

CITY OF ALAMEDA RESOLUTION NO. _____

SUBMITTING TO THE ELECTORS AN ORDINANCE ENTITLED
“MCKAY AVENUE OPEN SPACE FISCAL RESPONSIBILITY
SUPPLEMENTAL MEASURE” AT THE SPECIAL MUNICIPAL
ELECTION TO BE HELD IN THE CITY OF ALAMEDA ON TUESDAY,
APRIL 9, 2019

WHEREAS, pursuant to the City Charter and Elections Code section 9222, the Council of the City of Alameda hereby proposes to submit to the voters of said City an ordinance entitled “McKay Avenue Open Space Fiscal Responsibility Supplemental Measure” to be voted upon at the April 9, 2019, Special Election of the City of Alameda.

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

Section 1. The Council of the City of Alameda hereby proposes on its own motion a measure be submitted to the voters at the April 9, 2019, special municipal election, to read as follows:

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

MCKAY AVENUE OPEN SPACE FISCAL RESPONSIBILITY SUPPLEMENTAL
MEASURE

The People of the City of Alameda ordain as follows:

SECTION I. FINDINGS.

- A. The voters of Alameda have qualified a measure for the ballot to change the land use designations for a 3.65-acre parcel on McKay Avenue from Office/Administrative-Professional to Open Space (the “McKay Avenue Open Space Initiative”). If approved, the measure would limit the use of the property to parks and recreational uses, and it would prohibit the development of a wellness center for senior assisted living and supportive services for the homeless that is currently planned for the property.
- B. The City of Alameda expects the owner of the McKay Avenue parcel that is subject to the McKay Avenue Open Space Initiative to file a lawsuit against the City for inverse condemnation if the voters enact the McKay Avenue Open Space Initiative. The law on this subject is unsettled. If an inverse condemnation claim succeeds, a court could order the City to pay the owner the fair market value of the property. The City would then own and be responsible for the property.

- C. The estimated fair market value of the property is approximately five million, six hundred thousand dollars (\$5,600,000). For comparison purposes, \$5,600,000 is equivalent to approximately two to three years of operating budget for the City's Recreation and Parks Department.
- D. The estimated one-time expense for the City to make the property safe and usable as park and open space would likely exceed eleven million, seven hundred thousand dollars (\$11,700,000). After making these improvements, the City would have annual maintenance costs of approximately one hundred and forty thousand dollars (\$140,000).
- E. To limit the cost, the City could leave the property unimproved. The City would need to spend an estimated costs for maintenance and security are approximately \$20,000 per month or \$240,000 per year for evening security and grounds and facility maintenance.
- F. Unless the City imposes new or increased taxes to pay for these costs, the City could not pay for the acquisition, improvement or maintenance of the McKay Avenue property without diverting funds from existing services such as police, fire, library and other essential City services and/or existing park improvement projects, such as Jean Sweeney Park or Estuary Park.
- G. This measure is intended to be a companion measure to the McKay Avenue Open Space Initiative and is intended to supplement that measure by providing a mechanism to ensure that the measure can be implemented in a fiscally responsible manner if the voters approve it.

SECTION 2. PURPOSE.

- A. To provide for an orderly and responsible public vote on whether to authorize new or increased property taxes or other revenue sources that will be required to implement the McKay Avenue Open Space Initiative if the voters adopt the initiative and the courts order the City to either pay the owner for the property or repeal the initiative.
- B. To ensure that the adoption by the electorate of the McKay Avenue Open Space Initiative will not impose on the City of Alameda an unfunded liability to pay for and to maintain the property, requiring diversion of potentially millions of dollars of City revenues currently used for park improvements, police, fire, library and other essential City services.

SECTION 3. INITIATION OF LITIGATION.

If the voters adopt the McKay Avenue Open Space Initiative at the April 9, 2019, special election, the City Attorney shall promptly, and in any event no later than six (6) months after the date that the City Council certifies passage of the McKay Avenue Open Space Initiative, initiate appropriate

litigation in the California state courts to obtain a judicial declaration whether enforcement of the initiative will require the City of Alameda to compensate the owner for the value of the McKay Avenue property.

The McKay Avenue Open Space Initiative shall not take effect until and unless:

1. There is a final judgment by a court of competent jurisdiction in the litigation, including any available relief in appellate courts, regarding whether or not the enforcement of the McKay Avenue Open Space Initiative will require the City of Alameda to compensate the owner for the value of the McKay Avenue property; and

2. In the event of a final judgment by a court of competent jurisdiction that enforcement of the McKay Avenue Open Space Initiative will require the City of Alameda to compensate the owner for the value of the McKay Avenue property, the voters of the City of Alameda approve a measure or measures to authorize new or increased taxes, fees, or assessments sufficient to compensate the property owner, improve or fence the property, and maintain the property once acquired. The City Council shall be responsible for submitting the appropriate measure or measures to the voters of the City of Alameda at the next general municipal election following the final judgment.

SECTION 4. EFFECT OF MEASURE

This measure shall be null and void if (1) the voters do not adopt the McKay Avenue Open Space Initiative at the April 9, 2019, special election, or the initiative is not given effect, or (2) the City enters into an out of court settlement with respect to the McKay Avenue property that is approved by the City Council.

SECTION 5. AMENDMENT OR REPEAL

This measure may be amended or repealed only by a majority of the voters voting in an election thereon.

SECTION 6. INTERPRETATION

This measure shall be interpreted to be consistent with all Federal and State laws, rules and regulations.

SECTION 7. COMPANION MEASURE

This measure is intended to be a companion measure to the McKay Avenue Open Space Initiative and to supplement that measure by providing a mechanism to ensure that the measure can be implemented in a fiscally responsible manner. It is the intent of the voters that this measure does not conflict with the McKay Avenue Open Space Initiative

and that the two measures shall both be given effect if the voters approve each of them.

Section 2. The City Council, pursuant to the authorization provided by section 9222 of the Elections Code, hereby submits the proposal to the qualified electors of the City of Alameda at the April 9, 2019, special municipal election to be held on that date.

Section 3. The proposal shall be designated on the ballot as “Proposed Ballot Measure of the City of Alameda” and shall be set forth as the first City of Alameda measure on the ballot if more than one such measure is submitted, as follows:

MEASURE: Proposed Ballot Measure of the City of Alameda

Shall an ordinance suspending the effective date of Measure _____ on this ballot until the voters at a future election authorize funding to pay for the property affected by Measure _____, if the City is required by a court to compensate the owner for that property, be adopted?	YES
	NO

Section 4. Pursuant to Elections Code section 9280, the City Clerk shall transmit a copy of the proposed ballot measure to the City Attorney, who shall prepare an impartial analysis of the proposed ballot measure showing the effect of the measure on existing law and the operation of the measure. The impartial analysis shall not exceed 500 words in length.

Section 5. The Council may prepare a ballot argument pursuant to Resolution No. 12317.

Section 6. The ballot arguments for and against the proposed ballot measure shall not exceed 300 words in length and the rebuttal arguments shall not exceed 250 words in length.

Section 7. If the proponents of the McKay Avenue Open Space Initiative withdraw the measure from the ballot by January 11, 2019, this Resolution shall be deemed null and void and shall have no effect.

* * * * *

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 2nd day of January, 2019, 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 3rd day of January, 2019.

Lara Weisiger, City Clerk
City of Alameda

Approved as to Form:

Michael H. Roush, Interim City Attorney
City of Alameda