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May 23, 2023

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VIA EMAIL ONLY:

City Clerk, and Members of the City Council
City of Brentwood

**Re: Tonight's City Council Meeting
"Call-Up" Review of Vineyard Academy Project
Agenda Item #D.1. (City File #DR 21-009-A1)**

Dear City Clerk, and Members of the City Council:

This office represents applicant Vineyard Academy regarding the City's ongoing mishandling of our client's above-noted Project, which merely seeks to better serve the community by installing portable classrooms on the subject site, to thereby satisfy longstanding, demonstrated support and demand to augment enrollment/attendance at its existing religious, private school facility.

For the below-noted reasons, we respectfully request that the City Clerk ensure this letter is distributed to all City Councilmembers ahead of tonight's meeting/hearing on this matter.

The purpose of this letter is to briefly summarize – ahead of tonight's Council meeting - some of our client's and their many existing and prospective students' and supporters' myriad practical and legal concerns about the City's overall mishandling of this matter – not only from the very start, but also the more recent improprieties of City staff and officials.

For convenience and efficiency, this letter hereby incorporates herein by reference all of our clients' (including their consultants', students' parents', and the community's and other supporters') prior comments and objections voiced or provided to the City during the prior steps of this very troubling land use approval process. Also, please note that our client's ongoing capitulation to and completion of the City's improperly imposed demands and requirements have been entirely "under protest and duress", and thus without any waiver of our client's legal, equitable, or other legal claims, rights, and remedies.

To the above ends, the following summarizes our client's and their supporters' grave concerns and objections - many if not all of which were previously voiced/submitted, including via my personal discussions with the City Attorney's Office.

First, our clients respectfully contend that, from the very start, the City improperly, prejudicially, and thus illegally "changed its mind" about **whether this minor Project – seeking to merely add portable classrooms to an existing, permitted church/religious facility - "fits within" or "is already allowed/permitted by or under" the City's prior CUP/approvals, issued years ago, for the underlying church use/facility.** Instead of reversing the City's original course, and dragging this minor, laudable school-improvement Project through years of unnecessary, extremely costly review and delays, the proper, legal thing to do was simply find or deem these proposed, consistent, minor improvements/uses as "falling within" or "already covered or allowed by" the City's prior, existing CUP/approvals.

Second, once the City erroneously decided this minor, consistent-with-prior-approvals Project somehow "required further discretionary review", **it should have simply and quickly approved it, without unnecessary, unreasonable, unsupported, prejudicial delays, and without improperly imposing on our client and the Project wholly unnecessary, unauthorized, ill-advised, burdensome purported "changes" and/or "conditions of approval"**. For example and without limitation, there was simply no plausible or rational basis (or constitutional nexus) for the City to require *these Applicants*, as part of *this subsequent, limited Project*, to construct/install the wholly irrelevant sound wall, or to impose any other, similarly burdensome, requirements or conditions. The only reason the City had previously imposed the sound wall requirement was because, as part of the prior/original CUP/approvals, the applicant sought to build a couple of dwelling units along the site's perimeter, near existing homes/residents. However, as everyone knows, such previously-proposed dwelling units were never built, were apparently abandoned by the prior church applicant, and clearly aren't included as part of this rather minor "installation of portable classrooms" Project. We further understand that such discretionary mistreatment by the City is both unheard of, and wholly inconsistent with how it's handled/treated prior, similar projects. Such harsh disparities are not only illegal in and of themselves, per relevant state and federal constitutional Due Process, Equal Protection, and Takings rights and principles, but also inconsistent with (and thus violate) the below-reference federal law known as "RLUIPA".

Third and finally, given that the Council's purported "review" tonight is solely the result of and comprises the second time – in as many opportunities - Councilmember Mendoza has "called-up" the Planning Commission's ("PC") prior approvals for zero valid, legitimate reason, **the Council should have treated this second "call-up" (as well as the first) as fatally tainted by improper bias, and thus declined to waste further, valuable time and public funds on such illegal, prejudicial machinations.**

For example, the City's own Municipal ("Muni") Code provides as follows:

Muni Code § 17.880.010 "Right to appeal—Call for review—Time limits."

A. Appeal. A decision of the community development director, zoning

administrator, planning manager, or city engineer may be appealed to the planning commission. A decision of the planning commission may be appealed to the city council. Any interested person may appeal a decision.

