



CITY ATTORNEY'S OFFICE

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To: Honorable Mayor Scharf and Members of the City Council
From: Heather Minner, City Attorney
Date: February 13, 2019
Re: Vallco Town Center Specific Plan Project Referendum Petitions

SUMMARY

This memorandum addresses alleged legal deficiencies in two of the four referendum petitions submitted to the City protesting the City Council's approvals for the Vallco Town Center Specific Plan Project ("Project"). At the December 18, 2018, City Council meeting, the City Clerk certified that all four referendum petitions contained sufficient valid signatures to qualify for placement on the ballot or repeal by the City Council pursuant to Elections Code Section 9241. As detailed below, in consultation with the City Attorney's office, the City Clerk has since concluded that one of the challenged referendum petitions (which protests the ordinance rezoning the Vallco property) is procedurally defective and must be rejected because it does not comply with the Elections Code's requirement to include the full text of the challenged ordinance. The City Clerk accordingly informed the referendum proponents on February 13, 2019, that she has rejected that referendum petition.

The City Clerk believes that the other challenged referendum petition (which protests the General Plan Amendment for the Project) "substantially complies" with the "full text" requirement and all other Elections Code requirements. However, under the applicable case law, it is not clear whether the City Clerk (as opposed to a court) has discretion to make such a substantial compliance determination on her own. Accordingly, the City Attorney has recommended that the City Clerk file an action for declaratory relief in Santa Clara County Superior Court to establish whether this referendum petition substantially complies with the full text requirement. At the February 19, 2019, City Council meeting, the City Attorney and the City Clerk will request that the City Council authorize the City Attorney to file such litigation on behalf of the City Clerk.

Once the Court determines whether the referendum challenging the General Plan Amendment substantially complies with the Elections Code, staff will bring the two unchallenged referendum petitions (which protest approval of the development agreement and specific plan for the Project) back to the Council for a determination whether to place them on the ballot or repeal them pursuant to Elections Code section 9241. If the Court determines that the General Plan Amendment referendum substantially complies with the Elections Code, then the City Council would have these same two options with respect to the referendum on the General Plan amendment.

The purpose of this memorandum is primarily to inform the City Council and the public of the City Attorney's recommendations to the City Clerk regarding the two challenged referendum petitions. The only City Council action this memorandum recommends is to authorize the filing of litigation to determine the validity of the referendum petition against the General Plan Amendment.

BACKGROUND

In September and October 2018, the City Council adopted three resolutions and enacted three ordinances in connection with its approval of the Vallco Town Center Specific Plan Project. Opponents of the Project filed a total of four referendum petitions challenging two of the resolutions (No. 18-085, amending the City's General Plan, and No. 18-086, adopting the Vallco Town Center Specific Plan) and two of the ordinances (No. 18-2178, adopting zoning designations and amending the City's Zoning Map, and No. 18-2179, adopting a development agreement). The City Clerk accepted the petitions for signature verification. On December 18, 2018, the City Council received the City Clerk's certification that each referendum petition contained sufficient valid signatures.

In the meantime, the City received two letters from attorneys representing Vallco Property Owner, LLC, the developer and applicant for the Project. The first letter, dated December 6, 2018, claimed that the referendum petition against Resolution No. 18-085 (the General Plan Amendment) failed to include the full "text" of that Resolution as required by the Elections Code. The second letter, dated December 18, 2018, claimed that the referendum petition against Ordinance No. 18-2178 (the Zoning Amendment) similarly failed to include the full "text" of the Ordinance. The two letters are attached to this report as Attachments A and B.

DISCUSSION

The City Attorney's office and outside counsel have carefully reviewed the arguments contained in both letters and discussed these issues with the attorneys for both Vallco and the referendum proponents. *On the basis of that review, the City Attorney's office has recommended that the City Clerk proceed as follows:* (1) seek a ruling from the Santa Clara County Superior Court regarding whether the Referendum Against Resolution No. 18-085 (General Plan Amendment) substantially complies with the Elections Code; (2) reject the Referendum Against Ordinance No. 18-2178 (Zoning Designations and Zoning Map) for failure to actually or substantially comply with the Elections Code; and (3) after the Court determines whether the referendum on the General Plan Amendment substantially complies with the Elections Code, return to the City Council with options on the remaining referendum petitions. These recommendations are discussed in detail below.

1. Seek a ruling from the Santa Clara County Superior Court regarding whether the Referendum Against Resolution No. 18-085 (General Plan Amendment) substantially complies with the Elections Code.

Resolution No. 18-085 amended the City's General Plan to accommodate the development anticipated in the Vallco Town Center Specific Plan. Those amendments included changes to General Plan Table LU-1, which establishes specific allocations for commercial, office, hotel, and residential development throughout the City, including in the Vallco Town Center area. As shown in an exhibit to Resolution No. 18-085 adopted by the City Council, Table LU-1 depicts the new development allocations in underlined red text, and the previous development allocations in blue text with red "strikethrough" lines indicating those allocations have been eliminated. A copy of Resolution No. 18-085 and exhibits, as presented to and voted upon by the City Council on September 18 and 19, 2018, is attached to this memorandum as Attachment C.

Vallco's December 6 letter claimed that the referendum petition challenging Resolution No. 18-085 failed to include the full text of the resolution. Specifically, Vallco claimed the version of Table LU-1 attached to the referendum petition omitted the "strikethrough" lines identifying the prior development allocations eliminated by the General Plan Amendment. Vallco argued that this discrepancy deprived potential petition signers of critical information about the effect of the General Plan Amendment and the referendum.

The City Clerk, in conjunction with the City Attorney’s office, determined that the version of Table LU-1 attached to the referendum petition omitted some of the “strikethrough” lines shown in the version adopted by the City Council. Staff further determined, however, that the “strikethrough” lines also were missing from the certified, printed version of Resolution No. 18-085 that the City Clerk maintained in her files and provided to the referendum proponents. A copy of Table LU-1, as it appears in the certified version of the Resolution provided to referendum proponents, is attached to this report as Attachment D.

This certified version—although incorrect—was the version provided to the referendum proponents prior to the circulation of petitions. In response to the Vallco letter, and with the assistance of the City’s IT department and vendors, staff subsequently determined that the “strikethrough” lines were inadvertently eliminated during printing of the certified resolution due to a software setting affecting the printing of PDF documents.¹

The City Clerk and City Attorney further determined that the version of Table LU-1 attached to the referendum petition also differed from the certified version provided to referendum proponents. For example, the words “With Vallco Town Center Tier 1” and “With Vallco Town Center Tier 2” were replaced with “With VTC Tier 1” and “With VTC Tier 2.” Moreover, some—but not all—of the “strikethrough” lines inadvertently omitted from the certified version of the resolution appear to have been restored in the version of Table LU-1 attached to the referendum petition. A copy of Table LU-1, as it appears in the referendum petition, is attached to this report as Attachment E.

A referendum petition must include the “text” of the challenged resolution or ordinance. *See* Elec. Code § 9238(b)(2). Court decisions have made clear that the relevant “text” includes not only the text of the resolution or ordinance itself, but also any other documents attached to, or expressly incorporated by reference into, the resolution or ordinance. *See Lin v. City of Pleasanton* (2009) 176 Cal.App.4th 408, 419-20. The purposes of the “text” requirement include reducing confusion, informing prospective petition signers regarding the effect of the challenged resolution or ordinance, and providing voters with the

¹ The version of Resolution No. 18-085 available on the City’s website continues to contain the same software “glitch” that either shows—or does not show—the strikethrough depending on how the document is printed. Pending completion of our investigation into this matter, we recommended that the City staff make no changes to this document. Pending further clarification from the Court, we likewise recommend that City staff make no changes to this document as it appears on the City’s website.

information they need to exercise their right of referendum intelligently. *Billig v. Voges* (1990) 223 Cal.App.3d 962, 966.

The California Supreme Court has held that “substantial” compliance with Elections Code requirements—as opposed to strict “technical” or “actual” compliance—is sufficient to allow a referendum to proceed to the ballot, so long as technical deficiencies do not deprive potential signers of critical information, mislead the public, or otherwise affect the integrity of the electoral process “as a realistic and practical matter.” *Costa v. Superior Court* (2006) 37 Cal.4th 986, 1012-13. This is particularly the case where the deficiency was inadvertent rather than intentional. *See id.* at 1029; *see also MHC Financing Ltd. Partnership Two v. City of Santee* (2005) 125 Cal.App.4th 1372, 1389-91 (ballot title and summary inadvertently prepared for wrong version of initiative sufficiently reflected initiative’s substance and did not invalidate city’s adoption of initiative ordinance). Other courts have suggested that referendum proponents may rely on the ordinances, resolutions, and exhibits provided by a city in preparing their petitions, and need not conduct their own investigations into what exactly the city might have intended to adopt. *See Lin*, 176 Cal.App.4th at 419.

Here, the City Attorney believes—and the City Clerk agrees—that the version of Table LU-1 attached to the referendum petition substantially complies with the Elections Code’s “text” requirement notwithstanding the omission of some of the “strikethrough” lines shown in the exhibit to Resolution No. 18-085 adopted by the City Council. The “strikethrough” was omitted due to an entirely inadvertent technical error by City staff. City staff then provided referendum proponents with a copy of Resolution No. 18-085 that contained this inadvertent error.

Under the applicable case law, it is our view that referendum proponents are entitled to rely upon the documents provided to them by City officials in preparing referendum petitions. Moreover, even without the “strikethrough,” it is reasonably clear from the context in which Table LU-1 appears in the referendum petition that the underlined, red text is new text added by the challenged resolution, and that the figures shown in blue in the table were replaced by the new text. Finally, the other changes in the referendum petition table made by the referendum proponents, although apparently intentional, do not materially affect the meaning of the table, and if anything appear to have been intended to improve the readability of the table compared to the version provided by the City.

These conclusions are not free from doubt. One Court of Appeal decision invalidated a referendum petition that omitted three words from the title of the challenged ordinance, finding the omission created ambiguity as to the ordinance's effect. *Hebard v. Bybee* (1998) 65 Cal.App.4th 1331, 1340-41. That case, however, did not involve a referendum proponent's reliance on a city's inadvertent error in attachments to the challenged ordinance. The case also was decided prior to *Costa* and must be read in light of the Supreme Court's subsequent determination that an "inadvertent good-faith human error" will not invalidate a petition unless, "as a realistic and practical matter," the error undermines the integrity of the electoral process or frustrates the underlying purpose of the statutory requirements. *Costa*, 37 Cal.4th at 1027-28. On balance—and considering that courts generally will uphold the exercise of the referendum power wherever reasonably possible—the City Attorney agrees with the City Clerk that the referendum petition against Resolution No. 18-085 substantially complies with the Elections Code.

That said, it is unclear under the applicable court precedents whether the City Clerk has the authority to determine on her own that the petition is substantially compliant. A city clerk's evaluation of a referendum petition is generally limited to comparing the petition itself with relevant statutory requirements, a ministerial exercise that does not allow for substantial discretion or subjective judgment. *See Lin*, 176 Cal.App.4th at 420-21; *Alliance for a Better Downtown Millbrae v. Wade* (2003) 108 Cal.App.4th 123, 133-34.

Accordingly, our office has advised the City Clerk that the most appropriate course of action under these circumstances is for the City Clerk to file an action for declaratory relief—essentially, a request that the Superior Court determine whether the referendum petition substantially complies with the Elections Code. Such an action is particularly appropriate here, where there is some legal uncertainty, and where any decision by the City Clerk—either to accept or reject the petition—would almost certainly result in litigation by either Vallco or the referendum proponents. Accordingly, the City Attorney recommends that the Council authorize the initiation of litigation on behalf of the City Clerk.

2. _____ Reject the Referendum Against Ordinance No. 18-2178 (Zoning Designations and Zoning Map) for failure to actually or substantially comply with the Elections Code.

Ordinance No. 18-2178 amended the zoning designations applicable to parcels within the Vallco Town Center Specific Plan and made corresponding changes to the City's official Zoning Map. A copy of Ordinance No. 18-2178, as adopted by

the City Council and provided to the referendum proponents by the City Clerk, is attached to this report as Attachment F.

Vallco's December 18 letter claimed that the referendum petition against Ordinance No. 18-2178 "fail[ed] to include the full-text" of the ordinance and contained "wildly inaccurate exhibits." Specifically, Vallco asserted that the version of the Zoning Map attached to the petition was "substantially and meaningfully different" from the Zoning Map attached to Ordinance No. 18-2178. A copy of the Zoning Map attached to the referendum petition is attached as Attachment G.

The City Clerk, in consultation with the City Attorney's office, determined that the version of the Zoning Map attached to the referendum petition differs in numerous respects from the Zoning Map attached to Ordinance No. 18-2178. The deviations from the Zoning Map adopted by the City Council are substantial and material enough to create confusion and undermine potential signers' understanding of the effect of the ordinance. *See Hebard*, 65 Cal.App.4th at 1340-41 (incorrect ordinance title in petition created ambiguity and multiple interpretations of how ordinance might affect particular parcels); *Chase v. Brooks* (1986) 187 Cal.App.3d 657, 664 (petition omitting exhibit describing property affected by ordinance failed to inform prospective signers of effect or breadth of ordinance).

Moreover, the deviations in the version of the Zoning Map attached to the referendum petition are entirely due to actions taken by the referendum proponents. Unlike with the General Plan Amendment, there were no inadvertent good faith errors by City staff in providing the proponents a version of the document that differed from what was actually adopted by the City Council.

