

RICHMOND, CALIFORNIA, April 6, 2021

The Richmond City Council Evening Open Session was called to order at 4:30 p.m. by Mayor Thomas K. Butt via teleconference.

Due to the coronavirus (COVID-19) pandemic, Contra Costa County and Governor Gavin Newsom issued multiple orders requiring sheltering in place, social distancing, and reduction of person-to-person contact. Accordingly, Governor Gavin Newsom issued executive orders that allowed cities to hold public meetings via teleconferencing (Executive Order N-29-20).

DUE TO THE SHELTER IN PLACE ORDERS, attendance at the City of Richmond City Council meeting was limited to Councilmembers, essential City of Richmond staff, and members of the news media. Public comment was confined to items appearing on the agenda and was limited to the methods provided below. Consistent with Executive Order N-29-20, this meeting utilized teleconferencing only. The following provides information on how the public participated in the meeting.

The public was able to view the meeting from home on KCRT Comcast Channel 28 or AT&T Uverse Channel 99 and livestream online at <http://www.ci.richmond.ca.us/3178/KCRT-Live>.

*Written public comments were received via email to cityclerkdept@ci.richmond.ca.us. Comments received by 1:00 p.m. on April 6, 2021, were summarized at the meeting, put into the record, and considered before Council action. Comments received via email after 1:00 p.m. and up until the public comment period on the relevant agenda item closed, were put into the record. Public comments were also received via teleconference during the meeting. **Attached herewith all written public comments received.***

ROLL CALL

Present: Councilmembers Nathaniel Bates, Claudia Jimenez, Eduardo Martinez, Gayle McLaughlin, and Mayor Thomas K. Butt. **Absent:** Councilmember Willis and Vice Mayor Johnson III arrived after the roll was called.

PUBLIC COMMENT INSTRUCTIONAL VIDEO

The Public Comment Instructional Video was shown.

PUBLIC COMMENT

The city clerk announced the public comment procedures and that the purpose of the Open Session was for the City Council to hear public comments on the following items to be discussed in Closed Session:

CITY COUNCIL

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (paragraph (1) of Subdivision [d] of Government Code Section 54956.9):

Denham, LLC et al. v. City of Richmond et al.
Michael Wang v. City of Richmond

CONFERENCE WITH LABOR NEGOTIATORS
(Government Code Section 54957.6):

Agency Representatives: Jack Hughes

Employee organizations:

1. SEIU Local 1021 Full Time Unit
2. SEIU Local 1021 Part Time Unit
3. IFPTE Local 21 Mid-Level Management Unit
4. IFPTE Local 21 Executive Management Unit
5. Richmond Police Officers Association RPOA
6. Richmond Police Management Association RPMA
7. IAFF Local 188
8. Richmond Fire Management Association RFMA

PUBLIC COMMENT BEFORE CLOSED SESSION

There were no public speakers.

ADJOURN TO CLOSED SESSION

The Open Session adjourned to Closed Session at 4:37 p.m.
Closed Session adjourned at 7:03 p.m.

The Regular Meeting of the Richmond City Council was called to order at 7:04 p.m. by Mayor Butt via teleconference.

ROLL CALL

Present: Councilmembers Bates, Jimenez, Martinez, McLaughlin, Willis, Vice Mayor Johnson III, and Mayor Butt.
Absent: None.

PUBLIC COMMENT INSTRUCTIONAL VIDEO

The Public Comment Instructional Video was shown.

STATEMENT OF CONFLICT OF INTEREST

None.

AGENDA REVIEW

Items H-8 and H-9 were continued to the April 20, 2021, City Council meeting. Items H-23, H-28, and H-30 were removed from the Consent Calendar for discussion at the end of the agenda. Item K-4 was heard directly after approval of the Consent Calendar.

The city clerk announced the public comment procedures published on the agenda.

REPORT FROM THE CITY ATTORNEY ON FINAL DECISIONS MADE DURING CLOSED SESSION

City Attorney Theresa Stricker stated there were no final actions to report.

REPORT FROM THE CITY MANAGER

City Manager Laura Snideman announced that there were Community Budget Sessions scheduled on Wednesday, April 7, 2021, Thursday, May 6, 2021, and Thursday, June 3, 2021, at 6 p.m. Ms. Snideman also encouraged the community to get vaccinated, continue wearing masks, and social distance. Everyone over age 16 was eligible to obtain a COVID-19 vaccine in Contra Costa County.

OPEN FORUM FOR PUBLIC COMMENT

The following individuals gave comments via teleconference:

Deborah Schmidt gave comments regarding the importance of preserving the El Sobrante Hills as open space.

Lingsie Jensen, Kurt Jensen, Jana Janwicklin, and Rosie Sorenson spoke in support of reaffirming that most boards and commissions are advisory to the City Council.

Joey Schlemmer stated that the Richmond Pension Tax has no sunset clause and suggested an actuarial report be conducted to reassess the tax.

CITY COUNCIL CONSENT CALENDAR

On motion of Vice Mayor Johnson III, seconded by Councilmember Martinez, the items marked with an (*) were approved by the unanimous vote of the City Council.

***H-1.** Approved the appropriation of \$28,500 from the United States Department of Justice Coronavirus Emergency Supplemental Funding Program Grant for a sole-source contract from January 1, 2021, to December 31, 2023, for dry cleaning services for officers' uniforms.

***H-2.** Approved a third amendment to the City's contract amendment with Silver and Wright LLP, increasing the contract amount by \$750,000 for a total not to exceed amount of \$850,000 over three years, through December 31, 2023, for legal services related to code enforcement and administration of the City's Health and Safety Receivership Program.

***H-3.** Adopted **Ordinance No. 03-21 N.S.**, amending Article 15.04.612 Transportation Demand Management (TDM) of the Richmond Municipal Code to align with the new Vehicle Miles Traveled (VMT) methodology, to reflect current best practices in TDM, new State law requirements, and emerging TDM options as encompassed in the new VMT methodology.

***H-4.** Approved a one-year contract with Donnoe & Associates in an amount not to exceed \$26,000.

***H-5.** Approved a three-year contract in the amount of \$56,000 with an additional option of two years at \$25,000 each for a total of \$50,000 with the Hvas Group for advisory services for the City's Deferred Compensation Plans for an amount not to exceed \$106,000. The contract term will be from April 6, 2021, through April 5, 2024.

***H-6.** Approved a second amendment to the contract with Koff & Associates in the amount of \$30,000 for a total not to exceed \$50,000 for recruitment services and extend the termination date to December 30, 2022.

***H-7.** Approved contracts with MRG, Peer Advocates, The Consulting Team, and an amendment to the contract with Amistad Associates for the total contract amounts not to exceed \$50,000 per contract for a total of \$200,000 for facilitation, conflict resolution, consultation, and/or training services for a three-year period ending April 5, 2023.

H-8. Continued to the April 20, 2021, City Council meeting, the matter to adopt a resolution authorizing and approving the execution of the side letter amendment to the Richmond Police Management Association (RPMA) Memorandum of Understanding providing clarification of Holiday Pay.

H-9. Continued to the April 20, 2021, City Council meeting, the matter to adopt a resolution for the approval of revised salary schedules from 2015 to present to comply with California Code of Regulations, Subchapter 1, Employees' Retirement System Regulations section 570.5 (a) (2 CCR § 570.5) as required by CalPERS.

***H-10.** Received the City's Investment and Cash Balance Report for the month of February 2021.

***H-11.** Received a written report regarding proposed updates to Richmond Arts & Culture Division related ordinances, policies and procedures.

***H-12.** Adopted **Resolution No. 32-21**, ordering the preparation of the Engineer's Report for Fiscal Year 2021-2022 regarding improvements and costs for the Hilltop Landscape Maintenance District.

***H-13.** Adopted **Resolution No. 33-21**, ordering the preparation of the Engineer's Report for Fiscal Year 2021-2022 regarding improvements and costs for the Marina Bay Landscape and Lighting Maintenance District.

***H-14.** Approved an emergency contract with 911 Restoration for fire abatement services at the Booker T. Anderson Community Center in an amount not to exceed \$293,000.

***H-15.** Received the Veolia Monthly Operating Report for the month of February 2021.

***H-16.** Adopted **Resolution No. 34-21**, to accept and appropriate into the FY2020/21 budget a California State Library grant in the amount of \$5,000 and approved an agreement with the California State Library to purchase children's books depicting diverse characters by August 31, 2021.

***H-17.** Approved an amendment to an Agreement between Califa Group and the Richmond Public Library for the period of March 23, 2020 to June 30, 2025 to provide high speed internet access for the Richmond Public Library.

***H-18.** Adopted **Resolution No. 35-21**, to accept and appropriated into the Fiscal Year 2020-2021 budget \$5,000 in grant funds received from the BNSF Railway Foundation.

***H-19.** Approved a contract with the Contra Costa County Office of Education who will financially support students from the West Contra Costa Unified School District to attend the distance learning hubs at the Recreation Division's community centers. The contract term is effective March 15, 2021 through June 9, 2021 in the amount of \$19,800 with a total not to exceed contract amount of \$22,320.

***H-20.** Approved appointment(s) to update the Shimada Friendship Commission: appointed Joshua Miklich, new appointment, seat #6, term expiration date January 18, 2024.

***H-21.** Approved an appointment(s) to the Commission on Aging: appointed Robert Corshen, new appointment, seat #12, filling an unexpired term with an expiration date May 19, 2022.

***H-22.** Approved appointment(s) to the Rent Board: Richmond Rent Board: Alana Grice Conner, re-appointment, seat #1, term expiration date March 21, 2023, Virginia Finlay, re-appointment, seat #2, term expiration date March 21, 2023, Michael Vasilas, new appointment, seat #3, term expiration date March 21, 2023, Shiva Mishek, new appointment, seat #4, term expiration date March 21, 2023, Carole Johnson, new appointment, seat #5, term expiration date March 21, 2023.

H-23. Continued to the April 20, 2021, City Council meeting, the matter to approve appointment(s) to the Design Review Board: appointed Macy Leung, re-appointment, seat #2, term expiration date March 17, 2023, Johnathan Livingston, re-appointment, seat #4, term expiration date March 17, 2023.

***H-24.** Approved appointments to the Urban Forest Advisory Committee: appointed Rebecca Orme, new appointment, seat #10, term expiration date November 17, 2024.

***H-25.** Approved appointment(s) to the Economic Development Commission: appointed Kapris James, new appointment, seat #2, term expiration date March 30, 2024; Gloria Sewell-Murphy, re-appointment, seat #4, term expired date March 30, 2024.

***H-26.** Approved action(s) to update the Youth Council: appointed Sofia Pereda-Zanni, new appointment, seat #10, term expiration date October 1, 2021; Chandra Davies, new appointment, seat #11, term expiration date October 1, 2021.

***H-27.** Approved appointment(s) to the Richmond Fund for Children and Youth Oversight Board: Councilmember Nathaniel Bates Appointment: appointed Devin D. Dinh, appointment, seat #4, term expiration date December 2, 2022.

H-28. Continued to the April 20, 2021, City Council meeting, the matter to approve appointments for the Mayor and Councilmembers to Regional Committees, Ad-Hoc Committees and Liaison Positions for the year of 2021. This item was continued from the March 16, 2021, and March 23, 2021, meetings.

