

**RICHMOND, CALIFORNIA, June 21, 2022**

Community Services Building  
440 Civic Center Plaza  
Richmond, CA 94804

---

**A. OPEN SESSION TO HEAR PUBLIC COMMENT BEFORE CLOSED SESSION**

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

**B. ROLL CALL**

**Present:** Councilmembers Nathaniel Bates, Claudia Jimenez, Demnlus Johnson III, Gayle McLaughlin, Melvin Willis, Vice Mayor Eduardo Martinez, and Mayor Thomas K. Butt. **Absent:** None.

**C. CLOSED SESSION**

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

- Winehaven Legacy LLC v. City of Richmond, et al.

**C.2 CONFERENCE WITH LABOR NEGOTIATORS (Government Code Section 54957.6)**

- Agency Representatives: Jaclyn Gross, Teresa Fairbanks, and Anil Comelo

Employee organizations:

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

**C.3 CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section 54956.8)**

- Property: 1324 Canal Boulevard (General Warehouse, Port of Richmond)  
Agency negotiator: Lizeht Zepeda  
Negotiating parties: Richmond Grown  
Under negotiation: Price and terms of payment

**C.4 LIABILITY CLAIMS (Government Code Section 54956.9)**

- 221B, 225, 229 & 235 Tunnel Avenue
- 12200 San Pablo Avenue

**D. PUBLIC COMMENT BEFORE CLOSED SESSION**

The following individuals gave comments via teleconference: Norman La Force, Jeanne Kortz, Sally Tobin, and Pam Stello regarding Item C.1. Ben Therriault regarding Item C.2. Deborah Bayer regarding Items C.1 and C.2.

Mayor Butt announced his recusal from Item C.3 due to a conflict of interest because one of the principal lessees was a client of his architectural firm.

**E. ADJOURN TO CLOSED SESSION**

The Open Session adjourned to Closed Session at 4:44 p.m. Closed Session adjourned at 6:39 p.m.

**F. SPECIAL JOINT MEETING OF THE RICHMOND HOUSING AUTHORITY/RICHMOND CITY COUNCIL**

The Special Joint Meeting of the Richmond Housing Authority Board of Commissioners and Richmond City Council was called to order at 6:43 p.m. by Chair/Mayor Thomas K. Butt via teleconference.

**G. ROLL CALL**

**Present:** Commissioners/Councilmembers Nathaniel Bates, Claudia Jimenez, Demnlus Johnson III, Gayle McLaughlin, Melvin Willis, Chair/Mayor Thomas K. Butt, and Housing Authority Tenant Commissioner Jaycine Scott. **Absent:** Vice Chair/Vice Mayor Eduardo Martinez arrived after the roll was called.

**H. PUBLIC COMMENT INSTRUCTIONAL VIDEO**

The public comment instructional video was shown.

**I. STATEMENT OF CONFLICT OF INTEREST**

None.

**J. REPORT FROM THE EXECUTIVE DIRECTOR**

Richmond Housing Authority (RHA) Executive Director Nannette Beacham presented a PowerPoint that highlighted the following RHA updates: Hacienda Senior Apartments project-based voucher waiting list was opened and accepting applications June 13-30, 2022, at [www.contracostahousing.org](http://www.contracostahousing.org); and the California Tax Credit Allocation Committee approved over \$41 million in tax credits for Nevin Plaza. The council suggested staff contact Pastor Ulis Redic, President of the Richmond Baptist Ministers Conference, to allow pastors to share housing waiting lists information with their congregations. City Manager Shasa Curl announced assistance for seniors and residents without computers was available by contacting the City Manager's Office at (510) 620-6512. The council requested staff to place visible signage outside the Hacienda Senior Apartments gates near the Barrett Avenue area advertising application details. Mark Wassberg and Naomi Williams gave comments via teleconference.

**K. AGENDA REVIEW**

None.

**L. CONSENT CALENDAR**

**Motion by** Commissioner/Councilmember Johnson III

**Seconded by** Vice Chair/Vice Mayor Martinez

To approve the Housing Authority Consent Calendar.

Ayes (8): Commissioners/Councilmembers Bates, Jimenez, Johnson III, McLaughlin, Willis, Vice Chair/Vice Mayor Martinez, Chair/Mayor Butt, and Housing Authority Tenant Commissioner Scott

Passed (8 to 0)

**L.1 Continued Use of Teleconferencing**

ADOPT a resolution requiring the continued use of teleconferencing for the meetings of the Board of Commissioners of the Richmond Housing Authority pursuant to the provisions of AB 361 – City Clerk’s Office (Pamela Christian 510-620-6513).

**Adopted Resolution No. 2162**

**L.2 Housing Authority Meeting Minutes**

APPROVE the minutes of the special May 17, 2022, Richmond Housing Authority meeting - City Clerk’s Office (Pamela Christian 510-620-6513).

**M. JOINT RICHMOND HOUSING AUTHORITY / RICHMOND CITY COUNCIL BUDGET SESSION**

**M.1 Proposed Richmond Housing Authority Budget for Fiscal Year (FY) 2022-2023**

ADOPT a joint resolution approving the proposed Fiscal Year (FY) 2022-2023 Richmond Housing Authority (RHA) budget, with estimated revenues of \$3,618,962 and total expenditures of \$4,880,044; and APPROVE an RHA subsidy from the City of Richmond General Fund in the amount of \$1,261,082, which will provide sufficient revenue to match anticipated expenditures and balance the RHA budget to \$4,880,044 in estimated revenues and \$4,880,044 in expenditures – Richmond Housing Authority (Nannette J. Beacham 510-621-1300).

RHA Executive Director Nannette Beacham presented a PowerPoint that highlighted the following: amended budget overview; revenue and expenditures; RHA properties; and asset repositioning accomplishments. Discussion ensued. The council recommended staff consider solar energy and rebates to reduce utility expenditures. Mark Wassberg gave comments via teleconference.

**Motion by** Commissioner/Councilmember Johnson III

**Seconded by** Commissioner/Councilmember McLaughlin

To adopt said resolution.

Ayes (7): Commissioners/Councilmembers Bates, Jimenez, Johnson III, McLaughlin, Willis, Vice Chair/Vice Mayor Martinez, and Housing Authority Tenant Commissioner Scott

Noes (1): Chair/Mayor Butt

Passed (7 to 1)

**Adopted Housing Authority Resolution No. 2163  
and City Council Resolution No. 78-22**

**N. ADJOURNMENT**

There being no further business, the meeting adjourned at 7:24 p.m.

**O. REGULAR MEETING OF THE RICHMOND CITY COUNCIL**

The Regular Meeting of the Richmond City Council was called to order at 7:24 p.m. by Mayor Thomas K. Butt via teleconference.

**P. ROLL CALL**

**Present:** Councilmembers Nathaniel Bates, Claudia Jimenez, Demnlus Johnson III, Gayle McLaughlin, Melvin Willis, Vice Mayor Eduardo Martinez, and Mayor Thomas K. Butt. **Absent:** None.

**Q. STATEMENT OF CONFLICT OF INTEREST**

None.

**R. AGENDA REVIEW**

Item U was continued to the July 19, 2022, City Council meeting. Item AA.1 was withdrawn from the agenda. Items W.1.c, W.2.a, W.2.b, W.3.b, and W.9.e were removed from the Consent Calendar for discussion at the end of the agenda. Item AA.2 was continued for two weeks to the July 5, 2022, City Council meeting. Item W.6.d was moved for discussion immediately following Item X.1.

**Motion by** Councilmember McLaughlin

**Seconded by** Councilmember Jimenez

To table without debate Item W.10.a regarding the disposition of open space at Point Molate.

Ayes (4): Councilmember Jimenez, Councilmember McLaughlin, Councilmember Willis, and Vice Mayor Martinez

Noes (3): Councilmember Bates, Councilmember Johnson III, and Mayor Butt

Passed (4 to 3)

**S. REPORT FROM THE CITY ATTORNEY OF FINAL DECISIONS MADE DURING CLOSED SESSION**

Interim City Attorney Dave Aleshire reported the following actions: A motion made by Councilmember Jimenez, seconded by Councilmember McLaughlin, to designate Councilmember McLaughlin as a representative in certain court matters concerning Item C.1, Winehaven Legacy LLC v. City of Richmond, et al., passed by a 4/3 vote. A motion made by Councilmember Jimenez, seconded by Councilmember Johnson III, to give settlement authority to the city's representative George Hills concerning Item C.3, Tunnel Avenue liability claim, passed unanimously. A motion made by Councilmember Bates, seconded by Mayor Butt, to authorize negotiations on a settlement for future consideration concerning Item C.3, San Pablo Avenue liability claim, passed unanimously.

**T. REPORT FROM THE CITY MANAGER (public comment allowed under Open Forum)**

City Manager Shasa Curl reported the following: Free bicycle repairs were available on June 22, 2022, at the Richmond Main Library and more information was available by calling (510) 620-6557. Applications for a \$2,500 Microbusiness Grant were being accepted until August 12, 2022, at [www.microbusinessgrant.org](http://www.microbusinessgrant.org). Ms. Curl advised community members that were interested in receiving the City Manager's Weekly Report to call (510) 620-6512.

**U. REPORT FROM THE REIMAGINING TASK FORCE - 3rd Tuesday (public comment allowed under Open Forum)**

Continued to the July 19, 2022, City Council meeting.

**V. OPEN FORUM FOR PUBLIC COMMENT**

The following individuals gave comments via teleconference:

Don Gosney expressed concerns regarding the reallocation of funds from the Police Department to other resources. Mr. Gosney shared his experience with delays reaching personnel at the non-emergency police phone number to make a report. Mr. Gosney suggested that the amount of time allowed for public comment regarding reports from the city attorney, city manager, and others was insufficient.

Mark Wassberg cited verses from the New Testament Times and gave comments regarding sexuality.

Madalyn Law expressed concerns regarding the delayed restoration of the Booker T. Anderson Community Center. Ms. Law requested periodic updates regarding reopening the facility.

Pam Stello acknowledged the councilmembers that voted in favor of tabling Item W.10.a regarding Point Molate.

Leisa Johnson expressed gratitude for Richmond's Juneteenth event held on June 18, 2022. Ms. Johnson expressed concerns regarding Item AA.1 regarding assistance for the unhoused and urged the council to address the crisis.

Naomi Williams and Arto Rinteela announced the Career Fair at the Hilltop Community Church scheduled for Saturday, June 25, 2022. Ms. Williams acknowledged the participants in Richmond's National Basketball Association parade and the Juneteenth event held on June 18, 2022.

**W. CITY COUNCIL CONSENT CALENDAR**

**Motion by** Councilmember Johnson III

**Seconded by** Councilmember McLaughlin

To approve all items on the City Council Consent Calendar except Items W.1.c, W.2.a, W.2.b, W.3.b, W.6.d, W.9.e, and W.10.a.

Ayes (7): Councilmember Bates, Councilmember Jimenez, Councilmember Johnson III, Councilmember McLaughlin, Councilmember Willis, Vice Mayor Martinez, and Mayor Butt

Passed (7 to 0)

**W.1 City Clerk's Office**

W.1.a Resolution call and giving notice of a municipal election on November 8, 2022

ADOPT a resolution: (1) Calling and Giving Notice of the holding of a Municipal Election to be held on Tuesday, November 8, 2022, for the election of certain officers as required by the provisions of the Charter of the City of Richmond; (2) requesting the Board of Supervisors of Contra Costa County to consolidate the Municipal Election with the Statewide General Election; and (3) adopting regulations for candidates pertaining to the candidates' statements submitted to the voters, cost of the candidates' statements and other fees, word limit for candidates' statements; and

actions to be taken for a tie vote – City Clerk’s Office (Pamela Christian 510-620-6513).

**Adopted Resolution No. 79-22**

W.1.b Municipal Code Contract Extension

APPROVE a contract extension with Municipal Code Corporation for ordinance, zoning code codification, and supplements of the city’s municipal code, for the City Clerk’s Office and the Planning Department, from July 1, 2022, through June 30, 2023, in an amount not to exceed \$17,000 – City Clerk’s Office (Pamela Christian 510-620-6513).

W.1.c Continued Use of Teleconferencing

ADOPT a resolution requiring the continued use of teleconferencing for the meetings of all City legislative bodies pursuant to the provisions of Assembly Bill 361 – City Clerk’s Office (Pamela Christian 510-620-6513).

City Clerk Pamela Christian introduced the matter and provided an oral report. Discussion ensued. The following individuals gave comments via teleconference: Mark Wassberg, Leisa Johnson, Katherine (last name not stated), and Don Gosney. Further discussion ensued.

**Motion by** Councilmember Willis

**Seconded by** Councilmember Johnson III

To adopt said resolution.

Ayes (7): Councilmember Bates, Councilmember Jimenez, Councilmember Johnson III, Councilmember McLaughlin, Councilmember Willis, Vice Mayor Martinez, and Mayor Butt

Passed (7 to 0)

**Adopted Resolution No. 80-22**

W.1.d City Council Meeting Minutes

APPROVE the minutes of the May 17, and 24, 2022, Richmond City Council meetings - City Clerk's Office (Pamela Christian 510-620-6513).

**W.2 City Council**

W.2.a Ban the Drilling of Oil and Gas in Contra Costa County

ADOPT a resolution in support of banning the drilling of oil and gas in Contra Costa County - Councilmembers Gayle McLaughlin and Claudia Jimenez (510-620-6636/510-620-6565).

Councilmember McLaughlin introduced the matter and gave an oral report. Discussion ensued. Mark Wassberg and Jessi Taran gave comments via teleconference.

**Motion by** Councilmember McLaughlin

**Seconded by** Vice Mayor Martinez

To adopt said resolution.

Ayes (6): Councilmember Jimenez, Councilmember Johnson III, Councilmember McLaughlin, Councilmember Willis, Vice Mayor Martinez, and Mayor Butt

Abstentions (1): Councilmember Bates

Passed (6 to 0)

**Adopted Resolution No. 81-22**

*(At 11:30 p.m. - a motion made by Councilmember Willis, seconded by Vice Mayor Martinez, to suspend the rules and extend the meeting until after W.2.b failed by the following vote: Ayes: Councilmembers Jimenez, McLaughlin, Willis, and Vice Mayor Martinez. Noes: Councilmember Bates, Johnson III, and Mayor Butt. Abstentions: None. Absent: None).*

W.2.b Expand the Terms of Appropriated ARPA Flex Funds for Rydin Road Residents

AMEND direction provided by City Council on December 21, 2021, which appropriated \$50,000 for flex funds for vehicle repair and servicing, to expand the terms under which these funds can be spent, to be overseen by the Community Development Department - Vice Mayor Eduardo Martinez (510-620-6593). Continued from the June 7, 2022, meeting.

