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April 5, 2013

Hon. Robert L. Dondero, Associate Justice
Hon. Sandra Lynn Margulies, Associate Justice
Hon. Kathleen M. Banke, Associate Justice
California Court of Appeal
State of California
First Appellate District, Division One
350 McAllister Street
San Francisco, CA 94102



Re: *Albert Park Neighborhood Alliance v. City of San Rafael, et al.*
Case No. A135028 (Marin County Superior Court No. CIV-1105491)
Request for Publication

Dear Justices Dondero, Margulies, and Banke:

Pursuant to California Rules of Court, Rule 8.1120(c), the League of California Cities ("League") and the City of San Rafael ("City") respectfully request that the opinion issued by this Court in *Albert Park Neighborhood Alliance v. City of San Rafael*, filed March 18, 2013 (the "Opinion"), be certified for publication in the Official Reports.

The League is an association of 469 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which comprises 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide or nationwide significance. The Committee has identified this case as having such significance.

The League and the City believe that the Opinion meets the standards for publication under California Rules of Court, Rule 8.1105(c). California Rules of Court, Rule 8.1105(c), sets forth a liberal standard for publication, encouraging "[a]n opinion **should** be certified for publication" when publication of opinions meet any one of nine criteria.¹ The Opinion satisfies the criteria for publication set forth in Rule 8.1105(c)(2),

¹ Under Rule 8.1105(c), an opinion should be published if it: (1) establishes a new rule of law; (2) applies an existing rule of law to a set of facts significantly different from

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(6) and (7). The Opinion addresses several difficult and important issues that no previous reported decision has resolved.

Specifically, the Opinion for the first time provides guidance on the following issues:

- Any deed restriction on property granted to a city whereby the grantor requires the city to permit free use and enjoyment to the public must be reasonably interpreted to not mean a pecuniary reference. Instead, the restriction requires the city to not enact undue controls or excessive directives on public use of the property. (Opinion, p. 11.)
- Entering into a Use Agreement is not the equivalent of entering into a lease with the city acting in a landlord-tenant relationship with the user. (Opinion, pp. 12-13.) Cities have the ability to enter into unilateral Use Agreements with users of City property, and these agreements should not be interpreted as a continuous lease with the city acting in its proprietary capacity, but instead should be interpreted as an agreement issued under the city's police power allowing the other party intermittent use of particular city property during a defined term.

The Opinion provides substantial, valuable guidance of continuing public interest to those California cities faced with similar contentions about the scope of what constitutes "free use and enjoyment" on dedications that have terms similar to the instant restriction. Moreover, the Opinion provides helpful direction to cities on what

those stated in published opinions; (3) modifies, explains, or criticizes with reasons given, an existing rule of law; (4) advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule; (5) addresses or creates an apparent conflict in the law; (6) involves a legal issue of continuing public interest; (7) makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law; (8) invokes a previously overlooked rule of law, or reaffirms a principle of law not applied in a recently reported decision; or (9) is accompanied by a separate opinion concurring or dissenting on a legal issue, and publication of the majority and separate opinions would make a significant contribution to the development of the law.

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sort of agreements constitute a leasehold interest and what constitutes a Use Agreement and the corresponding duties and obligations resulting from a Use Agreement. Finally, from the City's perspective, the City has multiple recreational users of Albert Park, and the Opinion clarifies the scope of the dedication for future users. We therefore urge this Court to publish the Opinion.

It is respectfully submitted that, for these reasons, the Opinion meets the standards for publication under California Rules of Court, Rule 8.1105(c) and merits certification for publication in the Official Reports.

Respectfully submitted,

BURKE, WILLIAMS & SORESENSEN, LLP



BENJAMIN L. STOCK

BLS:ecc

PROOF OF SERVICE

I, Erika Calderon, declare that I am a citizen of the United States and employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1901 Harrison Street, Suite 900, Oakland, California 94612-3501. On April 5, 2013, I served a copy of the:

**Letter Request for Publication of Opinion
(addressed to the Justices of the Court of
Appeal, First Appellate District, Division One
Re: Albert Park Neighborhood Alliance v. City
of San Rafael, Case No. A135028)**

by **MAIL** on the following party(ies) in said action, in accordance with Code of Civil Procedure § 1013a (3), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Burke, Williams & Sorensen, LLP, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Oakland, California.

Steven Schoonover, Esq.
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*Attorneys for Appellant Albert Park
Neighborhood Alliance*

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Neighborhood Alliance*

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 5, 2013, at Oakland, California.



Erika Calderon