

**LAW OFFICES OF PAUL B. JUSTI**  
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2022 December 6

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**VIA EMAIL**

Ashley Zieba, Deputy City Clerk  
Lara Weisiger, City Clerk  
Elizabeth Mackenzie, Chief Assistant City Attorney  
Michael Roush, Special Counsel  
City of Alameda  
2263 Santa Clara Ave  
Alameda, CA 94501

Re: Sunshine Ordinance Complaint filed November 14, 2022 by John Brennan et al.

Dear Gentlepersons:

Please be advised that this office represents John Brennan and others with respect to their complaints against the City of Alameda (“the City”) regarding the Grand Street Improvement Project (“the Project”) and the multiple violations of, *inter alia*, the Brown Act, the City of Alameda’s Sunshine Ordinance and the Rosenberg Rules regarding the City’s decision-making concerning the Project. I will be appearing on my clients’ behalf at the Open Government Committee Hearing (“the Hearing”) scheduled for December 19, 2022 at 7:00 p.m.

Pursuant to Ms. Zieba’s request to provide material for use at the Hearing by December 6, 2022, please be advised that we intend to introduce the following materials, which should be included in the administrative record regarding this matter:

1. October 31, 2022 correspondence objecting to consideration of Agenda Item 7-F for November 1, 2022 City Council meeting (copy attached);
2. November 14, 2022 Brown Act Complaint (copy attached);
3. November 14, 2022 Sunshine Ordinance Complaint (copy attached);
4. November 14, 2022 Rosenberg Rules complaint (copy attached);
5. Comments by Mayor Ezzy Ashcraft at 10/6/22 Bike Walk Mayoral forum (transcribed in October 31, 2022 correspondence; link to be provided if still available);

6. Agenda for October 4, 2022 City Council Meeting (copy attached);
7. Agenda for October 18, City Council Meeting (copy attached);
8. Agenda for November 1, 2022 City Council Meeting (copy attached);
9. November 29, 2022 Position Statement By Special Counsel Michael Roush Concerning Sunshine Ordinance Complaint (copy attached); and
10. Declaration of Lara Weisiger (copy attached)

In addition, we intend to introduce testimony from the following individuals in addition to comments by other members of the public who may wish to speak:

1. Margaret Hall;
2. John Brennan;
3. John Healy;
4. Hale Foote;
5. Carol Gottstein; and
6. Carmen Reid.

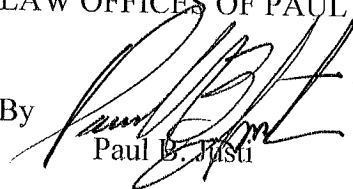
Finally, in anticipation of potential, and indeed likely, litigation, please ensure that the Hearing is properly recorded and the recording properly maintained and secured.

Please contact me if you have any questions or require any additional information.

Very Truly Yours,

LAW OFFICES OF PAUL B. JUSTI

By



Paul B. Justi

Cc: John Brennan (via email; w/encl.)

October 31, 2022

Mayor Ezzy Ashcraft:  
Vice Mayor Vella:  
Councilmember Daysog:  
Councilmember Herrera Spencer:  
Council Member Knox White:  
Interim City Manager Nancy Bronstein:  
City Clerk Lara Weisiger:  
City Attorney Yibin Shen:

Re: Objection To Agenda Item 7-F On The City Council's November 1, 2022 Regular  
Agenda Seeking To Effect Reconsideration Of The City Council's October 4,  
2022 Final Vote In Support Of The Alternative Plan For Grand Street

We write in objection to the City Council proceeding with Agenda Item 7-F on the  
Regular Agenda for Council's action at its November 1, 2022 meeting for the following reasons:

1. Agenda Item 7-F in reality seeks, based on the Council's "consideration" of purported "new information," to facilitate the Mayor's change (i.e. reconsideration) of her recent vote on October 4, 2022 in violation of the Council's adopted procedural rules of order (*Rosenberg's Rules of Order*). The Mayor's decision to change her vote was made less than 48 hours after the Council's October 4<sup>th</sup> vote. The Mayor said at Bike Walk Alameda's October 6<sup>th</sup> Mayoral Forum that "new information" provided by Bike Walk Alameda satisfied her safety concerns that had not, heretofore, been allayed by the multiple engineers and safety consultants working on the plans.
2. Agenda Item 7-F's description itself is misleading and appears to lack sufficient and requisite transparency under applicable open government laws to place the public on notice of what will really transpire on November 1<sup>st</sup> under the guise of "authoriz[ing] the Interim City Manager or Designee to Proceed with Construction Documents for the Grand Street Resurfacing and Safety Improvement Project Final Concept." Indeed, the "Proposed Final Concept Plan," included in Agenda Item 7-F for authorization of construction, is not the final plan approved by Council on October 4<sup>th</sup> as it contains the protected bike lanes and the roadway lane changes (i.e. meandering roadway zig-zags called "chicanes") rejected by the Mayor and Council on October 4<sup>th</sup>.
3. Likewise, the October 18, 2022 Agenda Item for Grand Street (5-I), which concerned only additional fund appropriation for the project, was misleading and provided no notice to the public that a Council vote would be taken at the October 18<sup>th</sup> meeting to

place the Council's October 4, 2022 final decision on the November 1, 2022 Council meeting Agenda for "rehearing" (i.e. re-vote).

**RELEVANT BACKGROUND:**

***A. The City Council's June 21, 2022 Provisional Approval Of A Grand Street Plan:***

On June 21, 2022, the Council held a "Public Hearing to Consider Adoption of Resolution Authorizing the Interim City Manager To Proceed With the Grand Street Resurfacing and Safety Improvement Project Final Concept and Adoption of Environmental Findings." (Agenda Item 7-B.) The Agenda Item contained a "Recommended Street Configuration" Plan ("Recommended Plan") and an "Alternative Street Configuration" Plan ("Alternative Plan") for consideration by Council. The main difference between the Recommended Plan and the Alternative Plan was that the Recommended Plan reconfigured the portion of Grand Street between Palmera Court and Encinal Avenue by adding protected bike lanes (in lieu of traditional bike lanes), significantly reduced residential parking and inserted periodic "lane changes" into the Grand Street roadway (i.e. meandering roadway zig-zags also known as "chicanes") to accommodate the protected bike lanes. The Alternative Plan was essentially the City's original plan with traditional bike lanes (with added paint and delineation, which had not been done in many years). Both Plans included the safety enhancements for all users (e.g. curb extensions, daylighting, highly visible crosswalks etc.). The Alternative Plan did not contain protected bike lanes or the periodic "lane changes" (i.e. meandering roadway zig-zags also known as "chicanes").

The Council meeting ended at midnight and included extensive public comment, a presentation and response to questions by City Transportation staff, participation by City-retained consultants NCE (civil engineering and transportation experts)<sup>1</sup> and Fehr & Peers (transportation consultants and safety experts),<sup>2</sup> and extensive Council debate. Council members Daysog and Herrera Spencer favored the Alternative Plan, which they believed was safe for all users and struck a balance between competing concerns. Council member Knox-White and Vice Mayor Vella supported the Recommended Plan because of its prioritization of protected bike lanes. Mayor Ezzy Ashcraft voiced her significant concerns about the Recommended Plan, primarily with respect to the impacts on persons with disabilities and elderly residents and concern for safety of the new lane change "zig-zag" roadway configuration. As a result, she voted to approve City staff moving forward with further design of the Recommended Plan, but only with provisions to occur prior to further Council review of the Recommended Plan in September.<sup>3</sup> The Mayor's provisions included having an ADA consultant review and identify how ADA needs would be addressed, and having a public safety consultant (could be a trained public safety consultant or traffic engineer) address the safety concerns presented by the meandering, zig-zag roadway design. The Council ultimately voted 3-2 (Ezzy Ashcraft, Vella,

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<sup>1</sup> <https://www.ncenet.com/>

<sup>2</sup> <https://www.fehrandpeers.com/active-transportation/>

<sup>3</sup> Council review occurred on October 4, 2022.

Knox White) to give approval to the City staff to move forward with the Recommended Plan with the Mayor's provisions.

***B. City Council's October 4, 2022 Final Approval Of A Grand Street Plan:***

On October 4, 2022, Council met on the "Recommendation to Authorize the Interim City Manager, or Designee, to Proceed with the Grand Street Resurfacing and Safety Improvement Project Final Concept, Including Preparation of Final Design and Construction Documents, Consistent with the Recommended Final Concept Plan." City staff, and consultants NCE and Fehr & Peers, presented Council with a revised final concept Plan (the "Recommended Plan" with the addition of elements requested by Council at its June 21, 2022 meeting such as adding a two-way separated bike lane in front of Wood School). The City's Staff Report included information on the status of review by an ADA consultant, the results of the public safety review by the Fire Department, and the statement that all project features, "including lane shifts, tapers, and delineation between bike lanes and travel lanes will be designed pursuant to best practice guidance, including the California Manual on Uniform Traffic Control Devices (CA MUTCD)."

During the lengthy Council debate, Mayor Ezzy Ashcraft reiterated her concerns about the safety of the zig-zag configuration, noting that a public safety expert's opinion had not been included in what was presented to Council. Ultimately the Mayor expressed support for implementing the recommended enhancements to Grand Street (e.g. curb extensions, daylighting, highly visible crosswalks, two-way cycle track for Wood, flashing beacons in two intersections, and mid-block speed enforcement via speed cushions) but maintaining the traditional bike lanes (painting them green). She said that the matter did not have the type of statistics she would like to see for a dramatic change. She further proposed that the City study the new treatments, including the safety of the meandering, over the next year to obtain more data, and also conduct more community involvement and outreach. The Mayor acknowledged that more might need to be done, but wanted to ensure that the City moves forward in a cautious, yet smart, manner.

Ultimately, the Mayor joined the Council majority (Ezzy Ashcraft, Daysog, Herrera Spencer) in approving construction of a final plan for the portion of Grand Street north of Otis Drive that did not include protected bike lanes or the roadway lane changes (i.e. meandering roadway zig-zags or "chicanes") reconfiguring Grand Street between Palmera Court and Encinal Avenue.

***C. The Mayor's Next Day Decision To Change Her Vote Based On "New Information" Regarding The Safety Of "Chicanes" Provided By Bike Walk Alameda:***

The reaction to the Mayor's October 4<sup>th</sup> decision was evidently swift, because two days later at the October 6<sup>th</sup> Bike Walk Alameda Mayoral Forum she stated the following as her Opening Statement:

Thank you Bike Walk Alameda and CASA for hosting us tonight and thank you for all the important work your organizations do in our City. So, I want to take us back to the City Council meeting this past Tuesday, October the 4<sup>th</sup>, it was a rough meeting for me, and I think a lot of you because we discussed a proposal

for Grand Street and protected bike lanes and at the time I voted “no” on the proposal the staff was putting forward and I want to quickly explain my reasons for voting “no,” but also the path forward. And I responded to some of your emails so you know that I’m going to provide further information, so this is now. So, the safety of our pedestrians, bicyclists all residents (was) paramount to me. When we considered the protected bike lanes there were safety concerns that I had previously raised in June that were never answered, never addressed. So, I voted no because I could not get from the City Engineer answers to my question about -- are there unintended consequences of these I call them meandering zig zagging lanes they are chicanes. In fact, because I didn’t want to see collisions caused by confused drivers that might lead to injury of a pedestrian or cyclist crossing an intersection and I want to see this plan extend all the way to Clement, I also asked if there were examples in other cities where this had been done and the results thereof. And the responses I got back were nothing really, but when I probed the week before the meeting, the City Engineer told me he thought I was asking about the safety of fire trucks if they could navigate the lanes, I wasn’t, but they can. He didn’t know of any other examples and at the meeting he let us know that the engineers had approved the plans. *My safety concerns were not addressed, but the next morning I felt terrible. I reached out to Cyndy Johnson and Denyse Trepanier. We had a Zoom and what I would like to say is that the safety concerns that I’d previously raised or have, have now been addressed by information, new information that Denyse shared this evening with Council and the City Clerk, and it will be an attachment to an agenda item on October 18.* And at the October 18<sup>th</sup> council meeting, I am prepared to request that the council review this new information at our November 1<sup>st</sup> meeting and I fully expect to have at least two other council members vote with me to review this new information, and I’ve cleared this with the City Attorney and Interim City manager, and when it comes back, I fully expect to support the proposed bike lane proposal that had been before us, and that I voted no on Tuesday. With this information, I am satisfied with the safety concerns and I so appreciate Bike Walk Alameda for providing that information. Thank you.

Later in the Forum, in response to question about road safety, the Mayor said that after reading up on “chicanes” that she was prepared to support chicanes on Grand Street with additional information, and that she believed that “there may be other opportunities to do that sort of road transformation in Alameda.”

***D. The City Council’s October 18, 2022 Vote To Bring The Grand Street Item Back For “Rehearing” At The November 1, 2022 Council Meeting Based On “New Information”***

On October 18, 2022, the Council met on Agenda Item 5-I “Adoption of Resolution Appropriating \$126, 618 in Transportation Development Act, Article 3 Grant Funding by Amending the Fiscal Year 2022-23 Capital Budget ... for Grand Street Improvements.” Under this Agenda Item, the Mayor also brought forth a “second motion” (not agendized) “to give the brief direction to staff ... to review new information about this project” and “to bring the item

back on November 1<sup>st</sup>, our next Council meeting, to give the Council the opportunity to consider this new information.” The Mayor further said that she “did not call for reconsideration of the item, um, specifically.” Councilmember Daysog raised his concern that the Mayor’s second motion was “out of order” because the Council has adopted the Rosenberg Rules of Order (“Council Rules”), under which any reconsideration has to occur on the night that the vote was made. Councilmember Daysog noted that if there was a possibility of reconsidering the Mayor’s vote outside of the meeting when the vote occurred, the Council Rules required that Council must first vote to suspend its Rules by a 2/3 majority vote (4 out of 5 councilmembers). Councilmember Herrera Spencer voiced similar procedural concerns and further noted doubts about what significant “new information” could have arisen within 24 hours of the October 4<sup>th</sup> meeting. The City Attorney was of the view, without having reviewed the “new information,” that what was being requested was not a “reconsideration item” but “simply ... staff has brought forward some new information and asked [Council] to take another look and see if [Council] wanted to make a different decision.” The City Clerk/Parliamentarian analogized to an ordinance enacted by a prior City Council being repealed by a different City Council. Councilmember Knox White’s motion to “direct staff to bring back the Grand Street item at our next meeting for, uh, reconsi..., for rehearing..., and hearing of new information” was approved by Councilmember’s Ezzy Ashcraft, Knox White, and Vella to place the matter on the November 1, 2022 Council Agenda. Councilmember Daysog cautioned that the Council needed to tread carefully as to what constituted “new information” and said that he was “not convinced that this is not a reconsideration of a vote.”

#### **INFIRMITIES AND IMPROPRIETIES IN THE CITY COUNCIL’S DECISION MAKING PROCESS:**

##### ***A. The November 1, 2022 Mayor’s Anticipated Change Of Vote Violates Council Rules***

As noted by Councilmember Daysog at the October 18, 2022 Council Meeting, the Council has adopted *Rosenberg’s Rules of Order* (“Rules”), published by the League of California Cities. The Rules address a Motion to Reconsider a vote, and recognize that a tenet of parliamentary procedure is finality in the decision making process. As explained in the Rules, “[a]fter vigorous discussion, debate, and a vote, there must be closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.” A motion to reconsider a vote must be made by a member who voted in the majority, and at the meeting where the item was voted upon. A motion to reconsider made at a later time is untimely, unless the body votes by a 2/3 majority (4 out of 5 Council members) to suspend the Rules and make a motion to reconsider at another time.

In the City’s case, the facts clearly demonstrate that the November 1, 2022 “consideration of new information” is in reality a belated motion to reconsider the Mayor’s October 4, 2022 vote, without the requisite 2/3 vote of Council to suspend its Rules as required by the City’s adopted Rules. A motion for reconsideration was not made at the October 4, 2002 meeting by the Mayor, or any other member of the Council majority. Nor did the Council vote to suspend its Rules by a 2/3 (4 out of 5 Council members) vote to place the item for re-vote on the November 1, 2022 Council agenda. Indeed, such a vote would have been unlikely to succeed in this matter

given the composition of the Council members who voted in the majority at the October 4<sup>th</sup> Council meeting.

Additionally, as pointed out by Councilmembers Daysog and Herrera Spencer at the October 18, 2022 Council meeting, the prospect that there was “new” information presented – after months of work by City Staff and its transportation engineering and safety expert consultants, discussion by Council and hearing of public comments – of such a magnitude to necessitate City staff review was very doubtful based on the facts described above. Moreover, the Rules *do not provide for a motion for reconsideration based on “new information.”*

The Mayor’s statements at the October 6, 2022 Bike Walk Alameda Mayoral Forum (quoted above) demonstrate that the “new information” she received from Bike Walk Alameda officers on October 5<sup>th</sup> was not an opinion of a public safety expert, which is what the Mayor had been seeking. The Mayor based her October 4, 2022 vote rejecting the Recommended Plan, in substantial part, on the fact that a public safety expert had not reviewed the proposed reconfiguration of Grand Street, specifically the chicanes (meandering, zig-zag of the roadway) of the Recommended Plan. Nevertheless, the next day the Mayor was proposing to change her vote after receiving general information on traffic calming techniques from Bike Walk Alameda (not engineers or public safety experts) easily obtainable through an Internet search.

*In sum, the facts clearly demonstrate that the proposed November 1, 2022 “consideration of new information” is in reality an improper reconsideration of the Mayor’s October 4, 2022 vote in violation of the City’s adopted Rosenberg’s Rules of Order.*

***B. The November 1, 2022 Agenda Item Fails To Adequately Place The Public On Notice Of The Planned Re-Vote***

The Mayor’s intent to change her vote at the November 1, 2022 Council meeting, thus reversing the Council’s vote on the final plan for Grand Street, has been known to the City for several weeks. Yet, Agenda Item 7-F gives no inkling to the public about what action is to take place at the meeting with respect to the Grand Street proposal that had been voted on and adopted by the Council on October 4<sup>th</sup>. Nowhere in the Agenda Item is it mentioned that what is proposed at the November 1<sup>st</sup> meeting is a reconsideration/rehearing of the October 4<sup>th</sup> Council vote: “Recommendation to Consider New Information Regarding the Grand Street Resurfacing and Safety Improvement Project and Authorize the Interim City Manager or Designee, to Proceed with Construction Documents for the Grand Street Resurfacing and Safety Improvement Final Concept.” Moreover, based on Council’s October 4<sup>th</sup> vote adopting the Alternative Plan with safety enhancements (and without the protected bike lanes and zig-zagging chicanes), members of the public reasonably believe that the Alternative Plan adopted on October 4<sup>th</sup> is the “Final Concept” adopted by the City Council. Indeed, this entire exercise is an inappropriate and impermissible procedural action since the Mayor, who is the only Councilmember who will be changing their vote after “consideration of new information,” made up her mind to do so, as evidenced by her public comments, by October 6<sup>th</sup>.



***C. The October 18, 2022 Agenda Item Also Failed to Adequately Place The Public On Notice That The Council Would Vote To “Rehear” The Final Grand Street Plan At The November 1, 2022 Council Meeting***

The Mayor’s motion on October 18, 2022 to seek Council approval to place the Grand Street item back before Council on November 1, 2022 is not reflected in the October 18, 2022 Grand Street limited I-5 agenda item (for increased funding) under which it was discussed. Although the City was aware by October 6<sup>th</sup>, in sufficient time to properly agendize the item separately for the October 18<sup>th</sup> Council meeting and give the public adequate notice of what would transpire at that meeting, the City did not post such an item on the agenda. The notion that the matter discussed on October 18, 2022 was merely procedural, is not supported by the facts and circumstances.

**CONCLUSION AND THE PATH FORWARD:**

The City has a ministerial duty to follow Council Rules, its Sunshine Ordinance, and California Open Government Laws (Brown Act and Public Records Act), which has not happened in this case. There is also a concern about the appropriateness in utilizing “new information” provided by Bike Walk Alameda (not public safety experts) as the vehicle for the Mayor to change her final vote on the Grand Street Plan. Moreover, the lack of transparency of the Agenda Item for the November 1, 2022 Council Meeting, especially given the intended Council action to reverse its prior approval of a final Grand Street Plan, failed to meet public notice legal requirements. Under these circumstances, the Grand Street “consideration” of “new evidence” item should be removed from the November 1, 2022, City Council Agenda.

The Mayor was correct at the October 4, 2022 City Council meeting in urging that the City proceed in a “cautious, yet smart” manner (implementation of new treatments and study of their effects over the next year), rather than the proposed “dramatic change” to Grand Street that she believed was not supported by the current statistics. We whole heartedly agree with this approach, and we look forward to working with the city to further develop a plan that achieves the objectives of those who live on and regularly utilize Grand Street.

Regards,

Regina Mucillo	John Brennan	Cindy Rankin Seibert
Hale Foote	Jean Brennan	Lolly Parker
Claire Yeaton-Risley	Sally Damsen	Barry Parker
Philip Jaber	Fred Damsen	Carol Gottstein
Gina Jaber	Margaret Hall	Karen Miller
George Jaber	Therese Hall	Gena Harriet
Nicholas Jaber	Marsha Broquedis	Pierre Harriet
Elizabeth Jaber	Kerry Plain	Matthew Dean

Elizabeth Dean  
Paolo Friedman

Paul Ferry  
Siam Peav

Beth Foote  
Jonathon Glazebrook

November 14, 2022

Mayor Ezzy Ashcraft:  
Vice Mayor Vella:  
Councilmember Daysog:  
Councilmember Herrera Spencer:  
Council Member Knox White:  
Acting City Manager Erin Smith:  
City Clerk Lara Weisiger:  
City Attorney Yibin Shen:

This letter is to call your attention to what we believe were substantial violations of central provisions of the Ralph M. Brown Act, which jeopardizes the finality of the action taken by the City Council on October 18, 2022 (Item 5-I) and November 1, 2022 (Item 7-F).

The nature of the violations are set forth below. Additional factual context for the violations is provided in the attached October 31, 2022 Letter Re: Objection To Agenda Item 7-F On The City Council's November 1, 2022 Regular Agenda Seeking To Effect Reconsideration Of The City Council's October 4, 2022 Final Vote In Support Of The Alternative Plan For Grand Street, which is incorporated herein.