B. Call for Review. A decision of the community development director, zoning administrator, planning manager, city engineer, or other administrative official may be called up for review by a planning commissioner. A decision of the planning commission may be called up for review by a member of the city council. The planning commissioner or council member may call the matter for review for the good of the city, without stating specific reasons for the call. The act of calling the matter for review shall not, by itself, disqualify the planning commissioner or council member from participating as part of the decision-making body *so long as that commissioner or council member is neutral and unbiased and has not previously announced to any member of the public or city staff a preferred outcome on the matter.* (Emph. added.)

Muni Code § 17.880.020 “Initiation of appeal or call for review.”

A. Filing Appeal or Call for Review. An appeal or call for review to the planning commission must be completed and filed with the community development director on a form provided by the city. An appeal or call for review to the city council must be completed and filed with the city clerk on a form provided by the city. An appeal must state specific reasons for the appeal and be accompanied by the appeal fee established by the city council.

B. Effect on Decisions. *A decision that is appealed or called up for review in a timely manner does not become effective until the appeal or review is decided and any further appeal period has passed,* or the appeal is withdrawn. Without a timely appeal, an appellant waives his or her rights to challenge the decision by administrative process, judicial process or any other legal proceeding. (Ord. 977 § 6, 2016) (Emph. added.)

If for some misguided reason the Council opts to proceed tonight with such ill-conceived “review” - which per the City’s above-noted rules purportedly vacates/nullifies the PC’s recent approvals (for the second time), and replaces them with the Council’s *de novo* decision - Councilmember Mendoza must be disqualified and/or recuse herself from participating, deliberating, or voting on any aspects of this matter, because her ongoing hostile, biased misconduct toward these Applicants and this Project violates the City’s express legal requirements, including that an official who “calls-up” a matter must be “neutral and unbiased”, and cannot have “previously announced to any member of the public or city staff a preferred outcome on the matter”. By invoking the “call-up” procedure twice now - as to both prior PC approvals – and then misusing such purported “review” to try to effectively kill the Project via costly, unsupportable requirements and conditions, and knowingly intentional, unending delays, Councilmember Mendoza has indicated and shown - and thus sufficiently, effectively “announced” to virtually everyone - that her “preferred outcome” has always been, and remains, exactly what’s occurred to date – e.g., unreasonably delaying and ultimately killing this needed, otherwise simple, laudable Project.

In her prior go-around, after improperly calling-up the Project about this time last year, at the Council’s resulting June 1, 2022 “review” hearing, she arbitrarily, out of the blue, insisted

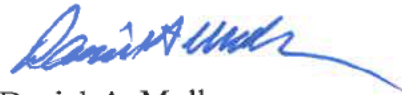
(among other things) that the portable classrooms' "roof tops" or "roof profiles" be changed, which ended up requiring our client to spend extensive time and costs to scour available vendors to find and order such rare new "steel-seam roofed" portables. Then, instead of properly exercising their delegated authority/discretion to deem such clearly minor roof-related changes as "substantially consistent/compliant with the Council's (i.e., Councilmember Mendoza's) prior direction/approval", last November City staff errantly declined and refused - thus forcing our client to "run such *de minimis* roof/design changes all the way back up and through" the PC approval process - yet again. Then, instead of setting such wholly unnecessary PC hearing early this year, as staff said they would, the PC hearing was delayed until several weeks ago, causing yet another year's (and, school year's) unnecessary, costly, and arbitrary and capricious delay. Indeed, when the PC finally heard and approved the matter, they emphasized how diligently our client had complied with all such essentially "Mendoza-mandated" changes, by rather apologetically noting "both the Applicant, and we (the PC) have more than satisfied every single detail/aspect of the Council's directives..." Yet, Councilmember Mendoza now seeks another (second, or third) bite at the very same apple.

Given all the above, Councilmember Mendoza is harshly biased against our client and/or this Project, and has rather clearly "expressed or announced a preferred outcome" of unreasonably delaying/killing same, and should thus be barred/prevented from improperly imposing such unfair, unjust, arbitrary and capricious motives/bias on our client, yet again. We further respectfully contend that once the City finally (belatedly) complies with our office's formal, written California Public Records Act ("PRA") requests - which expressly seek and include any and all of Councilmember Mendoza's texts, emails, and other communications with anyone, about our clients and/or this Project (including communications with other Project opponents, whom we're reliably informed include Ms. Mendoza's close friends/colleagues) - the evidence will yet further confirm she harbors severe *personal animus* and ill-will toward, and is unfairly biased against, our client and this Project, thereby demonstrating even more clearly that the City's entire administrative process has been illegally tainted and delayed, to our client's and its supporters' severe prejudice and detriment.