Accordingly, and on the advice of the City Attorney, the City Clerk has determined that the referendum challenging Ordinance No. 18-2178 does not actually or substantially comply with the Elections Code. Under the applicable case law, the City Clerk thus has a legal duty to reject the petition against Ordinance No. 18-2178 as procedurally defective. A copy of the City Clerk's February 13, 2019, Receipt Rejecting [this] Referendum Petition is attached as Attachment H. Pursuant to the Elections Code, there is no further action for the City Clerk, or the City Council, to take in connection with this referendum petition.

3. Return to the City Council with options on the remaining referendum petitions after the Court determines whether the referendum on the General Plan Amendment substantially complies with the Elections Code.

As noted above, the City Clerk on December 18, 2018, certified that all four referendum petitions had sufficient valid signature to qualify for placement on the ballot or repeal by the City Council pursuant to Elections Code section 9241. Neither Vallco nor anyone else has identified any defects in the remaining two referendum petitions, which protest the City Council's adoption of Resolution No. 18-086 (approving the Vallco Town Center Specific Plan) and Ordinance No. 18-2179 (approving the Vallco development agreement). Accordingly, the City Council must ultimately determine what actions to take with respect to these two referendum petitions (i.e., whether to (1) repeal one or both of the challenged enactments entirely; (2) place one or both of them on the ballot for the "next regular municipal election occurring not less than 88 days after the order of the election"; or (3) place one or both of them on the ballot for a special election occurring not less than 88 days after the order).

The Elections Code does not specify any particular deadline for the City Council to take one of these specified actions, and the "next regular" municipal election on which the referendums could potentially appear is not until November 3, 2020. Although there is no published case law directly on point, it is possible that a court might conclude that the City Council must take one of the authorized actions within a reasonable period of time.

Under the circumstances, and because the City Council's decision with respect to these two referendums may depend upon the outcome of the declaratory relief action that we recommend the City Clerk file regarding the General Plan Amendment, we recommend that the City Council not make any decision on whether to repeal or place these two referendums on the ballot until after the Court has issued a decision in that case. Accordingly, we have recommended that City staff return to the City Council for possible action on the two unchallenged referendum petitions once the court has issued a decision regarding whether the General Plan Amendment referendum petition substantially complies with the Elections Code. If the court determines that the General Plan Amendment referendum petition does substantially comply with the Elections Code, the City Council would consider possible action on that referendum petition as well at the same time.

Attachments:

A – Dec. 6, 2018, letter from Sean Welch regarding alleged defects in referendum petition against Resolution No. 18-085

B – Dec. 18, 2018, letter from Sean Welch regarding alleged defects in referendum petition against Ordinance No. 18-2178

C – Resolution No. 18-085 and all exhibits, *as presented to and voted upon by the City Council on September 18 and 19, 2018*

D – Table LU-1, as it appears in the certified version of Resolution No. 18-085 *provided to referendum proponents*

E – Modified Table LU-1, *as it appears in the referendum petition*

F – Ordinance No. 18-2178 (including the Zoning Map and other all exhibits), *as adopted by the City Council and as provided to referendum proponents*

G – Modified Zoning Map, *as it appears in the referendum petition*

H – City Clerk's February 13, 2019, Receipt Rejecting Referendum Petition

1081250.4

December 6, 2018

VIA EMAIL AND FIRST CLASS MAIL

Grace Schmidt, City Clerk
City of Cupertino
Cupertino City Hall, 10300 Torre Avenue
Cupertino, California 95014

Re: Referendum of City of Cupertino Resolution No. 18-085

Dear Ms. Schmidt:

We are writing on behalf of Vallco Property Owner, LLC regarding the referendum (the "Referendum") of City of Cupertino Resolution No. 18-085, titled "A Resolution of the City Council of the City of Cupertino Approving a General Plan Amendment to Development Allocations, the General Plan Land Use Map and Development Standards Related to the Vallco Town Center Special Area" (the "General Plan Amendment"). On October 30, 2018, we submitted a Public Records Act request for a blank copy of the Referendum petition. We received your response to our request on November 9, 2018, and have reviewed the petition for compliance with the mandatory requirements of the California Elections Code.

In short, the Referendum petition fails to provide the full and accurate text of the resolution being referred, as required by the California Elections Code. This failure to comply with the Elections Code unlawfully deprived signers of the statutorily required information necessary to intelligently exercise their electoral rights. The Referendum petition is therefore facially defective and cannot be certified.

1. The Referendum Petition Failed to Include the Full Text of the Ordinance in Violation of Elections Code section 9238.

The Referendum petition plainly fails to comply with section 9238 of the California Elections Code, which mandates that the "full text" of a municipal referendum be included in a petition circulated for voter signatures. The General

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Plan Amendment indicates what changes are being made to the General Plan by showing additions in underline and deletions in ~~strikethrough~~. Page LU-13 of the General Plan Amendment contains a critically important table, titled “Table LU-1: Citywide Development Allocation Between 2014-2040.” In Table LU-1, the General Plan Amendment makes *significant* alterations to the development allocations for Vallco, reducing the square footage allocated to office by up to 1,250,000 square feet, and increasing the number of units allocated to residential development by as much as 2,543 units (or more than 7.5 times the number of residential units previously allocated). These changes are shown by striking out the current development allocations, and replacing them with new allocations in underlined text. Significantly, these key changes to the development allocations are not shown or otherwise discussed elsewhere in the GPA Resolution. In short, the amendments contained in Table LU-1 are arguably the most significant change to the City’s General Plan.

As shown in Exhibit A hereto, however, Referendum proponents failed to faithfully reproduce the General Plan Amendment as adopted by the City Council, and the Referendum petition circulated for voter signatures completely *omitted* the strikethroughs of the current allocations. As such, signers had absolutely no way to determine how the allowable uses for the Vallco property were changing. They were left completely in the dark.

A long line of California cases have struck down initiative and referendum petitions that failed to comply with the formatting provisions of the Elections Code, especially those such as section 9238, which is intended to provide information to petition signers. (See, e.g., *Mervyn’s v. Reyes* (1998) 69 Cal.App.4th 93, 104-05 [relying on an “unbroken line of initiative and referendum cases covering the period 1925 to 1998” to strike down a petition for failing to include the full text of the measure].) Moreover, where, as here, a referendum petition fails to comply with the statutory requirements, local elections officials have the *ministerial duty* to reject the petition and must refuse to take any action on it. (*Id.*; see also *Billig v. Voges* (1990) 223 Cal.App.3d 962, 968-69 [“a city clerk who refuses to accept a petition for noncompliance with the statute is only performing a *ministerial function* involving no exercise of discretion”].)

For example, in *Chase v. Brooks* (1986) 187 Cal.App.3d 657, proponents of a referendum petition against a rezoning ordinance included references to a city map number and reclassification of the property affected, but failed to attach a

related exhibit which contained the legal description of the property affected. The Court of Appeal held that proponents were required to faithfully reproduce the exhibit in their petition. Accordingly, having failed to comply with the “full text” requirement, the petition was illegal. (*Id.* at 663; see also *Mervyn’s, supra*, 69 Cal.App.4th at 97-98 [“The purpose of the full text requirement is to provide sufficient information so that registered voters can intelligently evaluate whether to sign the initiative petition and to avoid confusion”]; *Creighton v. Reviczky* (1985) 171 Cal.App.3d 1225, 1232 [invalidating petition because it “failed to provide the electors with the information [] they needed in order to exercise intelligently their rights under the referendum law”].)

Even far less egregious violations of the full text requirement have produced the same result. In *Hebard v. Bybee* (1998) 65 Cal.App.4th 1331, a referendum petition challenging an ordinance altering a land use designation in a city’s general plan merely misstated the title of the ordinance by inadvertently omitting three words. (*Id.* at 1338-40.) The Court of Appeal invalidated the referendum petition for failing to technically or substantially comply with the full text requirement. In misstating the correct title of the ordinance, the Court held, the petition failed to adequately inform voters which land was involved and thereby deprived them of vital, mandatory information. (*Id.* at 1340-41 [“[I]t is the responsibility of the petition proponents to present a petition that conforms to the requirements of the Elections Code”].)

Here, the ~~strikethroughs~~ and underlines on the Development Allocation table were the *only* way for potential signers to know that the General Plan was being amended to *significantly* reduce the amount of commercial office space planned for the Vallco area of the City, and replace it with at least 1,645 units of much needed housing. Yet the strikethroughs of the *current* allocations are completely absent, leaving signers with no way to determine which allocations are going away and which allocations are replacing them. To the contrary, the information provide provided to the voters was completely nonsensical.

These changes were not merely technical edits. Rather, they provide critical information about a central component of the General Plan Amendment. “Better Cupertino”—the group responsible for circulating the Referendum petition—has been vocal in its opposition to the transformation of Vallco into an alleged “office complex.” It is completely misleading for this group to oppose proposed development at Vallco because it includes “too much office,” and “worsens the

housing shortage,” and then fail to provide potential signers with information showing that the proposed Vallco Town Center development would actually *reduce* the amount of office currently allowed at Vallco by more than *half*. In fact, Referendum proponents falsely told potential signers that the project would still include 2 million square feet of office. (See Exhibit B.)

Furthermore, the housing crisis in the Bay Area is a topic of serious concern for many voters, and it is reasonable to assume that many would be reluctant to sign a Referendum petition if they knew that the resolution being referred provided for an additional 1,645 to 2,534 units of housing for Cupertino residents. By failing to show the changes being made to the residential housing allocations, this critical information was withheld from potential signers.

As clearly illustrated by the cases discussed above, failure to provide signers with the complete and accurate text of the resolution being referred fails to satisfy the clear legislative purpose of the full text requirement. This is a plain, direct, and facial violation of the Elections Code. The Referendum petition must be rejected.

2. City Clerks Have a Ministerial Duty to Reject an Initiative Petition that Fails to Comply With the Requirements of the Elections Code.

Pursuant to the Elections Code and well-established case law, where, as here, a referendum petition fails to comply with mandatory statutory requirements, local elections officials have the *ministerial duty* to reject the petition and must refuse to take any action on it. (See, e.g., *Billig v. Voges* (1990) 223 Cal.App.3d 962, 969 [clerks have a ministerial duty to reject a petition that facially violates the statutory requirements of the Elections Code].) California courts have not wavered on this point:

[C]lerks throughout the state are mandated by the constitution to implement and enforce the statute’s procedural requirements. *In the instant case, respondent had the clear and present ministerial duty to refuse to process appellants’ petition because it did not comply with the procedural requirements.*

(*Id.* [upholding clerk's rejection of petition for omitting a portion of the measure's full text (emphasis added)]; see also *Myers v. Patterson* (1987) 196 Cal.App.3d 130, 136 [rejecting argument that clerk could in any way waive proponents' statutory violation: "Defendant's duties as city registrar include the *ministerial* function of ascertaining whether the procedural requirement for submitting an initiative measure have been met" (internal quotations omitted)].)

When faced with petition errors and omissions, the clerk must not be put in a position where she must make a judgment call, resort to her own discretion, or rely on extrinsic evidence regarding the petition's alleged compliance with the law:

If, according to appellants, a petition must be accepted regardless of its compliance with the statute, then the statute is unenforceable. . . .

Therefore, a city clerk who refuses to accept a petition for noncompliance with the statute is only performing a ministerial function involving no exercise of discretion.

(*Billig, supra*, 223 Cal.App.3d at 968-69 [rejecting the flawed argument that a clerk can simply ignore petition errors (underscoring added)]; see also *Ley v. Dominguez* (1931) 212 Cal. 587, 602 [the "duties and powers of the city clerk in reference to his examination of referendum petitions ... is purely ministerial and not judicial" (underscoring added)].)¹

Based on the foregoing, it is without question that the Referendum is not entitled to be processed for the ballot or to otherwise be acted upon. (See, e.g., *Billig, supra*, 223 Cal.App.3d at 969.) Given that the City's duties in this respect are purely ministerial, the City has no authority to excuse proponents' failure to comply with the law. To the contrary, the City is obligated, *as a matter of law*, to

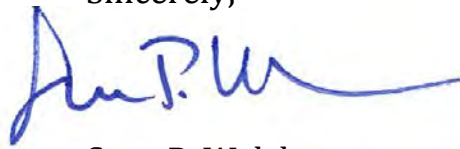
¹ See also *Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 501-02 ["A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exist. Discretion, on the other hand, is the power conferred on public functionaries to act officially according the dictates of their own judgment" (underscoring added)]. Thus, there is simply no room for discretion or judgment on the part of the clerk when reviewing the petition.

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reject this defective Referendum in order to avoid the waste of taxpayer funds and protect the integrity of the electoral process.

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,

A handwritten signature in blue ink, appearing to read "Sean P. Welch", with a long horizontal flourish extending to the right.

