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SECTION I. TITLE

This Initiative shall be known as and may be cited as the Citizens' Planning Initiative for the Albany Waterfront.

SECTION 2. PURPOSE

The purpose of this initiative is to establish a citizens' planning process for the future of the Albany Waterfront in order to ensure that Albany's citizens are able to plan the future of the entire Albany waterfront, including planning for appropriate development within the context of preserving to the maximum extent possible the waterfront as an open space resource for all to enjoy. The initiative specifies required guiding policies, processes, and procedures for the development of a waterfront plan to ensure that the community's desires for open space and Bay access at the waterfront are incorporated in any plan for the future of the racetrack site and that the community's desires are carried out through a community-oriented public planning process.

SECTION 3. FINDINGS

The people of the City of Albany do deliberately find and declare the following:

- a. The Albany Waterfront lands comprise the largest and most significant remaining tract of land in the City suitable for development or as open space. The shoreline itself is an important resource both for the public as a whole and as an amenity that increases the value of any private development in the Waterfront District. Commercial development in close proximity to the shoreline can adversely affect its value. Because of the large size, unique setting, and environmental significance of the waterfront, any change in its use may irreversibly alter the character and composition of the City.
- b. The remaining privately held property is known as the Golden Gate Fields Race Track. It is owned by Magna Entertainment Corporation ("Magna").
- c. Magna, in a partnership with a Southern California developer, Caruso Affiliated, has proposed its own development at Golden Gate Fields Race Track or only portion of the site.
- d. At other race track sites that Magna owns in the State, it has proposed large scale commercial developments that are out of character with the City of Albany.
- e. Magna has also sought to establish casino gambling at its other race track sites in the State. It was the sponsor and largest campaign contributor to the Statewide ballot measure known as Proposition 68 in 2002, which would have legalized Las Vegas style Casino gambling at its property at the Albany Waterfront and authorized the placement of up to 3,000 slot machines at the Albany Waterfront. Proposition 68 would have barred the City of Albany from prohibiting or regulating the placement of those slot machines at the site. The voters of Albany resoundingly rejected Proposition 68 by more than ninety percent. These facts

- indicate that Magna intends to propose development for Golden Gate Fields that would be contrary to the expressed interests and desires of the people of Albany and contrary to Albany's general plan and zoning laws.
- f. Magna has a history of selling off racing facilities at the other tracks it has owned. This raises questions about whether Magna intends to continue to operate racing at Golden Gate Fields.
 - g. Any potential change in the use of the Albany Waterfront, and particularly the closure of the Golden Gate Fields racetrack, could affect the City's revenue and financial obligations. Planning for future waterfront uses must therefore take into account the potential fiscal impacts of any change in use. Planning for future waterfront uses now will ensure that the city will be prepared with updated planning policies for the area that would reduce the impact of revenue losses that would accompany the unforeseen future closure of the racetrack.
 - h. The citizens of Albany wish to direct their own future and to plan the future development of the Albany Waterfront according to their needs and desires. This planning should protect Albany citizens' ability to use and enjoy the waterfront. Albany citizens also wish to make sure that, should the race track close, there is a plan in place for the thoughtful, sensitive development of the entire privately held Albany waterfront lands in order to protect the city's revenues and fiscal obligations and to protect the shoreline and Albany waterfront as an open space resource for the enjoyment of all residents.
 - i. Without proper planning, development within the Waterfront District would present an immediate threat to the public health, safety, and/or welfare, including without restriction the loss of revenue to maintain vital city programs, the loss of open space, public access to open space, and irreplaceable visual, cultural, and historical resources, and excessive traffic with resulting congestion, traffic and pedestrian safety, air pollution, water pollution, and noise impacts.

SECTION 4. PROTECTION OF LEGAL RIGHTS

Notwithstanding their literal terms, the provisions of this initiative do not apply to the extent that the courts determine that if they were to be applied they would deprive any person of constitutional or statutory rights or privileges, or otherwise would be contrary to the United States or State of California Constitutions or laws. The purpose of this limitation is to make certain that this initiative does not infringe on any person's constitutional or legal rights or violate the law in any way, or subject the City of Albany to any legal liability.

To the extent that the City Council finds that a provision or provisions of this initiative is/are inapplicable to a project because of this section, the City Council may, after making appropriate findings of the necessity of allowing such development in compliance with this section, approve only that minimum development necessary to avoid a deprivation of rights while maintaining the maximum consistency with the provisions and purposes of this initiative and all other requirements set by statute, ordinance, or the City's general plan.

