



## OFFICE OF THE CITY CLERK

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### CITY COUNCIL STAFF REPORT

Meeting: May 7, 2019

#### Subject

Options regarding three referendum petitions challenging approvals related to the Vallco Town Center Specific Plan: Resolution No. 18-085 (General Plan Amendment for Vallco Town Center), Resolution No. 18-086 (Vallco Town Center Specific Plan), and Ordinance No. 18-2179 (Development Agreement for Vallco Town Center).

#### Recommended Action

As required by California Elections Code Section 9241, the City Council must choose one of the following options for each of the referendum petitions: Repeal the resolution(s) and/or ordinance in their entirety; or submit the resolution(s) and/or ordinance to the voters, either at the next regular municipal election (November 3, 2020) or at a special election called for that purpose on a date determined by the Council, but occurring at least 88 days after the order calling the election (i.e., not before July 16, 2019 if action is taken on May 7, 2019):

Resolution No. 19-042 repealing Resolution No. 18-085

Resolution No. 19-043 submitting Resolution No. 18-085 to Nov 2020 regular election

Resolution No. 19-044 repealing Resolution No. 18-086

Resolution No. 19-045 submitting Resolution No. 18-086 to Nov 2020 regular election

Resolution No. 19-046 repealing Ordinance No. 18-2179

Resolution No. 19-047 submitting Ordinance No. 18-2179 to Nov 2020 regular election

The Council may choose to place one or more of the approvals on the ballot while repealing the others. However, because the Specific Plan and Development Agreement both depend upon the General Plan Amendment to establish consistency with the City's General Plan, if the Council decides to repeal the General Plan Amendment then it should also repeal the Specific Plan and Development Agreement. The Council also may choose to defer taking action on one or more of the referendum petitions. The Elections Code does not specify any particular deadline for the Council to take action on the petitions.

Below are the specific options for each approval:

1. 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:
  - a. Repeal the resolution in its entirety; or
  - b. Submit the resolution to the voters at the next regular municipal election occurring at least 88 days after the order calling the election (i.e., on November 3, 2020); or
  - c. Submit the resolution to the voters at a special election called for that purpose on a date to be determined by the Council at least 88 days after the order calling the election (after July 16, 2019 if action is taken on May 7, 2019).
2. Resolution No. 18-086: A Resolution of the City Council of the City of Cupertino adopting the Vallco Town Center Specific Plan:
  - a. Repeal the resolution in its entirety; or
  - b. Submit the resolution to the voters at the next regular municipal election occurring at least 88 days after the order calling the election (i.e., on November 3, 2020); or
  - c. Submit the resolution to the voters at a special election called for that purpose on a date to be determined by the Council at least 88 days after the order calling the election (after July 16, 2019 if action is taken on May 7, 2019).
3. Ordinance No. 18-2179: Ordinance of the City Council of the City Of Cupertino approving a Development Agreement by and between the City Of Cupertino and Vallco Property Owner LLC for the development of Vallco Town Center:
  - a. Repeal the ordinance in its entirety; or
  - b. Submit the ordinance to the voters at the next regular municipal election occurring at least 88 days after the order calling the election (i.e., on November 3, 2020); or
  - c. Submit the ordinance to the voters at a special election called for that purpose on a date to be determined by the Council at least 88 days after the order calling the election (after July 16, 2019 if action is taken on May 7, 2019).

As discussed below, the cost of submitting measures to the voters at a stand-alone special election called for that purpose is significantly higher than the cost of submitting measures to the voters at the next regular municipal election. Election costs also increase substantially with each additional page of text added to the voter information guide.

Accordingly, staff recommends that should the Council wish to submit either of the resolutions or the ordinance to the voters, it do so at the next regular municipal election, which will be the general election held on November 3, 2020. To reduce costs, staff further recommends that the

full text (including exhibits) to each resolution and ordinance not be printed in the ballot materials, but rather be made available by the City Clerk.

Draft resolutions or ordinances (a) repealing each measure and (b) submitting each measure to the voters at the next regular municipal election (and requesting consolidation with the November 3, 2020 general election) are attached. Should the Council instead wish to submit either of the resolutions or the ordinance to voters at a special election, staff can return to Council with draft resolutions to that effect.

### Discussion

Opponents of the Vallco Town Center project submitted four separate referendum petitions challenging four enactments associated with the project: Resolution Nos. 18-085 (General Plan Amendment for Vallco Town Center) and 18-086 (Vallco Town Center Specific Plan), and Ordinance Nos. 18-2178 (Rezoning Parcels within Vallco Special Area) and 18-2179 (Development Agreement for Vallco Town Center). The Registrar of Voters validated the signatures on all four referendum petitions. On December 18, 2018, the City Council received the City Clerk's certification that all four petitions had been signed by more than ten percent of the City's voters.

In letters dated December 6 and December 18, 2018, Vallco Property Owner, LLC ("Vallco") claimed that the petitions challenging Resolution No. 18-085 and Ordinance No. 18-2178 were procedurally defective because they allegedly failed to include the "full text" of the challenged approvals. Those claims, and the City Attorney's recommendations regarding those petitions, were discussed in a memorandum from the City Attorney dated February 13, 2019 (attached as Attachment D to this report).

As discussed in the City Attorney's memorandum, the City Clerk, in consultation with the City Attorney's office, determined that the referendum petition challenging Ordinance No. 18-2178 did not actually or substantially comply with the Elections Code's procedural requirements. Accordingly, on February 13, 2019, the City Clerk notified referendum proponents of her rejection of the referendum petition against Ordinance No. 18-2178.