***H-29.** Approved a letter supporting Senate Bill 612 (Portantino), which ensures that resources held in the Investor-Owned Utility (IOU) portfolios are managed to maximize value for all customers, and would ensure fair and equal access to the benefits of these legacy resources.

H-30. Continued to the April 20, 2021, City Council meeting, the matter to adopt a resolution in support of the Richmond People's Strike People's Movement Assembly.

***H-31.** Approved a Memorandum of Understanding between the West Contra Costa Unified School District (WCCUSD) and the City of Richmond to mutually cooperate in the District's Proof of Concept for deployment of the WCC EdConnect Wireless Project at no cost to the City.

***H-32.** Adopted **Resolution No. 36-21**, to reaffirm that most boards and commissions are advisory to the City Council.

PUBLIC HEARINGS

I-1. The matter to hold a public hearing to adopt a resolution adopting a General Plan Amendment to cure inconsistencies within the General Plan to implement the Richmond Hills Initiative, a voter initiative, that restricted housing development in a ~430 acre area in the El Sobrante Hills to protect undeveloped rural hillside land; and introduce an ordinance (first reading) amending various sections, including Articles 15.04.202, 15.04.206, and 15.04.611 of the Zoning Ordinance to align with General Plan Amendments related to the Richmond Hills Initiative and to implement requirements of the RHI was presented by Planning Director, Lina Velasco and Michael Dyett, Dyett & Bhatia, who presented a Powerpoint which highlighted the following: Richmond Hills Initiative; General Plan Amendments; Zoning Amendments; Transfer of Development Rights; Increase in Density; CEQA Review; and Planning Commission Recommendation. Mayor Butt declared the public hearing open. The following individuals gave comments via teleconference: Janet Kutulas, Cary Groner, Peter Simcich, Dick Schneider, Sarah Willner, and Jim Hogan. Mayor Butt closed the public hearing. A motion made by Councilmember McLaughlin, seconded by Councilmember Martinez, adopted **Resolution No. 37-21**, and introduced first reading of the ordinance, by the following vote: **Ayes:** Councilmembers Bates, Jimenez, Martinez, McLaughlin, Vice Mayor Johnson III, and Mayor Butt. **Noes:** None. **Absent:** Councilmember Willis. **Abstain:** None.

I-2. The matter to introduce an ordinance (first reading) adding chapter 10.32 of the City of Richmond Municipal Code entitled "Special Event Permit" Ordinance was presented by Interim Public Works Director, Tawfic Halaby and Community Services Administrative Manager, Ranjana Maharaj who presented a PowerPoint, which highlighted the following: Inter-Departmental Coordination; Filing an Application; Fees; and Administrative Regulations. Discussion ensued. A motion made by Councilmember Martinez, seconded by Vice Mayor Johnson III, introduced said ordinance, by the following vote: **Ayes:** Councilmembers Bates, Jimenez, Martinez, McLaughlin, Vice Mayor Johnson III, and Mayor Butt. **Noes:** None. **Absent:** Councilmember Willis. **Abstain:** None.

BUDGET SESSION

J-1. Received a presentation and provide feedback on the: (1) Fiscal Year 2021-22 budget development process; (2) 10-year financial forecast presented by Management Partners; and (3) the proposed process and/or ideas on how Richmond should spend its \$20.81 million ARPA allocation was presented by Deputy City Manager, LaShonda White, who presented a Powerpoint, which highlighted the following: FY 21-22 Budget Calendar; \$1.9 Trillion Rescue Package; American Rescue Plan Act; Steps/Timeline; and Outreach & Engagement. Discussion ensued. The city council suggested to fully fund and open Libraries, Community Centers, the Leap Program, Summer Youth Employment Program, Richmond Build, Healing groups and Circle Healings of Hope, Office of Neighborhood Safety, Public Works, Code Enforcement; provide small business and rental assistance; provide seed money for worker Co-ops; and support for the unhoused community. City council requested that staff provide a report that identified programs that have suffered the most during COVID. The city council also requested cost information regarding vehicle replacement and the status of vacancies going back five years that were frozen since June 2020. City council will provide any further suggested uses of the ARPA funding directly to staff. Lisa Cody and Sean Stalbaum gave comments via teleconference.

J-2. The matter to receive an update on the City's Pension Obligation bonds was presented by Jo Mortensen and George Majors, from Public Resources Advisory Group, who presented a PowerPoint, which highlighted the following: 2005AB Pension Obligation Bonds; Variable Rate Bonds for Municipalities; Pension Obligation Bond and Swap Participants and Fees; Review of the 2014 Swaption History; Detailed Analysis of 2005B-1 POB Costs; Termination of the 2005B-2 POB Swap. Discussion ensued. Councilmembers requested a special meeting to receive an in depth bond orientation and that slides and information contained in the PowerPoint would be provided to the City Council.

(10:55 p.m. – A motion made by Councilmember McLaughlin, seconded by Councilmember Jimenez, extended the meeting to discuss Item K-3, passed by the following vote: Ayes: Councilmembers Bates, Jimenez, Martinez, McLaughlin, Vice Mayor Johnson III, and Mayor Butt. Noes: None. Absent: Councilmember Willis. Abstain: None.

J-3. Continued to the April 20, 2021, City Council meeting, the matter to receive updates on the Fiscal Year 2020-21 budget.

COUNCIL AS A WHOLE

K-1. Continued to the April 20, 2021, City Council meeting, the matter to consider reinstating the Finance, Economic Development and Administrative Services Standing Committee and the Public Services/Safety Committee was presented by Councilmembers Martinez and Bates. This item was continued from the March 23, 2021, meeting.

K-2. Continued to the April 20, 2021, City Council meeting, the matter to receive a presentation by Police Strategies and approve a one-year contract in an amount not to exceed \$40,000.

K-3. The matter to receive a presentation regarding the Dispatch Communications Center and approve the City of Richmond Position Classification Plan to add the new Communications Dispatcher III classification was presented by Chief Bisa French, Lt. Eric Smith, and Dispatch Supervisor, Michael Schlemmer, who presented a PowerPoint which highlighted the following: Current Staffing Levels; Shift Staffing; Communications Center Volume; Dispatch Training and Turnover. This item was continued from the March 23, 2021, meeting. Discussion ensued. A motion by Councilmember McLaughlin, seconded by Councilmember Jimenez, approved the item by the following vote: **Ayes:** Councilmembers Jimenez, McLaughlin, Vice Mayor Johnson III, and Mayor Butt. **Noes:** Councilmembers Bates and Martinez. **Absent:** Councilmember Willis. **Abstain:** None. A motion by Councilmember Johnson III, seconded by Councilmember Jimenez, to take public comment for the item, failed by the following vote: **Ayes:** Councilmembers Jimenez, McLaughlin, Vice Mayor Johnson III, and Mayor Butt. **Noes:** Councilmembers Bates and Martinez. **Absent:** Councilmember Willis. **Abstain:** None.

K-4. The matter to discuss and consider adopting an urgency ordinance requiring large grocery stores in Richmond to provide hazard pay to their employees as just compensation for the clear and present dangers of doing their jobs during the pandemic. If adopted, the urgency ordinance would take effect immediately and apply to only to certain large retail or wholesale stores that have at least 10% of their interior spaced dedicated to the sale food for off-site consumption and would expire on the earlier of the 91st day after adoption or when the risk level in Richmond returns to "minimal" (yellow tier) under the State of California Health Orders was presented by Councilmembers McLaughlin and Willis who gave an overview of the matter. Discussion ensued. The following individuals gave comments via teleconference: Michael Nye, Katrinka Ruk, Joshua Anjar, John Gomez, Doug Jones, and Bambi Marien. Further discussion ensued. A motion made by Councilmember McLaughlin, seconded by Councilmember Willis, adopted **Urgency Ordinance No. 04-21 N.S.**, by the unanimous vote of the City Council.

K-5. Continued to the April 20, 2021, City Council meeting, the matter to announce recent resignation from City of Richmond boards, commissions, and committees; and announce vacancies as of March 17, 2021, and ask that interested individuals send applications to the City Clerk. This item was continued from the March 23, 2021, meeting.

**REPORTS OF OFFICERS: REFERRALS TO STAFF, AND
GENERAL REPORTS (INCLUDING AB 1234 REPORTS)**

ADJOURNMENT

There being no further business, the meeting adjourned at 11:31p.m., to meet again on Tuesday, April 20, 2021, at 6:30 p.m.

Clerk of the City of Richmond

(SEAL)

Approved:

Mayor

From: [Cordell Hindler](#)
To: [City Clerk Dept](#)
Subject: OPEN FORUM FOR PUBLIC COMMENT
Date: Thursday, April 01, 2021 5:14:36 PM

good Evening, Mayor Butt and City council, i have a couple of Comments for the Record

1. for the next Agenda, the Council should Consider Reinstating the Agenda & Rules Committee
2. also I am in Full Support for H-4 thru H-9

Sincerely
Cordell

From: [Daniel Muller](#)
To: [City Clerk Dept](#)
Cc: [Patty A. Harris](#)
Subject: Today's Council Mtg - Agenda Item I.1. - P:roposed Illegal Revisions to Illegal Richmond Hills Initiative
Date: Tuesday, April 06, 2021 12:59:07 PM
Attachments: [SKM_C45821040611570.pdf](#)
Importance: High

Dear City Clerk of the City of Richmond,

Please find attached Public Comments re the above-noted [Item I.1.](#) on today's City Council Meeting Agenda. Please confirm receipt prior to the 1:00 p.m. deadline.

Regards,
Dan Muller

Daniel A. Muller
Partner

Gagen, McCoy, McMahon, Koss, Markowitz & Fanucci
630 San Ramon Valley Blvd., Suite 100
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April 6, 2021

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Mayor Tom Butt, Members of the City Council, and
Lina Velasco, Planning Director
City of Richmond
440 Civic Center Plaza
Richmond, CA 94804

Re: **Public Comments – re Today’s City Council Meeting, Agenda Item I.1. –
Public Hearing to Consider “Corrections” to Rectify the Illegal Richmond
Hills Initiative**

Dear Mayor Butt, Members of the City Council, and Ms. Velasco:

On behalf of the prior owner (Ms. Moilan Manning) and current owner (Manning-NextBay Venture, LLC) of roughly 32 acres of the land so improperly negatively affected by the Richmond Hills Initiative (“RHI”) and the above-noted City-proposed “corrections” thereto, our office hereby submits the following comments and objections regarding the latter-proposed GPA/Zoning changes. As explained further below, these proposed actions are patently illegal, cannot be approved, and will only spawn yet further, expensive, wasteful litigation. If the City or nearby residents really want to preserve the subject, historically residentially-zoned private property as “permanent, public open space”, they must pay the owners constitutionally-required just compensation.

1. The City’s Proposed Changes Violate SB 330, the “Housing Crisis Act of 2019” (Govt Code § 66300, et seq.)

First, SB 330 clearly applies to the City’s proposals, because they seek to amend, *inter alia*, the General Plan (“GP”) Land Use and other elements, changing them from what they stated or provided as of January 1, 2018. The City itself admits SB 330 applies: “This

limitation (of SB 330, requiring coherent, realistic, fully compensatory ‘upzoning’ elsewhere, if it seeks otherwise prohibited residential ‘downzoning’) applies to land use designations and zoning ordinances that were in effect on January 1, 2018. While the RHI was passed by the voters in 2017, **the implementing actions called for by the initiative have not yet been enacted, so it would be prudent to conform to these requirements.**” (Emph. added; Planning Commission (“PC”) Staff Report, dated March 4, 2021, at p. 4 of 8.) Likewise, the City admits that the legal validity of its efforts (to satisfy SB 330’s required “no net loss of residential units, via upzoning”) are contingent on HCD’s SB 330-mandated approval: “if the requirements of this section of the Government Code are met, then the changes in urban growth boundaries, as was done by the RHI, are not voided” per Govt Code §66300(g). (Id.)

