

RICHMOND, CALIFORNIA,

February 21, 2023, 4:30 p.m.
Community Services Building
440 Civic Center Plaza
Richmond, CA 94804

A. OPEN SESSION TO HEAR PUBLIC COMMENT BEFORE CLOSED SESSION

The meeting was called to order at 4:31 p.m. by Mayor Eduardo Martinez via teleconference.

B. ROLL CALL

Present: Councilmembers Soheila Bana, Claudia Jimenez, Doria Robinson, Cesar Zepeda, Vice Mayor Gayle McLaughlin, and Mayor Eduardo Martinez **Absent:** Councilmember Melvin Willis arrived after the roll was called.

C. CLOSED SESSION

C.1 CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Significant exposure to litigation pursuant to paragraph (2) or (3) of Subdivision (d) [as applicable] of Government Code Section 54956.9)

- One case

C.2 CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (initiation of litigation pursuant to paragraph (4) of Subdivision (d) of Government Code Section 54956.9)

- One Case

C.3 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (paragraph (1) of Subdivision [d] of Government Code Section 54956.9)

- DKD of Hilltop, Inc., et al. v. City of Richmond
- Californians for Homeownership, Inc. v. City of Richmond

C.4 CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section 54956.8)

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

C.5 CONFERENCE WITH LABOR NEGOTIATORS (Government Code Section 54957.6)

- Agency Representatives: Sharrone Taylor and Jack Hughes
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

D. PUBLIC COMMENT BEFORE CLOSED SESSION

Joe Summers, John Varga, Kevin Tisdell, Gregory Everetts, Isaac Martine, Jamaica Reddick, and Henry Powell gave comments regarding support of the immediate implementation of the Class and Compensation Study and continued negotiations with SEIU Local 1021.

E. ADJOURN TO CLOSED SESSION

The meeting adjourned at 4:44 p.m. Closed Session adjourned at 6:36 p.m.

F. SPECIAL MEETING OF THE RICHMOND HOUSING AUTHORITY

The meeting was called to order at 6:37 p.m. by Chair Eduardo Martinez via teleconference.

G. ROLL CALL

Present: Commissioners Soheila Bana, Claudia Jimenez, Doria Robinson, Cesar Zepeda, Melvin Willis, Vice Chair Gayle McLaughlin, Chair Eduardo Martinez, and Tenant Commissioner Jaycine Scott. **Absent:** None.

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

Interim Executive Director Gabino Arredondo reported on the Hacienda Leasing Update; and Nevin Plaza Heat Issue.

K. AGENDA REVIEW

None.

L. HOUSING AUTHORITY OPEN FORUM

None.

M. HOUSING AUTHORITY CONSENT CALENDAR

Motion by Commissioner Cesar Zepeda

Seconded by Vice Chair Gayle McLaughlin

Ayes (8) Commissioners Soheila Bana, Claudia Jimenez, Doria Robinson, Melvin Willis, Cesar Zepeda, Vice Chair Gayle McLaughlin, Chair Eduardo Martinez, and Tenant Commissioner Jaycine Scott.

(Passed 8 to 0)

M.1 Housing Authority Meeting Minutes

APPROVE the minutes of the Richmond Housing Authority December 20, 2022, and January 17, 2023, special meetings - City Clerk's Office (Pamela Christian 510-620-6513).

M.2 Continued use of teleconference technology

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 scheduled to end February 28, 2023 – City Clerk’s Office (Pamela Christian 510-620-6513).

Adopted **Resolution No. 2177**

N. ADJOURNMENT

There being no further business, the meeting adjourned at 6:52 p.m.

O. REGULAR MEETING OF THE RICHMOND CITY COUNCIL

The meeting was called to order by Mayor Eduardo Martinez at 6:52 p.m. via teleconference.

P. ROLL CALL

Present: Councilmembers Soheila Bana, Claudia Jimenez, Doria Robinson, Cesar Zepeda, Melvin Willis, Vice Mayor Gayle McLaughlin, and Mayor Eduardo Martinez
Absent: None.

Q. STATEMENT OF CONFLICT OF INTEREST

Councilmember Robinson stated conflict of interest on Item **W.6.a.** - *Grant Application for the California Department of Food and Agriculture Fairground and Community Resilience Centers Program.*

R. AGENDA REVIEW

Items W.1.a. - *Chevron Hydrogen Project Legal Services Agreement*, and W.5.d - *Fourth Contract Amendment with the Segal Group* were removed from the Consent Calendar for discussion. Item W.7.d. - *Community Police Review Commission Appointment* was tabled by Mayor Martinez.

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

C.1 CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

(Significant exposure to litigation pursuant to paragraph (2) or (3) of Subdivision (d) [as applicable] of Government Code Section 54956.9)

- One case - **Discussion with no reportable action**

C.2 CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

(initiation of litigation pursuant to paragraph (4) of Subdivision (d) of Government Code Section 54956.9)

- One Case - **Discussion with no reportable action**

C.3 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(paragraph (1) of Subdivision [d] of Government Code Section 54956.9)

- DKD of Hilltop, Inc., et al. v. City of Richmond - **Not discussed**
- Californians for Homeownership, Inc. v. City of Richmond - **Status report given and no reportable action taken**

C.4 CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section 54956.8) - Not discussed

- Property: 1324 Canal Boulevard (General Warehouse, Port of Richmond) Agency negotiator: Dave Aleshire, Lizeht Zepeda, and Nannette Beacham Negotiating parties:

Richmond Grown Under negotiation: Price and terms of payment

C.5 CONFERENCE WITH LABOR NEGOTIATORS (Government Code Section 54957.6) - **Discussed with no reportable action**

· Agency Representatives: Sharrone Taylor and Jack Hughes

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

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

City Manager Shasa Curl reported the following: Commended the City Council and Finance Department for an upgrade of the City's Credit Rating to A.3; Several Black History Month programs were scheduled in honor of recreation and sports leaders on Thursday, February 26, 2023, at 6.p.m. in the Council Chambers; The Art of the African Diaspora Exhibit would be at the Richmond Art Center until March 1, 2023, for more information contact Amy@richmondartcenter.org or by calling the City Manager's Office at 510-620-6513; Odor reports could be made by contacting Bay Area Air Quality Management District (BAAQMD) at 800-334-3667, baaqmd.gov. or by contacting the City Manager's Office at 510-620-6512.

Councilmember Jimenez requested that the employee vacancy report was given at each City Council meeting under the Report from the City Manager agenda item.

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

Reimagining Task Force Chair Deborah Small reported that the task force received an update by Urban Strategies regarding a plan for the Community Emergency Response Plan. Ms. Small also welcomed Jamin Pursell and Lea Murray as newly appointed members to the task force.

V. OPEN FORUM FOR PUBLIC COMMENT

Rita Barouch asked the city council to support Item W.3.a. urging that Cuba be removed from the U.S. list of State Sponsors of Terrorism.

Don Gosney gave comments regarding the importance of democracy and being open to varying ideas that would better Richmond as a whole.

Andrew Cann, Carolina de Barros, Richard Johnson, Sally Tobin, Graham, Rod Satre, Roger Cain, Doug Williams, Suzie, Karlyn Neel, and Tim Knowles stated concerns regarding the Keller Beach Sewer Relocation Plan due to nauseous gases, lack of public input and the need to study other alternatives.

Luis Chacon and Fernando Guzman requested that the Gary Family be recognized for their contributions to Richmond.

Councilmember Bana thanked Public Works Director Daniel Chavarria for his assistance with the Wilke Creek mudslide. Councilmember Bana would also like to acknowledge the history and contributions by the Gary Family to Richmond.

Councilmember Robinson gave comments regarding the Gary Family and stated that the Richmond Museum of History had information about the Gary Family.

Daniel Chavarria stated that agenda Item X-2 *Keller Beach Sanitary Sewer Temporary Urgency Ordinance* was a moratorium to not allow any more connections to the sewer line. There was a feasibility study prepared and there was not a project proposed at this time.

Councilmember Jimenez suggested that a presentation be made to the Gary Family and that Richmond High School students were invited.

Vice Mayor McLaughlin thanked Rita Barouch for assisting with preparation of the resolution in support of removal of Cuba from the list of state sponsors of terrorism. Vice Mayor McLaughlin stated that the Gary Family was recognized by the City Council a few years ago.

W. CITY COUNCIL CONSENT CALENDAR

Councilmember Robinson did not vote on Item W.6.a. due to conflict of interest.

Motion by Councilmember Cesar Zepeda

Seconded by Vice Mayor Gayle McLaughlin

Ayes (7): Councilmember Soheila Bana, Councilmember Claudia Jimenez, Councilmember Doria Robinson, Councilmember Melvin Willis, Councilmember Cesar Zepeda, Vice Mayor Gayle McLaughlin, and Mayor Eduardo Martinez

Passed (7 to 0)

W.1 City Attorney's Office

W.1.a Chevron Hydrogen Project Legal Services Agreement

APPROVE a legal services agreement with Aleshire & Wynder for legal representation related to a proposed Chevron Hydrogen Fuel project, with the term expiration date of June 30, 2024, and for a total amount not to exceed \$85,000 to be paid by fees collected from the project applicant - City Attorney's Office (James Atencio 510-620-6509).

Continued the item to the March 7, 2023, City Council meeting.

W.1.b Approval of Settlement Agreement and General Release for Former Retired Annuitant, Jim Nantell

APPROVE a Settlement Agreement and General Release with former retired annuitant Jim Nantell; and AUTHORIZE the city manager to execute the agreement – City Attorney's Office (Dave Aleshire 510-620-6509).

W.1.c Third Amendment to a contract with Burke, Williams & Sorensen, LLP to assist with RHA Asset Repositioning and, as requested, citywide affordable housing projects.

APPROVE a third amendment to the legal services contract with Burke, Williams & Sorensen, LLP to increase contract payment limit by \$55,000, for a new total contract amount not to exceed \$355,000, for assistance with Richmond Housing Authority Asset Repositioning and, as requested, city-wide affordable housing projects, and extending the expiration date to June 30, 2024 - City Attorney's Office (Shannon Moore 510-620-6509).

W.2 City Clerk's Office

W.2.a City Council Meeting Minutes

APPROVE the minutes of the Richmond City Council Orientation meeting on January 17, 2023, and the minutes of the January 24 and February 7, 2023, regular meetings - City Clerk's Office (Pamela Christian 510-620-6513).

W.2.b 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 scheduled to end February 28, 2023 – City Clerk’s Office (Pamela Christian 510-620-6513).

Adopted **Resolution No. 14-23**

W.3 City Council

W.3.a Resolution urging that Cuba be removed from U.S. list of State Sponsors of Terrorism

ADOPT a Richmond City Council resolution urging that Cuba be removed from U.S. list of State Sponsors of Terrorism; and DIRECT City staff to send a copy of the resolution and a cover letter to President Biden and our congressional delegation – Vice Mayor Gayle McLaughlin (510-620-6636).

Adopted **Resolution No. 15-23**

W.3.b Approval to attend the Community Village Symposium in Austin, Texas

APPROVE travel requests to attend the Community Village Symposium in Austin, Texas in April – Councilmembers Soheila Bana (510-620-6743) and Cesar Zepeda (510-620-6593).

W.4 Fire Department

W.4.a Appropriate General Fund for Personal Protective Equipment and Increase Limit of Purchase Order with LN Curtis & Sons.

