

# City of Alameda Sunshine Ordinance Complaint

Submitted on	11 October 2023, 10:39PM
Receipt number	10
Related form version	3

## Sunshine Ordinance Complaint Form

Complaint against which Department or Body:	City Council, City Manager, City Attorney, Asst City Manager, Planning Staff
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Name of individual contacted at Department or Body, if any:	none
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Alleged violation of public records access.  
Alleged violation of public meeting.

Date of meeting:	10/03/2023
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Sunshine Ordinance Section:	see attached
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Please describe alleged violation:	see attached
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Please attach relevant documents here.	Sunshine for AFB parcel
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Name:	shelby Sheehan
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Filing Date:	10/11/2023
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At least one contact method is needed in order to schedule a hearing. Email address:

Telephone number:

Mailing address:

This form is public and will be included in the meeting record online. Would you like your email address withheld?	Yes
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Would you like your telephone number withheld?	Yes
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Would you like your address withheld?	Yes
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## **SUNSHINE ORDINANCE COMPLAINT FOR ITEM 2023-3338**

**RE: Introduction of an ordinance authorizing the City Manager to execute a 59-month lease with AGLF for City-owned property located at 1900 Thau Way, Alameda, CA.**

### **TIMELINESS**

This complaint is timely because it was Item#2023-3338 on the October 3 2023 City Council meeting, because City Officials provided false information that has not yet been corrected, because my PRA request is still open, and because the lease has not yet commenced

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### **ITEM SUMMARY**

The currently vacant 10,050 square foot parcel at 1900 Thau Way is owned by the City, and the existing abandoned graffiti-covered trailer is owned by the Alameda Food Bank.

This item seeks a 59-month lease for a different non-profit organization, "All Good Living Foundation", for storage use of the building and parcel that is incompatible with the current Open Space Land Use designation.

In an unwritten verbal presentation following the formal presentation attached to the agenda, Planning Staff presented the Alameda Food Bank as being an "approved nonconforming use" within the Jean Sweeney Open Space and used that as the rationale to approve the proposed lease.

**The key issue presented by the Planning Dept about this lease was the "ask" to grandfather-in the supposedly equivalent "non-conforming use" for All Good Living Foundation to use as storage in open space zoning.**

**Suspiciously, all mention of this key issue is completely absent from any and all of the written documentation available beforehand and in the record—likely because they were trying to hide it from scrutiny and ensure there was no written record—however, that omission violated the Sunshine Ordinance because the agenda items did not provide sufficient information, and the process lacked transparency.**

**Planning Staff also did not disclose the expiration of the grandfather clause and other important facts to deliberately paint this picture for the public that the proposed lease is legal.**

**The "City Negotiators" also did not confer with interested parties (Rec Park Commission and Jean Sweeny Board) or issue a public RFP, instead they gifted this**

**illegal sweetheart deal to a favored crony, which violates the rules of transparency, equity, and fair business practices.**

**The above also violates the public meeting rules and public records access rules, as I still am unable to obtain the relevant information, and the public was not afforded adequate opportunity to participate.**

As stated above, no written materials provided with this item contained even a hint of the zoning issues presented verbally during the meeting, and it is this issue that was the key determinant of leasing.

These materials include:

The Staff Summary Report by City Manager Ott (!! ) wherein she which falsely reported the Food Bank has only been inactive since last December (2022), when in fact the trailer has actually been abandoned for at least three years.

The Community Development Departments Presentation about All Good Living which (1) is intentionally vague about the AFB use and (2) falsely claims there will be on-site distribution of items—they travel to school sites for that.

The proposed Lease and use-permit-by-Ordinance, both of which are totally devoid of zoning context or the fact the parcel is part of Jean Sweeney Open Space, which makes it nearly impossible to track the process or oppose the action—which constitutes a grievous miscarriage of procedure (a trick they use a lot lately).

Please see my attached “fact-checking” public comment (below) from the City Council meeting for the details regarding the Sunshine violations summarized above.