As its “Housing Crisis Act” title suggests, SB 330 strictly prohibits cities from downzoning residentially developable property – with the only narrow exception being if the City simultaneously, concurrently upzones sufficient land to ensure it adds at least the number of units lost via the otherwise prohibited downzoning. Here, the City’s purported “upzoning” miserably fails the test, and continues to create further, fatal “horizontal” inconsistencies (within the GP itself), and “vertical” inconsistencies (between the GP and relevant Zoning).

- Contrary to SB 330’s mandatory “upzoning” requirement, the City proposes *no actual changes in the “recipient” parcels’ zoning*.
- An example of the proposals’ “vertical” inconsistencies - between the GP and Zoning – is their failure to increase the supposed “recipient” CM-4 and CM-5-zoned parcels’ allowable GP density.
 - o The purported increases in the “recipient” CM-4 and CM-5 parcels’ density occur only in the Zoning changes, yet by law a city’s GP always controls over any inconsistent zoning.
 - o The City proposes to add language stating that “[t]he higher density represents the maximum number of allowable units, except in cases of density transfers, development rights and credits transfers, or when density increases are adopted in order to comply with Government Code section 66300 et seq in order to effectuate a voter initiative,” but that is insufficient to indicate whether a particular location can exceed the otherwise maximum density in the land use table – i.e., where people would reasonably look to determine maximum allowed density.
- Although the City claims to increase the maximum allowed density in the CM-4/5 zoning districts, the fact that it proposes no corresponding

increased height limits, reduced setbacks, etc. suggests the “claimed” increase in maximum density is not actually feasible.

- Most of the parcels the City relies on (the vast bulk of which are zoned CM-5, not CM-4) to “replace the capacity of the vacant residentially-zoned parcels being downzoned” are already developed with commercial uses, including parking lots. *There is no indication (nor substantial evidence) that these parcels are likely to be redeveloped with residential uses during this housing cycle.* (See Gov’t Code § 65583.2(g)(1), (2)).
- The notion that parcels “with an assessed land value greater than their assessed improvements value” are somehow “ready to go” or remotely suitable to “receive TDR units” (from the initiative-decimated, inversely-condemned, regulatorily-taken Hillside Open Space District) is unsupported and wholly speculative.
- The fact that the owners of supposed “recipient” parcels must “consent” to allowing any TDR units to be built on their purportedly “underutilized” parcel renders the City’s “no net loss” construct even more dubious/speculative.
- Despite how strongly all the above suggests the City’s “pseudo-upzoning” scheme will never satisfy SB 330’s strict “no net residential loss” mandate, the record contains zero evidence that the City has conducted any tests or reality checks of its scheme’s efficacy or feasibility.

2. The City’s Proposal Illegally Amends its Housing Element

The proposed Housing Element revisions also violate controlling law, by failing to provide sufficient land to meet (for example) the City’s above-moderate housing allocation. Such abject, further failures – by a City that is *already* so far behind in satisfying its housing allocation mandates – are both patently illegal and irresponsible. This City is the “poster child” for why the State Legislature has no choice but to enact “top-down” housing mandates.

3. The Proposed New GP “FAR” Definition Impermissibly Decreases Density/Intensity of Mixed-Use Projects Throughout the City

The proposed GP amendments (“GPA”) redefine FAR as “the area of all floors, regardless of composition including soil, **under roof in or connected to buildings, including porches, decks, carports, and attic floors** to the extent that the height of the ceiling is five feet or more above the floor.” By contrast, the existing FAR definition is: “The numerical value obtained by dividing the **gross**

floor area of all buildings on a premise by the total area of the premises on which the buildings are located.” Also, the proposed, revised definition will override the Zoning Code’s FAR definition, which excludes uninhabitable spaces, porches, decks, carports, etc. (See, City Muni. Code § 15.04.103.090.) **The GPA thus decreases allowable FAR throughout the City with no compensating upzoning.**

4. These Proposals Are Not Exempt From CEQA

Contrary to the above-noted PC Staff Report’s claims, the “remedial” or “corrective” actions currently-proposed by City staff are *not an initiative, nor found anywhere in the subject initiative*. Rather, they directly “amend” the GP and Zoning *to try to correct myriad Court of Appeal-affirmed legal flaws created by* an initiative. As such, these GP/Zoning amendments - proposed by the City itself, not the public/voters - cannot evade CEQA compliance. By noting the initiative made “some changes”, the City admits the initiative didn’t make the changes now before the Council (otherwise, the latter wouldn’t be needed). In sum, any reliance on the cited CEQA exemption for voter-initiatives is invalid.

Without such mistakenly claimed exemption, the GP and Zoning amendments are a “project”, for CEQA purposes.

If the City wants to claim it’s making substantive upzoning changes – that actually increase density in some areas beyond that previously allowed – then it simply cannot evade CEQA. If, however, it wants to claim its alleged upzoning is categorically exempt, that just proves the point that this is not “real” upzoning, since *that* unquestionably requires real environmental review under CEQA. Simply put, any proposed upzoning that’s truly intended to comply with SB 330 – that materially *increases* density elsewhere to allow homes *not* previously permitted – will certainly create myriad direct and indirect potentially significant environmental impacts, including as to traffic, utility service, aesthetics, schools, police, emergency medical, and fire services, natural resources, etc. – not to mention the above-noted, similarly CEQA-cognizable, horizontal GP inconsistencies, vertical GP/Zoning inconsistencies, failures to comply with the City’s housing allocation (RHNA) requirements, etc. One wonders how the City can speak out of both sides of its mouth, by claiming its own (not the voters’) proposed GP/Zoning changes are somehow “CEQA exempt”, yet also in the same breath claim that precluding all residential development of the subject 430+ acres will “avoid traffic impacts” (PC Staff Report, p. to Hillside Open Space will prevent

5. The Actions Cause Unconstitutional Takings/Inverse Condemnation, Due Process, Equal Protection Violations

The City's proposed GPA/Zoning changes also continue to violate the affected owners' state and federal constitutionally protected private property, equal protection, and due process rights. For example and without limitation:

- While the City finally admits it is indeed taking the subject 430+ acres of private property for public "open space" use, including by placing it within a new "Hillside Open Space District" (see, e.g., PC Staff Report, at p. 5 of 8), it continues to wholly fail to pay the owners constitutionally-guaranteed just compensation. Thus, our clients hereby reiterate all of the prior "takings" and "inverse condemnation" objections, arguments, and claims – including those noted in (A) our client's combined Petition for Writ of Mandate and Complaint for Damages (etc.) filed against the City in Contra Costa Co. Superior Court in April 2017, and (B) all of the relevant landowner petitioners/plaintiffs' pleadings and papers filed in the resulting cases that were coordinated under the lead case *Denham, LLC & Nikta, LLC v. City of Richmond, et al.*
- *Furthermore, to the above ends, please note that all of the aforesaid pleadings and papers in or relating to the above-noted previously-filed cases, including for example and without limitation the "administrative record" lodged therein (all of which the City has in its possession) are hereby incorporated by this reference as if fully set forth herein, and must be included as part of the official record of proceedings (or administrative record) for these currently-proposed "corrective", yet illegal GPA/Zoning proceedings.*
- The City has also utterly, inexplicably *failed* to uphold its agreed, written commitments (as well as statutory requirements) to *reasonably notify the affected landowners before moving ahead* with any public hearings or other steps to consider or approve these crucial, proposed changes, thereby violating said binding agreements and our clients' constitutional due process protections.

In conclusion, per the Court of Appeal's October 2019 decision, what the City has ample authority to do, and *should* responsibly do, is simply, entirely scrap this ill-conceived, inconsistency-generating, illegal, unconstitutional initiative – as it was so correctly ordered to do, by Contra Costa County trial judge Barry Goode - and then sit down with the landowners and neighbors to responsibly broker a workable, mutually acceptable solution.

Mayor Tom Butt, Members of the City Council, and Lina Velasco, Planning Director
April 6, 2021
Page 6

Thank you for providing the opportunity to submit the above comments regarding this critically important matter.

Very truly yours,

Gagen McCoy
A Professional Corporation



Daniel A. Muller
Partner

/pah
cc: Clients

From: [ALEX MORTAZAVI](#)
To: [Tom Butt - external](#); [Claudia Jimenez](#); [Eduardo Martinez](#); [Demnlus Johnson](#); [Gayle McLaughlin](#); [Melvin Willis](#); [Nat Bates](#); [City Clerk Dept](#); [Teresa Stricker](#); [Lina Velasco](#)
Subject: OBJECTION - To Proposed General Plan Amendment - Richmond Initiative
Date: Tuesday, April 06, 2021 4:31:16 PM

Honorable Mayor Tom Butt, Council member Claudia Jimenez, Council member Eduardo Martinez, Council member Demnlus Johnson III, Council member Gayle McLaughlin, Council member Melvin Willis, Council member Bates Nathaniel, City clerk Pamela Christian, City Attorney Teresa Stricker and Planning Community Development Director Lina Velasco

Dear Honorable Mayor Tom Butt,

We like to have our objections on the records and for your consideration to reject the proposed amendments for following reasons :

The City's Proposed General Plan Amendment Violates SB 330

1. SB 330 applies because this is an amendment to the Land Use Element to change it from what it provided as of January 1, 2018.
2. SB 330 prohibits downzoning, but provides an exception if simultaneous upzoning to accommodate at least as many units as are lost is also adopted.
3. The upzoning set out in the resolution is not real upzoning, it's just a paper exercise to pretend the City is upzoning. **No actual change in the zoning is being proposed.**
 - There is no increase in the allowable density under the General Plan of the parcels the City says it is upzoning.
 - The increases in density occurs only in the zoning, but the General Plan controls over an inconsistent zoning.
 - City would add language to GP stating that the “[t]he higher density represents the maximum number of allowable units, except in cases of density transfers, development rights and credits transfers, or when density increases are adopted in order to comply with Government Code section 66300 et seq in order to effectuate a voter initiative,” but that is insufficient to indicate whether a particular location can exceed the otherwise maximum density in the land use table. People generally look at the land use table to determine the maximum permitted density.
 - Although the City increases the maximum density permitted in the CM-4 and CM-5 zoning, there is no corresponding increase to height limits or setbacks in the zoning, suggesting that the maximum density may not actually be feasible. No indication that the City has done any test fits.

4. City illegally amends its Housing Element
 - Many of the parcels the City relies on to replace the capacity of the vacant residentially zoned parcels area already developed with commercial uses, including parking lots. No indication that these parcels are likely to be redeveloped with residential uses during this housing cycle. (See Gov't Code § 65583.2(g)(1), (2)).
 - City's Housing Element would be revised to have insufficient land to meet its above-moderate housing allocation.

