE meeting from
City offices and he will not have to travel to San Rafael, and other communities can choose to come to
Lafayette or they can begin broadcasting from more than one location, with proper noticing.

   Vice Mayor Tatzin also reported that the School Bus Authority is meeting on May 15th. A study of school
bus stops has been prepared to determine if they comply with changes in state law. Lafayette is due
with moving three or four stops a small distance. There are stops in Orinda where there is no way they
comply and basically, public meetings in Orinda will be held to discuss doing major re-routing of buses
so they do not enter into neighborhoods.

   B. Mayor Anderson
1. Status Report from Council Liaisons on Stanford Alumni Study of City Commissions  
Recommendation: Receive and file.

Mayor Anderson stated all liaisons have met with Commissions and he hoped Councilmembers are turning in their summations from meetings to the City Clerk. He will take these and work with the City Manager to develop a staff report. Now that PG&E has pushed their meeting back, the Council may want to agendize this for the May 22nd meeting.

Councilmember Samson said he anticipates a number of people from the various commissioners will be in attendance and he questioned the format for May 22nd and going forward. Mayor Anderson stated he would like to review which commissions that seem to be working fine so they do not worry about changes. Separated from those would be commissions for potential changes for discussion and review in detail. His hope is to then take each commission and have an ad-hoc committee or liaisons hold separate discussions to arrive at a process or recommendation. For example, he questioned whether it makes sense for BPAC to join with the Circulation Commission. He thinks the Chair of each commission and a liaison meet on an ad-hoc basis, discuss how this might work, and then return to the Council with a recommendation on whether it makes sense and how it would work.

Councilmember Samson asked and confirmed the ad-hoc meeting would be more of an informal working session and thereafter, the item would be noticed and agendized for return to the Council.

City Clerk Robbins asked that written comments would need to be received by Friday, May 12th so a staff report can be prepared.

Councilmember Mitchell noted that the Downtown Congestion Study group had meeting conflicts in that they would have to convene a special meeting, but virtually all members serve on other commissions so their input should have been received. Mayor Anderson noted this is a group which will sunset so there is no need for a report for this group.

2. Introduce New Proclamation Format  
Recommendation: Receive and file.

Mayor Anderson presented the new proclamation format, stating he and the City Manager met and discussed a way to develop proclamations more on par with grander formats.

Mr. Falk discussed background on the reason the City's format was changed to achieve a better looking format. He said the new format was developed by Jennifer Moreland who prepares the banners along Lafayette's streets who just won the Cooper Hewitt Award for design, which is awarded by the Smithsonian. He and the City Clerk had worked on this and she had 250 sheets of acid free paper ordered and the Council will decide how they wish to issue these.

Mayor Anderson stated in discussing the matter regarding recognition of people who have served on commissions, retirements, this proclamation versus the old proclamation and they contemplated what to give depending upon circumstances. He hoped that an ad-hoc committee could review this and he would volunteer and asked for one other member, and Councilmember Burks agreed to volunteer.

Mr. Falk asked that the City Clerk serve as the staff member involved with the ad-hoc committee.
C. Councilmember Mitchell and Vice Mayor Tatzin
Resolution 2017-13 Appointing one member to the Parks, Trails and Recreation Commission
Recommendation: Adopt Resolution 2017-13 appointing one member to the Parks, Trails & Recreation Commission.

Councilmember Mitchell stated Commissioner Horn left the PTR Commission and two excellent candidates were interviewed. He said the interview panel consisted of PTR Commissioners Stephanie Stevens and Carol Singer, himself and Vice Mayor Tatzin.

Vice Mayor Tatzin noted that the panel recommended Lauren McCabe Herpich, stating she had appeared before the Council discussing Leigh Creekside Park and understands she will recuse herself from further deliberations on the park.

ACTION: It was M/S/C (Tatzin/Mitchell) to adopt Resolution 2017-13 appointing Lauren McCabe Herpich to the Parks, Trails and Recreation Commission. Vote: 5-0 (Ayes: Anderson, Tatzin, Burks, Mitchell, and Samson; Noes: None).

16. WRITTEN COMMUNICATIONS
   A. Letter from Clay Jensen resigning from the Public Art Committee effective June 30, 2017.
      Recommendation: Accept with regret.

      ACTION: It was M/S/C (Tatzin/Burks) to accept with regret Clay Jensen’s resignation from the Public Art Committee effective June 30, 2017. Vote: 5-0 (Ayes: Anderson, Tatzin, Burks, Mitchell, and Samson; Noes: None).

         Recommendation: Accept with regret.

         ACTION: It was M/S/C (Tatzin/Burks) to accept with regret Bill Loudon’s resignation from the Circulation Commission effective April 28, 2017. Vote: 5-0 (Ayes: Anderson, Tatzin, Burks, Mitchell, and Samson; Noes: None).

      C. Letter from Patricia Frost, Contra Costa County Emergency Services Director, congratulating the City of Lafayette for achieving Contra Costa County HeartSafe Community Status.
         Recommendation: Receive and file

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

Vice Mayor Tatzin commented that in developing the agenda for the next meeting, the Stanley Jazz Messengers will begin playing at 6:30 p.m. and they will need the piano.

17. ADJOURNMENT
    10:38 PM

APPROVED:

City Council, Design Review Board, Planning Commission
ATTEST:

_________
Joanne Robbins, City Clerk

_________
Mike Anderson, Mayor