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El Curtola bridge protests spark safety and legal concerns

By Lou Fancher

Combining public safety concerns, confusing responsibility channels between state, regional, and local government agencies, and hot-button issues such as the First Amendment and peaceful assembly, the El Curtola bridge over Highway 24 has become a high-voltage topic in Lafayette. At the Jan. 22 city council meeting, City Manager Niroop Srivatsa delivered a report on demonstrations and protests held on the bridge since 2020.

In a review of the item's history, Srivatsa and residents commenting during the meeting said narrow sidewalks and the slim roadway increase the danger of public gatherings and the signs and flags affixed to the bridge's protective chain-link fencing are distractions to motorists on Highway 24 below. Srivatsa said city staff and the police department anticipate ongoing gatherings and demonstrations will increase, given the presidential election later this year. Srivatsa reiterated that the State of California owns the bridge, California Department of Transportation (Caltrans) maintains the bridge, with the one exception being that the city has one maintenance agreement to maintain the surfacing, which includes the sidewalks. Notably, the California Highway Patrol (CHP) is charged with enforcing the laws and regulations of the State of California relating to gatherings on the El Curtola Blvd/Highway 2024 overpass.

The city has previously been asked whether its sign ordinance or any other code regulation might apply to protests on the bridge. City attorney Mala Subramanian confirmed in past meetings that the city's ordinances and regulations would not apply to state property such as a freeway facility. At the Jan. 22 meeting, Subramanian reviewed the city's responsibilities and limitations: the signs or anything affixed to the bridge are the state's responsibility to remove; the CHP must enforce the laws and regulations, not local law enforcement officers; and Caltrans must clear signs, banners, and flags (other than the American flag, which was granted an exception in a well-documented federal court case). The jurisdiction of the three agencies precludes and prohibits several actions of the city, such as real-time removal of objects and ticketing protesters, other than issuing tickets for violations involving illegal parking on or near the bridge. Srivatsa said increased activity since October 2023 shows the bridge has been the site of new demonstrations. Drivers have been seen and reported as driving onto the shoulder of the freeway, with one case where a motorist stopped his vehicle in a lane amid moving traffic and made efforts to engage with protesters. City staff in the past and now, have contacted Caltrans to determine how the agency is enforcing its laws. While waiting this year for a response to the most recent inquiry and with considerable concern expressed in letters and email sent to the city council, Srivatsa said she has placed an urgent call to state Sen. Steve Glazer's office with a request that he facilitate a meeting between the city, Caltrans and the CHP. Last time, the city had adopted a resolution and sent a request to Caltrans to monitor the situation. "For about 3-4 months the police chief was receiving accident data (for Highway 24)," she said. Reaching out to Glazer's office again, she said, "I received a phone call from the branch chief of Caltran's public affairs and community engagement who said she had received the voice mail message and would speak to the director about what steps Caltrans can take."

During council members' discussion, Mayor Gina Dawson expressed appreciation for the effort made by city staff to discuss the matter with Sen. Glazer and underscored the importance of the growing public safety concerns. Council Member Susan Candell referenced past meetings during which placing an opaque material to block the visibility of protest items and people protesting on the bridge was discussed. She asked staff to pull previous designs deemed too complicated to install at the time for review and a discussion of new options that may be possible in 2024.

Vice Mayor Wei-Tai Kwok, after reading through the "multiyear history and public comment on the bridge," wondered if the CHP would defer to local police action on their behalf. Srivatsa said that in 2020 and 2021, incidents of altercations and people blocking access to the bridge occurred and local police were out enforcing the law as a health and safety matter. Deferring the legalities to her colleague, Subramanian said real time enforcement is largely the purview of the state, Caltrans and CHP, and other than the city noise ordinance, code enforcement is the city's only actionable law enforcement at the current time.

In public comments, Garret Harley said the five-plus-year issue brought to his mind the protests after 9-11 and said "any time there are protesters, you get counter protesters." He said things falling from the bridge have caused hazards on the roadway. In the matter of protest, such action labeled "courtesy work" is hard to define, he suggested and asked if the state could give the city "a clear picture of the civil case law governing this kind of thing, and allocate what department should be responsible for enforcing it."

Another member of the community suggested the state and Caltrans participate in creating a public gathering application process for holding protests. The hope would be that traffic control could, as a result, be "organized and nice and neat."

A third person participating virtually emphasized the public safety issues for both pedestrians and drivers on the bridge, not just motorists on the highway. She said there was no local law enforcement during an MLK Day protest and had concerns about parking rules not being followed and safety issues she predicted will rise as the election moves closer.

Returning the matter to council, Council Member Carl Anduri said it was "shameful" that Caltrans and CHP "shirked their responsibility to take action unless something happens on the freeway." He called the situation absurd and frustrating. He believes no protests should be allowed on the bridge, and said, "Nobody should be out there with flags, banners, marching, or protests."

Kwok thanked the community for providing input. He said it was important the public understand the matter is a safety issue related to public gatherings and not to be misinterpreted as messaging or taking a stance on political topics.

The council unanimously approved staff's recommendation to meet with legislators and state agencies to ensure motorist safety on Highway 24 and the enforcement of state laws and regulations.

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