

LAW OFFICE OF DONALD B. MOONEY

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April 21, 2020



VIA FACSIMILE
cof@fremont.gov
AND REGULAR MAIL

Mark Danaj
City Manager
City of Fremont
3300 Capitol Avenue, Bldg A
Fremont, CA 94538

Re: Alterations to Rancho Arroyo Parkway

Dear Mr. Danaj:

This office represents Sharon Scharff regarding the City of Fremont's proposed alterations to the Rancho Arroyo Parkway. The alterations include bulb outs and sidewalks on Rancho Arroyo Parkway and allowing parking when it has been specifically eliminated by previous Council actions. The previous changes and the proposed new alterations to Rancho Arroyo Parkway violate City of Fremont Ordinance 847 (1971); Ordinance 1114 (1976); and Ordinance 6660 (1986) that established there was to be no parking and no sidewalk on Rancho Arroyo Parkway. The City's Resolutions and previous conditions of approval specify state that the road is to remain a certain width and a loading and unloading zone placed near the office of the apartments and that parking is otherwise prohibited.

Despite the City's previous changes and the proposed changes to Rancho Arroyo Parkway, the City has taken no action to modify or amend the applicable Conditions of Approval or the governing Ordinances and Resolutions. While the City Council amended the parking prohibition in 1986 to allow parking near the apartment office to address a problem associated with the postal service's delivery of mail and packages, there have been no other actions by the City Council to modify the parking prohibitions on Rancho Arroyo Parkway. (See *Resolution of the City Council of the City of Fremont Establishing a 50-Foot Loading Zone at 405 Rancho Arroyo Parkway to be Effective 24 Hours a Day, Seven Days a Week*, Resolution No. 6660, dated February 18, 1986.) The City's recent elimination of the loading and unloading also violates Resolution No. 6660.

While Public Works may have some discretion in creating and eliminating parking on public streets, such discretion is not allowed when it contradicts ordinances and resolutions duly passed by the City Council. As such, any action by Public Works on Rancho Arroyo Parkway must be consistent with the Council's Resolutions and Ordinances.

It is also my understanding that the City asserts that the current activities are exempt from the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code, §§ 21000 *et seq.* To this end, the City relies upon a Notice of Exemption filed on April 6, 2015. The NOE describes the Project Description as "the project will perform pavement

preventive maintenance work using cape and slurry seals at various locations throughout the City of Fremont.” Despite the City’s representation that the 2015 NOE applies, the clear language of the Project description indicates that it does not apply to modification of parking on Rancho Arroyo Parkway or the creation of sidewalks.

To the extent, the City seeks to approve a new notice of exemption for the current project, no such exemption would apply. First, because the exemptions operate as exceptions to CEQA, they are narrowly construed. (*See, e.g., Santa Monica Chamber of Commerce v. City of Santa Monica* (1999) 101 Cal.App.4th 786, 793.) “Exemption categories are not to be expanded beyond the reasonable scope of their statutory language.” (*Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal.4th 105, 125; *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District* (2006) 139 Cal.App.4th 1356, 1382.) Previously, the City relied upon CEQA Guidelines section 15301, also known as the “Existing Facilities” exception.

As discussed below, the existing facilities exemption does not apply to the City’s current project. The “existing facilities” exemption provides an exemption for “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, [or] mechanical equipment ..., involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.... The key consideration is whether the project involves negligible or no expansion of an existing use.” (CEQA Guidelines, § 15301.) In the present matter, the City intends to expand the use of Rancho Arroyo Parkway to include parking and sidewalks. This constitutes a significant expansion of the existing use. (*See Erven v. Board of Supervisors* (1975) 53 Cal.App.3d 1004, 1012-1014 [a decision to widen the roads or acquire additional roads for improvement purposes would require environmental review because the exemption would not apply].) That is exactly the situation in the present matter. This is not maintenance or minor alteration of the existing road, but an expansion of the road facilities. As such, the existing facilities exemption would not apply.

Based upon the foregoing, my client requests that the City refrain from any work on Rancho Arroyo Parkway unless and until the City Council rescinds and/or modifies the governing Ordinances and applicable conditions of approval and complies with CEQA’s requirements. If the City progresses with the modifications to the Rancho Arroyo Parkway, my client reserves her right to seek any and all administrative and judicial remedies. Additionally, the City should begin the process of reverse the parking, pylon and buffer zone work conducted prior to any notice in 2018. Please let me know within the five days of this letter whether the City intends to proceed with the modifications. In the meantime, please do not hesitate to call me if you would like to discuss this matter.

Sincerely,


Donald B. Mooney
Attorney

cc: Sharon Scharff



Office of the City Attorney

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May 20, 2020

Don Mooney
Law Office of Donald B. Mooney
417 Mace Blvd, Suite J-334
Davis, CA 95618
Email: dbmooneylaw@gmail.com

Re: Rancho Arroyo Parkway

Dear Mr. Mooney:

The City received your letter addressed to City Manager Mark Danaj concerning the redesign and other improvements to Rancho Arroyo Parkway. The City has had the opportunity to review this matter and responds as follows.