In conclusion, thank you very much for providing our office and our client this opportunity to provide our above-noted grave concerns. While we understand that at times involved City staff have been "put in very difficult positions" (e.g., by certain Councilmembers' demands that staff "leave it to the Council" to decide how to handle even minor changes to previously-approved projects), our client respectfully contends that the above events/problems are merely a few examples of the many ways the City has continuously, improperly mishandled this Project, to our client's and the involved community's severe detriment, resulting in rather clear violations of not only the City's own local laws, codes, and regulations, but also applicable state and federal statutes (including the above-referenced Religious Land Use and Institutionalized Persons Act ("RLUIPA"), and Civil Rights statutes, including 42 U.S.C. § 1983, etc.), as well as our client's state/federal constitutional rights including Substantive and Procedural Due Process, Equal Protection, and the Takings Clause and its evolving Unconstitutional Conditions Doctrine. (See, e.g., *Knight v. Metropolitan Government of Nashville & Davidson County, Tennessee* (2023), United States Court of Appeals, Sixth District (2023 WL 3335869), decided/filed May 10, 2023, and numerous cases cited therein.)

Sincerely,

GAGEN McCOY
A Professional Corporation

A handwritten signature in blue ink, appearing to read "Daniel A. Muller", with a long, sweeping underline that extends to the right.

Daniel A. Muller

From: [Amanda Miller](#)
To: [=yCouncil Members](#)
Subject: Vineyard Academy Portable Classrooms
Date: Monday, May 22, 2023 3:10:32 PM

CAUTION – EXTERNAL SENDER

Hello City Council Members,

This email is in regards to the Vineyard Academy portable school buildings. As a resident of Brentwood, who also happens to live across the street from The Rock Church, and a parent of children attending the school, I am very invested in this process and outcome.

I would like to express my deep disappointment with how this matter has been handled over the last couple years. While I can appreciate the concern for the buildings to look in keeping with the existing church and our neighborhood, I also believe things should be handled in a timely and efficient manner, which has not happened here.

I was at the city council meeting last year where an hour and a half was spent just talking about the design of the school. After that the school diligently worked to meet all of those requirements, even though some were not suited for portable units. We have since then been sent back to planning commission and now back to city council. I implore you to look at what is at the heart of this matter, and that is creating a space where children from your community can learn effectively. This is about allowing children and teachers to have a space where they can come together to create leaders of the next generation, some of which could help steer the future of Brentwood.

Students cannot thrive if they are not able to have an environment free of distractions. Teachers cannot reach their potential if they are constantly battling for students attention.

There are many other private schools in the area that have been granted portable classrooms and I fail to see why this one is any different?

Tomorrow night, I ask that you search within yourselves and ask what is really important here? Is it arguing over a roof pitch and siding texture? I don't believe it is. This is about providing a safe and quality school for your community to thrive within. Please consider this matter when making your decision at the meeting tomorrow evening. If you're able to read this email out loud, as I know some members have done in the past, I would greatly appreciate that as well.

Thank you for your time and commitment to our city, residents and children.

Sincerely,
Amanda Miller

From: [Antonio Xavier](#)
To: [=yCouncil Members](#)
Cc: [webCityClerk](#)
Subject: D.3 Council member Oerlemans policy violation
Date: Tuesday, May 23, 2023 12:05:01 PM

CAUTION – EXTERNAL SENDER

I am unable to attend the meeting this evening.

However, I feel strongly about the behavior of our elected officials when it comes to ethics and codes of conduct.

Anyone who has seen the video from the April 25th council meeting can tell you that was not acceptable behavior for an elected official during a council meeting.

Council member Oerlemans embarrassed Brentwood with his behavior that night. It was reported via multiple news outlets and the public response was not kind.

There are no questions of fact regarding what happened:

- (1) Council member Oerlemans appeared to lose control of his emotions and directed his anger and frustration towards the Mayor;
- (2) The Mayor attempted to defuse the situation but it had no effect on Council member Oerlemans; and
- (3) Council member Oerlemans stormed out of a meeting in progress before a recess had been officially called.