APPROVE a standing purchase order limit increase in the amount of \$250,000, for a new total purchase order amount not to exceed of \$716,000, with a term extended through January 20, 2024; and APPROPRIATE \$199,500 from the General Fund, for the procurement of personal protective equipment (PPE), firefighting tools, and safety supplies – Fire Department (Chief Angel Montoya 501-307-8041/Aaron Osorio 510-307-8021).

W.4.b Appropriate Additional Funds to Allow the Rotation of Fire Personnel to Staff the 2023 Fire Academy.

APPROPRIATE additional funds in the amount of \$148,469.82 to augment the Fire Department’s Fiscal Year 2022 –2023 Overtime Budget to allow the rotation of one firefighter, one fire engineer, and one fire captain to staff the 2023 Fire Academy for twelve weeks, and backfill the three temporarily vacant roster assignments by authorizing the overtime of existing staff – Fire Department (Chief Angel Montoya 510-307-8038).

W.5 Human Resources

W.5.a Contract amendment for Municipal Resource Group (MRG), Peer Advocates and The Consulting Team

APPROVE contract amendments with Municipal Resources Group (MRG), Peer Advocates, and The Consulting Team in the amounts of \$150,000 per contract, for the total contract limit amounts not to exceed \$200,000 per contract, for a total of \$600,000, for facilitation, conflict resolution, consultation and/or training services, for a three-year period extending through June 30, 2026; and APPROPRIATE the funds as needed – Human Resources Department (Sharrone Taylor/Nickie Mastay 510-620-6602).

W.5.b Contract with GovernmentJobs.com dba NEOGOV

APPROVE a sole-source contract with GovernmentJobs.com dba NEOGOV, in an amount not to exceed \$50,984.65, for a three-year subscription to Insight Enterprise and GovernmentJobs.com, with a term from January 28, 2023, through January 27, 2026 – Human Resources Department (Nickie Mastay/Sharrone Taylor 510-620-6602).

W.5.c Resolution Amending Staffing (Position Control) for the Community Services Department, City Attorney's Office, and Police Department

ADOPT a resolution amending staffing (position control) for the Community Services Department, City Attorney's Office, and Police Department; and APPROPRIATE the required wages, salaries, and benefits costs – Human Resources Department (Nickie Mastay/Sharrone Taylor 510-620-6602).

Adopted **Resolution No. 16-23**

W.5.d Fourth Contract Amendment with the Segal Group (Western States) DBA Segal

APPROVE a fourth contract amendment in the amount of \$20,000 with The Segal Group, Inc., for a total amount not to exceed \$350,000, to provide consultation services regarding implementation of the classification and compensation study, with a term extending through December 31, 2023 - Human Resources Department (Nickie Mastay/Sharrone Taylor 510-620-6602).

Continued the item to the February 28, 2023, City Council meeting.

W.6 Library and Community Services

W.6.a Grant Application for the California Department of Food and Agriculture Fairground and Community Resilience Centers Program

ADOPT a resolution approving the Community Services-Recreation Department's request to authorize it to file a grant application for the California Department of Food and Agriculture Fairground and Community Resilience Centers Program; and to approve its proposed, potential partnership list in said grant - Community Services Department (LaShonda White/Ranjana Maharaj/Jene Levine-Snipes 510-620-6793).

Councilmember Robinson recused from voting on the item.

Adopted **Resolution No.17-23**

W.7 Mayor's Office

W.7.a Revised 2023 Appointments to Committees and Liaison Positions

APPROVE the revised liaison appointment and the addition of a committee to the Regional Committees, Ad-Hoc Committees and Liaison Positions for the year of 2023 - Mayor's Office (Mayor Eduardo Martinez 510-620- 6503).

W.7.b Richmond Arts and Culture Commission Appointment

APPOINT Carole J Porter to the Richmond Arts and Culture Commission, Term Expires January 31, 2027 – Mayor's Office (Mayor Eduardo Martinez 510-620-6503).

W.7.c Recreation and Parks Commission Appointment

APPOINT Dani Lanis to the Recreation and Parks Commission, term expires, October 26, 2026 – Mayor's Office (Mayor Eduardo Martinez 510-620-6503).

W.7.d Community Police Review Commission Appointment

APPOINT Michael Caesar to the Community Police Review Commission, term expires, November 1, 2026 – Mayor's Office (Mayor Eduardo Martinez 510-620-6503).

Mayor Martinez tabled the item.

W.7.e Economic Development Commission Appointment

Appoint Christina Kenney to the Economic Development Commission, term expires, March 30, 2026 – Mayor's Office (Mayor Eduardo Martinez 510-620-6503).

W.7.f Youth Council Appointment

APPOINT Scarlett Perez to the Youth Council, term expires, October 1, 2023 – Mayor's Office (Eduardo Martinez 510-620-6503).

W.7.g Commission on Aging Appointment

APPOINT Darlene Drapkin Rios to the Commission on Aging, term expires, May 19, 2027 - Mayor's Office (Mayor Eduardo Martinez 510-620-6503).

W.7.h Reimagining Public Safety Community Task Force Appointment

APPOINT Lea Murray and Jamin Pursell to the Reimagining Public Safety Task Force, terms expire, June 30, 2024 – Mayor's Office (Mayor Eduardo Martinez 510-620-6503).

W.8 Public Works

W.8.a Application for the Transportation Development Act (TDA) Article 3 Pedestrian and Bicycle Funding for Fiscal Year 2023-24

ADOPT a resolution authorizing a request to the Metropolitan Transportation Commission for the allocation of fiscal year 2023-2024 Transportation Development Act Article 3 pedestrian/bicycle project funding for the Carlson Blvd Path & Bike Education Project; and to ACCEPT and APPROPRIATE the funds should the grant be awarded – Public Works Department (Robert Armijo 510-620-5477/Ken Cheng 510-621-1612).

Adopted **Resolution No. 18-23**

W.8.b Purchase of Police Pursuit Dodge Durango Vehicles

APPROVE the purchase of twenty 2023 4-door Police Pursuit Dodge Durango All Wheel Drive Sport Utility vehicles from Elk Grove Auto Group in a total amount not to exceed \$975,000 – Public Works Department (Daniel Chavarria 510-620-5478).

W.8.c Private Sewer Lateral Grants for Brickyard Cove Homeowner’s Association Number Two

ADOPT a resolution authorizing participation by the Brickyard Cove Association Number 2 in the City’s private sewer lateral grant program and approval of the private sewer lateral grant award to this development, in the amount of \$16,200, for the replacement of multiple laterals that is consistent with the current grant program guidelines – Public Works Department (Daniel Chavarria 510-620-5478/Mary Phelps 510-621-1269).

Adopted **Resolution No. 19-23**

W.8.d Contract with Sonoma Technology, Inc. for the Upgrade of the Hydrogen Sulfide Monitoring and Maintenance System

APPROVE a three year sole-source contract with Sonoma Technologies, Inc., in an amount not to exceed \$340,046, with a term ending December 31, 2025, to upgrade the existing Jerome® Hydrogen Sulfide meters and for continuous monitoring and maintenance of the data, with a two year renewal option in the amount of \$208,698, for a total not-to-exceed contract limit of \$548,744 – Public Works Department (Daniel Chavarria 510-620-5478/Mary Phelps 510-621-1269).

W.8.e Contract with Wiss, Janney, Elstner Associates, Inc. (WJE) for Historic Resource Evaluations

APPROVE a sole-source contract with Wiss, Janney, Elstner Associates, Inc. (WJE), in an amount not to exceed \$250,000, for a term ending June 30, 2024, to provide evaluation and related design services of certain historic structures at Winehaven Historic District and Shipyard No. 3 Historic District – Public Works Department (Daniel Chavarria 510-620-5478/Lina Velasco 510-620-6841).

Continued to the March 7, 2023, City Council meeting.

X. PUBLIC HEARINGS

X.1 Public Hearing to consider approval of an Encroachment Agreement Application for a private landowner encroachment into the unimproved public right of way at 130 E. Scenic Avenue

The City Clerk Pamela Christian announced that this item was a public hearing to adopt a resolution to approve an Encroachment Agreement Application for a private landowner fence encroachment into the unimproved public right- of- way at 130 E. Scenic Avenue; and, DIRECT City staff to enter into an Encroachment Agreement regarding same to be recorded on the landowner’s property title – Public Works Department (Daniel Chavarria/Robert Armijo 510-620-5477).

Deputy Director of Public Works/City Engineer Dave Armijo and Applicant Eli Berland gave an overview. Discussion ensued.

Mayor Martinez opened the public hearing. The following individuals gave comments via teleconference: Leopoldo Lopez, Jami Spittler, Matthew Cotton, Ralph Jacobson, Tom Butt, Rod Satre, Leopoldo Lopez, Jean Reynolds, Daniel Butt, Bill Berland, and Richard Katz.

Mayor Martinez closed the public hearing.

A motion was made to adopt the resolution, made the findings in the staff report and add reflectors to the fence.

Motion by Councilmember Melvin Willis
Seconded by Vice Mayor Gayle McLaughlin

Ayes (6): Councilmember Claudia Jimenez, Councilmember Doria Robinson, Councilmember Melvin Willis, Councilmember Cesar Zepeda, Vice Mayor Gayle McLaughlin, and Mayor Eduardo Martinez

Noes (1): Councilmember Soheila Bana

Passed (6 to 1)

X.2 Keller Beach Sanitary Sewer Temporary (45-day) Urgency Ordinance

The City Clerk Pamela Christian announced that this item was to adopt an urgency ordinance, pursuant to Government Code Section 65858, establishing a temporary moratorium (45 days) on the issuance of certain building permits for development requiring a new sewer connection to the Keller Beach Sanitary Sewer and Declaring the Urgency thereof pursuant to Government Code Section 65858. The Ordinance is not a project under the California Environmental Quality Act (CEQA), in that it maintains the existing physical environment and prevents changes in the environment and so does not have the potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines Section 15378(a)). It is also exempt under Guidelines Sections 15060(c)(2), as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15061(b)(3), as there is no possibility that the adoption of this ordinance may have a significant effect on the environment because it maintains the existing condition of the environment. – Public Works Department (Daniel Chavarria 510-620-5478).

Jenny Melman Civil Engineer at Coastland presented a PowerPoint, which highlighted the following: Parcels Tributary to KBSS, Major findings; Need for a Moratorium. The public hearing was opened. The following individuals gave comments via teleconference: Clair Arbour, Andrew Cann, Norm Hantzsche, Rod Satre, and Paula Lavine.

Mayor Martinez closed the public hearing. Discussion ensued.

At 10:59 p.m. a motion was made by Councilmember Jimenez, seconded by Vice Mayor McLaughlin extended the meeting until 11:30 p.m., by the unanimous vote of the city council. Further discussion ensued.

At 11:31 p.m. a motion was made by Councilmember Willis, seconded by Councilmember Zepeda suspended the rules and extended the meeting until the conclusion of current Item X.2.

A motion was made to adopt the urgency ordinance and scheduled a community meeting to be held no later than the first week of April 2023.

Adopted **Ordinance No. 02-23 N.S.**

Motion by Councilmember Cesar Zepeda

Seconded by Councilmember Melvin Willis

Ayes (7): Councilmember Soheila Bana, Councilmember Claudia Jimenez, Councilmember Doria Robinson, Councilmember Melvin Willis, Councilmember Cesar Zepeda, Vice Mayor Gayle McLaughlin, and Mayor Eduardo Martinez

Passed (7 to 0)

X.3 THIS ITEM HAS BEEN CONTINUED TO THE MARCH 7, 2023, CITY COUNCIL MEETING.