**October 18, 2022 City Council Meeting Brown Act Violation:**

In its meeting of October 18th 2022, the City Council took action on Agenda Item 5-I, the description of which was:

“Adoption of Resolution Appropriating \$126, 618 in Transportation Development Act, Article 3 Grant Funding by Amending the Fiscal Year 2022-23 Capital Budget to Increase Budgeted Revenue and Expenditures in Capital Improvement Program C14000 by \$50,000 and in Capital Improvement Program C11000 by \$76,618 for Grand Street Improvements. (Planning, Building and Transportation 20962740)”

Agenda Item 5-I concerned only additional fund appropriation for the project and did not contain a description of the actual business that the City Council intended to transact or discuss. As such it was misleading and provided no notice to the public that a Council vote would be taken at the October 18th meeting to place the Council's October 4, 2022 final decision adopting the plans for the Grand Street project on the November 1, 2022 Council meeting Agenda for “rehearing/reconsideration” (i.e. re-vote).

This action violated Government Code §§ 54954.2 and 54954.3 of the Brown Act because the action was taken on a matter that was not properly described in the agenda for the open meeting at which the action was taken, and none of the exceptions specified in section 54954.2(b) were applicable or satisfied.

**November 1, 2022 City Council Meeting Brown Act Violations:**

Further, in its meeting of November 1<sup>st</sup> 2022, the City Council took action on Agenda Item 7-F, the description of which was:

“Recommendation to Consider New Information Regarding the Grand Street Resurfacing and Safety Improvement Project and Authorize the Interim City Manager, or Designee, to Proceed with Construction Documents for the Grand Street Resurfacing and Safety Improvement Project Final Concept. (Planning, Building & Transportation 20962710)”

Agenda Item 7-F's description is misleading and lacks sufficient and requisite transparency under the Brown Act because it does not contain a description of the actual business that the City Council intended to transact, which was to reverse the final vote/action taken on the Grand Street project at the October 4<sup>th</sup> meeting to place the public on notice of what would really transpire on November 1<sup>st</sup>. Indeed, the "Proposed Final Concept Plan," included in Agenda Item 7-F for authorization of construction, is not the final plan approved by Council on October 4<sup>th</sup>, as it contained the protected bike lanes and the roadway lane changes (i.e. meandering roadway zig-zags called "chicanes") rejected by the Mayor and Council on October 4<sup>th</sup>. Moreover, as noted by some Council members, there was no actual "new information" presented for the Council's consideration.

This action violated Government Code §§ 54954.2 and 54954.3 of the Brown Act because it was taken on a matter that was not sufficiently described in the agenda for the open meeting at which the action was taken as it failed to provide the public with fair notice of what the Council would consider, and none of the exceptions specified in Section 54954.2(b) were applicable or satisfied.

Additionally, during the public comment portion of Item 7-F it appears that at least 4 speakers who had their hands raised were not called upon on Zoom. These speakers were Margaret Hall, John Brennan, John Healy and Hale Foote. These individuals raised their hands right at the end as the mayor was asking if there were any other public speakers, and were not recognized. The city clerk moved with much more speed about to close public comments than during other discussion periods. In fact, at the October 4<sup>th</sup> meeting, the clerk recognized Mr. Brennan at precisely this time. We don't know what value was served by not being sure that all people who desired to speak were recognized. This is especially critical given that City Council meetings are held via Zoom. At an in-person meeting, it is very easy for speakers to tell how many people are in line, who is next up, and when to put yourself in the cue. At the Zoom meeting, none of this is visible to potential speakers. It is critically important the City ensures that all speakers are heard from and gives them time to virtually raise their hands to speak. This was not done for the public discussion for Item 7-F.

The Council's abrupt cutoff of public comment was contrary to Council's procedural practice and amounted to a prohibition of public criticism of the acts or omissions of the legislative body (i.e. Council) in violation of Government Code § 54954.3(c).

Finally, the essence of the Brown Act is an informed public. The public depends on the City Council to follow the procedural rules it has adopted to create order, predictability, and full disclosure of items it will act on, and an opportunity for public comment. Violating the Council's procedural rules violates the very intent of the Brown Act: that legislative meetings will be transparent, deal with issues that are publicly disclosed and conduct its business in an orderly way to hold public officials accountable for their actions and in allowing the public to participate in the decision-making process. The City Council's actions at the October 18, 2022 and November 1, 2022 meetings regarding the Grand Street project violated this foundational principle of the Brown Act.

These issues, including the procedural rules violations, are further described in our letter to the City of October 31, 2022, which is attached.

As you are aware, the Brown Act allows the legal remedy of judicial invalidation of illegally taken action. Pursuant to Government Code § 54960.1, We respectfully demand that the City cure and correct these violations cited above regarding the Brown Act and invalidate the actions taken in the October 18, 2022 and November 1, 2022 City Council meetings. Should the City decide not to cure and correct, we ask that the City maintain the status quo and not move forward with the actions approved at the November 1<sup>st</sup> 2022 City Council meeting regarding agenda item 7-F, pending judicial review.

As provided by Government Code § 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave us with no recourse but to seek judicial invalidation of the challenged

actions pursuant to Section 54960.1, in which case we would also ask the court to order you to pay our court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

Respectfully yours,

We the undersigned members of the Grand Street Neighborhood

Hale Foote	Margaret Hall	Paul Ferry
Philip Jaber	Marsha Broquedis	Siam Peav
Gina Jaber	Barry Parker	Beth Foote
George Jaber	Carol Gottstein	Jonathon Glazebrook
Nicholas Jaber	Karen Miller	Carmen Reid
Elizabeth Jaber	Gena Harriet	Matt Reid
John Brennan	Pierre Harriet	Kerry Plain
Jean Brennan	Matthew Dean	Cindy Rankin Seibert
Sally Damsen	Elizabeth Dean	
Fred Damsen	Paolo Friedman	

Attachment below – October 31, 2022 Letter

October 31, 2022

Mayor Ezzy Ashcraft:

Vice Mayor Vella:

Councilmember Daysog:

Councilmember Herrera Spencer:

Council Member Knox White:

Interim City Manager Nancy Bronstein:

City Clerk Lara Weisiger:

City Attorney Yibin Shen:

Re: Objection To Agenda Item 7-F On The City Council's November 1, 2022 Regular Agenda Seeking To Effect Reconsideration Of The City Council's October 4, 2022 Final Vote In Support Of The Alternative Plan For Grand Street

We write in objection to the City Council proceeding with Agenda Item 7-F on the Regular Agenda for Council's action at its November 1, 2022 meeting for the following reasons:

1. Agenda Item 7-F in reality seeks, based on the Council's "consideration" of purported "new information," to facilitate the Mayor's change (i.e. reconsideration) of her recent vote on October 4, 2022 in violation of the Council's adopted procedural rules of order (*Rosenberg's Rules of Order*). The Mayor's decision to change her vote was made less than 48 hours after the Council's October 4<sup>th</sup> vote. The Mayor said at Bike Walk Alameda's October 6<sup>th</sup> Mayoral Forum that "new information" provided by Bike Walk Alameda satisfied her safety concerns that had not, heretofore, been allayed by the multiple engineers and safety consultants working on the plans.
2. Agenda Item 7-F's description itself is misleading and appears to lack sufficient and requisite transparency under applicable open government laws to place the public on notice of what will really transpire on November 1<sup>st</sup> under the guise of "authoriz[ing] the Interim City Manager or Designee to Proceed with Construction Documents for the Grand Street Resurfacing and Safety Improvement Project Final Concept." Indeed, the "Proposed Final Concept Plan," included in Agenda Item 7-F for authorization of construction, is not the final plan approved by Council on October 4<sup>th</sup> as it contains the protected bike lanes and the roadway lane changes (i.e. meandering roadway zig-zags called "chicanes") rejected by the Mayor and Council on October 4<sup>th</sup>.
3. Likewise, the October 18, 2022 Agenda Item for Grand Street (5-I), which concerned only additional fund appropriation for the project, was misleading and provided no notice to the public that a Council vote would be taken at the October 18<sup>th</sup> meeting to

place the Council's October 4, 2022 final decision on the November 1, 2022 Council meeting Agenda for "rehearing" (i.e. re-vote).

## **RELEVANT BACKGROUND:**

### ***A. The City Council's June 21, 2022 Provisional Approval Of A Grand Street Plan:***

On June 21, 2022, the Council held a "Public Hearing to Consider Adoption of Resolution Authorizing the Interim City Manager To Proceed With the Grand Street Resurfacing and Safety Improvement Project Final Concept and Adoption of Environmental Findings." (Agenda Item 7-B.) The Agenda Item contained a "Recommended Street Configuration" Plan ("Recommended Plan") and an "Alternative Street Configuration" Plan ("Alternative Plan") for consideration by Council. The main difference between the Recommended Plan and the Alternative Plan was that the Recommended Plan reconfigured the portion of Grand Street between Palmera Court and Encinal Avenue by adding protected bike lanes (in lieu of traditional bike lanes), significantly reduced residential parking and inserted periodic "lane changes" into the Grand Street roadway (i.e. meandering roadway zig-zags also known as "chicanes") to accommodate the protected bike lanes. The Alternative Plan was essentially the City's original plan with traditional bike lanes (with added paint and delineation, which had not been done in many years). Both Plans included the safety enhancements for all users (e.g. curb extensions, daylighting, highly visible crosswalks etc.). The Alternative Plan did not contain protected bike lanes or the periodic "lane changes" (i.e. meandering roadway zig-zags also known as "chicanes").

The Council meeting ended at midnight and included extensive public comment, a presentation and response to questions by City Transportation staff, participation by City-retained consultants NCE (civil engineering and transportation experts)<sup>1</sup> and Fehr & Peers (transportation consultants and safety experts),<sup>2</sup> and extensive Council debate. Council members Daysog and Herrera Spencer favored the Alternative Plan, which they believed was safe for all users and struck a balance between competing concerns. Council member Knox-White and Vice Mayor Vella supported the Recommended Plan because of its prioritization of protected bike lanes. Mayor Ezzy Ashcraft voiced her significant concerns about the Recommended Plan, primarily with respect to the impacts on persons with disabilities and elderly residents and concern for safety of the new lane change "zig-zag" roadway configuration. As a result, she voted to approve City staff moving forward with further design of the Recommended Plan, but only with provisions to occur prior to further Council review of the Recommended Plan in September.<sup>3</sup> The Mayor's provisions included having an ADA consultant review and identify how ADA needs would be addressed, and having a public safety consultant (could be a trained public safety consultant or traffic engineer) address the safety concerns presented by the meandering, zig-zag roadway design. The Council ultimately voted 3-2 (Ezzy Ashcraft, Vella,

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<sup>1</sup> <https://www.ncenet.com/>

<sup>2</sup> <https://www.fehrandpeers.com/active-transportation/>

<sup>3</sup> Council review occurred on October 4, 2022.

Knox White) to give approval to the City staff to move forward with the Recommended Plan with the Mayor's provisions.

***B. City Council's October 4, 2022 Final Approval Of A Grand Street Plan:***

On October 4, 2022, Council met on the "Recommendation to Authorize the Interim City Manager, or Designee, to Proceed with the Grand Street Resurfacing and Safety Improvement Project Final Concept, Including Preparation of Final Design and Construction Documents, Consistent with the Recommended Final Concept Plan." City staff, and consultants NCE and Fehr & Peers, presented Council with a revised final concept Plan (the "Recommended Plan" with the addition of elements requested by Council at its June 21, 2022 meeting such as adding a two-way separated bike lane in front of Wood School). The City's Staff Report included information on the status of review by an ADA consultant, the results of the public safety review by the Fire Department, and the statement that all project features, "including lane shifts, tapers, and delineation between bike lanes and travel lanes will be designed pursuant to best practice guidance, including the California Manual on Uniform Traffic Control Devices (CA MUTCD)."

During the lengthy Council debate, Mayor Ezzy Ashcraft reiterated her concerns about the safety of the zig-zag configuration, noting that a public safety expert's opinion had not been included in what was presented to Council. Ultimately the Mayor expressed support for implementing the recommended enhancements to Grand Street (e.g. curb extensions, daylighting, highly visible crosswalks, two-way cycle track for Wood, flashing beacons in two intersections, and mid-block speed enforcement via speed cushions) but maintaining the traditional bike lanes (painting them green). She said that the matter did not have the type of statistics she would like to see for a dramatic change. She further proposed that the City study the new treatments, including the safety of the meandering, over the next year to obtain more data, and also conduct more community involvement and outreach. The Mayor acknowledged that more might need to be done, but wanted to ensure that the City moves forward in a cautious, yet smart, manner.

Ultimately, the Mayor joined the Council majority (Ezzy Ashcraft, Daysog, Herrera Spencer) in approving construction of a final plan for the portion of Grand Street north of Otis Drive that did not include protected bike lanes or the roadway lane changes (i.e. meandering roadway zig-zags or "chicanes") reconfiguring Grand Street between Palmera Court and Encinal Avenue.

***C. The Mayor's Next Day Decision To Change Her Vote Based On "New Information" Regarding The Safety Of "Chicanes" Provided By Bike Walk Alameda:***

The reaction to the Mayor's October 4<sup>th</sup> decision was evidently swift, because two days later at the October 6<sup>th</sup> Bike Walk Alameda Mayoral Forum she stated the following as her Opening Statement:

Thank you Bike Walk Alameda and CASA for hosting us tonight and thank you for all the important work your organizations do in our City. So, I want to take us back to the City Council meeting this past Tuesday, October the 4<sup>th</sup>, it was a rough meeting for me, and I think a lot of you because we discussed a proposal



for Grand Street and protected bike lanes and at the time I voted “no” on the proposal the staff was putting forward and I want to quickly explain my reasons for voting “no,” but also the path forward. And I responded to some of your emails so you know that I’m going to provide further information, so this is now. So, the safety of our pedestrians, bicyclists all residents (was) paramount to me. When we considered the protected bike lanes there were safety concerns that I had previously raised in June that were never answered, never addressed. So, I voted no because I could not get from the City Engineer answers to my question about -- are there unintended consequences of these I call them meandering zig zagging lanes they are chicanes. In fact, because I didn’t want to see collisions caused by confused drivers that might lead to injury of a pedestrian or cyclist crossing an intersection and I want to see this plan extend all the way to Clement, I also asked if there were examples in other cities where this had been done and the results thereof. And the responses I got back were nothing really, but when I probed the week before the meeting, the City Engineer told me he thought I was asking about the safety of fire trucks if they could navigate the lanes, I wasn’t, but they can. He didn’t know of any other examples and at the meeting he let us know that the engineers had approved the plans. ***My safety concerns were not addressed, but the next morning I felt terrible. I reached out to Cyndy Johnson and Denyse Trepanier. We had a Zoom and what I would like to say is that the safety concerns that I’d previously raised or have, have now been addressed by information, new information that Denyse shared this evening with Council and the City Clerk, and it will be an attachment to an agenda item on October 18.*** And at the October 18<sup>th</sup> council meeting, I am prepared to request that the council review this new information at our November 1<sup>st</sup> meeting and I fully expect to have at least two other council members vote with me to review this new information, and I’ve cleared this with the City Attorney and Interim City manager, and when it comes back, I fully expect to support the proposed bike lane proposal that had been before us, and that I voted no on Tuesday. With this information, I am satisfied with the safety concerns and I so appreciate Bike Walk Alameda for providing that information. Thank you.

Later in the Forum, in response to question about road safety, the Mayor said that after reading up on “chicanes” that she was prepared to support chicanes on Grand Street with additional information, and that she believed that “there may be other opportunities to do that sort of road transformation in Alameda.”

***D. The City Council’s October 18, 2022 Vote To Bring The Grand Street Item Back For “Rehearing” At The November 1, 2022 Council Meeting Based On “New Information”***

On October 18, 2022, the Council met on Agenda Item 5-I “Adoption of Resolution Appropriating \$126, 618 in Transportation Development Act, Article 3 Grant Funding by Amending the Fiscal Year 2022-23 Capital Budget ... for Grand Street Improvements.” Under this Agenda Item, the Mayor also brought forth a “second motion” (not agendized) “to give the brief direction to staff ... to review new information about this project” and “to bring the item

back on November 1<sup>st</sup>, our next Council meeting, to give the Council the opportunity to consider this new information.” The Mayor further said that she “did not call for reconsideration of the item, um, specifically.” Councilmember Daysog raised his concern that the Mayor’s second motion was “out of order” because the Council has adopted the Rosenberg Rules of Order (“Council Rules”), under which any reconsideration has to occur on the night that the vote was made. Councilmember Daysog noted that if there was a possibility of reconsidering the Mayor’s vote outside of the meeting when the vote occurred, the Council Rules required that Council must first vote to suspend its Rules by a 2/3 majority vote (4 out of 5 councilmembers). Councilmember Herrera Spencer voiced similar procedural concerns and further noted doubts about what significant “new information” could have arisen within 24 hours of the October 4<sup>th</sup> meeting. The City Attorney was of the view, without having reviewed the “new information,” that what was being requested was not a “reconsideration item” but “simply ... staff has brought forward some new information and asked [Council] to take another look and see if [Council] wanted to make a different decision.” The City Clerk/Parliamentarian analogized to an ordinance enacted by a prior City Council being repealed by a different City Council. Councilmember Knox White’s motion to “direct staff to bring back the Grand Street item at our next meeting for, uh, reconsti..., for rehearing..., and hearing of new information” was approved by Councilmember’s Ezzy Ashcraft, Knox White, and Vella to place the matter on the November 1, 2022 Council Agenda. Councilmember Daysog cautioned that the Council needed to tread carefully as to what constituted “new information” and said that he was “not convinced that this is not a reconsideration of a vote.”

### **INFIRMITIES AND IMPROPRIETIES IN THE CITY COUNCIL’S DECISION MAKING PROCESS:**

#### ***A. The November 1, 2022 Mayor’s Anticipated Change Of Vote Violates Council Rules***

As noted by Councilmember Daysog at the October 18, 2022 Council Meeting, the Council has adopted *Rosenberg’s Rules of Order* (“Rules”), published by the League of California Cities. The Rules address a Motion to Reconsider a vote, and recognize that a tenet of parliamentary procedure is finality in the decision making process. As explained in the Rules, “[a]fter vigorous discussion, debate, and a vote, there must be closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.” A motion to reconsider a vote must be made by a member who voted in the majority, and at the meeting where the item was voted upon. A motion to reconsider made at a later time is untimely, unless the body votes by a 2/3 majority (4 out of 5 Council members) to suspend the Rules and make a motion to reconsider at another time.

In the City’s case, the facts clearly demonstrate that the November 1, 2022 “consideration of new information” is in reality a belated motion to reconsider the Mayor’s October 4, 2022 vote, without the requisite 2/3 vote of Council to suspend its Rules as required by the City’s adopted Rules. A motion for reconsideration was not made at the October 4, 2002 meeting by the Mayor, or any other member of the Council majority. Nor did the Council vote to suspend its Rules by a 2/3 (4 out of 5 Council members) vote to place the item for re-vote on the November 1, 2022 Council agenda. Indeed, such a vote would have been unlikely to succeed in this matter

given the composition of the Council members who voted in the majority at the October 4<sup>th</sup> Council meeting.

Additionally, as pointed out by Councilmembers Daysog and Herrera Spencer at the October 18, 2022 Council meeting, the prospect that there was “new” information presented – after months of work by City Staff and its transportation engineering and safety expert consultants, discussion by Council and hearing of public comments – of such a magnitude to necessitate City staff review was very doubtful based on the facts described above. Moreover, the Rules *do not provide for a motion for reconsideration based on “new information.”*

The Mayor’s statements at the October 6, 2022 Bike Walk Alameda Mayoral Forum (quoted above) demonstrate that the “new information” she received from Bike Walk Alameda officers on October 5<sup>th</sup> was not an opinion of a public safety expert, which is what the Mayor had been seeking. The Mayor based her October 4, 2022 vote rejecting the Recommended Plan, in substantial part, on the fact that a public safety expert had not reviewed the proposed reconfiguration of Grand Street, specifically the chicanes (meandering, zig-zag of the roadway) of the Recommended Plan. Nevertheless, the next day the Mayor was proposing to change her vote after receiving general information on traffic calming techniques from Bike Walk Alameda (not engineers or public safety experts) easily obtainable through an Internet search.

*In sum, the facts clearly demonstrate that the proposed November 1, 2022 “consideration of new information” is in reality an improper reconsideration of the Mayor’s October 4, 2022 vote in violation of the City’s adopted Rosenberg’s Rules of Order.*

***B. The November 1, 2022 Agenda Item Fails To Adequately Place The Public On Notice Of The Planned Re-Vote***

The Mayor’s intent to change her vote at the November 1, 2022 Council meeting, thus reversing the Council’s vote on the final plan for Grand Street, has been known to the City for several weeks. Yet, Agenda Item 7-F gives no inkling to the public about what action is to take place at the meeting with respect to the Grand Street proposal that had been voted on and adopted by the Council on October 4<sup>th</sup>. Nowhere in the Agenda Item is it mentioned that what is proposed at the November 1<sup>st</sup> meeting is a reconsideration/rehearing of the October 4<sup>th</sup> Council vote: “Recommendation to Consider New Information Regarding the Grand Street Resurfacing and Safety Improvement Project and Authorize the Interim City Manager or Designee, to Proceed with Construction Documents for the Grand Street Resurfacing and Safety Improvement Final Concept.” Moreover, based on Council’s October 4<sup>th</sup> vote adopting the Alternative Plan with safety enhancements (and without the protected bike lanes and zig-zagging chicanes), members of the public reasonably believe that the Alternative Plan adopted on October 4<sup>th</sup> is the “Final Concept” adopted by the City Council. Indeed, this entire exercise is an inappropriate and impermissible procedural action since the Mayor, who is the only Councilmember who will be changing their vote after “consideration of new information,” made up her mind to do so, as evidenced by her public comments, by October 6<sup>th</sup>.

***C. The October 18, 2022 Agenda Item Also Failed to Adequately Place The Public On Notice That The Council Would Vote To “Rehear” The Final Grand Street Plan At The November 1, 2022 Council Meeting***

The Mayor’s motion on October 18, 2022 to seek Council approval to place the Grand Street item back before Council on November 1, 2022 is not reflected in the October 18, 2022 Grand Street limited I-5 agenda item (for increased funding) under which it was discussed. Although the City was aware by October 6<sup>th</sup>, in sufficient time to properly agendize the item separately for the October 18<sup>th</sup> Council meeting and give the public adequate notice of what would transpire at that meeting, the City did not post such an item on the agenda. The notion that the matter discussed on October 18, 2022 was merely procedural, is not supported by the facts and circumstances.

