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Cc:

Bcc:

Date: Fri, 24 Jan 2025 13:30:39 -0800

Subject: [EXTERNAL] Re: Critical Concerns About City Attorney Memo on Footnote 7

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In the email sent earlier today with the subject line included above, where the date "December 28" appears, it should read, "January 28" as that is the date of the hearing on the code amendment to repeal Footnote 7.

Andrea Hetheru, Chair
Chollas Valley Community Planning Group

On Fri, Jan 24, 2025 at 9:52 AM Chollas Valley CPG <chollasvalleycpg@gmail.com> wrote:

Honorable Council President Joe LaCava, District 1
Honorable Councilmember Jennifer Campbell, District 2
Honorable Councilmember Stephen Whitburn, District 3
Honorable Councilmember Henry L. Foster III, District 4
Honorable Councilmember Marni von Wilpert, District 5
Honorable Councilmember Kent Lee, District 6
Honorable Councilmember Raul Campillo, District 7
Honorable Councilmember Vivian Moreno, District 8
Honorable Councilmember Sean Elo-Rivera, District 9

RE: CRITICAL CONCERNS ABOUT CITY ATTORNEY MEMO ON FOOTNOTE 7

Dear Councilmembers,

We write to you as the Chollas Valley Community Planning Group (CVCPG), the officially recognized advisory body representing the sole community affected by Footnote 7. We respectfully request your attention to procedural inconsistencies, transparency concerns, and potential violations of Due Process created by the City Attorney's January 22, 2025, memorandum on the legality of Footnote 7.

Summary of Relevant Events and Concerns

1. **Prior Request for Due Process Review:** On **September 22, 2024**, CVCPG sent a letter of inquiry to the then-City Attorney, Mara Elliott, regarding procedural errors and potential violations of constitutional Due Process and the Brown Act in the appeal of the Klauber Project's environmental determination, which relies on Footnote 7. Ms. Elliott responded on **September 24, 2024**, stating that it was "not appropriate" for her office to respond as the matter was "quasi-judicial."
2. **City Attorney's Memorandum on Footnote 7:** On the evening of **Thursday, January 23, 2025**, a memorandum dated January 22, 2025, from the newly elected City Attorney, Heather Ferbert, was posted as a revision to the city council agenda for January 28, 2025. The memorandum rendered an opinion that Footnote 7 was not illegal and contained detailed case law citations. This lengthy memorandum effectively supports allowing projects reliant on Footnote 7 to go forward. It is our best knowledge and belief that there are only two such projects: Klauber and Old Memory Lane.
 - While the prior City Attorney's Office refused to address CVCPG's legal concerns about procedural errors and Due Process violations in the Klauber project because the matter was deemed quasi-judicial, the new memorandum provides an extensive legal opinion to justify the City Administration's position as put forth by the Planning Department, that Klauber and other projects reliant on Footnote 7 should proceed.
 - This contradiction undermines public confidence in the City Attorney's Office and raises questions about the selective application of legal interpretations to support the City Administration's agenda while disregarding the need for transparency and fairness in addressing community concerns.
3. **Procedural Discrepancies and Undue Influence Concerns:** The City Attorney's Office's handling of Footnote 7 reflects a clear inconsistency: it refused to engage with CVCPG's legal concerns about Klauber but has now issued a detailed memorandum, in effect, advocating for the City Administration's position to avoid retroactively applying the repeal of Footnote 7 so that the Klauber and Old Memory Lane projects can go forward. Thus, the memorandum is posted as a companion document to the city council agenda for the December 28, 2025, meeting and gives reasonable cause to believe there is an intention to intimidate Councilmembers into concluding that they cannot act to effect retroactive repeal of Footnote 7. The Planning Department staff and Planning Commission have already recommended removing Footnote 7 without retroactive effect. So, the memorandum would not have been necessary if the city administration was sure that council would only vote for the prospective (forward) removal of Footnote 7.

Key Issues for Councilmembers

1. **Contradictory Legal Advocacy by the City Attorney's Office:**
 - How can the City Attorney's Office justify refusing to address CVCPG's legal concerns on the grounds of quasi-judicial impartiality and shortly thereafter issue a detailed legal opinion supporting the City Administration's efforts to protect projects reliant on Footnote 7?
 - Does this selective engagement with legal questions represent an imbalance in how the City Attorney's Office fulfills its obligations to the public and the community?

1. Council's Obligation:

- As the legislative branch of city government, the Council has a constitutional obligation to uphold Due Process while reflecting the will of the people who elected them. Are you prepared to exercise your discretionary power to retroactively remove Footnote 7 if you believe it is inconsistent with community plans, zoning and environmental law, and plain constitutional law despite the City Attorney's memorandum?

CVCPG represents people within the community of Chollas Valley of this city. The city attorney's office has not communicated with CVCPG regarding the issues raised about Footnote 7 prior to the preparation and posting of the memorandum nor after. However, within the memorandum itself, there is the very strong implication of extensive communication with the Planning Department, an arm of the administrative branch of city government. CVCPG respectfully requests that councilmembers, who constitute the legislative branch of city government, **reject any undue influence** from the City Attorney's memorandum as you evaluate the legality and correctness of retroactively applying the removal of Footnote 7 to halt projects reliant on it: Klauber and Old Memory Lane.

The residents of Chollas Valley rely on your leadership to ensure that decisions affecting their community and city are made transparently, fairly, and in compliance with the Constitution. We trust you will carefully consider these concerns as you deliberate on Footnote 7 and its impact at the hearing on its repeal on December 28, 2025.

Respectfully Submitted,

Andrea Hetheru, Chair

Chollas Valley Community Planning Group

Enclosure/Attachment: City Attorney Memorandum date 01/22/2025