Public Hearing to Consider Encroachment Agreement Application Approval

APPROVE an Encroachment Agreement Application for private landowner fence encroachment into the unimproved public right of way at 8 Western Drive; and AUTHORIZE the City to enter into a recorded Encroachment Agreement regarding same, to be recorded on the landowner's property title - Public Works Department (Daniel Chavarria 510-620-5478/Robert Armijo 510-520-5477).

Y. BUDGET SESSION

Y.1 Budget Presentation

RECEIVE budget presentations from the City Manager, Capital Improvement Projects, Internal Services (Information Technology, Human Resources, Finance), Economic Development, City Clerk, City Council, Mayor's Office - Finance Department (Shasa Curl/Delmy Cuellar 510-620-6790). This item was continued from the February 7, 2023, meeting.

Continued to the February 28, 2023, City Council meeting.

Y.2 Budget Presentations

RECEIVE budget presentations from Community Services (Children and Youth, Employment & Training, Environmental and Community Investment Agreement Grant Administration, Library, Office of Neighborhood Safety, Recreation, Transportation), Community Development (Building, Code Enforcement, Housing Policy, Planning, Successor Agency to the former Redevelopment Agency), and City Attorney's Office – Finance Department (Shasa Curl/Delmy Cuellar 510-620-6790).

Continued to the February 28, 2023, City Council meeting.

Z. NEW BUSINESS

Z.1 Resolution authorizing City Manager and City Attorney (or their designees) to work through next steps for forming the Public Bank East Bay with the cities of Berkeley and Oakland

RECEIVE a presentation from the Friends of Public Bank East Bay; and ADOPT a resolution authorizing the City Manager and City Attorney (or their designees) to work through next steps along the pathway to forming the Public Bank East

Bay with the Cities of Berkeley and Oakland – Vice Mayor Gayle McLaughlin (510-620-6636).

Vice Mayor McLaughlin gave an overview. George Quaye from Friends of Public Bank East Bay presented a PowerPoint, which highlighted the following: Model for the Public Bank East Bay; Viability Study; Proposed Funding; Proposed Lending; Tentative Timeline; and Next Steps. Discussion ensued. Susan Harman and Amanda Bruun gave comments via teleconference.

Adopted Resolution No. 21-23

Motion by Vice Mayor Gayle McLaughlin
Seconded by Councilmember Melvin Willis

Ayes (7): Councilmember Soheila Bana, Councilmember Claudia Jimenez, Councilmember Doria Robinson, Councilmember Melvin Willis, Councilmember Cesar Zepeda, Vice Mayor Gayle McLaughlin, and Mayor Eduardo Martinez

Passed (7 to 0)

Z.2 Three-year Agreement with Flock Group, Inc.

APPROVE a three-year agreement with Flock Group, Inc. for the acquisition, support, and maintenance of a Fixed Automated License Plate Reader System, in an amount not to exceed \$249,600, for a term beginning March 1, 2023, through February 28, 2026, and with two one-year renewal options based on the same terms - Police Department (Chief Bisa French 510-621-1802).

Continued to the February 28, 2023, City Council meeting.

Z.3 Finance Committee and Support Staff

APPROVE the creation of the Finance Committee and the hiring of the one staff person within the Mayor's Office to support the Finance Committee. The deadline to create the Finance committee that includes the City staff will be March 21, 2023 – Mayor's Office (Mayor Eduardo Martinez 510-620-6503).

Mayor Martinez gave an overview. Discussion ensued. Don Gosney, Eli Moore, Jamin Pursell, and Steve Bischoff gave comments via teleconference.

Mayor Martinez stated he would continue the item to the February 28, 2023, City Council meeting in order to include additional information and scope of the committees' responsibilities.

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

None.

AB. ADJOURNMENT

There being no further business, the meeting adjourned at 11:36 p.m., to meet again on February 28, 2023, at 6:30 p.m.

Clerk of the City of Richmond

Mayor



Meeting Type

All

Meeting Date

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Public Comments

| Meeting Date ▼ | Agenda Item | Name | Email | Comment | Position | Status |
|---------------------|-------------------------------|--------------|-------|--|-------------|--------|
| City Council | | | | | | |
| 2/21/2023 4:30 PM | OPEN FORUM FOR PUBLIC COMMENT | Vivien Feyer | | OPEN FORUM: I'd like to add my voice to the many who are coming to you with concerns about the failing Keller Beach Sewer Line - and the City's decision making process. I raise two questions: First, as I understand it, the City committed to conducting an impartial analysis of the repair, RECONSTRUCTION, or replacement of this old and failing line. The discussion | No Position | Appro' |

- and the investment of significant resources - has somehow moved to the consideration of ONLY two alternatives, presented by ONE engineering company - essentially either a simple repair or a complete relocation. Have we already made commitments that force us to choose between these two options, both clearly poor ones? The best approach may be neither of these, but rather the careful step by step RECONSTRUCTION of at least parts of the existing line, with state of the art materials and techniques, and full attention to the sensitive environment. What is being done in other locales with similar challenges? Can this option be fully investigated

before leaping into what may be a poor decision? Secondly, as we weigh the advantages and disadvantages of each possible approach, it seems important to remember that this process will take many years. How will the faulty pipeline that is in use during that time be maintained and repaired - or not?^{SEP} How will that cost - in terms of both money and environment - figure into the larger equation? It would seem reasonable to keep this in mind - and to come up with a watertight plan that assures as much protection as possible from leakage and spills over the next few years. Might we consider plans that would include this as part of the larger process - and perhaps begin

with reconstruction now in the faultiest places? Thank you for giving these questions serious thought before moving forward.

| | | | | | | |
|-------------------|---|---------------|--------------------|--|---------|--------|
| 2/21/2023 4:30 PM | Three-year Agreement with Flock Group, Inc. | Deborah Bayer | dbayer49@gmail.com | I guess we found a license plate reader vendor that is better than the last proposal for plate readers that was shot down a couple of years ago. It still makes me shiver though. I don't want to have "the officer alerted" when I drive into Richmond, even if it could lower crime. However many attempts are made to make us feel better about this, it is still surveillance. | Against | Appro' |
|-------------------|---|---------------|--------------------|--|---------|--------|

From: [Cordell Hindler](#)
To: [City Clerk Dept User](#)
Subject: Public Comments- Open Forum
Date: Friday, February 17, 2023 12:19:30 PM

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Hello Mayor Martinez, Council Members and Staff

I am Providing Comments for the Record:

1. I am In Full Support of W.7.a - W.7.h that the Office of The Mayor Has on The Consent Calendar
2. For a Future Agenda, The Council Should Consider Inviting Danny Wan To Provide a Presentation on How the Port of Oakland Is Recovering from the Pandemic

Sincerely
Cordell

From: [TARNEL ABBOTT](#)
To: [City Clerk Dept User](#); [Eduardo Martinez](#); [Gayle McLaughlin](#)
Subject: Item W.3.a Resolution urging that Cuba be removed from U.S. list of State Sponsors of Terrorism
Date: Tuesday, February 21, 2023 1:35:55 PM

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Madame Clerk, please send to all City Council Members, thank you.

Dear Mayor Martinez and members of the Richmond City Council:

I urge you to support Item W.3.a -
ADOPT a Richmond City Council resolution urging that Cuba be removed from U.S. list of State Sponsors of Terrorism; and DIRECT City staff to send a copy of the resolution and a cover letter to President Biden and our congressional delegation .
Special thank you to Vice Mayor Gayle McLaughlin for bringing the resolution forward.

Since 1999, inspite of the challenges imposed by the unilateral U.S. embargo against Cuba, the City of Richmond has maintained a friendship city relationship with Regla, Cuba. Over the years, Richmond has shown its solidarity with the Cuban people by passing resolutions, making people to people visits and exchanging educational, cultural and humanitarian aid.

Cuba has long been a victim, not a sponsor of terrorism, by keeping Cuba on this list the Cuban people a forced to suffer even more cruel deprivation beyond what the embargo imposes.

It is past time to end the collective punishment of the Cuban people by failed policies such as this one.

Thank you, Tarnel Abbott, Richmond Resident, Co-Chair Richmond Regla Friendship Committee

From: [Beth Jerde](#)
To: [City Clerk Dept User](#)
Cc: [Rita Barouch](#)
Subject: cityclerkdept@ci.richmond.ca.us
Date: Monday, February 20, 2023 6:49:42 PM

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To the City Council of Richmond:

I am writing in support of our Resolution to remove Cuba from the U.S. arbitrary list of states that sponsor terrorism.

As a sister city to Regla, Cuba we express our concern that the people of Regla are being harmed by the unjust sanctions impacting food, medicines, more. Cuba meets no criteria for this list.

Even the US Intelligence community does not regard Cuba as a state that sponsors terrorism. Please, we must realize and own the terror we are creating by pegging Cuba in this hole.

Elizabeth Jerde
Marina Bay
Richmond CA

Created for Joy

I sometimes forget
that I was created for Joy.

My mind is too busy.
My Heart is too heavy
for me to remember

that I have been
called to dance
the Sacred dance of life.

I was created to smile
To Love
To be lifted up
And to lift others up.

O' Sacred One
Untangle my feet
from all that ensnares.
Free my soul.
That we might
Dance
and that our dancing
might be contagious.

~Hafiz

From: [Rita Barouch](#)
To: [City Clerk Dept User](#)
Subject: Re: Support for Richmond Council resolution proposed by Vice Mayor McLaughlin, supporting the people of Regla, Cuba, Richmond sister city
Date: Tuesday, February 21, 2023 12:18:01 AM

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You don't often get email from baile.rita@sbcglobal.net. [Learn why this is important](#)

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To Mayor Martinez and Esteemed City Councilpersons of Richmond,

As a leader of our Richmond, Ca.-Regla, Cuba Friendship Committee, I respectfully ask you to support the Resolution proposed by Vice Mayor McLaughlin

which urges that Cuba be removed from the arbitrary U.S. list of states that sponsor terrorism (SSOT).

Due to this unfair designation, the people of Regla, our Richmond sister city, are being severely harmed by unjust sanctions impacting access to food, medicines, trade and financial transactions. Along with the failed 60 year U.S. embargo, it is greatly impeding their economic recovery from Covid-19.

Incredibly, former President Trump arbitrarily reinstated Cuba's designation as a State Sponsor of Terrorism (days after the January 6th attempted coup), reversing the Obama-Biden administration's 2015 decision to remove this status after an exhaustive review by the U.S. State Department.

Cuba does not satisfy any criteria for inclusion on this list.

Cuba is known world wide for its medical brigades providing life saving care during disasters, currently in Turkey post earthquakes.

Our Richmond values of equity, fairness and compassion are shared by our friends in Regla, and throughout Cuba. This resolution will be most appreciated.

Sincerely,

Rita Barouch

Co-chair Richmond, Ca.-Regla, Cuba Friendship Committee

Resident of Richmond, CA

From: [Jean Reynolds](#)
To: [City Clerk Dept User](#)
Cc: [Jean Reynolds](#)
Subject: Public Comments Agenda Item # X.1
Date: Tuesday, February 21, 2023 11:33:23 AM

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Re: X.1 Public Hearing to consider approval of an Encroachment Agreement Application for a private landowner encroachment into the unimproved public right of way at 130 E. Scenic Avenue

Dear Members of the Richmond City Council,

A fence that encroaches on the right of way for pedestrians, bicycles, and vehicles at 130 E Scenic Ave affects my safety and the safety of others. We have no choice but to pass by as we leave home since E Scenic is one-way. I walk there daily.

