

CITY OF ALAMEDA RESOLUTION NO. _____

CALLING AN ELECTION IN THE CITY OF ALAMEDA ON NOVEMBER 4, 2014, FOR THE SUBMISSION OF A PROPOSED ORDINANCE ENTITLED "ALAMEDA OPEN SPACE FISCAL RESPONSIBILITY ORDINANCE PERTAINING TO THE INITIATIVE MEASURE TO AMEND CITY OF ALAMEDA GENERAL PLAN INCLUDING THE 2007-2014 HOUSING ELEMENT AND THE ZONING ORDINANCE TO CLASSIFY APPROXIMATELY 3.899 ACRES OF LAND ADJACENT TO MCKAY AVENUE TO OPEN SPACE"

WHEREAS, pursuant to authority provided by Sections 1405(b) and 9215(b) of the Elections Code a proposed ordinance has been filed with the City Council of the City of Alameda to submit to the voters a measure entitled, "Alameda Open Space Fiscal Responsibility Ordinance Pertaining to the Initiative Measure to Amend City of Alameda General Plan Including the 2007-2014 Housing Element and the Zoning Ordinance to Classify Approximately 3.899 Acres of Land Adjacent to McKay Avenue to Open Space;" and

WHEREAS, the City Council has not voted in favor of the adoption of the ordinance; and

WHEREAS, the City Council is authorized and directed by statute to submit the proposed ordinance to the voters.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ALAMEDA THAT:

Section 1. Pursuant to the requirements of the Charter of the City of Alameda and general law, there is called and ordered to be held in the City of Alameda, California, on Tuesday, November 4, 2014, a General Municipal Election for the purpose of submitting the following proposed ordinance:

<u>Shall the Alameda Open Space Fiscal Responsibility Ordinance be adopted?</u>	YES
	NO

**BOLD/UNDERLINED TEXT ABOVE CAN CHANGE;
TITLE LIMITED TO 75 WORDS**

Section 2. The text of the proposed measure to be submitted to the voters is attached as Exhibit A.

Section 3. The ballots to be used at the election shall be in form and content as required by law.

Section 4. The City Clerk is hereby directed to cause notice of the measure to be published once in the official newspaper of the City of Alameda, in accordance with Section 12111 of the Elections Code and Section 6061 of the Government Code.

Section 5. The City Council adopts the provisions of section 9285(a) of the Elections Code to permit rebuttal arguments, if arguments have been filed in favor of or against the measure.

Section 6. Notice of the time and place of the election on this proposed measure is hereby given, and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

Section 7. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 8. The City Clerk is hereby authorized, instructed and directed to procure and furnish (or cause to be procured and furnished) any and all official ballots, notices, printed matter and all other supplies, equipment and paraphernalia that may be necessary to properly and lawfully conduct the election.

Section 9. The polls for the special election shall be open at 7:00 AM on the day of said election and shall remain open continuously from said time until 8:00 PM of the same day when the polls shall be closed, pursuant to Elections Code Section 10242, except as provided in Section 14401 of the Elections Code.

Section 10. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

Section 11. This action is not a project and is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15378(b)(3) of CEQA Guidelines, as it concerns the submittal of a proposal to the voters of the City. In addition, the action is exempt pursuant to Section 15378(b)(4) which excludes from the definition of "project" fiscal activities that do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment and Section 15061(b)(3) which provides that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Section 12. The City Clerk is hereby directed to file a certified copy of this resolution with the Alameda County Clerk of the Board of Supervisors and the County Registrar of Voters in sufficient time so that the measure may be included in the November 4, 2014 Election ballot.

ALAMEDA OPEN SPACE FISCAL RESPONSIBILITY MEASURE

The People of the City of Alameda do ordain as follows:

SECTION 1. TITLE

This measure shall be known and referred to as the “Alameda Open Space Fiscal Responsibility Measure” (the “Measure”).

SECTION 2. PURPOSE

To ensure that the adoption by the electorate of the “Initiative for Measure to Amend City of Alameda General Plan including the 2007-2014 Housing Element and the Zoning Ordinance to Classify Approximately 3.899 acres of Land adjacent to McKay Avenue to Open Space” (the “Initiative”) will not impose on the City of Alameda (the “City”) an unfunded liability to pay for and maintain the property, requiring diversion of millions of dollars of City revenues currently used for City parks, libraries, police, fire and other City services.

