

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Lara Weisiger
City Clerk

Date: November 3, 2009

Re: Adopt a Resolution Calling an Election in the City of Alameda for the Purpose of Submitting to the Electors an Initiative Regarding Development at Alameda Point and Setting the Election to be Consolidated with the County's February 2, 2010 Election

BACKGROUND

On March 26, 2009, SunCal Companies submitted to the City Clerk's Office a Notice of Intent to Circulate a Petition amending the City Charter, General Plan, and zoning ordinance and adopting a specific plan and development agreement. The Petition containing the signatures was filed on September 23, 2009, at which time it was transmitted to the Registrar of Voters for examination of the signatures.

On October 14, 2009, the City Clerk received the Registrar of Voters' report that the Petition contains a total of 9,185 signatures, of which 423 signatures were found to be sufficient. This represents 123% of the total number of signatures needed to qualify the initiative based on the random sample examination. Because 15% of the qualified voters of Alameda signed the Petition, a Certificate of Sufficiency has been transmitted to the City Council, and the Council is required to submit the proposal to the voters.

DISCUSSION

State elections law does not specifically address an initiative that has both a Charter amendment and an ordinance. An initiative that is only a Charter amendment may be set for election 88 days or more from the calling of the election, under Sec. 9255. An ordinance initiative with 15% of qualified voters' signatures can be adopted by the City Council or set for election 88 to 103 days out, with some exceptions, under Secs. 9214 and 1405. An ordinance initiative with 10% of qualified voters' signatures generally is required to be submitted to voters at the next regular municipal election at least 88 days out, under Sec. 9215. Given that the initiative is not solely a Charter amendment, and it has been signed by 15% of voters, the election should be called for a date no sooner than 88 days or more than 103 days from the date of the City Council Resolution to set the election (Elections Code, Sections 1405, 9214). The next available special election within Alameda County will be held on February 2, 2010. As this date is within the 88-103 day window, the City Council should set the Initiative for February 2, 2010.

City Council
Report Re:
Agenda Item #6-B
11-3-09

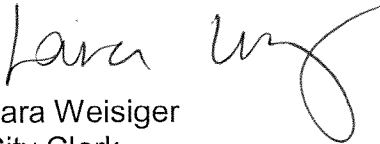
FINANCIAL IMPACT

The estimated cost of placing this measure on the County's February 2, 2010 ballot is between \$235,000-\$325,000; this estimate does not include the cost of printing the entire 200 plus page initiative ballot measure in the event that a citizen requests it in accordance with Sec. 9280. As of the date of this report, SunCal has not committed to reimbursing the City for the cost of the election.

RECOMMENDATION

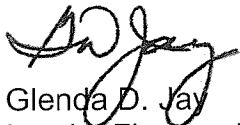
Adopt the Resolution calling an election in the City of Alameda for the purpose of submitting to the electors an Initiative regarding development at Alameda Point, and setting the election to be consolidated with the County's February 2, 2010 election.

Respectfully submitted,



Lara Weisiger
City Clerk

Approved as to funds and account,



Glenda D. Jay
Interim Finance Director

EXTERNAL CORRESPONDENCE

The City Clerk's office received the attached external correspondence regarding Agenda Item #6-B on the 11-03-2009 Regular City Council Agenda

Case Details


[Print](#) [Close](#)

Case Number: 18416

Status: Resolved

Tags:

Request Type: Complaint

Customer: howard, david
external customer
 928 taylor ave
Alameda CA 94501
510-673-0998
mowster@sbcglobal.net

Location of Request:

Facility: N/A

Preferred Contact Method: Email

Submitted By: howard, david
customer

Primary Owner: Acord, Liz

Topic: City Clerk's Office>Council
Records (City Clerk)

Date/Time Created: 10/21/2009 14:13

Date/Time Closed: 10/26/2009 09:11

Original Request

I just want to go on record that I still oppose SunCal's initiative for Alameda Point, and I don't buy all this malarkey about making changes to the development agreement, or to the DDA. The development agreement forms part of the initiative and can't be changed.

And I don't trust SunCal to hold to any promises about a DDA PAST the vote on the initiative. In 2007, SunCal stood before you (Council) and said they had \$600 million in a "fully discretionary" fund with money from Lehman. Now, earlier this year, SunCal's execs - Elleff and Cook - swore under penalty of perjury in court that Lehman never came up with that money. I will send the court documents to you if you like.

SunCal can't be trusted. Say "NO" to SunCal!

Customer Communications *

No records of communication activities found

* Customer Communications are visible on the customer's case status page.

Internal Activity

Internal Notes

Date	From	Note
10/26/09 09:11	Weisiger, Lara	Details > Printed to be included in Council record
10/21/09 14:18	Baines, Christina	Details > For the Record...