A fence on the roadway would affect my ability to see and hear approaching vehicles. The road curves and is narrow. The proposed fence (indicated by a string at the site) would not offer a harbor for pedestrians and bicycles since the space between the pavement and proposed fence is on a hill, providing only a slope to stand on.

Some bike riders and vehicles ride/drive the wrong way on the street. We also have many dog-walkers who must take extra time to get their dogs off the narrow roadway when vehicles approach. The street is used by families with strollers. Not everyone drives as slowly as visibility and lack of a sidewalk would warrant.

On a recent morning walk, My two neighbors and I had to hustle to a driveway along that stretch of road, while someone walking toward us hustled to another one to dodge a passing car.

As a pedestrian, biker, and driver, I use all of my senses to avoid collisions on our street, and I feel a fence that encroaches on the street at 130 E Scenic Ave would add additional impairment to my ability to walk, bike, and drive safely.

Jean Reynolds
218 E Scenic Ave
(510) 734-3942

From: [Jennifer Brown](#)
To: [City Clerk Dept User](#)
Subject: Keller Beach Sewer Project/ 2/21/23 Public Hearing #X2
Date: Monday, February 20, 2023 10:29:30 PM

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City Council of Richmond,

We are homeowners on Ocean Avenue since March 2020. To our dismay, the Keller Beach Sewer Relocation Feasibility Study has recently been brought to our attention although the city has been looking into this potential project *for years*. There is a general lack of transparency in this “urgent” project in scope and scale for all affected residents.

Here are just a few of our concerns:

-Has the **feasibility of solely modernizing the existing Keller Beach sewer been examined in-depth**?

-What are the **other locations/ solutions** that were considered for this project?

-Why was this impending project not included as **mandatory disclosures** for new homeowners buying property in the affected area?

As Richmond, has been considering this project for years, **how does the city justify the lack of transparency** to residents?

-What is the **actual time line** and exactly when will residents of the area learn whether or not the project will happen?

-**Property Values.** How will this impact residents' ability to sell their home if this intrusive project takes place?

-What is the **true scope of the disruption to affected residents** in noise/ environmental/ hardship/ potential expense?

Thank you for every consideration in seeking less intrusive alternatives within the Keller Beach Sewer Sanitary Project.

Keith & Jennifer Kober
Ocean Avenue
Point Richmond, CA

From: [Sarah Eeles](#)
To: [Pamela Christian](#); [Eduardo Martinez](#); [Melvin Willis](#); [Claudia Jimenez](#); [Gayle McLaughlin](#); [Doria Robinson](#); [soheila_bana@ci.richmonf.ca.us](#); [Cesar Zepeda](#)
Cc: [Tom Butt - external](#)
Subject: Fwd: Encroachment Agreement Application/130 E. Scenic Ave.
Date: Saturday, February 18, 2023 12:08:18 PM

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

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Dear Council and City staff,

I have already sent my comments to you about this unfortunate proposal which I wholeheartedly OPPOSE. (See below) Now I have also read the stated PURPOSES for which the homeowner is seeking this permit. (These were not previously available) Each of these is nothing short of ridiculous! He is, I feel, pretending that he is serving the community. I am "very nearby community" and this serves me not in the least. In walking there with two canes or my walker, I would NOT be "safer" as the owner proclaims as I would be squished up against this fence. Even the speediest vehicles traveling this narrow road are not in danger of going over his cliff and would crash right through his wooden fence if they did. As for viewing into his bedrooms, if anyone is that interested, they would park on the curve just before his house, walk over and look through the part of the fence that is OPEN at the top. Silly, people are gazing at the ROAD while they drive here Because IT IS NARROW.

PLEASE, put this proposal out of its misery. We residents who have better things to propose will appreciate it very much.

Thank you,

Sarah Eeles

169 East Scenic Avenue

From: eelesfrn@aol.com
To: Yader_Bermudez@ci.richmond.ca.us
Sent: 1/5/2023 12:41:45 PM Pacific Standard Time
Subject: Encroachment Agreement Application/130 E. Scenic Ave.

Dear persons,

As a nearby neighbor of 130 E. Scenic Avenue, I want to go on record as thoroughly OPPOSED to this encroachment agreement.

I live at 169 E. Scenic Avenue. I drive this street. I also have a dog walker who uses this street. I, myself, am mobility handicapped and must walk with a walker on this street. I am positioned so that I am well aware of the "traffic" on this street which includes walkers, joggers, skateboarders, families with small children and strollers. It is a section which is probably the closest things we have to a hiking trail. ALL OF THE USERS WOULD BE SQUEEZED AGAINST A FENCE IF THIS AGREEMENT WAS TO BE GRANTED. There is no alternative space for them when a vehicle comes along. These vehicles are not only cars and vans but VERY LARGE delivery vans, garbage trucks, EMS and fire trucks.

PLEASE DO NOT GRANT THIS AGREEMENT.

Sarah Eeles,
169 E. Scenic Avenue
510-965-8008

From: [Sharon Waterman](#)
To: [City Clerk Dept User](#)
Subject: Public Hearing of Feb 21
Date: Sunday, February 19, 2023 5:27:34 PM
Attachments: [City Clerk's Office.pdf](#)

City Clerk's Office
450 Civic Center Plaza
3rd Floor
Richmond, Ca 94804

Re: Public Comments to February 21 Agenda Item X.1 - (proposed encroachment agreement for 130 E, Scenic)

I have previously provided my written comments to the Public Works Department per Mr. Yader's request. Those same comments and my additional comments are as follows:

1. What is unique to this property that requires constructing a fence and extending the property into the street right of way? There appears to be adequate space for a fence to be located entirely on the property.
2. Do I assume the existing "string line" which runs along the street in front of the property is to be the specific location of the fence?
3. As a nearby property owner I, along with other neighbors, routinely walk E. Scenic each morning, often in the dark since there are no street lights. We are well aware of the narrowness of the one-way street and are vigilant about watching for vehicles. The current unobstructed conditions afford us the visibility of both seeing and hearing oncoming vehicles such as garbage trucks, and vice versa, allowing us to scramble to a safe location out of the street. Electric vehicles are a special hazard as they must be seen in advance. I'm concerned a 6-foot high fence so close to the street and on a curve will obstruct such visibility for both drivers and pedestrians. Does the encroachment application provide a place of refuge -- ie; is there to be constructed a retaining wall at the base of the proposed fence with a flat shoulder next to the street wide enough for pedestrians? What about the many baby strollers I see being pushed up the street or children riding bicycles? E. Scenic Ave via Buena Vista Ave is a favorite route for walking clubs that often have as many as 10-12 walkers in a group. How will the various users safety be addressed?
4. With a steep uphill on one side of the road, will allowing such encroachment on the downhill side set a precedent for other property owners on E. Scenic to request the same right and privilege thereby creating a "tunnel" to be negotiated by drivers and non-drivers alike?

Sharon Waterman
224 Buena Vista Ave.

From: [Pamela Christian](#)
To: [City Clerk Dept User](#)
Subject: FW: Encroachment Applications for 8 Western Drive and 130 East Scenic Avenue, Items X.1 and X.3
Date: Tuesday, February 21, 2023 10:45:57 AM
Attachments: [8 Western Drive Encroachment Hearing Letter to City Council.pdf](#)
[130 East Scenic Avenue Encroachment Hearing Letter to City Council.pdf](#)
[image001.png](#)

From: Tom Butt <tom.butt@intres.com>
Sent: Friday, February 17, 2023 7:03 PM
To: Eduardo Martinez <Eduardo_Martinez@ci.richmond.ca.us>; Melvin Willis <melvin_willis@ci.richmond.ca.us>; Claudia Jimenez <Claudia_Jimenez@ci.richmond.ca.us>; Gayle McLaughlin <Gayle_McLaughlin@ci.richmond.ca.us>; Doria Robinson <Doria_Robinson@ci.richmond.ca.us>; Soheila Bana <Soheila_Bana@ci.richmond.ca.us>
Cc: Pamela Christian <pamela_christian@ci.richmond.ca.us>
Subject: Encroachment Applications for 8 Western Drive and 130 East Scenic Avenue, Items X.1 and X.3

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See attached letters. I urge you to deny both of these applications.

Although anyone has a right to apply for an encroachment into the public right-of-way, the City has no obligation to grant it. The real question here is whether it is good public policy for an abutting property owner to convert public property to private use, with no benefit or remuneration to the public, by fencing it off and essentially incorporating it into a private yard.

The proposed encroachments are simply a gratuitous land grab of public property by a private property owner and should be denied. There is no support at all for these in the surrounding neighborhood and community.

RMC Chapter 12.30 indicates that encroachments are warranted only “due to special circumstances” (12.30.190(A)(1) (G)) and “unique circumstances” (12.130.180 (a)). There are no special or unique circumstances at either address.

There should be a clear public benefit for transferring the use of public right-of-way to a private landowner. In this case, there is none.

Furthermore, neither the applications nor the notices for this encroachment are complete or correct, and they should not even be scheduled for a hearing. The required findings cannot be met.

Both applications were made long after illegal encroachments were constructed. These are not requests for permission; they are attempts to clean up egregious illegal constructions after the fact.

Tom Butt, FAIA, LEED AP BD+C



INTERACTIVE RESOURCES, INC. | Est. 1973

117 Park Place | Richmond, CA 94801

D: 510.231.7502 | O: 510.236.7435 | F: 510.232.5325 | M: 510.220.1577

E: tom.butt@intres.com | W: www.intres.com

Tom Butt

235 East Scenic Avenue
Richmond CA 94801

February 17, 2023

Mayor Eduardo Martinez and Members of the City Council
450 Civic Center Plaza
Richmond CA 94804

Subject: Agenda Item X.3 - Encroachment Permit Application for 8 Western Drive

Dear Mayor Martinez and Members of the City Council:

Although anyone has a right to apply for an encroachment into the public right-of-way, the City has no obligation to grant it. The real question here is whether it is good public policy for an abutting property owner to convert public property to private use, with no benefit or remuneration to the public, by fencing it off and essentially incorporating it into a private yard.

The proposed encroachment is simply a gratuitous land grab of public property by a private property owner and should be denied. There is no support at all for this in the surrounding neighborhood and community.

RMC Chapter 12.30 indicates that encroachments are warranted only “due to special circumstances” (12.30.190(A)(1) (G)) and “unique circumstances” (12.130.180 (a)). There are no special or unique circumstances at 8 Western Drive.

There should be a clear public benefit for transferring the use of public right-of-way to a private landowner. In this case, there is none.

Furthermore, neither the application nor the notice for this encroachment is complete or correct, and it should not even be scheduled for a hearing. The required findings cannot be met.

This application was made long after illegal encroachments were constructed. It is not a request for permission; it is an attempt to clean up an egregious illegal construction after the fact.

History

Ever since at least 2007, the owner of this property has been trying to establish an illegal private parking space within the public right-of-way and construct illegal encroaching structures to enclose it and to expand the private front yard.



Figure 1 – Google Earth image from November 2007. The then owner of 8 Western had converted part of the street ROW into a parking area. There is a “No Parking Any Time” sign just to the left and behind the blue car. 8 Western is behind the car.



Figure 2 – Google earth image from May 2011. The then owner of 8 Western had built several illegal accessory structures, which you can see to the right and in front of 8 Western. The “No Parking Any Time” sign is behind the VW van. The neighbors complained to the City about both the parking and the illegal construction, and Code Enforcement took action. See Richmond building Permit #11-02410 and 11- 02411 (Remove illegal structures). The City also confirmed that no parking was allowed on that portion of Western Drive and enforced the No Parking designation moving forward.



