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September 26, 2019

**VIA E-MAIL AND U.S. MAIL**

Bryan W. Wenter  
Miller Starr Regalia  
1331 N. California Blvd.  
Fifth Floor  
Walnut Creek, CA 94596

Re: Terraces of Lafayette Project

Dear Bryan:

On behalf of our client, the City of Lafayette, we are responding to your letter dated August 22, 2019, regarding Vice Mayor Susan Candell's participation in proceedings involving the Terraces of Lafayette housing development project (the "Project"), as well as your remarks (on behalf of Project applicant O'Brien Land Company, LLC) during the public comment periods at the September 3 and September 23 meetings of the City Council.

On February 25, 2019, Vice Mayor Candell announced that she would recuse herself, stating that her decision was made after consultation with her own attorney, as well as the City's attorney on matters related to the Project. To be clear, our firm serves as counsel to the City of Lafayette, not Vice Mayor Candell as an individual Councilmember.

On August 12, 2019, Vice Mayor Candell announced that she would no longer recuse herself with respect to the Project. Ultimately, it is each Councilmember's responsibility to make that decision when faced with a conflict of interest charge of the type you have made. You have asserted, however, that the other Councilmembers are under an obligation to initiate legal action, or take other steps, in order to prevent Vice Mayor Candell from participating in the City's consideration of the Project application. There is no such obligation. City Councilmembers are not empowered to overrule a fellow Councilmember's judgment with respect to such a matter.

If your client believes that Vice Mayor Candell's decision to participate in the Council's possible future consideration of matters concerning the Project is subject to legal challenge, then your client is free to pursue such an action. It would, of course, make sense that a legal action of this type be resolved prior to any Council action regarding the Project.

I can imagine that your client has considered filing a declaratory relief action regarding Vice Mayor Candell's participation, but has refrained from doing so out of a concern that such a lawsuit could have a negative influence on the City's evaluation of the Project. Let me assure you that there would be no such impact. The City Council and City staff remain committed to

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September 26, 2019  
Page 2

ensuring fairness and due process throughout its consideration of the Terraces project. We recognize your client's right to present the recusal issue to the Court should you conclude that judicial guidance on the subject would be appropriate. Your seeking such a determination would not negatively impact the City's consideration of the Project application in any way.

Very truly yours,



Robert B. Hodil

rbh

cc: Honorable Mayor Mike Anderson  
Vice Mayor Susan Candell  
City Councilmember Steve Bliss  
City Councilmember Cameron Burks  
City Councilmember Teresa Gerring  
Lafayette Planning Commission  
Niroop Srivatsa, City Manager  
Greg Wolff, Planning & Building Director  
Joanne Robbins, City Clerk  
Jonathan R. Bass  
Arthur Coon  
Allan Moore