

CITY OF ALAMEDA RESOLUTION NO. _____

DENYING APPEALS FILED BY BRIAN TREMPER AND LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 304 AND APPROVING A FINAL DEVELOPMENT PLAN AND DESIGN REVIEW TO ALLOW THE CONSTRUCTION OF A 172-ROOM HOTEL AND RESTAURANT ON THE HARBOR BAY BUSINESS PARK SHORELINE AT 2900 HARBOR BAY PARKWAY (PLN18-0381)

WHEREAS, Robert Leach for Harbor Bay Hospitality, LLC submitted an application requesting Design Review and Development Plan Amendment for the construction of a new 172-room five-story hotel and restaurant located on approximately 5.5 acres within the Harbor Bay Business Park, as case number PLN18-0381 (“project”); and

WHEREAS, the subject property is designated Business Park on the General Plan Diagram; and

WHEREAS, the subject property is located within the C-M-PD, Commercial Manufacturing - Planned Development District; and

WHEREAS, the Planned Development for the Harbor Bay Business Park was approved by PD-81-2, and subsequently amended by PDA-85-4, PDA05-0003, PLN07-061, and PLN15-0092; and

WHEREAS, Condition #2 of Resolution No. 1203 which approved the Business Park requires that for each development proposal within the Business Park a Final Development Plan be reviewed by Community Development Department staff for compliance with the standards and conditions of the Business Park Final Development Plan and then be brought before the Planning Board; and

WHEREAS, on October 8, 2018, the Planning Board held a study session on the project and provided comments on the proposed design and development plan amendment; and

WHEREAS, the application was agendized for the Planning Board hearing of December 10, 2018, and public notices were duly distributed; and

WHEREAS, on December 10, 2018, the Planning Board independently reviewed, considered, and determined based on substantial evidence in light of the whole record that no further review pursuant to the California Environmental Quality Act (CEQA) is required for the proposed project because the proposed modifications to the approved development result in no new significant or substantially more severe environmental effects than were previously identified in the existing environmental documents; and

WHEREAS, on December 10, 2018, the Planning Board approved the Design Review and Development Plan Amendment for PLN 18-0381, subject to findings and conditions of approval; and

WHEREAS, on December 18, 2018, appellant Brian Tremper filed a timely appeal of the Planning Board's decision to approve the project; and

WHEREAS, on December 19, 2018, appellant Laborers International Union of North America, Local Union 304 filed a timely appeal of the Planning Board's decision to approve the project; and

WHEREAS, after giving due notice to the appellants, the applicant, all interested parties, and the public, the appeals came before the City Council in a duly noticed public hearing on February 5, 2019; and

WHEREAS, the appellants, the applicant, supporters of the application, those opposed to the application and interested neutral parties were given the opportunity to participate in the public hearing by submittal of oral and/or written comments; and

WHEREAS, the City Council held a de novo public hearing on February 5, 2019, on the final development plan and design review application at which time the Council considered the entirety of the record, including all submitted materials and public comments regarding the application; and

WHEREAS, the public hearing on the appeals was closed by the City Council on February 5, 2019; and

WHEREAS, the City Council considered the appeals, the public testimony, and all pertinent maps and reports and evidence in the record as a whole, and made the following findings concerning the project.

NOW, THEREFORE, BE IT RESOLVED, that the City Council makes the following findings regarding the California Environmental Quality Act (CEQA):

- A. The City Council independently finds and determines that this Resolution complies with CEQA, as no further environmental review is required for the proposed amendment to the Development Plan pursuant to Public Resources Code section 21166 and section 15162 of the California Environmental Quality Act Guidelines because there have been no changes to the project or the circumstances in which it is undertaken that would result in a new significant or substantially more severe environmental effect than was identified in the previously certified Environmental Impact Report for Harbor Bay Isle and related Addendum (Previous CEQA Documents).
- B. The project site has no value as habitat for endangered, rare or threatened species. The Previous CEQA Documents analyzed the impacts of Harbor Bay development

on wildlife and migratory birds. The biological survey for the proposed hotel concludes that the proposal does not substantially change the determination of the previously certified EIR. The area of the proposed development is currently a vacant 5.5 acre site. The vacant site has no habitat value for any endangered, rare, or threatened wildlife species. A survey for burrowing owls and sensitive species was conducted by Monk & Associates Environmental Consultants at the project site on September 10, 2018, and no evidence of the presence of these species were observed on or within a zone of influence of the site.