**CONCLUSION AND THE PATH FORWARD:**

The City has a ministerial duty to follow Council Rules, its Sunshine Ordinance, and California Open Government Laws (Brown Act and Public Records Act), which has not happened in this case. There is also a concern about the appropriateness in utilizing “new information” provided by Bike Walk Alameda (not public safety experts) as the vehicle for the Mayor to change her final vote on the Grand Street Plan. Moreover, the lack of transparency of the Agenda Item for the November 1, 2022 Council Meeting, especially given the intended Council action to reverse its prior approval of a final Grand Street Plan, failed to meet public notice legal requirements. Under these circumstances, the Grand Street “consideration” of “new evidence” item should be removed from the November 1, 2022, City Council Agenda.

The Mayor was correct at the October 4, 2022 City Council meeting in urging that the City proceed in a “cautious, yet smart” manner (implementation of new treatments and study of their effects over the next year), rather than the proposed “dramatic change” to Grand Street that she believed was not supported by the current statistics. We whole heartedly agree with this approach, and we look forward to working with the city to further develop a plan that achieves the objectives of those who live on and regularly utilize Grand Street.

Regards,

Regina Mucillo	John Brennan	Cindy Rankin Seibert
Hale Foote	Jean Brennan	Lolly Parker
Claire Yeaton-Risley	Sally Damsen	Barry Parker
Philip Jaber	Fred Damsen	Carol Gottstein
Gina Jaber	Margaret Hall	Karen Miller
George Jaber	Therese Hall	Gena Harriet
Nicholas Jaber	Marsha Broquedis	Pierre Harriet
Elizabeth Jaber	Kerry Plain	Matthew Dean

Elizabeth Dean  
Paolo Friedman

Paul Ferry  
Siam Peav

Beth Foote  
Jonathon Glazebrook

November 14, 2022

Dear City of Alameda,

We hereby submit the following Sunshine Ordinance Complaint;

**Complaint against:** City Council; Alleged Violation of City of Alameda Sunshine Ordinance

**Date of meeting:** Nov. 1, 2022, Item 7-F

**Describe alleged violations:** Violations of the Sunshine Ordinance: Sections 2-91.6(c), 2-91.15 (b), 2-92.4 (g), 2-91.5 (a & b), 2-91.5 (a), (b), (f) are noted below.

**Reference:** Sunshine Ordinance

[https://library.municode.com/ca/alameda/codes/code\\_of\\_ordinances?nodeId=CHIID\\_ARTVIIIISUOR#TOPTITLE](https://library.municode.com/ca/alameda/codes/code_of_ordinances?nodeId=CHIID_ARTVIIIISUOR#TOPTITLE)

### **Violation 1:**

#### **2-91.6 (c) - Public Notice Requirements**




*If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted.*

The agenda did not include updated public correspondence that was submitted before the meeting. During the meeting when this issue was brought up in public comment at approximately 9:43PM, (video recording 2:43:00), the Mayor later addressed the City Clerk (2:48:00) who incorrectly stated that all correspondence had been posted on the agenda. The City Clerk said, "As correspondence comes in over the course of after we publish the agenda, we always update and attach all new correspondence so it's included in the record." Three minutes later (2:51:40), another speaker additionally addressed the Council echoing the same concern that submitted correspondence had *still* not been published. Moments later, the agenda correspondence was altered, and the correspondence was then updated. This was not announced to meeting participants, though it was observed (see below). This alteration to the official public record - during the meeting before which it was supposed to be made available, seems improper and in violation of, if not the letter of the ordinance, the spirit of the ordinance. As a result, **correspondence was not considered and available to the public and City Council members prior to the beginning of the agenda item.**

#### **Evidence:**

The following is a screen capture from 11/1/2022, submitted to the City Council and City Clerk at 10:15 PM. Correspondence was downloaded at 9:17 PM during the meeting. The file size was 3.7 MB, and included only one letter of correspondence (Exhibit 1). The correspondence was subsequently reposted, and then downloaded again at 9:54 PM. Note the new file size as 10.5 MB, with added correspondence (Exhibit 2).

Based on public speaker comments, and the timestamps below, the correspondence was reposted by the City Clerk sometime between 9:51 PM and 9:54 PM.

▼  Downloads	--	Today at 9:54
 Correspondence - Updated 111-2.pdf	10.5 MB	Today at 9:54
 Correspondence - Updated 111.pdf	3.7 MB	Today at 9:17

One of the letters not available at the beginning, but later added as described above, was correspondence from Carmen Reid - which was submitted to the City Clerk at 11:07 AM, and receipt was acknowledged at 11:32 AM. This particular correspondence, therefore, was not added to the record prior to the meeting start at 7PM, but was added at some point between 9:51 PM and 9:54 PM.

Lara Weisiger

11:32 AM (10 hours ago)

to me ▼

Hi Carmen,

Hope all is well! Your correspondence will be included in the meeting record.

Respectfully,

Lara

**From:** Carme001 [mailto:[carmereid@gmail.com](mailto:carmereid@gmail.com)]

**Sent:** Tuesday, November 1, 2022 11:07 AM

**To:** City Clerk <[CLERK@alamedaca.gov](mailto:CLERK@alamedaca.gov)>

**Subject:** [EXTERNAL] Agenda Item 7F / Grand St.

Dear Mayor and Councilmembers,

**Re: Grand St. Redesign**

I am writing to express concern about the current proposed redesign of Grand St., and respectfully request that you revisit this project and consider a thorough study for the entirety of the street (from Shoreline Dr. to Clement Ave).

I would also like to suggest two alternative plans that may adequately suit the needs of the community--

1) a shared bike, walk, jogging permeable walkway made from natural decomposed granite pathway stabilizer. It is 100% organic, and could be a suitable addition into the historic landscape of the street. The pathway could be widened to accommodate sufficient distance between cyclists, pedestrians and joggers. Future current Class 2 bicycle lane at the street level could be maintained, as well as all of the parking along the curbs.

2.) separated bike trail and walking pathway. See attached photo. This proposal includes a landscaped strip between the paths. It could be landscaped with native plants.

Attached:

Exhibit 1: One letter of correspondence (Jay Garfinkle).

Exhibit 2: Multiple letters of correspondence.

## **Violation 2:**

### **2-91.15 (b)- Public Testimony**

*Every agenda for regular or special meetings at which action is proposed to be taken on an item shall provide, consistent with Council policy, an opportunity for each member of the public to directly address the body concerning that item before taking action.*

During the public comment period, it appears that at least 4 speakers who had their hands raised were not called upon on Zoom. These speakers were: Margaret Hall, John Brennan, John Healy and Hale Foote. These individuals raised their hands right at the end as the mayor was asking if there were any other public speakers, and were not recognized. The city clerk moved with much more speed to close public comments than during other discussion periods. In fact, at the October 4th meeting, the clerk recognized Mr. Brennan at precisely this time. We don't know what value was served by not being sure that all people who desired to speak were recognized.

This is especially critical given that City Council meetings are held via Zoom. At an in-person meeting, it is very easy for speakers to tell how many people are in line, who is next up, and when to put yourself in the cue. At the Zoom meeting, none of this is visible to potential speakers. It is critically important the City ensures that all speakers are heard from and gives them time to virtually raise their hands to speak. This was not done for the public discussion for Item 7-F.

**Evidence:**

Text message from John Healy to friend timestamped at 9:51 PM:





Correspondence from John Healy to City Clerk, 11/1/22, 10:01 PM indicating he had his hand raised:



John Healy <save.alameda@gmail.com>

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## Hand Up! RE Grand Street

1 message

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**John Healy** <save.alameda@gmail.com>  
To: clerk@alamedaca.gov

Tue, Nov 1, 2022 at 10:01 PM

Madam Clerk,  
I had my hand up, and the system pulled it down, and within a second of saying no more hands, I had my hand back up!

That Was wrong!

John Healy  
Save Alameda

Correspondence from Carol Gottstein to City of Alameda 11/3/22, 11:47 PM, forwarded from Carmen Reid:

Dear City Staff and Chief City Attorney,

It appears that others were also unable to view the correspondence. Please see email below from Ms. Gottstein.

There is clear evidence that there was only one letter available for public review prior to the start of the meeting. Only after this issue was raised during the public comment period, was it then updated in real-time. I have shared screen captures with your office indicating the alteration, and the two downloaded documents also with timestamps to do with the cache.

I respectfully request that you investigate this thoroughly, and review the recorded meeting as well as City issued devices.

It is essential that the public be allowed to review submitted public comments prior to meetings in order to meaningfully participate in our local government, and kindly be revisited to insure proper public engagement.

See timestamps and size of files. These files are attached in this email for your reference.

Correspondence - Updated 111-2.pdf	10.5 MB	Nov 1, 2022 at 9:54 PM
Correspondence - Updated 111.pdf	3.7 MB	Nov 1, 2022 at 9:17 PM

Thank you.  
Best,  
Carmen

----- Forwarded message -----

From: **Carol Gottstein** <carolgottstein@yahoo.com>

Date: Thu, Nov 3, 2022 at 11:18 AM

Subject: Re: [EXTERNAL] Improper alteration of Agenda Item/ Correspondence

Dear All: On Tuesday, between 2:40 pm and 3 pm, I attempted to access the Agenda 7-F Correspondence from the Mastick Computer Lab, whose servers I do not control. The City Clerk had just sent me an acknowledgement of my letter and I was in the Correspondence. I had been able to see the Correspondence (23 pages) before 2:40 pm, but from 2:40-3 pm, that the "page not available". Mastick closes at 3 PM so I went home.

I repeatedly attempted to view the Correspondence on my Samsung Android phone from the time I got home around 3:30 pm. The Agenda Item came up at 9:20 pm after the council recess, but only got one page (Jay Garfinkel), although the size of the file on my phone was much bigger (3.5 MB). And I had cleared my caches and wiped the cache partition.

I did try to view the Correspondence by going thru multiple routes: the Staff Report, and re-downloading the agenda links. Never worked.

The odd thing is that I could open the entire Correspondence for Item 7-E, the police review board item, without a problem.

I was going to mention the problem during my public comment, but I didn't want to waste my time. However, after the next item was mentioned, then the Correspondence for Item 7-F appeared.

Since this apparently happened on multiple devices, including public ones, I doubt the problem was with the recipients. If the Agenda Item 7-F Correspondence was hidden from view from 2:40 pm - 9:20 pm continuously. At least it was to me. That's quite a long time, if you ask me. I don't know that this has ever happened before.

You may forward this email along to the City Staff. Thank you.

Carol Gottstein

Statements from Margaret Hall, John Brennan, John Healy, and Hale Foote

### **Margaret Hall**

I was watching the meeting on Zoom, and I knew there were going to be numerous speakers. I raised my hand directly after Matt Reid spoke. The clerk erroneously stated, "That was our last speaker." But my hand was raised and stayed raised until after the final vote. During discussion Councilmember Spencer mentioned that people had their hands raised. I was waiting and expecting to be able to exercise my right to participate in a public meeting. Had this been an in-person meeting this would have never happened. Constituents are not being included in the process.

### **John Brennan**

I want to raise the issue about how public comments were cut off during the discussion about the Grand Street Project. Several of us raised our hands right at the end as the mayor was asking if there were any other public speakers. Hale Foote, Margaret Hall, John Healy and I all raised our hands at that point and were not recognized. The city clerk moved with much more speed about this than for other issues. In fact, at the October 4<sup>th</sup> meeting, the clerk recognized me at just this time. I don't know what value is served by not being sure that all people who desire to speak are recognized.

### **John Healy**

On 11/1/2022, I attempted to participate in the public hearing before the Alameda City Council. This hearing was being held on Zoom. I was waiting my turn to speak and had my hand raised electronically. When the Mayor asked the City Clerk if there were more speakers, I watched my hand drop immediately from the screen. I immediately once again raised my hand before the Mayor could state that there was no more discussion. I

wasn't called upon, unfortunately. At that exact moment, I emailed the City Clerk directly, saying my hand was raised. I am still waiting for a response to date from anyone. Therefore, I was not heard before the City Council in violation of my rights as a citizen of Alameda, and I was not allowed to speak as permitted by Law.

### **Hale Foote**

I thought that I clicked the raised hand button but did not see any indication that it registered, as the clerk was announcing "no more comments." It was all rushed. Maybe my mistake that I did not raise my hand much earlier in the meeting, to get into the queue? But I wanted to be one of the last to speak.

### **Violation 3:**

#### **2-92.4 (g) - Notices and Posting of Information**

*Meetings on matters related to or actions taken in anticipation of a potential development project or other land use matter, such as but not limited to grant applications, project funding, and ordinance changes, including but not limited to, General Plan and area plan amendments or rights transfers, shall be noticed at least as extensively as is required for meetings on said projects.*

As noted in the Sunshine Ordinance, potential development projects that include grant funding are required to be noticed extensively. The City of Alameda has a dedicated webpage for the Grand St. project, but failed to properly notice the agenda item for the November 1, 2022 meeting. It cites the previous meetings, including the October 4, 2022 meeting that had been voted upon, but did not provide information regarding the revisiting of the item. This failure to publicly notice the item is a clear violation of the Sunshine Ordinance and precluded the public from an opportunity to participate.

#### **Evidence:**

<https://www.alamedaca.gov/Departments/Planning-Building-and-Transportation/Transportation/Grand-Street-Pavement-Resurfacing-and-Safety-Improvements>

# Grand Street Pavement Resurfacing and Safety Improvements

**Announcement** City staff/consultant team is requesting City Council approval of the final concept for the Grand Street Resurfacing and Safety Improvement Project on Tuesday, October 4.

**Background.** The City has identified Grand Street between Shore Line Drive and Encinal Avenue as a high priority for pavement improvements. This pavement rehabilitation project has multiple benefits for all street users. Better maintained streets have fewer potholes, improved ride quality, pavement that is eligible for less costly preservation in future, updated striping and signage, and improved curb ramps, curbs and gutters. The project also is recommending safety improvements such as high visibility crosswalks, flashing beacons for pedestrians at Wood School and at the intersections of Grand Street/San Antonio Avenue and Grand/San Jose Avenue, separated bike lanes, enhanced bus stops by Shore Line Drive and Wood School, and narrower travel lanes to encourage slower vehicle speeds. On-street parking will be reduced to implement the safety features such as bus islands, separated bike lanes and high visibility crosswalks.

**Correspondence.** To receive project updates via email, subscribe directly [here](#). Please direct questions or concerns to Robert Vance, Supervising Civil Engineer, by phone at 510 747-7972 or by email at [rvance@alamedaca.gov](mailto:rvance@alamedaca.gov).

如需中文协助，请致电 510-747-6892 进行预约。Rú xū zhōngwén xiézhù, qǐng zhìdiàn 510-747-6892 jìnxíng yùyuē.

Para obtener asistencia en español, llame al 510-747-7939.

## Details

**Project Goals:** For the Grand Street Pavement Resurfacing and Safety Improvements, the City seeks to:

- Improve Alameda's pavement condition to improve street operations and user experience, and to reduce future maintenance costs.
- Promote safety by prioritizing Vision Zero, which the City Council approved as a policy in 2019 to reduce traffic deaths and severe injuries to zero.
- Improve mobility for all modes, including AC Transit buses.
- Comply with existing plans and policies, including the City's *General Plan* and Draft *Active Transportation Plan*.

## Progress

Design is in progress, and construction is expected to begin in 2023.

## More Information

Learn more about the City's Pavement Management Program from the City's 2021-2023 Capital Budget.

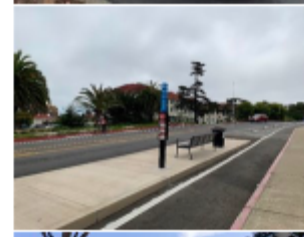
📄 [Informational Fact Sheet](#) (PDF, 1MB)

📄 [Project Sheet](#) (PDF, 306KB)

📄 [Final Concept](#) (PDF, 4MB)

## Funding

This project is funded by Measure B/BB Local Streets and Roads, Measure B/BB Paratransit and One Bay Area Grant (OBAG) federal monies.



Project construction

## Town Hall

### 2022

- April: Second online survey
- May 4: Virtual community workshop - [presentation \(PDF, 3MB\)](#) -  
[notes \(PDF, 103KB\)](#) - **video:** 
- May 25: Transportation Commission approval of the concept - [agenda](#)
- June 21: Requested City Council approval of the concept - [staff report](#)
- October 4: Request City Council approval of the concept
- Finish/Winter: Finish design

### 2023

- Mid: Project construction



### Schedule

#### 2021

- December 9: Virtual community workshop #1

#### 2022

- May 4: Virtual community workshop #2
- May 25: Approval of concept by Transportation Commission
- Tues, June 21 at 7 p.m.: Requested approval of concept by City Council
- Tues, October 4 at 7 p.m.: Request approval of concept by City Council
- Fall/Winter: Finish design

#### 2023

- Project construction

### Town Hall

#### Contact Us

City Hall Address  
2263 Santa Clara Avenue  
Alameda, CA 94501  
(510) 747-7400  
[Report Website Errors](#)

[Phone Directory](#)  
See [Department pages](#) for physical address.

Photographs by Maurice Ramirez.

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**Violation 4: (related to October 4, 2022 and October 18, 2022 meetings, which set the stage for the November 1, 2022 meeting—see Violation 5)  
2-91.5 (a, b, f)- Agenda Requirements; Regular Meetings**

*a. Twelve (12) days before a regular meeting of City Council, and seven (7) days for all other policy bodies, the policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. These time requirements shall apply to posting on the internet*

*b. A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted with the agenda or, if such documents are of more than one (1) page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.*

*f. No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.*

In the description of Agenda Item 5-I at the City Council meeting on October 18th, 2022, the City failed to accurately describe the nature of the items to be discussed regarding this agenda item.

“Adoption of Resolution Appropriating \$126,618 in Transportation Development Act, Article 3 Grant Funding by Amending the Fiscal Year 2022-23 Capital Budget to Increase Budgeted Revenue and Expenditures in Capital Improvement Program C14000 by \$50,000 and in Capital Improvement Program C11000 by \$76,618 for Grand Street Improvements. (Planning, Building and Transportation 20962740).”

The October 18, 2022 Agenda Item for Grand Street (5-I), which concerned only additional fund appropriation for the project, was misleading and provided no notice to the public that a Council vote would be taken at the October 18, 2022 meeting to place the City Council’s October 4, 2022 final decision on the November 1, 2022 City Council meeting Agenda for “rehearing” (i.e. re-vote).

Nowhere in this description is placing on the next City Council meeting agenda a re-vote or reconsideration of the October 4, 2022 vote of the City Council on Grand Street

Resurfacing and Safety Improvement Project. However, this is the action that the City Council actually took, in violation of the Sunshine Ordinance.

Further, the essence of the Sunshine Ordinance is transparency and an informed public. The public depends on the City Council to follow the procedural rules it has adopted—the Rosenberg Rules—to create order, predictability, and full disclosure of items it will act on, and an opportunity for public comment. Violating the Council's procedural rules violates the very intent of the Sunshine Ordinance: that legislative meetings will be transparent, deal with issues that are publicly disclosed and conduct its business in an orderly way to hold public officials accountable for their actions and in allowing the public to participate in the decision-making process. The Rules require that a revote or reconsideration of a previously conducted vote can only occur at the same meeting at which the original vote was held. The only exception to this is if the Council takes a 2/3rds vote to suspend the rules, which on the 5-member Council requires 4 votes, which didn't occur.

The City Council's actions at the October 18, 2022 meeting regarding the Grand Street project violated this foundational principle of the Sunshine Ordinance.

### **Violation 5:**

#### **2-91.5 (a, b, f)- Agenda Requirements; Regular Meetings**

*a. Twelve (12) days before a regular meeting of City Council, and seven (7) days for all other policy bodies, the policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. These time requirements shall apply to posting on the internet*

*b. A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted with the agenda or, if such documents are of more than one (1) page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.*

*f. No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.*

In the description of Agenda Item 7-F at the City Council meeting on November 1, 2022, the City failed to accurately describe the nature of what would transpire at the meeting:

Agenda Item 7-F of the November 1, 2022 City Council Meeting reads as follows:

“Recommendation to Consider New Information Regarding the Grand Street Resurfacing and Safety Improvement Project and Authorize the



Interim City Manager, or Designee, to Proceed with Construction Documents for the Grand Street Resurfacing and Safety Improvement Project Final Concept (Planning, Building & Transportation 20962710).”

Indeed, the “Proposed Final Concept Plan,” included in Agenda Item 7-F for authorization of construction, is not the final plan approved by Council on October 4, 2022 as it contains the protected bike lanes and the roadway lane changes (i.e. meandering roadway zig-zags called “chicanes”) rejected by the Mayor and Council on October 4, 2022.

In reality this was reconsideration and revote on the concept that was approved at the October 4, 2022 City Council Meeting. The concept that was approved at that meeting was in fact the Final Concept. This was not attached to the agenda.

Further, the vote at this meeting to adopt the “Proposed Final Concept Plan” violated the City Council’s procedural rules. The public depends on the City Council to follow the procedural rules it has adopted—the Rosenberg Rules—to create order, predictability, and full disclosure of items it will act on, and an opportunity for public comment. Violating the Council’s procedural rules violates the very intent of the Sunshine Ordinance: that legislative meetings will be transparent, deal with issues that are publicly disclosed and conduct its business in an orderly way to hold public officials accountable for their actions and in allowing the public to participate in the decision-making process.

The Rules require that a revote or reconsideration of a previously conducted vote can only occur at the same meeting at which the original vote was held. The only exception to this is if the Council takes a 2/3rds vote to suspend the rules, which on the 5-member Council requires 4 votes, which didn’t occur. The City Council’s actions at the November 1, 2022 meeting regarding the Grand Street project violated this foundational principle of the Sunshine Ordinance.

### **Remedy:**

We respectfully request that the City cure and correct these violations cited above regarding the City’s Sunshine Ordinance and invalidate the actions taken on the October 18, 2022 and November 1, 2022 City Council meetings. Should the City decide not to cure and correct, we ask that the City maintain the status quo and not move forward with the actions approved at the October 4, 2022 regarding Agenda Item 7-B and the November 1, 2022 meeting regarding Agenda Item 7-F, pending the Open Government Commission’s determination and recommendation on this complaint.