5. New definition of FAR in the General Plan decreases intensity throughout the City for mix-used projects.
 - General Plan amendment redefines FAR as “the area of all floors, regardless of composition including soil, **under roof in or connected to buildings, including porches, decks, carports, and attic floors** to the extent that the height of the ceiling is five feet or more above the floor.”
 - Existing definition of FAR: “The numerical value obtained by dividing the **gross floor area of all buildings** on a premise by the total area of the premises on which the buildings are located.”
 - General Plan definition will override the FAR definition in the Zoning Code, which excludes uninhabitable spaces, porches, decks, carports, etc. (§ 15.04.103.090.)
 - **General Plan amendment thus decreases allowable FAR throughout the City with no compensating upzoning.**

The City's Proposed General Plan Amendment Violates CEQA

1. The City-initiated General Plan Amendment is not an initiative and cannot avoid CEQA compliance by pointing out that the Richmond Hills Initiative (RHI) made some changes before. The RHI did not make the changes before the City Council now. If it had, there would be no need for the amendment before the Council so any reliance on the CEQA exemption for initiatives is worthless.

2. This is a general plan and zoning code amendment and it is a “project” for CEQA purposes.

3. If the city wants to claim it is making substantive upzoning decision to increase density beyond what was allowed before, it cannot avoid CEQA. If it claims that this alleged upzoning is categorically exempt that just makes the point that it is not a real upzoning. A real upzoning would require real environmental review pursuant to CEQA.

4. Material increase in density to allow for homes not previously permitted has both direct and indirect environmental impacts on multiple issues including traffic,

utilities, aesthetics, schools, natural resources, not to mention the fact that it is being finessed in such a way as to create potential internal inconsistencies in the existing zoning and general plan as noted above.

Thank you,

Denham, LLC & Nikta, LLC

*851 Burlway Rd., Suite 710
Burlingame, Ca. 94010
Tel. (650)-579-4994
Fax. (650)-579-2646
Email: Habitat8@pacbell.net*

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From: [emi2](#)
To: [City Clerk Dept](#)
Subject: PUBLIC HEARINGS April 6, 2021 I-1 Richmond Hills Initiative
Date: Saturday, April 03, 2021 10:06:28 AM

City of Richmond City Council
440 Civic Center Plaza
Richmond, CA 94804
cityclerkdept@ci.richmond.ca.us

Re: **PUBLIC HEARINGS April 6, 2021 I-1**

Richmond Hills Initiative

- I-1.** [HOLD a public hearing to: ADOPT a resolution adopting a General Plan Amendment to cure inconsistencies within the General Plan to implement the Richmond Hills Initiative, a voter initiative, that restricted housing development in a ~430 acre area in the El Sobrante Hills to protect undeveloped rural hillside land; and INTRODUCE an ordinance \(first reading\) amending various sections, including Articles 15.04.202, 15.04.206, and 15.04.611 of the Zoning Ordinance to align with General Plan Amendments related to the Richmond Hills Initiative and to implement requirements of the RHI - Community Development Department \(Lina Velasco 620-6706\).](#)

Honorable City Council Members:

I wanted to express my support for proposed amendments to the General Plan and amend the Zoning Ordinance, both of which cure the inconsistencies between the General Plan and the Richmond Hills Initiative (RHI).

My family and I appreciated the passage of the RHI by the City Council in 2017—a unanimous vote as I recall. Approval of this item, which will create consistency between the General Plan and the Zoning Ordinance with RHI, is the final step in what my neighbors and I, and many others in the community, are excited about. The Council is to be lauded for taking this action to support all of us awaiting final implementation of the RHI.

Thank you for making Richmond a better place!

Sincerely,

Erez Maoz
5810 Knobcone Ct.
Richmond, CA 94803

From: [Janet Kutulas](#)
To: [City Clerk Dept](#)
Subject: Public Comment AGENDA ITEM I-1
Date: Monday, April 05, 2021 5:58:30 PM

Public Comments for April 6, 2021 Agenda Item I-1

Dear Councilmembers,

As a member of the Friends of the Richmond Hills and a resident of the El Sobrante Valley, I'd like to thank the City's staff for the excellent work they've done amending the General Plan in order to implement the Richmond Hills Initiative, and to thank the City Council for recognizing the importance of protecting these last remaining hillside areas from harmful and irreversible development.

The community has been fighting piecemeal development proposals on these hillsides for decades. We've seen many of these parcels change hands as out-of-town and out-of-the-country speculators proposed large-scale ventures that did not have the best interests of the community in mind. The Richmond Hills Initiative provides an ideal solution for not only protecting these last-remaining East Bay hillsides, but for transitioning to an era in which infill development provides needed housing and open space remains plentiful, nearby, and accessible to all.

As we've learned during the pandemic, our parks and open space areas are essential to maintaining a healthy community. The Clark Road access trail, leading up through the Richmond Hills Initiative area to Wildcat Canyon Regional Park, has been heavily used during the pandemic, like all other parks and open spaces in the Bay Area. With the Richmond Hills Initiative, the possibility exists of someday expanding the East Bay Regional Park District boundaries at Wildcat Canyon, or of a Land Trust obtaining some of this land as was done in Hercules with expansion of Fernandez Ranch by the John Muir Trust after a hillside protection initiative passed there.

It's exciting that one of the landowners in the initiative area, Gray1 Forest Green LLC, donated their nearly 80 oak-studded acres to the adjacent Waldorf school to use as an outdoor educational area, and the Richmond Hills Initiative provides many allowable uses of the land that can serve the students and the community in beneficial ways. The use of Transferable Development Credits also allows for the handful of current land owner/investors in the initiative area to expand Richmond's housing in receiving areas near transit centers and where infrastructure can ecologically support density.

Many studies have provided data showing the best ways for cities to grow, and it's great that Richmond has dedicated itself to transitioning from outdated edge development practices to more future-looking ways of accommodating growth... ways that address our climate emergency, provide affordable housing, and protect precious natural environments that are so essential to the health of the community.

Thank you for first adopting and now integrating the Richmond Hills Initiative into the city General Plan.

Sincerely,

Janet Kutulas

Friends of the Richmond Hills

From: [Jong, Nancy](#)
To: [City Clerk Dept](#)
Cc: [Guerra, Alicia C.](#)
Subject: Public Comments - Agenda Item #1-1 Regarding (PLN20-269) RICHMOND HILLS INITIATIVE GENERAL PLAN AMENDMENT AND ZONING TEXT AND MAP AMENDMENT [IWOV-BN.FID2844312]
Date: Tuesday, April 06, 2021 11:49:46 AM
Attachments: [Letter to Mayor and Members of the City Council.PDF](#)

Dear City Clerk Pamela Christian:

Please accept these comments on Agenda Item No. I-1 and distribute the attached letter to Mayor Butt and Members of the City Council prior to this evening's City Council meeting. Thank you.

Nancy Jong
for Alicia Guerra

Buchalter

Nancy Jong

Legal Assistant to Howard Ellman, Bukola Mabadeje, Jay Paxton, Thomas Sherwood and Jonathan August

T (415) 296-1659

F (415) 227-0770

njong@buchalter.com

55 Second Street, Suite 1700
San Francisco, CA 94105-3493

www.buchalter.com

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55 Second Street
Suite 1700
San Francisco, CA 94105
415.227.0900 Phone
415.227.0770 Fax

April 6, 2021

415.227.3508 Direct
aguerra@buchalter.com

VIA E-MAIL (CITYCLERKDEPT@CI.RICHMOND.CA.US)

Mayor Butt and Members of the City Council
City of Richmond
450 Civic Center Plaza, Suite 300
Richmond, CA 94804

Re: (PLN20-269) Richmond Hills Initiative General Plan Amendment and Zoning
Text and Map Amendment

Dear Mayor Butt and Members of the City Council:

Buchalter, A Professional Corporation, represents NextBay Properties regarding the 31.5 acre property located off of San Pablo Road (APN 435-180-005) in the Richmond Hills portion of the City of Richmond (the "Property"). I understand that the City Council of the City of Richmond ("City") will conduct a hearing to consider (1) a Resolution amending the General Plan to correct certain internal inconsistencies related to adoption of the Richmond Hills Initiative, a voter initiative, that amended the Housing Element and (2) an Ordinance amending the Richmond Municipal Code to align Article XV, Zoning and Subdivision regulations and zoning map with the proposed General Plan Amendment and to implement provisions of the Richmond Hills Initiative (the "Project").

Please be advised that the City Council's proposed actions to amend the General Plan and rezone the land (including NextBay's Property) subject to the Richmond Hills Initiative do not comply with Senate Bill (SB) 330. The Court of Appeals previously found invalid the Richmond Hills Initiative on the basis that the Initiative created General Plan inconsistencies. The City of Richmond could have fixed the defects before Senate Bill 330 took effect on January 1, 2020, but it did not do that.

With SB 330 in effect, the City must comply with State Law generally prohibiting the downzoning of residentially designated and zoned land, as is the case here. Although SB 330 provides for an exception in those cases in which municipality concurrently upzones property elsewhere in the city to accommodate at least as many units as are lost by the downzoning, that

buchalter.com

Los Angeles
Napa Valley
Orange County
Portland
Sacramento
San Diego
San Francisco
Scottsdale
Seattle

Buchalter

Mayor Butt and Members of the City Council

April 6, 2021

Page 2

exception does not apply here. That is because the City has only vaguely identified some commercially zoned areas it may study in the future to assess their viability for conversion to higher density zoning so as to achieve a “no net loss” in residential units. That exercise to study other sites, however, is not the same thing as concurrently rezoning other properties to compensate for the loss in units attributable to the General Plan amendments and downzoning that the City is now trying to adopt in order to effectuate the Richmond Hills Initiative. Moreover, the City has not conducted any environmental review of its Project in accordance with the California Environmental Quality Act (“CEQA”). The exemption from CEQA review for initiatives adopted by the voters or the City Council does not apply to the City’s proposed General Plan Amendments and rezoning because the discretionary actions before you this evening still constitute a project under CEQA.

For these reasons, we request that the City Council defer any consideration of the Project and the proposed General Plan amendments and rezoning of the land subject to the defective Richmond Hills Initiative unless and until the City complies with SB 330. We appreciate your consideration of our comments.

Regards,

BUCHALTER
A Professional Corporation

A handwritten signature in blue ink, appearing to be 'Alicia Guerra', with a long horizontal line extending to the right.

By

Alicia Guerra

AG:nj

cc: Housing and Community Development Department
Jay Utal

From: [Natalie Mulford](#)
To: [City Clerk Dept](#)
Subject: Public comments agenda item PLN20-269--Richmond Hills Initiative--for 4/6 meeting at 6 PM
Date: Tuesday, April 06, 2021 12:57:53 PM

Greetings,

I hope building is not starting in the Richmond Hills. The only reason we bought this house in 2015 was so that we could live next to open space. If construction starts we will have to move. The Richmond/El Sobrante area is one of the only affordable peaceful places to live in the Bay Area.

Also these hills are an important throughway for wildlife and migrating birds, who will suffer if you take away their habitat.

Please don't ruin this area with high rise condos, construction, and tons of noise.