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## **RELEVANT SUNSHINE ORDINANCE CODES**

### **2-91.9 - Agendas and Related Materials; Public Records.**

Agenda materials and/or associated relevant information should be readily available if not before or during the meeting, they should be available immediately afterward.

There is an enormous amount of missing information from the agenda materials, which were also not disclosed, and/or false statements were made at the meeting; and corroborating documentation is still not available as of 10/11/23 even though I requested records on September 25, 2023.

As a result, and due to the City Attorneys' failure to perform their statutory duty to provide accurate information to the public, the approval for this lease item was based on false information.

Missing information and/or corroborating documents include:

- Applicable Zoning Ordinances/Maps for the parcel during the relevant time periods
- AFB use permits
- AFB lease
- Documentation of "AFBs" rights to choose the next entity (??!!)
- Written documentation in the agenda materials about the zoning of the parcel.

Most importantly, Planning Staff represented a convoluted and false reason for placing the storage trailer use on the parcel that should be reverted back to Jean Sweeney Open Space. In addition, Yibin Shen did not provide the public with corrected or accurate public information even though he had the opportunity to do so. For example, the statement that AFB could choose the next tenant is just not true.

#### **2-92.7 - Public Review File—Policy Body Communications.**

I also asked for the communications and terms discussed in closed session in my PRA, which has not been released, even though once a contract is approved, those records are required to be made public.

It begs the question—why weren't the Jean Sweeney Board and the Rec Park Commission contacted as interested parties ahead of time?

c. I asked for these on September 25, PRA 23-438, and are still not available..

#### **2-91.17 - Public Comment by Members of Policy Bodies.**

Several violations of the Brown act occurred when members on the dais gave personal endorsements and opinions and further unduly influenced and intimidated and spoke derogatorily about and to their colleague, Councilmember Spencer.

The discussion on this item was controlled by shame and intimidation and was wholly inappropriate. Officials clearly colluded and played favorites. Staff and officials obviously stacked the public comments with cheerleaders, and then the mayor demonstrated a clear bias before the vote and after public comment when she said to one of the cheerleaders she was looking "forward to meeting with you this week" *Could it be any more obvious?*

Its not about the tenant, it is about zoning.

Members on the dais, with the exception of Trish Herrera-Spencer, were completely uninterested in the potential legal issues, and their body language, voice tone, and treatment of the public and Councilmember Spencer violated their rights to speak freely during the meeting. ---- Its getting worse every meeting, to the extent that more than one member of the public has pointed it out. *I think I even suggested they do a quick read of their code of ethics later in this meeting.*

It was actually very shocking to see public officials either feign ignorance or sit silently complicit during this item's discussion.

Worse were their unprofessional and discourteous treatment of you as their colleague, as well as their obvious disdain for public input.

In summary, according to my review, the public was grossly and intentionally misled by City Officials, including both of the Planning "Experts" Alan Tai and Andrew Thomas, who failed to disclose essential information regarding the 2 1/2 year expiration of the "Grandfather Clause" for nonconforming uses--specifically as it applies to the City's request for approval of the newly-proposed non-conforming use of the parcel.

It is utterly implausible this omission was accidental. It is also utterly implausible the City Attorney was unaware of the intentional deception, and it is just as implausible that any members of the "negotiating parties" were unaware of it as well.

**There is not even one condition that is satisfied that make this project eligible for this parcel, and *I can only conclude that there was a collective intentional attempt to deceive the public by City Officials in order to approve this Project.***

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#### **SHEEHAN'S PUBLIC COMMENT FOR THE 10/03/2023 COUNCIL MEETING**

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**RE Introduction of an ordinance authorizing the City Manager to execute a 59-month lease with AGLF for City-owned property located at 1900 Thau Way, Alameda, CA.**

**This proposed lease should not be approved.**

**This item needs to be called back because City Officials did not provide accurate information about the zoning and other relevant facts that make approval of the lease improper.**

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Councilmember Spencer,

The public appreciates your questions at the Council meeting regarding nonconforming use of the Food Bank's former space now proposed to be a storage shed (09/19/23 Item 2023-3338).