Sincerely,

Marsha Broquedis

Pierre Harriet

John Brennan

John Healy

Jean Brennan

Philip Jaber

Sally Damsen

Gina Jaber

Fred Damsen

George Jaber

Matthew Dean

Nicholas Jaber

Elizabeth Dean

Elizabeth Jaber

Paul Ferry

Karen Miller

Beth Foote

Barry Parker

Hale Foote

Paolo Friedman

Jonathon Glazebrook

Carol Gottstein

Margaret Hall

Gena Harriet

Lolly Parker

Siam Peav

Carmen Reid

Matt Reid

## **Attachments**

**Exhibit 1:** Correspondence, one letter, Jay Garfinkle

October 28, 2018

RE: 11/1/22 Council agenda item 7F

Honorable Mayor and Councilmembers,

How ironic is it that the chicanery we are now witnessing on the part of self-interested actors in their effort to reverse the City Council's recent decision regarding the proposed distortion of Grand Street should actually revolve around the very *chicanes* they've been promoting. This term now being used to describe their traffic diverters is not found in the Staff's previous reports or elsewhere in any discussions of the proposed zigzagging. And it seems likely that the only reason for using this term now is that when push came to shove, the losers of the debates determined that they might be able to bolster their weak argument if they could find formal support for their self-serving and baseless arguments with a Google search that would provide them with references that mentioned the term.

Their "new information" lead to a rewrite of the earlier staff report which simply shares that some jurisdictions have used *chicanes*, our new vocabulary word, to slow traffic, primarily in commercial areas as Oakland has done along Telegraph Avenue. In addition, BWA submitted links to a few limited agency reports that, for the most part, do nothing more than mention, without recommendation, the employing of *chicanes* as one of several methods for slowing traffic. There was little, if any, mention in these agency reports of any demonstrated reductions in the incidence of collisions or injuries, let alone fatalities. The reports focused primarily on speed reduction, not on safety. This would render their proffered reports largely irrelevant to their current pleading which focuses almost exclusively on safety for cyclists. Note that I am not arguing against safety as an important issue. I am simply arguing that the "new information" is irrelevant and does nothing to support their argument for reconsidering the Council's October 4th decision.

As noted, it appears that the new staff report is nothing more than a rehashing of their earlier reports except for the inclusion of BWA's irrelevant "new information" and the use of the term *chicanes* to suggest that they might be offering a new, and possibly less onerous, type of traffic diverting barriers to traffic flow.

Now, consider this. Both Union Street and Paru Street, streets which parallel Grand, have much less traffic than Grand, a fact known by virtually everyone familiar with the neighborhood, and certainly known to City Staff and the spokespeople for Bike Walk Alameda. And given that neither of these ardent advocates for zigzagging on Grand Street offered or suggested the alternative of using these quieter, and arguably safer, streets as preferred routes for crosstown cyclists, it would seem that their arguments, at best, might be taken as examples of disingenuous political rhetoric. Think chicanery.

Note also that should Staff be successful in throttling vehicle traffic flow on Grand Street, they will have eliminated one of the only two remaining four lane crosstown evacuation routes. Having already eliminated Webster Street and Park Street, they will be leaving the residents of the city with Broadway as our only four-lane thoroughfare capable of serving as a crosstown evacuation route.

Jay Garfinkle

**Exhibit 2**: Correspondence, multiple letters; see attachment with file name beginning “Exhibit 2”

**Exhibit 3:** Correspondence to City Attorney, City Manager

October 31, 2022

Mayor Ezzy Ashcraft:

Vice Mayor Vella:

Councilmember Daysog:

Councilmember Herrera Spencer:

Council Member Knox White:

Interim City Manager Nancy Bronstein:

City Clerk Lara Weisiger:

City Attorney Yibin Shen:

Re: Objection To Agenda Item 7-F On The City Council's November 1, 2022  
Regular Agenda Seeking To Effect Reconsideration Of The City Council's  
October 4, 2022 Final Vote In Support Of The Alternative Plan For Grand  
Street

We write in objection to the City Council proceeding with Agenda Item 7-F on the  
Regular Agenda for Council's action at its November 1, 2022 meeting for the following  
reasons:

1. Agenda Item 7-F in reality seeks, based on the Council's "consideration"  
of purported "new information," to facilitate the Mayor's change (i.e.

reconsideration) of her recent vote on October 4, 2022 in violation of the Council's adopted procedural rules of order (*Rosenberg's Rules of Order*). The Mayor's decision to change her vote was made less than 48 hours after the Council's October 4<sup>th</sup> vote. The Mayor said at Bike Walk Alameda's October 6<sup>th</sup> Mayoral Forum that "new information" provided by Bike Walk Alameda satisfied her safety concerns that had not, heretofore, been allayed by the multiple engineers and safety consultants working on the plans.

2. Agenda Item 7-F's description itself is misleading and appears to lack sufficient and requisite transparency under applicable open government laws to place the public on notice of what will really transpire on November 1<sup>st</sup> under the guise of "authoriz[ing] the Interim City Manager or Designee to Proceed with Construction Documents for the Grand Street Resurfacing and Safety Improvement Project Final Concept." Indeed, the "Proposed Final Concept Plan," included in Agenda Item 7-F for authorization of construction, is not the final plan approved by Council on October 4<sup>th</sup> as it contains the protected bike lanes and the roadway lane changes (i.e. meandering roadway zig-zags called "chicanes") rejected by the Mayor and Council on October 4<sup>th</sup>.

3. Likewise, the October 18, 2022 Agenda Item for Grand Street (5-I), which concerned only additional fund appropriation for the project, was misleading and provided no notice to the public that a Council vote would be taken at the

October 18<sup>th</sup> meeting to place the Council's October 4, 2022 final decision on the November 1, 2022 Council meeting Agenda for "rehearing" (i.e. re-vote).

**RELEVANT BACKGROUND:**

***A. The City Council's June 21, 2022 Provisional Approval Of A Grand Street Plan:***

On June 21, 2022, the Council held a "Public Hearing to Consider Adoption of Resolution Authorizing the Interim City Manager To Proceed With the Grand Street Resurfacing and Safety Improvement Project Final Concept and Adoption of Environmental Findings." (Agenda Item 7-B.) The Agenda Item contained a "Recommended Street Configuration" Plan ("Recommended Plan") and an "Alternative Street Configuration" Plan ("Alternative Plan") for consideration by Council. The main difference between the Recommended Plan and the Alternative Plan was that the Recommended Plan reconfigured the portion of Grand Street between Palmera Court and Encinal Avenue by adding protected bike lanes (in lieu of traditional bike lanes), significantly reduced residential parking and inserted periodic "lane changes" into the Grand Street roadway (i.e. meandering roadway zig-zags also known as "chicanes") to accommodate the protected bike lanes. The Alternative Plan was essentially the City's original plan with traditional bike lanes (with added paint and delineation, which had not been done in many years). Both Plans included the safety enhancements for all users (e.g. curb extensions, daylighting, highly visible crosswalks etc.). The Alternative Plan did not contain protected bike lanes or the periodic "lane changes" (i.e. meandering roadway zig-zags also known as "chicanes").



The Council meeting ended at midnight and included extensive public comment, a presentation and response to questions by City Transportation staff, participation by City-retained consultants NCE (civil engineering and transportation experts)<sup>[1]</sup> and Fehr & Peers (transportation consultants and safety experts),<sup>[2]</sup> and extensive Council debate. Council members Daysog and Herrera Spencer favored the Alternative Plan, which they believed was safe for all users and struck a balance between competing concerns. Council member Knox-White and Vice Mayor Vella supported the Recommended Plan because of its prioritization of protected bike lanes. Mayor Ezzy Ashcraft voiced her significant concerns about the Recommended Plan, primarily with respect to the impacts on persons with disabilities and elderly residents and concern for safety of the new lane change “zig-zag” roadway configuration. As a result, she voted to approve City staff moving forward with further design of the Recommended Plan, but only with provisions to occur prior to further Council review of the Recommended Plan in September.<sup>[3]</sup> The Mayor’s provisions included having an ADA consultant review and identify how ADA needs would be addressed, and having a public safety consultant (could be a trained public safety consultant or traffic engineer) address the safety concerns presented by the meandering, zig-zag roadway design. The Council ultimately voted 3-2 (Ezzy Ashcraft, Vella, Knox White) to give approval to the City staff to move forward with the Recommended Plan with the Mayor’s provisions.

***B. City Council’s October 4, 2022 Final Approval Of A Grand Street***

***Plan:***

On October 4, 2022, Council met on the “Recommendation to Authorize the Interim City Manager, or Designee, to Proceed with the Grand Street Resurfacing and Safety Improvement Project Final Concept, Including Preparation of Final Design and Construction Documents, Consistent with the Recommended Final Concept Plan.” City staff, and consultants NCE and Fehr & Peers, presented Council with a revised final concept Plan (the “Recommended Plan” with the addition of elements requested by Council at its June 21, 2022 meeting such as adding a two-way separated bike lane in front of Wood School). The City’s Staff Report included information on the status of review by an ADA consultant, the results of the public safety review by the Fire Department, and the statement that all project features, “including lane shifts, tapers, and delineation between bike lanes and travel lanes will be designed pursuant to best

practice guidance, including the California Manual on Uniform Traffic Control Devices (CA MUTCD).”

During the lengthy Council debate, Mayor Ezzy Ashcraft reiterated her concerns about the safety of the zig-zag configuration, noting that a public safety expert’s opinion had not been included in what was presented to Council. Ultimately the Mayor expressed support for implementing the recommended enhancements to Grand Street (e.g. curb extensions, daylighting, highly visible crosswalks, two-way cycle track for Wood, flashing beacons in two intersections, and mid-block speed enforcement via speed cushions) but maintaining the traditional bike lanes (painting them green). She said that the matter did not have the type of statistics she would like to see for a dramatic change. She further proposed that the City study the new treatments, including the safety of the meandering, over the next year to obtain more data, and also conduct more community involvement and outreach. The Mayor acknowledged that more might need to be done, but wanted to ensure that the City moves forward in a cautious, yet smart, manner.

Ultimately, the Mayor joined the Council majority (Ezzy Ashcraft, Daysog, Herrera Spencer) in approving construction of a final plan for the portion of Grand Street north of Otis Drive that did not include protected bike lanes or the roadway lane changes (i.e. meandering roadway zig-zags or “chicanes”) reconfiguring Grand Street between Palmera Court and Encinal Avenue.

***C. The Mayor’s Next Day Decision To Change Her Vote Based On “New Information” Regarding The Safety Of “Chicanes” Provided By Bike Walk Alameda:***

The reaction to the Mayor's October 4<sup>th</sup> decision was evidently swift, because two days later at the October 6<sup>th</sup> Bike Walk Alameda Mayoral Forum she stated the following as her Opening Statement:

Thank you Bike Walk Alameda and CASA for hosting us tonight and thank you for all the important work your organizations do in our City. So, I want to take us back to the City Council meeting this past Tuesday, October the 4<sup>th</sup>, it was a rough meeting for me, and I think a lot of you because we discussed a proposal for Grand Street and protected bike lanes and at the time I voted "no" on the proposal the staff was putting forward and I want to quickly explain my reasons for voting "no," but also the path forward. And I responded to some of your emails so you know that I'm going to provide further information, so this is now. So, the safety of our pedestrians, bicyclists all residents (was) paramount to me. When we considered the protected bike lanes there were safety concerns that I had previously raised in June that were never answered, never addressed. So, I voted no because I could not get from the City Engineer answers to my question about -- are there unintended consequences of these I call them meandering zig zagging lanes they are chicanes. In fact, because I didn't want to see collisions caused by confused drivers that might lead to injury of a pedestrian or cyclist crossing an intersection and I want to see this plan extend all the way to Clement, I also asked if there were examples in other cities where this had been done and the results thereof. And the responses I got back were nothing really, but

when I probed the week before the meeting, the City Engineer told me he thought I was asking about the safety of fire trucks if they could navigate the lanes, I wasn't, but they can. He didn't know of any other examples and at the meeting he let us know that the engineers had approved the plans. ***My safety concerns were not addressed, but the next morning I felt terrible. I reached out to Cyndy Johnson and Denyse Trepanier. We had a Zoom and what I would like to say is that the safety concerns that I'd previously raised or have, have now been addressed by information, new information that Denyse shared this evening with Council and the City Clerk, and it will be an attachment to an agenda item on October 18.*** And at the October 18<sup>th</sup> council meeting, I am prepared to request that the council review this new information at our November 1<sup>st</sup> meeting and I fully expect to have at least two other council members vote with me to review this new information, and I've cleared this with the City Attorney and Interim City manager, and when it comes back, I fully expect to support the proposed bike lane proposal that had been before us, and that I voted no on Tuesday. With this information, I am satisfied with the safety concerns and I so appreciate Bike Walk Alameda for providing that information. Thank you.

Later in the Forum, in response to question about road safety, the Mayor said that after reading up on "chicanes" that she was prepared to support chicanes on Grand Street with additional information, and that she believed that "there may be other opportunities to do that sort of road transformation in Alameda."

***D. The City Council's October 18, 2022 Vote To Bring The Grand Street Item Back For "Rehearing" At The November 1, 2022 Council Meeting Based On "New Information"***

On October 18, 2022, the Council met on Agenda Item 5-I "Adoption of Resolution Appropriating \$126, 618 in Transportation Development Act, Article 3 Grant Funding by Amending the Fiscal Year 2022-23 Capital Budget ... for Grand Street Improvements." Under this Agenda Item, the Mayor also brought forth a "second motion" (not agendized) "to give the brief direction to staff ... to review new information about this project" and "to bring the item back on November 1<sup>st</sup>, our next Council meeting, to give the Council the opportunity to consider this new information." The Mayor further said that she "did not call for reconsideration of the item, um, specifically." Councilmember Daysog raised his concern that the Mayor's second motion was "out of order" because the Council has adopted the Rosenberg Rules of Order ("Council Rules"), under which any reconsideration has to occur on the night that the vote was made. Councilmember Daysog noted that if there was a possibility of reconsidering the Mayor's vote outside of the meeting when the vote occurred, the Council Rules required that Council must first vote to suspend its Rules by a 2/3 majority vote (4 out of 5 councilmembers). Councilmember Herrera Spencer voiced similar procedural concerns and further noted doubts about what significant "new information" could have arisen within 24 hours of the October 4<sup>th</sup> meeting. The City Attorney was of the view, without having reviewed the "new information," that what was being requested was not a "reconsideration item" but "simply ... staff has brought forward some new information and asked [Council] to take another look and see if

[Council] wanted to make a different decision.” The City Clerk/Parliamentarian analogized to an ordinance enacted by a prior City Council being repealed by a different City Council. Councilmember Knox White’s motion to “direct staff to bring back the Grand Street item at our next meeting for, uh, reconsi..., for rehearing..., and hearing of new information” was approved by Councilmember’s Ezzy Ashcraft, Knox White, and Vella to place the matter on the November 1, 2022 Council Agenda. Councilmember Daysog cautioned that the Council needed to tread carefully as to what constituted “new information” and said that he was “not convinced that this is not a reconsideration of a vote.”

## **INFIRMITIES AND IMPROPRIETIES IN THE CITY COUNCIL’S DECISION MAKING**

### **PROCESS:**

#### ***A. The November 1, 2022 Mayor’s Anticipated Change Of Vote Violates Council Rules***

As noted by Councilmember Daysog at the October 18, 2022 Council Meeting, the Council has adopted *Rosenberg’s Rules of Order (“Rules”)*, published by the League of California Cities. The Rules address a Motion to Reconsider a vote, and recognize that a tenet of parliamentary procedure is finality in the decision making process. As explained in the Rules, “[a]fter vigorous discussion, debate, and a vote, there must be closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.” A motion to reconsider a vote must be made by a member who voted in the majority, and at the meeting where the item was voted upon. A motion to reconsider made at a later time is

untimely, unless the body votes by a 2/3 majority (4 out of 5 Council members) to suspend the Rules and make a motion to reconsider at another time.

In the City's case, the facts clearly demonstrate that the November 1, 2022 "consideration of new information" is in reality a belated motion to reconsider the Mayor's October 4, 2022 vote, without the requisite 2/3 vote of Council to suspend its Rules as required by the City's adopted Rules. A motion for reconsideration was not made at the October 4, 2022 meeting by the Mayor, or any other member of the Council majority. Nor did the Council vote to suspend its Rules by a 2/3 (4 out of 5 Council members) vote to place the item for re-vote on the November 1, 2022 Council agenda. Indeed, such a vote would have been unlikely to succeed in this matter given the composition of the Council members who voted in the majority at the October 4<sup>th</sup> Council meeting.

Additionally, as pointed out by Councilmembers Daysog and Herrera Spencer at the October 18, 2022 Council meeting, the prospect that there was "new" information presented – after months of work by City Staff and its transportation engineering and safety expert consultants, discussion by Council and hearing of public comments – of such a magnitude to necessitate City staff review was very doubtful based on the facts described above. Moreover, the Rules ***do not provide for a motion for reconsideration based on "new information."***

The Mayor's statements at the October 6, 2022 Bike Walk Alameda Mayoral Forum (quoted above) demonstrate that the "new information" she received from Bike Walk Alameda officers on October 5<sup>th</sup> was not an opinion of a public safety expert, which is what the Mayor had been seeking. The Mayor based her October 4, 2022 vote

rejecting the Recommended Plan, in substantial part, on the fact that a public safety expert had not reviewed the proposed reconfiguration of Grand Street, specifically the chicanes (meandering, zig-zag of the roadway) of the Recommended Plan. Nevertheless, the next day the Mayor was proposing to change her vote after receiving general information on traffic calming techniques from Bike Walk Alameda (not engineers or public safety experts) easily obtainable through an Internet search.

***In sum, the facts clearly demonstrate that the proposed November 1, 2022 “consideration of new information” is in reality an improper reconsideration of the Mayor’s October 4, 2022 vote in violation of the City’s adopted Rosenberg’s Rules of Order.***

***B. The November 1, 2022 Agenda Item Fails To Adequately Place The Public On Notice Of The Planned Re-Vote***

The Mayor’s intent to change her vote at the November 1, 2022 Council meeting, thus reversing the Council’s vote on the final plan for Grand Street, has been known to the City for several weeks. Yet, Agenda Item 7-F gives no inkling to the public about what action is to take place at the meeting with respect to the Grand Street proposal that had been voted on and adopted by the Council on October 4<sup>th</sup>. Nowhere in the Agenda Item is it mentioned that what is proposed at the November 1<sup>st</sup> meeting is a reconsideration/rehearing of the October 4<sup>th</sup> Council vote: “Recommendation to Consider New Information Regarding the Grand Street Resurfacing and Safety Improvement Project and Authorize the Interim City Manager or Designee, to Proceed with Construction Documents for the Grand Street Resurfacing and Safety Improvement



Final Concept.” Moreover, based on Council’s October 4<sup>th</sup> vote adopting the Alternative Plan with safety enhancements (and without the protected bike lanes and zig-zagging chicanes), members of the public reasonably believe that the Alternative Plan adopted on October 4<sup>th</sup> is the “Final Concept” adopted by the City Council. Indeed, this entire exercise is an inappropriate and impermissible procedural action since the Mayor, who is the only Councilmember who will be changing their vote after “consideration of new information,” made up her mind to do so, as evidenced by her public comments, by October 6<sup>th</sup>.

***C. The October 18, 2022 Agenda Item Also Failed to Adequately Place The Public On Notice That The Council Would Vote To “Rehear” The Final Grand Street Plan At The November 1, 2022 Council Meeting***

The Mayor’s motion on October 18, 2022 to seek Council approval to place the Grand Street item back before Council on November 1, 2022 is not reflected in the October 18, 2022 Grand Street limited I-5 agenda item (for increased funding) under which it was discussed. Although the City was aware by October 6<sup>th</sup>, in sufficient time to properly agendize the item separately for the October 18<sup>th</sup> Council meeting and give the public adequate notice of what would transpire at that meeting, the City did not post such an item on the agenda. The notion that the matter discussed on October 18, 2022 was merely procedural, is not supported by the facts and circumstances.

**CONCLUSION AND THE PATH FORWARD:**

The City has a ministerial duty to follow Council Rules, its Sunshine Ordinance, and California Open Government Laws (Brown Act and Public Records Act), which has

not happened in this case. There is also a concern about the appropriateness in utilizing “new information” provided by Bike Walk Alameda (not public safety experts) as the vehicle for the Mayor to change her final vote on the Grand Street Plan. Moreover, the lack of transparency of the Agenda Item for the November 1, 2022 Council Meeting, especially given the intended Council action to reverse its prior approval of a final Grand Street Plan, failed to meet public notice legal requirements. Under these circumstances, the Grand Street “consideration” of “new evidence” item should be removed from the November 1, 2022, City Council Agenda.

The Mayor was correct at the October 4, 2022 City Council meeting in urging that the City proceed in a “cautious, yet smart” manner (implementation of new treatments and study of their effects over the next year), rather than the proposed “dramatic change” to Grand Street that she believed was not supported by the current statistics. We whole heartedly agree with this approach, and we look forward to working with the city to further develop a plan that achieves the objectives of those who live on and regularly utilize Grand Street.

Regards,

Regina Mucillo

Hale Foote

Claire Yeaton-Risley

Philip Jaber

Gina Jaber

George Jaber

Nicholas Jaber

Elizabeth Jaber

John Brennan

Jean Brennan

Sally Damsen

Fred Damsen

Margaret Hall

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Kerry Plain

Cindy Rankin Seibert

Lolly Parker

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Carol Gottstein

Karen Miller

Gena Harriet

Pierre Harriet

Matthew Dean

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Paolo Friedman

Paul Ferry

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Beth Foote

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<sup>[1]</sup> <https://www.ncenet.com/>

<sup>[2]</sup> <https://www.fehrandpeers.com/active-transportation/>

<sup>[3]</sup> Council review occurred on October 4, 2022.

November 14, 2022

Mayor Ezzy Ashcraft:

Vice Mayor Vella:

Councilmember Daysog:

Councilmember Herrera Spencer:

Council Member Knox White:

Acting City Manager Erin Smith:

City Clerk Lara Weisiger:

City Attorney Yibin Shen:

This letter is to call your attention substantial violations of the City's adopted procedural rules, The Rosenberg Rules of Order, which jeopardizes the finality of the action taken by the City Council on October 18, 2022 (Item 5-I) and November 1, 2022 (Item 7-F).