In summer 2018, the City repaved and restriped Rancho Arroyo Parkway with a "safe and complete street" design that enhances bicycle and pedestrian facilities, reduces travel speeds, and addresses operational issues. The roadway was redesigned with a buffered bike lane and on-street parking in both directions and high visibility crosswalks at the intersections of Niles Boulevard, De Valle Court and Serpa Court. A vehicle travel lane was removed in each direction, reducing the roadway from four lanes to two.

These street design features and roadway safety improvements comport with contemporary professional standards for street design, and implement City Council policies contained in the General Plan (2011), the City's Complete Streets policy, the Fremont Vision Zero traffic safety program (initiated in 2015), the Pedestrian Master Plan (2016), and the Bicycle Master Plan (2018). The required CEQA findings can be located in said documents, which are on file with the Fremont City Clerk's Office, and any legal challenges to the City's actions under the Public Resources Code Section 21167 et seq., are now barred by the statute of limitations. Specifically, the City's General Plan — Mobility Section updated the City's Planned Roadway System, which reclassified Rancho Arroyo Parkway from an arterial roadway to a local collector street with reduced lanes (four to two); and the Bicycle Master Plan provided for the addition of buffered bicycle lanes to the roadway. Attached for your reference are relevant pages and maps of the General Plan and Bicycle Master Plan, and you can find more information about City Council's approved policies and changes for Rancho Arroyo Parkway on the following links:

- Fremont General Plan, Planned Roadway System, Diagram 3-4 (shows Rancho Arroyo Parkway having 1 lane in each direction), <https://www.fremont.gov/398/General-Plan>
- Fremont Bicycle Master Plan, Figure 4-2b (shows plan for buffered bike lanes on Rancho Arroyo Parkway), <https://fremont.gov/3151/Bicycle-Master-Plan>



The City's plenary power to implement street design features and regulate parking is codified in California Vehicle Code Section 21100(d) (authority to install traffic control devices on city streets) and Vehicle Code Section 22507 (authority to regulate parking). In accordance with these statutory authorities, the Fremont City Council delegated to the City Manager and staff the authority to maintain roadways, regulate parking, and approve traffic control devices, such as street lanes, markings, signs, signals. See, FMC 10.05.190, 10.05200 and 10.05.630(a)(3).

The City Manager and staff exercised their authority to reinstitute street parking in the area in accordance with law, and these actions did not require amending the zoning ordinances that were approved in the 1970s because these ordinances did not prohibit parking in the area in perpetuity. Rather, Ordinances Nos. 847 and 1114 rezoned the Niles Nursery Area into a Planned District for the area located on the easterly side of Rock Avenue, northerly and southerly of Niles Boulevard and easterly and westerly of Rancho Arroyo Parkway. In April 1971, a development plan was approved for the California Nursery Property (P-71-3), with no restrictions on street parking or sidewalks; and in October 1971, a PUD-71-7 was approved for a portion of the same site located generally between Rancho Arroyo Parkway and Rock Avenue, with a condition that the developer install no parking signs on both sides of the roadway outside the proposed apartments prior to occupancy. This condition was based on staff's determination at the time that there was sufficient off-street parking in the area, and the condition was satisfied by the developer during the project-approval process. Fifty years later, the conditions have changed and staff have determined that street parking is now needed to respond to community needs.

The 1970s development condition was fulfilled by the developer and does not operate as a covenant or a binding obligation to the City regarding the long-term operations and improvements to the City's public street system. Nor would a development condition serve to impede or trump the City's obligations to comply with legal mandates and implement City Council policies and objectives for the roadway system. The City must continue its obligations to redesign streets to contemporary standards and make them safe for all users, including bicyclists and pedestrians. The City must also comply with Title II of the Americans with Disabilities Act, which requires the City to construct a sidewalk in order to make the area accessible to wheelchair-bound individuals (28 C.F.R. Sections 35.102(a) and 35.151).

The City's actions are supported by the facts and are consistent with the general use for local streets to accommodate parking for all residents and their visitors. For over a decade, there have been various requests to add on-street parking on Rancho Arroyo Parkway to address parking demands in the neighborhood. Staff received requests from residents in the Rock Avenue neighborhood for Residential Permit Parking and parking restrictions to address parked vehicles that blocked residential driveways or parked at intersection corners or on narrow sections of the roadway that caused unsafe conditions for other roadway users. Any such interim solution would only have further removed parking capacity in the general area. Ultimately, adding on-street parking on Rancho Arroyo Parkway has helped to address

Mr. Don Mooney
May 20, 2020
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parking demands, alleviate parking issues for adjacent neighborhoods, and ultimately allow utilization of the unused portion of the roadway for the benefit of the community and the public. Thus the City's allowance addressed the roadway operational issues that developed over time with the lack of on-street parking and the impact it had in the neighborhood.