Unfortunately, and not surprisingly by now, no one on the dais was either willing or able to answer your questions, and yet AGAIN the City Attorney AGAIN allowed the Planning Dept Staff to dupe you (and the public) with false and misleading statements in a public forum.

There are a lot of issues with the City's proposal which were not properly disclosed during the City Council meeting.

This email fact-checks many of the statements made by City Officials and provides additional published information on the topic.

### ITEM SUMMARY

The currently vacant 10,050 square foot parcel at 1900 Thau Way is owned by the City, and the existing abandoned graffiti-covered trailer is owned by the Alameda Food Bank.

This item seeks a 59-month lease for a different non-profit organization, "All Good Living Foundation", for storage use of the building and parcel that is incompatible with the current Open Space Land Use designation.

Planning Staff presented the Alameda Food Bank as being an "approved nonconforming use" within the Jean Sweeney Open Space and used that as the rationale to approve the proposed lease.

It is important to note that information provided by the Planning Dept about non-conforming uses and zoning is completely absent from all of the written documentation, as it bears-out the lack veracity of their statements.

### ITEM DISCUSSION

As a matter of record, recall that there were many other City Officials on the dais that could have and should have provided the information you asked for. Given the years of experience and the breadth of the collective knowledge in that room, there is no reasonable excuse for their coordinated silence, which unfortunately gave the appearance of a pre-meeting collective agreement between Public Officials to purposely evade your questions.

For example:

- Assistant City Manager Amy Wooldridge wrote the Jeanne Sweeney Master Plan that includes this parcel and could have and should have disclosed the fact that the Food Bank is an **approved conforming use** of the Planned Development for Jean Sweeney Park as a retail/"concession" for on-site distribution of free food.
- City Attorney Yibin Shen--whose sole function at meetings is to ensure that the City follows the law--offered no legal determinations about the statements made by City Officials, including the Summary Report's 2+ year error regarding the date the Food Bank stopped operating at the Thau Way Parcel, as well as the ridiculous "nonconforming" zoning statements made by Planning Department staff.
  - PS, it's his job to fact-check, not refer legalities back not non-lawyers, and he might even be violating his duties to the State Bar when he did so.

- Longtime Planning Director Andrew Thomas and current Acting Director Alan Tai, certainly know--but refused to disclose--the fact that the “nonconforming use grandfather clause” expires after a certain amount of time.
- City Manager Jennifer Ott certainly knows--but refused to disclose--the fact that the Staff Report erred by almost 2 years in reporting when the Alameda Food Bank stopped operations at 1900 Thau Way. She, as well as the Planning Dept Staff, surely know--and should have disclosed--the fact that the Food Bank stopped food distribution from Thau Way in March 2020, and it has been vacant (not active) since at least September 2020.
- Acting Planning Director Alan Tai also certainly knows--but refused to disclose--the fact that the Food Bank--as a distribution Center—is in fact an **approved conforming use** as part of the Jean Sweeney Open Space, yet he asserted their use is **nonconforming** (which was then the basis to approve the proposed lease)
- Planning Dept Directors Andrew Thomas and Alan Tai also certainly know--and should have disclosed--the fact that the Planning Board had a “Study session” item (2023-3369) the week before--intending to change the “non-conforming use” section of the Zoning Code—suspiciously including to “...provide a process for formally lapsing unused permits and non-conforming uses”.
- City Manager Jennifer Ott and Andrew Thomas should have also made a point to publicly-disclose (during the item discussion) that they are the City’s negotiators--not only for the lease at Thau Way--but also for the sale of 650 West Ranger (Building 92). At the very least, this unshared fact gives the appearance of hiding a potential conflict of interest in negotiations with the Food Bank and Alameda Point Collaborative (APC).
  - The City is currently negotiating a nearly \$1,000,000 pay-out for the majority of APC’s 59-year lease in signed 2010 as part of the federally-mandated “Standards of Reasonableness” accommodations agreement during the base closure—also part of the required RESHAP settlement and other elements of Alameda Point development as well.