In its meetings of October 18th 2022 and November 1st 2022 the City Council took action in violation of City Resolutions 15382, 15697, 15746, 15772 and 15875 by reversing the final action it took at the City Council's October 4, 2022 meeting adopting a plan for the reconfiguration of Grand Street. This action violated the Rosenberg Rules of Order (Rules), which The City has adopted to govern the proceedings of the City Council. The Rules require that a revote or reconsideration of a previously conducted vote can only occur at the same meeting at which the original vote was held. The only exception to this is if the Council takes a 2/3rds vote to suspend the rules, which on the 5-member Council requires 4 votes, which didn't occur.

The Rules address a Motion to Reconsider, and recognize that a tenet of parliamentary procedure is finality in the decision making process. As explained in the Rules, "[a]fter vigorous discussion, debate, and a vote, there must be closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed." A motion to reconsider a vote must be made by a member who voted in the majority, and at the meeting where the item was voted upon. A motion to reconsider made at a later time is untimely, unless the body votes by a 2/3 majority (4 out of 5 Council members) to suspend the Rules and make a motion to reconsider at another time.

In the City's case, the facts clearly demonstrate that the November 1, 2022 "consideration of new information" is in reality a belated motion to reconsider the Mayor's October 4, 2022 vote, without the requisite 2/3 vote of Council to suspend its Rules as required by the City's adopted Rules. A motion for reconsideration was not made at the October 4, 2002 meeting by the Mayor, or any other member of the Council majority. Nor did the Council vote to suspend its Rules by a 2/3 (4 out of 5 Council members) vote to place the item for re-vote on the November 1, 2022 Council agenda. Indeed, such a vote would have been unlikely to succeed in this matter given the composition of the Council members who voted in the majority at the October 4th Council meeting.

Additionally, as pointed out by Councilmembers Daysog and Herrera Spencer at the October 18, 2022 Council meeting, the prospect that there was "new" information presented – after months of work by City Staff and its transportation engineering and safety expert consultants, discussion by Council and hearing of public comments – of such a magnitude to necessitate City staff review was very doubtful based on the facts described above. (Also see the attached letter to the city dated October 31, 2022). Moreover, the Rules do not provide for a motion for reconsideration based on "new information." The prescribed way to handle the need to vote based on truly new information that would require a new vote is for the Council to vote to suspend the rules, which it did not do.

The public depends on the City Council to follow the Rules it has adopted to create order, predictability and finality in its decision-making process. The City Council's actions at the 18 October 2022 and 1 November

2022 meetings regarding the Grand Street project violated these foundational principles of the Rosenberg Rules.

We respectfully demand that the City cure and correct the violations of its adopted Rosenberg Rules and invalidate the actions taken at the October 18, 2022 and November 1, 2022 meetings by the City Council reversing its final decision of October 4, 2022, adopting a plan for the reconfiguration of Grand Street. Should the City decide not to cure and correct, we ask that the City maintain the status quo and not move forward with the actions approved at the November 1<sup>st</sup> 2022 City Council meeting regarding agenda item 7-F, pending judicial review. If you fail to cure or correct as demanded, such inaction may leave us with no recourse but to seek a writ of mandate compelling the City Council to comply with its established Rules, a declaration that what occurred at the October 18<sup>th</sup> 2022 meeting violated the Rules. The action taken at the October 18<sup>th</sup> 2022 City Council meeting was in reality a reconsideration that required a 2/3rds or 4 out of 5 Council Member vote to place the matter on the Council agenda for November 1, 2022, and such a vote did not occur. We would also seek injunctive relief to maintain the status quo until the matter is resolved by the court as well as applicable costs and attorney fees.

We respectfully request that you respond to this letter by Wednesday the 14<sup>th</sup> of December, 2022

Respectfully yours,

We the undersigned members of the Grand Street Neighborhood:

Hale Foote	Margaret Hall	
Philip Jaber	Marsha Broquedis	Paul Ferry
Gina Jaber	Barry Parker	Siam Peav
George Jaber	Carol Gottstein	Beth Foote
Nicholas Jaber	Karen Miller	Jonathon Glazebrook
Elizabeth Jaber	Gena Harriet	Carmen Reid
John Brennan	Pierre Harriet	Matt Reid
Jean Brennan	Matthew Dean	Kerry Plain
Sally Damsen	Elizabeth Dean	Cindy Rankin Seibert
Fred Damsen	Paolo Friedman	

Attachment below – October 31, 2022 Letter

October 31, 2022

Mayor Ezzy Ashcraft:

Vice Mayor Vella:

Councilmember Daysog:

Councilmember Herrera Spencer:

Council Member Knox White:

Interim City Manager Nancy Bronstein:

City Clerk Lara Weisiger:

City Attorney Yibin Shen:

Re: Objection To Agenda Item 7-F On The City Council's November 1, 2022 Regular Agenda Seeking To Effect Reconsideration Of The City Council's October 4, 2022 Final Vote In Support Of The Alternative Plan For Grand Street

We write in objection to the City Council proceeding with Agenda Item 7-F on the Regular Agenda for Council's action at its November 1, 2022 meeting for the following reasons:

1. Agenda Item 7-F in reality seeks, based on the Council's "consideration" of purported "new information," to facilitate the Mayor's change (i.e. reconsideration) of her recent vote on October 4, 2022 in violation of the Council's adopted procedural rules of order (*Rosenberg's Rules of Order*). The Mayor's decision to change her vote was made less than 48 hours after the Council's October 4<sup>th</sup> vote. The Mayor said at Bike Walk Alameda's October 6<sup>th</sup> Mayoral Forum that "new information" provided by Bike Walk Alameda satisfied her safety concerns that had not, heretofore, been allayed by the multiple engineers and safety consultants working on the plans.
2. Agenda Item 7-F's description itself is misleading and appears to lack sufficient and requisite transparency under applicable open government laws to place the public on notice of what will really transpire on November 1<sup>st</sup> under the guise of "authoriz[ing] the Interim City Manager or Designee to Proceed with Construction Documents for the Grand Street Resurfacing and Safety Improvement Project Final Concept." Indeed, the "Proposed Final Concept Plan," included in Agenda Item 7-F for authorization of construction, is not the final plan approved by Council on October 4<sup>th</sup> as it contains the protected bike lanes and the roadway lane changes (i.e. meandering roadway zig-zags called "chicanes") rejected by the Mayor and Council on October 4<sup>th</sup>.
3. Likewise, the October 18, 2022 Agenda Item for Grand Street (5-I), which concerned only additional fund appropriation for the project, was misleading and provided no notice to the public that a Council vote would be taken at the October 18<sup>th</sup> meeting to

place the Council's October 4, 2022 final decision on the November 1, 2022 Council meeting Agenda for "rehearing" (i.e. re-vote).

## **RELEVANT BACKGROUND:**

### ***A. The City Council's June 21, 2022 Provisional Approval Of A Grand Street Plan:***

On June 21, 2022, the Council held a "Public Hearing to Consider Adoption of Resolution Authorizing the Interim City Manager To Proceed With the Grand Street Resurfacing and Safety Improvement Project Final Concept and Adoption of Environmental Findings." (Agenda Item 7-B.) The Agenda Item contained a "Recommended Street Configuration" Plan ("Recommended Plan") and an "Alternative Street Configuration" Plan ("Alternative Plan") for consideration by Council. The main difference between the Recommended Plan and the Alternative Plan was that the Recommended Plan reconfigured the portion of Grand Street between Palmera Court and Encinal Avenue by adding protected bike lanes (in lieu of traditional bike lanes), significantly reduced residential parking and inserted periodic "lane changes" into the Grand Street roadway (i.e. meandering roadway zig-zags also known as "chicanes") to accommodate the protected bike lanes. The Alternative Plan was essentially the City's original plan with traditional bike lanes (with added paint and delineation, which had not been done in many years). Both Plans included the safety enhancements for all users (e.g. curb extensions, daylighting, highly visible crosswalks etc.). The Alternative Plan did not contain protected bike lanes or the periodic "lane changes" (i.e. meandering roadway zig-zags also known as "chicanes").

The Council meeting ended at midnight and included extensive public comment, a presentation and response to questions by City Transportation staff, participation by City-retained consultants NCE (civil engineering and transportation experts)<sup>1</sup> and Fehr & Peers (transportation consultants and safety experts),<sup>2</sup> and extensive Council debate. Council members Daysog and Herrera Spencer favored the Alternative Plan, which they believed was safe for all users and struck a balance between competing concerns. Council member Knox-White and Vice Mayor Vella supported the Recommended Plan because of its prioritization of protected bike lanes. Mayor Ezzy Ashcraft voiced her significant concerns about the Recommended Plan, primarily with respect to the impacts on persons with disabilities and elderly residents and concern for safety of the new lane change "zig-zag" roadway configuration. As a result, she voted to approve City staff moving forward with further design of the Recommended Plan, but only with provisions to occur prior to further Council review of the Recommended Plan in September.<sup>3</sup> The Mayor's provisions included having an ADA consultant review and identify how ADA needs would be addressed, and having a public safety consultant (could be a trained public safety consultant or traffic engineer) address the safety concerns presented by the meandering, zig-zag roadway design. The Council ultimately voted 3-2 (Ezzy Ashcraft, Vella,

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<sup>1</sup> <https://www.ncenet.com/>

<sup>2</sup> <https://www.fehrandpeers.com/active-transportation/>

<sup>3</sup> Council review occurred on October 4, 2022.



Knox White) to give approval to the City staff to move forward with the Recommended Plan with the Mayor's provisions.

***B. City Council's October 4, 2022 Final Approval Of A Grand Street Plan:***

On October 4, 2022, Council met on the "Recommendation to Authorize the Interim City Manager, or Designee, to Proceed with the Grand Street Resurfacing and Safety Improvement Project Final Concept, Including Preparation of Final Design and Construction Documents, Consistent with the Recommended Final Concept Plan." City staff, and consultants NCE and Fehr & Peers, presented Council with a revised final concept Plan (the "Recommended Plan" with the addition of elements requested by Council at its June 21, 2022 meeting such as adding a two-way separated bike lane in front of Wood School). The City's Staff Report included information on the status of review by an ADA consultant, the results of the public safety review by the Fire Department, and the statement that all project features, "including lane shifts, tapers, and delineation between bike lanes and travel lanes will be designed pursuant to best practice guidance, including the California Manual on Uniform Traffic Control Devices (CA MUTCD)."

During the lengthy Council debate, Mayor Ezzy Ashcraft reiterated her concerns about the safety of the zig-zag configuration, noting that a public safety expert's opinion had not been included in what was presented to Council. Ultimately the Mayor expressed support for implementing the recommended enhancements to Grand Street (e.g. curb extensions, daylighting, highly visible crosswalks, two-way cycle track for Wood, flashing beacons in two intersections, and mid-block speed enforcement via speed cushions) but maintaining the traditional bike lanes (painting them green). She said that the matter did not have the type of statistics she would like to see for a dramatic change. She further proposed that the City study the new treatments, including the safety of the meandering, over the next year to obtain more data, and also conduct more community involvement and outreach. The Mayor acknowledged that more might need to be done, but wanted to ensure that the City moves forward in a cautious, yet smart, manner.

Ultimately, the Mayor joined the Council majority (Ezzy Ashcraft, Daysog, Herrera Spencer) in approving construction of a final plan for the portion of Grand Street north of Otis Drive that did not include protected bike lanes or the roadway lane changes (i.e. meandering roadway zig-zags or "chicanes") reconfiguring Grand Street between Palmera Court and Encinal Avenue.

***C. The Mayor's Next Day Decision To Change Her Vote Based On "New Information" Regarding The Safety Of "Chicanes" Provided By Bike Walk Alameda:***

The reaction to the Mayor's October 4<sup>th</sup> decision was evidently swift, because two days later at the October 6<sup>th</sup> Bike Walk Alameda Mayoral Forum she stated the following as her Opening Statement:

Thank you Bike Walk Alameda and CASA for hosting us tonight and thank you for all the important work your organizations do in our City. So, I want to take us back to the City Council meeting this past Tuesday, October the 4<sup>th</sup>, it was a rough meeting for me, and I think a lot of you because we discussed a proposal

for Grand Street and protected bike lanes and at the time I voted “no” on the proposal the staff was putting forward and I want to quickly explain my reasons for voting “no,” but also the path forward. And I responded to some of your emails so you know that I’m going to provide further information, so this is now. So, the safety of our pedestrians, bicyclists all residents (was) paramount to me. When we considered the protected bike lanes there were safety concerns that I had previously raised in June that were never answered, never addressed. So, I voted no because I could not get from the City Engineer answers to my question about -- are there unintended consequences of these I call them meandering zig zagging lanes they are chicanes. In fact, because I didn’t want to see collisions caused by confused drivers that might lead to injury of a pedestrian or cyclist crossing an intersection and I want to see this plan extend all the way to Clement, I also asked if there were examples in other cities where this had been done and the results thereof. And the responses I got back were nothing really, but when I probed the week before the meeting, the City Engineer told me he thought I was asking about the safety of fire trucks if they could navigate the lanes, I wasn’t, but they can. He didn’t know of any other examples and at the meeting he let us know that the engineers had approved the plans. ***My safety concerns were not addressed, but the next morning I felt terrible. I reached out to Cyndy Johnson and Denyse Trepanier. We had a Zoom and what I would like to say is that the safety concerns that I’d previously raised or have, have now been addressed by information, new information that Denyse shared this evening with Council and the City Clerk, and it will be an attachment to an agenda item on October 18.*** And at the October 18<sup>th</sup> council meeting, I am prepared to request that the council review this new information at our November 1<sup>st</sup> meeting and I fully expect to have at least two other council members vote with me to review this new information, and I’ve cleared this with the City Attorney and Interim City manager, and when it comes back, I fully expect to support the proposed bike lane proposal that had been before us, and that I voted no on Tuesday. With this information, I am satisfied with the safety concerns and I so appreciate Bike Walk Alameda for providing that information. Thank you.

Later in the Forum, in response to question about road safety, the Mayor said that after reading up on “chicanes” that she was prepared to support chicanes on Grand Street with additional information, and that she believed that “there may be other opportunities to do that sort of road transformation in Alameda.”

***D. The City Council’s October 18, 2022 Vote To Bring The Grand Street Item Back For “Rehearing” At The November 1, 2022 Council Meeting Based On “New Information”***

On October 18, 2022, the Council met on Agenda Item 5-I “Adoption of Resolution Appropriating \$126, 618 in Transportation Development Act, Article 3 Grant Funding by Amending the Fiscal Year 2022-23 Capital Budget ... for Grand Street Improvements.” Under this Agenda Item, the Mayor also brought forth a “second motion” (not agendized) “to give the brief direction to staff ... to review new information about this project” and “to bring the item

back on November 1<sup>st</sup>, our next Council meeting, to give the Council the opportunity to consider this new information.” The Mayor further said that she “did not call for reconsideration of the item, um, specifically.” Councilmember Daysog raised his concern that the Mayor’s second motion was “out of order” because the Council has adopted the Rosenberg Rules of Order (“Council Rules”), under which any reconsideration has to occur on the night that the vote was made. Councilmember Daysog noted that if there was a possibility of reconsidering the Mayor’s vote outside of the meeting when the vote occurred, the Council Rules required that Council must first vote to suspend its Rules by a 2/3 majority vote (4 out of 5 councilmembers). Councilmember Herrera Spencer voiced similar procedural concerns and further noted doubts about what significant “new information” could have arisen within 24 hours of the October 4<sup>th</sup> meeting. The City Attorney was of the view, without having reviewed the “new information,” that what was being requested was not a “reconsideration item” but “simply ... staff has brought forward some new information and asked [Council] to take another look and see if [Council] wanted to make a different decision.” The City Clerk/Parliamentarian analogized to an ordinance enacted by a prior City Council being repealed by a different City Council. Councilmember Knox White’s motion to “direct staff to bring back the Grand Street item at our next meeting for, uh, reconsi..., for rehearing..., and hearing of new information” was approved by Councilmember’s Ezzy Ashcraft, Knox White, and Vella to place the matter on the November 1, 2022 Council Agenda. Councilmember Daysog cautioned that the Council needed to tread carefully as to what constituted “new information” and said that he was “not convinced that this is not a reconsideration of a vote.”

### **INFIRMITIES AND IMPROPRIETIES IN THE CITY COUNCIL’S DECISION MAKING PROCESS:**

#### ***A. The November 1, 2022 Mayor’s Anticipated Change Of Vote Violates Council Rules***

As noted by Councilmember Daysog at the October 18, 2022 Council Meeting, the Council has adopted *Rosenberg’s Rules of Order* (“Rules”), published by the League of California Cities. The Rules address a Motion to Reconsider a vote, and recognize that a tenet of parliamentary procedure is finality in the decision making process. As explained in the Rules, “[a]fter vigorous discussion, debate, and a vote, there must be closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.” A motion to reconsider a vote must be made by a member who voted in the majority, and at the meeting where the item was voted upon. A motion to reconsider made at a later time is untimely, unless the body votes by a 2/3 majority (4 out of 5 Council members) to suspend the Rules and make a motion to reconsider at another time.

In the City’s case, the facts clearly demonstrate that the November 1, 2022 “consideration of new information” is in reality a belated motion to reconsider the Mayor’s October 4, 2022 vote, without the requisite 2/3 vote of Council to suspend its Rules as required by the City’s adopted Rules. A motion for reconsideration was not made at the October 4, 2002 meeting by the Mayor, or any other member of the Council majority. Nor did the Council vote to suspend its Rules by a 2/3 (4 out of 5 Council members) vote to place the item for re-vote on the November 1, 2022 Council agenda. Indeed, such a vote would have been unlikely to succeed in this matter

given the composition of the Council members who voted in the majority at the October 4<sup>th</sup> Council meeting.

Additionally, as pointed out by Councilmembers Daysog and Herrera Spencer at the October 18, 2022 Council meeting, the prospect that there was “new” information presented – after months of work by City Staff and its transportation engineering and safety expert consultants, discussion by Council and hearing of public comments – of such a magnitude to necessitate City staff review was very doubtful based on the facts described above. Moreover, the Rules *do not provide for a motion for reconsideration based on “new information.”*

The Mayor’s statements at the October 6, 2022 Bike Walk Alameda Mayoral Forum (quoted above) demonstrate that the “new information” she received from Bike Walk Alameda officers on October 5<sup>th</sup> was not an opinion of a public safety expert, which is what the Mayor had been seeking. The Mayor based her October 4, 2022 vote rejecting the Recommended Plan, in substantial part, on the fact that a public safety expert had not reviewed the proposed reconfiguration of Grand Street, specifically the chicanes (meandering, zig-zag of the roadway) of the Recommended Plan. Nevertheless, the next day the Mayor was proposing to change her vote after receiving general information on traffic calming techniques from Bike Walk Alameda (not engineers or public safety experts) easily obtainable through an Internet search.

*In sum, the facts clearly demonstrate that the proposed November 1, 2022 “consideration of new information” is in reality an improper reconsideration of the Mayor’s October 4, 2022 vote in violation of the City’s adopted Rosenberg’s Rules of Order.*

***B. The November 1, 2022 Agenda Item Fails To Adequately Place The Public On Notice Of The Planned Re-Vote***

The Mayor’s intent to change her vote at the November 1, 2022 Council meeting, thus reversing the Council’s vote on the final plan for Grand Street, has been known to the City for several weeks. Yet, Agenda Item 7-F gives no inkling to the public about what action is to take place at the meeting with respect to the Grand Street proposal that had been voted on and adopted by the Council on October 4<sup>th</sup>. Nowhere in the Agenda Item is it mentioned that what is proposed at the November 1<sup>st</sup> meeting is a reconsideration/rehearing of the October 4<sup>th</sup> Council vote: “Recommendation to Consider New Information Regarding the Grand Street Resurfacing and Safety Improvement Project and Authorize the Interim City Manager or Designee, to Proceed with Construction Documents for the Grand Street Resurfacing and Safety Improvement Final Concept.” Moreover, based on Council’s October 4<sup>th</sup> vote adopting the Alternative Plan with safety enhancements (and without the protected bike lanes and zig-zagging chicanes), members of the public reasonably believe that the Alternative Plan adopted on October 4<sup>th</sup> is the “Final Concept” adopted by the City Council. Indeed, this entire exercise is an inappropriate and impermissible procedural action since the Mayor, who is the only Councilmember who will be changing their vote after “consideration of new information,” made up her mind to do so, as evidenced by her public comments, by October 6<sup>th</sup>.

***C. The October 18, 2022 Agenda Item Also Failed to Adequately Place The Public On Notice That The Council Would Vote To “Rehear” The Final Grand Street Plan At The November 1, 2022 Council Meeting***

The Mayor’s motion on October 18, 2022 to seek Council approval to place the Grand Street item back before Council on November 1, 2022 is not reflected in the October 18, 2022 Grand Street limited I-5 agenda item (for increased funding) under which it was discussed. Although the City was aware by October 6<sup>th</sup>, in sufficient time to properly agendize the item separately for the October 18<sup>th</sup> Council meeting and give the public adequate notice of what would transpire at that meeting, the City did not post such an item on the agenda. The notion that the matter discussed on October 18, 2022 was merely procedural, is not supported by the facts and circumstances.

**CONCLUSION AND THE PATH FORWARD:**

The City has a ministerial duty to follow Council Rules, its Sunshine Ordinance, and California Open Government Laws (Brown Act and Public Records Act), which has not happened in this case. There is also a concern about the appropriateness in utilizing “new information” provided by Bike Walk Alameda (not public safety experts) as the vehicle for the Mayor to change her final vote on the Grand Street Plan. Moreover, the lack of transparency of the Agenda Item for the November 1, 2022 Council Meeting, especially given the intended Council action to reverse its prior approval of a final Grand Street Plan, failed to meet public notice legal requirements. Under these circumstances, the Grand Street “consideration” of “new evidence” item should be removed from the November 1, 2022, City Council Agenda.

The Mayor was correct at the October 4, 2022 City Council meeting in urging that the City proceed in a “cautious, yet smart” manner (implementation of new treatments and study of their effects over the next year), rather than the proposed “dramatic change” to Grand Street that she believed was not supported by the current statistics. We whole heartedly agree with this approach, and we look forward to working with the city to further develop a plan that achieves the objectives of those who live on and regularly utilize Grand Street.