Sean P. Welch

SPW/pas

cc: Rocio Fierro, City Attorney
Mayor Darcy Paul and City Council

EXHIBIT A

Table LU-1 on page LU-13 in City of Cupertino Resolution No. 18-085:

Table LU-1: Citywide Development Allocation Between 2014-2040												
	commercial (s.f.)			office (s.f.)			hotel (rooms)			residential (units)		
	current built (Oct 7, 2014)	buildout	available	current built (Oct 7, 2014)	buildout	available	current built (Oct 7, 2014)	buildout	available	current built (Oct 7, 2014)	buildout	available
Heart of the City	1,351,730	214,5000	793,270	2,447,500	2,464,613	17,113	404	526	122	1,336	1,805	469
Valico* Tier 1	1,207,774	600,000	-	-	750,000	750,000	148	339	191	-	2,034	2,034
Town Shopping District** Tier 2	1,207,774	420,7774	-	-	2,000,000	2,000,000	148	339	191	-	389	389
Center District** Tier 2	1,207,774	485,000	-	-	1,500,000**	1,500,000**	148	339	191	-	2,923	2,923
Homestead	291,408	291,408	-	69,550	69,550	-	126	126	-	600	750	150
N. De Anza	56,708	56,708	-	2,081,021	2,081,021	-	123 126	123 126	-	49	146	97
N. Valico	133,147	133,147	-	3,069,676	3,069,676	-	315 123	315 123	-	554	1154	600
S. De Anza	352,283	352,283	-	130,708	130,708	-	315	315	-	6	6	-
Bubb	-	-	-	444,753	444,753	-	-	-	-	-	-	-
Monta Vista Village	94,051	99,698	5,647	443,140	456,735	13,595	-	-	-	828	878	90
Other	144,964	144,964	-	119,896	119,896	-	-	-	-	18,039	18,166	127
Major Employers	-	-	-	109,935	633,053	523,118	-	-	-	-	-	-
With Valico Town Ctr Tier 1	3,632,065	3,823,208	-	-	10,270,005	1,303,826	1,116	1,429	313	21,412	24,939	3,527
Citywide	3,632,065	4,430,982	798,917	8,916,179	11,470,005	2,553,826	1,116	1,429	313	21,412	23,294	1,882
With Valico Town Ctr Tier 2	3,632,065	3,708,208	-	-	10,970,005	2,053,826	1,116	1,429	313	-	25,828	4,416

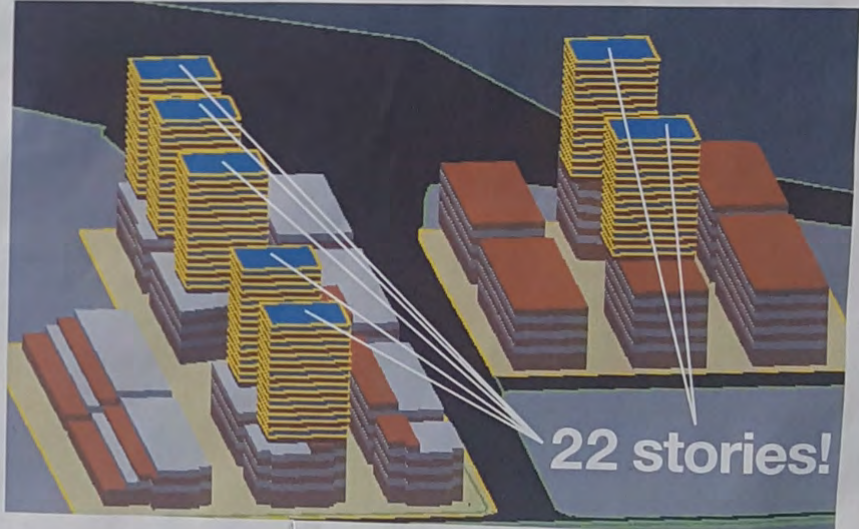
Table LU-1 in the Referendum Petition of City of Cupertino Resolution No. 18-085:

Table LU-1: Citywide Development Allocation Between 2014-2040												
	commercial (s.f.)			office (s.f.)			hotel (rooms)			residential (units)		
	current built (Oct 7, 2014)	buildout	available	current built (Oct 7, 2014)	buildout	available	current built (Oct 7, 2014)	buildout	available	current built (Oct 7, 2014)	buildout	available
Heart of the City	1,351,730	214,5000	793,270	2,447,500	2,464,613	17,113	404	526	122	1,336	1,805	469
Valico* Tier 1	1,207,774	600,000	-	-	750,000	750,000	148	339	191	-	2,034	2,034
Town**	1,207,774	120,7774	-	-	2,000,000	2,000,000	148	339	191	-	389	389
Center** Tier 2	1,207,774	485,000	-	-	1,500,000**	1,500,000**	148	339	191	-	2,923	2,923
Homestead	291,408	291,408	-	69,550	69,550	-	126	126	-	600	750	150
N. De Anza	56,708	56,708	-	2,081,021	2,081,021	-	123 126	123 126	-	49	146	97
N. Valico	133,147	133,147	-	3,069,676	3,069,676	-	315 123	315 123	-	554	1154	600
S. De Anza	352,283	352,283	-	130,708	130,708	-	315	315	-	6	6	-
Bubb	-	-	-	444,753	444,753	-	-	-	-	-	-	-
Monta Vista Village	94,051	99,698	5,647	443,140	456,735	13,595	-	-	-	828	878	90
Other	144,964	144,964	-	119,896	119,896	-	-	-	-	18,039	18,166	127
Major Employers	-	-	-	109,935	633,053	523,118	-	-	-	-	-	-
With VTC Tier 1	3,632,065	3,823,208	-	-	10,270,005	1,303,826	1,116	1,429	313	21,412	24,939	3,527
Citywide	3,632,065	4,430,982	798,917	8,916,179	11,470,005	2,553,826	1,116	1,429	313	21,412	23,294	1,882
With VTC Tier 2	3,632,065	3,708,208	-	-	10,970,005	2,053,826	1,116	1,429	313	-	25,828	4,416

EXHIBIT B

Minimum Public (on ground)	6.0
Open Space (Acres)	

The 2018 Vallco plan is *much worse* than what we voted down in 2016 as Measure D.



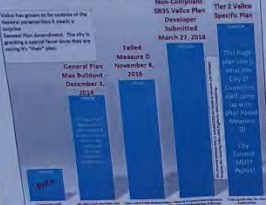
- Still hiding buildings up to 9 stories under green roof
- Adding 13 stories *above* the green roof!
- Went from 800 to 2,400 apartments
- Still with almost 2,000,000 sq. ft. of office
- Retail reduced *again* by 1/3
- We'll say it again: *seven 22-story buildings!!!*

BETTER CUPERTINO

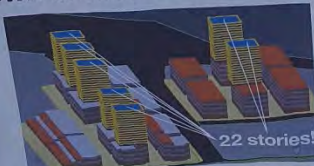
- *Informed, empowered residents who are engaged in civic matters*
- *Transparency and accountability in local and regional government*
- *Sensible growth aligned with the needs and interests of a majority of residents*

web: bettercupertino.org • newsletter: bettercupertino.org/contact • support: bettercupertino.org/donate

Total Square Feet At Vallco



The 2018 Vallco plan is *much worse* than what we voted down in 2016 as Measure D.



- Still hiding buildings up to 9 stories under green roof
- Adding 13 stories above the green roof!
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BETTER CUPERTINO

Informed, empowered residents who are engaged in their community. Transparency and accountability in local and regional government. Services that grow along with the needs and interests of a majority of residents.

Out-of-town
Paid
Disrupters

SERVING THE
DEVELOPER



Now it's *this*: *What's in a Name? No Green Roof*
2018 Cupertino: Team Carter
It has seven 22-story buildings (count 'em)



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.

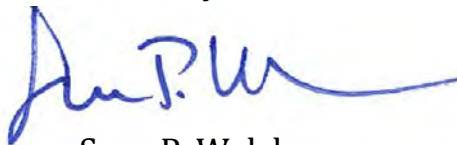
First, as you may already be aware, the legal defects in the referenda petitions are not limited to the referendum petition against the General Plan Amendment. For example, the referendum petition against City of Cupertino Ordinance No. 18-2178 (Rezoning the Parcels within the Vallco Special Area) not 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.)

Mayor and City Council
December 18, 2018
Page 2

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

DRAFT RESOLUTION NO. 18-085

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
APPROVING A GENERAL PLAN AMENDMENT TO DEVELOPMENT
ALLOCATIONS, THE GENERAL PLAN LAND USE MAP AND
DEVELOPMENT STANDARDS RELATED TO THE VALLCO TOWN CENTER
SPECIAL AREA

SECTION I: PROJECT DESCRIPTION

Application No: GPA-2018-02

Applicant: City of Cupertino

Location: 10101 to 10333 N Wolfe Rd

APN#s: 316-20-080, 316-20-081, 316-20-103, 316-20-107, 316-20-101, 316-20-105,
316-20-106, 316-20-104, 316-20-088, 316-20-092, 316-20-094, 316-20-099,
316-20-100, 316-20-095

SECTION II: RECITALS

WHEREAS, the Housing Element of the Cupertino General Plan identifies the Vallco Town Center Special Area as being appropriate to accommodate at least 389 dwelling units to be developed pursuant to a specific plan for the Vallco Town Center; and

WHEREAS, the Vallco Town Center Specific Plan has been developed pursuant to City Council direction to initiate a project to prepare a specific plan for the Vallco Town Center Special Area, including any required changes to the adopted goals and objectives for the Special Area, in order to implement the Housing Element of the Cupertino General Plan and to plan for anticipated future development activity; and

WHEREAS, pursuant to the City Council direction to conduct extensive public outreach the City conducted multiple forms of public outreach including two multi-day charrettes, online civic engagement, open houses and brown bag presentations, comment meetings etc.; and

WHEREAS, the General Plan Amendment to Development Allocations, the General Plan Land Use Map and development standards related to the Vallco Town Center Special Area (the "General Plan Amendment") is part of the Vallco Town Center Specific Plan, all as fully described and analyzed in the May 2018 Vallco Special Area Specific Plan Environmental Impact Report ("Draft EIR") (State Clearinghouse No. 2018022021), as amended by the July 2018 Vallco Special Area Specific Plan Environmental Impact Report Amendment ("EIR Amendment") and by text revisions in the August 2018 Vallco Special Area Specific Plan Final EIR document which contains Response to Comments to the Draft EIR and the EIR Amendment, and the August 2018 and September 2018

Supplemental Text Revisions to the Vallco Special Area Specific Plan Final Environmental Impact Report; (together, the “Final EIR”);

WHEREAS, the Final EIR was presented to the Environmental Review Committee (“ERC”) for review and recommendation on August 31, 2018, and after considering the Final EIR, and Staff’s presentation, the ERC recommended on a 5-0 vote that the City Council certify the EIR; and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on September 4, 2018 to consider the General Plan Amendment; and

WHEREAS, based on substantial evidence in the administrative record, on September 4, 2018 the Planning Commission recommended on a 5-0 vote that the City Council certify that the Final EIR has been completed in compliance with the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, and reflects the independent judgment and analysis of the City, adopt the Findings and Statement of Overriding Considerations, and implement all of the mitigation measures for the Project that are within the responsibility and jurisdiction of the City that are identified in Findings, in substantially similar form to the Resolution presented (Resolution No. 6860); and

WHEREAS, on September 4, 2018, the Planning Commission recommended on a 4-1 vote (Liu: no) that the City Council adopt the General Plan Amendment (GPA-2018-05), in substantially similar form to the Resolution presented (Resolution no. 6861) with additional recommendations to amend Strategy LU-19.1.2, correct Table LU-1, and consider a middle tier Development Allocation for the Vallco Town Center Special Area as more particularly described in Resolution no. 6861; and

WHEREAS, on September 18, 2018, upon due notice, the City Council has held at least one public hearing to consider the General Plan Amendment; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Resolution; and

WHEREAS, after consideration of evidence contained in the entire administrative record, at the public hearing on September 18, 2018, the City Council adopted Resolution No. 18-084 certifying the Final EIR, adopting Findings and a Statement of Overriding Considerations, adopting Mitigation Measures, and adopting a Mitigation Monitoring and Reporting Program; and

WHEREAS, prior to taking action on this Resolution, the City Council has exercised its independent judgment in carefully considering the information in the Final EIR and finds that the scope of this Resolution falls within the certified Final EIR, in that the aspects of the General Plan Amendment proposed in this Resolution that have the potential for

resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment have been examined in the Final EIR and therefore, no recirculation of the Final EIR is required.

SECTION III: RESOLUTIONS

NOW, THEREFORE, BE IT RESOLVED:

After careful consideration of the, maps, facts, exhibits, testimony and other evidence submitted in this matter, the City Council hereby adopts:

1. Amendments to the General Plan (Application No. GPA-2018-05) as shown in Exhibit GPA-1 and authorizes the staff to make grammatical, typographical, numbering, and formatting changes necessary to assist in production of the final published General Plan; and
2. Changes to the Land Use Map as shown in Exhibit GPA-2.

NOW, THEREFORE, BE IT FURTHER RESOLVED:

The foregoing recitals are true and correct and are included herein by reference as findings.

NOW, THEREFORE, BE IT FURTHER RESOLVED:

The City Council finds this Resolution is within the scope of the EIR and directs the Director of Community Development to file a Notice of Determination with the Santa Clara County Recorder in accordance with CEQA guidelines.