Thanks,
Natalie

--

Natalie Mulford
Certified California Naturalist

From: [Philip Chang](#)
To: [City Clerk Dept](#)
Subject: April 6, 2021 City Council Agenda
Date: Monday, April 05, 2021 4:04:26 AM

April 5, 2021

Philip Chang
5700 Knobcone Drive
Richmond, CA 94803-3501
philipc13@att.net

City of Richmond City Council
450 Civic Center Plaza, Second Floor
Richmond, CA 94804
cityclerkdept@ci.richmond.ca.us

Re: Public Comments on Agenda Item I.1. - General Plan Amendment to Create
Consistency with the City-Adopted Richmond Hills Initiative
City Council Public Hearing April 6, 2021

Honorable City Council Members:

I want to express my support for proposed amendments to the General Plan and the amend the Zoning Ordinance, both of which cure the inconsistencies between the General Plan and the Richmond Hills Initiative (RHI)

I really appreciated the passage by your council of the "RHI" in 2017 by the City Council with an unanimous vote. Approval of this item, providing the needed consistency between the General Plan and the Zoning Ordinance with the "RHI". With your final approval vote on this item, me and so many of my follow neighbors are all very excited about. We are all praise for the Council to taking this very important step to finalizing the Implantation of the Richmond Hills Initiative. The council's hard work for the citizen of the Richmond will be greatly appreciated.

Sincerely,

Philip Chang

From: [Robin Bedell-Waite](#)
To: [City Clerk Dept](#)
Subject: Public Comments on Agenda Item I.1. -- April 6, 2021 City Council Agenda
Date: Friday, April 02, 2021 1:58:55 PM

5728 Knobcone Drive
Richmond, CA 94893
laircmpr@yahoo.com
April 2, 2021

City of Richmond City Council
450 Civic Center Plaza, Second Floor
Richmond, CA 94804
cityclerkdept@ci.richmond.ca.us

Re: Public Comments on Agenda Item I.1. – General Plan Amendment to Create Consistency with the City-Adopted Richmond Hills Initiative
City Council Public Hearing April 6, 2021

Honorable City Council Members:

I wanted to express my support for proposed amendments to the General Plan and the amend the Zoning Ordinance, both of which cure the inconsistencies between the General Plan and the Richmond Hills Initiative (RHI).

I truly appreciated the passage by your council of the RHI by the City Council in 2017—a unanimous vote as I recall. Approval of this item, providing the needed consistency between the General Plan and the Zoning Ordinance with the RHI, is the final step in what so many in the community are excited about. The Council is to be lauded for taking this action to support all of us awaiting final implementation of the Richmond Hills Initiative.

Sincerely,

Robin Bedell-Waite

Hope and fear cannot occupy the same space. Invite one to stay. By Maya Angelou

From: [Sherry Alford](#)
To: [City Clerk Dept](#)
Subject: Public Comments on Agenda Item 1.1 - General Plan Amendment to create Consistency with the City-Adopted Richmond Hills Initiative City Council Public Hearing April 6, 2021
Date: Saturday, April 03, 2021 8:54:30 AM

Honorable City Council Members,

I wanted to express my support for proposed amendments to the General Plans and Amend the Zoning Ordinance, both of which cure the inconsistencies between the General Plan and the Richmond Hills Initiative (RHI).

Thank you for the passage by your council of the RHI by the City Council in 2017. Approval of this item, providing the needed consistency between the General Plan and the Zoning Ordinance with the RHI, is the final step in what so many in our community are waiting for and excited about. The council is to be commended for taking this action to support all of us awaiting final implementation of the Richmond Hills Initiative.

Sincerely,

Sherry Alford

From: stevenchickering
To: City Clerk Dept
Cc: Stephen Shorette
Subject: Public Comments on Agenda item I.1 - General Plan Amendment to Create Consistency with the City-Adopted Richmond Hills Initiative
Date: Monday, April 05, 2021 5:09:57 PM

From: Steven Chickering & Stephen Shorette
5820 Knobcone Court
Richmond, CA 94803
stevenchickering@comcast.net
stephenshorette@comcast.net

To: City of Richmond City Council
450 Civic Center Plaza, Second Floor
Richmond, CA 94804
cityclerkdept@ci.richmond.ca.us

Re: Public Comments on Agenda item I.1 - General Plan Amendment to Create Consistency with the City-Adopted Richmond Hills Initiative
City Council Public Hearing April 1, 2021

Honorable City Council Members:

We want to express our support for proposed amendments to the General Plan and the Zoning Ordinance amendment, both of which cure the inconsistencies between the General Plan and the Richmond Hills Initiative (RHI).

We were most appreciative of the passage of the RHI by the City Council in 2017. Approval of this item, providing the needed consistency between the General Plan and the Zoning Ordinance with the RHI, is the necessary and final step in what so many in the community are highly enthusiastic about. The Council is commended for taking this important action to support of all of us awaiting the final implementation of Richmond Hills Initiative.

Sincerely,

Steven Chickering & Stephen Shorette

From: [Cordell Hindler](#)
To: [City Clerk Dept](#)
Subject: Public Comments Budget Session J-1
Date: Thursday, April 01, 2021 5:20:41 PM

good Evening Mayor Butt, City Council and city Staff

i have looked at the Power Point Presentation, and I do like the concept

i would like to hear on what the council thinks

Sincerely
Cordell

From: [Cordell Hindler](#)
To: [City Clerk Dept](#)
Subject: Public Comments J-3 Budget Session
Date: Thursday, April 01, 2021 5:24:32 PM

good Evening Mayor Butt, City Council

I have Reviewed the Over Time Report and i am Impressed

so i would like to hear on what the council thinks

Sincerely
Cordell

From: [Cordell Hindler](#)
To: [City Clerk Dept](#)
Subject: Public Comments K-1 Council as a whole
Date: Thursday, April 01, 2021 5:31:21 PM

good Evening Mayor Butt and City Council

the Reason that the Council should Consider Reinstating the Finance and Public Safety Committees is because i have been in conversation with the City Clerk in Berkeley and he explained that the Assistant and Deputy City clerks are assigned to attend the meetings every month.

so i am asking that the Council Please Please Re Consider reinstate the Finance and Public Safety Standing Committees

Sincerely
Cordell

From: [anai gomez](#)
To: [City Clerk Dept](#)
Subject: Please read this message at the meeting at 6:30 pm. today
Date: Tuesday, April 06, 2021 1:07:51 PM

My name is Anai Gomez, I work at Foodsco on McDonald Ave. Richmond,

I am writing this email because at the time of the meeting I will be working as I have during the most difficult times for everyone, and that it is a pity that our representatives of the city of Richmond think that we do not deserve the temporary increase of 5 dollars an hour.

While many of us get from the virus from working during the pandemic, some died, others were left with serious health problems and in my case my husband has not yet returned to work.

This increase will not return anyone's health but will help solve economic problems.

they must be humane in making this decision. because we deserve it.

Thank you.

 *Anai Gomez.*

From: [Tim James](#)
To: [City Clerk Dept](#)
Cc: [Sabrina Lundy](#)
Subject: Public Comments Agenda Item #K-4 - Grocery Pay Ordinance
Date: Tuesday, April 06, 2021 11:14:04 AM
Attachments: [Richmond Grocery Pay LTR 4-6-21.pdf](#)
[CGA - Letter to Richmond City Council - 4462369.pdf](#)
[2021-Extra-Pay-Mandates-Economic-Study.pdf](#)

Please add to public comments agenda item #K-4. Thank you.

From: Tim James <tjames@CAGrocers.com>
Date: Tuesday, April 6, 2021 at 10:24 AM
To: "cityclerkdept@ci.richmond.ca.us" <cityclerkdept@ci.richmond.ca.us>
Subject: FW: Grocery Pay Ordinance - April 6 Agenda

For April 6 meeting. Thank you. Tim

From: Tim James <tjames@CAGrocers.com>
Date: Tuesday, April 6, 2021 at 10:22 AM
To: "tom.butt@intres.com" <tom.butt@intres.com>, "natbates@comcast.net" <natbates@comcast.net>, "Claudia_Jimenez@ci.richmond.ca.us" <Claudia_Jimenez@ci.richmond.ca.us>, "eduardo_martinez@ci.richmond.ca.us" <eduardo_martinez@ci.richmond.ca.us>, "demnlus_johnson@ci.richmond.ca.us" <demnlus_johnson@ci.richmond.ca.us>, "gayle_mclaughlin@ci.richmond.ca.us" <gayle_mclaughlin@ci.richmond.ca.us>, "melvin_willis@ci.richmond.ca.us" <melvin_willis@ci.richmond.ca.us>
Subject: Grocery Pay Ordinance - April 6 Agenda

Councilmembers, please accept the attached letters and documents regarding the grocery pay ordinance. Please contact me directly to discuss. Thank you for your consideration. Tim

Timothy James
Director, Local Government Relations
California Grocers Association
916-448-3545

April 6, 2021

The Honorable Tom Butt
Mayor, City of Richmond
450 Civic Center Plaza
Richmond, CA 94804



RE: Grocery Worker Pay

Dear Mayor Butt,

On behalf of Richmond grocers, I write to ask the Council to not move forward with the proposed grocery worker premium pay ordinance given the numerous negative consequences to grocery workers, neighborhoods and the grocery industry. Based on the consequences experienced in other jurisdictions with similar ordinances, we must oppose the ordinance for both policy and legal reasons.

We agree that grocery workers serve a vital and essential role during the pandemic. They have worked tirelessly to keep stores open for consumers, allowing our communities to have uninterrupted access to food and medications. To protect our employees, grocery stores were among the first to implement numerous safety protocols, including providing PPE and masks, performing wellness checks, enhancing sanitation and cleaning, limiting store capacity, and instituting social distance requirements, among other actions.

On top of increased safety measures, grocery employees have also received unprecedented amounts of supplemental paid leave to care for themselves and their families in addition to already existing leave benefits. Grocers have also provided employees additional pay and benefits throughout the pandemic in various forms, including hourly and bonus pay, along with significant discounts and complimentary groceries. All of these safety efforts and additional benefits clearly demonstrate grocers' dedication and appreciation for their employees. Most importantly the industry has been fierce advocates for grocery workers to be prioritized for vaccinations. This is evident now that your county has been considering grocery workers a priority for weeks now and nearly every grocery worker has the opportunity to be vaccinated.

Unfortunately, a Grocery Worker Pay ordinance would mandate grocery stores provide additional pay beyond what is feasible, which would severely impact store viability and result in increased prices for groceries, limited operating hours, reduced hours for workers, fewer workers per store, and most concerning, possible store closures. These negative impacts from the ordinance would be felt most acutely by independent grocers, ethnic format stores, and stores serving low-income neighborhoods. The Cities of Los Angeles, Long Beach and Seattle, who have passed a similar ordinance, have already suffered the permanent loss of several full-service grocery stores as direct result.

We request the City of Richmond perform an economic impact report to understand the true impacts of this policy. If you choose not to understand specific impacts for Richmond, then we refer you to the economic impact report from the City of Los Angeles Legislative Analyst Office and the San Francisco Office of the Controller. These reports make it clear that the impact of this policy will severely impact workers, consumers, and grocery stores.

In their own words the Los Angeles City Legislative Analyst clearly states that grocery "companies would be required to take action to reduce costs or increase revenue as the labor increase will eliminate all current profit margin." The report recognizes that "affected companies could raise prices to counteract the additional wage cost." This type of ordinance would put "more pressure on struggling stores (especially independent grocers) which could lead to store closures" and that "the closure of stores could lead to an increase in 'food deserts' that lack access to fresh groceries."