The allowance of parking in the area is also supported by the community and the City Council. The City held several community meetings and created a project webpage in 2019 to provide information to residents and solicit their input about the street design improvements. An on-line survey also was conducted to gather community input. Overall, the community showed support for the street redesign and adding street parking in the area. On March 19 and December 3 of 2019, the City Council heard from City staff and residents about the street design and plans for Rancho Arroyo Parkway. The Council did not recommend any changes and supported staff's actions.

Thank you for your letter and do not hesitate to contact me if you have any questions.

Very truly yours,

HARVEY E. LEVINE
City Attorney



ROCIO V. FIERRO
Senior Deputy City Attorney

/RVF

cc: Mark Danaj, City Manager
Harvey Levine, City Attorney

Susan Gauthier

From: Cindy Sakihara
To: Hans Larsen, City Clerk, City Council
Date: 05/31/2020 2:33 PM
Subject: Accurate parking survey and assessment of need regarding street re-zoning of Rancho Arroyo Parkway

Dear Mr. Larsen,

Since you have indicated you continue to plan to leave the added street parking to Rancho Arroyo Parkway and are planning to further permanently narrow the entrance to the road with concrete bulb outs, add a sidewalk, keep the bike lane in between parked cars and moving traffic, and permanently eliminate the loading zone that was in place to the 394 unit apartment complex, I am asking you to respond by verifying the following:

- 1) prove this re-zoning does not violate prior laws and agreements.
- 2) street parking is actually needed - it was found all parked cars on Rancho Arroyo Parkway throughout the pandemic could fit into the apartment's own parking lot. Please do an official count yourself and provide numbers back to me. I will verify the accuracy.
- 3) provide written proof you've communicated with the apartment owner prior to the initial road re-modification and officially notified them there in fact was a signed, written agreement obligating them to provide enough parking for their unit. Additionally, prior to the apartment unit being built, it was agreed they manage and provide adequate parking for their tenants without having them use street parking. It is important we know you communicated they are responsible for the upkeep of their property, the street, and the median planters. It is not apparent to me you have worked to mitigate the problem in every possible way and what you ended up doing was the only and/or correct solution.
- 4) eliminating the loading/unloading zone for the 394 unit apartment complex (that was deemed necessary and present since 1980s) makes sense. If you've deemed it a necessity, I would like to know the reasoning. It's currently a problem.
- 5) narrowing the road with concrete bulb outs is a necessity - if the simple fix of lowering the speed limit has already slowed traffic as you've reported, adding expensive concrete bulb outs will only be a waste of precious city money and is not necessary.
- 6) you've conducted a survey whether cars have now been parking illegally and blocking views from the apartment exit. I have already let you know numerous times, it's a safety concern. Please provide what measures you are taking to correct this, for instance if you are planning to paint the curb red in those areas as the signs you have up are completely ineffective.
- 7) fire rescue teams have adequate access to the neighborhood with road re-modifications you intend to keep/implement.

Please understand residents and I are concerned hundreds of thousands of dollars have been poured into the road modification on a street that was once safe and now has been plagued with safety issues. Reasonable justification of why the changes have been implemented is being asked of you. Non response and not providing adequate reasoning on your part has only led to more frustration and confusion as to why the City has not honored previous agreements (resolutions and ordinances) that were carefully negotiated for this street and had provided a safe and effective roadway for nearly 50 years. I have provided my reasoning with proof of why street parking is not necessary, a loading and unloading zone is needed, the street does not have to be narrowed, fire team access should be studied, and the bike lane should be next to the curb (for this point, reasons were mentioned in previous correspondence).

I am also waiting to hear back how the 2018 Cape and Slurry Fund was able to be used with a CEQA exemption since it was used for a MAJOR, (not a minor) alteration of existing facilities and used it for considerable expansion of its use beyond that presently existing.

In summary, this letter is specifically asking for justification on your part. The city has limits on funds and as cases such as this, money must be used judiciously with adequate reasoning for backing up action taken.

I know you have been working on road plans for this street, and in the end, I hope it's established Public Works and the City are open to working with residents on changes that are justified and make sense, and additionally are found to be the right fit for the given situation since lots of precious money and resource continues to be poured into this project.

Sincerely,
Cindy Sakihara

Susan Gauthier

From: Hans Larsen

Subject: Rancho Arroyo Parkway

Date: June 2, 2020 at 3:25:42 PM PDT

To: Cindy Sakihara

Hi Cindy -

This responds to your recent email message from May 31st (see below). I understand you prefer to keep Rancho Arroyo Parkway the way it was planned many decades ago; however, this does not align with current City policy direction and street design practices.

Rancho Arroyo Parkway was originally planned with the intention that the street function as a four-lane thoroughfare for cars, with no parking, and no accommodations for people who walk and bicycle. The changes being made to the street reflect current City policy that the street serve the local neighborhood, is limited to one lane in each direction, has parking to serve local uses (as is typical on neighborhood streets), and provides safe facilities for walking and bicycling. This justification for the project has been communicated in past community meetings, on the project webpage, and in reports to the City Council.

The legal basis for changes made to the street are documented in the attached letter from our City Attorney's Office dated May 20, 2020, which was prepared in response to questions by an attorney representing another resident in the Rancho Arroyo Parkway neighborhood.