PASSED AND ADOPTED this 18th day of September 2018, at a Special Meeting of the City Council of the City of Cupertino by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

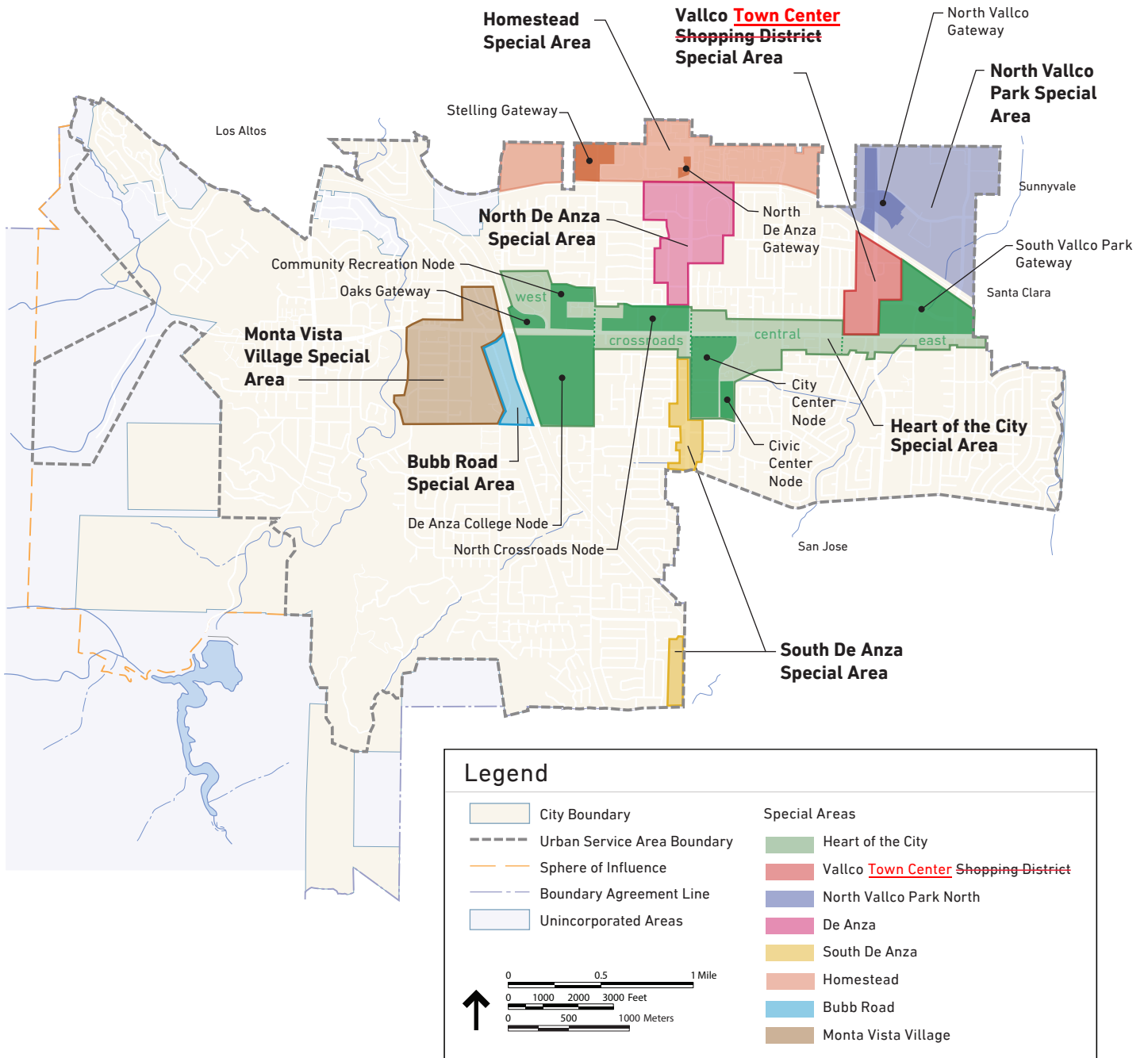
ATTEST:

APPROVED:

Grace Schmidt
City Clerk

Darcy Paul
Mayor, City of Cupertino

Figure PA-1
SPECIAL AREAS



The City Center subarea is located south of the Central Stevens Creek Boulevard subarea, between De Anza and Torre Avenue/Regnart Creek. The primary use for this area is office/residential/hotel/public facilities/commercial retail/mixed-uses. This subarea is further defined into the City Center Node and Civic Center Node. The City Center Node includes Cali Plaza. The Civic Center Node includes City Hall, Cupertino Community Hall, Cupertino Public Library, as well as the Library Plaza and Library Field.

The East Stevens Creek Boulevard subarea is located at the east end of the Heart of the City Specific Plan area and extends from Portal Avenue to the eastern city limit. The area is largely defined by the South Vallco Park Gateway immediately east of the Vallco [Town Center Shopping District Special Area](#), which includes Nineteen 800 (formerly known as Rosebowl), The Metropolitan and Main Street developments. This area is intended as a regional commercial district with retail/commercial/ office as the primary uses. Office above ground level retail is allowed as a secondary use, with residential/residential mixed-use as a supporting use per the Housing Element.

VISION

The Heart of the City area will continue being a focus of commerce, community identity, social gathering and pride for Cupertino. The area is envisioned as a tree-lined boulevard that forms a major route for automobiles, but also supports walking, biking and transit. Each of its five subareas will contribute their distinctive and unique character, and will provide pedestrian and bicycle links to adjacent neighborhoods through side street access, bikeways and pathways. While portions of the area is designated as a Priority Development Area (PDA), which allows some higher intensity near gateways and nodes, development will continue to support the small town ambiance of the community. The Stevens Creek Boulevard corridor will continue to function as Cupertino's main mixed-use, commercial and retail corridor. Residential uses, as allowed per the Housing Element, should be developed in the "mixed-use village" format described later in the Land Use and Community Design Element.



VALLCO TOWN CENTER SHOPPING DISTRICT

CONTEXT

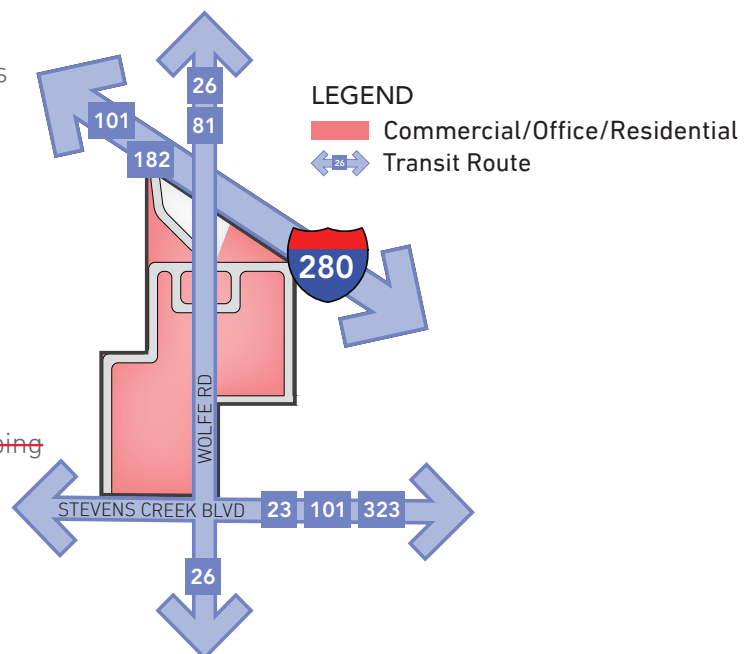
The Vallco ~~Town Center Shopping District~~ Special Area encompasses Cupertino's most significant commercial center, formerly known as the Vallco Fashion Park. This Special Area is located between Interstate 280 and Stevens Creek Boulevard in the eastern part of the city. The North Blaney neighborhood, an established single-family area, is adjacent on the west side of ~~the Vallco Town Center Shopping District~~. Wolfe Road bisects the area in a north-south direction, ~~and divides Vallco Shopping District into distinct subareas: Vallco Shopping District Gateway West and Vallco Shopping District Gateway East~~. In recent years there has been some façade improvement to the Vallco Fashion Mall; however, there has been no major reinvestment in the mall for decades. Reinvestment is needed to upgrade or replace older buildings and make other improvements to that this commercial center is more competitive and better serves the community. Currently, the major tenants of the mall include a movie theater, ~~and a~~ bowling alley ~~and three national retailers~~. The Vallco ~~Town Center~~ Shopping District is identified as a separate Special Area given its prominence as a regional commercial destination and its importance to future planning/redevelopment efforts expected over Vallco.

VISION

The Vallco ~~Town Center~~ Shopping District will continue to function as a major regional and community destination. The City envisions this area as a new mixed-use "town center" and gateway for Cupertino. It will include an interconnected street grid network of bicycle and pedestrian-friendly streets, more pedestrian-oriented buildings with active uses lining Stevens Creek Boulevard and Wolfe Road, and publicly-accessible parks and plazas that support the pedestrian-oriented feel of the revitalized area. New development in ~~the Vallco Town Center Shopping District~~ should be required to provide buffers between adjacent single-family neighborhoods in the form of boundary walls, setbacks, landscaping or building transitions.



VALLCO TOWN CENTER SHOPPING DISTRICT SPECIAL AREA DIAGRAM



NORTH BLANEY

CONTEXT

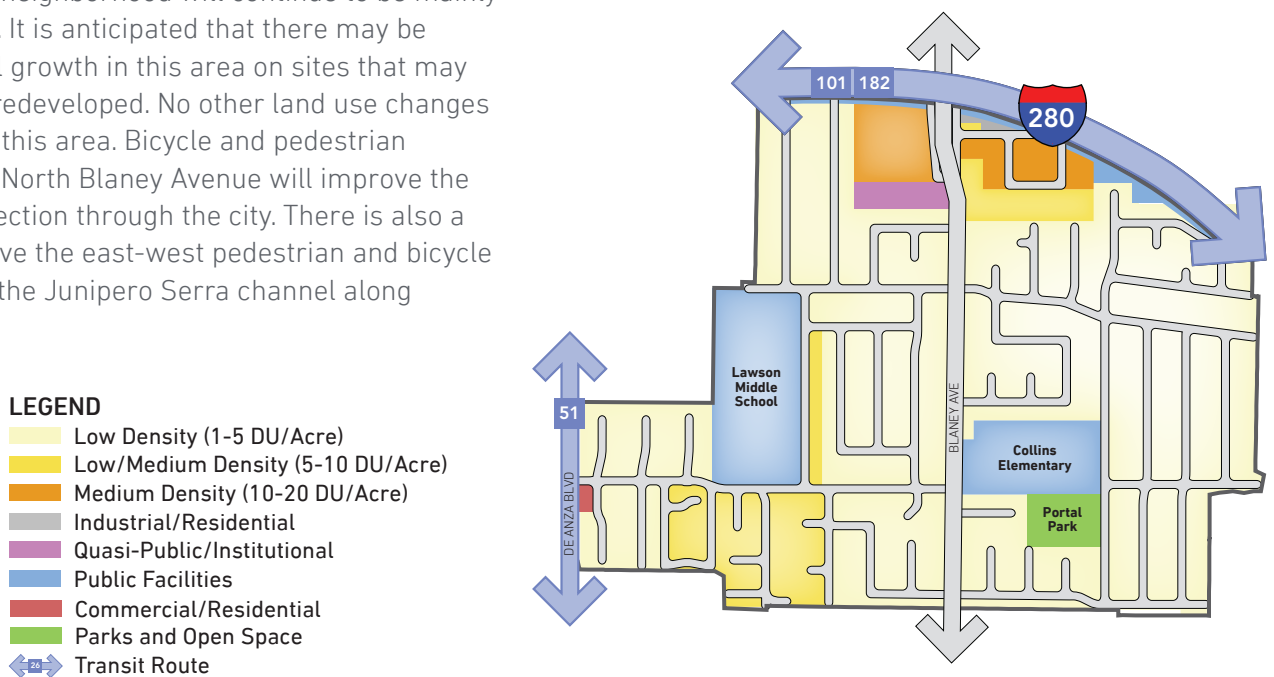
The North Blaney neighborhood is located in the eastern portion of Cupertino, north of Stevens Creek Boulevard and east of De Anza Boulevard. This area, predominantly defined by single-family residential homes, is on the valley floor with minimal grade changes. Bounded generally by De Anza Boulevard, Highway 280, Stevens Creek Boulevard, and Perimeter Road, this area is served by amenities including Portal Park, which includes a number of recreational amenities such as a tot lot and a recreation building. The Junipero Serra drainage channel runs along the northern edge of the neighborhood along Interstate 280. North Blaney is a major north-south corridor through the area. The Portal Plaza Shopping Center, located in the Heart of the City Special Area, includes grocery facilities and a variety of neighborhood serving uses. Proximity to the Vallco ~~Shopping Mall~~ Special Area in the Heart of the City Special Area provides opportunities for shopping for this neighborhood within close walking distance. Housing types located in this neighborhood include duplexes, townhomes and apartments closer to the freeway. The North Blaney Neighborhood includes Collins Elementary School and Lawson Middle School.



VISION

The North Blaney neighborhood will continue to be mainly a residential area. It is anticipated that there may be limited residential growth in this area on sites that may be subdivided or redeveloped. No other land use changes are anticipated in this area. Bicycle and pedestrian enhancements to North Blaney Avenue will improve the north-south connection through the city. There is also a potential to improve the east-west pedestrian and bicycle connection along the Junipero Serra channel along Interstate 280.

NORTH BLANEY NEIGHBORHOOD DIAGRAM



LU-1.2.3: Unused Development Allocation.

Unused development allocations may be re-assigned to the citywide allocation table per Planning Area, when development agreements and development permits expire.

LU-1.2.4: Neighborhood Allocation.

Allocate residential units in neighborhoods through the building permit process unless subdivision or development applications are required.