The San Francisco Controller's Office in their Economic Impact Report urges decision-makers to consider "the distributional impact of having local consumers, including low-income households, pay for wage mandates that lead to higher labor costs for business." The report identifies the ordinance will "possibly lead to reduced employment and higher consumer prices.

April 6, 2021

PAGE 2



These costs would generate negative multiplier effects on other local industries and sectors of the local economy.” The report also identifies “a decline in employment of 164 jobs.”

These are all scenarios we know everyone in the community wants to avoid, especially during a pandemic. This is why we are asking the Council to not move forward with this policy and, instead, focus on making sure all grocery workers are provided the vaccine.

Specific to ordinance language, there are numerous policy and legal issues which unnecessarily single out the grocery industry and create significant burdens. The ordinance fails to recognize the current efforts grocers are making to support their employees and requires grocers add significant costs on to existing employee benefit programs.

Furthermore, passing this ordinance improperly inserts the city into employee-employer contractual relationships. The ordinance also ignores other essential workers, including city employees, that have similar interaction with the public. Taken in whole, this ordinance is clearly intended to impact only specific stores within a single industry and fails to recognize the contributions of all essential workers. Based on language specifics, this ordinance misses a genuine effort to promote the health, safety and welfare of the public.

Emergency passage of the ordinance also ignores any reasonable effort for compliance by impacted stores, as several grocery stores will be operating at the time of passage. By implementing the ordinance immediately there is literally no time to communicate to employees, post notices, adjust payroll processes, and other necessary steps as required by California law. Coupled with the varied enforcement mechanisms and significant remedies outlined, the passage of this ordinance would put stores into immediate jeopardy. This scenario is yet another negative consequence resulting from the lack of outreach to grocers and the grocery industry to understand real world impacts.

Grocery workers have demonstrated exemplary effort to keep grocery stores open for Richmond. This why the grocery industry has provided significant safety measures and historic levels of benefits that include additional pay and bonuses. It is also why vaccinating grocery workers has been our first priority. Unfortunately, this ordinance is a significant overreach of policy and jurisdictional control. This will result in negative consequences for workers and consumers that will only be compounded by the pandemic.

We respectfully implore the Council to not move forward with the grocery worker pay ordinance at this time. We encourage you to recognize and understand the impacts of this ordinance on workers and the community by accepting our invitation to work cooperatively with Richmond grocers. If Council must bring the ordinance forward for a vote at this time we ask you to oppose its passage. CGA is submitting additional information from our legal counsel for your consideration.

Thank you for your consideration and we look forward to being able to combat the pandemic in partnership with the City of Richmond.

Sincerely,


Timothy James
California Grocers Association

CC: Members, Richmond City Council
City Clerk, City of Richmond

April 5, 2021

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Via Email

The Honorable Tom Butt
City Council
440 Civic Center Plaza
Richmond, California 94804

Re: Hazard Pay for Grocery and Retail Workers Ordinance

Dear Council Members:

We write on behalf of our client, the California Grocers Association (the "CGA"), regarding the proposed Hazard Pay for Grocery and Retail Workers Ordinance (the "Ordinance") that singles out a specific group of grocery stores (i.e., those companies with 300+ employees nationally) and requires them to implement mandatory pay increases. The City Council's rushed consideration of this Ordinance, would, if passed, lead to the enactment of an unlawful, interest-group driven ordinance that ignores large groups of essential retail workers. It will compel employers to spend less on worker and public health protections in order to avoid losses that could lead to closures. In addition, the Ordinance, in its proposed form, interferes with the collective-bargaining process protected by the National Labor Relations Act (the "NLRA"), and unduly targets certain grocers in violation of their constitutional equal protection rights. We respectfully request that the City Council reject the Ordinance, as these defects are incurable.

The Ordinance fails to address any issue affecting frontline workers' health and safety.

The purported purpose of the Ordinance is to protect "public health and welfare" during the Covid-19 pandemic. (Ordinance at 1.) The Ordinance is devoid of any requirements related to the health and safety of frontline workers or the general public and instead imposes costly burdens on certain grocers by requiring them to provide an additional Five Dollars (\$5.00) per hour wage bonus ("Hero Pay"). (§ 5.112.040.) A wage increase does not play any role in mitigating the risks of exposure to COVID-19, nor is there any suggestion that there is any risk of interruption to the food supply absent an increase in wages. (Ordinance at 1.) If anything, the Ordinance could increase those risks, as it may divert funds that otherwise would have been available for grocers to continue their investments in public health measures recognized to be effective: enhancing sanitation and cleaning protocols, limiting

store capacity, expanding online orders and curbside pickup service, and increasing spacing and social distancing requirements.

The Ordinance also inexplicably chooses winners and losers among frontline workers in mandating Hazard Pay. The Ordinance defines “store” as a “retail grocery store that sells primarily food or household goods” or a “retail store that is over 85,000 square feet and dedicates 10 percent or more of its sales floor to groceries.” (§ 5.112.020(J).) Other retail and health care workers are ignored, despite the fact that those same workers have been reporting to work since March. The Ordinance grants Hazard Pay for select employees while ignoring frontline employees of other generic retailers and other frontline workers in Richmond that face identical, if not greater, risks.

The Ordinance is unlawful. By mandating Hazard Pay, the Ordinance would improperly insert the City of Richmond into the middle of the collective bargaining process protected by the National Labor Relations Act. The Ordinance suggests that the certain grocery workers require this “immediate” relief on an emergency basis to preserve “the public peace, health, welfare and safety.” (Ordinance at 1.) Richmond employers and workers in many industries have been faced with these issues since March 2020. Grocers have continued to operate, providing food and household items to protect public health and safety. In light of the widespread decrease in economic activity, there is also no reason to believe that grocery workers are at any particular risk of leaving their jobs, but even if there were such a risk, grocers would have every incentive to increase the workers’ compensation or otherwise bargain with them to improve retention. The Ordinance would interfere with this process that Congress intended to be left to be controlled by the free-play of economic forces. *Machinists v. Wisconsin Employment Relations Comm’n*, 427 U.S. 132 (1976). Such ordinances have been found to be preempted by the NLRA.

For example, in *Chamber of Commerce of U.S. v. Bragdon*, the Ninth Circuit Court of Appeals held as preempted an ordinance mandating employers to pay a predetermined wage scale to employees on certain private industrial construction projects. 64 F.3d 497 (9th Cir. 1995). The ordinance’s purported goals included “promot[ing] safety and higher quality of construction in large industrial projects” and “maintain[ing] and improv[ing] the standard of living of construction workers, and thereby improv[ing] the economy as a whole.” *Id.* at 503. The Ninth Circuit recognized that this ordinance “differ[ed] from the [a locality’s] usual exercise of police power, which normally seeks to assure that a minimum wage is paid to all employees within the county to avoid unduly imposing on public services such as welfare or health services.” *Id.* at 503. Instead, the ordinance was an “economic weapon” meant to influence the terms of the employers’ and their workers’ contract. *Id.* at 501-04. The Ninth Circuit explained that the ordinance would “redirect efforts of employees not to bargain with employers, but instead, to seek to set specialized minimum wage and benefit packages with political bodies,” thereby substituting a “free-play of economic forces that was intended by the NLRA” with a “free-play of political forces.” *Id.* at 504.

The same is true of this Ordinance. While the City has the power to enact ordinances to further the health and safety of its citizens, it is prohibited from interfering directly in employers' and their employees' bargaining process by arbitrarily forcing certain grocers to provide Hazard Pay that is both unrelated to minimum labor standards, or the health and safety of the workers and the general public. While minimum labor standards that provide a mere backdrop for collective bargaining are consistent with the NLRA, local laws such as this Ordinance which effectively dictate the outcome of the collective bargaining process are preempted. The Ordinance here imposes unusually strict terms on a narrow band of businesses without any allowance for further bargaining. By enacting an ordinance such as this, the City would end any negotiations by rewriting contracts.

The Ordinance also violates the U.S. Constitution and California Constitution's Equal Protection Clauses (the "Equal Protection Clauses"). The Equal Protection Clauses provide for "equal protections of the laws." U.S. Const. amend. XIV, § 1; Cal. Const. art I, § 7(a). This guarantee is "essentially a direction that all persons similarly situated should be treated alike" and "secure[s] every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985); *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). No law may draw classifications that do not "rationally further a legitimate state interest." *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). By requiring that any classification "bear a rational relationship to an independent and legitimate legislative end, [courts] ensure that classifications are not drawn for the purpose of disadvantaging the group burdened by law." *Romer v. Evans*, 517 U.S. 620, 633 (1996).

As discussed above, the Ordinance here unfairly targets traditional grocery companies and arbitrarily subjects certain 300-employee grocers to the Hazard Pay mandate while sparing other generic retailers who also employ frontline workers. *See Fowler Packing Co., Inc. v. Lanier*, 844 F.3d 809, 815 (9th Cir. 2016) ("[L]egislatures may not draw lines for the purpose of arbitrarily excluding individuals," even to "protect" those favored groups' "expectations."); *Hays v. Wood*, 25 Cal. 3d 772, 786-87 (1979) ("[N]othing opens the door to arbitrary action so effectively as to allow [state] officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected.").

As an ordinance that impinges on fundamental rights to be free of legislative impairment of existing contractual agreements, this ordinance would be subject to heightened scrutiny by courts. *See, e.g., Plyler v. Doe*, 457 U.S. 202, 216 (1982); *Hydrick v. Hunter*, 449 F.3d 978, 1002 (9th Cir. 2006); *Long Beach City Employees Ass'n v. City of Long Beach*, 41 Cal.3d 937, 948 (1986). The City's unilateral modification of contractual terms governing wages and hours of grocery employees goes to the very heart of bargained-for agreements—it modifies contractual terms and as such impinges on a fundamental right. Regardless, absent from the Ordinance is any requirement that would actually address its stated purpose of

promoting the public's health and safety. Paying grocery workers this Hazard Pay will not protect anyone from contracting coronavirus. Put simply, there is a disconnect between the Ordinance's reach and its stated purpose, making it unlawful and violating the equal protection rights of CGA's members.

CGA disagrees with the Council's characterization of the Ordinance as a potential "urgency ordinance." There is nothing in the Ordinance that is required for immediate preservation of the "public peace, health, and safety." (§ 3.) Even if an emergency measure passes, there is no requirement that an emergency measure become effective immediately on passage. As this Council has done many times before, an emergency measure can become effective at a set date in the future.

Finally, in light of emerging vaccination programs for essential workers, stores' increasing ability to protect patrons and workers from infection using distancing, curbside pickup, and other measures, we strongly encourage the City to set an alternate deadline for expiration of the hazard pay ordinance (i.e., 90 days) so that it can be revisited by the Council in light of the rapidly changing pandemic conditions.

For all of the reasons discussed above, we respectfully request that the City Council reject the Ordinance.

Sincerely,



William F. Tarantino

Cc: Richmond City Council
Nathaniel Bates
Claudia Jimenez
Demnlus Johnson, III
Eduardo Martinez
Gayle McLaughlin
Melvin Willis

Consumer and Community Impacts of Hazard Pay Mandates

January 2021

Prepared for:

California Grocers Association

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About the Authors

The authors are partners with Capitol Matrix Consulting (CMC), a firm that provides consulting services on a wide range of economic, taxation, and state-and-local government budget issues. Together, they have over 80 years of combined experience in economic and public policy analysis.