With respect to the referendum petition against Resolution No. 18-085, however, the City Clerk and City Attorney concluded that although the petition substantially complied with Elections Code requirements despite certain technical deficiencies, the City Clerk lacked legal authority to accept the petition without a court order. On February 19, 2019, the Council authorized the City Attorney to file an appropriate legal action to obtain a judicial declaration that the referendum petition substantially complied with the Elections Code and could be processed.

On March 20, 2019, the City Clerk and referendum proponents (Better Cupertino Action Committee and Liana Crabtree) filed a Joint Submission on Agreed Facts in Santa Clara Superior Court seeking a court order confirming that the referendum petition against Resolution No. 18-085 substantially complied with the Elections Code. Attorneys for Vallco Property Owner, LLC

notified the City by letter dated March 18, 2019, that Vallco took no position on the substantial compliance issue and would accept the decision of the Court.

On March 21, 2019, the Superior Court entered an order (1) finding that the referendum petition against Resolution No. 18-085 substantially complied with the Elections Code; (2) directing the City Clerk to process the petition and promptly submit it to the City Council for action pursuant to Elections Code section 9241; and (3) directing that if the City Council submits the petition to voters, the version of Resolution No. 18-085 considered and adopted by the City Council on September 19, 2018, shall be made available to voters either in the ballot materials or as otherwise provided by law.

The procedural validity of the petitions challenging Resolution No. 18-086 and Ordinance No. 18-2179 has not been questioned. The City Clerk has determined that these petitions comply with the procedural requirements of the Elections Code and contain the valid signatures of more than ten percent of the City's voters.

Accordingly, pursuant to Elections Code section 9237, the effective dates of Resolution No. 18-085, Resolution No. 18-086, and Ordinance No. 18-2179 have been suspended, and the City Council must now reconsider all three enactments.

Elections Code section 9241 gives the City Council only three options for each resolution or ordinance: the Council may (1) repeal each resolution or ordinance in its entirety; (2) submit each resolution or ordinance to the voters at the next regular municipal election occurring at least 88 days after the order calling the election, or (3) submit each resolution or ordinance to the voters at a special municipal election called for that purpose and occurring at least 88 days after the order calling the election.

Potential election dates and estimated costs are discussed below.

#### Election Dates and Cost

A detailed breakdown of the cost estimates for each election is attached as Attachment E. However, this chart gives an overview of the costs of putting both resolutions and the ordinance to a vote at the same election:

Type of Election	Date of Election	Estimated cost with three ballot measures
Special Election (Stand-Alone)	TBD (after July 16, 2019)	\$1,491,320*
Special Election (consolidated with presidential primary)	March 3, 2020	\$185,223**
Next Regular Municipal Election	Nov. 3, 2020	\$153,741 ***

\*Includes a \$1,420,184 “base charge” for a stand-alone special election, plus \$71,136 for three ballot measures (based on the Registrar of Voters’ estimated cost of \$23,712 per measure in a special election). The “base charge” for a stand-alone special election could potentially be shared if any other city or entity has an election on the same day.

\*\*Includes \$82,729 “initial item” charge for first measure, plus \$51,247 “additional item” charge for each of the two additional ballot measures.

\*\*\*Excludes \$82,729 “initial item” charge for City Council seats, but includes \$51,247 “additional item” charge for each of the three ballot measures.

The figures in the chart above reflect estimated costs for three measures based on each measure taking up six pages in the printed voter information guide (one page for the text of the measure, one page for the impartial analysis, and four pages for arguments and rebuttals for and against the measure).

The Council has the option of including the text of and exhibits to each of the measures in the ballot materials, but doing so would substantially increase costs to the City. For the March 3, 2020 and November 3, 2020 consolidated elections, each additional page in the voter information guide would add \$6,493 to the cost of each measure. Although the resolutions and ordinance themselves are not especially lengthy, they include a total of 306 pages of exhibits (10 pages for Resolution No. 18-085, 202 pages for Resolution No. 18-086, and 94 pages for Ordinance No. 18-2179). Assuming that each page of each exhibit would require one page in the voter information guide, including the full text and exhibits of all three resolutions could add approximately \$2 million to the total costs. Accordingly, staff recommends that the text of and exhibits to the resolutions and ordinance not be printed in the ballot materials, but rather be made available on the City’s web page and in the City Clerk’s office upon request.

Finally, it is possible that some of the “base costs” for a stand-alone special election could be shared with another city in Santa Clara County if that other city were to call a special election for the same day. Should the Council direct staff to prepare a resolution calling a stand-alone special election, it also could direct staff to attempt to coordinate with other cities to the extent possible before bringing potential election dates back to a future Council meeting.

#### Sustainability Impact

There is no sustainability impact.

#### Fiscal Impact

The fiscal impact depends on which option Council chooses. Election costs are noted in the chart above and in Attachment E. Unknown fiscal impact if Council chooses to repeal either the resolution or ordinance.

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Approved for Submission by: Timm Borden, Interim City Manager

Attachments:

- A – Resolution No. 18-085
- B – Resolution No. 18-086
- C – Ordinance No. 18-2179
- D – Memorandum from City Attorney (February 13, 2019)
- E – Election Cost Estimates
- F – Draft resolution repealing Resolution No. 18-085
- G – Draft resolution submitting Resolution No. 18-085 to the voters at the next regular municipal election (Nov. 3, 2020)
- H – Draft resolution repealing Resolution No. 18-086
- I – Draft resolution submitting Resolution No. 18-086 to the voters at the next regular municipal election (Nov. 3, 2020)
- J – Draft ordinance repealing Ordinance No. 18-2179
- K – Draft resolution submitting Ordinance No. 18-2179 to the voters at the next regular municipal election (Nov. 3, 2020)