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Public Forum

Public Forum response
regarding Candell recusal

Lafayette Councilmember Candell has a common law conflict of interest and can't lawfully vote on the Terraces Apartments Project

Vocal opponents of the 315-unit Terraces of Lafayette apartment project continue to mislead Lafayette residents. For example, a recent "Public Forum" comment from one opponent in the October 30, 2019 edition of the Lamorinda Weekly incorrectly asserts that City Councilmember Susan Candell has a right to vote on the project based on a 1975 case, *City of Fairfield v. Superior Court*, that did not address common law conflicts of interest. That "Public Forum" assertion regarding the Terraces contradicts the facts regarding Ms. Candell's project opposition and has no basis in the applicable law that does address common law conflicts. The only rights at stake here are those of O'Brien Land Company, whose constitutional right to procedural due process demands the recusal of biased local officials such as Ms. Candell.

Among other things, Ms. Candell signed two citizen petitions against the project and has actively opposed it since 2012. On the eve of her candidacy last summer Ms. Candell encouraged the City to hire a new attorney to handle the project and spoke in favor of the City Council considering what it would take to make the stringent findings necessary to deny the project.

In seeking to raise campaign funds to aid in the defense of her unconstitutional activities to thwart the project, while sitting as a duly-elected public official and not a "mere" private citizen, she also recently admitted in writing to the Fair Political Practices Commission that "I have a common law conflict." She also admitted that the City's attorney for the project (the same attorney she encouraged the City to hire) advised her that she should recuse herself.

The City's attorney also explained in a February 26 letter that Ms. Candell originally recused herself "due to her past opposition to the Terraces of Lafayette project." And in a February 27 letter rejecting Save Lafayette's haphazard argument that Councilmembers Anderson, Burks, and Geringer have their own conflict of interest, he also agreed with us regarding the cases-*Nasha L.L.C. v. City of Los Angeles* (2004) and *Woody's Group, Inc. v. City of Newport Beach* (2015)-that establish the relevant legal standard for determining when public officials such as Ms. Candell must recuse themselves due to a common law conflict of interest-"an unacceptable probability of actual bias."

Save Lafayette has a history of making dubious arguments based on bad advice from attorneys opposing the project who presumably should know better. Tellingly, one of those attorneys is on the opposite side of the City's ongoing successful defense in *Fowler v. City of Lafayette*, which will ultimately cost taxpayers more than \$1M before the case is finally resolved in the City's favor. Perhaps more notably, Ms. Candell's own attorney on this critical issue, an attorney she touts as an ethics expert, wisely has yet to make any public statement or produce anything in writing to support the unsupportable.

Ms. Candell cannot lawfully vote on or participate in the City's processing of the project and doing so will severely and unnecessarily raise the City's legal risks.

Bryan Wenter, a land use partner at Miller Starr Regalia and former city attorney for Walnut Creek, represents O'Brien Land Company.

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[back](#)

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