Regards,

Regina Mucillo	John Brennan	Cindy Rankin Seibert
Hale Foote	Jean Brennan	Lolly Parker
Claire Yeaton-Risley	Sally Damsen	Barry Parker
Philip Jaber	Fred Damsen	Carol Gottstein
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Elizabeth Jaber	Kerry Plain	Matthew Dean

Elizabeth Dean

Paolo Friedman

Paul Ferry

Siam Peav

Beth Foote

Jonathon Glazebrook



# City of Alameda

## Meeting Agenda

### City Council

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Tuesday, October 4, 2022

7:00 PM

City Hall, 2263 Santa Clara Avenue, Council  
Chambers, 3rd Floor, Alameda CA 94501

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The agenda was revised on 9/27/22 at 4:30 p.m. to provide closed session information to allow comment via telephone and on 10/4/22 at 11:30 a.m. to indicate Item 5-C was withdrawn

*Pursuant to Assembly Bill 361, codified at Government Code Section 54953, Councilmembers can attend the meeting via teleconference. The City allows public participation via Zoom.*

*For information to assist with Zoom participation, please click:  
<https://www.alamedaca.gov/zoom>*

*For Zoom regular meeting registration, please click:  
[https://alamedaca-gov.zoom.us/webinar/register/WN\\_d5FSWzUITWSZfdforgu08A](https://alamedaca-gov.zoom.us/webinar/register/WN_d5FSWzUITWSZfdforgu08A)*

*For Telephone Participants:  
Zoom Phone Number: 669-900-9128  
Zoom Meeting ID: 880 9863 0725*

*Closed Session participation options are under Section 2 of the Closed Session agenda.*

*see information*

*Any requests for reasonable accommodations should be made by contacting the City Clerk's office: [clerk@alamedaca.gov](mailto:clerk@alamedaca.gov) or 510-747-4800.*

*City Hall will be NOT be open to the public during the meeting.*

*The Council may take action on any item listed in the agenda.*

#### **SPECIAL CITY COUNCIL MEETING - 5:00 P.M.**

**1 Roll Call - City Council**

**2 Public Comment on Agenda Items Only - Anyone wishing to comment via telephone, please call:**

**Phone Number: 669-900-9128**

**Meeting ID: 858 2177 0263**

**To have a comment read into the record, please email [clerk@alamedaca.gov](mailto:clerk@alamedaca.gov) no more than 30 minutes prior to the meeting; comments submitted more than 30 minutes prior will not be read**

**3 Consent Calendar - Items are routine; Council can remove items and speak for up to 5 minutes on each item; recording a non-affirmative vote should be done without removal**

**3-A** [2022-2395](#) Recommendation to Approve Nancy Bronstein, Interim City Manager, and Amy Wooldridge, Recreation and Parks Director as Real Property Negotiators for the Alameda Swimming Pool Association Lease Agreement for Operations and Maintenance of Swimming Pool Facilities Located at Lincoln Park, 1450 High Street and Franklin Park, 1432 San Antonio Avenue in Alameda. (Recreation 10051400)

**3-B** [2022-2294](#) Recommendation to Approve Nancy Bronstein, Interim City Manager, Lisa Maxwell, Community Development Director, Len Aslanian, Assistant City Attorney, and Nanette Mocanu, Assistant Community Development Director, as Real Property Negotiators for 2440 Monarch Street, Suite 100, (Building 43), Alameda Point, Alameda, CA. (Community Development)

**4 Adjournment to Closed Session to consider:**

**4-A** [2022-2394](#) CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Pursuant to Government Code Section 54956.8)  
PROPERTIES: Swimming Pool Facilities Located at Lincoln Park, 1450 High Street and Franklin Park, 1432 San Antonio Avenue  
CITY NEGOTIATOR: Nancy Bronstein, Interim City Manager; and Amy Wooldridge, Recreation and Parks Director  
NEGOTIATING PARTIES: City of Alameda and Alameda Swimming Pool Association  
UNDER NEGOTIATION: Price and terms of lease

**4-B** [2022-2265](#) CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Pursuant to Government Code Section 54956.8)  
PROPERTY: 2440 Monarch Street, Suite 100, (Building 43) Alameda Point, Alameda, CA  
CITY NEGOTIATORS: Interim City Manager Nancy Bronstein, Community Development Director Lisa Maxwell, Assistant Community Development Director Nanette Mocanu, and Assistant City Attorney



Len Aslanian

NEGOTIATING PARTIES: City of Alameda and Steeltown Winery  
UNDER NEGOTIATION: Price and Terms of Lease [Not heard on  
September 20,2022]

- 4-C**     [2022-2429](#)     PUBLIC EMPLOYEE APPOINTMENT/HIRING  
Pursuant to Government Code § 54957  
Title/description of positions to be filled: City Manager/Interim City  
Manager
- 4-D**     [2022-2430](#)     CONFERENCE WITH LABOR NEGOTIATORS (Government Code  
Section 54957.6)  
CITY NEGOTIATORS: Nancy Bronstein, Interim City Manager; Nico  
Procos, General Manager Alameda Municipal Power; Jessica Romeo,  
Human Resources Manager; and Steve Woo, Senior Human  
Resources Analyst  
EMPLOYEE ORGANIZATIONS: Alameda City Employees Association  
(ACEA); Management and Confidential Employees Association  
(MCEA); Electric Utility Professionals Association (EUPA);  
International Brotherhood of Electrical Workers (IBEW); Alameda  
Police Officers Non-Sworn (PANS); Alameda Municipal Power  
Unrepresented Employees (AMPU)  
UNDER NEGOTIATION: Salaries, Employee Benefits and Terms of  
Employment

**5**        **Announcement of Action Taken in Closed Session, if any**

**6**        **Adjournment - City Council**

**REGULAR CITY COUNCIL MEETING - 7:00 P.M.**

**Pledge of Allegiance**

- 1**        **Roll Call - City Council**
- 2**        **Agenda Changes**
- 3**        **Proclamations, Special Orders of the Day and Announcements - Limited to 15  
minutes**
- 3-A**     [2022-1618](#)     Proclamation Declaring October 2022 as Lesbian, Gay, Bisexual,  
Transgender and Queer/Questioning History Month.  
**Attachments:**    [Proclamation](#)
- 3-B**     [2022-1619](#)     Proclamation Declaring October 2022 as Filipino Heritage Month.

**Attachments:** [Proclamation](#)

**4 Oral Communications, Non-Agenda (Public Comment) - Limited to 15 minutes; members of the public may speak for up to 2 minutes regarding any matter not on the agenda; any remaining speakers may comment under Section 9**

**5 Consent Calendar - Items are routine and will be approved by one motion; members of the public may speak once for up to 2 minutes on the entire Consent Calendar; following public comment, the Council can remove items and speak for up to 5 minutes on each item; recording a non-affirmative vote should be done without removal**

**5-A** [2022-2434](#) Minutes of the Special and Regular City Council Meetings Held on September 6, 2022. (City Clerk)

**5-B** [2022-2433](#) Bills for Ratification. (Finance)

**Attachments:** [Bills for Ratification](#)

**5-C** [2022-2360](#) WITHDRAWN - Recommendation to Authorize the Interim City Manager, or Designee, to Partially Accept the Improvements Completed by Alta Buena Vista Owner, LLC for Tract 8254, Plans for the Public Improvement of Clement Avenue Extension. (Public Works 31041520) [Will not be heard on October 4, 2022]

**5-D** [2022-2368](#) Recommendation to Authorize the City Manager to Reject All Bids, Release All Bonds Held, and Advertise for the Rebidding of the Littlejohn Park Recreation Building Restoration Project. (Public Works 60341590)

**5-E** [2022-2371](#) Recommendation to Authorize the Interim City Manager, or Designee, to Execute a One-Year Agreement, with the Option to Extend One-Year, with Dudek in an Amount Not to Exceed \$269,830.29 to Develop an Urban Forest Plan. (Public Works 31041520)

**Attachments:** [Exhibit 1 - Agreement](#)  
[Correspondence - Updated 10/4](#)

**6 Continued Agenda Items - Public comment and speaking times are determined based upon the prior meeting discussion**

**7 Regular Agenda Items - 6 members of the public may speak for up to 3 minutes; 7 or more may speak for up to 2 minutes**

**7-A** [2022-2308](#) Recommendation to Approve Findings to Allow City Meetings to be Conducted via Teleconference. (City Clerk 10022020)

**7-B** [2022-2380](#) Recommendation to Authorize the Interim City Manager, or Designee, to Proceed with the Grand Street Resurfacing and Safety Improvement

Project Final Concept, Including Preparation of Final Design and Construction Documents, Consistent with the Recommended Final Concept Plan. (Public Works 31041520)

**Attachments:** [Exhibit 1 - Proposed Final Concept Plan](#)  
[Correspondence - Updated 10/4](#)

- 7-C**     [2022-2292](#)     Introduction of Ordinance Authorizing the Interim City Manager, or Designee, to Execute a Lease with Kai Concepts, LLC, a California Limited Liability Company, for Thirty-Six Months for Building 168 Located at 1651 Viking Street, Alameda, CA (Community Development 29061822)

**Attachments:** [Exhibit 1 - Premises](#)  
[Exhibit 2 - Lease](#)  
[Ordinance](#)

- 7-D**     [2022-2323](#)     Adoption of Resolution Adopting the Equitable Building Decarbonization Plan. (City Manager 10021032) [Not heard on October 4, 2022]

**Attachments:** [Exhibit 1 - Equitable Building Decarbonization Plan](#)  
[Resolution](#)  
[Presentation](#)  
[Correspondence - Updated 10/4](#)

- 7-E**     [2022-2336](#)     Recommendation to Receive a Six-Month Update on the Alameda Community Assessment Response and Engagement (CARE) Team Pilot Program. (Fire 10032270) [Not heard on September 20 or October 4, 2022]

**Attachments:** [Presentation](#)  
[Correspondence](#)

- 8**     **City Manager Communications - Communications from City Manager**
- 9**     **Oral Communications, Non-Agenda (Public Comment) - Members of the public may speak for up to 2 minutes regarding any matter not on the agenda**
- 10**     **Council Referrals - Matters placed on the agenda by Councilmembers may be scheduled as future agenda items or dispositive action may be taken on sufficiently noticed time sensitive legislative matters; presentations are limited to 5 minutes; Councilmembers can speak for up to 3 minutes; 6 members of the public may speak for up to 3 minutes; 7 or more may speak for up to 2 minutes**
- 10-A**     [2022-2111](#)     Consider Directing Staff to Reform the Fee Towing Companies  
Require Alameda Residents to Pay to Retrieve Towed Vehicles.

(Councilmember Daysog) [Not heard on June 21, July 5, September 6, 20, or October 4, 2022]

**Attachments:** [Email](#)

- 10-B** [2022-2175](#) Consider Directing Staff to Address Massive Corporations Purchasing Housing. (Councilmember Herrera Spencer) [Not heard on July 5, September 6, 20, or October 4, 2022]

**Attachments:** [Email](#)

- 10-C** [2022-2300](#) Consider Directing Staff to Create a Requirement for Upfront Payment of Candidate Statements if a Candidate for Local Elected Office Has a Balance Due from a Prior Election. (Councilmember Knox White and Vice Mayor Vella) [Not heard on September 6, 20, or October 4, 2022]

- 11 Council Communications - Councilmembers can speak for 9 minutes to address any matter not on the agenda, including reporting on conferences or meetings**

- 12 Adjournment - City Council**

- Meeting Rules of Order are available at:  
<https://www.alamedaca.gov/Departments/City-Clerk/Key-Documents#section-4>
- Please contact the City Clerk at 510-747-4800 or [clerk@alamedaca.gov](mailto:clerk@alamedaca.gov) at least 48 hours prior to the meeting to request any reasonable accommodation that may be necessary to participate in and enjoy the benefits of the meeting.
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- **KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE:** Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City of Alameda exist to conduct the citizen of Alameda's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.
- **FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION:** the address is 2263 Santa Clara Avenue, Room 380, Alameda, CA, 94501; phone number is 510-747-4800; fax number is 510-865-4048, e-mail address is [lweisiger@alamedaca.gov](mailto:lweisiger@alamedaca.gov) and contact is Lara Weisiger, City Clerk.
- In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.



# City of Alameda

## Meeting Agenda

### City Council

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Tuesday, October 18, 2022

7:00 PM

City Hall, 2263 Santa Clara Avenue, Council  
Chambers, 3rd Floor, Alameda CA 94501

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The agenda was revised on October 18, 2022 at 11:00 a.m. to add the 5:00 p.m.  
Continued Closed Session

***Pursuant to Assembly Bill 361, codified at Government Code Section 54953,  
Councilmembers can attend the meeting via teleconference. The City allows public  
participation via Zoom.***

***For information to assist with Zoom participation, please click:  
<https://www.alamedaca.gov/zoom>***

***For Zoom regular meeting registration, please click:  
[https://alamedaca-gov.zoom.us/webinar/register/WN\\_xuFT3lrWQyGeIS-s1fkK2g](https://alamedaca-gov.zoom.us/webinar/register/WN_xuFT3lrWQyGeIS-s1fkK2g)***

***For Telephone Participants:  
Zoom Phone Number: 669-900-9128  
Zoom Meeting ID: 867 5758 2947***

***Closed Session participation options are under Section 2 of the Closed Session  
agenda.***

***Any requests for reasonable accommodations should be made by contacting the City  
Clerk's office: [clerk@alamedaca.gov](mailto:clerk@alamedaca.gov) or 510-747-4800.***

***City Hall will be NOT be open to the public during the meeting.***

***The Council may take action on any item listed in the agenda.***

### **CONTINUED OCTOBER 17, 2022 SPECIAL CITY COUNCIL MEETING - CLOSED SESSION - 5:00 P.M.**

**1 Roll Call - City Council**

**2 Continued Closed Session**

**3-A [2022-2409](#) PUBLIC EMPLOYEE APPOINTMENT/HIRING  
Pursuant to Government Code § 54957  
Title/description of positions to be filled: City Manager [Continued from**

September 28, 2022 to October 17, 2022, from October 17, 2022 to October 18, 2022, from October 18, 2022 to October 25, 2022 and from October 25, 2022 to November 1, 2022; public comment closed]

**3 Announcement of Action Taken in Closed Session, if any**

[2022-2540](#) October 18, 2022 Continued Closed Session Announcement

**Attachments:** [Announcement](#)

**4 Adjournment - City Council**

**SPECIAL CITY COUNCIL MEETING - CLOSED SESSION - 5:15 P.M.**

**1 Roll Call - City Council**

**2 Public Comment on Agenda Items Only - Anyone wishing to comment via telephone, please call:**

**Phone Number: 669-900-9128**

**Meeting ID: 828 2065 5579**

**To have a comment read into the record, please email [clerk@alamedaca.gov](mailto:clerk@alamedaca.gov) no more than 30 minutes prior to the meeting; comments submitted more than 30 minutes prior will not be read**

**3 Adjournment to Closed Session to consider:**

**3-A** [2022-2448](#) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
Pursuant to Gov't Code Sec. 54956.9(a)  
Case Name: Kahuanui v. City of Alameda et al.  
Court: Alameda County Superior Court  
Case No. RG21105553

**3-B** [2022-2477](#) PUBLIC EMPLOYEE APPOINTMENT/HIRING  
Pursuant to Government Code § 54957  
Title/description of positions to be filled: City Manager/Interim City Manager

**4 Announcement of Action Taken in Closed Session, if any**

[2022-2567](#) October 18, 2022 Closed Session Announcement

**Attachments:** [Announcement](#)

**5 Adjournment - City Council**

**SPECIAL JOINT MEETING OF THE CITY COUNCIL AND SUCCESSOR AGENCY TO THE COMMUNITY IMPROVEMENT COMMISSION (SACIC) MEETING - 6:59 P.M.**

**Pledge of Allegiance**

- 1 **Roll Call - City Council and SACIC**
- 2 **Consent Calendar - Items are routine and will be approved by one motion; members of the public may speak once for up to 2 minutes on the entire Consent Calendar; following public comment, the Council/SACIC can remove items and speak for up to 5 minutes on each item; recording a non-affirmative vote should be done without removal**
- 2-A [2022-2463](#) Minutes of the Special Joint City Council and SACIC Meetings Held on June 21, 2022, July 12, 2022 and September 20, 2022. [City Council/SACIC] (City Clerk)
- 2-B [2022-2431](#) Recommendation to Accept the Unaudited Fourth Quarter Revenue and Expenditure Report for Fiscal Year (FY) 2021-22. [City Council and SACIC] (Finance 10024051)  
**Attachments:** [Exhibit 1 - FY 2021-22 Fourth Quarter Report](#)
- 3 **Adjournment - City Council and SACIC**

**REGULAR CITY COUNCIL MEETING - 7:00 P.M.**

- 1 **Roll Call - City Council**
- 2 **Agenda Changes**
- 3 **Proclamations, Special Orders of the Day and Announcements - Limited to 15 minutes**
- 3-A [2022-1620](#) Proclamation Declaring October 2022 as Domestic Violence Awareness Month.
- 3-B [2022-1621](#) Proclamation Declaring October 2022 as Disability Awareness and Acceptance Month.
- 4 **Oral Communications, Non-Agenda (Public Comment) - Limited to 15 minutes; members of the public may speak for up to 2 minutes regarding any matter not on the agenda; any remaining speakers may comment under Section 9**
- 5 **Consent Calendar - Items are routine and will be approved by one motion; members of the public may speak once for up to 2 minutes on the entire Consent Calendar; following public comment, the Council can remove items and speak for up to 5 minutes on each item; recording a non-affirmative vote should be done without removal**



- 5-A**     [2022-2487](#)     Minutes of the Special and Regular City Council Meetings Held on September 20, 2022 and the Special Meetings Held on September 27 and 28, 2022. (City Clerk)
- 5-B**     [2022-2490](#)     Bills for Ratification. (Finance)
- Attachments:**     [Bills for Ratification](#)
- 5-C**     [2022-2420](#)     Recommendation to Authorize the Interim City Manager, or Designee, to Execute an Amendment to the Darktrace Enterprise Immune System Subscription in an Amount Not to Exceed \$54,235.03, for an Aggregate Amount Not to Exceed \$345,235.03 for a Three-Year Term. (Information Technology 60626070)
- Attachments:**     [Exhibit 1 - Subscription Quote](#)  
                                  [Exhibit 2 - Terms and Conditions](#)  
                                  [Exhibit 3 - Master Customer Agreement](#)  
                                  [Exhibit 4 - Original Subscription Quote](#)  
                                  [Exhibit 5 - Master Customer Agreement - Alameda Municipal Power](#)
- 5-D**     [2022-2426](#)     Recommendation to Authorize the Interim City Manager, or Designee, to Execute a Five-Year Agreement with SOLitude Lake Management for Maintenance of the Bayport Stormwater Treatment Pond for an Amount Not to Exceed \$86,130. (Public Works 28041530)
- Attachments:**     [Exhibit 1 - Inspection and Maintenance Plan](#)  
                                  [Exhibit 2 - Agreement](#)
- 5-E**     [2022-2427](#)     Recommendation to Authorize the Interim City Manager, or Designee, to Execute a Five-Year Agreement with Clark Services for Harbor Bay Ferry Terminal Maintenance for an Amount Not to Exceed \$391,172. (Public Works 27241530)
- Attachments:**     [Exhibit 1 - Agreement](#)
- 5-F**     [2022-2462](#)     Recommendation to Authorize the Interim City Manager, or Designee, to Execute a Five-Year Agreement with Emerald Landscape for Landscape Maintenance in the Harbor Bay Zone of the City's Landscape and Lighting District 84-2 for an Amount Not to Exceed \$1,210,056. (Public Works 27241530)
- Attachments:**     [Exhibit 1 - Agreement](#)
- 5-G**     [2022-2425](#)     Recommendation to Authorize the Interim City Manager, or Designee, to Execute a Five-Year Agreement with Turbo Data Systems Incorporated for an Integrated Automated License Plate Reader (ALPR) and Parking Citation Processing and Collection Service Solution for an Amount Not to Exceed \$541,570; and

Adoption of Resolution Amending the Fiscal Year 2022-23 Parking Enforcement Operating Budget to Increase Revenue in the Amount of \$105,672 and Increase Expenditures in the Amount of \$105,672. (Public Works 26541643)

**Attachments:** [Exhibit 1 - Agreement](#)  
[Exhibit 2 - Parking Enforcement Policy](#)  
[Exhibit 3 - Records Retention Schedule](#)  
[Resolution](#)

**5-H**     [2022-2279](#)     Adoption of Resolution Approving a Memorandum of Understanding (MOU) Between the Alameda Police Officers Association, Non-Sworn (PANS) and the City of Alameda for a Thirty-Six Month Term Commencing July 1, 2022 and Ending June 30, 2025. (Human Resources 10025060) [Not heard on September 20, 2022]

**Attachments:** [Exhibit 1 - Memorandum of Understanding – Redline](#)  
[Exhibit 2 - Memorandum of Understanding - Clean](#)  
[Exhibit 3 - PANS Salary Schedule](#)  
[Resolution](#)

**5-I**     [2022-2340](#)     Adoption of Resolution Appropriating \$126,618 in Transportation Development Act, Article 3 Grant Funding by Amending the Fiscal Year 2022-23 Capital Budget to Increase Budgeted Revenue and Expenditures in Capital Improvement Program C14000 by \$50,000 and in Capital Improvement Program C11000 by \$76,618 for Grand Street Improvements. (Planning, Building and Transportation 20962740)

**Attachments:** [Resolution](#)  
[Correspondence - Updated 10/18](#)

**5-J**     [2022-2443](#)     Adoption of Resolution Approving Tentative Tract Map No. 8570 to Subdivide a Portion of the Oakland Inner Harbor Tidal Canal (APN No. 71-289-8) to Create Seven Parcels. (Planning, Building and Transportation 20962710)

**Attachments:** [Exhibit 1 - Tentative Map No. 8570](#)  
[Resolution](#)

**5-K**     [2022-2416](#)     Adoption of Resolution Authorizing the Interim City Manager, or Designee, to Negotiate and Execute a Grant Agreement Between the State of California Department of Parks and Recreation, Division of Boating and Waterways and the City of Alameda By and Through the Alameda Police Department; and  
Adoption of Resolution Amending the Fiscal Year 2022-23 Midcycle Police Grants Fund (221) Estimated Revenue and Expenditures Budget by \$100,000 Each for the Surrendered and Abandoned Vessel Exchange Grant. (Police 10031100)

**Attachments:** [Exhibit 1 - Grant Agreement: Certificate of Funding Resolution - Grant Agreement](#)  
[Resolution - Amending Budget](#)

5-L [2022-2486](#) Final Passage of Ordinance Authorizing the Interim City Manager, or Designee, to Execute a Lease with Kai Concepts, LLC, a California Limited Liability Company, for Thirty Six Months for Building 168 Located at 1651 Viking Street, Alameda, CA (Community Development 29061822)