Figure 3 – Google Earth June 2014. The parking area was abandoned and a new “No Parking Any Time” sign installed by Public Works to the left. The illegal structures had been removed and as far as neighbors were concerned, the City had done its job and done it well. Mr. Zicheran and Ms. Aftel, who later obtained the illegal encroachment agreement in 2021, purchased the property in July 2013 – after the City had helped the neighbors unwind the prior illegal parking and structures. This is how the property looked when they purchased it:

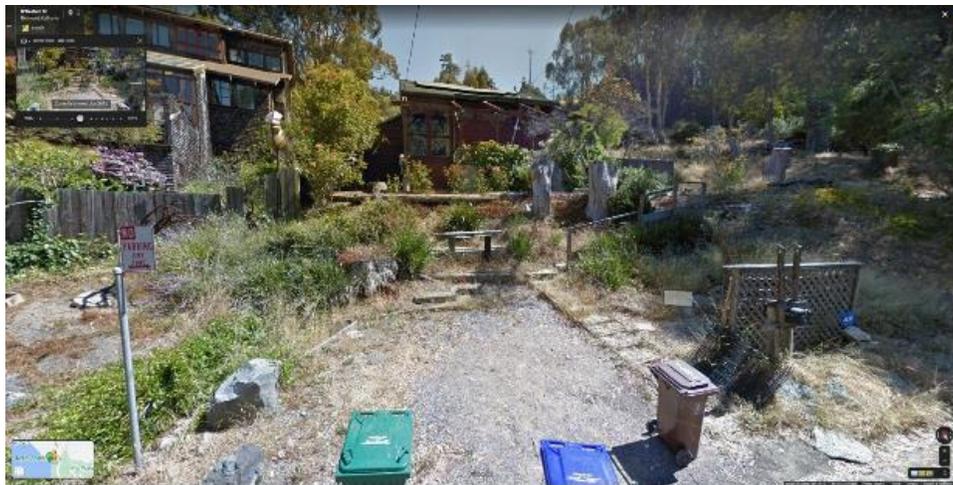


Figure 4. Google earth image June 2015. the parking area remained no longer in use and the No Parking designation was being enforced by the City.



Figure 5 – Google Earth image May 2017. The abandoned parking space had grown over and remained out of use.



Figure 6 – Google earth image from February 2018.

In February of 2018 (above), the neighbors (all of whom experienced the above transition and prior enforcement by the City) noticed a large stockade fence being built well out into the Western Drive ROW. They asked their neighbor “what’s going on”?

“I have a permit” the neighbor says.

So, they asked the City “what’s going on”? Even though they asked the question, they know what’s going on, and they know it is illegal – they’ve lived there for over 40 years. So, like last time, they call Code Enforcement. Only this time they get a different response.

This time, the City does nothing, and the neighbors are given the silent treatment by code enforcement. So, they elevate it up city staff – to the senior planner, Public Works, and even the City Manager. Again, no response. So, they call and email the mayor, who also emails city staff and asked, “What’s going on?”.

But not even the mayor of Richmond could get an answer from staff as to “What’s going on”. Instead, former Public Work Director Joe Leach met with the neighbors and told them it’s a done deal and they have no say in it.

“What about our lived experience and institutional knowledge of the last 40+ years?” they ask; “What about what the City told us and did last time this issue came up?” they ask.

Nope, says Joe Leach – that’s not important; the only thing that is important is what I think – and I say it’s fine. So, the city manager, with the blessing of the City Attorney’s Office executes a notarized document based on that and told them the same thing: “It’s a done deal. We did and there is nothing you can do about it”.

Below, is 8 Western in June 2019 – The fenced-in parking and front yard on the City right-of-way is a done deal a full two years before the “Encroachment Agreement” was recorded.



Figure 7 - 8 Western n 2019

This was the polar opposite of how the City had (competently) handled it years before. For the next TWO YEARS the neighbors complained to the City – but instead of enforcing the law, this time, City staff did everything they could to support the owner of 8 Western.

Some more insight into the history of 8 Western:

the “Encroachment Agreement” was approved by the City Attorney’s office on 7/15/21 and signed by the City Manager and notarized on 7/23/21. Below is an email sent by neighbor Clair Brown on June 28, 2021 (before any documents were executed) and a number of emails that followed.

On Mon, Jun 28, 2021, at 9:23 AM Clair Brown wrote:

Dear Director Velasco,

I am following up on my earlier email (June 2) about the public safety problem caused by the non-conforming stockade fence that encloses the public right-of-way in front of 8 Western Drive.

Please provide my neighbors and me with an update.

To summarize the situation that was documented in the June 2 email: Approximately 1400 sq ft of city property is enclosed and the non-conforming fence goes down to Western Drive so there is *no shoulder by the narrow 18' road* for pedestrians to safely walk off the street. The fence, in fact, extends 37 feet into public land, from their property line down to Western Drive, The encroachment provides private parking for two cars for the use of the owner of 8 Western in a "No Parking" zone. Keller Beach is across the street, and parents and kids are forced to walk in the street in front of 8 Western Dr, below a blind hill where the street narrows.

I am especially concerned because Ms. Whales of Planning gave out erroneous information to RPD Captain Walle, both about a shoulder being in front of the stockade fence and about homeowners having an encroachment permit.

In addition, a City engineer (name on request) told us that he took a look at the encroaching fence and sliding gate at 8 Western Drive, but was told by City Planner Whales to "back off".

The house is for sale, and potential buyers who ask about the fence and city property are told that the owner has "an invoice for the encroachment". They also describe problems about the fence as a "minor dispute caused by the neighbors". The dispute is with the City of Richmond and not with neighbors.

The City needs to require the owners to put their fence back near the property line, and restore the shoulder and city right-of-way so that people can walk safely off the narrow street. This is a public safety problem that needs to be addressed before people are physically hurt, in addition to their being scared to walk in front of 8 Western Dr.

We know that public safety is a top priority and duty for Richmond Code Enforcement and Planning, and we look forward to learning that public safety is not being ignored.

Sincerely,

Clair Brown
Professor of Economics, University of California, Berkeley

Having received no response to her June 2, 2021, or June 28, 2021, email to city staff, Ms. Brown did receive a response from the mayor – who was the only one who responded. Ms. Brown again emailed staff (still prior to the "Encroachment Agreement" being executed). Again, Ms. Brown received no reply from staff (note below she has been complaining about the illegal encroachment since 2020).

On Wed, July 7, 2021, at 5:04 PM Clair Brown wrote:

Dear Mayor Butt and Director Velasco,

Thank you Mayor Butt for providing us with the update about the fence that encroaches on the public right-of-way on 8 Western Drive and causes a public safety problem for pedestrians and cars.

We have provided documentation of the encroachment and how pedestrians are forced to walk in the narrow street on a blind hill in front of 8 Western Drive near Dornan Drive and across from popular Keller Beach. Beginning in September 2020, emails concerning the encroachment were sent to Eva Mann, Alma Causey, and Lina Velasco, who replied that the placement of the fence on public land was being investigated. We sent emails and documentation to officials in Code Enforcement, Planning, Richmond Police, and Community Development. However no further

updates were provided until July 1, 2021, when Mayor Butt sent us the email with queries to Velasco about the investigation.

We are concerned that Richmond Senior Planner Whales, who took charge of the investigation, is not taking care of the public safety problem created by the encroachment (of approximately 1400 sq ft of city property) into the public right-of-way. The history of the problem online shows that #ISU2106-0117 had a file created on 6/6/2021 with description “fence built on public land”, and pending investigation assigned to JW1 (Planning) with due date 6/16/2021. The online record shows that the case was first assigned to SHANITA HARRIS of Code Enforcement; then reassigned to ALMA CAUSEY at 10:31 am on 6/7/2021; then reassigned to JACQUELINE OKEEFE at 2:36: 52 pm on 6/7/2021 and finally reassigned to JONELYN WHALES at 2:37:00 pm on 6/7/2021. Causey is in Code Enforcement and Whales is in Planning, but we do not know where Okeefe is employed, and we do not know if both Okeefe and Whales were assigned to work on the case at the same time. However, after 6/7, automatic messages were sent to Whales on 6/14 and 6/21 about the case, and a third automatic message was sent on 6/28 and 7/5 to Whales with a cc to Velasco. The due date of 6/16/2021 has been ignored and is long past with the public safety problem being ignored. We fear that this is an accident waiting to happen.

We can provide the previous emails containing documentation that were sent to the Richmond officials, if helpful.

Thank you for your help in ensuring that the City of Richmond takes action to enforce the Ordinances and protect the public safety.

Clair Brown and Richard Katz
20 Belvedere Ave [next door to 8 Western]

On July 17, 2021, Joe Leach responded (with full knowledge that the illegal “Encroachment Agreement” had been orchestrated by staff because he was directly involved). He does not mention this.

Mr Katz,

The Engineering Division is reviewing this issue. With several staff on leave today, I’ll confirm the disposition of this subject with them early next week and provide a response by Close of Business, Wednesday, 7/21.

Cordially,

Joe Leach, PE
Public Works Director
City of Richmond
510-610-5478 ofc
emailed via digital telephonic device

Joe Leach did not follow up with Ms. Brown as he promised – instead joining the conspiracy to keep the neighbors in the dark about what staff had illegally done. Ms. Brown emailed Joe Leach again on 7/30/21, just before the illegal agreement was recorded:

Dear Director Leach,

It is now the end of July, and the encroachment of public land, enclosing the public right-of-way along 8 Western Dr, is still causing public safety problems.

As the documentation shows, the Municipal Code is not being enforced by city employees and lawmakers.

As several neighbors have emailed you, there is simply no excuse for allowing the owners of 8 Western Drive to take over public property and creating a public hazard for private gain. You stated on July 16 that you would provide a response about the disposition of this subject by Close of Business, Wednesday, 7/21.

We are still waiting for your response, and for the private front yard fence to be moved back to the property line at 8 Western.

Please Respond!!

Clair Brown [with her neighbors]
20 Belvedere Ave, Richmond, CA 94801

Finally, Joe Leach responded – telling the neighbors the City had granted an “Encroachment Agreement” based on his advice:

Ms. Brown,

Thank you for your inquiry on the status of this application. My apologies for the delayed response.

The City has reviewed the applicant’s request for an encroachment. Based upon review of the vertical and horizontal geometry of the street (i.e. clear line of sight from the intersection of Western Drive/Dornan Drive), as well as the opportunity for a pedestrian to obtain safe refuge between the fence and edge of pavement, the City has granted the property owner the encroachment permit.

Sincerely,

Joe Leach, PE
Public Works Director
City of Richmond
510-620-5478

The same day, Mayor Butt emailed Joe Leach requesting information on what the City had done:

Joe,

Thank you for responding, but I have some concerns that this particular encroachment did not comply with RMC Chapter 12.30.

Was there a written application? If so, please provide a copy (12.30-040)

Is there a written permit? If so, please provide a copy. Were there findings? Please provide a copy (12.30.050).

Is there an insurance policy (12.30.050.1.B)? Please provide a copy.
 Was there a surety bond (12.30.050.1.C)? Please provide a copy.
 Is there an indemnification (12.30.050.1.O)? Please provide a copy.
 Was the decision posted (12.30.60)? Please provide a copy.

