

December 18, 2018

VIA EMAIL AND FIRST CLASS MAIL

Mayor Scharf and Councilmembers Sinks, Paul, Willey and Chao
City of Cupertino
Cupertino City Hall, 10300 Torre Avenue
Cupertino, California 95014

Re: Referendum Against City of Cupertino Resolution No. 18-085; Referendum Against City of Cupertino Resolution No. 18-086; Referendum Against City of Cupertino Ordinance No. 18-2178; and Referendum Against City of Cupertino Ordinance No. 18-2179

Dear Mayor Scharf and Councilmembers:

We are writing on behalf of Vallco Property Owner, LLC regarding the above referenced referenda. We understand that the City Attorney's office is in the process of evaluating the legal defects with respect to the referendum petition against the General Plan Amendment (Resolution No. 18-085), as raised in our letter dated December 6, 2018, and will advise the City Clerk and City Council regarding the results of that evaluation prior to the Council's next regularly scheduled meeting in January 2019. This letter raises two additional key points.

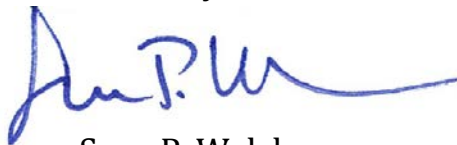
First, as you may already be aware, the legal defects in the referenda petitions are not limited to the referendum petition against the General Plan Amendment. For example, the referendum petition against City of Cupertino Ordinance No. 18-2178 (Rezoning the Parcels within the Vallco Special Area) not only fails to include the full-text of the ordinance in violation of Elections Code section 9238, but—similar to the petition against the General Plan Amendment—it contains wildly inaccurate exhibits that were necessary for signers to be able to intelligently decide whether or not to sign the petition. Namely, the "recreation" of the Zoning Map provided by proponents to voters in the petition fails to match and is, in fact, substantially and meaningfully different than the true and correct copy of the actual Zoning Map. (See letter dated December 6, 2018, regarding City Clerk's legal duty to reject facially defective petitions.)

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Second, as noted in the Staff Report in connection with this matter for the City Council meeting scheduled for December 18, 2018, a *duly qualified* referendum petition must be presented to the city council at the council's next regular meeting, at which time the council must either rescind the referred approval or submit it to the voters at either the next regular municipal election or at a special election called for that purpose. (See Elec. Code § 9241.) Because there are serious legal defects in the referenda petitions requiring the City to reject them, we agree that rescission or placement on the ballot at the City Council meeting on December 18, 2018 would be improper. Moreover, per the Staff Report, we understand that the City will decisively address this matter at or before the City Council's first meeting in 2019, which is scheduled for January 2. Please note, however, that in the event the City Council attempts to delay the timely processing of the referenda for their final, legal resolution, we will take appropriate legal action.

Thank you for your prompt attention to this letter. Please note that we reserve all rights in connection with this matter. I can be reached at (415) 389-6800. If I am not available to speak with you, please speak to Hilary Gibson, who is working with me on this matter.

Sincerely,



Sean P. Welch

SPW/pas

cc: Rocio Fierro, City Attorney
Perl Perlmutter, Special Counsel
Grace Schmidt, City Clerk