I’m Andrea Hetheru, chair of Chollas Valley Community Planning Group. Before this item on today’s agenda, this statement was emailed to all councilmembers and is entered into the record.

The adoption of Footnote 7, which imposed selective zoning changes in the Encanto and Southeastern San Diego neighborhoods, was a betrayal of our community and a clear violation of due process, equal protection, environmental law, and fair housing obligations. It was a policy enacted without meaningful input, bypassing procedural safeguards, environmental reviews, and our community’s right to equitable development. Footnote 7 must be repealed retroactively because it was unlawful at inception and is poised to do irreversible and severe harm to our community.

Before Footnote 7, District 4—the low-resourced, primarily nonwhite district with by far the greatest concentration of Black San Diegans—had crumbling roads, poor schools, boarded-up storefronts, food deserts, severely deficient stormwater infrastructure, trash-strewn medians filled with cracked, weed-ridden asphalt, and streets with no sidewalks. The only amenity we had was 17% of the city's RS-1-2 lot size. Footnote 7 completely eliminated the one amenity we had. District 1, the far wealthier and whiter district, had all the things lacking in District 4 and had a whopping 61% of the RS-1-2 lot size. Footnote 7 reduced District 4's share of that lot size from 17% to **zero**, while **increasing** District 1's share from 61% to 74%. Housing cost is driven at least as much by location as it is by inventory. Everyone is familiar with the retail and real estate maxim of “Location, Location, Location.” As long as there are large areas that are deemed undesirable, the cost of housing will remain inflated. Fixing this means leveling the public amenities available throughout our city. Modern, well-maintained parks bring higher quality retail and more residents with higher incomes, schooling and time to engage civically. When Chollas Valley is no

longer undesirable, the prices of housing in other areas of or city will come down.

Our community does not oppose housing. In fact, the 2015 Encanto Community Plan significantly increased multi-housing capacity by 8,077 units while reducing single-family units by 203, resulting in a net population increase of over 28,000—which is about 160% growth. Why are we fiercely opposed to Footnote 7?? Because it was unlawful and unconscionable. It was buried within the sprawling Phase 2 of the **2019 Land Development Code Update**, a massive collection of amendments divided into three phases due to its sheer size. The Phase 2 update was presented to the Community Planners Committee (CPC) on October 2, 2019, giving members only three weeks to review it before the Planning Commission's hearing on October 26, 2019. At that meeting, CPC Chair Wallis Wolford requested a three-month continuance, citing the overwhelming size of the update and the need for the CPC, individual planning groups, and the Code Monitoring Team to adequately review and provide input. The CPC had voted unanimously, 27-0, to support this request, underscoring the need for sufficient time for public participation. Pricella Escobar, Chair of the Code Monitoring Team, described the process as being "like drinking out of a fire hose," illustrating how overwhelming the rushed timeline was for those tasked with analyzing the changes. Despite these valid concerns, the Planning Commission denied the continuance. Commissioner Vicki Granowitz harshly rebuked the CPC and planning groups for "being so far behind," while Commissioner Susan Pearson argued that there were time-sensitive items requiring immediate approval.

Notably, during the meeting, Commissioner William Hoffman questioned the rationale behind the requirements of Footnote 7 applying exclusively to Southeastern San Diego and Encanto. In response, Planning Department staff provided misleading justifications, stating that Footnote 7 was needed to "clean up" inconsistencies and avoid

penalizing smaller lots in Encanto—an assertion that failed to acknowledge the ordinance's direct conflict with the Encanto Neighborhoods Community Plan. Following this flawed process, the City Council voted unanimously on December 17, 2019, to adopt Phase 2 of the Land Development Code Update without incorporating any input from the CPC, Code Monitoring Team, or individual planning groups.