**Continued to the June 28, 2022, City Council meeting.**

**W.3 City Manager's Office**

W.3.a FY 2022-2023 Richmond Environmental and Community Investment Agreement (ECIA) Community Grant Program Grant Awardee Recommendation

APPROVE a recommendation from the Environmental & Community Investment Agreement (ECIA) Grant Review Committee for Fiscal Year 2022-2023 grant awards to 10 organizations in an amount not to exceed \$225,000; ADOPT a resolution; and AUTHORIZE the city manager to negotiate and execute Grant Service Agreements with approved grantees – City Manager’s Office (LaShonda White/Patrick Seals/Shane Johnson 510-620-6512).

**Adopted Resolution No. 82-22**

W.3.b FY 2022-2023 Richmond Department and Fund for Children and Youth Grant Awardee Recommendation

APPROVE a recommendation from the Richmond Fund for Children and Youth (RFCY) Oversight Board for Fiscal Year 2022-2023 to award 19 grants in an amount not to exceed \$1,434,317; ADOPT a resolution; and AUTHORIZE the City Manager to negotiate and execute Grant Service Agreements with the approved grantees – Richmond Department of Children & Youth (LaShonda White/Patrick Seals 510-620-6512).

**Continued to the June 28, 2022, City Council meeting.**

**W.4 Community Development**

W.4.a Guidelines for Implementation of the Inclusionary Housing and Affordable Housing Linkage Fee Ordinance

ADOPT a resolution approving the Guidelines for Implementation of the Inclusionary Housing and Affordable Housing Linkage Fee Ordinance - Community Development Department (Lina Velasco 510-620-6705).

**Adopted Resolution No. 83-22**

- W.4.b Execute an EPA Brownfields Assessment Coalition Memorandum of Agreement and Amend the Stantec Consulting Services Contract

AUTHORIZE the city manager to execute a Memorandum of Agreement between the City of Richmond, Contra Costa County, Community Housing Development Corporation of North Richmond, and Eden Housing, Inc. to identify and prioritize brownfield sites for assessment; and APPROVE a contract amendment with Stantec Consulting Services to increase the payment limit by \$559,000, for a total amount not to exceed \$630,986, and extending the term to December 31, 2024 – Community Development Department (Lina Velasco 510-620-6706).

**W.5 Economic Development**

- W.5.a City’s Transformative Climate Communities Program Application and Memorandum of Understanding

ADOPT a resolution authorizing the city manager or designee to apply, accept, and appropriate a Transformative Climate Communities grant and execute all related documents, if awarded, and authorizing the city manager or their designee to execute a Memorandum of Understanding with Co-applicants –Economic Development Department/Community Development Department (Lina Velasco/Samantha Carr 510-620-5407).

**Adopted Resolution No. 84-22**

- W.5.b Contract with Art Builds Community to Develop a Public Art Master Plan

APPROVE a contract with Art Builds Community (ABC) to create an actionable Public Art Master Plan, in a total amount not to exceed \$35,000, for a term beginning June 22, 2022, and ending June 30, 2023 – Economic Development Department (Shasa Curl/Winifred Day 510-620-6512).

- W.5.c Contract with the Richmond Art Center (RAC)

APPROVE a two-year sole source contract with the Richmond Art Center to provide visual art services, in the amount of \$55,000 per year, for a total contract amount not to exceed \$110,000, with a term from July 1, 2022, through June 30, 2024 - Economic Development Department (Shasa Curl/Winifred Day 510-620-6512).

- W.5.d Contract Amendment for Low-Income Solar Installation Services

APPROVE a fourth amendment to the contract with GRID Alternatives Bay Area to provide no cost solar systems on an additional 138 low-income homes, increasing the contract by \$1,750,000, for a total contract amount not to exceed \$3,150,872, and extending the term to June 30, 2025 - Economic Development Department (Samantha Carr/Sabrina Paras 510-620-5407).

**W.6 Finance Department**

- W.6.a Approval of Liens and Special Assessments for Unpaid Garbage Collection Service Fees Due to Republic Services

ADOPT a resolution authorizing placement of liens and special assessments for unpaid garbage collection service fees on County property tax records – Finance Department (Delmy Cuellar/Antonio Bañuelos 620-6741).

**Adopted Resolution No. 85-22**

W.6.b Fiscal Year 2022-2023 Annual Appropriations Limit

ADOPT a resolution approving the Fiscal Year 2022-2023 appropriations limit for the City of Richmond pursuant to Article XIII B of the Constitution of the State of California – Finance Department (Delmy Cuellar/Mubeen Qader 510-412-2077).

**Adopted Resolution No. 94-22**

W.6.c Amend Contract with KPM as the City’s Swap Advisor to Refinance the 2005 Series B Pension Obligation Bonds ("2005 POB's")

APPROVE an amended sole-source contact with KPM to extend the term through June 30, 2023, and increase the current contract amount by \$40,000, for a total payment limit not to exceed \$50,000, to perform swap analysis – Finance Department (Anil Comelo/Delmy Culler 510-620-6600).

W.6.d Resolution Authorizing Issuance of Taxable Pension Refunding Bonds, Series 2022 ("2022 Refunding Bonds")

ADOPT a resolution authorizing issuance of taxable pension refunding bonds, series 2022, to refund certain outstanding taxable pension funding bonds of the City, authorizing the execution of a first supplemental indenture, and approving and directing of other matters related thereto – Finance Department (Delmy Cuellar 510-620-6740).

Interim Deputy City Manager Internal Services Anil Comelo introduced the matter. Mark Northcross of NHA Advisors provided an oral report. Discussion ensued.

**Motion by** Councilmember Jimenez

**Seconded by** Councilmember Johnson III

To adopt said resolution.

Ayes (7): Councilmember Bates, Councilmember Jimenez, Councilmember Johnson III, Councilmember McLaughlin, Councilmember Willis, Vice Mayor Martinez, and Mayor Butt

Passed (7 to 0)

**Adopted Resolution No. 86-22**

W.6.e City of Richmond Audited Reports for the Fiscal Year Ended June 30, 2021

RECEIVE Audited reports for Single Audit, Richmond Joint Powers Financing Authority Report, and Independent Accountant’s Report on Agreed-Upon Procedures Applied to Appropriations Limit Schedule for Fiscal Year 2020-2021 – Finance Department (Delmy Cuellar 510-620-6740).

**W.7 Human Resources**

- W.7.a Approve a Two-Year Extension to Contract with Du-All Safety, LLC to Continue to Provide Safety Program Compliance Services

APPROVE a two-year contract amendment with Du-All Safety LLC, increasing the amount of the contract by \$317,531, for a total amount not to exceed \$760,206, to continue providing safety program compliance services, with a term ending June 30, 2024 - Human Resources Department (Laura Marquez 510-620-6974).

## **W.8 Information Technology**

- W.8.a Purchase of a Tabbing Machine for use by the City's Duplicating Mail Division

APPROVE the purchase of a tabbing machine from Saddle Point Systems in an amount not to exceed \$30,000 – Information Technology Department (Sue Hartman 510-620-6874).

## **W.9 Library and Community Services**

- W.9.a Contract with Jason Corburn to Provide a New Online Client Database, System Maintenance, and Support

APPROVE a contract with Jason Corburn to develop a client case-management database, that provides for data collection support, maintenance, training, analysis, and reporting for the Office of Neighborhood Safety. The contract will be for two (2) years with a term from June 22, 2022, through June 30, 2024, and a payment limit not to exceed \$40,000 – Library and Community Services Department (LaShonda White/Sam Vaughn 510-620-5422).

- W.9.b Contract with Rebuilding Together East Bay-North for Emergency Cooling Structures

APPROVE a sole-source contract with Rebuilding Together East Bay-North, in an amount not to exceed \$83,830, to provide design, construction, and staffing services for modular emergency cooling structures – Library and Community Services Department (LaShonda White/Jene Levine-Snipes 510-307-8132)

- W.9.c Extension of Contra Costa County Health Services Covid-19 Vaccine and Testing Center at the Richmond Convention Center

APPROVE a third amendment to extend the agreement with Contra Costa County Health Services to continue the COVID-19 Vaccine and Testing Center at the Richmond Convention Center terrace rooms until June 30, 2023, and WAIVE fees associated with the third amendment – Library and Community Services Department (LaShonda White/Ranjana Maharaj/Kymerlyn Carson-Thrower 510-620-6512)

- W.9.d Accept and Appropriate Share the Spirit 2021 Additional Funds Grant Award

ACCEPT and APPROPRIATE in the Fiscal Year 2021-2022 budget \$4,000 received from Share the Spirit East Bay 2021 Additional Funds Grant – Library and Community Services Department (Melinda Cervantes/Abigail Sims-Evelyn 510-307-8082).

- W.9.e Contract with Ed Fund to Provide Youth Programs to Camp Achieve Youth in Partnership with Community Services-Recreation

APPROVE a contract with West Contra Costa Public Education Fund to provide free youth programs in partnership with Community Services-Recreation to 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> graders through Camp Achieve's 8-week summer camp program. The term of the contract is July 1, 2021, through June 30, 2025, in an amount not to exceed \$54,000 - Library and Community Services Department (LaShonda White/Ranjana Maharaj/Troy Porter 510-620-6822).

**Continued to the June 28, 2022, City Council meeting.**

W.9.f Convert the West Side Tennis Court at Booker T. Anderson to Two Fixed Pickleball Courts

APPROVE the conversion of one tennis court at the Booker T. Anderson tennis courts to two permanent pickleball courts – Library and Community Services Department/Public Works Department (Ranjana Maharaj/Tetteh Kisseh/Greg Hardesty 510-620-6919).

W.9.g Fiscal Year 2022-2023 Budget for the North Richmond Waste & Recovery Mitigation Fee Expenditure Plan

APPROVE the 2022/2023 North Richmond Waste and Recovery Mitigation Fee Expenditure Plan (Exhibit A) for Fiscal Year 2022-2023, as recommended by the North Richmond Mitigation Waste and Recovery Mitigation Fee Joint Expenditure Planning Committee, to fund the listed projects and activities in the Fiscal Year that support the reduction of blight in North Richmond – Library and Community Services Department (LaShonda White/Lori Reese-Brown 510-620-6869)

**W.10 Mayor's Office**

W.10.a Disposition of Open Space at Point Molate

DIRECT staff to prepare a Request for Proposal (RFP) to be circulated as widely as possible soliciting proposals to manage the Point Molate Open Space for public use. The RFP should include solicitation of proposals for an operations plan, funding, implementation schedule, and other details essential for the City Council to make a selection of the best proposal. The RFP shall be released no later than August 1, 2022, with proposals due no later than September 15, 2022 – Mayor's Office (Mayor Tom Butt 510-620-6503).

**Tabled without debate during Agenda Review.**

**W.11 Police Department**

W.11.a Resolution Authorizing a Sole Source Procurement Process for Selected Specialized Police Department Services

ADOPT a resolution authorizing the city manager to execute reoccurring contracts for fiscal years 2022-2023 and 2023-2024 with Contra Costa County and the State of California at an aggregate annual amount of \$951,000. Services contracted with Contra Costa County include the following: California Law Enforcement Telecommunications System (CLETS) - \$11,000; California Identification Division (CAL ID) - \$145,000; Automated Regional Information Exchange System (ARIES) - \$50,000; All County Criminal Justice Information System (ACCCJIN) - \$23,500; Martinez Detention Facility intake fees - \$46,000; alcohol/toxic drug and crime scene evidence analysis - \$365,000; Sexual Assault Response Team (SART) examinations- \$41,000; annual jail inspection

and audit - \$1,000; Coroner & Gunshot Residue (GSR) examination and analysis - \$10,000; out of state inmate extradition - \$4,000; Law Enforcement Training Center - \$21,000; Department of Information Technology - \$29,500; East Bay Regional Communication System Authority (EBRCS) - \$182,500. The State of California contracted services including Live Scan fingerprinting - \$16,500 and University of California Regents - \$5,000 – Police Department (Acting Chief of Police Louie Tirona 510-621-1802).

**Adopted Resolution No. 87-22**

W.11.b Proposed 5-year, \$927,000 contract amendment, with Mark43 for continued use of critical dispatching and records software.

APPROVE a first contract amendment with Mark43 to increase the contract amount by \$927,000, for a total payment limit not to exceed \$2,427,000, and a term extending through June 30, 2027 - Police Department (Acting Chief Louie Tirona 510-621-1802).

**W.12 Public Works**

W.12.a Proposed Contract with Julian Tree Care

APPROVE a contract in the amount of \$17,800 for the removal of dead pine trees at the Macdonald Avenue grade separation. The contract term will be from July 1, 2022, to December 31, 2022 – Public Works Department (Joe Leach 510-620-5478/Greg Hardesty 510-620-6920).

W.12.b Contract Amendment to Increase Total Contract Budget for the Project to Replace the Grit and Aeration Project Located at the Richmond Wastewater Treatment Plant

ADOPT a resolution to increase the contract budget for the Grit and Aeration Basin project located at the Richmond Wastewater Treatment Plant, in the amount of \$3,500,000, for a total amount not to exceed \$45,606,488 - Public Works Department (Joe Leach 510-620-5478 / Mary Phelps 510-621-1269).

**Adopted Resolution No. 88-22**

W.12.c Resolution to Issue a New Contract to Schaaf and Wheeler Consulting Civil Engineers

ADOPT a resolution authorizing a contract extension with Schaaf and Wheeler Consulting Civil Engineers to design the Ferry Point Lift Sewer Pump Station replacement located at the intersection of Brickyard Cove Road and Dornan Road for an amount not to exceed \$159,948.24 - Public Works Department (Joe Leach 510-620-5478/Mary Phelps 510-621-1269).

**Adopted Resolution No. 89-22**

W.12.d Contract with Ninyo & Moore for Terminal 4 Wharf Removal Project

APPROVE a contract with Ninyo & Moore, in an amount not to exceed \$50,000, to provide hazardous materials characterization services for the Terminal 4 Wharf Removal Project, to be funded by various grants awarded to the City for this project, with a contract term through December 31, 2023 – Public Works Department (Joe Leach 620-5478).

W.12.e Proposed Standing Purchase Order for Traffic Signs & Lines Materials

APPROVE standing purchase orders with First Vanguard Rentals and Sales, Inc., Statewide Traffic Safety and Signs, Inc., and The Construction Zone for traffic signs and lines materials in a total combined amount of \$900,000, with an allocation not-to-exceed \$300,000 per vendor over a three-year period, with one (1) two-year option to renew at \$200,000 per vendor over the two-year period. – Public Works Department (Joe Leach 510-620-5478 / Rob Chelemedos 510-231-3007).