Mike Genest founded Capitol Matrix Consulting (originally Genest Consulting) in 2010 after concluding a 32-year career in state government, which culminated as Director of the California Department of Finance (DOF) under Governor Arnold Schwarzenegger. Prior to his four-year stint as the Governor's chief fiscal policy advisor, Mr. Genest held top analytical and leadership positions in both the executive and legislative branches of government. These included Undersecretary of the Health and Human Services Agency, Staff Director of the Senate Republican Fiscal Office, Chief of Administration of the California Department of Corrections and Rehabilitation, and Director of the Social Services section of California's Legislative Analyst's Office.

Brad Williams joined Capitol Matrix Consulting in 2011, after having served in various positions in state government for 33 years. Mr. Williams served for over a decade as the chief economist for the Legislative Analyst's Office, where he was considered one of the state's top experts on the tax system, the California economy, and government revenues. He was recognized by the Wall Street Journal as the most accurate forecaster of the California economy in the 1990s, and has authored numerous studies related to taxation and the economic impacts of policy proposals. Immediately prior to joining CMC, Mr. Williams served as a consultant to the Assembly Appropriations Committee, where he advised leadership of the majority party on proposed legislation relating to taxation, local government, labor, and banking.

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Executive Summary

Hazard-pay mandates passed in the City of Long Beach and under consideration in the City of Los Angeles and in other local jurisdictions would raise pay for grocery workers by as much as \$5.00 per hour. Since the average pay for grocery workers in California is currently about \$18.00 per hour, a \$5.00 increase would raise store labor costs by 28 percent, and have major negative impacts on grocery stores, their employees and their customers. Specifically:

- Average profit margins in the grocery industry were 1.4% in 2019, with a significant number of stores operating with net losses. While profits increased temporarily to 2.2% during early to mid 2020, quarterly data indicates that profit margins were subsiding to historical levels as 2020 drew to a close.
- Wage-related labor expenses account for about 16 percent of total sales in the grocery industry. As a result, a 28 percent increase in wages would boost overall costs 4.5 percent under the City of Los Angeles proposal of \$5.00 per hour. *This increase would be twice the size of the 2020 industry profit margin and three times historical grocery profit margins.*
- In order to survive such an increase, grocers would need to raise prices to consumers and/or find substantial offsetting cuts to their controllable operating expenses, which would mean workforce reductions. As an illustration of the potential magnitude of each of these impacts, we considered two extremes:
 - 1) All of the higher wage costs (assuming the \$5.00/hour proposal) are passed through to consumers in the form of higher retail prices:
 - This would result in a \$400 per year increase in grocery costs for a typical family of four, an increase of 4.5 percent.
 - If implemented in the City of Los Angeles, its residents would pay \$450 million more for groceries over a year.
 - The increase would hit low- and moderate-income families hard, particularly those struggling with job losses and income reductions due to COVID-19.
 - If implemented statewide, additional grocery costs would be \$4.5 billion per year in California.
 - 2) Retail prices to consumers are not raised and all the additional costs are offset through a reduction in store expenses:
 - Given that labor costs are by far the largest controllable expense for stores, it is highly likely that the wage mandates will translate into fewer store hours, fewer employee hours, and fewer jobs.
 - For a store with 50 full-time equivalent employees, it would take a reduction of 11 employees to offset the increased wage costs, or a 22% decrease in staff.
 - If the mandate were imposed statewide at \$5.00 per hour, the job loss would be 66,000 workers.

Consumer and Community Impacts of Hazard Pay Mandates

- If imposed in the City of Los Angeles, the job loss would be 7,000 workers.
- And in the City of Long Beach, the job impact of its \$4.00 per hour mandate would be 775 jobs.
- Stores could alternatively avoid job reductions by cutting hours worked by 22 percent.
- For the significant share of stores already operating with net losses, a massive government-mandated wage increase would likely result in store closures, thereby expanding the number of “food deserts” (i.e. communities with no fresh-food options).

Introduction

The Long Beach City Council has passed an ordinance that mandates grocers to provide a \$4.00 per hour pay increase – “hazard pay” – to grocery workers. The mandate expires in 120 days. Two members of the Los Angeles City have introduced a similar measure for a \$5.00 per hour increase for companies that employ more than 300 workers nationwide. Grocery workers in California currently earn about \$18.00 per hour.¹ Therefore, the Los Angeles proposal would increase average hourly pay to \$23.00 per hour, an increase of 28 percent. Several other cities in California have discussed \$5.00/hour proposals similar to Los Angeles.

This report focuses on the impact of hazard pay mandates on grocery store profitability and on the sustainability of an industry with traditionally low profit margins. It also assesses the potential impact of the proposed wage increases on consumers, especially lower-income consumers (a cohort already hit hard by the COVID lockdowns and business closures).

Background — Grocery is a Low-Margin, High-Labor Cost Business

The grocery business is a high-volume, low-margin industry. According to an annual database of public companies maintained by Professor Damodaran of New York University (NYU),² net profit margins as a percent of sales in the grocery industry are among the lowest of any major sector of the economy. Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA) averaged 4.6 percent of sales in 2019, and the net profit margin (which accounts for other unavoidable expenses such as rent and depreciation) was just 1.4 percent during the year. This compares to the non-financial, economy-wide average of 16.6 percent for EBITDA and 6.4 percent for the net profit margin. The NYU estimate for public companies in the grocery industry is similar to the 1.1 percent margin reported by the Independent Grocers Association for the same year.³

COVID-19 temporarily boosted profits

In the beginning of the COVID-19 pandemic, sales and profit margins spiked as people stocked up on household items and shifted spending from eating establishments to food at home. According to data compiled by NYU, net profit margins in the grocery industry increased to 2.2 percent in early to mid 2020.⁴ Although representing a substantial year-to-year increase in profits, the 2.2 percent margin remains quite small relative to most other industries. This implies that even with the historically high rates of profits in 2020, there is little financial room to absorb a major wage increase.

¹ \$18.00 per hour is consistent with the responses we received to our informal survey. It is also consistent with published contract agreements we reviewed. See, for example, the “Retail Food, Meat, Bakery, Candy and General Merchandise Agreement, March 4, 2019 - March 6, 2022 between UFCW Union Locals 135, 324, 770, 1167, 1428, 1442 & 8 - GS and Ralphs Grocery Company.” In this contract, hourly pay rates starting March 2, 2021 for food clerks range from \$14.40 per hour (for first 1,000 hours) up to \$22.00 per hour (for workers with more than 9,800 hours), The department head is paid \$23.00 per hour. Meat cutter pay rates range from \$14.20 (for the first six months) to \$23.28 per hour (for those with more than 2 years on the job). The department manager is paid \$24.78 per hour. <https://ufcw770.org/wp-content/uploads/2020/08/Ralphs-Contract-2020.pdf>

² Source: Professor Aswath Damodaran, Stern School of Business, New York University. <http://pages.stern.nyu.edu/~adamodar/>

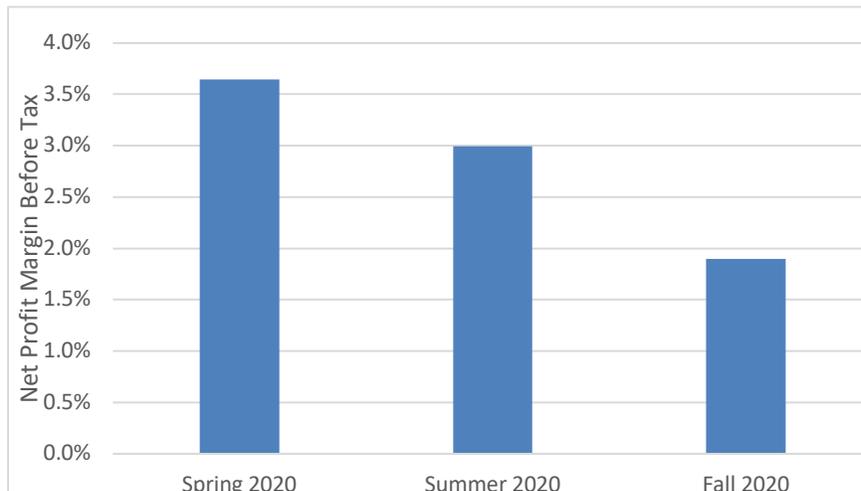
³ Source: “2020 Independent Grocer Financial Survey.” Sponsored by the National Grocer’s Association and FMS Solutions Holding, LLC

⁴ Supra 2.

But the increases are subsiding

Moreover, quarterly data indicates that the sales and profit increases experienced in early 2020 were transitory and were settling back toward pre-COVID trends as 2020 drew to a close. This quarterly trend is evident in quarterly financial reports filed by California’s two largest publicly traded companies in the grocery business: The Kroger Company (which includes Ralphs, Food for Less, and Fred Meyers, among others) and Albertsons (which includes Safeway, Albertsons, and Vons, among others). Figure 1 shows that the average profit margin for these two companies was 3.6 percent of sales in the Spring of 2020, declining to 1.9 percent by the fourth quarter of the year.⁵ Monthly sales data contained in the 2020 Independent Grocer’s Financial Survey showed a similar pattern, with year-over-year sales peaking at 68 percent in mid-March 2020, but then subsiding to 12 percent as of the first three weeks of June (the latest period covered by the survey).⁶

Figure 1
Combined Net Profit Margins During 2020
Albertsons and The Kroger Companies



While grocers continued to benefit from higher food and related sales during the second half of 2020, they also faced higher wholesale costs for food and housing supplies, as well as considerable new COVID-19 related expenses. These include expenses for paid leave and overtime needed to cover shifts of workers affected by COVID-19, both those that contracted the virus and (primarily) those that were exposed and needed to quarantine. Other COVID-19 costs include those for intense in-store cleaning, masks for employees, new plastic barriers at check-outs and service counters, and additional staffing and capital costs for scaling up of e-commerce, curbside and home delivery.

⁵ In their SEC 10-Q quarterly report for the four-month period ending in June 2020, Albertsons reported that consolidated sales were up 21.4 percent from the same period of 2019 and before-tax profits were 3.5 percent of total sales. In the three-month period ending in mid-September, the company reported year-over-year sales growth of 11.2 percent and before-tax profits equal to 2.5 percent of sales. In their 10-Q report filed for the three-month period ending in early December, Albertsons showed year-over-year sales growth of 9.3 percent, and profits as a percent of sales of just 1.0 percent. Data for the Kroger Company indicates that year-over-year sales growth subsided from 11.5 percent for the three-month period ending in May 2020 to 8.2 percent for the three-month period ending in August, and further to 6.3 percent for the three-month period ending in November. Profits as a percent of sales fell from 3.8 percent to 3.5 percent, and further to 2.8 percent during the same three quarterly periods. (Source: EDGAR Company Filings, U.S. Securities and Exchange Commission. <https://www.sec.gov/edgar/searchedgar/companysearch.html>.)