Additional investments along Rancho Arroyo Parkway are being made that include building a missing sidewalk, narrowing the intersection at Niles/Rancho for improved pedestrian safety (and taking into account the reduction in lanes on Rancho Arroyo Parkway), and adding a flashing beacon to improve pedestrian safety at Niles/Rancho, a location where a pedestrian was struck and killed by a vehicle driver.

The Niles/Rancho intersection modifications will replace the plastics posts installed as a temporary measure. Also, the landscaped median island on Rancho Arroyo Parkway is planned to be extended to Niles Boulevard to enhance the aesthetics of the area as requested by community members.

As you are aware, the City's communications about the project are being made through the project website. I expect that later this month, updated information will be posted about the results of recent community preference surveys, the latest project design features, and an update on the project schedule. Additionally, I have provided responses (in red text) below to the various items raised in your recent message.

Thanks! Hans

Susan Gauthier

From: Ravneet Kaur
To: City Council
Date: 06/02/2020 12:52 PM
Subject: Confronting Police Brutality in Fremont

Good Afternoon Fremont City Council members,

As a constituent and resident of Fremont, I am deeply concerned by the on-going acts of police brutality and believe Fremont can do more to prevent this, including demilitarizing and defunding the police force.

Please find my letter both attached and copied below imploring you to advocate in reducing police violence as much as possible.

Best,

Ravneet Kaur
Masters of Public Policy Candidate, 2021

Fremont Council Members and Mayor Lily Mei

June 2, 2020

Re: Demilitarization of California Law Enforcement

Dear Fremont Council Members and Mayor Lily Mei,

In view of the death of Minnesota resident George Floyd and the deaths of countless Black Americans like him, I am writing to request your advocacy for legislation that would seek to demilitarize California law enforcement and Fremont Police Force. I reside in Fremont, CA and am your constituent. Your advocacy for this type of legislation would go a long way in earning my support as a voter, volunteer, and donor.

Mr. Floyd's death is yet another reminder that we must consistently ask more of ourselves as American citizens and as active participants in our system of governance. At a bare minimum, we must advocate for research-based policies that will protect lives and foster trust in government, including law enforcement agencies, as an agent for good in our communities. As such, we must continue reducing instances of homicide by law enforcement officers wherever we can.

California could curb homicide by law enforcement by further demilitarizing its police force. A 2017 study suggests that the receipt of military equipment increases multiple dimensions of law enforcement agency militarization (material, cultural, organizational, and operational) and that such increases lead to more violent behavior. The US Department of Defense 1033 program makes excess military equipment,

including weapons and vehicles, available to local law enforcement agencies. California alone has received the equivalent of at least \$163,952,367 in equipment through this program. The study suggests that curbing 1033 transfers would reduce fatalities from officer-involved shootings across all models.

In view of the research, I ask that your office advocate for legislation that would do the following:

- a. End the federal government's 1033 program providing military weaponry to local police departments; and**
- b. Establish local restrictions to prevent police departments from purchasing or using military weaponry.**

Please be a vocal advocate to ensure our institutions reduce police violence as much as practicable.

Sincerely,

Ravneet Kaur

Susan Gauthier

From: Steve Skala
To: City Council
Date: 06/02/2020 1:17 PM
Subject: Public Comment for Council mtg 6/2/20

Dear Madam Mayor and City Council

I have comments regarding Agenda item 5A Proposed City Budget. 6/2/2020 City Council Meeting

First, comment is that the report provided for item 5A is not only the City Budget, but also lists the department goals and priorities as well as department metrics for the entire city. In past years only about ½ a dozen people attend the budget review presentation. A document that lists the goals, priorities and metrics for all of Fremont I think would be better attended with increased discussion if there were an agenda item solely for reviewing goals, priorities, metrics and staffing levels. In fact, most organization set goals ahead of allocating budget so there is a clear distinction regarding the priorities of an organization and allocation of budget.

Second comment and request, for the budget. I request that you provide greater details for some items of Community Service budget. Specifically on page 115 provide detail on the, 'strategic maintenance funding the City Council took to allow development of Dusterberry and Palm Avenue Parks.' Other part of the budget shows that maintenance is provided by a one-time sale of park land. Considering that Community Service is about to develop a Parks Master Plan, it is important that there be full visibility to how the City will fund maintenance for any new facilities. How much budget is needed per year to fund maintenance for each of Dusterberry and Palm Ave. parks? How much was received from sale of surplus land and can that amount be used to fund maintenance for other park expansions? Also, I'll request to show the budget allocated for the individual items of parks, street medians and urban landscape instead of the three items lumped together again to provide better visibility to resources used for parks to aid in development of the Park Master Plan. I'll like to list how much budget is allocated for full time employee park maintenance staff, contracted maintenance service and maintenance expense such as irrigation water specifically for City Parks.