POLICY LU-1.3: LAND USE IN ALL CITYWIDE MIXED-USE DISTRICTS

Encourage land uses that support the activity and character of mixed-use districts and economic goals.

STRATEGIES:

LU-1.3.1: Commercial and Residential Uses.

Review the placement of commercial and residential uses based on the following criteria:

1. All mixed-use areas with commercial zoning will require retail as a substantial component. The North De Anza Special Area is an exception.
2. All mixed-use residential projects should be designed on the “mixed-use village” concept discussed earlier in this Element.

3. On sites with a mixed-use residential designation, residential is a permitted use only on Housing Element sites and in the Monta Vista Village Special Area.
4. Conditional use permits will be required on mixed-use Housing Element sites that propose units above the allocation in the Housing Element, and on non-Housing Element mixed-use sites, unless otherwise allowed in a Specific Plan.

LU-1.3.2: Public and Quasi-Public Uses.

Review the placement of public and quasi-public activities in limited areas in mixed-use commercial and office zones when the following criteria are met:

1. The proposed use is generally in keeping with the goals for the Planning Area, has similar patterns of traffic, population or circulation of uses with the area and does not disrupt the operations of existing uses.
2. The building form is similar to buildings in the area (commercial or office forms). In commercial areas, the building should maintain a commercial interface by providing retail activity, storefront appearance or other design considerations in keeping with the goals of the Planning Area.

POLICY LU-1.4: PARCEL ASSEMBLY

Encourage parcel assembly and discourage parcelization to ensure that infill development meets City standards and provides adequate buffers to neighborhoods.

POLICY LU-1.5: COMMUNITY HEALTH THROUGH LAND USE

Promote community health through land use and design.

POLICY LU-1.6: JOBS/HOUSING BALANCE

Strive for a more balanced ratio of jobs and housing units.

Table LU-1: Citywide Development Allocation Between 2014-2040

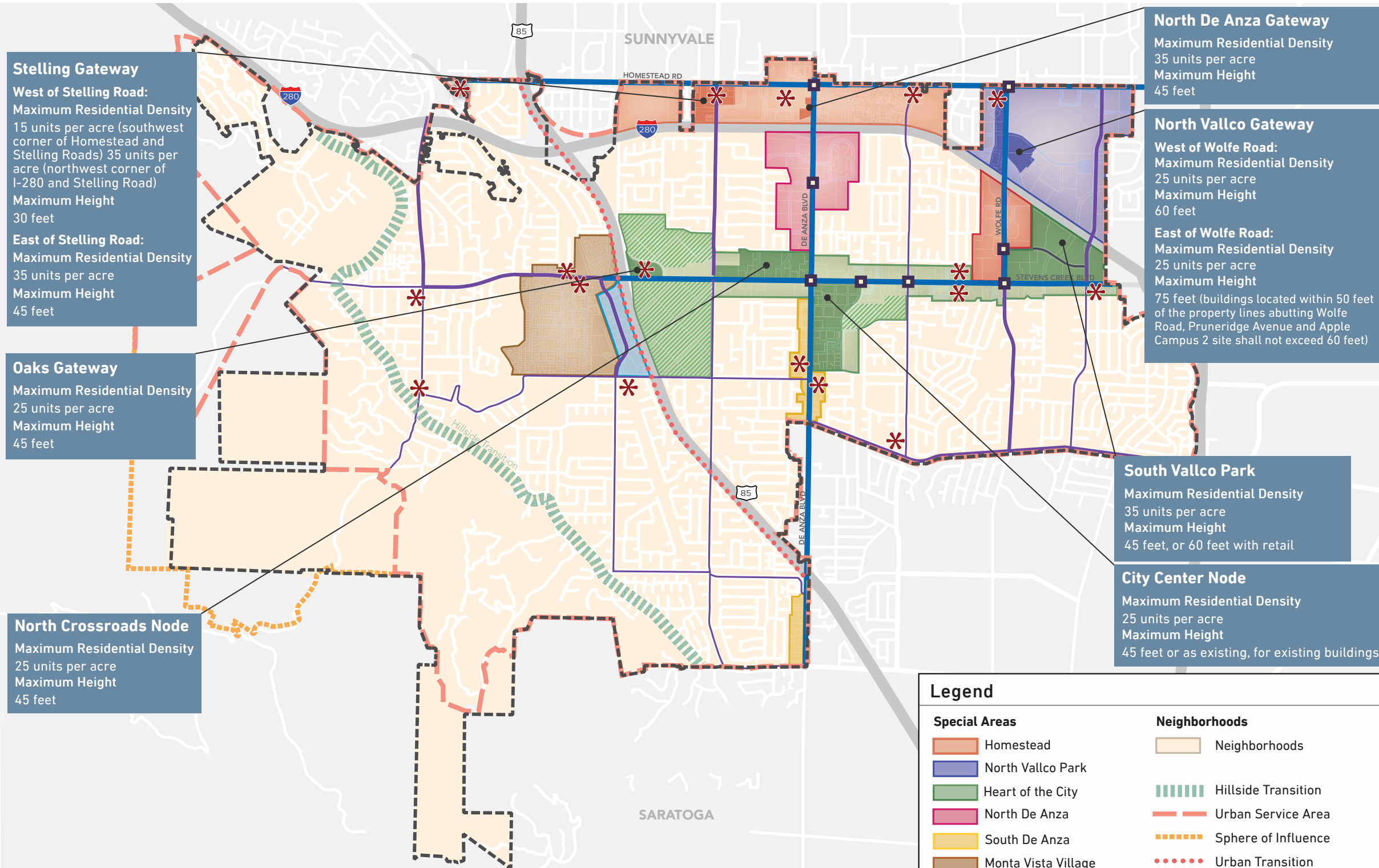
		commercial (s.f.)			office (s.f.)			hotel (rooms)			residential (units)		
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Heart of the City		1,351,730	214,5000	793,270	2,447,500	2,464,613	17,113	404	526	122	1,336	1,805	469
Vallco Town Center	Tier 1	<u>1,207,774</u>	<u>600,000</u>	-	-	<u>750,000</u>	<u>750,000</u>	<u>148</u>	<u>339</u>	<u>191</u>	-	<u>2,034</u>	<u>2,034</u>
	Shopping District**	<u>1,207,774</u>	<u>120,7774</u>	-	-	<u>2,000,000</u>	<u>2,000,000</u>	<u>148</u>	<u>339</u>	<u>191</u>	-	<u>389</u>	<u>389</u>
	Tier 2	<u>1,207,774</u>	<u>485,000</u>	-	-	<u>1,500,000**</u>	<u>1,500,000**</u>	<u>148</u>	<u>339</u>	<u>191</u>	-	<u>2,923</u>	<u>2,923</u>
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N. De Anza		56,708	56,708	-	2,081,021	2,081,021	-	123 126	123 126	-	49	146	97
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S. De Anza		352,283	352,283	-	130,708	130,708	-	315 315	315 315	-	6	6	-
Bubb		-	-	-	444,753	444,753	-	-	-	-	-	-	-
Monta Vista Village		94,051	99,698	5,647	443,140	456,735	13,595	-	-	-	828	878	50
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Major Employers		-	-	-	109,935	633,053	523,118	-	-	-	-	-	-
With Vallco Town Ctr Tier 1		<u>3,632,065</u>	<u>3,823,208</u>	-	<u>10,220,005</u>	<u>1,303,826</u>	<u>1,116</u>	<u>1,429</u>	<u>313</u>	-	<u>24,939</u>	<u>3,527</u>	<u>3,527</u>
Citywide		<u>3,632,065</u>	<u>4,430,982</u>	798,917	<u>8,916,179</u>	<u>11,470,005</u>	<u>2,553,826</u>	<u>1,116</u>	<u>1,429</u>	<u>313</u>	21,412	<u>23,294</u>	<u>1,882</u>
With Vallco Town Ctr Tier 2		<u>3,632,065</u>	<u>3,708,208</u>	-	<u>10,970,005</u>	<u>2,053,826</u>	<u>1,116</u>	<u>1,429</u>	<u>313</u>	-	<u>25,828</u>	<u>4,416</u>	<u>4,416</u>

** Buildout totals for Office and Residential allocation within the Vallco Shopping District are contingent upon a Specific Plan being adopted for this area by May 31, 2018. If a Specific Plan is not adopted by that date, City will consider the removal of the Office and Residential allocations for Vallco Shopping District. See the Housing Element (Chapter 4) for additional information and requirements within the Vallco Shopping District.

* The Vallco Town Center Specific Plan authorizes a community benefits density bonus as an alternative to the State Density Bonus if proposed development meets specified criteria. The applicable Development Allocations, if the City approves a community benefits density bonus, are identified as Tier 2 in Table LU-1.

** For a Tier 2 project in the Vallco Town Center Special Area, an additional 250,000 square feet of allocation is allowed for office amenity space, as defined in the Vallco Town Center Specific Plan, for a total allocation of 1,750,000 square feet.

Figure LU-2 COMMUNITY FORM DIAGRAM



Stelling Gateway
West of Stelling Road:
 Maximum Residential Density
 15 units per acre (southwest corner of Homestead and Stelling Roads) 35 units per acre (northwest corner of I-280 and Stelling Road)
 Maximum Height
 30 feet
East of Stelling Road:
 Maximum Residential Density
 35 units per acre
 Maximum Height
 45 feet

Oaks Gateway
 Maximum Residential Density
 25 units per acre
 Maximum Height
 45 feet

North Crossroads Node
 Maximum Residential Density
 25 units per acre
 Maximum Height
 45 feet

North De Anza Gateway
 Maximum Residential Density
 35 units per acre
 Maximum Height
 45 feet

North Vallco Gateway
West of Wolfe Road:
 Maximum Residential Density
 25 units per acre
 Maximum Height
 60 feet
East of Wolfe Road:
 Maximum Residential Density
 25 units per acre
 Maximum Height
 75 feet (buildings located within 50 feet of the property lines abutting Wolfe Road, Pruneridge Avenue and Apple Campus 2 site shall not exceed 60 feet)

South Vallco Park
 Maximum Residential Density
 35 units per acre
 Maximum Height
 45 feet, or 60 feet with retail

City Center Node
 Maximum Residential Density
 25 units per acre
 Maximum Height
 45 feet or as existing, for existing buildings

Homestead Special Area
Maximum Residential Density
 Up to 35 units per acre per General Plan Land Use Map
 15 units per acre (southeast corner of Homestead Road and Blaney Avenue)
Maximum Height
 30 feet, or 45 feet (south side between De Anza and Stelling)

North Vallco Park Special Area
Maximum Residential Density **Maximum Height**
 25 units per acre 60 feet

Heart of the City Special Area
Maximum Residential Density
 25 or 35 (South Vallco) units per acre
Maximum Height
 45 feet, or 30 feet where designated by hatched line

North De Anza Special Area
Maximum Residential Density **Maximum Height**
 25 units per acre 45 feet

South De Anza Special Area
Maximum Residential Density
 25 (north of Bollinger) Or 5-15 (south of 85) units per acre
Maximum Height
 30 feet

Monta Vista Village Special Area
Maximum Residential Density
 Up to 15 units per acre per General Plan Land Use Map
Maximum Height
 Up to 30 feet

Bubb Road Special Area
Maximum Residential Density **Maximum Height**
 20 units per acre 45 feet

Vallco Town Center Shopping District Special Area
West of Wolfe Rd **East of Wolfe Rd**
Maximum Residential Density **Maximum Residential Density**
Tier 1: 35 units per acre ~~35 units per acre~~
Tier 2: 52.5 units per acre in **Maximum Height**
 areas where the Vallco Town Per Specific Plan
 Center Specific Plan
 authorizes a community
 benefits density bonus as an
 alternative to the State
 Density Bonus
Maximum Height
 Per Specific Plan

Legend

Special Areas	Neighborhoods
Homestead	Neighborhoods
North Vallco Park	Hillside Transition
Heart of the City	Urban Service Area
North De Anza	Sphere of Influence
South De Anza	Urban Transition
Monta Vista Village	City Boundary
Bubb Road	Boulevards (Arterials)
Vallco Town Center Shopping District	Avenues (Major Collectors)
	Avenues (Minor Collectors)
	Key Intersections
	Neighborhood Centers

Building Planes:

- Maintain the primary building bulk below a 1:1 slope line drawn from the arterial/boulevard curb line or lines except for the Crossroads Area and the Vallco Town Center Special Area.
- For the Crossroads area, see the Crossroads Streetscape Plan.
- For the Vallco Town Center Special Area, see the Vallco Town Center Specific Plan
- For projects adjacent to residential areas: Heights and setbacks adjacent to residential areas will be determined during project review.
- For the North and South Vallco Park areas (except for the Vallco Shopping District Special Area): Maintain the primary building bulk below a 1.5:1 (i.e., 1.5 feet of setback for every 1 foot of building height) slope line drawn from the Stevens Creek Blvd. and Homestead Road curb lines and below 1:1 slope line drawn from Wolfe Road and Tantau Avenue curb line.

Rooftop Mechanical Equipment: Rooftop mechanical equipment and utility structures may exceed stipulated height limitations if they are enclosed, centrally located on the roof and not visible from adjacent streets.

Priority Housing Sites: Notwithstanding the heights and densities shown above, the maximum heights and densities for Priority Housing Sites identified in the adopted Housing Element shall be as reflected in the Housing Element.