Footnote 7 represents a direct violation of the **Affirmatively Furthering Fair Housing (AFFH)** obligations under state and federal law. These obligations require local governments to actively dismantle housing discrimination and segregation while creating equitable opportunities for all residents. Footnote 7 does the opposite. By disproportionately burdening Encanto and Southeastern San Diego—predominantly Black and Hispanic communities—with the reduction of green space to increase housing stock with reduced lot sizes and increased density, it exacerbates pre-existing inequities and segregated housing patterns. Furthermore, adding more "market-rate" housing to an area already deemed undesirable due to its lack of resources and its racial segregation of primarily nonwhite residents does nothing to affirmatively further fair housing. Such housing will remain undervalued compared to virtually identical market-rate housing in whiter, high-resource areas, perpetuating the racial and economic inequities that AFFH was designed to address. Additionally, the increased density allowed by Footnote 7 imposes significant environmental burdens on these communities, including worsening heat-island effects, overburdening stormwater infrastructure, and reducing access to public green spaces. These impacts contravene both the Fair Housing Act and California's AFFH mandates, which demand proactive measures to address systemic inequities in housing and environmental quality. Footnote 7 entrenches these disparities rather than alleviating them, making its repeal necessary to comply with the law and uphold fair housing principles.

The City has failed to demonstrate that Footnote 7 serves a public good that justifies the disparate impact it imposes on Encanto and Southeastern San Diego. While disparate impacts on certain communities may, in limited cases, be permissible under equal protection principles if they are tied to a compelling public interest, Footnote 7 fails to meet this standard. To the extent the stated justification about "cleaning code up" and making it "more consistent" makes any sense and is not approached as pretext, it appears to be administrative rather than any demonstrable benefit to the public at large or to the communities it burdens. As established in **Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265 (1977)**, government policies that create racial disparities must have strong justifications rooted in the public good to withstand legal scrutiny. Footnote 7 has no such justification. The policy's disparate impact, combined with its procedural irregularities, renders it indefensible under equal protection principles. The city Attorney's dedication to defending the indefensible acts the administration sets a new bar for behavior that is merely under the COLOR of law.

Footnote 7 also violates **CEQA**, which mandates an environmental review for significant zoning changes. The failure to conduct an Environmental Impact Report (EIR) constitutes a deprivation of **procedural due process**, as CEQA ensures stakeholders are informed of potential environmental impacts and given the opportunity to participate in mitigating them. This omission denied residents of Encanto and Southeastern San Diego the opportunity to raise concerns about increased density's environmental consequences, such as heat-island effects and stormwater runoff. As established in **Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)**, and **Walker v. City of Hutchinson, 352 U.S. 112, 115 (1956)**, due process requires notice reasonably calculated to inform interested parties and provide them a fair opportunity to be heard. The absence of a CEQA-mandated EIR also violates precedent requiring environmental review of

significant zoning changes (**No Oil, Inc. v. City of Los Angeles, 13 Cal. 3d 68, 74 (1974)**).

Furthermore, Footnote 7 is substantively unlawful because it conflicts with the **Encanto Neighborhoods Community Plan of 2015** and the City's General Plan. Under **Lesher Communications, Inc. v. City of Walnut Creek, 52 Cal. 3d 531, 544 (1990)**, zoning ordinances inconsistent with a general plan are invalid from inception. Footnote 7's increased density contradicts the Encanto Community Plan's provisions for infrastructure development, green space preservation, and environmental sustainability, rendering it void under this principle.

Allowing projects to proceed under Footnote 7 would set a dangerous precedent and undermine public trust. If developers and City officials are allowed to benefit from ordinances later deemed unlawful, it creates a perverse incentive for passing and relying on unlawful legislation. **Cal. Gov't Code § 66498.1 prohibits** reliance on ordinances that do not comply with state or federal law. **Acker v. Baldwin** invalidated development approval based on unconstitutional zoning code. And, **Starbird v. County of San Benito has specific application to violation of CEQA.** Allowing such reliance would discourage accountability, erode confidence in the City's planning processes, and disproportionately harm marginalized communities. It is essential to send a clear message that unlawful ordinances cannot serve as the basis for development approvals.

The **Chollas Valley Community** does not oppose housing. Our 2015 Community Plan demonstrated our commitment to sustainable and equitable development. Footnote 7, however, disregarded our needs and the law, prioritizing developer profits over both. Its retroactive repeal is necessary not only to correct past harms but to ensure a future where all San Diego communities are treated with fairness, dignity, and respect. If there is a burden to be borne as a result of the unlawful passage of Footnote 7, it should not fall on a demographic that has been misused

and neglected for over a century. So, city of San Diego, pay the developers if they prevail or you think they ought to prevail. But, halt the development that is based on wrong and unlawful zoning. That remedy, though somewhat painful, is the least our community is due on this matter.