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## Lafayette determined to clean up commissions

By Pippa Fisher

Members of the public made their voices clear to the Lafayette City Council: It is time to clean up conflict of interest and unethical behavior in the commissions, specifically in the Design Review and Planning Commissions.

City Council Member Ivor Samson presented his progress on the subject at the Sept. 11 meeting. He and Council Member Cam Burks were tasked with creating a new policy designed to eliminate conflict of interest following a council meeting in July during which several cases of conflict and perceived conflict were discussed. (See the July 26 Lamorinda Weekly article, "Conflict of interest in commissions is causing trust issues in Lafayette," in the archives.)

Samson, who said he believes this is the most important issue facing the city today, presented his draft of the resolution and policy with changes intended to clarify that commissioners may not represent clients coming before any board. Currently they may represent but must recuse themselves - a practice which, according to Samson, on a couple of occasions has not happened.

The proposed policy prohibitions would extend to firms employing immediate family members. It would stipulate a one-year post-service period of exclusion, except in cases where a member is representing a personally owned property.

During the public comments, attorney and Lafayette resident Scott Sommer listed multiple violations going back over years - at least one of which resulted in a commissioner being fined by the Fair Political Practices Commission for violation of the California Political Reform Act back in 2008.

With detailed documentation from commission meeting minutes in hand, Sommer provided many other examples of commissioners voting for each others' projects in an implied "you scratch my back, I'll scratch yours" arrangement. As many as five commissioners recused themselves on an ongoing basis, according to the documents.

Sommer drew the council's attention to ex-Design Review Commissioner Gordon Chong's comments following the Stanford Commission's report - an independent pro-bono consulting team brought in to examine the working of the commissions earlier this year. Chong referred to "... second rate developers" who "know how to co-opt the process and hire commissioners on the two commissions."

Sommer also took time to point to Planning Commissioner Thomas Chastain's and Design Review Commissioner Bob Cleaver's involvement on the Woodbury Highlands development. Notably, Cleaver's resignation, along with that of Design Review Commissioner Richard Marshall, from the DRC was also on the night's agenda.

Fifteen members of the public spoke up, overwhelmingly in favor of the revisions to policy, with one resident recalling her own experience when she witnessed commissioners, clients and staff colluding both before and after a DRC meeting. "It didn't matter that he (the commissioner whose project was being discussed) had recused himself. It was so blatant we almost took a photo," she said.

However one resident warned that the city would lose good people or end up with unqualified people on the boards. He urged the city council to "lead by example" if policy is changed. Another resident suggested that the city was taking "a sledge hammer to a thumb tack" in its approach and said that the policy changes are really only needed for DRC and LPC.

And in fact that became a recurring question: should the new policy be applied to all commissions and the city council?

City Council Member Mark Mitchell noted that while most are referral bodies, the DRC and PC are quasi-judicial, having the ability to make decisions and thus may need a stronger standard. Mitchell said that he would be fine with the new restrictions at the city council level, and pointed out that he already adheres to it in his real estate business by deliberately choosing never to accept work in Lafayette, but said he thought the policy would be hard to implement at city council level.

Lafayette Mayor Mike Anderson agreed with Mitchell that the focus should be on the DRC and PC. He said there was a need to clarify policy and build confidence and that although there are currently FPPC policies in place for recusals, "if they are not being followed, that's an issue."

Vice Mayor Don Tatzin appeared to have more reservations, raising theoretical "what if" questions to Samson about exactly what would constitute conflict, such as relationships to vendors, for example. Samson in turn acknowledged, "It needs fine-tuning" but said he thought it important to draw a bright line or clearly defined rule, as the city needs transparency.

President of Save Lafayette Michael Griffiths said, "I would underscore the long list of commissioner violations, condoned by the city attorney and city manager. The ordinance is a first step." He says that an independent ethics commission needs to be established. "City staff, city council, commission/committee members, project applicants need to sign project-specific compliance agreements. Recusals should be for a minimum of two years. Finally, there is the ongoing investigation by the FPPC, which will shed even more light on the situation," Griffiths said.

Deborah Callister and Mary Jo Cass of The Coalition to Save Leigh Creekside Park said via email that CSLCP supports the council's proposed resolution "for representations related to commission and committee positions" to mitigate conflict-of-interest issues in the city. "Numerous speakers at Monday night's city council meeting expressed concerns about the pervasiveness of conflict of interest and related problems. For example, the CSLCP is working to protect Lafayette's critical riparian and natural habitat at Leigh Creekside Park, but we have encountered problems with substandard and flawed environmental studies, pre-determined outcomes, a broken covenant between the city and residents, inherent bias, and conflict of

interest at the commission level. These problems have led to faulty decision-making and the erosion of public trust in city governance. We are hopeful that this proposed conflict of interest policy will help restore trust and open governance in the city of Lafayette."

Sommer commented after the meeting, "A number of groups are now 'connecting the dots' between how this group of architect commissioners has worked for their clients and the multiple projects approved in Lafayette, which have significant adverse impacts on traffic and the city's character."

"I am pleased with the initial draft language that will enhance the current requirements in place to prevent conflicts of interest in our planning and design review processes," said Anderson. "The trick will be to simplify the draft to make sure that commissioners can clearly determine how this affects their firm or associates ability to pursue projects in Lafayette. The effort here is to improve the perception of these processes by the residents of the city, while recognizing that our commissioners are typically practicing professionals of regional, if not national acclamation, that have been essential to the thoughtful yet vibrant development of the city."

In the end, the council (minus Burks who was absent) decided to send it back to the subcommittee together with the city attorney to refine language and to give clarification on the relationships with vendors and other possible related parties. It will come back to the city council at the Oct. 23 meeting.

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