

CITY OF ALAMEDA ORDINANCE NO. \_\_\_\_\_

New Series

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

### SECTION 1. PURPOSE

To ensure that the adoption by the City Council of 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" ("Initiative Ordinance") 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 police, fire, library and other city services.

### SECTION 2. FINDINGS

The City Council of the City of Alameda finds and declares as follows:

WHEREAS, the 3.899 acre portion of Alameda County Assessor's Parcel No. 74-1305-026 (the "Property") is currently zoned for residential development and its General Plan designation is Medium Density Residential; and

WHEREAS, the Property is currently owned by the federal government and the City of Alameda is informed 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 and General Plan designation; and

WHEREAS, on February 10, 2014, a Notice of Intent to Circulate a Petition was filed in the Alameda City Clerk's Office for a measure seeking to amend the City's General Plan, including the 2007-2014 Housing Element and the Zoning Ordinance to classify the Property as open space; and

WHEREAS, on February 25, 2014, the City Attorney transmitted a Title and Summary to the initiative proponents and on April 30, 2014, the Petition was filed with the City Clerk and transmitted to the County Registrar of Voters to examine the signatures; and

WHEREAS, based on a random sample examination, the County Registrar determined that the initiative petition contained sufficient valid signatures; and

WHEREAS, the City Council held a public hearing on June 3, 2014 to consider various options pertaining to the initiative and at the same hearing, the Council directed staff to conduct an Impacts Analysis pursuant to Election Code 9212 and bring back an Impacts Report on the effects of the initiative within 30 days; and

WHEREAS, on July 1, 2014, the City Council received an Impacts Report analyzing the impacts of the Initiative and was advised of the potential fiscal impact to the City's General Fund; and

WHEREAS, pursuant to the Election Code Section 9215, the City Council has the option to adopt the Initiative by ordinance; and

WHEREAS, on July 1, 2014, the City Council introduced an ordinance to adopt the Initiative to change the General Plan designation of the Property from Medium Density Residential to Parks and Public Open Space and change the zoning on the Property to Open Space, thereby preventing the development of residential housing on the Property

WHEREAS, to ensure that the adoption by the City Council of the Initiative will not impose an unfunded liability on the City to pay for and maintain the property, requiring diversion of millions of dollars of City revenues currently used for police, fire, library and other city services; and

WHEREAS, the City is concerned that the Initiative Ordinance may cause the owner of the Property, or other holder of rights to the Property, to file a lawsuit for inverse condemnation or taking against the City; and

WHEREAS, although the City would defend against any such lawsuits 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; and

WHEREAS, 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 police, fire, library, and other city services, or obtaining voter approval of new taxes; and

WHEREAS; alternately, to ensure that the adoption of the Initiative Ordinance 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; and

WHEREAS, such purchasers could potentially include the East Bay Regional Parks District as Measure WW, approved by voters in 2008, authorized funding for the District that could be used to acquire and improve the Property.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Alameda that:

If, within 120 days after the Initiative Ordinance becomes effective, the City is sued for inverse condemnation, ~~or~~ a taking, or any other cause of action based on the General Plan designation and/or zoning change effected by the Initiative Ordinance, the City Council shall be authorized to take such measures, including but not limited to suspension or stay of the effectiveness of the Initiative Ordinance, as are necessary to mitigate any possible detrimental impacts on the General Fund 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, or other 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 or taking~~ claim and lawsuit, make any required improvements to the Property, and pay for necessary maintenance of the Property; OR
- b) the City Council cuts services or modifies the City's budget in an amount sufficient to pay the judgment and all accrued interest thereon, pay all legal fees associated with defending the claim

and lawsuit, make any required improvements to the Property, and pay for necessary maintenance of the Property; OR

c 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 claim and lawsuit, make any required improvements to the Property, and pay for necessary maintenance of the Property; OR

~~a) d) Any combination of the above. judgment and all accrued interest thereon, pay all legal fees associated with defending the inverse condemnation or taking claim, make any required improvements to the Property and pay for necessary maintenance of the Property, at no cost to the City.~~

### SECTION 3. INTERPRETATION AND SEVERABILITY

- A. This Ordinance shall be broadly construed in order to achieve the purpose stated herein. The provisions of this Ordinance 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 Ordinance.
- B. If any portion, section, subsection, paragraph, subparagraph, sentence, clause, phrase or application of this Ordinance 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 Ordinance. Consistent with that, the provisions and applications of this Ordinance 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 4. OTHER MEASURES OR ORDINANCES.

This Ordinance is intended to be complementary and supplemental to the Initiative Measure to Amend the 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  
Ordinance and is not intended to conflict or compete with that measure in any way.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.