**X. BUDGET SESSION**

**X.1 Adopt Fiscal Year (FY) 2022-2023 Proposed Operating Budget and FY 2022-2023 through 2026-2027 Capital Improvement Plan.**

ADOPT resolutions approving: (1) Fiscal Year (FY) 2022-2023 Annual Operating Budget, and (2) FYs 2022-2023 to 2026-2027 Five-Year Capital Improvement Program Budget – City Manager’s Office/Finance Department (Shasa Curl/Delmy Cuellar 510-620-6740).

City Manager Shasa Curl introduced the matter. Ms. Curl, Director of Finance Delmy Cuellar, Accounting Manager Antonio Banuelos, and Budget Administrator Mubeen Qader presented a PowerPoint that highlighted the following: proposed General Fund balanced budget; revenue and expenditures; operating transfers and adjustments; reserves; non-General Fund budget; proposed Capital Improvement Projects (CIP) budget; and fiscal headwinds. Ms. Curl clarified that the \$1,000,000 adjustment for "*Additional Paving Index Investment*" should have stated, "*Additional Paving Index Investment/Sidewalk Repair/Roadway Safety Improvements*". Discussion ensued. The council recommended staff move the proposed \$750,000 appropriation for the Public Bank to the American Rescue Plan Act (ARPA) funding for a future council vote and utilize the \$750,000 for road safety initiatives. The council requested the following: remove the \$150,000 ARPA community needs assessment funds from the CIP budget; add to the narrative in the budget the key performance indicators evaluating the progress of CIP; seek additional funding to rebuild the Martin Luther King Jr. Community Center; staff to resend the council the internal audit of housing intervention expenditures for the Rydin Road encampment; and future updates on repairs to re-open the Booker T. Anderson Community Center. The following individuals gave comments via teleconference: Leisa Johnson, Mark Wassberg, and Amanda Jenkins.

**Motion by** Councilmember McLaughlin  
**Seconded by** Councilmember Jimenez

To adopt said resolutions with the understanding that the \$750,000 Public Bank appropriation will be moved to ARPA funding (if eligible) and the \$750,000 will be reallocated to traffic safety initiatives. A friendly amendment made by Councilmember Jimenez that \$150,000 should be removed from the Capital Improvement Projects budget for an ARPA community needs assessment was accepted.

Ayes (5): Councilmember Jimenez, Councilmember Johnson III, Councilmember McLaughlin, Councilmember Willis, and Vice Mayor Martinez

Noes (2): Councilmember Bates and Mayor Butt

Passed (5 to 2)

**Adopted Resolution Nos. 90-22 and 91-22**

**Y. PUBLIC HEARINGS**

**Y.1 Public Hearing to Consider the Levy of Annual Assessments for the Hilltop Landscape Maintenance District**

ADOPT a resolution approving the Engineer’s Report and ordering the levy and collection of assessments in the Hilltop Landscape Maintenance District for the Fiscal Year 2022-2023, providing for a three percent increase in annual assessments - Public Works Department (Joe Leach 510-620-5478/Greg Hardesty 510-620-6920).

City Clerk Pamela Christian announced that it was time, pursuant to public notice, to hold a public hearing. Project Manager Mary Phelps provided an oral report. Discussion ensued. The council expressed concerns regarding overgrown weeds along Richmond Parkway in the Hilltop area. Staff agreed to provide the council with a maintenance schedule for the area. Mayor Butt declared the public hearing opened. The following individuals gave comments via teleconference: Naomi Williams, Mark Wassberg, Amanda Jenkins, Jessi Taran, Katherine (last name not stated), and Arto Rinteela gave comments via teleconference. Mayor Butt closed the public hearing.

**Motion by Councilmember McLaughlin  
Seconded by Vice Mayor Martinez**

To adopt said resolution.

Ayes (7): Councilmember Bates, Councilmember Jimenez, Councilmember Johnson III, Councilmember McLaughlin, Councilmember Willis, Vice Mayor Martinez, and Mayor Butt

Passed (7 to 0)

**Adopted Resolution No. 92-22**

**Y.2 Public hearing to consider the levy of annual assessments for the Marina Bay Landscaping and Lighting Maintenance District**

ADOPT a resolution approving the Engineer’s Report and ordering the levy and collection of assessments in the Marina Bay Landscape and Lighting Maintenance District for the Fiscal Year 2022-2023 providing for a three percent increase in annual assessments - Public Works Department (Joe Leach 510-620-5478/Greg Hardesty 510-620-6920).

City Clerk Pamela Christian announced that it was time, pursuant to public notice, to hold a public hearing. Project Manager Mary Phelps provided an oral report. Mayor Butt declared the public hearing opened. There were no public speakers via teleconference. Mayor Butt closed the public hearing.

**Motion by Councilmember McLaughlin  
Seconded by Councilmember Johnson III**

To adopt said resolution.

Ayes (7): Councilmember Bates, Councilmember Jimenez, Councilmember Johnson III, Councilmember McLaughlin, Councilmember Willis, Vice Mayor Martinez, and Mayor Butt

Passed (7 to 0)

**Adopted Resolution No. 93-22**

**Z. ITEMS CONTINUED FROM PREVIOUS MEETINGS**

**Z.1 Improve Staff Morale**

RECEIVE a presentation on ideas to maximize communication, raise employee morale, and to acknowledge the dedication of staff; and provide direction to staff. Councilmember Melvin Willis (510-412-2050) and Councilmember Claudia Jiménez (510) 620-6565. This item was continued from the March 22, 2022, April 26, 2022, and May 24, 2022, meetings.

Councilmembers Willis and Jimenez introduced the matter. Councilmember Willis presented a PowerPoint that highlighted the data gathered, concerns, and suggested solutions. Discussion ensued. The following individuals gave comments via teleconference: Mark Wassberg, Jessi Taran, Leisa Johnson, Deborah Small, Anna (last name not stated), Anthony Woodards, and Benjamin Therriault.

## **Z.2 Reintroduce an Ordinance (First Reading) to Revise and Amend Richmond Municipal Code Chapter 12.30**

REINTRODUCE an Ordinance (first reading) amending RMC Chapter 12.30 (“Video Service Provider, Utility and Special District Encroachments”) by incorporating Chapter 12.29 (“Street Opening and Pavement Restoration Regulations”); adding provisions that address private landowner encroachments into the public Right-of-Way (ROW); easements; and street vacations; retitling Chapter 12.30 “Encroachments and Easements,” and rescinding Chapter 12.29 in its entirety - City Attorney’s Office/Public Works Department (Dave Aleshire 510-620-6509/Joe Leach 510-620-3008). This item was continued from the May 17, 2022, and June 7, 2022, meetings.

Interim City Attorney Dave Aleshire introduced the matter and provided an oral report.

**Motion by** Councilmember Willis

**Seconded by** Councilmember McLaughlin

To reintroduce said ordinance for first reading and lay over for two weeks for the second reading.

Ayes (7): Councilmember Bates, Councilmember Jimenez, Councilmember Johnson III, Councilmember McLaughlin, Councilmember Willis, Vice Mayor Martinez, and Mayor Butt

Passed (7 to 0)

## **Z.3 Private Landowner Encroachments**

RECEIVE a report from the City Attorney regarding the legality of staff awarding and transferring city property without approval from the City Council - Councilmember Nathaniel Bates (510-620-6743). This item was continued from the May 17, 2022, May 24, 2022, and June 7, 2022, meetings.

Councilmember Bates introduced the matter. Interim City Attorney Dave Aleshire advised that the council's action taken for Item Z.2 created a standardized process to address concerns regarding Item Z.3. Discussion ensued. The council suggested that staff should be held accountable for correcting the recent transfer of city property on Tewksbury Avenue and restoring the property to its original purpose.

## **Z.4 The Segal Group Inc., Classification and Compensation Study**

DIRECT the City Manager to release the Class and Compensation Study to the City Council – Mayor’s Office (Mayor Tom Butt 510-620-6503). This item was continued from the May 17, 2022, May 24, 2022, and June 7, 2022, meetings.

Mayor Butt introduced the matter. Interim Deputy City Manager Internal Services Anil Comelo and Interim City Attorney Dave Aleshire provided an oral report. Discussion ensued. Staff advised that the study was scheduled for release on June 23, 2022. Benjamin Therriault gave comments via teleconference.

**Motion by Mayor Butt**

**Seconded by Councilmember Jimenez**

To direct staff to release said study on June 23, 2022.

Ayes (7): Councilmember Bates, Councilmember Jimenez, Councilmember Johnson III, Councilmember McLaughlin, Councilmember Willis, Vice Mayor Martinez, and Mayor Butt

Passed (7 to 0)

## **Z.5 Street Sweeping**

DIRECT the city manager to incorporate into the 2022-23 budget funding to provide: new street sweeping signage in neighborhoods that have not previously been signed; repairs/replace existing deteriorated signage in neighborhoods that have previously been signed; sufficient staff and equipment to perform scheduled street sweeping operations in all neighborhoods; sufficient enforcement staff to issue citations for vehicles not moved on designated street sweeping days and times. AUTHORIZE vehicle towing operations in areas where citations have not provided sufficient motivation for residents to move vehicles – Mayor’s Office (Mayor Tom Butt 510-620-6503). This item was continued from the May 24, 2022, and June 7, 2022, meetings.

Mayor Butt introduced the matter. Discussion ensued. The following individuals gave comments via teleconference: Mark Wassberg, Don Gosney, Arto Rinteela, and Yenny Garcia gave.

*(At 11:00 p.m. - a motion made by Councilmember Willis, seconded by Councilmember Jimenez, to extend the meeting to 11:30 p.m. passed by the following vote: Ayes: Councilmembers Bates, Jimenez, Johnson III, McLaughlin, Willis, and Vice Mayor Martinez. Noes: Mayor Butt. Abstentions: None. Absent: None).*

**Motion by Councilmember McLaughlin**

**Seconded by Councilmember Jimenez**

To approve said direction to staff excluding the authorization for vehicle towing; direct staff to install street sweeping signage in all 16 neighborhoods and provide costs; enable text message notification reminders; and provide one-time postcard mailing and a city website link with instructions for how to opt-in for text messages. A friendly amendment made by Mayor Butt with a stipulation that vehicle towing was not authorized to enforce but printed on signage for future enforcement was not accepted. A friendly amendment made by Vice Mayor Martinez to start with heavy traffic streets and install signs equitably was accepted.

Ayes (5): Councilmember Jimenez, Councilmember Johnson III, Councilmember McLaughlin, Councilmember Willis, and Vice Mayor Martinez

Noes (2): Councilmember Bates, and Mayor Butt

Passed (5 to 2)

## **AA. NEW BUSINESS**

**AA.1 Collaborative approach between Safe Organized Spaces Richmond (SOS), the Richmond Rotary Club Housing First Initiative, and various related partners to assist the unhoused.**

DIRECT staff to create two contracts that outline a collaborative approach between Safe Organized Spaces Richmond (SOS), the Richmond Rotary Club Housing First Initiative, and various related partners and bring back the contracts to the City Council for approval before the August break. The fiscal sponsor for both contracts will be the Richmond Community Foundation – Councilmembers Gayle McLaughlin and Melvin Willis (510) 620-6581.

**Withdrawn from the agenda.**

**AA.2 Resolution Establishing the Fiscal Year 2022-23 Residential Rental Housing Fee**

ADOPT a resolution establishing the Fiscal Year 2022-2023 Residential Rental Housing Fee in the amount of \$226 per Controlled Rental Unit and \$127 per Partially Covered Rental Unit – Rent Program (Nicolas Traylor 510-620-6564). *Consider if budget should be modified to provide General Fund support at historic level and if revised cost study should be performed by parties.*

**Continued to the July 5, 2022, City Council meeting.**

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

**AC. ADJOURNMENT**

There being no further business, the meeting adjourned at 11:32 p.m., in memory of Rochelle Cartwright and Mrs. House, and congratulating the new Colombian President Gustavo Petro and Vice President Francia Márquez, to meet again on June 28, 2022, at 6:30 p.m.

---

Clerk of the City of Richmond

---

Mayor

**From:** [Cordell Hindler](#)  
**To:** [City Clerk Dept User](#)  
**Subject:** Public Comments- Open Forum  
**Date:** Friday, June 17, 2022 1:04:47 PM

---

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

Good Evening Mayor Butt, Council Members and Staff,

for the July 26th Agenda, the Council should Invite Sabrina Landreth to Provide an Update on How Park Services had been Impacted by CO-VID

Also to revisit the Idea of Reinstating the Standing Committees

Sincerely  
Cordell

**From:** [Shelley Trask](#)  
**To:** [PCcomments](#); [City Clerk Dept User](#); [The McLaughlin Group](#); [Dimm-Key Neighborhood](#); [Jim Hanson](#)  
**Subject:** public comments - Open Forum  
**Date:** Friday, June 17, 2022 9:41:17 PM  
**Attachments:** [Nevin Roundabout \(1\).pdf](#)

---

Some people who received this message don't often get email from shelley.trask@gmail.com.

[Learn why this is important](#)

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

Dear City Council,

Apologies if this came through multiple times. The image size was too large, so I am attaching a PDF of my original email with images intact so that you may review.

The neighbors in East Richmond recently gathered in Mira Vista Park to discuss the influx of donuts and other crime that has been happening on our streets, and even a sideshow that we recently witnessed at the corner of Key x Barrett. A petition was signed by 30-40 neighbors with great interest in creating a roundabout at that intersection. We only recently received a 4-way stop sign at both intersections of Key x Barrett and Key x Nevin, which has greatly improved the traffic flow. Still, folks continue to speed excessively down Key, often blowing through the stop signs. We have experienced donuts on Friday and Saturday evenings. As a daily pedestrian, I find it very unnerving trying to cross the various blocks around our house.

In 2018, I wrote to Patrick Phelan, then Infrastructure Administrator at the City's Engineering department, to see if we could get stop signs (or better yet) roundabouts installed. He agreed that traffic was very busy along Key, and as a cyclist, that he himself found it very dangerous. He informed me that although plans were drawn up and a grant was applied for, we did not get the grant money to proceed with roundabouts. We did wind up with stop signs later on, which I am grateful for.

Last week, several neighbors met with our District 6 Councilmember, Claudia Jimenez and she informed us that there is budget available for further traffic safety improvements. I'd like to propose the following, which came directly from Patrick in 2018:

- At Barrett & Key: Install a roundabout. This would force drivers on Barrett to slow down, and the idea with a roundabout is that each leg of the intersection has the same "right" to enter; you cede the right-of-way to drivers already in the roundabout. We would also install curb ramps and high-visibility crosswalks. Roundabouts are inherently safer for all users, according to research. See attachment which shows the design of the roundabout installed right now on Nevin Ave at 24th St, part of the almost-complete Nevin Streetscape. If a roundabout doesn't work, we could build "bulb-outs" which would shorten the distance a pedestrian has to cross. I would be happy to help maintain the plants in the roundabout, especially drought-tolerant

ones.

