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November 14, 2018

The Honorable Presiding Justice Jones and
Honorable Associate Justices Bruiniers and Simons
California Court of Appeal
First Appellate District, Division Five
350 McAllister Street
San Francisco, CA 94102-7421

Re: *Rasooly v. City of Oakley*, Case No. A152709,
Request for Publication of Unpublished Opinion

Dear Presiding Justice Jones and Associate Justices Bruiniers and Simons,

The League of California Cities respectfully submits this letter pursuant to California Rules of Court, Rule 8.1120, in order to request that this Court order that its opinion in the above-referenced matter be published.

I. Interests of Requestor, the League of California Cities

The League of California Cities is an association of 475 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, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

In particular, at issue in the opinion in this matter is whether a property owner's due process right to receive reasonable notice of code violations is satisfied even when actual notice is lacking.

Rule 8.1105, subsection (c) provides, in part, that an opinion is appropriate for publication when it:

> . . . (2) Applies an existing rule of law to a set of facts significantly different from those stated in published opinions; . . . [or]
> (6) Involves a legal issue of continuing public interest; . . . .

The opinion here satisfies these criteria for publication, and this Court is thus urged to certify for publication in the official reports the opinion issued by this Court in *Rasooly* on October 25, 2018.

1. The Opinion Applies Existing Law to Facts Different than Those in Published Opinions and Reaffirms and Clarifies an Important Principle of Law Relating to Due Process, and Applicable to the Daily Business of Public Agencies Throughout the State.

Consistent with subsection (2) above, the Court's opinion applies existing law to different facts. Critically, the set of facts applied in the *Rasooly* opinion comprise a set of circumstances that are recurring and of significance to cities throughout the State. Prior law does provide that due process is satisfied without actual notice, such as when certified mail goes unclaimed. *See Evans v. Department of Motor Vehicles*, 21 Cal. App. 4th 958 (1994); *Baughman v. Medical Board*, 40 Cal. App. 4th 398 (1995). However, prior opinions are based on specific statutory interpretation and differing rights than are often encountered by cities taking code enforcement action to remedy real property code violations. The Court's application of the legal rationales prevailing in *Baughman* and *Evans* to the context of municipal code enforcement is of great importance to cities and other agencies facing similar due process concerns. The extension of prior holdings to the factual situation in *Rasooly* emphasizes applicable due process concepts that are consistent with prior law, but which clearly and definitively apply to the differing facts presented in the code enforcement context. This wider application is of enormous usefulness to cities and other agencies in more varying circumstances than prior law provides. Under these circumstances, publication is justified and necessary.

2. There is a Continuing Public Interest in the Subject Matter Addressed in the Opinion.

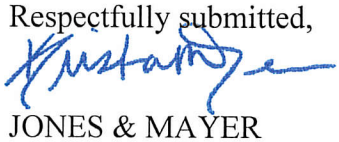
In addition, subsection (6) of the criteria for publication is also met with respect to the opinion issued by this Court in *Rasooly*, since publication would serve the public interest. Code enforcement is one of the most important functions of local government. The League's members regularly provide notices concerning a myriad of matters involving building safety, property maintenance, and public health. Publication in this case would provide guidance to cities,

regularly provide notices concerning a myriad of matters involving building safety, property maintenance, and public health. Publication in this case would provide guidance to cities, counties, and other local agencies—as well as the recipients of notices — concerning the minimum requirements of due process in these important matters affecting property owners and their communities and neighbors, who are affected by code violations, nuisances, and/or property conditions that often severely impact public health, welfare and safety. In addition, cities and other public agencies often interact with recalcitrant property owners who may purposely avoid notice, as was suggested in the opinion. Cities, property owners, and the community need clear authority supporting the fact that, when all reasonable efforts are made to provide notice as to code enforcement activities, corrective action can be taken by agencies without being in violation of due process. Many cities within the State follow the International Property Maintenance Code, and thus the specific notice procedures at issue in the opinion would also be clarified and affirmed for the benefit of cities, public agencies, property owners, and others, and providing greater certainty in administrative proceedings. Further, publication of the opinion may aid in avoiding the expenditure of public money in disputes relating to notice, thus conserving increasingly scarce local public resources.

Publication of the Court's opinion would directly and clearly affirm the City's ability to provide notice in compliance with applicable building code provisions, by way of certified mail and posting on real property, in satisfaction of due process. The opinion supports, furthers, and adds depth to prior decisions of the Court of Appeal and thus would be an appropriate addition to the published opinions of this Court.

For the foregoing reasons, the League of California Cities, on behalf of its members, respectfully requests that this Court order publication of the opinion in *Rasooly*. The opinion would extend the holding and reasoning of prior precedent to a new factual situation, and would serve an important public interest in guiding and clarifying critical municipal activities.

Respectfully submitted,



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