Neighborhoods
Maximum Residential Density
 As indicated in the General Plan Land Use Map;
 15 units per acre for Neighborhood Commercial Sites
Maximum Height
 30 feet



GOAL LU-19

Create a distinct and memorable mixed-use "town center" that is a regional destination and a focal point for the community

VALLCO TOWN CENTER ~~SHOPPING DISTRICT~~ SPECIAL AREA

The City envisions a complete redevelopment of the existing Vallco Fashion Mall into a vibrant mixed-use "town center" that is a focal point for regional visitors and the community. This new Vallco Town Center ~~Shopping District~~ will become a destination for shopping, dining and entertainment in the Santa Clara Valley.

POLICY LU-19.1: SPECIFIC PLAN

Implement the Vallco Town Center Specific Plan and apply the adopted vision, policies or development standards in the review of any development on the site including the street layout, land uses, design standards and guidelines, and infrastructure improvements required. The Vallco Town Center Specific Plan will be is based on the following strategies:

STRATEGIES:

LU-19.1.1: Master Developer.

Redevelopment will require a master developer in order to remove the obstacles to the development of a cohesive district with the highest levels of urban design.

LU-19.1.2: Parcel Assembly.

Parcel assembly and a master site development plan for complete redevelopment of the site is required prior to issuance of other implementing permits ~~adding residential and office uses~~. ~~Parcelization is highly discouraged in order to preserve the site for redevelopment in the future.~~ Accommodate parcelization needs of certain development types, such as senior housing or affordable housing, or if demonstrated to be necessary for financing reasons.

LU-19.1.3: Complete Redevelopment. The ~~"town center"~~ Any site development plans should be based on complete redevelopment of the site in order to ensure that the site can be planned to carry out the community vision in the specific plan.

LU-19.1.4: Land Use.

~~The following uses are allowed on the site (see Figure LU-2 for residential densities and criteria):~~ Uses allowed on the site shall be as shown in the Vallco Town Center Specific Plan and generally include residential, office, commercial (including retail, restaurant, entertainment, and cultural uses), and hotel uses.

Table LU-1 identifies the development potential on the site in two levels: Tier 1 and Tier 2. Tier 1 identifies the maximum development potential for the site under the base density as defined in Figure LU-2 and the Vallco Town Center Specific Plan. Tier 2 identifies the maximum development potential for the site for projects that have applied for and received a community benefits density bonus, as an alternative to the state Density Bonus law, which is further defined in the Vallco Town Center Specific Plan and which requires certain community benefits to be incorporated into the project.

1. Retail Commercial: Include ~~High-~~ performing retail, restaurant and entertainment uses. ~~Maintain a minimum of 600,000 square feet of retail that provide a good source of sales tax for the City. Entertainment uses may be included but shall consist of no more than 30 percent of retail uses.~~
2. Hotel: Encourage a ~~business class~~ hotel with conference center and active uses such as ~~including~~ main entrances, lobbies, ~~retail~~ and restaurants, at key locations, on the ground floor .
3. Residential: Allow residential ~~on upper floors~~ with retail and active uses on the ground floor per the Vallco Town Center Specific Plan. Encourage a mix of units for young professionals, couples and/or active seniors who like to live in an active "town center" environment.
4. Office: Encourage high-quality office space arranged in a pedestrian-oriented street grid with active uses, such as lobbies, cafes, break rooms, active office amenities, on the ground floor in key locations ~~publicly accessible street and that front~~ plazas/green space.

LU-9.1.5: "Town Center Layout" Create streets and blocks laid out using "transect planning" (appropriate

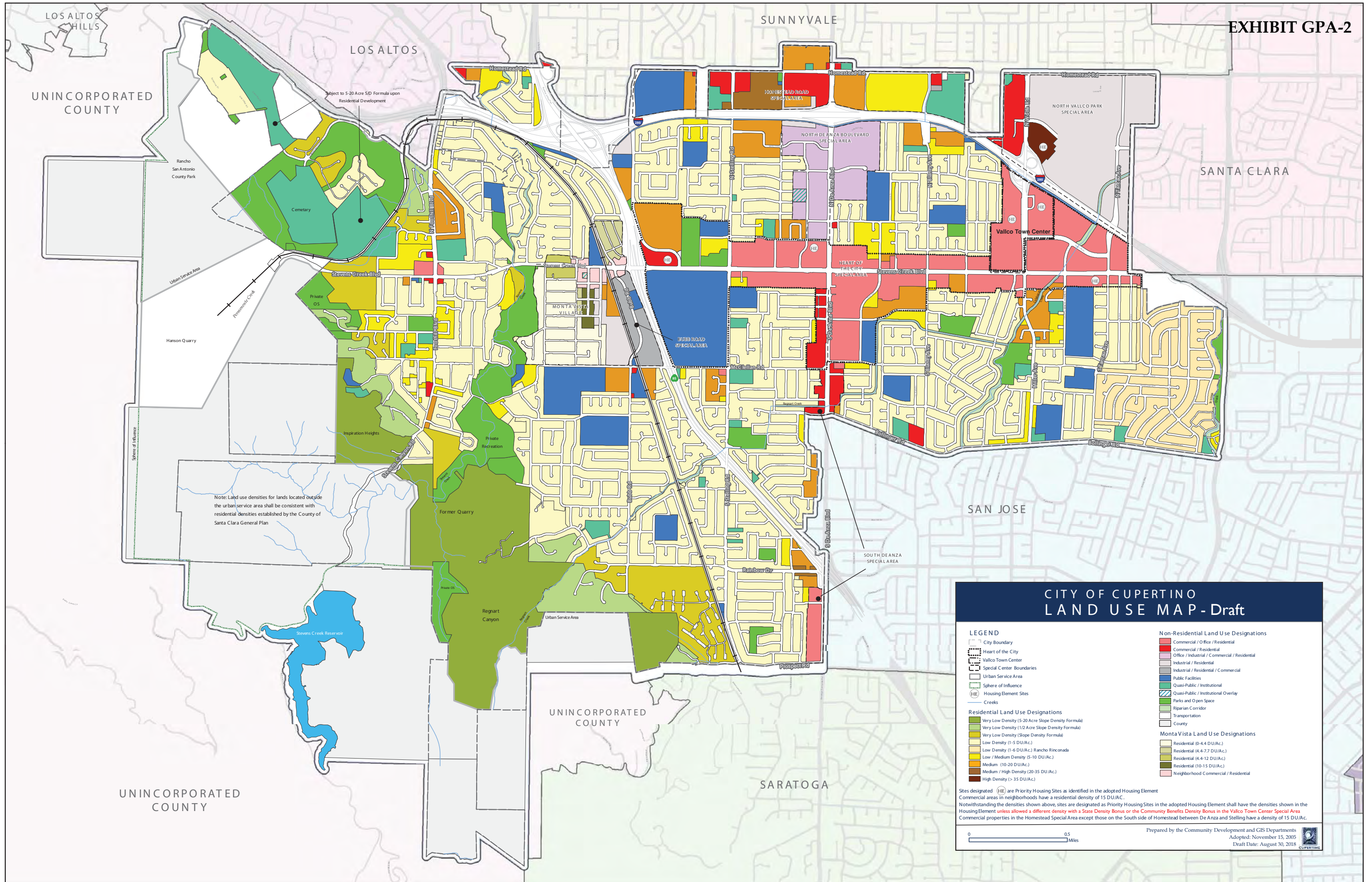
street and building types for each area), which includes a discernible center and edges, public space ~~at center~~, high quality public realm, and land uses appropriate to the street and building typology.

LU-19.1.6: Connectivity.

Provide a newly configured complete street grid hierarchy of streets, boulevards and alleys that is pedestrian-oriented, connects to existing streets, and creates walkable urban blocks for buildings and open space. It should also incorporate transit facilities, provide connections to other transit nodes and coordinate with the potential expansion of Wolfe Road bridge over Interstate 280 to continue the walkable, bikeable boulevard concept along Wolfe Road. The project should also contribute towards a study and improvements to a potential Interstate 280 trail along the drainage channel south of the freeway and provide pedestrian and bicycle connections from the project sites to the trail.

LU-19.1.7: Existing Streets.

Improve Stevens Creek Boulevard and Wolfe Road to become more bike and pedestrian-friendly with bike lanes, wide sidewalks, street trees, improved pedestrian intersections to accommodate the connections to ~~Rosebow~~ Nineteen800, and Main Street and in the vicinity.



Note: Land use densities for lands located outside the urban service area shall be consistent with residential densities established by the County of Santa Clara General Plan

CITY OF CUPERTINO LAND USE MAP - Draft

LEGEND		Non-Residential Land Use Designations	
	City Boundary		Commercial / Office / Residential
	Heart of the City		Office / Industrial / Commercial / Residential
	Vallecito Town Center		Industrial / Residential
	Special Center Boundaries		Industrial / Residential / Commercial
	Urban Service Area		Public Facilities
	Sphere of Influence		Quasi-Public / Institutional
	Housing Element Sites		Quasi-Public / Institutional Overlay
	Creeks		Parks and Open Space
			Riparian Corridor
			Transportation
			County
Residential Land Use Designations		Monta Vista Land Use Designations	
	Very Low Density (5-20 Acre Slope Density Formula)		Residential (0-4.4 DU/Ac)
	Very Low Density (1/2 Acre Slope Density Formula)		Residential (4.4-7.7 DU/Ac)
	Very Low Density (Slope Density Formula)		Residential (4.4-12 DU/Ac)
	Low Density (1-5 DU/Ac)		Residential (10-15 DU/Ac)
	Low Density (1-6 DU/Ac) Rancho Rinconada		Neighborhood Commercial / Residential
	Low / Medium Density (5-10 DU/Ac)		
	Medium (10-20 DU/Ac)		
	Medium / High Density (20-35 DU/Ac)		
	High Density (> 35 DU/Ac)		

Sites designated (HE) are Priority Housing Sites as identified in the adopted Housing Element. Commercial areas in neighborhoods have a residential density of 15 DU/Ac. Notwithstanding the densities shown above, sites are designated as Priority Housing Sites in the adopted Housing Element shall have the densities shown in the Housing Element unless allowed a different density with a State Density Bonus or the Community Benefits Density Bonus in the Vallecito Town Center Special Area. Commercial properties in the Homestead Special Area except those on the South side of Homestead between De Anza and Stelling have a density of 15 DU/Ac.



Prepared by the Community Development and GIS Departments
Adopted: November 15, 2005
Draft Date: August 30, 2018



POLICY LU-1.4: PARCEL ASSEMBLY

Encourage parcel assembly and discourage parcelization to ensure that infill development meets City standards and provides adequate buffers to neighborhoods.

POLICY LU-1.5: COMMUNITY HEALTH THROUGH LAND USE

Promote community health through land use and design.

POLICY LU-1.6: JOBS/HOUSING BALANCE

Strive for a more balanced ratio of jobs and housing units.

Table LU-1: Citywide Development Allocation Between 2014-2040

		commercial (s.f.)			office (s.f.)			hotel (rooms)			residential (units)		
		current built (Oct 7, 2014)	buildout	available	current built (Oct 7, 2014)	buildout	available	current built (Oct 7, 2014)	buildout	available	current built (Oct 7, 2014)	buildout	available
	Heart of the City	1,351,730	214,5000	793,270	2,447,500	2,464,613	17,113	404	526	122	1,336	1,805	469
Vallejo	Tier 1	1,207,774	600,000	-	-	750,000	750,000	148	339	191	-	2,034	2,034
Vallejo	Shopping District** Tier 2	1,207,774	120,7774	-	-	2,000,000	2,000,000	148	339	191	-	389	389
Vallejo	Other	1,207,774	485,000	-	-	1,500,000**	1,500,000**	148	339	191	-	2,923	2,923
	Homestead	291,408	291,408	-	69,550	69,550	-	126	126	-	600	750	150
	N. De Anza	56,708	56,708	-	2,081,021	2,081,021	-	123	123	-	49	146	97
	N. Vallejo	133,147	133,147	-	3,069,676	3,069,676	-	315	315	-	554	1154	600
	S. De Anza	352,283	352,283	-	130,708	130,708	-	315	315	-	6	6	-
	Bubb	-	-	-	444,753	444,753	-	-	-	-	-	-	-
	Monta Vista Village	94,051	99,698	5,647	443,140	456,735	13,595	-	-	-	828	878	50
	Other	144,964	144,964	-	119,896	119,896	-	-	-	-	18,039	18,166	127
	Major Employers	-	-	-	109,935	633,053	523,118	-	-	-	-	-	-
Vallejo	Vallejo Town Ctr Tier 1	3,632,065	3,823,208	-	10,220,005	1,303,826	1,116	1,429	313	-	21,412	24,939	3,527
Vallejo	Citywide	3,632,065	4,430,982	798,917	8,916,179	11,470,005	2,553,826	1,116	1,429	313	21,412	23,294	1,882
Vallejo	Vallejo Town Ctr Tier 2	3,632,065	3,708,208	-	10,970,005	2,053,826	1,116	1,429	313	-	-	25,828	4,416

** Buildout totals for Office and Residential allocation within the Vallejo Shopping District are contingent upon a Specific Plan being adopted for this area by May 31, 2018. If a Specific Plan is not adopted by that date, City will consider the removal of the Office and Residential allocations for Vallejo Shopping District. See the Housing Element (Chapter 4) for additional information and requirements within the Vallejo Shopping District.