Tasks

Complete Due Subject Assigned By Assigned To Status

Case Contacts

Role	Name	Email	Phone
Primary Owner	Acord, Liz	eacord@ci.alameda.ca.us	510/747-4803
Secondary Owner	Stoker, Lana	lstoker@ci.alameda.ca.us	
Past Owner	Baines, Christina	cbaines@ci.alameda.ca.us	510-747-4701

Attachments

No attachments found

From: "David Howard" <mowster@sbcglobal.net>
To: <lweisige@ci.alameda.ca.us>
Date: 10/23/2009 5:06 PM
Subject: For entering into the Nov. 3rd City Council packet.

Hi - don't know of AMG fwd'd this on to you or not...

-----Original Message-----

From: Ann Marie Gallant [mailto:AGallant@ci.alameda.ca.us]
Sent: Friday, October 23, 2009 3:57 PM
To: mowster@sbcglobal.net
Cc: Beverly Johnson; Doug DeHaan; Frank Matarrese; Lena Tam; Marie Gilmore
Subject: RE: \$500K for Oak Knoll...

City Clerk's office will handle per policy. TX

>>> "David Howard" <mowster@sbcglobal.net> 10/23/2009 3:34 PM >>>
Please enter this into the formal record as input for the November 3rd
Alameda City Council Meeting

In SunCal's RFP responses to the City of Alameda, in early 2007, they bragged of a "\$600 million fully discretionary fund" funded with Lehman's money. In court filings over the past two months, SunCal's CEO himself swore under penalty of perjury that Lehman "never came close to satisfying" that funding. Court documents also show that SunCal was to have put in \$66 million into the same fund, making it a \$666 million fund. But less than a month after Lehman Brothers filed for bankruptcy, SunCal closed up shop at Oak Knoll - pulled their staff, closed their construction trailer, etc. Evidently they didn't even have the \$66 million they promised. (Happy to share the court documents if you want to see them.) Same guy - Pat Keliher - in charge of both Oak Knoll and Alameda Point.

Court documents also show that SunCal's CEO and wife are personally on the hook for \$230 million in loan guarantees on Lehman/SunCal projects - and Lehman's attorney's are NOT letting them wriggle off. What happens to SunCal and their projects when Bruce Elieff and wife file for personal bankruptcy?

So I ask you - who is performing due diligence on the DE Shaw-SunCal deal now, to make sure we don't get a repeat of this at Alameda Point? I remember Council/CIC/ARRA giving this direction to development services staff some months ago, but never saw the fruits of that effort.

<http://actionalameda.org/actionalamedanewsblog/2009/10/06/revitalize-alameda-point-suncal-didnt-have-as-much-lehman-money-as-they-presented/>

David Howard
928 Taylor Ave
Alameda, CA 94501

From: Don and Jeannette
Sent: Friday, October 23, 2009 3:18 PM
To: Joe Aguirre
Subject: RE: \$500K for Oak Knoll...

Dear Mr. Aguirre:

SunCal's recent press releases appear to have been deliberately designed to mislead the public. I can't say that I am not surprised. As of an hour ago there was nothing in the docket re the release of \$500,000 for use at Oak Knoll. Further, it doesn't appear to be coming anytime soon as your company's attorney objected just yesterday, in documents filed with the

court, over how the money was to be spent (to include half of it being used to purchase insurance policies to protect against suits by the city of Oakland and concerned neighbors). We both know that \$250,000 will pay for one grazing of the property by goats or a few, marginally trained, armed security personnel for 3-4 months. This is nothing considering what is legally required at the site. Thus far we have SunCal contributing zero-NOTHING- toward any of the required abatement at Oak Knoll and Lehman offering to loan SunCal \$500K for token work at the site. This is laughable in light of what needs to be done at Oak Knoll and there being \$6 billion legally available from non-bankrupt subsidiaries to comply with Oakland's lawful order to abate. SunCal ought to exhibit some token amount of good faith and at least get roving security on the property immediately and until such time that the lawyers finish their bickering over such a pathetic amount of money. Failure to do so will bode quite unfavorably for SunCal at Alameda Point.

Donald Mitchell
Sequoyah Hills/Oak Knoll Neighborhood Association

--- On Wed, 10/21/09, Joe Aguirre wrote:

From: Joe Aguirre
Subject: RE: \$500K for Oak Knoll...
To: "Don and Jeannette"
Date: Wednesday, October 21, 2009, 3:34 PM

Dear Mr. Mitchell,

I did some research following your inquiry and here's the information I've obtained.