- At Key & Nevin: Install real “valley gutters.” You probably notice how there are big dips across Key at this intersection to channel the stormwater flow coming down Nevin, as there are no underground storm pipes. A valley gutter is a concrete gutter/pan that is much sturdier and handles the flow of water as well as the vehicle traffic. The road is getting torn up here already and we paved the street just a few years ago. A good valley gutter acts just like a speed bump. [Edit from me: You should see the street now - it's even worse! I also cross on foot at this point and it's very difficult to do so with people speeding down Key from BART].

In addition, if there were additional budget, I propose the following:

- Repaint & re-level the pedestrian crosswalk pavement at the 3 areas of pedestrian intersection at Barrett & San Pablo. Add in handicap curbing. You can see in the photo here how worn-away the crosswalks are.
- Add pedestrian striping and reflectors to the crosswalk on Nevin Avenue crossing San Pablo to allow passage to the bus stop across the street. Currently, it is very unsafe to cross this intersection. I have to carry lights and wave them around to cross to catch the bus.
- Consider pedestrian-level lighting along San Pablo Avenue connecting Barrett to at least Solano. Adding this would encourage pedestrians to walk underneath the freeway tunnel which is currently overgrown with weeds and trash. MacDonald Avenue has charming vintage-style lights and this neighborhood could also benefit from a similar style. Neighbors want to walk to Catahoula Coffee, El Toucan, The Factory Bar, and other shopping destinations in our neighborhood, but I wind up driving due to safety concerns. This improved lighting is in line with the Livable Corridors Form Based Code planning.

Thank you for considering these requests.

Sincerely,  
Shelley Trask  
461 Key Blvd, Richmond

 [Gmail - public comments - Open Forum.pdf](#)



**From:** [Eleanor Thompson](#)  
**To:** [City Clerk Dept User](#)  
**Subject:** W.3.A ECIA GRANT  
**Date:** Tuesday, June 21, 2022 12:57:21 PM

---

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

To honorable Mayor and Richmond City Councilmembers:

I know that Social Progress Inc. does not write a perfect grant, but I feel that we should get funded sometime, we are never funded. When we received funding it has been to come to the City Council and ask for the left over fund.

I know that you can see on the funding list these are the same organizations that are always funded.

Social Progress Inc. grant was to get funds for two events in North Richmond. One of the events have been put on for 10 years, with Eleanor Thompson myself, paying most of the cost. But I found out from Lily from Chevron, that I should be applying for these funds, because they gave the funds to the city to help all the Organizations, but we have been cut short in North Richmond. Only the ones who they have given the funds to in North Richmond in the past are the ones who continue to get funded. I ask that the Council have them go back and give some of the funded to Social Progress Inc. For our events

Thank you,  
Eleanor Thompson  
CEO

Social Progress Inc.

From: Bruce Beyaert  
To: Nat Bates; Tom Butt - external; Claudia Jimenez; Demilus Johnson; Eduardo Martinez; Gayle McLaughlin; Melvin Willis; City Clerk Dept User  
Cc: Shasa Curt; Lina Velasco; Bruce Brubaker  
Subject: Public Comment Agenda Item W10: Point Molate Open Space  
Date: Sunday, June 19, 2022 7:16:38 PM  
Attachments: PMLocateOpenSpaceArrange.pdf

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

Mayor Butt and City Councilors,

Re June 21 City Council Agenda Item W10, TRAC, the Trails for Richmond Action Committee, supports soliciting proposals to manage for public use the almost 200 acres of the City's Point Molate property designated for enjoyment as park and open space land.

The Reuse Plan adopted by the City Council in 1999 calls for 35 acres of shoreline park & open space lands plus 156 acres of hillside open space as shown on the attached figure and table. More than two decades later, the public remains locked out and unable to enjoy the scenic 1.5 miles of Point Molate shoreline (other than the small beach park) or the stunning vistas from the hillsides of the property. Moreover, French broom and other invasive non-native plants continue taking over the rare Coastal Prairie plant communities in the hills.

The past two decades have been marked by controversy, litigation and finger pointing over the approximately 80 acres (30%) of Point Molate acreage designated for economic development, including the Winehave Historic District. Please address the 70% of Point Molate acreage designated for park and open space uses, rather than waiting out another decade of litigation over the fate of the other 30% of the property. It is worth noting that East Bay Regional Park District's Master Plan calls for a potential Regional Shoreline park at Point Molate.

Bruce

Bruce Beyaert, TRAC Chair  
[baytrailtrac@gmail.com](mailto:baytrailtrac@gmail.com)  
tel. 510-235-2835  
<http://www.pointrichmond.com/baytrail/>  
<http://www.ci.richmond.ca.us/109/TRAC>  
Photos: <https://sfbaytrailinrichmond.shutterfly.com/pictures/5>

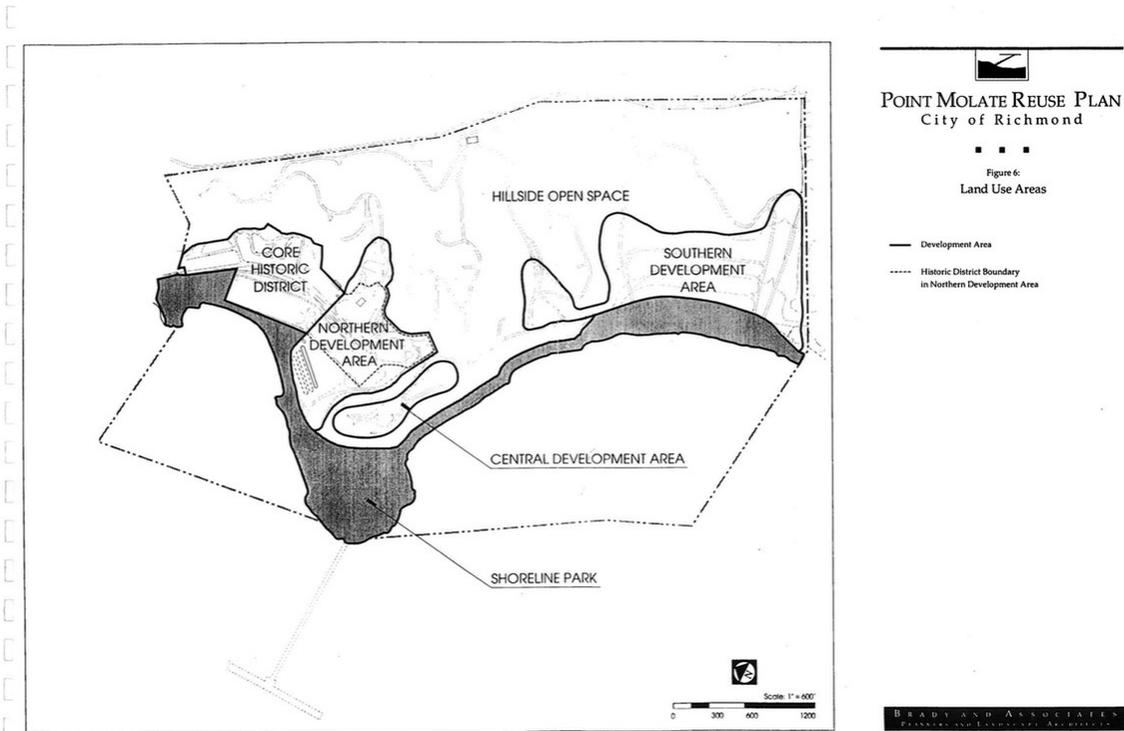


Table 2 continued

Area/Building	Proposed Uses	Potential Users/Developers	Acreage/SF	Density	# Units	Estimated Parking
<b>Central Development Area</b>			6 AC			
	Multi-Family Residential	Private Industry	6 AC	20	120	
<b>Southern Development Area</b>			35 AC			
	Single Family Residential/Light Industrial	Private Industry	27 AC	12	324	
	Multi-Family Residential	Private Industry	5 AC	20	100	
	Entrance Area	Private Industry	3 AC			
<b>Open Space/Park</b>			191 AC			
Hillside Open Space	Recreation	City of Richmond/EBRPD	156 AC			
Shoreline Open Space	Retreatment	City of Richmond/EBRPD	14.4 AC			
Shoreline Park	Recreation	City of Richmond/EBRPD	20.9 AC			200
<b>Total</b>			<b>275 AC</b>		<b>670</b>	<b>742</b>

\* May be demolished pending further investigation.

**From:** [n.laforce@comcast.net](mailto:n.laforce@comcast.net)  
**To:** [Tom Butt - external](#); [Gayle McLaughlin](#); [Eduardo Martinez](#); [Claudia Jimenez](#); [melvin.willis@ci.richmond.ca.us](mailto:melvin.willis@ci.richmond.ca.us); [Nat Bates](#); [Demnlus Johnson](#); [City Clerk Dept User](#)  
**Subject:** Sierra Club Letter re Agenda Item W.10.a Re Point Molate.  
**Date:** Monday, June 20, 2022 11:30:08 AM  
**Attachments:** [2022-06-20 Sierra Club to Richmond Re Point Molate.pdf](#)

---

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

You don't often get email from [n.laforce@comcast.net](mailto:n.laforce@comcast.net). [Learn why this is important](#)

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.



**San Francisco Bay Chapter**

Serving Alameda, Contra Costa, Marin, and San Francisco Counties

2530 San Pablo Ave., Suite I, Berkeley, CA 94702

510-848-0800

[www.sierraclub.org/san-francisco-bay](http://www.sierraclub.org/san-francisco-bay)

[info@sfbaysc.org](mailto:info@sfbaysc.org)

June 20, 2022

**VIA EMAIL ONLY**

Mayor Tom Butt &  
Council Members Nat Bates, Claudia Jimenez, Delmnus Johnson,  
Eduardo Martinez, Gayle McLaughlin, Melvin Willis  
450 Civic Center Plaza  
Richmond, CA 94608

Re: Consent Calendar Item W.10.a Richmond City Council Meeting of June 21, 2022

Dear Mayor Butt and Council Members, Bates, Jimenez, Johnson, Martinez, McLaughlin, and Willis:

Sierra Club understands that this item has been removed from the Consent Calendar. The Sierra Club urges that the City Council formally table this item and remove it from the agenda entirely.

This proposal comes from the Mayor, who has demonstrated a remarkable ability fiscally and legally imperil the City with actions regarding Point Molate. The proposal for an RFP to public agencies like the East Bay Regional Park District to take and operate 70% of Point Molate when the City faces multiple pending lawsuits is irrational and ill timed. It is yet another example of the mayor's putting his own political interests above those of the City and placing the City in legal and fiscal jeopardy. I will detail some of the reasons why this item should be rejected.

First, the proposed action could be construed as a violation of the Temporary Restraining Order (TRO) which bars the City from taking any action that changes the terms and conditions of the Land Development Agreement or the other contractual rights in the Amended Settlement Agreement with Upstream and the Tribe. The TRO essentially freezes



actions regarding Point Molate until the Court hears the motion for Preliminary Injunction now set for hearing on August 4, 2022. Going forward with the Mayor's proposal could be construed as an intentional violation of the TRO and subject the City to sanctions including sanctions for contempt for intentionally taking actions in violation of the TRO. Sanctions could be sought against individual city council members.

Second, the Mayor already tried to get the East Bay Regional Park District to do what he now proposes in the RFP. The Park District rejected this very proposal some two years ago. When the current development project for Point Molate was approved, the Mayor approached the East Bay Regional Park District and asked it to take over and operate the 70% open space so as to relieve this financial obligation from the developer and saddle the public with paying for open space that was supposed to be an amenity of the project.

The Park District rejected his proposal for a number of reasons. First, it would be saddled with operating open space that was not contiguous and not at designated as a public park. The "park" would be fragmented, and the Park District had no interest in operating a fragmented park system. Second, the Park District would be saddled with liability if the eucalyptus stands in the hills caught fire and burned down the private development. Unlike the situation where all of Point Molate was a park without 1400 to 2000 residential units and commercial development, the liability exposure for a real park would be minimal. In contrast the liability for a large wildfire that destroyed 1400 to 2000 residential units and associated commercial development not to speak of the probable deaths of hundreds of residents would be enormous. The Park District wisely refused to take on this liability.

For these and other reasons the Park District's General Manager Robert Doyle rejected the Mayor's proposal. There is no reason to think that the Park District has changed its mind under the current circumstances. This RFP is simply grandstanding on the park of the mayor when he knows neither the Park District nor any other public agency would even respond to the RFP.

Third, this proposal could open up the city to an inverse condemnation action by SunCal and also by Upstream and the Tribe. To begin with, if a public agency engages in land use actions that down zone property with the intent of acquiring the property for public use, then that can be considered a taking of the property. The issue is what is the intent of the city as derived from the actions it takes in regard to the property in question. One could argue that this proposal demonstrates the intent of the city to take all the property for public use.



SunCal could argue that in taking away the open space around and within the development, the city has taken a private amenity of the development and has thus devalued their development because areas that would be considered as private open space that adds value to the residential units would be open to the public, lowering the value of the residential units. I am sure skillful SunCal lawyers would find a way to claim inverse condemnation as part of their existing lawsuit.

As for Upstream and the Tribe, they could argue that while there is a development project that currently has 70% open space, that should not preclude them from marketing the property for more development assuming the city could approve more development. Butt's proposal takes 70% of the property, a portion or all of which could be developed. (It does not matter that they may not want to do this; what matters is that they would argue this as a taking.)

The end result would be for the City to be faced with lawsuits in which SunCal and Upstream/Tribe would be asking for hundreds of millions of dollars, all because of yet another ill conceived idea that the Mayor has cooked up.

Finally, the Mayor may attempt to argue that this proposal is a way for the City to avoid having to pay the costs for the open space areas at Point Molate. He should have thought of this possibility when he hatched the Amended Settlement Agreement and foisted it on the taxpayers of Richmond. He is simply trying to make the public pay for his mistakes with yet another scheme that will put the City into fiscal and legal peril.

Sincerely yours,

A handwritten signature in black ink that reads "Norman La Force". The signature is written in a cursive, flowing style.