Sincerely,
Steve Skala
Resident of Fremont

Susan Gauthier

From: daryoush ashtari
To: City Council
Date: 06/02/2020 1:33 PM
Subject: Warm Spring , my new homemy conversation with the mayor

@lilymeimayo

Hi dear , i am so proud of you for doing so much for the city and keeping up the good spirit ,, and now covid 19 arrived and put us all in limbo as we know you are doing the best to get things in control and order, we all love you very much and we believe you are the right person for the city and its people, thanks for the efforts and hard work for the 82 million project you have been working on and all the best to you and your family.. my name is dario ash, and you may be familiar with my background and advocacy that i have for human rights and my community around the world, especially in Fremont and warm spring.

i am an ordinary guy living in Fremont , but if you look at my profile and background you will see that i travel all over the world in my youth and finally reached the united states when i was 21 and i am 65 now An american by all means...

i really want you to do me a favour and that is the new building

i was interested to have a one bedroom there since 5 years ago ,, in 2015 i was attacked in oakland at 9 pm in the evening as a group of youngsters wanted my car and my keeys to eneter the car and may be killing me and i do not know what their intention was , but as a result of that and assault on me i fought back to death because at that time i was homeless and my car was the only place i had , therefore i really fought back to save my car and the 20 bill which was the only bill of dollar i had to get to safety that night , but they broke my femur on my left leg and beaten to death before they had left, no media and nothing was curious enough to report this , then somebody called and the police came and the only thing i remember is the time i open my eyes by some body calling my name and here i was a doctor was trying to talk to me, i passed out again and after a few hours i came to life and opened eyes, i did not know where i was and what happened, the first thing i did after a couple of minuets of waking up for my phone as i retrieved the the time they were trying to get it out of my hand and , as a result of that by left thumb was broken and needed a cast... why i was looking for the which i could never find was because my Mom was at the airport looking for me from iran after 48 hours of flight she came to sfo and hours and hours looking for me.... i asked the nurse to give me a phone, and i call my ex wife asking and begging her to go and get my Mom... i will never ever forget this major dramatic scene i went through, it remains in your subconscious and will bother you for the rest of your life as psychologist demonstrated how it works in books, , and that this shock will remain in my brain as long as i live.... that is why i am on depression pills and anxiety pills for the rest of my life, do you think they work , i do not think so , but helps a little bit...after that i live in rooms due to my low income i could not afford an apartment , therefore; i always live in a room from one to another since 2015.. that is since the drama happened and i was so happy that finally i could find a place to live in a room and get out of the streets.

Eversince i have been trying hard before even the project of warm spring buildings started i was in the picture and i worked hard to get to this point and i really followed up and i got my application and everything else taken care of , but one thing remains a question, in your opinion do you believe after all that happened to me as you know only small part of it that i deserve a one bedroom there, as you may

know i am walking with a cane because of the pain that i have to live with for the rest of my life, therefore you are highly requested to make my wish come through, and that is the last stage of this process which is the lottery , they want to pick peoples name from lottery , i am in doubt if i am one those lucky ones; therefore i would like to ask you if possible knowing what happened to me to allow me to have it without going into this lottery thing..

if you really want to help me i really appreciate it

pleas call association of the building and remind them of my life story...i called .

Carmen and send notes to her and asked her for a 2 bedroom , but she said one bedroom was available i said it was okay.. the reason for 2 bedroom was my MOM.

anyways one bedroom is still very good and a miracle to me.

I really appreciate reading my story.

Thank you very much for your time with all respect

yours sincerely

daryoush ashtari

Mayor Mei and Council members,

On the next page is something I wrote prior to the tragic event that led to the death of George Floyd at the hands of individuals sworn to protect his rights and liberties. I believe the underlying argument of my below address to the Council is exactly what we are seeing played out across our nation. We are all seeing and feeling that our local, county, state and federal politicians are not acting in the best interest of the people by whom they have been elected and who they have promised to serve.

This section of the “Declaration of Independence” has never been more meaningful in my life than in the past three months:

*“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. **That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.** That, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.”*

I was physically appalled and angered at the mistreatment of George Floyd, a fellow human being and American. Mr. Floyd was not in a position of power or control over his situation. He was powerless, vulnerable and had relinquished control over his wellbeing to authority. But, his trust was abused and his life was lost. Those officers that broke that social contract must be held accountable and it appears will be. I am optimistic that justice for Mr. Floyd will occur swiftly and I take some solace in that belief.

However, I am less optimistic that our governmental officials will understand the undercurrent that has led to the violence and mayhem in many cities across our nation this past week. The unrest is not simply about a desire for justice for Mr. Floyd. Justice for his death is in motion. The continuing unrest is more about the breaking of the social contract between the governed and those who govern.

We are at a crossroad. Now, what will all of you do for those who have entrusted you to represent us and defend our rights to life, liberty and the pursuit of happiness?

I commend Mayor Mei for her statement regarding the City’s position on protests, “However, while supporting peaceful protest activities, the City will do everything in our power to stop other forces from altering a peaceful situation and rendering it dangerous by engaging in criminal activities such as vandalism and looting.”

I hope Mayor Mei means what she says and allows our police to protect the law abiding citizens of Fremont and their property. Our representatives and citizens should stand for peaceful protests and discourse, not violence, looting and anarchy.