SECTION 5: ADDITION TO THE GENERAL PLAN

The following Policy CROS 7.7 is hereby added to the Conservation, Recreation, & Open Space Element of the Albany General Plan:

CROS 7.7. Any future development or redevelopment of the privately held lands that comprise the Albany Waterfront and are included in the City's Waterfront District, as defined in the City's Municipal Code as it existed on January 1, 2006, shall only occur pursuant to a Specific Plan adopted in accordance with the process, procedures, and policies enacted by the Citizens' Planning Initiative for the Albany Waterfront.

SECTION 6: PLANNING PROCESS

Effective upon passage of this initiative, the City shall immediately initiate a Community Planning Process as defined below for the purpose of creating a Specific Plan and, if necessary, corresponding General Plan Amendment for privately held lands included in the City's Waterfront District, as defined in the City's Municipal Code as it existed on January 1, 2006. A map of that Waterfront District is attached hereto as Exhibit A. The Community Planning Process shall mandate that upon completion and adoption of a Specific Plan and General Plan Amendment, the City's Waterfront District Zoning shall be amended to be consistent with the Specific Plan and General Plan Amendment.

SECTION 7: GUARANTEED VOTE OF THE PEOPLE ON THE RESULTS OF THE COMMUNITY PLANNING PROCESS

Nothing in this initiative abrogates Measure C, the Citizens Waterfront Approval Initiative. The Specific Plan and all necessary amendments to the General Plan and City's Zoning Ordinance shall be placed on the ballot as a single measure and put to a vote of the people as required by Measure C for approval at the next regularly scheduled City election following completion of the community planning process. Measure C shall apply to any adopted Specific Plan in order to ensure that the voters retain the right to vote on any future changes to the Specific Plan for the Waterfront District.

SECTION 8: COMMUNITY PLANNING PROCESS

- a. The purpose of the Community Planning Process is to prepare a Specific Plan for the City's Waterfront District that provides for the future development and redevelopment of the property with alternative non-racetrack uses so that if at some time in the future the existing racetrack ceases to operate an approved plan will be in place for property consistent with the requirements of this Initiative. Advance planning for the property's future development is intended to allow sufficient time for a comprehensive planning process that maximizes public participation and balances plans for sustainable development and open

space preservation, while insuring the protection of the city's revenues and fiscal obligations.

b. Composition of a Citizens Committee to Guide the Community Planning Process:

Upon passage of this initiative, the City shall immediately begin a Community Planning Process that shall include a Citizens Committee made up of Albany registered voters. Five members shall be appointed by the Albany City Council with each councilmember appointing one member. The Albany City Council shall appoint the remaining members with one member appointed from each of the following entities: The owner of the race track property, Citizens for the Albany Shoreline, Citizens for East Shore Parks, Sierra Club, Albany Chamber of Commerce, Albany Waterfront Committee, the Albany Park and Recreation Commission, and Albany Library Board and two members nominated by the Albany Board of Education. It is not necessary that the representative of a board or commission or entity be a member of that organization or board.

b. Except for the City Council, which shall appoint its members pursuant to its rules, each of the other organizations or board shall nominate a person as its representative on the Citizens Committee. The City Council must appoint the person each respective organization or board has nominated, unless that person is not a registered voter in the City of Albany. Each person so appointed shall serve through the life of the Citizen's Committee and so long as he or she remains a registered Albany voter. An organization or board may elect not to nominate anyone or be unable to nominate a person who qualifies as a member in which case that position shall remain vacant until such time as that organization or board nominates a qualified person. The City Council shall not have the right to appoint any representative from an organization or board who has not been nominated by that organization or board. Vacancies during the term of the Committee shall be filled through the same process and criteria as set forth above. Upon passage and voter approval of a general plan amendment and specific plan governing future development of the waterfront in accordance with the provisions of this Initiative, the Committee shall be dissolved.

c. Meetings

The Citizens Committee shall determine the number and nature of all meetings, but it shall be required to have a minimum of five community meetings prior to its approval of any Specific Plan. The Citizens Committee shall comply with California's Open Meeting Law known as the Brown Act.

d. Guiding Policies

The people of Albany by this initiative mandate that the following policies shall govern the deliberations of the Community Planning Process and be incorporated into the Specific Plan for the Waterfront District and any accompanying amendments to the City's General Plan and Zoning ordinance.