Norman La Force,  
Chair, Sierra Club San Francisco Bay Chapter  
Legal Committee and Chair Sierra Club  
East Bay Public Lands Committee

**From:** [Jeannette Kortz](#)  
**To:** [Gayle McLaughlin](#); [Melvin Willis](#); [claudia jimenez](#); [richcityservant](#); [Demnlus Johnson](#); [Nat Bates](#); [Tom Butt - external](#)  
**Cc:** [City Clerk Dept User](#); [Dave Aleshire](#); [Shasa Curl](#)  
**Subject:** PUBLIC COMMENT - AGENDA ITEM W.10.a  
**Date:** Tuesday, June 21, 2022 12:18:18 PM

---

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

Dear City Council,

I am writing regarding Mayor Butt's extraordinarily deceitful, illogical, and possibly legally damaging agenda item, W.10.a.

In this agenda item, Mayor Butt thinks the public will see this agenda item as a logical proposition — to have public land organizations take over what he calls expensive-to-manage uplands.

The real reason he is doing this is to represent himself as supporting a park at Point Molate that he has never supported and is not supporting now: this is another publicity stunt. The East Bay Regional Park District already turned down managing the land at Point Molate that can't be developed for housing because it's either too steep or too contaminated and a liability in a high fire severity zone with up to 2,000 homes. Trust for Public Land does not manage public lands, and the Mayor knows this, and why would Muir Land Trust take on liability that the East Bay Regional Park District is not willing to take on?

The Mayor is also creating negativity among residents toward the East Bay Regional Park District for not "logically" taking over the uplands while he knows they have already rejected this plan and Trust for Public

Land does not manage public land. The Mayor also knows that even if the East Bay Regional Park District had not already rejected this plan, it would be impossible at this time given the current development and contractual agreements the Mayor orchestrated and passed by the previous City Council.

Why does Mayor Butt spend so much of his time and energy on Point Molate when there are so many pressing issues in this City especially, the high cost of housing when there is absolutely no focus in his agenda on affordable housing in his high end shoreline developments plans or to build affordable/mixed use housing within the core of the City near public transportation, and other major survival issues the people of Richmond are enduring. By prioritizing complex high-end housing developments on the shoreline and not development for current Richmond residents, he is costing the city millions and prioritizing displacement.

Case in point, having the residents of Richmond pay for a 24/7 fire station and infrastructure for only 1400 high-end homes at Point Molate. This would have cost the taxpayers of Richmond millions of dollars a year and not provided housing the majority of Richmond residents can afford and not provided any significant amenities for Richmond residents yet cost the taxpayers millions.

The Mayor's agenda proposal W.10.a. is a front and distraction from the mess he has made of Point Molate. It's hard to believe a mayor of a city would do this, and his agenda item if passed would only serve to weaken the City's position to clean up the legal mess Mayor Butt has made and provides SunCal and Jim Levine with advantages to sue and take more money from the City.

It's another in a long history of Tom Butt using his position as mayor to

undermine the interests of current Richmond residents.

The distinction between council members who depend on cronyism and developers, and those who champion the interests of working families is obvious.

Thank you Melvin Willis, Gayle McLaughlin, Claudia Jimenez, Eduardo Martinez and Demlus Johnson for your fiscal responsibility voting against the \$300 million bond and protecting the interests of current Richmond residents from millions a year in costs. I hope you will also table the legally and therefore fiscally dangerous Agenda item W.10.a. to protect Richmond's current residents.

Thank you for your time.

Sincerely,

Jeanne Kortz  
Richmond Resident



**From:** [Robert Cheasty](#)  
**To:** [City Clerk Dept User](#)  
**Cc:** [Shirley Dean](#); [Program Cesp](#); [Norman La Force](#)  
**Subject:** Agenda Item W 1-a , the Point Molate item  
**Date:** Tuesday, June 21, 2022 12:56:52 PM  
**Importance:** High

---

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

You don't often get email from [rcheasty@cheastylaw.com](mailto:rcheasty@cheastylaw.com). [Learn why this is important](#)

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

Mayor Tom Butt, Members of there Richmond City Council:

I write on behalf of Citizens for East Shore Parks to join with eh letter sent to you by the Sierra Club and by Shirley Dean objecting to having the City Council entertain any further schemes that would further mire the City of Richmond in litigation and exposure to claims by would be developers SunCal and By Upstream and The Guideville Band of the Pomo Tribe.

The consequences of the Mayor's proposal would likely be argued to violate the TRO currently over further action on Point Molate, would raise the opportunity for an argument of inverse condemnation, would present further opportunity to argue breaches of contract and interference with contracts by the would be developers and tie up the city in more litigation.

Equally problematic is the amount of more wasted time this proposal would cost the City Attorney and City staff and possibly new hired attorneys and consultants to address the myriad of legal issues and concerns this proposal would entail.

It is understandable that Mayor Butt would not care about exposing the city to further litigation costs and further waste of staff and City Attorney time but hopefully the rest of the City Council will behave like adults and tell him to stop digging the hole even deeper.

I hope the City Council will table this matter and let it rest permanently while the real issues of Point Molate are sorted out in Court or settled.

Sincerely,  
Robert C. Cheasty  
Cheasty, Cheasty & Malek, LLP  
1604 Solano Avenue  
Berkeley, CA 94707  
Tel.: 510-525-1000  
Fax: 510-526-3672  
[rcheasty@cheastylaw.com](mailto:rcheasty@cheastylaw.com)

On Jun 21, 2022, at 12:38 PM, Shirley Dean <[shirley.dean@sbcglobal.net](mailto:shirley.dean@sbcglobal.net)> wrote:

Robert,

Below is a copy of my email. See below for address to Richmond and the way they want the subject line to read.

Shirley

---

**From:** Shirley Dean <[shirley.dean@sbcglobal.net](mailto:shirley.dean@sbcglobal.net)>

**Sent:** Tuesday, June 21, 2022 12:07 PM

**To:** '[cityclerkdept@ci.richmond.ca.us](mailto:cityclerkdept@ci.richmond.ca.us)' <[cityclerkdept@ci.richmond.ca.us](mailto:cityclerkdept@ci.richmond.ca.us)>

**Subject:** PUBLIC COMMENT: Agenda Item W 10a, Disposition of Open Space at Pt Molate

**Importance:** High

Dear Mayor Butt and Council Members Bates, Jimenez, Johnson, Martinez, McLaughlin and Willis,

It is extremely puzzling why this proposal is on your agenda at this time for two basic reasons:

- 1). There is no supporting material as to why the Council should ask City Staff to prepare a request to be sent out widely by August 1<sup>st</sup> 2022 soliciting proposals that involve a detailed plan, including funding and a schedule, for the proposed management of open space in some undefined area or areas within Point [Molate.by](#) September 15, 2022. Are these open space areas based on the plan which was submitted by SunCal, or on some other proposal? Without any definite information stating what should be included in such a directive, how can you expect the City Staff to proceed and the public to react?
- 2). As unclear as what is being requested is, the more important matter is the legal implications it may involve. We all know that whatever happens at Point Molate is currently the subject of multiple legal battles, none of which will be resolved easily or soon. While bold statements are being made about why all of this occurred, it is absolutely clear from the public record that the most recent City Council action to reject moving forward the proposal by SunCal to develop various commercial and residential uses within Point Molate, was based on information provided by the City Attorney regarding SunCal's failure to provide the basic information required of any developer by the City of Richmond. SunCal's failure to meet these requirements was listed by the Richmond City Attorney for all to see and understand. This information indicated that moving forward with SunCal's proposed plan would present a financial risk to the City and its residents. A majority of the City Council chose in open meeting

to take the prudent action of saying “No.” With such issues in front of them, nothing less than such an action would seem to be malfeasance of duty.

Not accepting the City’s decision, the developer, instead of working to correct the findings of non-compliance, took the matter to court and requested AND RECEIVED a Temporary Restraining Order (TRO) which was scheduled for hearing on July 6 by the Superior Court in Martinez. I understand that the July 6 legal hearing has now been rescheduled for August 4. It is logical to draw the conclusion that approval of Item W 10 a well may be a violation of the TRO and could possibly expand the legal entanglements that the City faces. Therefore, it does not seem reasonable to approve Item W 10 a under these circumstances.

Thank you,  
Shirley Dean

**From:** [Shirley Dean](#)  
**To:** [City Clerk Dept User](#)  
**Subject:** PUBLIC COMMENT: Agenda Item W 10a, Disposition of Open Space at Pt Molate  
**Date:** Tuesday, June 21, 2022 12:06:47 PM  
**Importance:** High

---

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

You don't often get email from [shirley.dean@sbcglobal.net](mailto:shirley.dean@sbcglobal.net). [Learn why this is important](#)

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

Dear Mayor Butt and Council Members Bates, Jimenez, Johnson, Martinez, McLaughlin and Willis,

It is extremely puzzling why this proposal is on your agenda at this time for two basic reasons:

- 1). There is no supporting material as to why the Council should ask City Staff to prepare a request to be sent out widely by August 1<sup>st</sup> 2022 soliciting proposals that involve a detailed plan, including funding and a schedule, for the proposed management of open space in some undefined area or areas within Point [Molate.by](#) September 15, 2022. Are these open space areas based on the plan which was submitted by SunCal, or on some other proposal? Without any definite information stating what should be included in such a directive, how can you expect the City Staff to proceed and the public to react?
- 2). As unclear as what is being requested is, the more important matter is the legal implications it may involve. We all know that whatever happens at Point Molate is currently the subject of multiple legal battles, none of which will be resolved easily or soon. While bold statements are being made about why all of this occurred, it is absolutely clear from the public record that the most recent City Council action to reject moving forward the proposal by SunCal to develop various commercial and residential uses within Point Molate, was based on information provided by the City Attorney regarding SunCal's failure to provide the basic information required of any developer by the City of Richmond. SunCal's failure to meet these requirements was listed by the Richmond City Attorney for all to see and understand. This information indicated that moving forward with SunCal's proposed plan would present a financial risk to the City and its residents. A majority of the City Council chose in open meeting to take the prudent action of saying "No." With such issues in front of them, nothing less than such an action would seem to be malfeasance of duty.

Not accepting the City's decision, the developer, instead of working to correct the findings of non-compliance, took the matter to court and requested AND RECEIVED a Temporary Restraining Order (TRO) which was scheduled for hearing on July 6 by the Superior Court in Martinez. I understand that the July 6 legal hearing has now been rescheduled for August 4. It is logical to draw the conclusion that approval of Item W 10 a well may be a violation of the TRO and could possibly

expand the legal entanglements that the City faces. Therefore, it does not seem reasonable to approve Item W 10 a under these circumstances.

Thank you,  
Shirley Dean

**From:** [Cordell Hindler](#)  
**To:** [City Clerk Dept User](#)  
**Subject:** Public Comments- X.1 Budget Session  
**Date:** Friday, June 17, 2022 1:08:43 PM

---

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

Good Evening Mayor Butt, Council Members and Staff

I am asking that the council to Adopt the Budget as Presented by the City Manager's Office and Finance Department

Sincerely  
Cordell

**From:** [Cordell Hindler](#)  
**To:** [City Clerk Dept User](#)  
**Subject:** Public Comments- Z.1  
**Date:** Friday, June 17, 2022 1:14:23 PM

---

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

Good Evening Mayor Butt, Councilmembers and Staff

I Appreciate the Hard work that our Employees do for the City of Richmond

Sincerely  
Cordell

**From:** [Cordell Hindler](#)  
**To:** [City Clerk Dept User](#)  
**Subject:** Public Comments- Z.4  
**Date:** Friday, June 17, 2022 1:16:44 PM

---

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

Good EVENING Mayor Butt, Councilmembers and Staff,

I am Requesting that the City Manager released the Class and Comp study as directed

Sincerely  
Cordell

**From:** [Cordell Hindler](#)  
**To:** [City Clerk Dept User](#)  
**Subject:** Public Comments- Z.5  
**Date:** Friday, June 17, 2022 1:29:35 PM

---

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

Good evening Mayor Butt, Council Members and Staff

I am in Favor of Street Sweeping

But I do oppose the idea of having cars being towed away

People need Their Cars to get to Work

sincerely  
Cordell

**From:** Savitri Khalsa <savitrikaurkhalsa@gmail.com>  
**Sent:** Monday, June 20, 2022 1:34 PM  
**To:** Shasa Curl; Tom Butt - external; Nat Bates; Louie Tirona; Joe Leach; Lina Velasco; Michelle Milam; City Clerk Dept User; Pamela Christian  
**Subject:** Public comments agenda item #AA.1; June 21, 2022 RCC  
**Attachments:** RCC.AA.1.COMMENTS.pdf

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

Some people who received this message don't often get email from savitrikaurkhalsa@gmail.com. [Learn why this is important](#)

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

Dear Respected City Leadership Team,  
Please consider the following regarding the proposed Council action. I've attached a pdf version of this email for the meeting minutes.

To: Richmond City Leadership and Council Members  
Re: June 21, 2022 Council Meeting

#### **New Business Item AA.1**

- 
- 
- That city staff be directed to create two contracts managed by the
- **Richmond Community Foundation**
- – that outline a collaborative approach between:
  - a) Safe Organized Spaces Richmond (SOS),
  - 
  - b) the Richmond Rotary Club Housing First Initiative, and
  - 
  - c) Various related partners (GRIP, Rebuilding Together East Bay North, Collaborizing, Tacos and Roses, Faith In Action, NeighborAid, La Familia Family Services, and Rising Sun Center For Opportunity)
  -
- 
- 
- 
- Then, bring back the contracts to the City Council for approval
- 
- before the August break.
-

Dear Council Members & Leadership Team,

**Please do not support Item AA.1.**

The spending of nearly \$2.4 million dollars now is unwise for several reasons.

**The first reason it is unwise to spend this money now** is that the city is in the process of developing an overall homelessness strategic plan.

The City of Richmond is paying \$100,000 to an expert consultant to develop a citywide [Homelessness Strategic Plan](#). Please wait for the Strategic Plan before spending more money on homelessness programs that may or may not be effective. The timeline is shown below. Presently, the consultants are assessing existing systems and services.



**The second reason it is unwise to spend this money now** is that the city will be managing the Castro Encampment Resolution Project beginning in August. Richmond won \$4.8 million, which city officials plan to use to clear the 100+ camp of people living off Castro Street in cars, RVs and trailers.

The city has placed on bid a Castro Encampment Resolution Project [CERP] Project Manager who will serve under the direction of the city’s new housing director who will be paid up to \$235,000 over 18 months to provide services to address the immediate crisis of unsheltered homelessness in the Castro encampment and to support people living in the encampment on to a path to safe and stable housing. This results in the sustainable restoration of public spaces to their intended uses while safeguarding the needs of unhoused people seeking shelter.

[Seattle’s Homelessness Plan](#) may inspire you to invest more carefully.