The only question remaining is what type of punishment should be assigned.

I ask that the council vote to SANCTION Council member Oerlemans.

I suggest Council member Oerlemans use his response time to acknowledge what happened and issue an apology instead of offering up excuses so we can close out this item for good.

I hope the entire council moves forward with less conflict after this is concluded.

Nobody expects you to vote 5-0 on every item.

All I want to see is professional and appropriate behavior when the disagreements on policy occur. There will be items you win and items you lose. You should maintain your professionalism regardless of the outcome of the votes.

Thank you

--Antonio Xavier
Brentwood resident

From: [Bill Nusbaum](#)
To: [webCityClerk](#)
Subject: City Council Meeting Agenda Item D.3
Date: Monday, May 22, 2023 1:56:25 PM

CAUTION – EXTERNAL SENDER

I am a resident of Brentwood. As such I expect our City Council elected officials to adhere to the City of Brentwood Ethics and Conduct Policy. It is clear, in my opinion, that the behavior of Council Member Oerlemans at the April 25th and May 9th City Council meetings violated the Ethics and Conduct Policy. I urge the Council to take action to hold Council Member Oerlemans accountable for his rude, disrespectful and uncivil actions. Thank you.

Bill Nusbaum

From: [Ogden, Tim](#)
To: [=yCouncil Members](#)
Cc: [=yDepartment Directors](#)
Subject: Council Agenda Item B.7 Pavement Management Program 2023 (Asphalt)
Date: Tuesday, May 23, 2023 9:14:34 AM

Mayor & Council,

Staff is providing additional details about Item B.7 for the approval of asphalt work in various locations.

The specific work is being done at these locations:

1. Fairview – 2.5” grind and overlay from Central to Sand Creek
2. Balfour Rd. – 2.5” grind and overlay the eastbound lane from ~350’ west of Walnut to Balfour
3. East Country Club Drive – 2” grind and overlay from Balfour to just past Palm Dr.
4. San Jose – 12” dig out and replace 75’ of roadway just east of Hwy. 4.
5. Brentwood Blvd. – crack sealing from the Police Department to Oak St.
6. Buena Vista St – 2 small 12” dig out and repairs around manholes
7. Empire Ave. – 1 small dig out and repair around a manhole
8. Indian Springs Dr. – 1 small dig out and repair around a manhole
9. Barcelona Ct. – 1 small dig out and repair around a manhole

If additional details are desired, the actual construction plans included in the bid documents are here:

<https://www.brentwoodca.gov/home/showpublisheddocument/7141/638169980516500000>

Thanks,
Tim



Tim Ogden, City Manager
City Manager's Office
150 City Park Way
Brentwood, CA 94513
Phone: 925.516.5174
Fax: 925.516.5441
togden@brentwoodca.gov



From: [Morris, Alexis](#)
To: [=yCouncil Members](#); [=yDepartment Directors](#)
Cc: [Wisinski, Katherine](#); [Nolthenius, Erik](#); [Hagen, Jennifer](#); [Yuwiler, Sarah](#)
Subject: City Council Agenda Item C.1 and D.1
Date: Tuesday, May 23, 2023 3:17:54 PM

Honorable Mayor, Vice Mayor and City Council:

Good afternoon. Vice Mayor Meyer and Council Member Pierson provided staff with several questions about the Wendy's Project (Agenda Item C.1) and Vice Mayor Meyer had several questions about the Vineyards Academy project (Agenda Item D.1). Please find the questions and answers below for your reference.

Thank you.

Wendy's (C.1)

1. Information on the operation and delivery hours/locations of Grocery Outlet per the CUP to ensure no conflicts with Wendy's.

Grocery Outlet does not have CUP as the use is permitted by right. However, they do have a Design Review approval that includes condition of approval #23 that states "Delivery hours for the project shall be limited to 7:00 am to 10:00 pm daily per the Sciortino Ranch Design Guidelines. Delivery trucks shall not access the site from the Stony Creek Drive access driveway." The entire center is also required to comply with this requirement related to delivery hours. Grocery Outlet has a dedicated delivery dock at the rear of the store.

2. The time of operations at KFC and Taco Bell on Brentwood Blvd.?

There are no hours of operation requirements in the projects' CUPs. Current operational hours according to the businesses websites are:

Taco Bell – Drive thru: open until 3:00 AM Sunday- Thurs and 4:00 AM on Friday and Saturday. Dine in: Open until 11:00 PM

KFC – Open until 10:00 PM but does not differentiate the drive-thru and dine-in.