Below is my address to the City Council specific to its Covid-19 response. All I ask is that each of you: (1) reviews our city’s actual data, as well as the science surrounding all social and business decrees; (2) actually represent us by discussing it; and, (3) vote on discontinuing or continuing the various restrictions currently imposed on its residents and businesses. These restrictive edicts should be based on facts, data and science and publically shared to inform the citizens. Currently, the City, County and State have provided no such accounting to support any of the Orders decreed on the citizens. I have provided some links to data and scientific information. I ask that you educate yourselves as I was forced to do.

My views on the City of Fremont's initial and continuing Covid-19 response are as follows.

Freedom, independence, choice, and liberty are cornerstones of our democracy, uniquely American. These things are not to be taken lightly, and are constantly being challenged from outside, and, more recently and maliciously, from within.

When citizens are deprived of their liberty, it usually involves a judge and a jury of their peers. There is a trial that allows opening statements, evidence, witnesses, cross-examinations, closing arguments, deliberations and verdicts. Taking away citizens' liberty, all at once or in bits and pieces, requires extreme consideration of relevant facts and evidence that establishes proof beyond a shadow of doubt. Depriving us of liberties should demand nothing less, something we can all agree on.

Yet, on March 17th, our liberties and our freedoms were restricted under the guise of a State of Emergency Order. There was no debate, no evaluation of the data or models, no deliberations by any elected body from the State Legislature to County Supervisors to our City Council. There was only a decree by Governor Newsom.

Governor Newsom used California Government Code section 8558 (b) which states the "State of emergency means the duly proclaimed existence of conditions of disaster or of **extreme peril** to the safety of persons" to invoke untethered executive power to subjugate the State's citizens for their own safety and good. This gave the Governor plenary, but temporary, executive powers. Under the rule, Newsom enacted the "Shelter in Place" Order where he said, and I quote, "Our goal **is simple**, we want to bend the curve, and disrupt the spread of the virus." I would now ask all of you, "Wasn't that simple goal met and exceeded many weeks ago?"

Additionally, mid-April, both the Fremont City Manager/Director of Emergency Services and Alameda H.O. announced Orders imposing face covering requirements without providing any research study support or compelling scientific justification. The main rationale provided was that "the Centers of Disease Control is now advising that individuals use simple cloth coverings in public..." and Alameda County also provided statistics that, when reviewed, translated to less than 1 in 1,000 tested positive and 1 in 50 thousand had died in a population of 1.7 million in Alameda at that time. Does either of those reasons support an "**eminent peril**" condition or provide compelling **scientific support**? Am I missing something? I don't know. These face covering orders were never discussed by the County Supervisors or City Council. It was never presented for debate by anyone. In actual fact, the CDC's own website only **recommends** face coverings (not strongly or absolutely), with no relevant studies on the efficacy of face coverings as a safe prophylactic in protecting anyone from getting or transmitting Covid-19 or influenza.

Since the March 17th Governor's Order, the Fremont City Council has had 7 council meetings. Yet, there has been no public discussion about any Order, be it from the State, County or even the City's Director of Emergency. There were no agenda items discussing the Orders, no scientific data or studies presented or evaluated, no input from the community, no deliberation, and no vote. How can you or we, citizens, make informed decisions about our risks if we are denied an accounting of the facts that warranted such draconian restrictions to our freedoms and liberties? If the facts prove eminent peril, the citizens will support restrictions. But, if the facts don't, then the restrictions need to be lifted in a quick and prudent way.

This is where I feel extremely let down by all of you. As our elected representatives, anytime there are restrictions of our liberties and freedoms being considered or levied, at a minimum, I would expect a very healthy and vigorous public debate and a Council vote. That is your responsibility. That is why you were elected. Unfortunately, that is not what you did.

You fell silent. You abdicated your responsibilities to the County, State, Federal Government and, even worse, to nonelected technocrats. Each of you is accountable for the impacts that this “shelter in place” has had on our city’s business and citizens. You do not get to shift responsibility for this lockdown and these capricious and arbitrary restrictions on our businesses and citizens to the County, the State or the Federal Government.

You are accountable. Please stop being passive observers and do your job. Look at the data. Look at the studies. Look at the science. Look to other Cities, States and Countries for their successes and failures. Do your homework. Stop relying on the Governor and the technocrats who are making uniform choices in a vacuum. They don’t know Fremont. You do. Discuss the data, the science and make the decision for Fremont based on our facts, not LA’s, not NY City’s .

I leave you with these three quotes:

- *“The cause of liberty becomes the mockery if the price to be paid is the wholesale destruction of those who are to enjoy liberty” Mohandas K. Gandhi, Non-Violence in Peace and War (1948)*
- *“Freedom of the mind requires not only, or not even especially, the absence of legal constraints but the presence of alternative thoughts.” Allan Bloom, “From Socrates’ Apology to Heidegger’s Riktoratsrede,” The Closing of the American Mind (1987)*
- *“They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.” Benjamin Franklin, An Historical Review of Pennsylvania (1759)*

Thank you,

D. Tapia

Fremont Resident of 57 years

Below are some questions that, if answered, may give you a better understanding of the actual threat of Covid-19 to the citizens of Fremont. Also, I have provided links to various articles and studies that may provide more insight into the science and data which may assist you in making better policy decisions for Fremont.