Richmond’s Homelessness Plan will:

- **Develop measurable goals and strategies with clear timelines that lead to population-level reductions** and bring indoors 75% of the unsheltered population by 2024.
- **Engage and empower the community to be part of the solution.**
- **Develop a shared vision** interdepartmentally and citywide.
- **Develop strategies for interdepartmental coordination and accountability.**
- **Identify funding and resources** needed to carry out specific strategies.
- **Discuss how progress on goals identified will be measured.**

**The third reason it is unwise to spend this money now** is that last year’s emergency approaches did not provide measurable, quantifiable successes.

Last year, in July 2021, Councilor McLaughlin said that a \$983,975 sole-source contract for SOS was justified because the city had to act “fast” to deal with an “immediate need” at the unsanctioned sites of Rydin Road and Castro Street encampments.

She noted that vehicles were to be thinned out ASAP in order to meet the 12/2021 end date for these encampments (as per council direction) and stated that SOS was working to relocate individuals within encampments to scattered sites and a proposed transitional village. **This did not happen.**

Additionally, she said SOS needed the contract so that it could increase its staff from 23 employees to 60 employees in order to work to clear the unsanctioned encampments. SOS instead [has not grown from 23 employees and on average is only 11 to 19 employees](#). **So, this did not happen.**

There are yet “safe parking” sites; many “scattered sites” at churches; or a “transitional village” for SOS employees to work at. **So, this did not happen.**

Councilor McLaughlin further stated that SOS works day and night to deal with problematic behaviors at the encampments and therefore helps the Richmond Police Force so they do not have to go to encampments. Yet, the level of calls for Service to Richmond Police at just one encampment, Rydin Road continues to rise. Notice the number of visits noted in the table below. **SOS did not keep the Richmond Police Department (and the Fire Department) from repeatedly visiting to resolve issues.**

Richmond Police Department Calls For Service Rydin Road Richmond CA			
Timeframe: 2019, 2020, 2021, 2022			
2019 CFS	2020 CFS	2021 CFS	% CHANGE 2020-2021
53	216	433	100% Increase
Current 2022 YTD Calls for Service: <u>175</u>			
Top Calls For Service 2022: Follow Up (Report), Parking Violation, Disturbance, Security Check			

While SOS did good work throughout the year employing unhoused individuals to deliver showers and complete community cleanups, it has not met minimal goals of helping to empty out the Rydin and Castro Encampments as stated by Councilor McLaughlin. SOS is not able to identify how many individuals they outreach to—because mostly they are picking up trash and providing showers to 25-30 people at Rydin Road. An additional 2022-2023 SOS contract for \$1,114,000 is not warranted at this time.

Whether the city groups the contracts into groups of 2, 3, 4, or 100, it does not hide the fact that Item AA.1 appears to be a payout to a variety of favored nonprofits from city funds. Paying the Richmond Community Foundation \$218,000 (a 10% fee) to manage these contracts makes little sense. The table and charts below show the proposed payouts for your consideration. Notice that the most successful program, the Rotary Club Rental Housing program is only 15.7% of the entire proposed unhoused funding. Please do not approve Item AA.1.

Thank you for your consideration.

Sincerely,  
Savitri Khalsa  
Richmond Resident

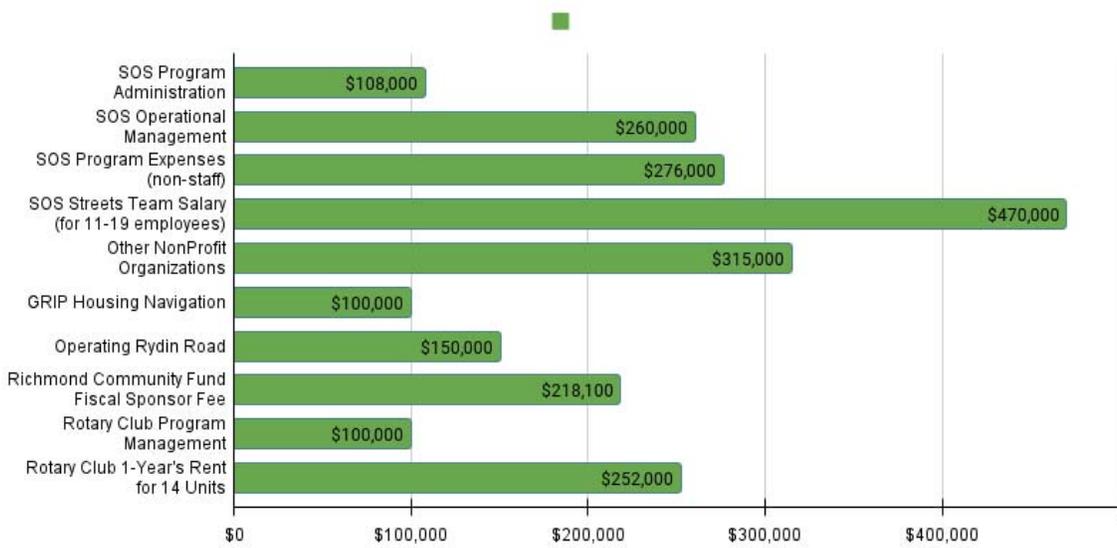
## Proposed \$2.4 Million Spending on Homelessness

Richmond, CA (2022-2023)



Fund Distribution	Dollar Amount	Percentage of Funds
SOS	\$1,114,000	49.5%
Other NonProfits	\$415,000	18.5%
Rotary Club (1-yr Rentals)	\$352,000	15.7%
Richmond Com. Foundation Management Fee	\$218,100	9.7%
Rydin Road Operations	\$150,000	6.7%
<b>Totals</b>	<b>\$2,249,100</b>	<b>100%</b>

### Richmond, CA Proposed \$2.4 Million Homeless Spending (2022-2023)



**From:** [Sam Bacal-Graves](#)  
**To:** [City Clerk Dept User](#)  
**Subject:** Public Comments Agenda Item # AA.2  
**Date:** Monday, June 20, 2022 9:51:56 AM  
**Attachments:** [image001.png](#)  
[RRH Fee Letter re 22-23 Fee \(00217110xC4B98\).pdf](#)

---

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

You don't often get email from sbacalgraves@thomaslaw.com. [Learn why this is important](#)

This email originated from outside of the City's email system. Do not open links or attachments from untrusted sources.

Hello,

Please see attached for a comment letter on Item AA.2 of the June 21, 2022 Richmond City Council Meeting – Resolution Establishing the Fiscal Year 2022-23 Residential Rental Housing Fee. Please let me know if you have any questions.

Thank you,

Sam Bacal-Graves  
THOMAS LAW GROUP  
455 Capitol Mall, Ste 801, Sacramento, CA 95814  
One Kaiser Plaza, Suite 875, Oakland, CA 94612  
Phone: 916.287.9294  
Fax: 916.737.5858  
[SBacalGraves@thomaslaw.com](mailto:SBacalGraves@thomaslaw.com)  
[www.thomaslaw.com](http://www.thomaslaw.com)

**T|L|G** Thomas Law Group

Confidentiality Note: The information contained in this e-mail and any attached files is confidential and intended for the exclusive use of the individual or firm named in the e-mail. The information should not be duplicated or distributed unless an express written consent is obtained from Thomas Law Group, LLP, in advance. If you are not the intended recipient of this e-mail, do not disseminate, distribute or copy it. Please notify me immediately and return any attachments.



TINA A. THOMAS

AMY R. HIGUERA  
CHRISTOPHER J. BUTCHER  
ANDREW M. SKANCHY  
Senior Counsel

SAMUEL D. BACAL-GRAVES

455 CAPITOL MALL, SUITE 801 | ONE KAISER PLAZA, SUITE 875  
SACRAMENTO, CA 95814 OAKLAND, CA 94612

Telephone: (916) 287-9292 Facsimile: (916) 737-5858  
www.thomaslaw.com

NICHOLAS S. AVDIS  
Of Counsel

June 20, 2022

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

Re: City of Richmond Rent Board Residential Rental Housing Fee

Dear Mayor Butt and Members of the City Council:

We represent AMG & Associates, LLC (AMG). We are submitting this letter on the proposed Fiscal Year 2022-23 Budget & Rental Housing Fee Study (Nexus Study), to address significant legal and equitable concerns regarding the Residential Rental Housing Fee (RRH Fee) recommended by the Rent Board.

AMG is the largest developer of affordable housing in the City of Richmond (City). AMG has a long and valued relationship with the City and the City Council, and hopes to develop more affordable housing for Richmond's residents in the future.

However, as discussed in more detail below, imposition of the RRH Fee as applied to governmentally subsidized affordable housing developments is duplicative of existing regulation. The RRH Ordinance does not impact these units or their tenants and does not establish any benefits or burdens not already established by existing state requirements and agreements. Yet the Rent Board has recommended that the City Council approve an RRH Fee that assesses these affordable housing units a substantial fee for operation of the RRH Ordinance. The RRH Fee as currently proposed by the Board for the City Council's consideration is unnecessary and unfair. Further, as proposed by the Rent Board the RRH Fee constitutes an unconstitutional exaction. We, therefore, respectfully ask that the City Council to exercise its discretion to address these equitable and legal issues by denying the RRH Fee as currently structured and proposed by the Rent Board.

Specifically, we request that the City Council determine that the RRH Fee should not be imposed on governmentally subsidized affordable housing units. Rent Board staff has taken the position that the City and Rent Board are legally restrained from making such a determination, but as we explain below, that is not the case. The Rent Board's existing regulations demonstrate that the Rent Board could exempt governmentally subsidized affordable housing projects. Moreover, the

City Council's authority over the RRH Fee itself grants the City Council authority to determine the type of units that should be assessed the RRH Fee as well as the appropriate amount of the fee.

We look forward to working with the City to resolve this fee issue in an amicable and productive manner.

## I. Residential Rental Housing Fee

In 2016 voters in the City passed, by initiative, the RRH Ordinance, adding Chapter 11.100 to the Richmond City Code (RCC). The RRH Ordinance contains two primary programs. First, it establishes rent control for non-exempt properties. (RCC, § 11.100.070.) Second, it prohibits evictions except for limited, articulated reasons ("just cause"), such as nonpayment of rent. (RCC, § 11.100.050.) To administer and enforce these provisions (the Program), the RRH Ordinance created the Richmond Rent Board. (RCC, § 11.100.060.) And to finance the Rent Board's "reasonable and necessary expenses" in administering and enforcing the Program, the RRH Ordinance created the RRH Fee. (RCC, § 11.100.060(l)(1).) The RRH Fee is charged to landlords annually, to be paid with business license fees. (*Ibid.*)

The RRH Ordinance draws a distinction between the Rent Board budget and the RRH Fee. With respect to the Rent Board budget, the Rent Board itself has unilateral approval authority. (RCC, § 11.100.060(n).) **However, with respect to the RRH Fee, the Rent Board's role is merely to make a recommendation – it is the City Council that holds the approval authority.** (RCC, § 11.100.060(l)(1).) There is no requirement that the City Council assess the RRH Fee at a level to fund all of the activities the Rent Board seeks to pursue in its budget, as the RRH Ordinance expressly empowers the Rent Board is "to request and receive funding when and if necessary from any available source for its reasonable and necessary expenses." (RCC, § 11.100.060(l).) As such, the City Council has clear authority, and an obligation, to independently consider the manner in which it assesses the RRH Fee.

## II. Legal Obligations of Governmentally Subsidized Affordable Housing

Governmentally subsidized affordable housing is highly regulated. Such developments are only eligible for low-income housing credits if the owner has entered into and record an extended low-income housing commitment. (26 U.S.C. § 42(h)(6).) This commitment must prohibit evictions, other than for good cause (just cause eviction protection), as well as rent increases, except as allowed by law. (*Ibid.*)

Essentially, the RRH Ordinance extends the protections already applicable to governmentally subsidized affordable housing to all other units in the City. To residents of those other units this certainly provides appreciable benefits, but tenants of governmentally subsidized affordable housing already enjoy these protections, with or without the RRH Ordinance. Further, the Public Housing Authority must confirm that every project based voucher unit (PCV) complies with

established housing quality standards (HQS) and that the owner has complied with the terms of the assisted leases and the Housing Assistance Payments Contract (HAP) before it will approve any rent increase.

Additionally, unlike residents of other units, tenants of governmentally subsidized housing projects are informed of these rights under federal law. Each lease is accompanied by a Resident Notification Letter, Low Income Housing Tax Credit Lease Rider re: Good Cause for Eviction, and Notice – Good Cause Eviction Protection.

In short, the RRH Program serves an important function for many tenants. But for governmentally subsidized affordable housing projects it is duplicative of existing regulation. It adds no benefit for tenants of such units, nor any additional regulation. What it does do, under the RRH Fee recommended by the Rent Board, is charge an unnecessary fee for services such tenants do not benefit from and for regulation duplicative of what such units are already required to comply with under federal law. Such an imposition is unfair, contrary to the RRH Ordinance's stated intent that landlords be able to retain a "fair and reasonable return on their investment" (RCC, § 11.100.010), and discourages continued development of much-needed affordable housing within the City.

### III. Regulatory Fees

In addition to being unnecessary with respect to governmentally subsidized affordable housing, the recommended RRH Fee is an unconstitutional exaction.

In *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866 (*Sinclair Paint*), the California Supreme Court recognized a distinction between "development fees, exacted in return for permits or other government privileges" from "regulatory fees, imposed under the police power." (*Id.* at p. 873.)

"*Sinclair Paint* rejected the argument that the state had no authority to impose the fees, stating that the case law 'clearly indicates that the police power is broad enough to include mandatory remedial measures to mitigate the *past, present, or future* adverse impact of the fee payer's operations, at least where, as here, the measure requires a causal connection or nexus between the product and its adverse effects."

(*Schmeer v. County of Los Angeles* (2013) (*Schmeer*) [original emphasis].)

Following and in response to *Sinclair Paint*, and to close perceived loopholes in Propositions 13 and 218, California Voters approved of Proposition 26 (Prop 26) in 2010. (*Schmeer, supra*, 213 Cal.App.4th at p. 1322.) Section 1 of Prop 26, sets forth the findings and declarations of purpose of the initiative. It laments the escalation of taxes which had evaded voter approval, notwithstanding Propositions 13 and 218. (Prop 26, § 1(a)-(d).) Specifically, it recognized:

“the recent phenomenon whereby the Legislature and local governments have disguised new taxes as ‘fees’ in order to extract even more revenue from California taxpayers without having to abide by these constitutional voting requirements. Fees couched as ‘regulatory’ but which exceed the reasonable costs of actual regulation or are simply imposed to raise revenue for a new program and are not part of any licensing or permitting program are actually taxes and should be subject to the limitations applicable to the imposition of taxes.”

(Prop. 26, § 1(e).)

