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## Lawsuit win comes with hefty price tag for taxpayers

By Pippa Fisher

The California Supreme Court denied a Petition for Review, brought by a group of neighbors who alleged the city had used biased procedures including an improperly held closed session meeting in violation of the Brown Act, in reaching a land use decision in 2016 in its approval of a neighbor's cabana.

Defending the lawsuit cost the city \$936,319.08.

A city statement July 23 reads, "The Court of Appeal affirmed the trial court's findings that the city council's closed sessions were justified and that the decision was based on a fair, thorough process."

The statement also says, "The Court of Appeal found that the city committed a minor technical violation of the Brown Act but that no prejudice resulted from it and it had no impact on the city council's decision. In its order, the Court found there was no evidence that anyone at the City of Lafayette – councilmembers, staff, or the city attorney – was biased."

"We are very pleased that the Supreme Court has denied the Petition for Review and that our trial court victory stands," said Mayor Mike Anderson, adding, "The unfortunate outcome, frankly, is that the legal fees to defend the city against this lawsuit have cost Lafayette taxpayers so

much."

The litigation stems from the application for a now-completed tennis cabana, which went before the planning commission at four meetings between December 2015 and May 2016. Following the planning commission approval the neighbors appealed to the city council, which considered it at four further meetings.

While approval was pending, the applicants' attorney threatened to sue the city if denied. The city attorney notified the council of the litigation threat orally during a July 25, 2016, closed session meeting. Record of this litigation threat was not made public, although notes were

kept and could be viewed at the planning department if the public knew to ask for them. The court determined, "This availability is illusory if an interested person would not know the question to ask."

Lafayette resident and plaintiff Lori Fowler says this was not a 'minor technical violation' of the Brown Act. "The city is attempting to whitewash this ruling," she says.

Plaintiff and an attorney in the case Scott Sommer says that the decision states the city did not meet its duty to make the litigation statement available to the public and "violated the Brown Act."

"The court specifically

ruled, 'the statutory scheme does not allow an agency to thwart its duty of public disclosure in this manner,'" says Sommer, noting that the city has changed how closed sessions to discuss pending litigation are disclosed since the decision.

"Thanks to this ruling, the city can no longer try to conceal important information from the public by hiding it in closed sessions," says Fowler. She says she feels vindicated explaining that because "even though I can't change the damage that was done to our plaintiff group, others won't be subject to the unfair process that we encountered."

## PG&E reports on PSPS plans – council and community remain skeptical



A downed power pole obstructs Camino Diablo in Lafayette on Oct. 27.

Photo Lamo archives

By Pippa Fisher

In its presentation to city leaders Pacific Gas and Electric Co. sought to highlight several ways in which the utility says it is improving over its performance last year, specifically with regard to public safety power shutoff procedures implemented to

keep the public safe when weather conditions put the area at risk for wild fires.

However as the testy exchanges following the presentation demonstrated, not everyone was reassured.

PG&E Diablo Division Senior Manager Vic Baker took the council through a series of slides explaining the com-

pany's goal this year to reduce the number of customers impacted by PSPS events compared with 2019 by one-third. Baker explained the installation of sectionalizing devices will enable them to cut power to smaller, more specific areas rather than large swathes of residences.

The utility should be able

to restore power to customers twice as fast following a PSPS, said Baker. Unlike last year, PG&E will now be able to use infrared equipment to inspect power lines at night and has added more field crews to speed the necessary inspection of all lines before re-energizing.

And in the area of communication, which was acknowledged to be severely lacking last year with PG&E's website crashing and no information available to the public, Baker said the company has grown its IT infrastructure and will be improving customer alerts both before and after a PSPS event, along with bolstering its website.

Predominantly on the minds of the council members was the fire that broke out in Lafayette during a PSPS

last October, in a section of the city that had not been de-energized. Prompted by a question from Vice Mayor Susan Candell on whether there had been an investigation on the cause of the fire, PG&E Public Affairs Representative Tom Guarino said he would find out the status of any investigation and get a report back to council.

Lafayette Homeowners Council President Bill Bucher had sent a letter to council members stating LHC's serious concern regarding PG&E's activities "and in some cases lack of activities in Lafayette."

The LHC concerns include the exposed 50-year-old pipeline in Briones, which remains in need of in-line inspection and weld-testing.

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