## FACTCHECKS

*(I invite the City Attorneys to fact-check these statements with their own supporting documentation)*

### **Fact 1. AFB Use has always been “conforming”**

- A. There is no record of Alan Tai’s and Andrew Thomas’s assertions that the Food Bank ever operated as an “approved non-conforming use” at 1900 Thau Way.
- B. Alameda Food Bank has had the same commercial use permit and zoning (M-1/PD) since 1990 for retail/warehousing/distribution.  
*(See: Planning Board Public Hearing 09/24/1990; Accela Citizen Access for 1900 Thau Way; Permits #P90-022 and B90-1426;  
<https://alameda.legistar.com/Legislation.aspx>)*
- C. When the Jean Sweeney Open Space Master Plan was implemented, the Food Bank was included as an approved open space use of on-site distribution of donated food (later planned to be food from the Park gardens) and is operationally considered a “concession”, which also means it is a conforming use in the Planned Development Open Space zoning.  
*(See: <https://www.alamedaca.gov/Departments/Public-Works-Department/City-Projects/Jean-Sweeney-Open-Space-Urban-Ag-Project>; CC Items 2013-230, 2016-2586, 2017-383)*

## **Fact 2. Corrected AFB Lease timeline**

- D. The Food Bank lease at Thau Way began on January 31, 1991, and the lease was amended per Ordinance #2964 on April 4 2007 as a 6-month lease when the Food Bank built their own trailer on the City-owned parcel.

(See Ordinance #2964, Permit #CB07-0528 and DR07-0017);

<https://docs.alamedaca.gov/WebLink/browse.aspx?dbid=0&repo=CityofAlameda&cr=1>)

- E. Use by the Alameda Food Bank continued from 1991 through most of 2020.
- F. Operations as a food distribution center ended once the lockdowns started in March 2020.
- G. The Food Bank ceased all activities by September 2020—approximately 3 years ago.

(See: <https://www.alamedafoodbank.org/history-mission/>;

<https://alamedapost.com/features/alameda-life/island-community-market-welcomes-shoppers/>; and pers comms)

*Although the above facts demonstrate the Food Bank operated 1900 Thau Way in conformance with the Zoning Codes, it appears the purpose for City Officials' contention it was nonconforming is for the sole purpose of getting this other nonconforming-use lease approved.*

*However, the next few Facts show that this attempt also fails, because statements made by City Officials about AFB operations and the zoning ordinances are also demonstrably false.*

## **Fact 3. The “grandfather clause” has expired**

- A. Per AMC Zoning Code 30-20.1 to 30-20.7, when a zoning change is made that causes an already-existing (conforming) use/building to become out of compliance with the new zoning type, the existing use may be “grandfathered in” as an allowed non-conforming use/building.
- B. Aside from the false assertion that the Food Bank operated as a nonconforming use, it appears City Officially intentionally falsified the supposed end date of AFB's operations at 1900 Thau Way specifically because there is a limit to the amount of time that a nonconforming use can be “grandfathered in”.
- C. What City Officials failed to disclose is that the non-conforming allowance is only for a maximum of 2 ½ years after the non-conforming use first became non-conforming; and/or expires sooner if the use/building is non-active for 12 months during that time.
- D. Therefore, even if the Food Bank was ever a non-conforming use at Jean Sweeney Open Space, the grandfather clause expired no later than May 2021 because the park officially opened November 27, 2018 (=2.5 years)
- (See: <https://bikeeastbay.org/grand-opening-jean-sweeney-open-space-park/#:~:text=The%20moment%20we've%20been,Sherman%20Street%20to%20Constitution%20Way.>)
- E. Alternatively, given the other potential (faulty) interpretations of the grandfather clause, it has already expired because:



- (1) Food Bank operations as a distribution center stopped in March 2020 (not December 2022), so it expired no later than June 2022 (=2.5 years).
  - (2) Food Bank operations stopped altogether in September 2020, so it expired no later than September 2021(=12 months inactivity).
- F. This review of the grandfather clause shows the City's motivation for the omitted and falsified relevant information about the end date of the Food Bank's use.