To address this, Prop 26 enshrined in the California Constitution the principle that a “levy, charge, or exaction of any kind” is a tax, requiring voter approval<sup>1</sup>, unless it falls within a specific exception. (Cal Const, Art. XIII C § 3(b); see also *Schmeer, supra*, 213 Cal.App.4th at p. 1326.) Thus, under the California Constitution as amended by Prop 26, a regulatory fee is only not a tax if it meets the following standard:

“A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.”

(Cal Const, Art. XIII C § 1(e)(3).)

As discussed in *Schmeer, supra*, (2013) 213 Cal.App.4th at p. 1328 the Legislative Analyst’s Office’s analysis of Prop 26 included in the relevant Voter Information Guide (LAO Analysis)<sup>2</sup> provides guidance as to the types of charges that are deemed to be taxes under Prop 26. Figure 3 of the LAO Analysis identifies types of hypothetical regulatory fees, and uses for fee funds, that could either in part or in whole, be considered taxes under Prop 26. Such hypothetical programs that constitute a tax under Prop 26 include an Oil Recycling Fee used to fund in part “Public information and education programs” and “Research and demonstration projects” as well as fee on alcohol retailers that would fund “Merchant education to reduce public nuisance problems associated with alcohol.”

A pair of cases decided shortly after passage of Prop 26 illustrate the difference between valid and invalid regulatory fees. *Morning Star Co. v. Board of Equalization* (2011) 201 Cal.App.4th 737 (*Morning Star*) considered whether a charge assessed on businesses that “use, generate,

---

<sup>1</sup> Though the RRH Ordinance was originally approved by voters by initiative, neither the initial level of the RRH Fee nor its increases have been approved by voters, and therefore it cannot be justified as a properly enacted tax. (Cal Const, Art XIII C § 2(b), (d).)

<sup>2</sup> Prop 26 Legislative Analyst’s Office analysis available at:  
[https://lao.ca.gov/ballot/2010/26\\_11\\_2010.aspx](https://lao.ca.gov/ballot/2010/26_11_2010.aspx)

store, or conduct activities in California related to hazardous materials” was a regulatory fee or a tax. (*Id.* at p. 742.) It found that the charge “is not regulatory because it does not seek to regulate the Company's use, generation or storage of hazardous material but to raise money for the control of hazardous material generally.” (*Id.* at p. 755.) These funds paid for “a wide range of governmental [\*Morning Star\* contrasted these broad uses of the hazardous waste charge with the charge at issue in \*CFBF\*, \*supra\*, 51 Cal.4th 421. Therein, the Supreme Court upheld, as a valid regulatory fee, a charge imposed by a statute that “carefully set\[\] out that the fees imposed shall relate to costs linked to issuing, monitoring, enforcing and administering licenses and permits, and list\[ed\] the recoverable costs in some detail.” \(\*Morning Star\*, \*supra\*, 201 Cal.App.4th at p. 752 quoting \*CFBF\*, \*supra\*, 51 Cal.4th at pp 438-439.\) The \*CFBF\* fee also did not collect “more than the administrative ‘costs incurred’ in carrying out the functions authorized in \[the authorizing statute\].” \(\*CFBF\*, \*supra\*, 51 Cal.4th at p. 439.\) Thus, the \*CFBF\* Court upheld the fee against a facial challenge to its constitutionality. \(See also \*Griffith v. City of Santa Cruz\* \(2012\) 207 Cal.App.4th 982, 997 \[“The fees are imposed to cover the cost of performing inspections. They are, therefore, expressly exempted from the Proposition 26 definition of ‘tax.’”\].\)](https://advance.lexis.com/search/?pdmfid=1000516&crd=b2b3c9eb-8a4b-42d0-b17c-e91e76055768&pdsearchterms=201+Cal.App.4th+737&pdstartin=hlct%3A1%3A1&pdcaseshlctselectedbyuser=false&pdtypeofsearch=searchboxclick&pdsearchtype=SearchBox&pdqtype=and&pdpsf=oop%3A1%3A1&pdquerytemplateid=&comp=4gsnk&earg=pdpsf&prid=dc70be11-b9af-4c2f-8ac5-7acbd51dbbeservices and programs related to hazardous waste control” unrelated to the regulated activity, such as “mediation, cleanup, disposal and control of hazardous materials generally, rather than for the regulation of the [fee] payers' business activities in using, generating or storing hazardous materials.” (<i>Ibid.</i>)</p></div><div data-bbox=)

Thus, these two cases passed shortly after Prop 26 establish the relevant limitations on a regulatory fee. Where a charge does not only fund administrative costs of regulation, but rather seeks to raise money for more general governmental functions it is a tax. However, where the fee’s uses are limited to issuing, monitoring, enforcing, and administering licenses and permits it is a legitimate regulatory fee.

Nonetheless, in *CFBF* the Supreme Court also acknowledged that while the charge at issue in that case was not facially an unconstitutional tax for the reasons stated above, it could still be unconstitutional *as applied* if the fees were “so disproportionate that they are unreasonable” in light of the “extent and costs of the [agency]’s regulatory ‘activity’.” (*CFBF*, *supra*, 51 Cal.4th at p. 440.) Because the relevant information was not in the record, the Court did not rule on that issue. (*Id.* at p. 441-442.) As such, where a facially valid fee is applied in a disproportionate manner may still be unconstitutional as applied.

Additionally, courts have long recognized that a regulatory fee cannot be established to “pay general revenue to the local government.” (*Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375.) Thus, “[a]n excessive fee that is used to generate general revenue becomes a tax.”

*(California Farm Bureau Federation v. State Water Resources Control Bd. (2011) 51 Cal.4th 421, 438 (CFBF).)*

Lastly, in contrast to many instances in which a local government must only provide substantial evidence for its position, under Prop 26, “[t]he local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax.” (Cal Const, Art. XIII C § 1(e) [emphasis added].) Thus, a charge is considered to be a tax unless the government has affirmatively and adequately shown otherwise.

#### **IV. The RRH Fee is not a Valid a Non-Regulatory Fee**

Prop 26 does not prohibit a local government from charging for government services or other specific benefits or privileges. (Cal. Const. Art. XIII C § 1(e)(1)-(2).) However, to do so, the service or benefit must be granted “directly to the payor” and the benefit “not provided to those not charged.” (*Ibid.*) These are sometimes referred to as “user fees” or “service fees” and are exempt from Prop 26. Here, unlike all of the seven other jurisdictions surveyed in the Nexus Study that have instituted a similar program, the RRH Fee proposed by the Rent Board does not permit landlords to pass any portion of the RRH Fee through to tenants. (Nexus Study, p. 26.) As such, the proposed RRH Fee is not charged to beneficiaries and cannot be justified on this basis. This choice is not mandated by the RCC or the RRH Ordinance. Rather, the City previously considered this, and explicitly rejected the possibility of allowing any portion of the RRH Fee to be passed through to tenants. (2017 Nexus Study, p. 6.)

Nor is the RRH Fee a development fee, as it is assessed on all landlords annually, and not “with approval of a development for the purpose of defraying... the cost of public facilities related to the development project.” (Gov. Code, § 66000(b).)

Thus, the RRH Fee is not charged to those benefited and is not a development fee. It is therefore not exempt from prop 26. If the RRH Fee is justifiable, it must be on the basis of its regulatory nature. However, as discussed below, the proposed RRH Fee does not satisfy the criteria required of a regulatory fee. It is therefore a tax, requiring a public vote under Prop 26.

#### **V. The RRH is not a Valid Regulatory Fee**

##### ***a. License or Permit***

First, the proposed RRH Fee cannot be a valid regulatory fee by definition because it is not connected to any permitting or licensing scheme. The regulatory fee exception only applies to “a charge... for issuing licenses and permits” meeting the specified criteria. (Cal Const, Art. XIII C § 1(e)(3).) The RRH Fee is paid at the same time as the fee is owed for a business license. (RCC, § 11.100.060(1)(1).) However, the RRH Fee cannot constitute an applicable license or permit fee because the City’s business license scheme exists “solely to raise revenue for municipal purposes and is not intended for the purpose of regulation” (RCC, § 7.04.010) and thus is clearly not

regulatory. The RRH Fee has no connection to any other license or permit under the RCC. As such, because it lacks a connection to a regulatory permit or license scheme, the RRH Fee cannot be a regulatory fee.

***b. Activities Funded by the RRH Fee***

Additionally, the activities the Rent Board proposes to fund with their recommended RRH Fee are not regulatory in nature. The Nexus Study divides the Program costs into three categories: the Program Layer, which 55% of funds go towards, the Just Cause for Eviction Layer, which 20% of the funds go towards, and the Rent Control Layer, which 25% of the funds go towards. (Nexus Study, p. 21.)

As to the Program Layer, many of its functions are facially irrelevant to regulation of landlords. For instance, it funds “Legal defense of the Rent Ordinance and agency policies.” This is a general governmental function that would need to be performed whether or not the RRH Ordinance engaged in any particular regulation. Indeed, the Nexus Study acknowledges that services provided by the City Attorney, whose job includes legal defense of the City Code, is a general function funded by the City’s general fund. (Nexus Study, p. 18.) Likewise, the functions such as “Interdepartmental coordination,” and “Website maintenance” are general functions of a local government that have no particular relationship to the RRH Ordinance or Program or to regulation.

Similarly, both the Just Cause for Eviction Layer and the Rent Control Layer include “Public education and outreach” which is stated to include counseling, and “Legal services referrals to community services agencies.” While these may provide valuable community services, the Rent Board has not recommended funding them with legitimate tax revenue, such as from its general fund. Nor has it recommended funding them by assessing a fee to tenants, the beneficiaries of these services. The Rent Board has express authority to seek funding from “any available source” (RCC, § 11.100.060(1)), but yet recommends funding these functions with a charge imposed on landlords. As such, the proposed RRH Fee can only be justified if these activities are legitimately regulatory in nature. However, landlord conduct is entirely irrelevant to these functions, and thus activities serve no regulatory function at all.

The 2022-23 Program budget as described in the Nexus Study is likewise replete with non-regulatory activities the Rent Board recommends to be funded by the RRH Fee. For instance, \$200,000 per year goes towards outside “Community Services Agency Contracts” to fund legal services clinics and to provide legal advice for tenants facing unlawful detainer actions<sup>3</sup>. (Nexus

---

<sup>3</sup> We do not address herein whether a local government can in general constitutionally compel persons to fund the legal fees of opponents in litigation, as this seems to fund, or in what circumstances that might be permissible, but merely note that such a use is not regulatory in nature. Nonetheless, litigation is a form of protected speech under the First Amendment. (See *Bill Johnson's Rests. v. NLRB* (1983) 461 U.S. 731, 741 [“the right of access to the courts is an

Study, p. 14.) The budget also pays for tuition reimbursement for City employees “consistent with the City’s personnel policies” which obviously is a function for general revenue, not the purportedly regulatory fee. Like the public education mentioned above, the budget includes amounts for “promotion on social media” and promotional mailers. Other costs in the budget include a variety of “office expenses” such as print materials, a lease of printers, scanners, and other office supplies. (Nexus Study, pp. 15-16.)

In sum, many recommended uses of the RRH Fee likely provide community benefits. However, it is not the community funding them, nor the beneficiaries, but landlords in particular. As such, they can only be upheld if regulatory in nature. And, courts have repeatedly rejected that uses such as those above are regulatory in nature.

For instance, in the factually similar case, *Weisblat v. City of San Diego* (2009) 176 Cal.App.4th 1022 (*Weisblat*), a city imposed through its municipal code a charge on all rental housing. The Court found it to be a tax and not a fee in part because:

“the primary, if not the sole, purpose of the levy is to recover the costs associated with the administration of the Business Tax and RUBT [Rental Unit Business Tax] programs, including the cost of collecting and processing the annual Business Tax applications and RUBT payments, the printing costs and postage fees, and the cost of computer systems and overhead, as shown by the declaration of Robbin Kulek, the City’s treasury operations division manager. It is also undisputed that the levy is not exacted in return for permits or other governmental privileges.”

(*Weisblat, supra*, 176 Cal.App.4th at p. 1042.)

Here too, the Nexus Study clearly shows that the recommended RRH Fee would be exacted to fund general governmental operations, and not to pay for any regulation or licensing of landlords.

What does constitute a legitimately regulatory fee in the context of rental housing can be seen in *Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375 (*Pennell*). Therein, the Supreme Court upheld a fee assessed as part of a rent control ordinance as a legitimate regulatory fee. The \$3.75 annual fee assessed against landlords paid for “[t]he costs of providing and administering the San Jose Rental Dispute Mediation and Arbitration Hearing Process,” nothing more. (*Id.* at p. 374, fn. 10.)

---

aspect of the First Amendment right to petition the Government for redress of grievances”]) and the Supreme Court has also recognized constitutional limits on the government’s ability to compel speech. (See, e.g., *Keller v. State Bar of Cal.* (1990) 496 U.S. 1 [State Bar could not use bar dues to fund ideological speech opposed by payors].)

The contrast is plain. As discussed above, the recommended RRH Fee (assessed at well over an order of magnitude higher than the *Pennell* fee, even accounting for inflation) funds a multitude of governmental functions far beyond legitimate regulation, and entirely divorced from the conduct of landlords. It is in fact a vehicle to generate revenue to fund the policy ambitions of the Rent Board. Sound as those ambitions may be, they are in large part not regulatory.

As such, as was the case in *Morning Star* and *Weisblat*, in the ways described above the recommended RRH Fee does not seek to regulate the conduct of purportedly regulated parties, but seeks merely to raise money for the general policy ambitions of the Rent Board. It therefore cannot be justified as a regulatory fee.<sup>4</sup>

*c. Consistency with the RRH Ordinance*

In addition to the activities funded by the recommended RRH Fee not being regulatory, they are not even activities that the RRH Ordinance authorizes the funds to be used for. For instance, the Just Cause for Eviction Layer identifies “Administration of Relocation Ordinance” and “Administration of eviction-related complaints” as functions being funded for that aspect of the Program. However, the Relocation Ordinance is a separate ordinance and chapter of the RCC. (RCC, Ch. 11.102.) Further, the RRH Ordinance contains no mechanism for any administrative adjudication or other proceedings of the Rent Board with respect to the just cause for eviction protections. (RCC, § 11.100.050.) The extent of their involvement is that the landlord must file a tenancy termination notice with them prior to serving it upon the tenant. (RCC, § 11.100.060(s)(1).) No provision establishes a process for a tenant to file, or the Rent Board administer or adjudicate, any complaint related to such notices. Thus, these are not functions authorized by the RRH Ordinance.