* The Vallejo Town Center Specific Plan authorizes a community benefits density bonus as an alternative to the State Density Bonus if proposed development meets special criteria. The applicable Development Allocations, if the City approves a community benefits density bonus, are identified as Tier 2 in Table LU-1.

** For a Tier 2 project in the Vallejo Town Center Special Area, an additional 250,000 square feet of allocation is allowed for office amenity space, as defined in the Vallejo Town Center Specific Plan, for a total allocation of 1,750,000 square feet.

POLICY LU-1.4: PARCEL ASSEMBLY

Encourage parcel assembly and discourage parcelization to ensure that infill development meets City standards and provides adequate buffers to neighborhoods.

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Heart of the City	1,351,730	214,5000	793,270	2,447,500	2,464,613	17,113	404	526	122	1,336	1,805	469
Vallco* Tier 1	1,207,774	600,000	-	-	750,000	750,000	148	339	191	-	2,034	2,034
Town	1,207,774	120,7774	-	-	2,000,000	2,000,000	148	339	191	-	389	389
Center** Tier 2	1,207,774	485,000	-	-	1,500,000**	1,500,000**	148	339	191	-	2,923	2,923
Homestead	291,408	291,408	-	69,550	69,550	-	126	126	-	600	750	150
N. De Anza	56,708	56,708	-	2,081,021	2,081,021	-	123	123	-	49	146	97
N. Vallco	133,147	133,147	-	3,069,676	3,069,676	-	315	315	-	554	1154	600
S. De Anza	352,283	352,283	-	130,708	130,708	-	315	315	-	6	6	-
Bubb	-	-	-	444,753	444,753	-	-	-	-	-	-	-
Monta Vista Village	94,051	99,698	5,647	443,140	456,735	13,595	-	-	-	828	878	50
Other	144,964	144964,	-	119,896	119,896	-	-	-	-	18,039	18,166	127
Major Employers	-	-	-	109,935	633,053	523,118	-	-	-	-	-	-
With VTC Tier 1	3,632,065	3,823,208	-	-	10,220,005	1,303,826	1,116	1,429	313	-	24,939	3,527
Citywide	3,632,065	4,430,982	798,917	8,916,179	11,470,005	2,553826,	1116	1429	313	21,412	23,294	1,882
With VTC Tier 2	3,632,065	3,708,208	-	-	10,970,005	2,053,826	1,116	1,429	313	-	25,828	4,416

** Buildout totals for Office and Residential allocation within the Vallco Shopping District are contingent upon a Specific Plan being adopted for this area by May 31, 2018. If a Specific Plan is not adopted by that date, City will consider the removal of the Office and Residential allocations for Vallco Shopping District. See the Housing Element (Chapter 4) for additional information and requirements within the Vallco Shopping District.

* The Vallco Town Center Specific Plan authorizes a community benefits density bonus as an alternative to the State Density Bonus if proposed development meets specified criteria. The applicable Development Allocations, if the City approves a community benefits density bonus, are identified as Tier 2 in Table LU-1.

** For a Tier 2 project in the Vallco Town Center Special Area, an additional 250,000 square feet of allocation is allowed for office amenity space, as defined in the Vallco Town Center Specific Plan, for a total allocation of 1,750,000 square feet.

ORDINANCE NO. 18-2178

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CUPERTINO REZONING THE PARCELS WITHIN THE VALLCO
SPECIAL AREA

SECTION I: PROJECT DESCRIPTION

Application No: Z-2018-01

Applicant: City of Cupertino

Location: 10101 to 10333 N Wolfe Rd

APN#s: 316-20-080, 316-20-081, 316-20-103, 316-20-107, 316-20-101, 316-20-105,
316-20-106, 316-20-104, 316-20-088, 316-20-092, 316-20-094, 316-20-099,
316-20-100, 316-20-095

SECTION II: RECITALS

WHEREAS, the Housing Element of the Cupertino General Plan identifies the Vallco Special Area as being appropriate to accommodate at least 389 dwelling units to be developed pursuant to a specific plan for the Vallco Special Area; and

WHEREAS, the Vallco Special Area Specific Plan has been developed pursuant to City Council direction to initiate a project to prepare a specific plan for the Vallco Special Area, including any required changes to the adopted goals and objectives for the Special Area, in order to implement the Housing Element of the Cupertino General Plan and to plan for anticipated future development activity; and

WHEREAS, pursuant to the City Council direction to conduct extensive public outreach the City conducted multiple forms of public outreach including 14 small group Interviews, eight presentations, five open studio times, three brown bags, three EIR public comment meetings, three open houses, two student/youth outreach sessions, one online civic engagement survey, one Fine Arts Commission check-in/update, one Housing Commission check-in/update, one Parks & Recreation Commission check-in/update, one Teen Commission check-in/update, one Economic Development Committee check-in/update, one Block Leader Group check-in/update; and

WHEREAS, the Rezoning of parcels within the Vallco Special Area Specific Plan ("Rezoning") is part of the Vallco Special Area Specific Plan, all as fully described and analyzed in the May 2018 Vallco Special Area Specific Plan Environmental Impact Report ("Draft EIR") (State Clearinghouse No. 2018022021), as amended by the July 2018 Vallco Special Area Specific Plan Environmental Impact Report Amendment ("EIR Amendment") and by text revisions in the August 2018 Vallco Special Area Specific Plan Final EIR document which contains Response to Comments to the Draft EIR and the EIR

Amendment, and the August 30, 2018, September 11, 2018, and September 13, 2018 Supplemental Text Revisions to the Vallco Special Area Specific Plan Final Environmental Impact Report; (together, the "Final EIR"); and

WHEREAS, the Final EIR was presented to the Environmental Review Committee ("ERC") for review and recommendation on August 31, 2018, and after considering the Final EIR, and Staff's presentation, the ERC recommended that the City Council certify the EIR; and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on September 4, 2018 to consider the Rezoning; and

WHEREAS, based on substantial evidence in the administrative record, on September 4, 2018 the Planning Commission recommended on a 5-0 vote that the City Council certify that the Final EIR has been completed in compliance with the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, and reflects the independent judgment and analysis of the City, adopt the Findings and Statement of Overriding Considerations, and implement all of the mitigation measures for the Project that are within the responsibility and jurisdiction of the City that are identified in Findings, in substantially similar form to the Resolution presented (Resolution No. 6860); and

WHEREAS, on September 4, 2018, the Planning Commission recommended on a 5-0 vote that the City Council adopt the Zoning Map Amendment (Z-2018-01), in substantially similar form to the Resolution presented (Resolution no. 6862); and

WHEREAS, immediately prior to the Council's consideration of the Rezoning, following a duly noticed public hearing on September 19, 2018 (continued from September 18, 2018), the Council adopted Resolution No. 18-085, adopting a resolution to adopt a General Plan Amendment to Development Allocations, the General Plan Land Use Map and development standards related to the Vallco Town Center Special Area, adopted Resolution No. 18-086, adopting a resolution to adopt the Vallco Town Center Specific Plan; and adopted Ordinance No. 18-2177, adopting amendments to the Municipal Code to allow implementation of the Vallco Town Center Specific Plan; and

WHEREAS, the Rezoning will be consistent with the City's General Plan land use map, proposed uses and surrounding uses as amended and the Vallco Special Area Specific Plan as adopted; and

WHEREAS, on September 19, 2018 (continued from September 18, 2018) and October 2, 2018, upon due notice, the City Council has held at least two public hearings to consider the Rezoning; and;

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Ordinance;

WHEREAS, after consideration of evidence contained in the entire administrative record, at the public hearing on September 19, 2018 (continued on September 18, 2018), the City Council adopted Resolution No. 18-084 certifying the Final EIR, adopting Findings and a Statement of Overriding Considerations, adopting Mitigation Measures, and adopting a Mitigation Monitoring and Reporting Program.

WHEREAS, prior to taking action on this Ordinance, the City Council has exercised its independent judgment in carefully considering the information in the Final EIR and finds that the scope of this Ordinance falls within the certified Final EIR, in that the aspects of the Rezoning proposed in this Ordinance that have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment have been examined in the Final EIR and therefore, no recirculation of the Final EIR is required; and

SECTION III

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

That after careful consideration of the facts, exhibits, testimony and other evidence submitted in this matter, the City Council adopts the Rezoning based upon the findings described above, the public hearing record, the Minutes of Planning Commission Meeting of September 4, 2018, and the Minutes of City Council Meetings of September 18, 2018 and September 19, 2018, and subject to the conditions specified below:

Section 1. The recitals set forth above are true and correct, and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council finds the following as set forth by Municipal Code 19.152.020.C:

1. That the proposed zoning is in accord with Title 19 of the Municipal Code and the City's Comprehensive General Plan (Community Vision 2040).

The Housing Element of the General Plan calls for the City to enact a specific plan to permit at least 389 dwelling units in the Vallco Special Area. The General Plan Amendment (adopted at the September 19, 2018 City Council meeting (continued from September 18, 2018) with Resolution no. 18-085) modifies the Land Use Element of the General Plan to designate late and define development standards that are consistent with the level of development contemplated in the Vallco Special Area Specific Plan. The proposed zoning amendments would designate land in the Vallco Special Area as a new Vallco Special Area Specific Plan zone to implement the General Plan and the Vallco Special Area Specific Plan, and therefore the proposed zoning is consistent with the General Plan and other relevant portions of the Municipal Code.

2. The proposed zoning is in compliance with the provisions of the California Environmental Quality Act (CEQA).

As set forth above, the City examined the environmental effects of the Project, including the zoning amendments adopted herein, in an Environmental Impact Report (EIR) prepared in accordance with the California Environmental Quality Act. On September 19, 2018 (continued from September 18, 2018), the City Council adopted Resolution no. 18-084 to certify that the Final Environmental Impact Report ("Final EIR") for the Project; and adopting CEQA Findings, a Statement of Overriding Considerations, Mitigation Measures, and a Mitigation Monitoring and Reporting Program, which Resolution together with the EIR is incorporated herein by reference. The significant environmental effects of the project have been fully analyzed and disclosed in compliance with CEQA. All mitigation measures identified in the Final EIR have been adopted and incorporated into the project to reduce the impacts of new development to the extent feasible. Therefore, the proposed zoning complies with the provisions of CEQA.

3. The site is physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints) for the requested zoning designation(s) and anticipated land use development(s).

The sites being rezoned have access to utilities and are compatible with adjoining land uses. To the extent that there are deficient utilities, the City has adopted mitigation measures to ensure that any future development would need to provide the appropriate utilities to accommodate the development. In addition, in connection with the Vallco Special Area Specific Plan process, the site has been analyzed thoroughly to ensure that the site would not constrain future development proposed under this zoning designation. The proposed zoning would implement the Vallco Special Area Specific Plan, which includes development standards to require appropriate transitions from adjoining land uses.

4. The proposed zoning will promote orderly development of the City.

The sites being rezoned will promote orderly development in the City by allowing a critical mass of development to be proposed along the City's Priority Development Area (PDA) in which future development is anticipated. This would also allow the easier applicability of zoning regulations adopted under the Vallco Special Area Specific Plan.

5. That the proposed zoning is not detrimental to the health, safety, peace, morals and general welfare of persons residing or working in the neighborhood of subject parcels.

The proposed zoning is not detrimental to the health, safety, peace, morals and general welfare since these are conforming changes that are necessary to implement adopted changes in the Land Use Element of the City's General Plan. Additionally, where health or safety impacts have been identified in the Project's EIR, mitigation measures have been identified which would be applicable to any development on these sites.

Section 3. The City Council approves the following:

1. That the property described in attached Exhibit Z-1 have a zoning designation as that shown and is incorporated into the Master Zoning Map (Exhibit Z-2) of the City of Cupertino; and

Section 4. The City Council finds the Rezoning is within the scope of the EIR and directs the Director of Community Development to file a Notice of Determination with the Santa Clara County Recorder in accordance with CEQA guidelines.

Section 5. This Ordinance shall be effective thirty (30) days following its adoption.


