

CC 05-15-20

#1 Pending Litigation;
Vallco Property Owner LLC
v. City of Cupertino

Written Communications

Lauren Sapudar

From: Joseph Fruen <jrfruen@gmail.com>
Sent: Friday, May 15, 2020 12:29 PM
To: City Clerk; Kirsten Squarcia; City Council; Deborah L. Feng; Cupertino City Manager's Office; Liang Chao; Darcy Paul; Steven Scharf; Rod Sinks; Jon Robert Willey
Cc: City Attorney's Office; Heather Minner Law Email
Subject: Re today's closed session

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Council and staff:

I note today's closed session to discuss pending litigation in *Vallco Property Owner LLC v. City of Cupertino*, Santa Clara County Superior Court, Case No. 19CV355457, concerning the city council's August 20, 2019 and September 3, 2019 actions to downzone the Vallco site. As Councilmember Chao recused herself from the underlying actions, it would be likewise inconsistent with the requirements of the Political Reform Act under Fair Political Practices Commission Regulation 18702.2 for her to participate in today's session.

Though the FPPC provided Advice Letter 19-032 clarifying that Councilmember Chao could participate in matters related to the 2018 Vallco Specific Plan and the 2018 Vallco SB 35 project litigation, that advice was predicated on the facts presented in the request for advice. The FPPC based its advice on the "public generally" exception to the materiality standards in Regulation 18702.2 linked to the similar effects of these two very large projects on a purported significant segment of the public and Councilmember Chao's property 939 feet from the Vallco site. The council actions at issue in the litigation being discussed today regard dramatically smaller potential development not addressed by the FPPC's advice and which would have different impacts. Advice Letter 19-032 is therefore inapposite to Councilmember Chao's eligibility to take part in today's discussion. A search of the FPPC's advice letter online database reveals no new advice letters related to Councilmember Chao's eligibility to participate in this discussion. Accordingly, should Councilmember Chao participate today, she does so at her own risk and imperils any decision council may make today.

I further note that in substantiating the city's request to stay this litigation, one of the reasons presented to the Court in its joint stipulation with Petitioners was the fact that the city was "commencing an additional planning effort for the Vallco property." The other was the ongoing litigation over the Vallco SB 35 project--a matter on which the court has now ruled. Discussion of the Vallco SB 35 project litigation is conspicuously absent from the notice for today's session, which would seem to leave only question of the "additional planning effort" as an item for discussion. As a preliminary matter, any detailed discussion of an "additional planning effort" should only occur at a properly noticed public meeting, and I would ask that the city attorney and the city manager work diligently to avoid the discussion of anything that should occur in a noticed open public meeting.

Many thanks for your service,

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J.R. Fruen, Esq.

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