Joe Leach did not respond to the mayor’s July 30, 2021, email. Mayor Butt again emailed him on August 15 and Aug 21 – again with no response from Joe Leach. Finally, on August 27, 2021 – 4 weeks after the request from the mayor and after multiple emails requesting a response, Leach emailed the mayor:

Mayor Butt,

My apologies for the delayed response to the questions from your 7/30 email. As I’ve completed 4 months of employment with the City of Richmond, I’m continuing to grow in my appreciation of this community and the impassioned engagement of stakeholders on a variety of issues.

Unfortunately, the Municipal Code section you cite is not applicable to the processing and issuance of Encroachment Agreements. The title of Chapter 12.30 is Video Service Provider, Utility and Special District Encroachments (added via Ord 21-08). The chapter that is normally used for Encroachment Permits as it relates to construction of facilities either owned/operated by the City or others is Chapter 12.29 – Street Opening And Pavement Restoration Regulations with the applicable application at the following link: <http://www.ci.richmond.ca.us/DocumentCenter/View/9092/EP-Application-11-12-20?bidId=>. Neither the Muni Code Ch 12.29 nor the Encroachment Permit application note a process for a permanent encroachment by a property owner (i.e. Encroachment Agreement).

On the Land Development Application provided by the Engineering Division (<http://www.ci.richmond.ca.us/DocumentCenter/View/9553/Land-Development-Application-Form-8-14-2016?bidId=>), there is a check box for Encroachment Agreement as show below:

CITY OF RICHMOND
 Engineering Services Department
 Ph: (510) 307-8091
 Fax: (510) 307-8116



450 Civic Center Plaza
 P.O. Box 4046
 Richmond, CA 94804
www.ci.richmond.ca.us

LAND DEVELOPMENT APPLICATION FORM

| APPLICATION TYPE(S) | | | |
|--|---|---|---|
| Planning Application Review <input type="checkbox"/> Initial Engineering Review <input type="checkbox"/> Lot Line Adj./Parcel Merge <input type="checkbox"/> Certificate of Compliance <input type="checkbox"/> Tentative Map <input type="checkbox"/> Preliminary Plan <input type="checkbox"/> Development Plan <input type="checkbox"/> Street Vacation | Land Development Plan Review <input type="checkbox"/> Parcel Map & Imp. Plan <input type="checkbox"/> Final Tract Map & Imp. Plan <input type="checkbox"/> Certificate of Correction <input type="checkbox"/> Construction Inspection <input type="checkbox"/> Watercourse Permit Grading <input type="checkbox"/> Plan Check – Non-Sub. | Stormwater <input type="checkbox"/> C.3 Stormwater Control Plan Review <input type="checkbox"/> Low Impact Development annual inspection <input type="checkbox"/> Low Impact Development installation/ construction inspection <input type="checkbox"/> C.6 SWPPP Monthly Inspection | Other <input type="checkbox"/> Traffic Control Plan Review <input type="checkbox"/> Letter of Map Rev./Amend. <input type="checkbox"/> Easement Dedication <input type="checkbox"/> Document Retrieval <input type="checkbox"/> Plans & Specifications <input type="checkbox"/> Pre-Application Review <input type="checkbox"/> Encroachment Agreement <input type="checkbox"/> Other: _____ |
| PROJECT INFORMATION | | | |

As well as in the p. 11 of 111 of the Master Fee Schedule: [Approved-Master-Fee-Schedule-Approved-June-2019--Effective-July-18-2019 \(richmond.ca.us\)](http://www.ci.richmond.ca.us/DocumentCenter/View/9553/Land-Development-Application-Form-8-14-2016?bidId=)

Regarding this specific application, it was originally submitted in 2017 to the Planning Department. As the request was for a fence, Planning staff approved the fence permit but was not aware of the encroachment at the time. It wasn’t until recently that Engineering staff became engaged in the process and coordinated with the property owner to execute the Encroachment Agreement, that is recorded against the property in perpetuity until the City revokes it. While the agreement indemnifies the City, insurance is required but a bond is not. I

will seek City Attorney's confirmation that it is acceptable to release both the application, agreement, and insurance information.

I understand that you have initiated a City Council agenda item to add language to Ch. 12.30 to include a notification process. I wonder if the entire Encroachment Agreement process needs to be documented as a separate section to eliminate future confusion.

Please let me know if you have additional questions on this matter.

Sincerely,

Joe Leach, PE
Public Works Director
City of Richmond
510-620-5478

The property at 8 Western Drive is located across the street from Keller's Beach, a popular part of Miller-Knox Regional Shoreline. The owners of 8 Western Drive already had off-street parking located behind the property and accessed by Belvedere Avenue, but they wanted more, and they wanted it accessed off Western Drive and restricted to their personal use.

The owners of 8 Western Drive also wanted to sell the property, but to maximize profit, they wanted to make the property more attractive by creating a private, secured parking area off Western Drive within the City right-of-way and expanding the private front yard.

With no authorization from the City, between 2017 and 2020, they built a redwood fence with a rolling gate enclosing around 1,580 square feet of the 50-foot right-of-way of Western Drive, taking up more of the right-of-way than was left for the public.

Once the project was completed and the home ready to put on the market with its new landscaped front yard entrance and private parking for two cars, all on the Western Drive street right-of-way, the owners submitted an Encroachment Application after the fact that also included a fence permit for a 6-foot fence. The height of a front yard fence in Richmond is limited to 4-feet unless approved for up to 6-feet by the Planning Department pursuant to a fence permit application.

The initial application for a fence permit was dated December 21, 2017, (PLN17-670) but was incomplete in that it did not indicate the application type (sign permit, fence permit, etc.), but the only project description is "Fence (6 ft)." It is stamped "APPROVED" by someone presumably in the Planning Department on December 17, 2021. The invoice indicates a fee of \$53.00 as paid on December 21, 2017, for "DRR – Over The Counter Fence Review." There was no mention of an encroachment into the public street right-of-way in either the application or the approval.

There was no public notice as required by 15.04. 601.060.G.

Encroachment Agreement Jonelyn: x6785
- Please call -

APPROVAL
CITY OF RICHMOND
PLANNING DIVISION
Phone: (510) 620-6700
Fax: (510) 620-6858

PLANNING APPLICATION FORM

450 Civic Center Plaza
Richmond, California 94804-1030
P.O. Box 4046
www.ci.richmond.ca.us/planning

IMPORTANT NOTICE TO APPLICANT!

Applicants are strongly encouraged to contact their neighborhood council prior to submitting an application to be reviewed or heard by the Design Review Board or the Planning Commission. Neighborhood council contact information is available at the Planning Division information counter.

APPLICATION TYPE(S)

Plan Amendment/Flare Variance Certificate of Compliance Zoning Verification Letter
 Zoning Ordinance Amendment Design Review Permit Lot Line Adjustment Over-the-Course Plan Check
 Conditional Use Permit Zoning Administrator Permit Historic Preservation Permit Other
 Administrative Use Permit Tentative Parcel Map Sign Permit
 Temporary Use Permit Tentative Tract Map Fence Permit

PROJECT INFORMATION

Site Address: 8 Western Dr. Richmond, Ca. 94801

APR#: _____

Project Description: Fence (6FT.)

PROPERTY OWNER ACKNOWLEDGEMENT & AUTHORIZATION

Property Owner's Name: Chloe Affel + Ben Richerman

Mailing Address: 8 Western Dr. Richmond, Ca. 94801

Phone: 510-574-3642 Fax: _____ Email: chloe@chlocaffel.com

I recognize that this application is subject to the California Environmental Quality Act (CEQA). The City is granting this application, after which any conditions necessary to secure that the project will not be detrimental to the public or private interests existing or existing in the neighborhood or to the City. I further certify that the information and materials submitted for this project are true and correct. In signing this application, I, as property owner, have full legal capacity to, and hereby do, authorize the filing of this application. I understand the conditions of approval and hereby agree to be bound by these conditions, subject only to the right to appeal or the hearing of this application or being the applicant.

X Ch 11/7/17
Signature Date

APPLICANT ACKNOWLEDGEMENT & AUTHORIZATION

Applicant's Name: Chloe Affel + Ben Richerman

Mailing Address: 8 Western Dr. Richmond, Ca. 94801

Phone: 510-574-3642 Fax: _____ Email: chloe@chlocaffel.com

In signing this application, I, as applicant, represent to have obtained authorization of the property owner to file this application. I agree to be bound by conditions of approval, subject only to the right to appeal or the hearing of this application or being the applicant. If this application has not been signed by the property owner, I have obtained appropriate authorization of full legal capacity to file this application and agreement to conditions of approval, subject only to the right to appeal or the hearing of this application or being the applicant.

X Ch 11/7/17
Signature Date

PLANNING DIVISION USE ONLY

File No: PLN17.670 Stage: _____ Applied Date: 11/21/17

Figure 8 - Fence permit application PLN17-670

Sometime after the 2017 fence permit application but before October 1, 2020, 6-foot wood fences were constructed enclosing the entire property, including both the Western Drive and Belvedere Avenue frontages, plus an additional 1,580 square feet of Western Drive right-of-way. The fence on the Belvedere Avenue frontage also appears to encroach into the right-of-way.



Figure 9 - Photo dated October 1, 2020, of the completed project some nine months before an encroachment application was submitted

Unfortunately, back in 2017, Planning staff did not follow the Municipal Code requirements for permitting a 6-foot front yard fence, notwithstanding the encroachment issue. The fence application and permit failed to indicate the location of the proposed 6-foot-high fence, particularly with respect to property lines. RMC 15.04.601.060.C.1 states:

Fence Location on a Lot. Fences may be erected, placed or maintained along or adjacent to a lot line or within a yard. A fence located on a lot line shall be considered as being within the yard adjacent to that lot line. The fence owner shall be responsible for properly locating all lot lines before construction of any fence.

RMC 15.04.601.060.C.2 states:

Fence Encroachment onto Public Property. No portion of any fence, including gate doors, shall encroach upon or project into any public right-of-way or other public property without the fence owner first obtaining from the City an encroachment permit.

RMC 15.04.601.060 states:

Exceptions to Residential Fence Height Regulations. The Zoning Administrator may grant an exception to the front yard fence height requirements imposed by this Section. Such exception shall be made only after public noticing of the proposed fence adjustment to side yard abutting property owners, the completion of a site visit, and administrative design review pursuant to [Article 15.04.805](#) if he/she makes all of the following findings:

- The proposed fence will not create or exacerbate a public safety hazard;

- The proposed fence is of design, materials, scale and color that are compatible and harmonious with the subject site, site improvements and other properties within the immediate vicinity; and
- Front yard fencing that prohibits access to the home shall be equipped with a doorbell device.

The Planning Department erred by:

- Not requiring information about the fence location to determine if it was on the lot line or inside the yard.
- Approving a fence that encroached significantly into the right-of-way.
- Not noticing of the proposed fence adjustment to side yard abutting property owners.

At some point after the project was completed, the encroachment into Western Drive became known, and City staff was more than happy to help the owner clean up the egregious expropriation of over $\frac{3}{4}$ of a city street.

Years after fencing in the street right-of-way, the property owners completed and submitted an "Encroachment Application Form" on May 11, 2021 (EN21-00325). It was noted "Approved" by Senior Civil Engineer Tawfic N. Halaby on July 13, 2021.