- What are Fremont’s current Covid-19 infections and mortalities?
 - How do our cases compare to other cities in California, in the US or outside the US?
 - How do our cases compare to States (e.g., South Dakota, Wyoming, etc.) and Countries (e.g., Sweden, South Korea, and New Delhi) that did not lockdown?
 - How do our stats compare to our normal and bad influenza (1957-58, 1968-69, 2009-10, and 2017-18) seasons?
 - What age groups are being hospitalized in Fremont? How does that does compare to our normal and bad influenza (1957-58, 1968-69, 2009-10, and 2017-18) seasons?

- What are the mortality rates by age groups? How does that compare to normal and bad influenza seasons (1957-58, 1968-69, 2009-10, and 2017-18) seasons?
- **Does the data support the “eminent peril” obligation to extend “state of emergency” condition?**
- **Does the data support all the arbitrary and capricious business lockdowns and restrictions?**
- **Does the data support closing schools and keeping them closed?**
- **Does the data support “sheltering in place” the healthy and the young?**
- **Does the data support focusing our efforts on protecting nursing homes, the elderly and individuals with certain health issues?**
- How many Fremont citizens tested positive? 1) How many before lockdown, 2) after lockdown, 3) before face covering, 4) after face covering?
 - How many were hospitalized during the above 4 periods?
 - How many deaths occurred during the above 4 periods?
 - **Based on the data, did the lockdowns or face coverings requirements demonstrate any significant usefulness or efficacy?**
- What is the current ICU capacity used and available for Fremont and Alameda?
 - Were there any impacts to our available ICU capacity during the height of the anticipated “surge” in Fremont?
 - Did Fremont or Alameda hospitals get over whelmed?
 - **Based on the data, is the capacity in Fremont and Alameda adequate to handle a spike if restrictions are removed?**
- Are face coverings effective prophylactics?
 - Are there any scientific studies to unequivocally conclude that face coverings provide any meaningful reduction to Covid-19 transmissions?
 - Is there any scientific support for mandatory face coverings to be worn in large spaces with good ventilation and airflow?
 - Is there any scientific support for mandatory face coverings to be worn outdoors while walking, riding bikes, driving, running, etc.? Has there been any confirmed Covid-19 transmissions of any significance while outdoors?
 - Do the cost of the societal anxiety and health issues caused by the use of face coverings outweigh the potential protection against transmissions by asymptomatic individuals?
 - How are the cities that do not mandate face coverings doing relative to Fremont Covid-19 infections?

Below are various links to studies and relevant articles or videos/podcast.

- For those of you who believe what the Health Officer's (H.O.) are asserting about face coverings, please be careful to distinguish between fear tactics and actual science. The below links are to a compilation of studies on the effectiveness of masks on preventing the spread of viral respiratory diseases, a recent article on homemade masks and the CDC on masks.
 - A report by Denis G. Rancourt, PhD Researcher, providing a review of science relevant to COVID-19 social policy for masks
https://www.researchgate.net/publication/340570735_Masks_Don't_Work_A_review_of_science_relevant_to_COVID-19_social_policy
 - Article: Testing the Efficacy of Homemade Masks: Would They Protect in an Influenza Pandemic? <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7108646/>
 - CDC states "the selective use of masks (e.g., in proximity to a known symptomatic person) may not effectively limit transmission in the community."
<https://www.cdc.gov/flu/professionals/infectioncontrol/maskguidance.htm>

- For those of you who believe what the Governor and H.O.'s are asserting about lockdowns, please inform yourself between fear tactics and actual science. The below links are to interviews, articles and studies evaluating the effectiveness of lockdowns saving lives. In fact, lockdowns may be extending the risk and increasing the cumulative deaths, as well as creating huge collateral damage that destroys lives and economies.
 - Recent report by Denis G. Rancourt, PhD, researcher, Ontario Civil Liberties Association
https://www.researchgate.net/publication/340738912_OCLA_Report_2020-1_Criticism_of_Government_Response_to_COVID-19_in_Canada
 - Recent article on impact on children by Covid-19 is minimal and keeping locked out of school is not justified by the data <https://thefederalist.com/2020/05/21/stop-fear-mongering-kids-are-safer-from-Covid-19-than-everyone-else/>
 - Discussion with Professor Michael Levitt of Structural Biology at the Stanford School of Medicine, and winner of the 2013 Nobel Prize for Chemistry for "the development of multiscale models for complex chemical systems." <https://youtu.be/bl-sZdfLcEk>
 - Scott W. Atlas, MD, is the David and Joan Traitel Senior Fellow at Stanford University's Hoover Institution and the former Chief of Neuroradiology at Stanford University Medical Center provide reasonable and rational means for re-opening society
<https://www.hsgac.senate.gov/imo/media/doc/Testimony-Atlas-2020-05-06.pdf>
<https://thehill.com/opinion/healthcare/494034-the-data-are-in-stop-the-panic-and-end-the-total-isolation>
 - Recent Article with facts about the risk to children
<https://thehill.com/opinion/healthcare/494034-the-data-are-in-stop-the-panic-and-end-the-total-isolation>
 - Article by Andrew Glen, Ph. D. and James D. Agresti discussing how the collateral damage of the lockdown will destroy more years of life than Covid-19
https://www.justfacts.com/news_Covid-19_anxiety_lockdowns_life_destroyed_saved
 - Listen to Why Do We Still Rely On Experts Who Always Fail Us? | Matt Kibbe Interview from The Rubin Report on Apple Podcasts. <https://podcasts.apple.com/us/podcast/the-rubin-report/id1052842770?i=1000475950323>
 - Article on need for global lockdowns
https://www.realclearpolitics.com/articles/2020/05/21/how_fear_groupthink_drove_unnecessary_global_lockdowns_143253.html