On Thursday, October 15, Judge Erithe A. Smith of the U.S. Bankruptcy Court in Santa Ana verbally granted in open court SunCal's motion that \$500,000 of cash collateral be released to address urgent matters at Oak Knoll. These matters specifically include weed abatement, wood pile cleanup, the staffing of five security guards onsite around the clock, ongoing fence repairs and a survey of fire hydrants throughout the property to determine their condition. The purpose of this survey is to identify the estimated costs for repairs to the hydrant system.

The court staff is in the process of transferring the judge's verbal order to written form, which she will then sign. Once this order has been signed, we will have the documented authorization in hand that enables the actual release of the funds from Lehman Brothers and the bankruptcy court trustee. We expect this to take place very soon, but we cannot speak for the court and provide an estimate.

As a point of clarification, matters such as verbal orders are typically not immediately posted by the court on the Pacer system. Processing time by court staff is required, the written order must be executed by the judge, and the court staff will then post the legal record in the Pacer system.

SunCal is ready to resume the cleanup of the Oak Knoll property as soon as we obtain the signed authorization, and of course we want to begin this work right away. Our manager in Oakland has already contacted various vendors to handle the cleanup, maintenance and security, and we anticipate that it will only be a matter of days before this gets underway.

For your information, we first filed action against Lehman Brothers in November 2008 in U.S. Bankruptcy Court in New York , and then initiated the current case in January 2009 in U.S. Bankruptcy Court in Santa Ana .

Thank you,

Joe Aguirre

Public Affairs

SunCal Companies

From: Don and Jeannette

Sent: Tuesday, October 20, 2009 2:11 PM
To: Joe Aguirre
Subject: \$500K for Oak Knoll...

Hello, Mr. Aguirre:

I read your 10/19 press release on your Alameda Point website but find nothing in the court documents to support SunCal's published release yesterday that funds have been released for use at Oak Knoll. I have checked U.S. Bankruptcy Court for the Central District of California's docket in the combined Lehman/SunCal case called "Palmdale Hills". As late as today, 6 days after the last bankruptcy court hearing on the Lehman/SunCal case, there still is nothing in the Bankruptcy Court's docket to support anything in SunCal's press release. There is also nothing in the court's old file, for SunCal Oak Knoll, LLC alone, supporting SunCal's press release. Can you clarify this, please?

Thank you,

Don Mitchell

This email has been scanned by the MessageLabs Email Security System.
For more information please visit <http://www.messagelabs.com/email>

CITY OF ALAMEDA RESOLUTION NO. _____

CALLING AN ELECTION IN THE CITY OF ALAMEDA ON
FEBRUARY 2, 2010, FOR THE PURPOSE OF SUBMITTING
TO THE ELECTORS AN INITIATIVE REGARDING DEVELOPMENT
AT ALAMEDA POINT

Approved as to Form

[Signature]
City Attorney

WHEREAS, pursuant to the Charter of the City of Alameda and the general law, an initiative petition has been filed on September 23, 2009 with the Clerk of the City of Alameda, signed by more than 15% of the voters of the city, to submit to the voters a proposed Charter amendment, General Plan Amendment, Community Plan, Specific Plan, zoning ordinance amendment, and development agreement, entitled and hereinafter referenced as the, "Alameda Point Development".

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

Section 1. Pursuant to Elections Code Sections 9255(a)(3) and 9214 the City Council of the City of Alameda does hereby call a special election in the City on February 2, 2010 at which on the Alameda Point Development initiative shall be submitted to the voters of the City.

Section 2.
The City Council hereby declares its intent to consolidate this special election with the Election to be held on February 2, 2010.

Section 3. The ballot label for the measure shall read as follows:

MEASURE: Alameda Point Development Initiative

Shall the City Charter Amendment, and ordinance proposing General Plan Amendments, Zoning Map and Text Amendment and Development Agreement, regarding development of Alameda Point be adopted?	YES
	NO

The text of the proposed initiative is on file in the Office of the City Clerk and incorporated herein by reference.

Section 4. The City Council adopts the provisions of subdivision (a) of section 9285 of the Elections Code to permit rebuttal arguments, if arguments have been filed in favor of or against the Alameda Point Development initiative.

Section 5. Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to

exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk in a time reasonably necessary to prepare and print the analysis.

Section 6. Notice of the time and place of the election on this proposed Charter amendment, General Plan amendment, Community Plan, Specific Plan, zoning ordinance amendment, and development agreement 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 ballot notices, printed matter and all other supplies, equipment and paraphernalia that may be necessary to prepare and lawfully conduct the special 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 and shall then be closed, 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.

* * * * *

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 3rd day of November, 2009, 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 4th day of November, 2009.

Lara Weisiger, City Clerk
City of Alameda