INTRODUCED at a special meeting of the Cupertino City Council the 19th day of September 2018 (continued from September 18, 2018) and ENACTED at a regular meeting of the Cupertino City Council on this 2nd day of October 2018 by the following vote:

AYES: Sinks, Chang, Vaidhyanathan
 NOES: Paul, Scharf
 ABSENT: None
 ABSTAIN: None

ATTEST:

APPROVED:


 Grace Schmidt, City Clerk 10.2.18


 Darcy Paul, Mayor, City of Cupertino

APN	Current Zoning	New Zoning
316-20-080	P(CG)	Vallco Town Center
316-20-081	P(CG)	Vallco Town Center
316-20-088	P(Regional Shopping)	Vallco Town Center
316-20-092	P(Regional Shopping)	Vallco Town Center
316-20-094	P(Regional Shopping)	Vallco Town Center
316-20-095	P(Regional Shopping)	Vallco Town Center
316-20-099	P(Regional Shopping)	Vallco Town Center
316-20-100	P(Regional Shopping)	Vallco Town Center
316-20-101	P(Regional Shopping)	Vallco Town Center
316-20-104	P(Regional Shopping)	Vallco Town Center
316-20-105	P(Regional Shopping)	Vallco Town Center
316-20-106	P(Regional Shopping)	Vallco Town Center
316-20-107	P(Regional Shopping)	Vallco Town Center

STATE OF CALIFORNIA)

COUNTY OF SANTA CLARA)

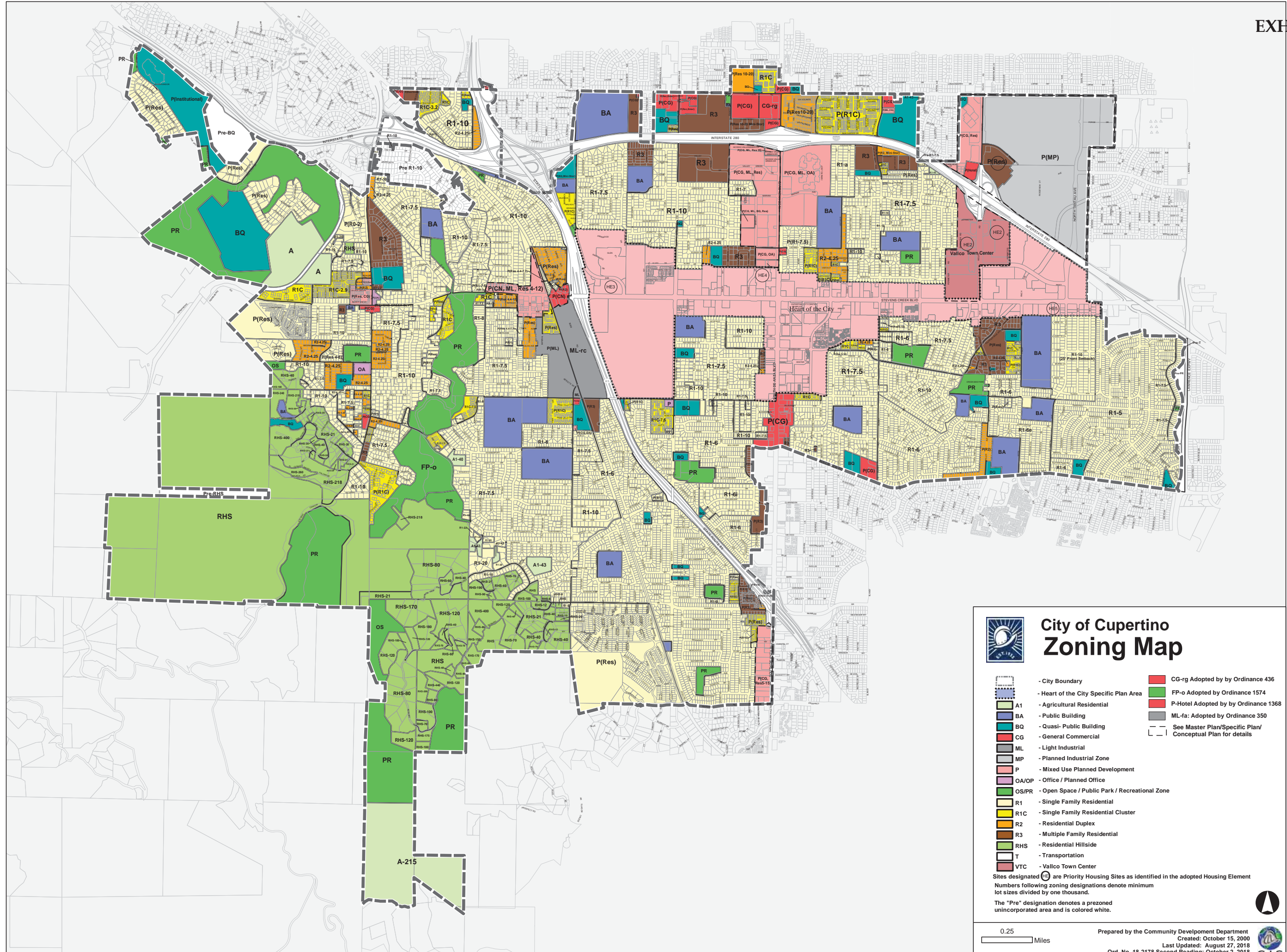
CITY OF CUPERTINO)

I, GRACE SCHMIDT, City Clerk and ex-officio Clerk of the City Council of the City of Cupertino, California, do hereby certify the attached to be a true and correct copy of Ordinance No. 18-2178, which was enacted on October 2, 2018, and that it has been published or posted pursuant to law (G.C. 40806).

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 2nd day of October, 2018.



GRACE SCHMIDT, City Clerk and Ex-officio Clerk
of the City Council of the City of Cupertino, California



City of Cupertino Zoning Map

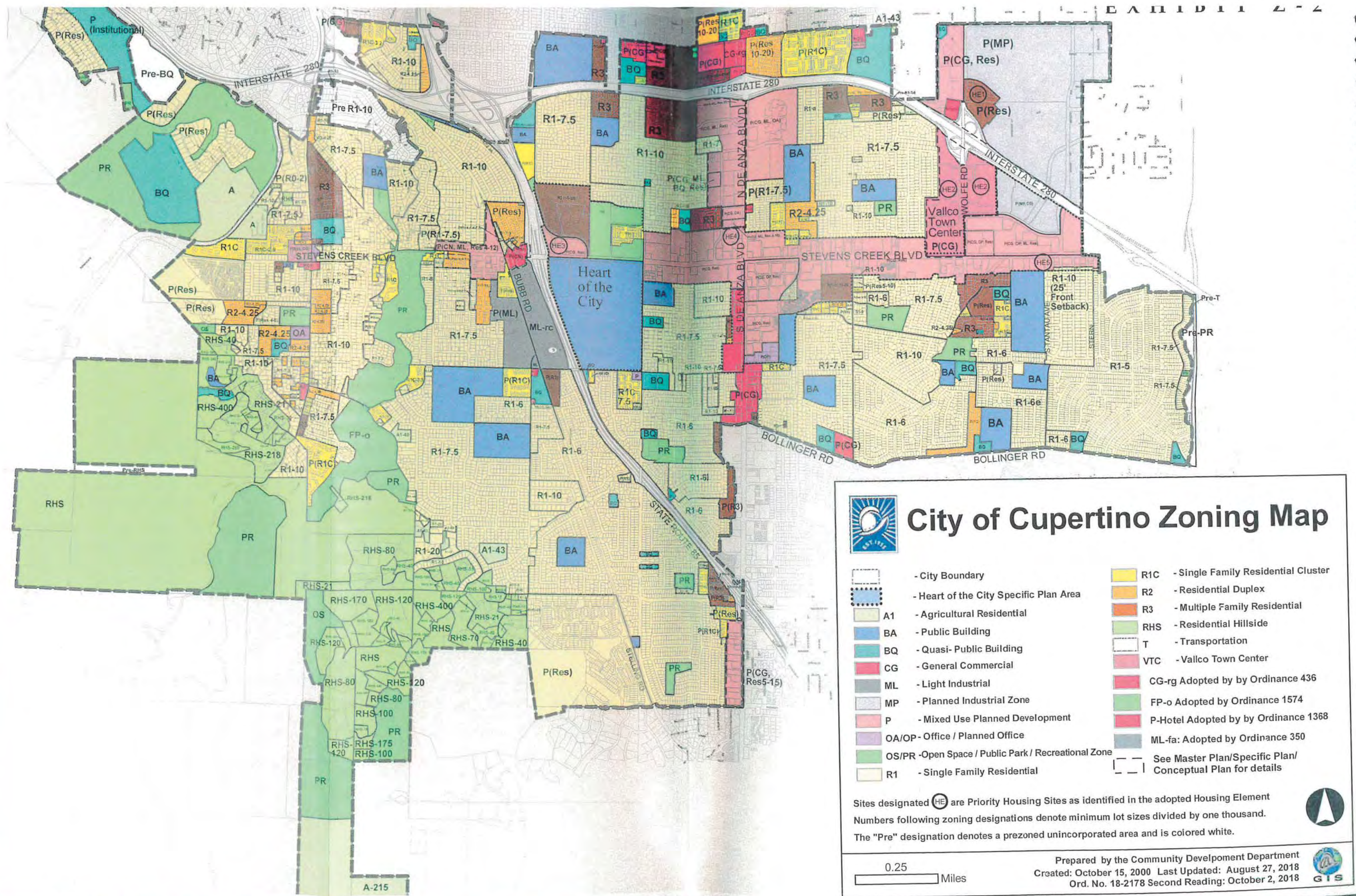
- City Boundary
- Heart of the City Specific Plan Area
- Agricultural Residential
- Public Building
- Quasi-Public Building
- General Commercial
- Light Industrial
- Planned Industrial Zone
- Mixed Use Planned Development
- Office / Planned Office
- Open Space / Public Park / Recreational Zone
- Single Family Residential
- Single Family Residential Cluster
- Residential Duplex
- Multiple Family Residential
- Residential Hillside
- Transportation
- Vallco Town Center
- CG-rg Adopted by Ordinance 436
- FP-o Adopted by Ordinance 1574
- P-Hotel Adopted by Ordinance 1368
- ML-fa Adopted by Ordinance 350
- See Master Plan/Specific Plan/Conceptual Plan for details

Sites designated are Priority Housing Sites as identified in the adopted Housing Element. Numbers following zoning designations denote minimum lot sizes divided by one thousand.

The "Pre" designation denotes a prezoned unincorporated area and is colored white.

0.25 Miles

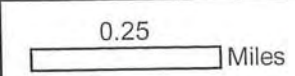
Prepared by the Community Development Department
 Created: October 15, 2000
 Last Updated: August 27, 2018
 Ord. No. 18-2178 Second Reading: October 2, 2018



City of Cupertino Zoning Map

- City Boundary
- Heart of the City Specific Plan Area
- A1 - Agricultural Residential
- BA - Public Building
- BQ - Quasi-Public Building
- CG - General Commercial
- ML - Light Industrial
- MP - Planned Industrial Zone
- P - Mixed Use Planned Development
- OA/OP - Office / Planned Office
- OS/PR - Open Space / Public Park / Recreational Zone
- R1 - Single Family Residential
- R1C - Single Family Residential Cluster
- R2 - Residential Duplex
- R3 - Multiple Family Residential
- RHS - Residential Hillside
- T - Transportation
- VTC - Vallco Town Center
- CG-rg Adopted by by Ordinance 436
- FP-o Adopted by Ordinance 1574
- P-Hotel Adopted by by Ordinance 1368
- ML-fa: Adopted by Ordinance 350
- See Master Plan/Specific Plan/Conceptual Plan for details

Sites designated are Priority Housing Sites as identified in the adopted Housing Element
 Numbers following zoning designations denote minimum lot sizes divided by one thousand.
 The "Pre" designation denotes a prezoned unincorporated area and is colored white.



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OFFICE OF THE CITY CLERK

CITY HALL

10300 TORRE AVENUE • CUPERTINO, CA 95014-3255

TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366

RECEIPT REJECTING REFERENDUM PETITION

Petition Name: Referendum Against an Ordinance Passed by the City Council;
Ordinance No. 18-2178

A total of 24 petition sections protesting the adoption of Ordinance No. 18-2178 were submitted to my office on October 29, 2018. These sections were in a 202-page, spiral-bound format. The page marked "Petition Signatures, Page 1 of 34" contained the title of the petition, a notice to the public, a statement of intention, and six signature blocks. The pages marked "Petition Signatures, Page 2 of 34" through "Petition Signatures, Page 33 of 34" each contained the title of the petition, a notice to the public, and nine signature blocks. The page marked "Petition Signatures, Page 34 of 34" contained the title of the petition, a notice to the public, six signature blocks, and a declaration of the circulator.

Following "Petition Signatures, Page 34 of 34" was a copy of Ordinance No. 18-2178 consisting of six pages, the sixth of which contained Exhibit Z-1 to Ordinance No. 18-2178. The following page of the petition contained the City Clerk's certification as to the correctness of Ordinance No. 18-2178. Following the City Clerk's certification was an 11x17 bifold color page purporting to contain Exhibit Z-2 to Ordinance No. 18-2178 and entitled "City of Cupertino Zoning Map." The next four pages of the petition contained color enlargements of sections of the 11x17 bifold color page, each showing approximately one-quarter of the image depicted on the 11x17 color page. Following these four pages, the petition contained a copy of Resolution No. 18-084, consisting of five pages, followed by Exhibits EA-1 and EA-2 to Resolution No. 18-084, which comprised the balance of the 202-page petition.

Elections Code section 9238(b)(2) requires each section of a referendum petition to contain "the text of the ordinance or the portion of the ordinance that is the subject of the referendum." The required "text" includes any documents attached to or incorporated by reference into the ordinance that is the subject of the referendum.

I find that the petition sections submitted to my office do not actually or substantially comply with Elections Code 9238(b)(2) because they do not contain an accurate copy of the "City of Cupertino Zoning Map," which was attached as Exhibit Z-2 to Ordinance No. 18-2178. The pages in each petition section purporting to contain Exhibit Z-2 reflect several substantial differences from the true and correct version of Exhibit Z-2 that was attached to Ordinance No. 18-2178 as adopted by the City Council and as maintained by my office and provided to the referendum proponents. Those differences, moreover, appear to reflect major changes made by the person or persons who prepared the referendum petitions.

For the foregoing reasons, I am required to reject the petition sections as not complying with the procedural requirements of the Elections Code.

All signatures were presented on petition sections in the format described above. As a result of this analysis, and because all of the petition sections are defective, I find that there are no signatures on valid petition sections. Therefore, I am rejecting the petition sections and taking no further action on this referendum petition.



2/13/19

Grace Schmidt, City Clerk

Date