**Fact 4. The proposed use of the parcel/building is not the same as-or more restrictive than-the Food Bank's use**

- G. The other condition of the grandfather clause regarding non-conforming use is that the proposed use must be equivalent to, or more restrictive than, the existing use.
- H. When Acting Planning Director Alan Tai reported that the use is equivalent, he convoluted the regulations saying that the type of company is equivalent (also a nonprofit), but it is the type of use that needs to be equivalent.
- I. The use by Alameda Food Bank includes "Retail" (or more correctly "concession") for on-site distribution of food, while the proposed use by AGL is for storage. AGL goes to various locations (such as schools) to distribute their supplies, so this site is proposed only for storage.
- J. Therefore, it is not an equivalent or more restrictive use.

**Fact 5. Non-conforming use permits do not need to be presented before City Council, but leases do.**

- K. According to AMC 30-20 et sec, non-conforming use permits need only be approved by the Planning Director.
- L. Leases DO need to come before Council, and if something's in an Ordinance, it's allowed—which enables the City to bypass the non-conforming use permit process (that doesn't even really exist in this case)
- M. It doesn't take the sharpest tool in the shed to see this lease would never be approved unless there was a "special" reason for it.
- N. So, they had to come up with something!

**It begs the question: BUT WHY?????**

Why the push for this organization to use this trailer on this parcel?

Given the enormous amount of collective malfeasance it would have taken to come up with and agree to this convoluted scheme, one can only imagine what is really going on.

However, if you have any doubt about intent—just look how Officials acted on the dais and ask yourself: why weren't the rest of the Officials even the least bit curious about the terms of the lease and the encroachment on our prized Jean Sweeney Open Space? Hmmm? (since you're asking....isn't there something in the Brown Act about not using staff as go-betweens to "meet"? hmmm...)

Then ask yourself again if this one looks like it is by the books or not.

**Conclusion: The lease should not be granted and the Food Bank's abandoned graffiti-covered trailer should be removed from the City-owned parcel.**

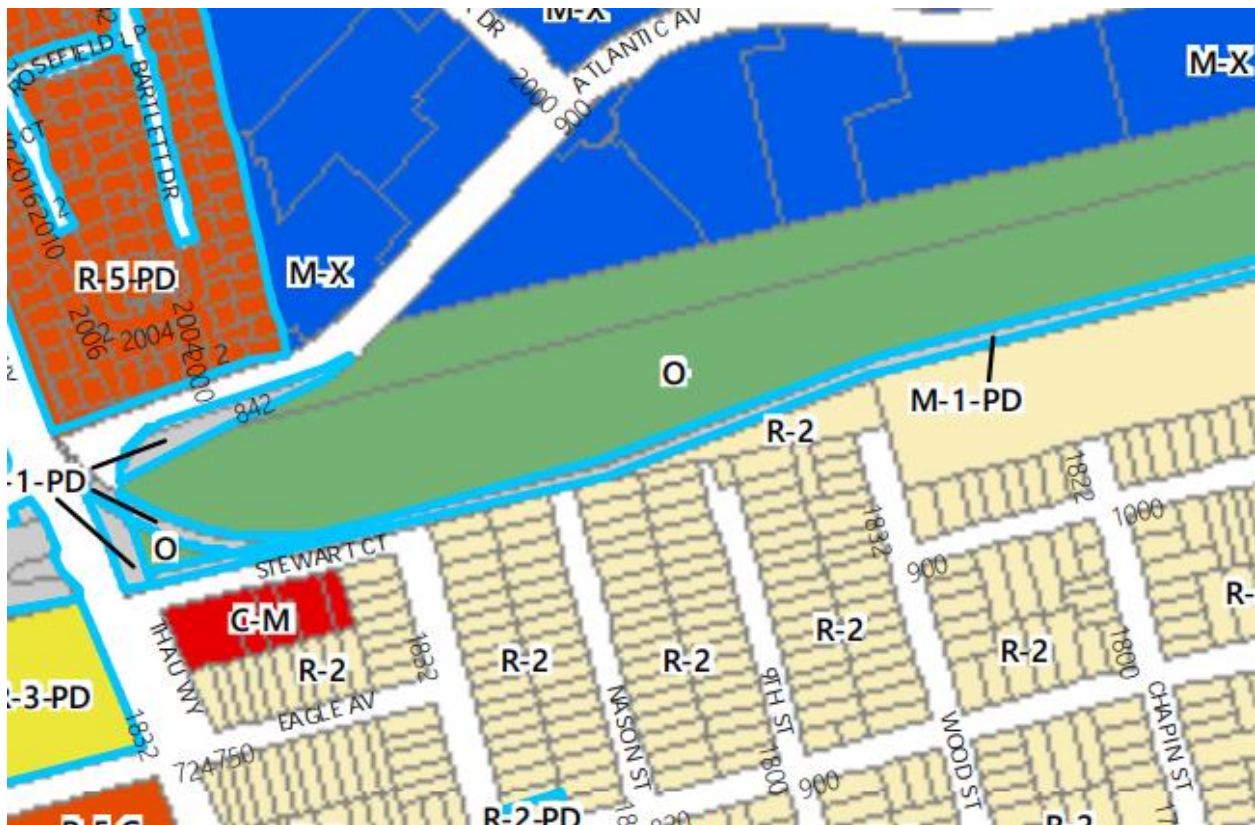
There is no need for that particular vendor to use that particular trailer on that particular parcel for storage. IT MAKES NO SENSE.