Susan Gauthier

From: William Yragui

Date: June 2, 2020 at 4:00PM

To: City Council

Subject: Item 4B on today's agenda

On 7/29/13 at 11:20am, I received a call from Kimberly Peterson of the Fremont Police Department (Badge #2797/510-790-6869). We had a short conversation about the need for expanded parking at the Stanford Avenue staging area. At that time, she stated that EBRPD controls the Stanford parking lot and the city of Fremont has a policy to not use Permit or designated Parking as it is too costly to manage. She said it requires too much overhead from both an officer and administration perspective. In 2015, parking restrictions were identified as a means to reduce congestion but only if EBRPD funded the administrative and policing costs. In 2016, a city spokesperson, stated that the goal was not to hand out a lot of parking tickets. She said, "we don't want to be heavy handed with citing people. The goal is that people don't park in these areas, not that we cite." However, police [issued more than 4,300 tickets](#) and the city raked in more than a \$250K in fines.

The Mission San Jose neighborhood has the lowest crime rate of any area in the city of Fremont. Police readily acknowledge that the neighborhood "currently receives [a higher amount of police service than most other neighborhoods.](#)" Elsewhere in our city, catalytic converters are removed from cars, vehicles are stolen, and packages disappear from doorsteps. On Nextdoor, few of these crimes are reported as resolved.

We recommend expansion of parking inside Mission Peak Regional Preserve to enhance public health; allow park visitors including families with young children to enjoy the benefits of outdoor activity; and alleviate parking congestion on city streets. Rather than "invest" in more policing that punishes park users, why not fund the development of a new parking lot inside the park? We ask the city to structure the lease with EBRPD so the city gains a new staging area for all Fremont citizens. They could then enjoy the park without the threat of a citation or verbal abuse from local residents. This is a true investment and would benefit, all of our community. wm

wm. yragui

co-founder

Mission Peak Conservancy

Susan Gauthier

From: Teresa Cox

Date: June 2, 2020 at 4:00PM

To: City Council

Subject: June 2, 2020 - Item #4 - Public Comments

Dear Mayor Lily Mei, Vice-Mayor - Rick Jones, and City Councilmembers Salwan, Bacon, Kassan, and Keng,

Last week we bore witness to the horrific video of George Floyd, a 46-year-old black male being restrained forcibly by a police officer who held him pinned to the ground with a knee on his neck resulting in death. Each of us will relate to this killing based on our own history and experiences, but it resonates at all levels.

Floyd's death has broken my heart as I'm sure it has yours. Our nation mourns the death of yet another black person as a result of racism, prejudice, injustice, and brutality. And while it's difficult to find words to express how deeply saddened I am, I know that I cannot fathom the depth of pain and the challenges felt just by being an African American in this country.

Racism is a tough subject to have hard conversations with everyone. Let's start it here in Fremont.

As a first step to re-build better community relations with African Americans, people of color and our diverse communities of Fremont, let's join together as we unite in community prayer vigil on Friday, June 5 from 6pm - 7pm via Zoom. Speakers will be Rabbi Avi Schulman, Temple Beth Torah, Pastor Tim Inman, Harbor Light, Pastor Morris Henriquez, Bay Area Baptist Church and Fremont Police Chaplain, Angela Tirado, Voice of the Bay Area, Teresa Cox, Vigil Organizer & Fremont Resident, and Neighborhood Block Captain, and also Fremont Police Chief Kimberly Peterson (tentative). See attached flyer.

Next steps are to create a City of Fremont Commission for Equal Justice and bring community leaders, Fremont Police, and Fremont Fire, along with City of Fremont residents and City staff, and electeds to find solutions on how to bring change and be a city of equality and social justices.

Another step is to celebrate the contributions and achievements of African Americans to value this diverse group that has helped shaped our City of Fremont on the first city council meeting in February.

Another step is to elect the first African American to City of Fremont City Council in 65 years.

Respectfully submitted,

Teresa Cox

Fremont Resident.

Virtual Community United in Prayer Service Organizer

Mother of 2 African American teenagers
PAC member for 8 years, now complete.