ENCROACHMENT APPLICATION FORM

Submitted Date: 5/11/21 Staff: NZ Assigned Permit Number (CRW): EN21-00325

| | |
|---|--|
| <p>Applicant: <u>Chloe Aftef & Ben Zicherman</u></p> <p><input checked="" type="checkbox"/> Property Owner <input type="checkbox"/> Contractor <input type="checkbox"/> Utility Company <input type="checkbox"/> Other</p> <p>Contact Name: <u>Chloe Aftef</u></p> <p>Address: <u>8 western dr</u> <u>Richmond, CA 94801</u></p> <p>Phone: _____ Cell: <u>5105793592</u></p> <p>Email: <u>chloe@chloeftef.com</u></p> <p>Job/Reference Number: _____</p> | <p>Contractor/Sub-Contractor: _____</p> <p>Contractor License No.: _____</p> <p>Contact Name: _____</p> <p>Address: _____</p> <p>Phone: _____ Cell: _____</p> <p>Email: _____</p> <p>Richmond Business License No.: _____</p> |
| <p>Scope of Work: <u>Encroachment permit</u></p> <p><i>Encroachment Agreement STAFF USE ONLY</i></p> <p><input checked="" type="checkbox"/> Encroachment Permit: <u>\$347</u></p> <p><input type="checkbox"/> Sewer Lateral (Sewer District: <input type="checkbox"/> Richmond <input type="checkbox"/> West County <input type="checkbox"/> Stage)</p> <p><input type="checkbox"/> Right of Entry (priorizing wells, pavement coating)</p> <p><input type="checkbox"/> Facility Placement (skidwin, POD, temporary level) <u>\$200</u></p> <p><input type="checkbox"/> Concrete (skidwin, driveway approach, curb/gutter) <u>\$155</u></p> <p><input type="checkbox"/> Plumbing: (Clearout/2-Way Back Flow Preventer) <u>\$182</u></p> <p><input checked="" type="checkbox"/> Traffic Control Plans/Construction Plans Review: <u>\$1012</u></p> <p># of Hours: <u>4</u> x \$253/hr.</p> <p><input type="checkbox"/> Major Encroachment: (additional days in ROW, in excess of 3)</p> <p># of Days: _____ x Inspector Hourly Rate: \$147/hr.</p> <p><input type="checkbox"/> Warranty Bond: (required for street cut) <u>\$600</u></p> <p><input type="checkbox"/> 2% Credit Card Processing Fee</p> <p>TOTAL: <u>\$</u></p> | <p>Property Address: <u>8 western dr richmond ca 94801</u></p> <p>Property Type for 4" Sewer Lateral: <input type="checkbox"/> Single Family <input type="checkbox"/> Multi-Family (4 units or less)</p> <p>Property Type for 6" Sewer Lateral: <input type="checkbox"/> Multi-Family (over 4 units) <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial (Refer to WRR)</p> <p>Est. Start Date: <u>5/11/21</u> # of Days Working in R-O-W: <u>1</u></p> <p>Street Cut Prohibition: Yes <input type="checkbox"/> / No <input type="checkbox"/> (See General Conditions)</p> <p>1. Is the project within the Marina Bay Area: Yes <input type="checkbox"/> / No <input type="checkbox"/> if yes, 2. Is the project within the Dood Restricted Areas: Yes <input type="checkbox"/> / No <input type="checkbox"/> if yes, 3. Additional requirements may apply. (See General Conditions)</p> <p>Please draw below or attach a site plan for the proposed work:</p> <p><i>Approved</i> <u>7/13/2021</u> <i>Tawfic M. Halaby, P.E.</i> Senior Civil Engineer</p> |

Updated 11/12/2020

BEFORE YOU DIG - CALL USA @ 1-811-800-227-2800

Figure 10 - Encroachment application

Tawfic, this looks good. Since the agreement indicates it will be recorded, you need to insert the space or the recording on top of the first page and notary blocks for signatures." A handwritten notation indicates, "Done – NZ.

Meanwhile, the abutting property owners were complaining about the fence. On June 23, 2021, there were emails from the abutting property owner to Albert Walle, and on June 24, 2021, from the abutting property owner to Albert Walle, Amanda Le Gaux, Matthew Stonebraker, Jonelyn Whales, Lina Velasco, Eva Mann, Alma Causey and Joe Leach. The abutting property owner emailed Lina Velasco on June 28, 2021, and reached out to me on July 7, 2021, with an email copied to all the previously listed individuals.

I made my first inquiry on July 16, 2021, and continued to pose questions via multiple emails on July 16, 2021, most of which went unanswered.

Despite the numerous unanswered questions and protests, the city manager summarily executed the encroachment agreement on July 23, 2021, more than a month after the abutting property owners began complaining, and years after the encroachment had been constructed, and she had it notarized. The city attorney approved it (to form).

There is no provision in the Municipal Code for a "Encroachment Agreement" and no authority for the city manager to execute one. The whole process was simply made up and completed by City staff with no authority whatsoever.

When I started making inquiries again in September 2021, instead of admitting errors, City staff circled the wagons and started doubling down on their faulty and illegal decisions. Regarding the illegal 6-foot fence on Western Drive, staff responded, "Regarding the fence permit, the planner states that the main entrance to the house is on Belvedere, therefore, that is their front yard. The approved fence permit was a 4-foot-high fence on Belvedere and side and rear yard fences up to 6 feet in height, as permitted by the Zoning Code."

First of all, the fence on the Belvedere side is 6-feet, not 4-feet. Second, the claim that Belvedere is the front of the property has no basis whatsoever.

Western Drive:

- The official address of the parcel is 8 Western Drive.
- The house number (8) is mounted on the Western Drive fence.
- Western Drive pavement is about 16-feet wide with two-way traffic.
- The mailbox and doorbell are located on Western Drive.
- The fence and gate encroaching on Western Drive enclose parking spaces for two vehicles and stairs to a porch and entry door to the house.
- Deliveries are made to this entrance.

Belvedere Avenue

- Belvedere is about 9 feet wide with a dead end.
- There is no mailbox, no house number and no doorbell
- Access to the house is via a narrow stairway that leads to the back of the house.
- Belvedere is more like an ally than a street.



Figure 12 - Google Earth image from Western Drive from June 2019



Figure 13 -- Two private gated parking spaces on fenced-in portion of Western Drive

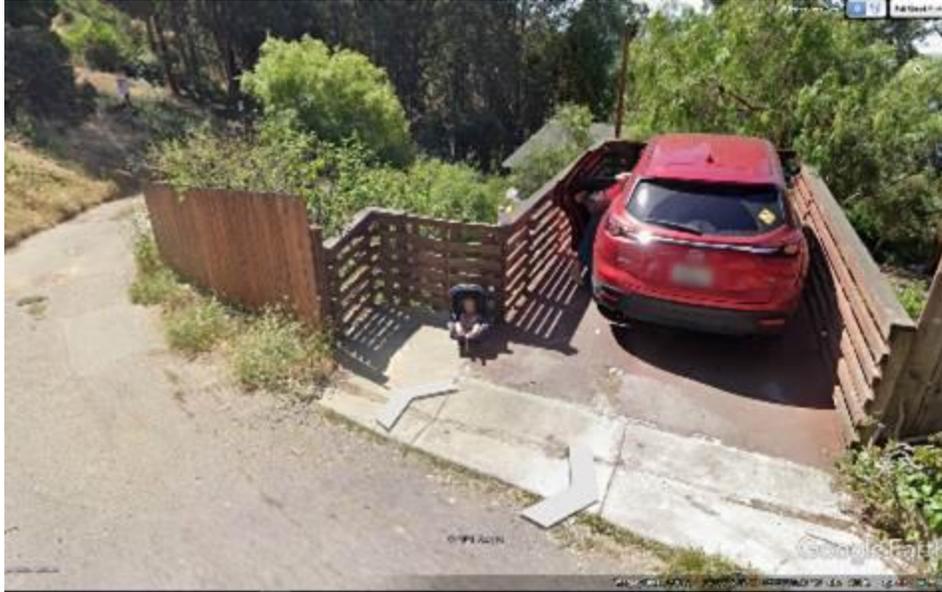


Figure 14 - Google Earth image Belvedere, June 2019

It appears that the process and content for an encroachment agreement was something simply invented, without authorization of ordinance or Charter, by City staff.

There is no authorization in ordinances or the Charter for the city manager to execute a contract other than a procurement contract for \$10,000 or less (Charter Article III – Section 7):

(Added at the election November 2, 2004) Effective with the November 2008 election, no ordinance shall be passed, no officer appointed or removed, no contract shall be awarded and no obligation incurred by the City in excess of one thousand dollars without the affirmative vote of at least four members of the Council provided that, the Council may by ordinance authorize the City Manager to enter into contracts and incur obligations on behalf of the City not in excess of ten thousand dollars.

The City Charter expressly vests any powers not otherwise vested in the City Council (Article III, Sec. 1). The Charter specifies that only the Mayor shall sign all contracts not otherwise vested or delegated (Article IIIA, Sec 2).

Article III. Sec 7 requires all contracts be ratified by 4 council members, but provides for authority for the Council to enter into contracts not to exceed \$10,000.

There is no authorization by ordinance for the city manager to enter into any contracts other than for procurement (and only if less than \$10,000): the question is not whether the value of an encroachment agreement exceeds \$10k, but rather whether the authority exists for the city manager to enter into a non-procurement contract all when it does not exist. Procurement contracts are authorized by RMC 2.52.334. ALL other contracts must be ratified by the council and signed by the mayor (pursuant to the Charter).

The city manager improperly and illegally entered into an encroachment agreement to allow a private party the exclusive use of 1,580 square feet of public street right-of-way.

The California Constitution, Article XVI, Section 6, prohibits the giving or lending public funds to any person or entity, public or private, except for public purposes, which has been interpreted to include any “thing of value.”

The city manager’s execution of an encroachment agreement to allow a private party the exclusive use of 1,580 square feet of public street right-of-way without action by the City Council was an unlawful gift of public property.

The CA Fire Code (2019 – which Richmond adopted) 503.2.1 requires all fire apparatus access roads (which includes Western Drive) shall have an unobstructed width of not less than 20 feet, exclusive of shoulders. Western Drive is about 18 feet wide at the narrowest point adjacent to 8 Western Drive, and more than half of the paved surface is on East Bay Regional Park Land.

The city manager’s execution of an encroachment agreement that constricts the roadway to less than 20 feet is a violation of the California Fire Code.

Termination of the Encroachment Agreement

After the neighbors filed a lawsuit challenging the encroachment agreement, the city attorney conceded that City staff had erred, and that the neighbors would ultimately prevail. On February 7, 2022, Dave Aleshire wrote the letter below, terminating the encroachment agreement.



February 7, 2022

Via First Class U.S. Mail

James and Anna Ortiz
8 Western Drive
Richmond, CA 94801

Chloe Aftel and Benjamin J. Zicherman
65 El Gavilan Road
Orinda, CA 94563

Re: *Encroachment Agreement between 8 Western Drive Property Owners Chloe Aftel and Benjamin J. Zicherman and the City of Richmond*

Dear All:

On July 12, 2021, the City of Richmond ("City") entered into an Encroachment Agreement authorizing certain encroachments on the City right-of-way adjacent to 8 Western Drive (APN 558-012-021-9) ("Encroachment Agreement"). An encroachment permit for the 6-foot fence that is subject to the Encroachment Agreement was applied for and granted in 2017.

Staff recently became aware that although the 2017 permit was granted under the assumption that the fence was on a side yard, the fence was located on the front of the property. Since the proposed front yard fence was higher than four feet, the initial application would have required providing notice to the neighbors and receiving approval from the City Zoning Administrator, in accordance with Richmond Municipal Code ("RMC") section 15.04.601.060. Additionally, the Zoning Administrator had the discretion to refer the fence permit application to the design review board, which would have involved a public hearing.