SECTION 3. FINDINGS

The people of the City of Alameda find and declare as follows:

- A. The 3.899 acre portion of Alameda County Assessor’s Parcel No. 74-1305-026 (the “Property”) is currently zoned for residential development.
- B. The Property is currently owned by the federal government. The City of Alameda understands that the federal government is under contract to sell the Property to a private developer who wishes to build residential housing on the Property in accordance with the current zoning.
- C. The Initiative, if adopted by the voters, will change the General Plan designation and zoning on the Property to Open Space, thereby preventing the development of residential housing on the Property.
- D. The Property is and has been the subject of extensive litigation brought by the East Bay Regional Park District (the “Park District”), the Federal Government and other regional agencies asserting competing claims as to its use. The City of Alameda has already incurred significant legal fees in defending itself in a lawsuit brought against it by the Park District.
- E. The City is concerned that passage of the Initiative may cause the owner of the Property, or other holder of rights to the Property, to file a lawsuit for inverse condemnation against the City. While the City would defend such a lawsuit vigorously, there is risk in litigation, and if such a claim succeeds, a court could

order the City to pay the Property owner the fair market value of the Property and related monetary relief.

- F. The City of Alameda could not pay an inverse condemnation judgment against the City, legal fees associated with responding to an inverse condemnation lawsuit, and costs of continued maintenance of the Property if the City is forced to acquire it, without diverting funds from existing services such as City parks, libraries, police, fire, and other City services, or obtaining voter approval of new taxes.
- G. Alternately, to ensure that the adoption of that Initiative would not impose on the City of Alameda an unfunded liability to pay for and maintain the Property, the City could sell the Property if it was able to locate a purchaser who would agree to pay an amount equal to the sums identified in subsection F above. The Park District has publicly stated it wants to acquire the Property and has funds identified to do so as a result of Measure WW, a tax measure approved by the voters of Alameda in 2008 to provide funds to the Park District for this purpose.

SECTION 4. AMENDMENT TO ALAMEDA MUNICIPAL CODE

The Alameda Municipal Code is hereby amended by adding section [REDACTED] as follows:

Alameda Municipal Code section [REDACTED]. If adopted by the voters, the Initiative shall become effective upon passage, as provided in Section 6 of that Initiative. This Measure does not alter the effective date of that Initiative.

If, within 120 days after the Initiative becomes effective, the City is sued for inverse condemnation or a taking based on the General Plan designation and/or zoning change effected by the Initiative, the City Council shall be authorized to take such measures as are necessary to mitigate any possible detrimental impacts on its ability to fund necessary services such as provision of City parks, libraries, police, fire and other city services until such time as the lawsuit is finally resolved in favor of the City or, if the lawsuit results in a final inverse condemnation judgment in favor of the plaintiff and against the City, until such time as:

- a) there is a vote of the electorate of the City authorizing new or increased taxes sufficient to pay the judgment and all accrued interest thereon, pay all legal fees associated with defending the inverse condemnation claim, make any required improvements to the Property, and pay for necessary maintenance of the Property; OR
- b) the City is able to sell the Property to a third party, including but not limited to the East Bay Regional Parks District which has publicly

stated it has 2008 Measure WW funds available for this purpose, pursuant to a purchase agreement whereby the new owner would agree to pay to the City a purchase price in a sum equal to the amount of any judgment and all accrued interest thereon, pay all legal fees associated with defending the inverse condemnation claim, make any required improvements to the Property and pay for necessary maintenance of the Property, at no cost to the City.

If the voters do not adopt the Initiative at the November 4, 2014 election, this section will not be needed and shall be deemed null and void.

SECTION 5. INTERPRETATION AND SEVERABILITY

- A. This Measure shall be broadly construed in order to achieve the purpose stated herein. The provisions of this Measure shall be interpreted and implemented by the City and others in a manner that is fully consistent with, and facilitates, the purpose set forth in this Measure.
- B. If any portion, section, subsection, paragraph, subparagraph, sentence, clause, phrase or application of this Measure is held invalid or inapplicable by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity or applicability of any other part of this Measure. Consistent with that, the provisions and applications of this Measure shall be deemed severable, and the voters expressly and deliberately declare that each portion, section, subsection, paragraph, subparagraph, sentence, clause, phrase or application of this Initiative would have been enacted irrespective of the fact that one or more other parts or applications is found to be invalid or inapplicable.

SECTION 6. OTHER MEASURES

This Measure is intended to be complementary and supplemental to the Initiative and is not intended to conflict or compete with that measure in any way. In the event that both this Measure and the Initiative are approved by a majority of voters at the same election, it is the intent of the voters that both measures be given full force and effect.

SECTION 7. AMENDMENT AND REPEAL.

This Measure may be amended or repealed only by a majority of the voters of the City of Alameda voting in an election held in accordance with law.

SECTION 8. EFFECTIVE DATE.

Pursuant to state law, if this Measure is approved by a majority of the voters voting on the issue, the Measure shall become effective upon the earliest date legally possible after the elections official certifies the vote on the Measure.

* * * * *

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 regular meeting of the City Council assembled on the 1st day of July, 2014, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of the said City this 2nd day of July, 2014.

Lara Weisiger, City Clerk
City of Alameda