- (1) In order to protect the shoreline and its resource value, to the maximum extent feasible all approved Waterfront District commercial development shall be located as close to the Interstate 80 freeway as possible, and, in the area south of the Albany neck, in no event closer than 500 feet from the San Francisco Bay Conservation and Development Commission's ("BCDC") 100 foot shoreline jurisdictional limit as measured from the landward border of that jurisdictional area. As a specific exception, small-scale (i.e., less than 5000 sq. ft. per project) water-oriented commercial recreational development may be allowed within 500 feet of the BCDC jurisdictional border so long as it complies with BCDC's policies for water access to the Bay for small recreational boating such as kayaks, sailboards, and small sailboats.

- (2) The Community Planning Process shall also make provisions for the future use of waterfront areas not designated for urban development for the purpose of maximizing the waterfront as an open space resource. Planning shall assume that a large portion of the Albany Waterfront District will, in the future, be dedicated or acquired for public park, open space and environmental restoration purposes. Any Specific Plan for the Waterfront area shall at a minimum include, to the extent feasible, provisions to accommodate the following uses:
 - a. Because, prior to their being filled, Codornices Creek and other creeks ran through the Waterfront District, any Specific Plan proposed under this Initiative shall include, to the extent feasible, the reopening and restoration of those creeks in their natural channels or as close as possible to the channels they flowed through prior to their being filled in.
 - b. The area known as Point Fleming including its top and slopes shall be open and undeveloped except for a small cultural, natural, historical interpretative center which may include a small cafe. The total developed square footage for this center, excluding parking, shall be no more than 22,500 square feet and similar to the interpretative center at San Francisco's Chrissy Field. The total parking area for vehicles shall not exceed and can be less than the amount required to park fifty (50) automobiles.
 - c. Areas for the restoration of wetlands shall be designated that complement planned creek restoration activities and to take advantage of the role of wetlands in improving ecosystem functions, improving water quality, flood protection, shoreline erosion control, recreational uses and waterfront aesthetic appreciation.
 - d. Areas for the natural expansion of the existing beach and dune area. Locations for public facilities should be identified that would support increased public access to this area including restrooms, parking areas and interpretation facilities to support use by school groups and other visitors for outdoor education purposes.

- e. Areas for the completion of the San Francisco Bay Trail.
 - f. Areas for expanded playing fields to enhance the playing field opportunities of Albany residents. Locations shall be sited so as to minimize environmental impacts and to allow for the construction of necessary restrooms, snack bars, parking and other ancillary facilities.
 - g. Areas for at least one large fenced off-leash dog walking and play area consistent with the accommodation of the full the range of other outdoor, conservation and open space activities planned for the waterfront.
- (3) Development should protect views and open space and avoid significant visual impacts, especially views from the land to the Bay.
 - (4) The total amount of square footage and nature of uses for commercial development shall be the minimum to enable the property owner to obtain a return on its investment that meets statutory and constitutional mandates on the protection of private property rights, consistent with the purpose and intent of the Initiative.
 - (5) Any approved commercial development shall provide sufficient revenues to make whole the revenues that the city, school district, and library district receive from the uses of the Waterfront District on the date of the passage of this ordinance.
 - (6) All development in the Waterfront District will reflect a commitment to Green Building and long-term sustainability in regard to energy use, water use and waste management. In accordance with the Alameda County Waste Management Authority's model Green Building Ordinance and Albany's movement toward sustainability, any development will, at a minimum, qualify for Silver LEED (Leadership in Energy and Environmental Design) certification and, whenever feasible, Platinum LEED certification, as defined in the model Green Building Ordinance.
 - (7) The City shall draw on local expertise to explore and use Permaculture principles whenever possible, as reflected in EcoVillage designs in urban areas, through use of renewable energy sources; conservation and harvesting of water; recycling and reuse policies; cultivation of soil and appropriate planting; natural building; and alternative transportation principles.

SECTION 9: INTERIM MORATORIUM

In order to give the Citizens Committee the time and opportunity to develop the future plan for the Waterfront Lands, immediately upon passage of this initiative, there shall be an interim moratorium on any general plan amendment, zoning change, or development approval for or related to any development of the Waterfront lands, including any that are then pending. This moratorium shall remain in effect for two years or until the specific plan for the waterfront is first voted on by the people of Albany, whichever occurs first.

SECTION 10: SEVERABILITY

If any section, subsection, part, subpart, paragraph, subparagraph, clause or phrase of this ordinance or any or revision of this ordinances is for any reason held to be invalid, the remaining portions shall not be affected, but remain in full force and effect.

SECTION 11: EFFECTIVE DATE

If adopted, this ordinance shall be effective immediately upon its approval.