- C. Approval of the proposed project modifications would not result in any substantial changes in the environmental determination in the Previous CEQA Documents in regards to traffic, noise, and air navigation. The previously certified Harbor Bay Isle EIR analyzed the impacts of the Harbor Bay development on traffic, noise, and air navigation. The traffic analysis, noise analysis, and Airport Land Use Commission analysis conclude that the proposed hotel facility will not substantially change the determinations of the previously certified EIR. A traffic and parking analysis conducted by Abrams and Associates on November 14, 2018 shows that the new hotel, restaurant, and ferry parking proposal does not result in any significant traffic or parking impacts to the surrounding area. The project also received an approval letter from the Alameda County Airport Land Use Commission on September 27, 2018 in regard to compliance with the safety, noise, and height development requirement of the adjacent Oakland Airport. The Noise analysis conducted by Saxelby Acoustics on September 5, 2018 determined that the project can meet city, state, and county requirements in regard to noise levels through the implementation of standard CNEL building requirements. The proposed project modifications will not result in any significant traffic, noise, air quality or water quality impacts because the proposed hotel use is consistent with the uses analyzed by the Harbor Bay Isle Environmental Impact Report.

BE IT FURTHER RESOLVED, that the City Council, having independently heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the application, the Planning Board's decision, and the appeals, hereby finds and determines that the appellants have **not** shown that the Planning Board's decision was not supported by substantial evidence in the record. This decision is based, in part, on the February 5, 2019 City Council staff report and the October 8, 2018 and December 10, 2018 Planning Commission staff reports, each of which is hereby incorporated by reference as if fully set forth herein, on the reports and testimony provided at the hearing, and on the City's General Plan, Zoning Code, and other planning regulations as set forth below; and

BE IT FURTHER RESOLVED, that the appeals are hereby denied, and the Planning Board's decision to approve the Design Review and Development Plan Amendment for the construction of a new 172-room five-story hotel and restaurant located on approximately 5.5 acres within the Harbor Bay Business Park, is affirmed, subject to the findings for approval and conditions of approval adopted by the Planning Board, each of which is

hereby incorporated by reference and separately and independently adopted by this Council in full as though set forth herein; and

BE IT FURTHER RESOLVED, that in support of the City Council's decision to deny the appeals and approve the project, the City Council affirms and adopts as its own independent findings and determinations: (1) the October 8, 2018 Planning Board staff report for the project, (2) the December 10, 2018 Planning Board staff report approving the project (including without limitation the discussion, findings and conclusions, each of which is hereby separately and independently adopted by this Council in full); and (3) the February 5, 2019 City Council staff report (including without limitation the discussion, findings and conclusions, each of which is hereby separately and independently adopted by this Council in full); and

BE IT FURTHER RESOLVED, the record before this Council relating to this project application and the appeals includes, without limitation, the following:

1. The application, including all accompanying maps and papers;
2. All plans submitted by the applicant and its representatives;
3. The Petitions for Appeal and all accompanying statements and materials;
4. All final staff reports, final decision letters, and other final documentation and information produced by or on behalf of the City, including without limitation all related/supporting final materials, and all final notices relating to the application and attendant hearings;
5. All oral and written evidence received by the Planning Board and City Council during the public hearings on the application and appeals; and all written evidence received by relevant City staff before and during the public hearings on the application and appeals; and
6. All matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan; (b) the Alameda Municipal Code; (c) all applicable State and federal laws, rules and regulations; and

BE IT FURTHER RESOLVED, that the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are located at the Office of the City Clerk located at 2263 Santa Clara Avenue, Room 380, Alameda, CA 94501; and

BE IT FURTHER RESOLVED, if litigation is filed challenging this decision, or any subsequent implementing actions, then the time period to begin actual construction of authorized construction-related activities stated in Condition of Approval #24 of Planning Board Resolution No. PB-18-23 is automatically extended for the duration of the litigation. The applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Alameda, the Alameda Planning Board and their respective agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Alameda, Alameda Planning Board and their respective agents, officers or employees to attack, set aside, void or annul, an approval by the City of Alameda, the Planning, Building and Transportation Department, Alameda

Planning Board or City Council relating to this project. The City shall notify the applicant of any claim, action or proceeding and the City shall cooperate in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action or proceeding; and

BE IT FURTHER RESOLVED, the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

* * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 5th day of February 2019, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the seal of said City this 6th day of February 2019.

Lara Weisiger, City Clerk
City of Alameda

Approved as to Form:

Michael H. Roush, Interim City Attorney
City of Alameda