The RRH Ordinance makes clear that it creates the Rent Board to “administer and enforce [the RRH] Chapter” of the RCC. (RCC, § 11.100.060(e)(15).) The Rent Board cannot unilaterally expand its own functions in violation of the voters’ intent in passing the RRH Ordinance. And

---

<sup>4</sup> We note that the RRH Fee does in some respects fund legitimately regulatory activity (e.g., “Rent Registration and tracking of the Maximum Allowable Rent”; “Processing of rent increase notices and development of templates”). (Nexus Study, p. 21.) Presumably a reformed RRH Fee that was limited to funding activities that are regulatory in nature would be valid, and the remaining functions could still be funded by other sources. The RRH Ordinance expressly allows the Rent Board to “request and receive funding... from any available source.” (RCC, § 11.100.060(l).) However, because the Nexus Study does not divide costs based on the different functions, it is currently impossible to know what extent of the RRH Fee’s funded activities are legitimate regulatory activity. Even if the Rent Board prepared a new Nexus Study and proposed a new RRH Fee for City Council consideration to address the current RRH Fee’s Prop 26 violations, the City Council is still vested with the discretion to decide whether the RRH Fee should be assessed against subsidized affordable housing projects and, if so, the appropriate amount to be assessed.

even if that were permissible, nothing authorizes the RRH Fee to be used to fund functions of the Rent Board beyond what is described in the RRH Ordinance. The RRH Fee is not a blank check for the Rent Board to seek to fund whatever programs it likes. These expanded uses are beyond the scope of what the RRH Ordinance authorizes, and to the extent that it funds such activities, the recommended RRH Fee is impermissible.

## **VI. The RRH Fee Lacks a Legally Required Nexus**

In addition to limits on nature of the funded activities, regulatory fees may only be imposed “for the reasonable regulatory costs” of the regulatory program. (Cal Const, Art. XIII C § 1(e)(3).) This requires a purported regulatory fee to “satisfy *both* the requirement that it be fixed in an amount that is ‘no more than necessary to cover the reasonable costs of the governmental activity,’ *and* the requirement that ‘the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.’” (*City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1214 [original emphasis].)

### ***a. Amount of the Reasonable Costs of the Governmental Activity***

“The aggregate cost inquiry considers if the challenged fee generates more revenue than necessary to support the regulatory program supported by the fee.” (*American Coatings Assn., Inc. v. State Air Resources Bd.* (2021) 62 Cal.App.5th 1111, 1126 (*American Coatings*).) “[P]ermissible fees must be related to the overall cost of the governmental regulation.” (*CFBF, supra*, 51 Cal.4th at p. 438.)

The Nexus Study on its face shows that the recommended RRH Fee is more than necessary to support the Program. As it repeatedly shows, since the RRH Fee’s inception, fee revenues have outstripped expended funds each and every year by hundreds of thousands of dollars per year. (Nexus Study, pp. 9, 19.) Yet nothing explains what has happened to these excess funds raised by the RRH Fee. An appendix to the Nexus Study which shows a 10-year financial projection, presumes that the Program has had no reserves at all until the end of 2021, and even then it shows the entirety of reserves being from the 2020-21 fiscal year. (Nexus Study, Appendix B, p. 32.) That the surplus is not being used for program activities is confirmed by Appendix A as well, which shows consistent surpluses of hundreds of thousands of dollars without any commensurate increase in the Program’s operating reserve. (Nexus Study, Appendix A, p. 31.)

Either these missing surplus funds are in fact still in Program reserves, which are proposed to be more than 15% of this year’s budget, in which case clearly the Program has no need for additional reserves (or a need for most of its proposed funding for this year), or these funds have been deposited into the City’s general fund, paying for general governmental operations, which would by definition be an improper use of regulatory fees. (*CFBF, supra*, 51 Cal.4th at p. 438 [“What a fee cannot do is exceed the reasonable cost of regulation with the generated surplus used for general revenue collection. An excessive fee that is used to generate general revenue

becomes a tax.”].) Because they are raised by a purportedly regulatory fee, these excess funds must be used for regulatory activities in some way, for instance by offsetting costs in the following year’s budget. Yet, by once more recommending an increase the RRH Fee and total expected revenue to be raised by it, while even raising additional reserves, it is apparent that the Rent Board is not using the excess funds for the Program at all.

Thus, the Nexus Study itself establishes that the recommended RRH Fee “generates more revenue than necessary to support the regulatory program supported by the fee.” (*American Coatings, supra*, 62 Cal.App.5th at p. 1126.) As such, “even if the [recommended RRH Fee] did constitute a regulatory fee, it would be invalid because it surpasses the costs of the regulatory program it purportedly supports.” (*Northwest Energetic Services, LLC v. California Franchise Tax Bd.* (2008) 159 Cal.App.4th 841, 859.)

***b. Manner in which the Costs are Allocated***

A regulatory fee must be “reasonable and substantially proportionate to all costs related to the regulation.” (*Northern California Water Assn. v. State Water Resources Control Bd.* (2018) 20 Cal.App.5th 1204, 1221.) In other words, this inquiry asks “whether any class of fee payers is shouldering too large a portion of the associated regulatory costs.” (*California Building Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1052.)

Here, even if the recommended RRH Fee’s uses and the total revenue generated were reasonable, the Nexus Study contains no attempt to justify the manner in which the RRH Fee and costs are recommended to be allocated. As such, it fails this test as a matter of law.

As noted above, a percentage of costs are allocated to each of the three layers. However, there is no justification for these respective percentages in the Nexus Study. Nothing whatsoever addresses, for instance, why the essentially identical functions of the Just Cause for Eviction Layer and the Rent Control Layer have differing costs, nor how or why the Program Layer requires more than half of the total recommended RRH Fee proceeds. Instead, there is a single sentence: “Such allocations correspond with the amount of resources spent administering each component of the program.” (Nexus Study, pp. 20-21) There is no analysis or other support for this claim or the reasonableness of this allocation and its relationship to the purported regulatory activity. The Nexus Study does not even fully articulate the functions attributable to each layer. The functions discussed above are referred to as being “for illustrative purposes only.” (Nexus Study, p. 21.)

Further, different unit-types are also assessed different rates. Units subject to both the Rent Control and Just Cause for Eviction Layers (“fully covered” units) pay \$226 per unit. However, those subject just to the latter (“partially covered” units) pay \$127 per unit. (Nexus Study, p. 22.) This correlates with fully covered units paying all three layers, and partially covered units paying the Program Layer and the Just Cause for Eviction Layer. (Nexus Study, p. 21.)

Again, the Nexus Study offers no justification for the existence or manner of such division. In fact, it shows that the City did not always consider it to be reasonable. In the 2017-2018 fiscal year all units were charged the same. (Nexus Study, p. 25.) The following year, the subset of what are now partially covered units that are governmentally subsidized rental units paid roughly one quarter of the fee for fully covered units. (*Ibid.*) The recent substantial increase in the fee for partially covered units that are governmentally subsidized is not justified.

This is not a situation in which there may be some defect in the apportionment method or in the analysis justifying the apportionment – it is a case in which there is no such analysis or justification whatsoever. As a matter of law, no nexus is established in such a case. (See, e.g., *Bixel Associates v. City of Los Angeles* (1989) 216 Cal.App.3d 1208, 1219 [method of fee apportionment failed the reasonable relationship test where percentage used to determine fee amount was not justified].)

## VII. Rent Board Exemptions

AMG has previously asked the Rent Board to exempt governmentally subsidized units from the RRH Fee. The Rent Board has not granted that exemption, suggesting that they lack authority to do this. However, this is contrary to their regulations. The Rent Board has interpreted the RRH Ordinance to grant them discretion in determining applicable exemptions in developing the Rent Board's regulations.

The Rent Board is empowered to establish regulations furthering the purpose of the RRH Ordinance. (RCC, § 11.100.060(f).) The Rent Board's regulations provide that rental units in hotels, hospitals, etc. as well as units for which there is a temporary tenancy are entirely exempt from both rent control and just cause for eviction protections. (Rent Board Regulations, Rule 201(A)-(C).) However, as set forth in the RRH Ordinance, the exemption for hotels, hospitals, etc. (RCC, § 11.100.030(d)(1)-(2)), like the exemption for a small class of subsidized units and units exempt pursuant to the Costa-Hawkins Rental Housing Act (RCC, § 11.100.030(d)(3)-(4)), are included as exemptions to the definition of "Controlled Rental Units." (RCC, § 11.100.030.) The term "Controlled Rental Units" is not relevant to the RRH Ordinance's just cause for eviction protections. (RCC, § 11.100.050(a).) As such, the Rent Board has necessarily exercised its discretion to extend some, but not all, of the rent control exemptions to also provide for exemptions from the just cause for eviction protections.

Likewise, the RRH Ordinance only grants temporary tenancies a partial exemption – from the just cause eviction requirements – for eviction based on expiration of the agreed tenancy duration. (RCC, §§ 11.100.040, 11.100.050(a)(8).) However, the Rent Board unilaterally granted such units an exemption from the remainder of the just cause for eviction protections as well, and also from the entirety of the rent control provisions. (Rent Board Regulations, Rule 201(C).) Thus, the Rent Board has necessarily concluded that it has the discretion to expand the scope of units that are exempt from the RRH Ordinance under its powers and duties.

Further, insofar as the Rent Board is empowered to grant new exemptions, nothing restricts their authority in that respect only to the promulgation of new regulations. (See RCC, § 11.100.060(e)(4), (15) [provisions relating to the Rent Board’s authority to issue orders].) Given that the Rent Board has determined that it has the power to establish exemptions not expressly set forth in the RRH Ordinance, and in consideration of the analysis in this letter, we believe the Rent Board should have, as our client requested, exempted subsidized affordable housing projects from the requirement to pay the partial RRH Fee relating to the RRH Ordinance’s just cause for eviction protections. Unfortunately, instead of addressing our clients’ request, the Rent Board has submitted a RRH Fee to the City Council for consideration that, as discussed above, (1) assesses a significant and unnecessary fee on subsidized affordable housing projects, and (2) is unconstitutional.

### **VIII. City Council Authority**

The City Council has authority to determine that the RRH Fee should not be assessed against affordable housing projects. While the Rent Board has unilateral authority to approve the its own budget (RCC, § 11.100.060(n)), they only make a “recommendation... to the City Council” as to the RRH Fee. (RCC, § 11.100.060(1)(1).) It is the City Council that determines, votes on, and approves the RRH Fee – not the Rent Board. (*Ibid.*) Based on equitable considerations and due to the unconstitutional nature of the RRH Fee as currently proposed by the Rent Board, AMG respectfully requests that the City Council deny the RRH Fee and direct City staff to amend the proposed fee to exclude subsidized affordable housing projects.

The RRH Ordinance has no requirement that the RRH Fee be assessed against all units. The City Council has express authority to independently determine the amount of the RRH Fee. (RCC, § 11.100.060(1)(1).) This necessarily includes a determination of what units are required to pay the fee and in what amounts. While the RRH Ordinance does acknowledge that “[a]ll landlords” must pay a *business license fee*, it makes no similar statement with respect to the RRH Fee. (*Ibid.*) And in the past the City has in fact approved a substantial reduction in the fees assessed to governmentally subsidized units. (Nexus Study, p. 25 [showing fees for such units in FY 2018-19 were half what they were for other partially covered units].)

Nor does the RRH Ordinance suggest or require that the RRH Fee be the sole funding source for the Rent Board. Under the RRH Ordinance, the Rent Board is “empowered to request and receive funding when and if necessary from any available source for its reasonable and necessary expenses.” (RCC, § 11.100.060(1).) As such, the voters made clear that there is no requirement that the City Council approve the RRH Fee at a level to fund the entirety of the Rent Board’s proposed budget.

### **IX. Conclusion**

In sum, the Rent Board has recommended that the City Council approve an unconstitutional RRH Fee, for the numerous reasons discussed above. AMG raised the issues addressed in this

letter directly to the Rent Board previously and is disappointed that the Rent Board elected not to address these significant equitable and legal issues before presenting the RRH Fee to the City Council for consideration.

We reiterate, that AMG values its relationship with the City. However, the RRH Fee recommended by the Rent Board is unreasonable, unjust, and unconstitutional. The City Council can and should determine that affordable housing units pay \$0 in RRH Fees, as is well within its authority.

Sincerely,  
THOMAS LAW GROUP



Christopher J. Butcher  
On behalf of AMG & Associates, LLC

CC: Dave Aleshire, Interim City Attorney



Meetings | Agenda Items | Attendees | Roll Call | Resolutions | Tasks | Voting | Referred Items | Deferred Items | Forecas

Meeting Type

All

Meeting Date

-- Select a Meeting Date --

Date Range

06/21/2022 - 06/22/2022

Generate

## Public Comments

Meeting Date	Agenda Item	Name	Email	Comment	Position	Status
<b>City Council</b>						
6/21/2022 4:30 PM	Ban the Drilling of Oil and Gas in Contra Costa County	Shoshana Wechsler	swechs@sonic.net	re W.2a: I am writing on behalf of Sunflower Alliance, which has been campaigning for the last two years to ban oil and gas drilling in Contra Costa County. I want to applaud you for this resolution, which I hope will set a strong precedent for other cities in Contra Costa in passing solidarity resolutions with the East County municipalities—	For	Appro

Antioch, Brentwood and Oakley, whose residents are directly impacted by oil and gas production. Yet again, Richmond is taking a strong, unequivocal stand for public health and speaking truth to the fossil fuel industry--and to Contra Costa County. Thank you!

---

6/21/2022 4:30 PM	Expand The Terms of Appropriated ARPA Flex Funds for Rydin Road Residents	Lea Murray	collaborising@gmail.com	I support agenda item w.2.b to expand the terms of appropriated ARPA Flex Funds for Rydin Road Residents. This money has already been appropriated and does not add additional burden to the City's Budget. Accessing these funds will help the residents transition from Rydin Road to suitable housing. The residents have ben waiting for 6 months for funds that were promised to them. If you care about	For	Appro
-------------------	---	------------	-------------------------	---	-----	-------

the unhoused you will do what is necessary to help them move and help themselves.

6/21/2022 4:30 PM	Collaborative approach between Safe Organized Spaces Richmond (SOS), the Richmond Rotary Club Housing First Initiative, and various related partners to assist the unhoused.	Lea Murray	collaborising@gmail.com	It is my hope that this item is removed from the calendar. This is not a collaborative project and it is not an equitable proposal. I have spoken with the people that have proposed this "partnership" and they have agreed that this should be pulled from the agenda.	Against	Appro
6/21/2022 4:30 PM	Adopt Fiscal Year (FY) 2022-2023 Proposed Operating Budget and FY 2022-2023 through 2026-2027 Capital Improvement Plan.	Lea Murray	collaborising@gmail.com	I support reparations. It is long over due.	For	Appro