The City could even move the trailer to a vacant parking lot on the Base if they are so excited about it.

There is no legal reason for the trailer to remain on the parcel. It should be removed so Jean Sweeney Open Space can use the parcel properly per the City's Master Plan. And someone should clean that darn graffiti!

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## ZONING CODES



1900 thau way

## Parcel Detail



APN : 74-906-37

Address : THAU WAY

Lot Square Feet : 10049

Living Square Feet :

Property Details : [Assessor Data](#)

Zoning : O

Link to City Zoning Code : Not Available

General Plan :

Historic Study List :

Commands

No  
Additional  
Results

Eagle Ave

Atlantic Ave

Stewart C

Wilma Chan W

Thau Way

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## Search Results

Your search for '1900 thau way' returned the following results.

Explore by Category: [Records\(16\)](#)

### Records

[All Records](#) ▼

Showing 1-10 of 16

Date	Record Number	Record Type	Short Notes	Project Name	Address	Status
04/21/2010	<b>M10-0053</b>	Building/Mechanical Permit/Over the Counter/NA	ALAMEDA FOOD BANK:REMOVE (3) WALL FANS & REPLACE W		1900 THAU WAY, ALAMEDA, CA 94501	Finaled
12/09/2008	<b>PDA-90-22</b>	Planning/Entitlement/NA/NA	Planned Development or Amendment		1900 THAU WAY, ALAMEDA, CA 94501	Approved
06/03/2008	<b>B08-0626</b>	Building/Building Permit/Commercial/Over the Counter	ALAMEDA FOOD BANK - INSTALLATION OF A 4 FT X 8 FT WALL SIGN		1900 THAU WAY, ALAMEDA, CA 94501	Finaled
05/09/2007	<b>CB07-0528</b>	Building/Combination Building Permit/Commercial/New	ALAMEDA FOOD BANK - BUILD 35 1/2 X 56 MODULAR BUILDING FOR STORAGE & D		1900 THAU WAY, ALAMEDA, CA 94501	Finaled
05/09/2007	<b>CB07-0527</b>	Building/Combination Building Permit/Commercial/Alteration	ALAMEDA FOOD BANK - DEMOLITION OF 24 X 60 MODULAR BUILDING (BLDG/PLBG/		1900 THAU WAY, ALAMEDA, CA 94501	Finaled
02/23/2007	<b>PDA07-0002</b>	Planning/Planned Development Amendment/NA/NA	ALAMEDA FOOD BANK - REPLACE EXISTING 24' X 60' MODULAR		1900 THAU WAY, ALAMEDA, CA 94501	ISSUED