Vineyards Academy (D.1)

1. Whether the tile roof was considered before moving on to the standing seam metal roof?

The applicant indicated that they considered both options but could only find buildings approved for educational occupancy that met their needs with a standing seam metal roof. The applicant may be able to provide further information on what they considered as part of their application.

2. Did we confirm with the State Architect about the roof types being feasible?

Both the Division of the State Architect (DSA) and Department of Housing and Community Development (HCD) have permitting authority over pre-fabricated buildings in California depending on the use and occupancy. DSA has permit authority over pre-fabricated buildings used by public K-12 schools in California. Manufactured buildings bearing a DSA insignia that are removed from a

public school site are under the permitting authority of the HCD per California Health & Safety Code sections 18015 and 18029 and can only be altered pursuant to that authority. Staff did not confirm the feasibility of roof materials with DSA; staff processed the application for an amendment based on what was submitted to the City. The conditions of approval provided an option for a standing seam metal roof if a tile roof is not feasible and it should be noted that tile roofs are significantly heavier than standing seam metal roofs and require different structural designs.

3. Why didn't this go to a PC design review first?

Condition of Approval #8 in City Council Resolution 2022-69 requires that "Any alteration of the building design, building colors, or materials from the approved plans and materials board shall be submitted for the review of the Community Development Director prior to building permit issuance and, if judged to be substantial, may be referred to the Planning Commission for approval." I determined that the proposed changes were substantial; therefore, the proposed amendment request was brought to the full Planning Commission consistent with the requirements of the project's conditions of approval. In addition, the Planning Commission's Design Review sub-committee is comprised of Planning Commissioners who were able to weigh in on the project as it was presented to the Planning Commission.

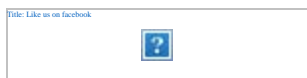
4. Share the square footage changes, why, and whether it can be considered Tuesday night.

2023 Amendment application: 3 buildings totaling 4,260 square feet (1,420 square feet each)
2022 Approved application: 3 buildings totaling 3,260 square feet (1,440 each class building and 380 square feet for restroom building)

It is our understanding that the change in square footage was due to the change in building type and the fact that the restrooms are now proposed inside each classroom rather than in their own smaller building. The 2022 CUP did not specify a maximum square footage that can be built on site. The aesthetics, massing (which includes building height and size), and design of the buildings associated with the design review application may be considered tonight. There are no changes proposed to the operational characteristics of the project, including total number of classrooms and students; therefore, the operational characteristics associated with the CUP should not be considered tonight.



Alexis Morris | She/Her/Hers | [why pronouns?](#)
Director of Community Development
Community Development
150 City Park Way
Brentwood, CA 94513-1164
Phone: 925.516.5195
Fax: 925.516.5407
amorris@brentwoodca.gov



From: [Morris, Alexis](#)
To: [=yCouncil Members](#); [=yDepartment Directors](#)
Cc: [Wisinski, Katherine](#); [Nolthenius, Erik](#); [Hagen, Jennifer](#); [Yuwiler, Sarah](#)
Subject: RE: City Council Agenda Item C.1 and D.1
Date: Tuesday, May 23, 2023 3:55:47 PM

Honorable Mayor, Vice Mayor and City Council:

I need to correct one statement below. Under Wendy's #1 it states: The entire center is also required to comply with this requirement related to delivery hours. It should read that any commercial use in the center within 100 feet of a residential zone is also required to limit delivery hours to 7:00 am to 10:00 pm daily.

I am sorry for any confusion this may have caused.

Thank you.

From: Morris, Alexis <amorris@brentwoodca.gov>
Sent: Tuesday, May 23, 2023 3:18 PM
To: =yCouncil Members <Councilmembers@brentwoodca.gov>; =yDepartment Directors <departmentdirectors@brentwoodca.gov>
Cc: Wisinski, Katherine <kwisinski@brentwoodca.gov>; Nolthenius, Erik <enolthenius@brentwoodca.gov>; Hagen, Jennifer <jhagen@brentwoodca.gov>; Yuwiler, Sarah <syuwiler@brentwoodca.gov>
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Community Development

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Brentwood, CA 94513-1164

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Title: Like us on facebook