6 **Continued Agenda Items - Public comment and speaking times are determined based upon the prior meeting discussion**

7 **Regular Agenda Items - 6 members of the public may speak for up to 3 minutes; 7 or more may speak for up to 2 minutes**

7-A [2022-2424](#) Recommendation to Provide Direction on Whether to Proceed with a City Aquatic Center, and, if Yes, Determine Location for Any Such Center, which may include West of the O'Club at Alameda Point or the West Side of Sweeney Park, and Determine Funding Sources, with Options Including Financing, a Voter Approved Bond, Residual Unassigned General Fund Balance or a Combination. (Recreation 10051400)

**Attachments:** [Exhibit 1 - Potential Locations Map](#)  
[Exhibit 2 - Conceptual Design Presentation](#)  
[Correspondence - Updated 10/18](#)

7-B [2022-2457](#) Adoption of Resolution Increasing Fiscal Year 2022-23 Expenditure Appropriations in (1) the American Rescue Plan Act (ARPA) Project (C99300) in the ARPA Fund (223) by \$4,055,995; and (2) the General Fund by \$1,000,000 to Provide Gap Funding For the Dignity Village Supportive Homeless Housing Project Located at 2350 5th Street, Alameda, California; and  
Recommendation to Authorize the Interim City Manager, or Designee, to Execute Related Documents, Agreements and Modifications with Five Keys Schools and Programs to Distribute up to \$4,055,995 in Gap Funding and to Distribute Donations Received for the Completion of Dignity Village Supportive Homeless Housing Project (Community Development 10061833)

**Attachments:** [Resolution Presentation](#)

7-C [2022-2445](#) Recommendation to Authorize the Interim City Manager, or Designee, to Execute a Five Year Agreement with Five Keys Schools and

Programs to Provide Interim Supportive Housing for Dignity Village in the Amount not to Exceed \$10,745,844; and Adoption of Resolution Amending the Grants Fund Budget (222) to Appropriate an Additional \$2,555,844 for Homekey 2.0 Grant Project (G24030). (Community Development 10061831)

**Attachments:** [Exhibit 1 - Agreement Resolution Presentation](#)

- 7-D**     [2022-2396](#)     Public Hearing to Receive Comments on the Proposed Permanent Local Housing Allocation (PLHA) Plan; and Adoption of Resolution Authorizing the Submission of an Application for Senate Bill 2 Funding from the State Department of Housing and Community Development Under the Permanent Local Housing Allocation (PLHA) Program, Amending the City's Five-Year PLHA Plan, Adopting the Revised Five-Year PLHA Plan, Accepting PLHA Funding, and Allocating PLHA Funding; and Adoption of Resolution Amending the PLHA Five Year Plan Grant Budget (G24010) to Increase 2020 Allocation Revenues and Expenditures in the Amount of \$309,728 and to Increase 2021 Allocation Revenues and Expenditures in the Amount of \$396,985; and Recommendation to Authorize the Interim City Manager, or Designee, to Negotiate and Execute Related Documents, Agreements, and Modifications. (Community Development 10061833)

**Attachments:** [Exhibit 1 - PLHA Application](#)  
[Exhibit 2 - PLHA Amendment](#)  
[Resolution - PLHA](#)  
[Resolution - Budget](#)  
[Presentation](#)

- 7-E**     [2022-2436](#)     Adoption of Resolution Authorizing the Interim City Manager, or Designee, to Accept and Appropriate HOME Investment Partnerships American Rescue Program Funds in the Amount of \$2,350,000; and Amending the HOME Fund Budget (201) to Increase the 2022 Allocation of Revenues and Expenditures in the Amount of \$2,350,000; and Recommendation to Authorize the Interim City Manager, or Designee, to Negotiate and Execute Documents, Agreements, and Modifications Related to Such Funds. (Community Development 20161848)

**Attachments:** [Exhibit 1 - 2021 HOME Agreement Amendment](#)  
[Resolution](#)  
[Presentation](#)

- 7-F [2022-2432](#) Recommendation to Receive a Report and Provide Direction to Staff Regarding the Allocation and Expenditures of the \$28.68 Million in Funding from the Federal Government through the American Rescue Plan Act of 2021 (ARPA). (Finance 10024051)
- Attachments:** [Exhibit 1 - Eligible Uses](#)  
[Exhibit 2 - Spending Plan](#)  
[Exhibit 3 - Expenditure Summary](#)  
[Presentation](#)  
[Correspondence](#)
- 7-G [2022-2422](#) Adoption of Resolution Terminating the Declaration of the Existence of a Local Emergency in Response to the COVID-19 Pandemic, Consistent with Government Code Section 8630(d); Adoption of an Urgency or Non-Urgency Uncodified Ordinance Repealing Ordinance Nos. 3267 and 3272 to Effectuate the Termination of the Local Emergency While Continuing to Preserve Certain Administrative Authorities of the City Manager Such as Remote Work for Employees and Amending Ordinance No. 3271 Continuing to Suspend Provisions of the City's Sunshine Ordinance that are Inconsistent with Assembly Bill 361 and Any Further Legislation to Allow Public Meeting to Be Held Remotely; and Introduction of Ordinance Amending Alameda Municipal Code Article XVIV (Third Party Food Delivery Services) of Chapter VI (Businesses, Occupations and Industries) to Modify the Sunset Provision Such that the Cap on Food Delivery Service Fees Will Remain in Place Until the State Emergency is Rescinded. (City Manager 10021030)
- Attachments:** [Resolution](#)  
[Ordinance - Termination of Local Emergency](#)  
[Ordinance - Amending Article XVIV](#)  
[Presentation](#)  
[Presentation - REVISED](#)  
[Presentation - REVISED 10-18](#)  
[Correspondence](#)
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**Attachments:** [Email](#)

**10-B** [2022-2175](#) Consider Directing Staff to Address Massive Corporations Purchasing Housing. (Councilmember Herrera Spencer) [Not heard on July 5, September 6, 20, October 4 or 18, 2022]

**Attachments:** [Email](#)

**10-C** [2022-2300](#) Consider Directing Staff to Create a Requirement for Upfront Payment of Candidate Statements if a Candidate for Local Elected Office Has a Balance Due from a Prior Election. (Councilmember Knox White and Vice Mayor Vella) [Not heard on September 6, 20, October 4 or 18, 2022]

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- Sign up to receive agendas here: <https://alameda.legistar.com/Calendar.aspx>

- **KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE:** Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City of Alameda exist to conduct the citizen of Alameda's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.
- **FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION:** the address is 2263 Santa Clara Avenue, Room 380, Alameda, CA, 94501; phone number is 510-747-4800; fax number is 510-865-4048, e-mail address is [lweisiger@alamedaca.gov](mailto:lweisiger@alamedaca.gov) and contact is Lara Weisiger, City Clerk.
- In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.



# City of Alameda

## Meeting Agenda

### City Council

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Tuesday, November 1, 2022

7:00 PM

City Hall, 2263 Santa Clara Avenue, Council  
Chambers, 3rd Floor, Alameda CA 94501

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The agenda was revised on October 25, 2022 at 7:30 pm to add the 4:59 p.m. continued  
Closed Session

***Pursuant to Assembly Bill 361, codified at Government Code Section 54953,  
Councilmembers can attend the meeting via teleconference. The City allows public  
participation via Zoom.***

***For information to assist with Zoom participation, please click:  
<https://www.alamedaca.gov/zoom>***

***For Zoom regular meeting registration, please click:  
[https://alamedaca-gov.zoom.us/webinar/register/WN\\_dFZTCgHIRse7Fcipn3BVsw](https://alamedaca-gov.zoom.us/webinar/register/WN_dFZTCgHIRse7Fcipn3BVsw)***

***For Telephone Participants:  
Zoom Phone Number: 669-900-9128  
Zoom Meeting ID: 824 1520 5228***

***Closed Session participation options are under Section 2 of the Closed Session  
agenda.***

***Any requests for reasonable accommodations should be made by contacting the City  
Clerk's office: [clerk@alamedaca.gov](mailto:clerk@alamedaca.gov) or 510-747-4800.***

***City Hall will be NOT be open to the public during the meeting.***

***The Council may take action on any item listed in the agenda.***

### **CONTINUED SEPTEMBER 28, AND OCTOBER 17, 18 AND 25 SPECIAL CITY COUNCIL MEETING - CLOSED SESSION - 4:59 P.M.**

**1 Roll Call - City Council**

**2 Continued Closed Session**

**3-A [2022-2409](#) PUBLIC EMPLOYEE APPOINTMENT/HIRING  
Pursuant to Government Code § 54957  
Title/description of positions to be filled: City Manager [Continued from**



September 28, 2022 to October 17, 2022, from October 17, 2022 to October 18, 2022, from October 18, 2022 to October 25, 2022 and from October 25, 2022 to November 1, 2022; public comment closed]

**3 Announcement of Action Taken in Closed Session, if any**

[2022-2566](#) November 1, 2022 Continued Closed Session Announcement

**Attachments:** [Announcement](#)

**4 Adjournment - City Council**

**SPECIAL CITY COUNCIL MEETING - 5:00 P.M.**

**1 Roll Call - City Council**

**2 Public Comment on Agenda Items Only - Anyone wishing to comment via telephone, please call:**

**Phone Number: 669-900-9128**

**Meeting ID: 891 1224 7863**

**To have a comment read into the record, please email [clerk@alamedaca.gov](mailto:clerk@alamedaca.gov) no more than 30 minutes prior to the meeting; comments submitted more than 30 minutes prior will not be read**

**3 Consent Calendar - Items are routine; Council can remove items and speak for up to 5 minutes on each item; recording a non-affirmative vote should be done without removal**

- 3-A** [2022-2353](#) Recommendation to Approve Lisa Maxwell, Community Development Director, Len Aslanian, Assistant City Attorney, and Nanette Mocanu, Assistant Community Development Director as Real Property Negotiators for 650 West Ranger Avenue (Building 92) Alameda Point, Alameda, CA, Parcel # 74-1375-2 and 2450 Saratoga Street, 801 West Ranger Avenue (Building 114), Alameda, CA, Parcel #74-1368-9-2. (Community Development 29061822)

**4 Adjournment to Closed Session to consider:**

- 4-A** [2022-2507](#) CONFERENCE WITH LEGAL COUNSEL - WORKERS' COMPENSATION CLAIM (Pursuant to Government Code §54956.95)  
Claimant: Employee - Fire Department, City of Alameda ; Claim Nos: 9895500046; 0195500062; 2095500022; 1795500017; and 1495500076; Agency Claimed Against: City of Alameda

- 4-B** [2022-2320](#) CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Pursuant to Government Code Section 54956.8)  
PROPERTY: 650 West Ranger Avenue (Building 92) Alameda Point,

Alameda, CA Parcel # 74-1375-2

CITY NEGOTIATORS: Community Development Director Lisa Maxwell, Assistant Community Development Director Nanette Mocanu, and Assistant City Attorney Len Aslanian

NEGOTIATING PARTIES: Alameda Point Collaborative and the City of Alameda

UNDER NEGOTIATION: Price and Terms of Potential Purchase by the City

PROPERTY: 2450 Saratoga Street, 801 West Ranger Avenue (Building 114) Alameda Point, Alameda, CA Parcel #74-1368-9-2

CITY NEGOTIATORS: Community Development Director Lisa Maxwell, Assistant Community Development Director Nanette Mocanu, and Assistant City Attorney Len Aslanian

NEGOTIATING PARTIES: Alameda Food Bank and the City of Alameda

UNDER NEGOTIATION: Price and Terms of Potential Lease/Sale from the City of Alameda (Negotiations commence January 2023 due to the current Surplus Lands Act restriction. Council may give staff negotiating parameters.)

- 4-C**     [2022-2506](#)     CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION  
Potential initiation of litigation pursuant to Government Code Section 54956.9, subsection (d)(4)  
Number of cases: One (As Plaintiff - City Initiating Legal Action)  
Potential Defendant(s): Steeltown Winery, Inc.
- 4-D**     [2022-2522](#)     CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION  
Significant exposure to litigation pursuant to Government Code Section 54956.9, subsection (d)(2)  
Number of Cases: One (As Defendant - City Exposure to Legal Action)  
Potential Plaintiff(s): Steeltown Winery, Inc.
- 4-E**     [2022-2523](#)     CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Pursuant to Government Code Section 54956.8)  
PROPERTY: 2440 Monarch Street, Suite 100, (Building 43) Alameda Point, Alameda, CA  
CITY NEGOTIATORS: Community Development Director Lisa Maxwell, Assistant Community Development Director Nanette Mocanu, and Assistant City Attorney Len Aslanian  
NEGOTIATING PARTIES: City of Alameda and Steeltown Winery, Inc.  
UNDER NEGOTIATION: Price and Terms of Lease

**5     Announcement of Action Taken in Closed Session, if any**

- [2022-2565](#)     November 1, 2022 Closed Session Announcement

**Attachments:** [Announcement](#)**6 Adjournment - City Council****REGULAR CITY COUNCIL MEETING - 7:00 P.M.****Pledge of Allegiance****1 Roll Call - City Council****2 Agenda Changes****3 Proclamations, Special Orders of the Day and Announcements - Limited to 15 minutes**

[2022-2564](#) Proclamation for Elsa Ortiz

**Attachments:** [Proclamation for Elsa Ortiz](#)

**3-A** [2022-2339](#) Proclamation Declaring November 2022 as Lung Cancer Awareness Month. (City Manager 10021030)

**4 Oral Communications, Non-Agenda (Public Comment) - Limited to 15 minutes; members of the public may speak for up to 2 minutes regarding any matter not on the agenda; any remaining speakers may comment under Section 9****5 Consent Calendar - Items are routine and will be approved by one motion; members of the public may speak once for up to 2 minutes on the entire Consent Calendar; following public comment, the Council can remove items and speak for up to 5 minutes on each item; recording a non-affirmative vote should be done without removal**

**5-A** [2022-2525](#) Minutes of the Special and Regular City Council Meetings Held on October 4, 2022 and the Continued September 28, 2022 Meetings Held on October 17 and 18, 2022. (City Clerk)

**5-B** [2022-2526](#) Bills for Ratification. (Finance)

**Attachments:** [Bills for Ratification](#)

**5-C** [2022-2482](#) Recommendation to Authorize Updates to the Existing Alameda Police Department Policy Manual to Conform to Best Practices and to Confirm/Ratify Policies That Have Been Updated Pursuant to Legal Updates, Significant Liability Issues, and Imminent Safety. (Police 10031100)

**Attachments:** [Exhibit 1 - Policy 450: Portable Audio/Video Recorders](#)  
[Exhibit 2 - Policy 1000: Recruitment and Selection](#)  
[Exhibit 3 - Policy 1004: Special Assignment Selection](#)  
[Exhibit 4 - Policy 1061: Wellness Program](#)

**5-D**     [2022-2485](#)     Recommendation to Approve Findings to Allow City Meetings to be Conducted via Teleconference. (City Clerk 10022020)

**5-E**     [2022-2465](#)     Recommendation to Accept the Work of Suarez & Munoz Construction Inc. for Alameda City Hall Lawn Conversion, Project PW No 02-22-05. (Public Works 31041520)

**5-F**     [2022-2467](#)     Recommendation to Authorize the Interim City Manager, or Designee, to Execute a Second Amendment to Infrastructure Agreement with Harbor Bay Business Park Association; and  
Adoption of Resolution Amending the Fiscal Year 2022-23 Capital Improvement Program Budget by Appropriating \$900,000 in Harbor Transportation Funds (287) for Bus Shuttle Stop Improvements and Signage in Harbor Bay Business Park. (Public Works 31041520)

**Attachments:** [Exhibit 1 - Agreement](#)  
[Exhibit 2 - First Amendment to Agreement](#)  
[Exhibit 3 - Proposed Second Amendment to Agreement Resolution](#)

**5-G**     [2022-2451](#)     Adoption of Resolution Approving of Administrative Corrections to Revise the Language for Retention Pay in the Memorandum of Understandings (MOU) Between the Alameda Police Officers Association (APOA) and Update the Salary Schedule for the Alameda Fire Chiefs Association (AFCA) to Reflect the Correct Calculation of Management Incentive Pay. (Human Resources 10025060)

**Attachments:** [Exhibit 1 - 2022-2025 APOA MOU - Clean](#)  
[Exhibit 2 - 2022-2025 APOA MOU - Redline](#)  
[Exhibit 3 - AFCA Salary Schedule Effective January 2, 2022 Resolution](#)

**5-H**     [2022-2483](#)     Adoption of Resolution Authorizing the Interim City Manager, or Designee, to Execute a Consent to Assignment and Assumption of Lease in Favor of Daniel Patrick Nichols With Respect to the Lease of Real Property Between Agnes McKinley, Successor Trustee of Mihailo Crnjanski, and the City of Alameda for the Tidelands Parcel Adjacent to the Uplands Parcel at 1620 Fernside Boulevard, Alameda, CA. (Community Development 21661825)

**Attachments:** [Exhibit 1 - Assignment and Assumption for Lease](#)  
[Exhibit 2 - Lease of Real Property](#)  
[Exhibit 3 - Map](#)  
[Resolution](#)

- 5-I [2022-2484](#) Adoption of Resolution Authorizing the Interim City Manager, or Designee, to Execute a Fourth Amendment to the License with Amber Kinetics, Inc., a California Corporation, to Extend the License Term for Twelve Months for the Unimproved Lot Located at 641 West Red Line Avenue, Alameda, CA. (Community Development 29061822)

**Attachments:** [Exhibit 1 - License Area](#)  
[Exhibit 2 - License](#)  
[Exhibit 3 - First Amendment](#)  
[Exhibit 4 - Second Amendment](#)  
[Exhibit 5 - Third Amendment](#)  
[Exhibit 6 - Fourth Amendment](#)  
[Resolution](#)

- 5-J [2022-2530](#) Final Passage of Ordinance Article XIX (Third Party Food Delivery Services) of Chapter VI (Businesses, Occupations and Industries) of the Alameda Municipal Code to Modify the Sunset Provision Such that the Cap on Food Delivery Service Fees Will Remain in Place Until the State Emergency is Rescinded. (City Manager 10021030)

6 **Continued Agenda Items - Public comment and speaking times are determined based upon the prior meeting discussion**

7 **Regular Agenda Items - 6 members of the public may speak for up to 3 minutes; 7 or more may speak for up to 2 minutes**

- 7-A [2022-2407](#) Recommendation to Name the New Park known as Alameda Landing Waterfront Park as Bohol Circle Immigrant Park and Direct Staff to Include Educational Signage About Bohol Circle. (Recreation 10051400)

**Attachments:** [Exhibit 1 - Park Location and Design](#)  
[Exhibit 2 - Park Name Ideas from Survey](#)  
[Presentation](#)

- 7-B [2022-2410](#) Recommendation to Name the New Park Known as Alameda Point Neighborhood Park as Whale Park. (Recreation 10051400)

**Attachments:** [Exhibit 1 - Park Location and Design](#)  
[Exhibit 2 - Park Name Ideas from Survey](#)  
[Presentation](#)

- 7-C [2022-2411](#) Recommendation to Name the New Park Known as Alameda Point Waterfront Park as Seaplane Lagoon Promenade. (Recreation 10051400)  
**Attachments:** [Exhibit 1 - Park Location and Design](#)  
[Exhibit 2 - Park Name Ideas from Survey Presentation](#)
- 7-D [2022-2466](#) Introduction of Ordinance Amending Alameda Municipal Code Chapter 21 (Solid Waste and Recycling) to Comply with Senate Bill 1383 and Conform with Alameda County Waste Management Authority's Organics Reduction and Recycling Ordinance. (Public Works 26141630/26241631)  
**Attachments:** [Exhibit 1 - Letter Agreement Ordinance](#)
- 7-E [2022-2350](#) Recommendation to Provide Direction to Staff Regarding Police Accountability. (Police 10031130)  
**Attachments:** [Exhibit 1 - Action Items With Status Presentation](#)  
[Correspondence - Updated 11/1](#)
- 7-F [2022-2518](#) Recommendation to Consider New Information Regarding the Grand Street Resurfacing and Safety Improvement Project and Authorize the Interim City Manager, or Designee, to Proceed with Construction Documents for the Grand Street Resurfacing and Safety Improvement Project Final Concept. (Planning, Building & Transportation 20962710)  
**Attachments:** [Exhibit 1 - Proposed Final Concept Plan](#)  
[Exhibit 2 - Examples of Chicanes Presentation](#)  
[Correspondence - Updated 11/1](#)
- 7-G [2022-2442](#) Adoption of Resolution to Adopt the Revised Pension Rate Stabilization Program (PRSP) and Other Post-Employment Benefits (OPEB) Funding Policy. (Finance 10024051)  
**Attachments:** [Exhibit 1 - Pension and OPEB Funding Policy - Revised June 2017](#)  
[Exhibit 2 - Pension and OPEB Funding Policy - Revised October 2022 Resolution Presentation](#)  
[Supplemental Memo](#)

- 8 City Manager Communications - Communications from City Manager**
- 9 Oral Communications, Non-Agenda (Public Comment) - Members of the public may speak for up to 2 minutes regarding any matter not on the agenda**
- 10 Council Referrals - Matters placed on the agenda by Councilmembers may be scheduled as future agenda items or dispositive action may be taken on sufficiently noticed time sensitive legislative matters; presentations are limited to 5 minutes; Councilmembers can speak for up to 3 minutes; 6 members of the public may speak for up to 3 minutes; 7 or more may speak for up to 2 minutes**
- 10-A** [2022-2111](#) Consider Directing Staff to Reform the Fee Towing Companies Require Alameda Residents to Pay to Retrieve Towed Vehicles. (Councilmember Daysog) [Not heard on June 21, July 5, September 6, 20, October 4 or 18, 2022]  
**Attachments:** [Email](#)
- 10-B** [2022-2175](#) Consider Directing Staff to Address Massive Corporations Purchasing Housing. (Councilmember Herrera Spencer) [Not heard on July 5, September 6, 20, October 4 or 18, 2022]  
**Attachments:** [Email](#)
- 10-C** [2022-2300](#) Consider Directing Staff to Create a Requirement for Upfront Payment of Candidate Statements if a Candidate for Local Elected Office Has a Balance Due from a Prior Election. (Councilmember Knox White and Vice Mayor Vella) [Not heard on September 6, 20, October 4 or 18, 2022]
- 11 Council Communications - Councilmembers can speak for 9 minutes to address any matter not on the agenda, including reporting on conferences or meetings**
- 12 Adjournment - City Council**

- Meeting Rules of Order are available at:  
<https://www.alamedaca.gov/Departments/City-Clerk/Key-Documents#section-4>
- Please contact the City Clerk at 510-747-4800 or [clerk@alamedaca.gov](mailto:clerk@alamedaca.gov) at least 48 hours prior to the meeting to request any reasonable accommodation that may be necessary to participate in and enjoy the benefits of the meeting.
- Translators and sign language interpreters will be available on request. Please contact the City Clerk at 510-747-4800 at least 48 hours prior to the meeting to request a translator or interpreter.
- Minutes of the meeting available in enlarged print.
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## MEMORANDUM

To: Lara Weisiger, City Clerk and Elizabeth Mackenzie, Chief Assistant City Attorney

From: Michael Roush, Special Counsel, City of Alameda

Date: November 29, 2022

Subject: Position Statement Concerning Sunshine Ordinance Complaint Filed November 14, 2022 by John Brennan, et al.