⁶ Supra 3

Many stores incur losses in normal years

The 1- to 2-percent net profit levels cited above reflect industry averages. There is considerable variation around these averages among individual stores, with some doing better and some doing worse. As one indication of this variation, the 2020 Independent Grocer Financial Survey found that, while the nationwide average profit before tax for all stores was 1.1 percent of sales in 2019, about 35 percent of the respondents reported negative net profits during the year.⁷ This national result is consistent with feedback we received from California grocers, which reported that even in profitable years, anywhere from one-sixth to one-third of their stores show negative earnings. While chain operations can subsidize some store losses with earnings from other stores, a major mandated wage increase would eliminate earnings for even the most profitable stores, making cross-subsidies within supermarket chains much less feasible. As discussed below, the consequence would likely be a closure of some unprofitable stores.

Mandated wage increases would push most stores into deficits

The grocery business is very labor intensive. Labor is the industry's second largest cost, trailing only the wholesale cost of the food and other items they sell. According to a benchmark study by Baker-Tilly, labor expenses account for 13.2 percent of gross sales of grocers nationally.⁸ The Independent Grocer Survey, cited above, found that labor costs account for 15 percent of sales nationally and 18.4 percent for independent grocers in the Western region of the U.S.⁹

Respondents to our survey of California grocers reported that labor costs equate to 14 percent to 18 percent of sales revenues. For purposes of this analysis, we are assuming that the wage base potentially affected by the mandated hourly pay increase is about 16 percent of annual sales.¹⁰

A mandatory \$4-\$5 per hour increase, applied to an average \$18.00 per hour wage base, would increase labor costs by between 22 percent and 28 percent. This would, in turn, raise the share of sales devoted to labor costs from the current average of 16 percent up to between 19 percent and 20.5 percent of annual sales. The up-to-4.5 percent increase would be double the 2020 profit margin reported by the industry, and three times the historical margins in the grocery industry.

Potential Impacts on Consumers, Workers and Communities

In order to survive such an increase, grocers would need to raise prices to consumers and/or find substantial offsetting cuts to their operating expenses. As an illustration of the potential magnitude of each of these impacts, we considered two extremes: (1) all of the higher wage costs are passed through to consumers in the form of higher retail prices; and (2) prices are not passed forward and all the additional costs are offset through a reduction of jobs or hours worked.

⁷ Supra 3

⁸ White Paper, "Grocery Benchmarks Report", November 5, 2019, Baker Tilly Virchow Krause LLP.

⁹ Supra 3

¹⁰ This recognizes that not all labor costs would be affected by the hazard pay proposal. Grocers report that both in-store and warehouse staff would receive the increase, as would supervisors and managers, although some executive and administrative staff may not. In addition, costs for health coverage would probably not be affected, at least not immediately, but payroll taxes and some other benefit costs would be.

Higher costs passed along to consumers

Aggregate impacts. If a \$5.00 per hour wage increase were imposed statewide and all of the increase were passed along to customers in the form of higher product prices, Californians would face a rise in food costs of \$4.5 billion annually. If imposed locally, the City of Los Angeles's \$5 per hour proposal would raise costs to its residents by \$450 million annually, and the \$4.00 per hour increase in Long Beach would raise grocery costs to its residents by about \$40 million annually.¹¹

Impact on household budgets. The wage increase would add about \$400 to the annual cost of food and housing supplies for the typical family of four in California.¹² While such an increase may be absorbable in higher income households, it would hit low- and moderate-income households especially hard. The impact would be particularly harsh for those who have experienced losses of income and jobs due to the pandemic, or for those living on a fixed retirement income including many seniors. For these households, the additional grocery-related expenses will make it much more difficult to cover costs for other necessities such as rent, transportation, utilities, and healthcare.

According to the BLS Consumer Expenditure Survey, California households with annual incomes of up to \$45,000 already spend virtually all of their income on necessities, such as food, housing, healthcare, transportation and clothing.¹³ For many of these households, a \$33 per month increase in food costs would push them into a deficit.

These increases would add to the severe economic losses that many Californians have experienced as a result of government-mandated shutdowns in response to COVID-19. According to a recent survey by the Public Policy Institute of California, 44 percent of households with incomes under \$20,000 per year and 40 percent with incomes between \$20,000 and \$40,000 have reduced meals or cut back on food to save money.¹⁴ Clearly, imposing a \$4.5 billion increase in grocery prices would make matters worse, especially for these lower-income Californians.

Higher costs are offset by job and hours-worked reductions

If grocers were not able to pass along the higher costs resulting from the additional \$5/hour wage requirement, they would be forced to cut other costs to avoid incurring financial losses.¹⁵ Given

¹¹ Our estimates start with national U.S. Census Bureau estimates from the Annual Retail Trade Survey for 2018 (the most current data available), which indicates that nationwide sales by grocers (excluding convenience stores) was \$634 billion in 2018. We then apportioned this national data to California as well as the cities of Los Angeles and Long Beach based on relative populations and per-household expenditure data from the Consumer Expenditure Survey. We then updated the 2018 estimate to 2021 based on actual increases in grocery-related spending between 2018 and 2020, as reported by the U.S. Department of Commerce, and a projection of modest growth in 2021. Our estimate is consistent with the industry estimate of \$82.9 billion for 2019 that was by IBISWorld, as adjusted for industry growth in 2020 and 2021. (See IBISWORLD Industry Report, Supermarkets & Grocery Stores in California, Tanvi Kumar, February 2019.)

¹² Capitol Matrix Consulting estimate based on U.S. Bureau of Labor Statistics, Consumer Expenditure Report, 2019. <https://www.bls.gov/opub/reports/consumer-expenditures/2019/home.htm>

¹³ U.S. Bureau of Labor Statistics, Consumer Expenditure Survey, State-Level Expenditure Tables by Income. <https://www.bls.gov/cex/csxresearchtables.htm#stateincome>.

¹⁴ "Californians and Their Well-Being", a survey by the Public Policy Institute of California. December 2020. <https://www.ppic.org/publication/ppic-statewide-survey-californians-and-their-economic-well-being-december-2020/>

¹⁵ Circumstances where stores would not be able to pass forward high costs include communities where customers are financially squeezed by pandemic-related losses in jobs or wages, or where the increased is imposed locally and customers are able to avoid higher prices by shifting purchases to cross-border stores.

that labor costs are by far the largest controllable expense for stores, it is highly likely that the wage mandates will translate into fewer store hours, fewer employee hours, and fewer jobs. For a store with 50 full-time equivalent employees, it would take a reduction of 11 employees to offset the increased wages, which is about a 22 percent decrease in staff/hours.

Aggregate impacts. As an illustration, if the full California grocery industry were to respond to a statewide \$5.00 wage mandate by reducing its workforce, we estimate that up to 66,000 industry jobs would be eliminated. This is about 22 percent of the 306,000 workers in the grocery industry in the second quarter of 2020 (the most recent quarter for which we have detailed job totals).¹⁶ If the mandate were imposed locally in the City of Los Angeles, the impact would be about 7,000 workers, and in the City of Long Beach (at \$4.00 per hour), the impact would be about 775 jobs. Stores could alternatively avoid job reductions by cutting hours worked by 22 percent across-the-board.

Under these circumstances, some workers receiving the wage increases would be better off, but many others would be worse off because of reduced hours or layoffs. Customers would also be worse off because of reduced store hours, and fewer food choices and services.

Without any external constraints imposed by the local ordinances, it is likely some combination of higher prices and job and hour reductions would occur. Stores within some jurisdictions imposing the mandatory wage increase might be able to raise retail prices sufficiently to cover a significant portion of the mandated wage increase, thereby shifting the burden onto customers. However, the degree to which this would occur would vary from jurisdiction to jurisdiction, depending on the price-sensitivity of their customers and (if the mandate is imposed locally) the availability of shopping alternatives in neighboring communities that have not imposed the wage mandate.

Of course, if the local ordinances contain provisions prohibiting stores from cutting hours, then stores would be forced to pass costs on to consumers in the form of higher prices, or to close stores in those jurisdictions.

Some communities would become food deserts

Many of the up-to one third of stores already incurring losses may find it impossible to raise prices or achieve savings that are sufficient to offset the higher wage costs. For these stores, the only option would be store closure. Indeed, a consistent theme of feedback we received from California grocer representatives is that it would be extremely difficult, if not impossible, to justify continued operation of a significant portion of their stores following a government-mandated 28-percent increase in wages. This would leave some communities with fewer fresh food options.

According to the Propel LA: “The United States Department of Agriculture (USDA) defines a food desert as ‘a low-income census tract where either a substantial number or share of residents has low access to a supermarket or large grocery store.’ There are a large number of census tracts in Los Angeles County, including Antelope Valley and San Fernando Valley, that are considered to be food deserts. The population of food deserts is predominantly Hispanic or Latino, followed by Black and White, respectively.”¹⁷ The map also shows several food deserts in and around the City of Long Beach. The hazard pay proposal would exacerbate this problem.

¹⁶ Employment Development Department. Labor Market Information Division. Quarterly Census of Employment and Wages. <https://www.labormarketinfo.edd.ca.gov/qcew/qcew-select.asp>

¹⁷ “Food deserts in LA, an Interactive Map.” Propel LA, <https://www.propel.la/portfolio-item/food-deserts-in-los-angeles-county/>

Closing even one supermarket in many neighborhoods would result in residents having to commute significantly farther to find fresh and healthy food at reasonable prices. Tulane University studied the impact of food deserts and concluded that while the majority of items at smaller stores are priced higher than at supermarkets, price is a consideration in deciding where to purchase staple foods, and transportation from a food desert to a supermarket ranges from \$5 to \$7 per trip.¹⁸

Thus, mandating hazard pay would likely impose significant hardships on some communities, especially in lower-income areas. The loss of a grocery store means both fewer jobs for members of the community and higher costs for all residents in the community, who must pay higher local prices or incur additional time and expense to shop.

Conclusion

Hazard pay initiatives like those passed in the City of Long Beach, and proposed in the City of Los Angeles and in other local jurisdictions, would have far-reaching and negative consequences for businesses, employees and customers of grocery stores in the jurisdictions where levied. They would impose an up-to-28 percent increase in labor costs on an industry that is labor-intensive and operates on very thin profit margins. The increases would be more than double the average profit margins for the grocery industry in 2020, and triple the margins occurring in normal years, and thus would inevitably result in either retail price increases or major employment cutbacks by grocery stores, or a combination of both. If the increased costs were passed forward to consumers, a typical family of four in California would face increased food costs of \$400 per year. This would intensify financial pressures already being felt by millions of low- and moderate-income families, many of whom are already cutting back on basic necessities like food due to COVID-19-related losses in jobs and income. Establishments not able to recoup the costs by raising prices would be forced to reduce store hours and associated jobs and hours worked by employees. For a significant number of stores that are already struggling, the only option may be to shutter the store. This would be a “lose-lose” for the community. It would mean fewer jobs with benefits, less local access to reasonably-priced food, and more time and expense spent by customers that would have to travel greater distance to find grocery shopping alternatives.

¹⁸ “Food Deserts in America (Infographic),” Tulane University, School of Social Work, May 10, 2018. <https://socialwork.tulane.edu/blog/food-deserts-in-america>

From: [Cordell Hindler](#)
To: [City Clerk Dept](#)
Subject: Public Comments K-5 Council as a Whole
Date: Thursday, April 01, 2021 5:38:00 PM

good Evening Mayor Butt and City Council, I have some wonderful news, I have Spoken with Richmond and De Anza High and they are interested in hearing about the Youth Council, so i will keep the council in the loop as soon as i can

Sincerely
Cordell