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July 10, 2018

Via Electronic Mail Only

Mayor Jean Mordo
and Members of the City Council
Los Altos City Hall
1 North San Antonio Road
Los Altos, CA 94022 |

Re: Resolution No. 2018-25; Proposed Council-Sponsored Measure to Amend the City's General Plan

Dear Mayor Mordo and Members of the City Council:

On behalf of the Committee for Yes on the Los Altos Protect Our Parks and Public Lands Initiative,[1] I write to object to the City Council's taking any action on Resolution No. 2018-25 ("Council-Sponsored General Plan Amendment") unless and until the City first complies with the procedural requirements set forth in the Government Code for proposing, considering, and adopting general plan amendments. This matter is listed on the Council's agenda for tonight's meeting as "Discussion" Item 15.

Among other things, these Government Code requirements include extensive opportunities for public participation and involvement (Gov't Code § 65351), and referral of the proposed amendments to the City's Planning Commission—which must hold at least one public hearing (Gov't Code § 65353(a)—before making a recommendation to the City Council. The City Council may not lawfully place this or any other proposed Council-Sponsored General Plan Amendment on the ballot until it first complies with these requirements.

[1] The full name of the Committee is Committee for Yes on Initiative General Plan Amendment Measure Requiring Voter Approval of the Sale, Lease or Certain Changes in Use of Certain Land Designated as "Parks," "Other Open Space" or "Public and Institutional" in the City's General Plan, FPPC ID Number 1405097 ("Committee").

1. Unlike the voters, the City Council must comply with procedural statutes governing city council actions before placing its own measures on the ballot.

As the Supreme Court has repeatedly held, there is a "clear distinction" between "voter-sponsored" initiatives—which are exempt from CEQA and other similar procedural requirements—and "council-sponsored" ballot measures, which are not. *Friends of Sierra Madre v. City of Sierra Madre,* 25 Cal.4th 165, 189-90 (2001); *see Tuolumne Jobs & Small Business Alliance v. Superior Court,* 59 Cal. 4th 1029, 1035 & n. 2 (2014).

This distinction, the Court explained, "serves a significant governmental policy." *Friends of Sierra Madre,* 25 Cal.3th at 190. Voters who are advised that a measure has been placed on the ballot by the city council:

> will assume that the city council has done so only after itself making a study and thoroughly considering the potential environmental impact of the measure. … By contrast, voters have no reason to assume that the impact of a voter-sponsored initiative has been subjected to the same scrutiny and, therefore, will consider the potential environmental impacts more carefully in deciding whether to support or oppose the initiative

Id.

The Court's holding regarding CEQA reflects the more general principle that "'[p]rocedural requirements which govern *council* action ... generally do not apply to initiatives, any more than the provisions of the initiative law govern the enactments of ordinance in council.'" *DeVita v. County of Napa,* 9 Cal.4th 763, 785 (1995) (emphasis in original).

Indeed, as subsequent courts have made clear, council-sponsored measures are not "initiatives" at all as that term is used in the Elections Code and the constitution. *See, e.g., Hernandez v. County of Los* Angeles, 167 Cal.App.4th 12, 20-22 (2008) (holding that a council-sponsored charter amendment placed on the ballot by the city council was not an "initiative" because it was placed on the ballot by the city's "governing body" rather than voter-signed initiative petition and therefore was not subject to "single subject rule" that governs initiatives); *Citizens for Responsible Gov't v. City of Albany*, 56 Cal. App. 4th 1199, 1214-16 (1997) (holding that council-sponsored

measure placing a development agreement on the ballot was *not* a voter-sponsored "initiative" and was therefore subject to CEQA).

Indeed, the draft proposed Council-Sponsored Measure prepared by staff expressly recognizes that council-sponsored ballot measures are generally subject to CEQA. It contains a proposed finding, however, that this particular proposal is not a "project" within the meaning of CEQA because it will not result in any direct or indirect physical change in the environment.

Assuming this proposed finding is accurate, it does not relieve the City Council of the obligation to comply with the procedural requirements of the State Planning and Zoning law. Instead, as detailed below, those requirements apply to all city council proposals or actions to amend the General Plan.

2. Like CEQA, the State Planning and Zoning Law imposes mandatory procedural requirements on council-sponsored general plan amendments that do not apply to voter-sponsored general plan amendments.

Article 6 of the State Planning and Zoning Law governs the preparation, adoption, and amendment of general plans, and it imposes numerous mandatory procedural requirements before the city council can consider or take action on any general plan amendment. Gov't Code § 65350 ("Cities and counties shall prepare, adopt, and amend general plans and elements of those general plans in the manner provided in this article.").

Perhaps most importantly, any "proposed amendments to the general plan" must first be presented to and considered by the City's Planning Commission, which "*shall* hold at least one public hearing before approving a recommendation" on that proposal. Gov't Code § 65353(a) (emphasis added). Likewise, the City Council itself—as the City's "legislative body"—"shall hold at least one public hearing" on the proposal, with notice provided as required by Government Code section 65090. Gov't Code § 65355 (emphasis added). In this regard, we note that the proposal before the Council this evening was not noticed or agendized as a public hearing but instead as a "Discussion" item.

These procedural requirements do not apply to voter-sponsored initiatives because that would conflict with the Elections Code and, potentially, the Constitution. *DeVita,* 9 Cal.4th at 785-87. However, these mandatory requirements do apply to city councils and board of supervisors. Gov't Code § 65350 et seq; *see also Orange Citizens for Parks and Recreation v. Superior Court,* 2 Cal.5th 141, 152-53 (2016); *DeVita,* 9

Cal. 4th at 773-74. Unlike for CEQA, the City Council has no power to find that these requirements are inapplicable due to particular aspects of the general plan amendment proposal before it.

Accordingly, on behalf of the Committee, I request that the Council defer taking any action on the proposed Council-Sponsored General Plan Amendment unless and until it refers the proposal to the Planning Commission for consideration at a public hearing and complies with all other mandatory procedural requirements in the State Planning and Zoning Law.

The Committee also urges the Planning Commission (as the City's "planning agency") to comply with the requirements of Gov't Code section 65352(a) to refer the proposed Council-Sponsored General Plan Amendments to the other entities specified in that section. The Planning Commission should do so even though this particular referral requirements is "directory," not mandatory.[2]

Should members of the City Council have any questions about this matter, I would be happy to discuss those with the City Attorney.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Robert "Perl" Perlmutter

cc: Christopher Diaz, City Attorney
Clients

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[2] *See* Gov't Code 65352(c)(1); *DeVita,* 9 Cal.4th at 773.