### Introduction

On November 14, 2022, John Brennan and 27 other members of the public (“complainants”) filed a complaint against the Alameda City Council alleging violations of various sections of the City’s Sunshine Ordinance (Alameda Municipal Code, beginning at Section 2-91.1; hereafter, Section references are to the Alameda Municipal Code).

At the heart of the complaint is complainants’ disagreement with the City Council’s decision to approve funding for the Grand Street project that is not to their liking. Dissatisfied with that decision, complainants have filed this complaint alleging violations, many of which they admit violate, in the best of circumstances, only the “spirit” of the Ordinance.

The alleged violations neither violate the substance nor the spirit of the Ordinance. One violation is time barred and the others lack merit. The Commission should so find.

### Violation 1

In Violation 1, complainants allege that at the November 1, 2022 meeting concerning Agenda Item 7-F, the agenda did not include public correspondence that was submitted before the meeting, in violation of Section 2-91.6 c. That section provides that prior to a meeting, persons may submit written comments regarding an agenda item and those comments will be brought to the attention of the persons conducting the meeting. Accordingly, the fundamental purpose of this section is to ensure that the decision makers have received written comments from the public so that those comments may be considered before any decision is made. There is no evidence that the City Council as decision makers had not received all of the written comments from the public before they deliberated on Agenda Item 7-F. Hence, there was no violation of Section 2-91.6 c,

The process by which written comments on an agenda item is provided to the City Council.

For regularly scheduled meetings, City Council agendas are published 12 days prior to the meeting date. Agenda materials, including correspondence that the City has received on an agenda item prior to the publication of the agenda, may be found on the City's website under "GOVERNMENT/Agendas-Minutes-Announcements." Access to agenda reports and attachments are in an agenda database and can be opened under <https://alameda.legistar.com/Calendar.aspx>. After the agenda materials are posted 12 days prior to the meeting, if the City Clerk receives correspondence concerning an agenda item, the City Clerk will add those to the database and repost the agenda. Declaration of City Clerk Lara Weisiger, filed herewith, ("Weisiger Declaration"), at paragraph 2.

Written comments received concerning the November 1, 2022 agenda item 7-F.

On the City Council's agenda for November 1, 2022 was agenda item 7-F, "Recommendation to Consider New Information Regarding the Grand Street Resurfacing and Safety Improvement Project and Authorize the Interim City Manager, or Designee, to Proceed with construction Documents for the Grand Street Resurfacing and Safety Improvement Project Final Concept." When the agenda materials for Item 7-f on the November 1, 2022 agenda were posted, there had been no correspondence received by the City Clerk for the item. Before the start of the meeting on November 1, the City Clerk had received nine pieces of correspondence on this agenda item: one on 10/28, four on 10/31, and four on 11/1, the last of which was received at 2:54 p.m. On November 1, the City Clerk reposted the agenda several times, including at 4:25 p.m., to ensure that all correspondence that had been received had been posted. Weisiger Declaration, at paragraph 3.

At the November 1 meeting when the City Council was receiving public comment on agenda item 7-F, a speaker stated that all correspondence concerning the item had not been posted. The City Clerk responded that all correspondence had been posted as described above. Weisiger Declaration, at paragraph 4.

It appears that some members of the public may have been looking at a stagnant or old PDF of the agenda which would not update when the agenda materials were republished at various times, including late in the afternoon on November 1. Weisiger Declaration, at paragraph 5. Moreover, no Councilmember stated at the meeting that he or she had not received the written comments submitted by the public. Weisiger Declaration, at paragraph 6.

### Conclusion

As stated above, the fundamental purpose of Section 2-91.6 c is to ensure that the decision makers—here the City Council—had available to them the written comments of the community so that their comments could be considered in the decision-making process. The City Clerk followed her normal process and reposted the agenda several times as additional written comments were received. If members of the public were not able to view all the written comments, those persons must have been viewing material that was stagnant or an old pdf. Most significantly for purposes of determining whether Section 2-91.6 c had been violated, at no time during the meeting did any Councilmember state that he or she had not received the written comments submitted by the public. Accordingly, there was no violation of Section 2-91.6 c.

## Violation 2

In violation 2, complainants allege that at the November 1, 2022 meeting concerning Agenda Item 7-F at least four persons who wished to be heard on the item were not called upon in violation of Section 2-91.15 b. That section provides every agenda at which action is proposed to be taken shall provide an opportunity for each member of the public to directly address the body concerning the item before the body takes action. There is no evidence that the City Clerk (or any member of the City Council) saw any “hands raised”) before the Mayor closed public comment. Accordingly, Section 2-91.15 b was not violated.

### The process by which members of the public are heard on an agenda item.

Since the onset of the COVID-19 pandemic, City Council meetings have been conducted remotely, via Zoom. If a person wishes to attend and/or participate in the meeting, the person must complete a “Zoom Webinar Registration”, listing the person’s name and email address. At the start of the meeting, the City Clerk opens the list of persons who have joined the Zoom Webinar. That list has two tabs: “Panelists” who are the Councilmembers and the relevant staff (all of whom appear “on screen”); and “Attendees”, everyone else including members of the public (who do not appear “on screen”). When an agenda item is called, the City Clerk reads the title. After staff presentation of an agenda item and Council has the opportunity to ask clarifying questions, the Mayor asks the City Clerk if there are any public speakers on each of the agenda items. Weisiger Declaration, at paragraph 7.

In lieu of “speaker cards,” which were used during in-person meetings, Attendees participating remotely using Zoom must click an icon on their computer screen to “raise their hand” to indicate that they wish to speak on an item. Generally, Attendees “raise their hand” after the Mayor asks if there are any public speakers but Attendees may, and often do, “raise their hand” as soon as the agenda item is introduced. In either event, once an Attendee raises their hand the Attendee is moved to the top of the list with a hand icon shown next to the person’s name (or next to the person’s name if the person is attending via a phone call). The City Clerk, the Mayor and all Councilmembers, and other Panelists are able to see raised hands of Attendees. Weisiger Declaration, at paragraph 8.

In addition, next to the word “Attendee” at the top of the tab, a number is added to indicate the number of “raised hands”. Since public speaker time is limited depending on the number of speakers, the City Clerk pays close attention to the number of persons who wish to speak so the timing is administered correctly. The City Clerk goes down the list of speakers, calls out the speaker’s name, and then the speaker is given permission to speak for up to the allotted time. Once the speaker has concluded the speaker’s comments, the Mayor says “Next speaker” and the process is repeated. Weisiger Declaration, at paragraph 9.

When the Mayor says “Next speaker” and there are no more raised hands on the screen, the City Clerk says “That was the last speaker”. The Mayor then closes public testimony. After the Mayor closes public testimony, it has been the City Council’s practice that if a member of the public thereafter raises a hand on the item, the person will not be called on to be heard. Weisiger Declaration, at paragraph 10.

### Public testimony on the November 1, 2022's Agenda Item 7-F.

The City Council meeting of November 1, 2022 was conducted remotely, via Zoom. The process by which members of the public were heard on Agenda Item 7-F was as described above. In particular, there were seven speakers on the item. After speaker Matt Reid provided comments, the Mayor said "Next speaker". Weisiger Declaration, at paragraph 11. The City Clerk looked at her screen and did not see any additional "raised hands". Accordingly, she said, "That was the last speaker". Weisiger Declaration, at paragraph 11. The Mayor then closed the public testimony portion of the item. Weisiger Declaration, at paragraph 11. Consistent with past practice as described above, any person raising a hand after the Mayor closed public testimony was not called on to be heard on the item. Weisiger Declaration, at paragraph 11. Moreover, neither the Mayor nor any of the Councilmembers—all of whom could see if there were additional "raised hands"—immediately pointed out that there were still members of the public who wished to be heard. Declaration of Weisiger, at paragraph 12.

### Conclusion

The evidence is clear that the City's usual process for having members of the public be heard on Agenda Item 7-F was followed. Complainants contend that at least four speakers had raised their hands before public comments were closed but not only is the City Clerk's declaration to the contrary but also neither the Mayor nor any of the Councilmembers—all of whom could see if there were additional "raised hands"—immediately pointed out that there were still members of the public who wished to be heard. Every person who wanted to be heard on Item 7-F and timely raised their hand before the Mayor closed public testimony was recognized and was heard. Accordingly, Section 2-91.15 b was not violated.

### Violation 3

In Violation 3, complainants allege that the City's webpage for the Grand Street project did not properly notice the agenda item for November 1, 2022 meeting, in violation of Section 2-92.4 g. That section provides that meetings on matters related to certain projects are to be noticed at least as extensively as is required for meetings on such projects. The fundamental purpose of this section is to ensure that members of the public are aware of certain projects so that they may be heard before a decision is made on the item.

Complainants argue that the City's webpage that concerned the Grant Street project cited only to the meeting of October 4, 2022 but not the meeting on November 1 and thereby precluded the public from the opportunity to participate.

This argument is without merit. There is nothing in that section that specifically required the City's webpage to reference the November 1 meeting, or any other public meeting for that matter. The purpose of the webpage was to describe generally the proposed project which it did. Section 2-92.4 g simply requires that "meetings on said projects" (e.g., November 1) and their *related* meetings be published "as extensively"; thus, project meetings and meetings that relate to them must be published in similar ways. Complainants make no such allegation. Rather, they argue that a City informational webpage that was not intended to provide notice for any relevant project meetings (or any related meetings for that matter) failed to provide additional notice for such meetings, which is not required by the Sunshine Ordinance. Moreover, notwithstanding that the webpage had not been revised to reflect

that Council would consider new information at its November 1 meeting, it is clear that this omission did not preclude the public from the opportunity to participate. The City received written comments from nine members of the public, seven speakers provided oral comments, and complainants have alleged that at least four other members of the public had wanted to provide additional oral comments on the item.

### Conclusion

There was no violation of Section 2-92.4 g.

### Violation 4.

In Violation 4, complainants allege that subsections a, b and f of Section 2-91.5 were violated because the description of Agenda Item 5-I of the City Council's meeting on October 18, 2022 failed to describe that the Council would direct that the Grand Street improvement project would be returned to the Council at a future date.

This violation is time barred. Any person may file a complaint against any violation of the Sunshine Ordinance no more than 15 days after the alleged violation. Section 2-93.2 a. Complainants filed their complaint on November 14, 2022, more than 15 days after October 18, 2022. Accordingly, this violation is time barred.

Even if this violation were not time barred, there was no violation because the October 18, 2022 agenda description of Agenda Item 5-I satisfies the requirements of the Brown Act and the Sunshine Ordinance. Agenda Item 5-I on October 18, 2022 provided, "Adoption of a Resolution Appropriating \$126,618 in Transportation Development Act, Article 3, Grant Funding by Amending the Fiscal Year 2022-23 Capital Budget to Increase Budgeted Revenue and Expenditures in Capital Improvement Program C 14000 by \$50,000 and in Capital Improvement Program C 11000 by \$76,618 for Grant Street Improvements."

The Sunshine Ordinance requires the posting of an agenda containing a meaningful description of each item of business to be transacted or discussed. Section 2-91.5 a. A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that the person may have reason to attend the meeting or seek more information. The description should be brief, concise and written in plain, easily understood English. Section 2-91.5 b. The Sunshine Ordinance is to be read and interpreted consistent with the Brown Act. Under the Brown Act, so long as notice of the essential nature of the matter an agency will consider has been disclosed in the agency's agenda, technical errors or immaterial omissions are not violations. *San Diegans for Open Gov't v. City of Oceanside* (2016) 4 Cal. App. 5<sup>th</sup> 637, 643.

From the agenda title, it is evident that the item on the agenda concerned the Grant Street improvements and funding sources for those improvements. The agenda item was meaningful in that it was clear and specific to a person of average intelligence and education that the City Council would consider appropriating a total of \$126,618 for Grand Street improvements and therefore any person whose interests would be affected by the item would have reason to attend the meeting or seek more information. Accordingly, the requirements of Section 2-91.5 a and b were more than satisfied.

Moreover, contrary to the assertions of complainants, the agenda item did not limit the Council to discuss or take action on just the funding for the improvements. By the agenda's identifying the reason

for the funding—the Grand Street Improvements—Council had wide discretion to discuss and take action on all aspects of such project including, as it did, directing that it be returned at a future date.

For the same reason, Council’s action did not violate Section 2-91.5 f. That section simply prohibits Council action or discussion on an item not on the agenda. As stated above, the Grand Street improvement project was clearly identified on the agenda and, as such, granted wide discretion to the Council as to the disposition of the item. Council exercised that discretion and directed that it be returned to it at a future date.

Moreover, even if the Council’s action to request the matter be placed on a future agenda was somehow outside the permissible bounds of the agenda description (which it was not), City Council nevertheless had the authority under the Brown Act to do so. The Brown Act provides that although generally no action or discussion shall be undertaken on any item not appearing on a posted agenda, a member of a legislative body, or the body itself may take action to direct staff to place a matter of business on a future agenda. Government Code, Section 54954.2 (a)(3); *Cruz v. City of Culver City* 2 Cal. App. 5<sup>th</sup> 239, 250 (2016). Council’s action in directing the Grand Street project to return to it on a future agenda was squarely authorized by the Brown Act and comports with the guidance in the *Cruz* case, and such action, is properly subsumed within its agenda title. As it must be “brief, concise,” it is not required be to as comprehensive as minutes or even the agenda report itself. It must simply provide notice of the proposed action taken so that an ordinary member of the public can decide whether it would be in their interest to participate in the meeting (or not). In addition, even if the request to have the matter placed on a future agenda was “not on the agenda”, Section 2-91.5 f was not violated. The Sunshine Ordinance must be read to be consistent with the Brown Act and, as described earlier in this paragraph, the Brown Act clearly authorized this Council action. Put simply, nothing in Section 2-91.5 f prohibited this Council action.

### Conclusion

Complainants’ contentions on this item center not on the agenda title but on what they perceive as a violation of the Council’s procedural rules, arguing that Council action to place the item on a future agenda constituted a reconsideration of its previous decision on October 4 without following the rules to do so. Whatever the merits of these contentions—and there are none—these contentions have nothing to do with an infirmity within the description of Agenda Item 5-I on October 18.

For all of these reasons, there were no violations of Section 2-91.5 a, b, or f.

### Violation 5

In Violation 5, similar to the allegations in Violation 4, complainants allege that subsections a, b, and f of Section 2-91.5 were violated when the description of Agenda Item 7-F of the City Council’s November 1, 2022 meeting failed to describe accurately the nature of the item to be discussed regarding the agenda item. As set forth above, the fundamental purpose of this section is for an agenda to convey the essential nature of an item to be discussed; if that purpose is satisfied, there is no violation.

Unlike Violation 4 which is time barred, the violations alleged in Violation 5 occurred on November 1, 2022 so the complaint is timely as to that Violation. But, as was the case with Violation 4, there was no violation because Agenda Item 7-F on the November 1, 2022 agenda satisfied the requirements of the Sunshine Ordinance. To reiterate, the Sunshine Ordinance requires the posting of an agenda containing

a meaningful description of each item of business to be transacted or discussed. Section 2-91.5 a. A description is meaningful if it sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that the person may have reason to attend the meeting or seek more information. The description should be brief, concise and written in plain, easily understood English. Section 2-91.5 b. Under Sunshine Ordinance, read consistently with the Brown Act, so long as notice of the essential nature of the matter an agency will consider has been disclosed in the agency's agenda, technical errors or immaterial omissions are not violations. *San Diegans for Open Gov't. v City of Oceanside, supra*, at 643.

Agenda Item 7-F on the November 1, 2022 provided, "Recommendation to Consider New Information Regarding the Grand Street Resurfacing and Safety Improvement Project and Authorize the Interim City Manager, or Designee, to Proceed with construction Documents for the Grand Street Resurfacing and Safety Improvement Project Final Concept." It cannot be seriously argued the agenda failed to describe that the Council would be considering new information relative to the Grant Street project. As set forth in the body of the agenda report, new information had come to the City's attention since Council took action on this project on October 4, 2022 and this fact was properly reflected in the agenda description.

The agenda item was meaningful in that it was clear and specific to a person of average intelligence and education that the City Council would consider new information concerning the Grand Street improvements and therefore any person whose interests would be affected by the item would have reason to attend the meeting or seek more information. The agenda item did not indicate or guarantee any particular outcome or that Council would authorize the Interim City Manager to proceed with construction documents based on that new information. Council retained discretion to revise or not the previously approved improvements.

By reason of written comments submitted prior to and on the date of this meeting, as well as extensive public testimony at the meeting itself, it is clear that members of the public—including many of the complainants here-- understood clearly what was before the City Council based on the agenda title and indeed several members of the public objected to any revision to the previously approved project.

Council's action concerning Agenda Item 7-F likewise did not violate Section 2-91.5 f, which prohibits action or discussion on an item not on the agenda. The agenda title provided the Council would consider new information regarding the project, which it did.

### Conclusion

As with Violation 4, complainants' real objection is not with the description of the agenda title but what complainants believe was a violation of the Council's Rules of Procedure, arguing that violating the Council's Rules also violates a foundational principle of the Sunshine Ordinance. Even if, however, Council action did violate its Rules of Procedure—which it did not—neither Section 2-91.5 nor any other section of the Sunshine Ordinance were violated.

## Declaration of Lara Weisiger

I, Lara Weisiger, declare:

1. I am currently the City Clerk for the City of Alameda and have been employed for 25 years since 5/27/1997. I have been the City Clerk since 10/14/2001.
2. For regularly scheduled meetings, City Council agendas are published 12 days prior to the meeting date. Agenda materials, including correspondence that the City has received on an agenda item prior to the publication of the agenda, may be found on the City's website under: GOVERNMENT/Agendas-Minutes-Announcements. Access to agenda reports and attachments are in an agenda database and can be opened under <https://alameda.legistar.com/Calendar.aspx>. After the agenda materials are posted 12 days prior to the meeting, if my office receives correspondence concerning an agenda item, we will add those to the database and repost the agenda.
3. When the agenda materials for Item 7-F on the November 1, 2022 City Council agenda were published, there had been no correspondence received for the item. Before the start of the meeting on November 1, my office received nine pieces of correspondence on this agenda item: one on 10/28, four on 10/31, and four on 11/1, the last of which was received at 2:54 p.m. On November 1, I reposted the agenda several times, including at 4:25 p.m. to ensure that all correspondence that had been received had been posted.
4. At the November 1 meeting when the City Council was receiving public comment on agenda item 7-F, a speaker stated that all correspondence concerning the item had not been posted. I responded that all correspondence had been posted as described above.
5. If some members of the public were not able to see the correspondence, I can only conclude that members of the public may have been looking at a stagnant or old PDF of the agenda which would not update when the agenda materials were republished at various times, including late in the afternoon on November 1.
6. No Councilmember at the meeting stated he or she had not received the written comments from the public.
7. Since the onset of the COVID-19 pandemic, City Council meetings have been conducted remotely, via Zoom. If a person wishes to attend and/or participate in the meeting, the person must complete a "Zoom Webinar Registration," listing the person's name and email address. At the start of the meeting, I open the list of persons who have joined the Zoom Webinar. That list has two tabs: "Panelists" who are the Councilmembers and the relevant staff (all of whom appear "on screen"); and "Attendees", everyone else including members of the public (who do not appear "on screen"). When an agenda item is called, I read the title. After staff presentation of an agenda item and Council has the opportunity to ask clarifying questions, the Mayor asks me if there are any public speakers on each agenda item.
8. Attendees using Zoom to participate in the meeting must click an icon on their computer screen to "raise their hand" to indicate that the person wishes to speak on the item. Generally, Attendees "raise their hand" after the Mayor asks if there are any public speakers but Attendees may, and often do, "raise their hand" as soon as the agenda item is introduced. In either event, once an Attendee raises their hand the Attendee is moved to the top of the list with a hand icon shown next to the person's name (or next to



the person's name if the person is attending via a phone call). I, along with the Mayor, all Councilmembers, and other Panelists are able to see raised hands of Attendees.

9. In addition, next to the word "Attendee" at the top of the tab, a number is added to indicate the number of "raised hands". Since public speaker time is limited depending on the number of speakers, I pay close attention to the number of persons who wish to speak so the timing is administered correctly. I go down the list of speakers, call out the speaker's name, and then the speaker is given permission to speak for up to the allotted time. Once the speaker has concluded the speaker's comments, the Mayor says "Next speaker" and the process is repeated.

10. When the Mayor says "Next speaker" and there are no more raised hands on screen, I say: "That was the last speaker." The Mayor then closes public testimony. After the Mayor closes public testimony, it has been the City Council's practice that if a member of the public thereafter raises a hand on the item, the person will not be called on to be heard.

11. The City Council meeting of November 1, 2022 was conducted remotely, via Zoom. The process by which members of the public were heard on Agenda Item 7-F was as described above. In particular, there were seven speakers on the item. After speaker Matt Reid provided comments, the Mayor said "Next speaker," I looked at my screen and did not see any additional "raised hands," accordingly, I said, "That was the last speaker". The Mayor then closed the public testimony portion of the item. Consistent with past practice as described above, any person raising a hand after the Mayor closed public testimony was not called on to be heard on the item.

12. Moreover, neither the Mayor nor any of the Councilmembers—all of whom could see if there were additional "raised hands"—immediately pointed out that there were still members of the public who wished to be heard.

I declare that this Declaration is made under penalty of perjury and that it was executed on November 28, 2022 at Alameda, California.

DocuSigned by:  
*Lara Weisiger*  
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Lara Weisiger