The City entered into the Encroachment Agreement partly in reliance on staff's analysis of materials received in the initial permit application. Staff has since learned that the review procedures for the initial permit set forth in the RMC were not followed. Additionally, the Encroachment Agreement does not capture all the property encroachments – the fence on Belvedere also encroaches into the City's right-of-way.

The City must ensure that all encroachment applications are reviewed in accordance with the appropriate procedures set forth in the RMC. That does not appear to have occurred for this Encroachment Agreement and the initial encroachment application. Additionally, there is a principal known as equitable estoppel which provides that if a permit is mistakenly or illegally issued by the City, no rights are given thereby because the public's rights cannot be voided by a public official. *Pettitt v. City of Fresno*, 34 Cal.App.3d 813 (1973)

01337.0006/764183.4 450 Civic Center Plaza, Richmond, CA 94804-1630
Telephone: (510) 620-6509 Fax: (510) 620-6518 www.ci.richmond.ca.us

Accordingly, the City must terminate the Encroachment Agreement in accordance with Section 3. The termination will be effective ninety days from the date of this letter (May 8, 2022), at which time all encroachments must be removed.

The reason for the 90-day grace period is to give you a period of time to attempt to reapply for the encroachment permit. The City has been considering a new encroachment ordinance which would provide a new public process for the granting of encroachment permits. The process would involve notice to surrounding property owners. There is a draft ordinance now under review.

If you wish to proceed with applications for the encroachments on Western and Belvedere, staff will work with you to ensure that those applications are processed in accordance with the procedures set forth in the RMC. Otherwise, you should commence removal of the encroachments.

If you have any questions feel free to contact Joe Leach, our Public Works Director, at 510-620-5478 or joe_leach@ci.richmond.ca.us.

Sincerely,



David J. Aleshire
Interim City Attorney

cc: Shasa Curl, City Manager (via email)
Joe Leach, Public Works Director (via email)
Stephanie Vollmer, Assistant City Attorney (via email)

Figure 15 - Letter terminating encroachment agreement

But Aleshire wasn't done. He wanted to create a path for the owners of 8 Western Drive to ultimately get their encroachment approved. He knew the legal basis for private property owners to encroach was murky at best, so he proposed preparing an updated encroachment ordinance, getting the City Council to adopt it, and then giving the owners of 8 Western yet another bite at legalizing their encroachment. That's where we are today.

Application Deficiencies

The encroachment application letter is dated July 6, 2022, and is addressed to Joseph Leach and is deficient in the following ways:

- The application does not describe a "unique circumstance necessitating an encroachment agreement" (12.130.180 (a)). The conditions at this property are common to all of Western Drive. No other property owner on Western Drive has enclosed public right-of-way to create a private parking space and to expand their front yard.
- The plans do not show, "vertical locations with respect to property and grade lines" (12.30.180(a)(7)).
- The site plans and survey are inaccurate in that they do not show the actual location of the Western Drive right-of-way.



Figure 16 - Overlay of GIS aerial photo showing that applicant's depiction of the Western Drive ROW is incorrect and that part of the proposed encroachment is actually on BNSF property.

Notice Deficiencies

The notice posted at the property is deficient because:

- It does not include a “description and diagram of the proposed encroachment (12.30.180.(b) (2) (B)).
- It does not include location of the public hearing (12.30.180.(b) (2) (E)).
- It does not include the method by which interested parties may acquire a copy of the application (12.30.180.(b) (2) (F)).



Figure 17 - Notice posted at 8 Western Drive

Findings and Conditions

12.3.190 requires conditions and findings that have not been met.

- The application does not include “all necessary, supporting information” (12-30-190(a)(1)(A)).
- The encroachment is not, “warranted due to special circumstances...” (12.30.190(A)(1) (G)). This property is no different than any other property abutting Western Drive.
- There is no certificate of insurance attached to the application (12.30.190 (a)(2)(I)(ii and iii)).
- Although the proposed encroachment includes “space for a four-foot sidewalk on one side” (12.30.190 (a)(2)(J)(ii)), there is no indication that it will be provided. Currently, the space is filled with soil and rocks, and the driveway portion has a steep cross slope that far exceeds the ADA limit of 2 percent.



Figure 18 - Area indicated for a 4-foot sidewalk is unpaved, blocked by rocks, and the cross slope of the driveway exceeds to ADA 2 percent maximum.

To summarize, this encroachment application is deficient in multiple respects, has no public benefit and should be rejected.

Sincerely,

Tom Butt

Tom Butt
235 East Scenic Avenue
Richmond CA 94801

February 17, 2023

Mayor Eduardo Martinez and Members of the City Council
450 Civic Center Plaza
Richmond CA 94804

Subject: Agenda Item X.1 - Encroachment Permit Application for 130 East Scenic Avenue

Dear Mayor Martinez and Members of the City Council:

Although anyone has a right to apply for an encroachment into the public right-of-way, the City has no obligation to grant it. The real question here is whether it is good public policy for an abutting property owner to convert public property to private use, with no benefit or remuneration to the public, by fencing it off and essentially incorporating it into a private yard.

The proposed encroachment is simply a gratuitous land grab of public property by a private property owner and should be denied. There is no support at all for this in the surrounding neighborhood and community.

RMC Chapter 12.30 indicates that encroachments are warranted only “due to special circumstances” (12.30.190(A)(1) (G)) and “unique circumstances (12.130.180 (a)). There are no special or unique circumstances at 130 East Scenic Avenue.

There should be a clear public benefit for transferring the use of public right-of-way to a private landowner. In this case, there is none.

Furthermore, neither the application nor the notice for this encroachment is complete or correct, and it should not even be scheduled for a hearing. The required findings cannot be met, and this application should be denied.

History

This fence was originally built in 2020 without any permits, neither an encroachment permit (RMC 12.130.80) nor a fence permit (RMC 16.04.601.060). See Figure 1.

At the direction of the City, a portion of the fence was subsequently removed, but approximately 40 feet of 6-foot fence encroaching into the public right-of-way remains to this day, along with other private improvements, including a porch, a flagstone path, a concrete retaining wall and a driveway.

RMC 2.30.030(d) states, "Any encroachment that requires but does not have a permit shall be deemed a violation of this chapter and a public nuisance, which the City may abate pursuant to any applicable provision of the law, but not limited to, this Code's Chapter 9.22."

It is unclear why the City continues to allow these illegal encroachments to remain for over two and a half years without requiring it to be removed.

Now, the property owner is trying to legalize it after the fact.



Figure 1 - Photo of fence at 130 East Scenic from April 25, 2020. This fence, under construction at the time, was red-tagged and partially removed.

Application Issues and Deficiencies

The updated Application for Encroachment dated 2/1/23 describes the purpose:

The Road in Front of our house is parallel to and above the entry path to our home. I am hoping to create a barrier between the Road and our path with this fence. I am concerned for the safety of my family and friends that use this path regularly. Currently, there is nothing protecting people who are walking on my property from a car coming off the road above crashing down into my property. The fence will be a guardrail.

Another purpose of this fence will be to create a safer space for pedestrians to walk on. There is no safe area for people to walk now unless they are on the road. This can be problematic when a car is coming. The fence would allow for a refuge area for pedestrians to step off the road without falling down the steep hill and allow cars to pass in a safe manner.

The Final purpose of this fence is create some privacy for my family. Our house is quite close to the road, and it is very easy for people to peer into our bedrooms. It would be nice to have a little separation between onlookers and our bedrooms. We also have many deer that frequent the area. Often they come into our yard and eat our roses. It would be nice to keep them out so we can enjoy our garden, and this fence would achieve that purpose.

The applicant describes the proposed fence as a guardrail, that would protect, “people who are walking on my property from a car coming off the road above crashing down into my property,” yet there is nothing in the application to show that the proposed wood fence has the structural properties required to keep an out-of-control vehicle from crashing through it. Furthermore, there is no record of a vehicle ever going off the road at East Scenic Avenue and crashing down the hill. The possibility of that is purely speculative.

The applicant describes the fence as creating a “safe space for pedestrians to walk on” and a “refuge area,” yet the area between the existing asphalt paved roadway and the proposed fence is shown as a vegetated dirt slope with tripping hazards – not exactly a functional “refuge area,” and certainly not an ADA-compliant sidewalk.

The privacy motivation is puzzling because the proposal shows the fence above 4-feet as 50% open, negating any actual privacy. Every downslope house along East Scenic Avenue has windows facing the street, but none ha erected fences to “create some privacy.” Indeed, “eyes on the street” is fundamental principal of CPTED (Crime Prevention Through Environmental design), and a fence would interfere with the applicant’s ability to see what is going on in the street and make everyone less safe.

The proposed fence would also interfere with the feeling of openness that frequent pedestrians enjoy. It is a popular walking route, and fencing off the downhill edge would create a walking route that looks more like sound walls along a freeway.

Finally, the applicant wants to keep the deer out of “our yard.” The area proposed to be fenced is not the applicant’s yard; it is a public right-of-way. The applicant can erect a deer fence on his property line without an encroachment permit.

Incomplete and Improper Application

- The application is not on, “a City Engineer-prescribed form” (12.30.050(a)).

- The application letter dated 2/2/23 is not addressed to the city engineer. It is addressed to “Whom it may concern” (12.30.180(a)).
- The application does not describe a “unique circumstance necessitating an encroachment agreement” (12.130.180 (a)). The conditions at this property are common to all of East Scenic Avenue, a narrow one-way street with steep banks on each side. The applicant discusses the challenges of digging postholes, which would not exist if the fence were erected on the property line instead of in the street right-of-way.

The area where we would like to build the fence is very steep, and narrow. These unique conditions restrict the width of clearance we can provide to 13’ from the far side of the road to the inside of the fence. Although we maintain the requested 3’ setback from the road in most cases, It is not possible to achieve at all areas due to the hillside dropping off to a steep slope. In order for our posts to be set in concrete, we need relatively flat ground to dig post

holes. If the Posts are set any further down the hill than we have proposed, it will make installation almost impossible, our post locations are limited by the current site conditions.

- The name, address and telephone number of the contractor is not listed (12.30.180 (a)(2)).
- The plans do not show, “vertical locations with respect to property and grade lines” (12.30.180(a)(7)).

Deficient Notice

The notice posted at the property is deficient because:

- It does not include the method by which interested parties may acquire a copy of the application. It only states, “call above” (12.30.180.(b) (2) (F)).



Findings and Conditions

12.3.190 requires conditions and findings that have not been met.

- The application does not include “all necessary, supporting information” (12-30-190(a)(1)(A)).
- The encroachment is not, “warranted due to special circumstances...” (12.30.190(A)(1) (G)). This property is no different than any other downslope property on East Scenic Avenue.”
- The certificate of insurance does not provide \$2,000,000 aggregate coverage (12.30.190 (a)(2)(I)(ii and iii)).
- The proposed encroachment does not include “space for a four-foot sidewalk on one side” (12.30.190 (a)(2)(J)(ii)). The table below shows the width available for a sidewalk:

| Section | Pavement Width | “sidewalk” Width | Total |
|---------|----------------|------------------|------------------------------|
| 5 | 125.75 inches | 40.25 inches | 166 Inches (13' 10") |
| 6 | 142 ¾ inches | 40. 87 inches | 183.62 inches (15' - 3 5/8") |
| 7 | 163 inches | 30 inches | 193 inches (16' 1") |

There is no sidewalk proposed in the application, and the area indicated violates the ADA requirements for sidewalks.

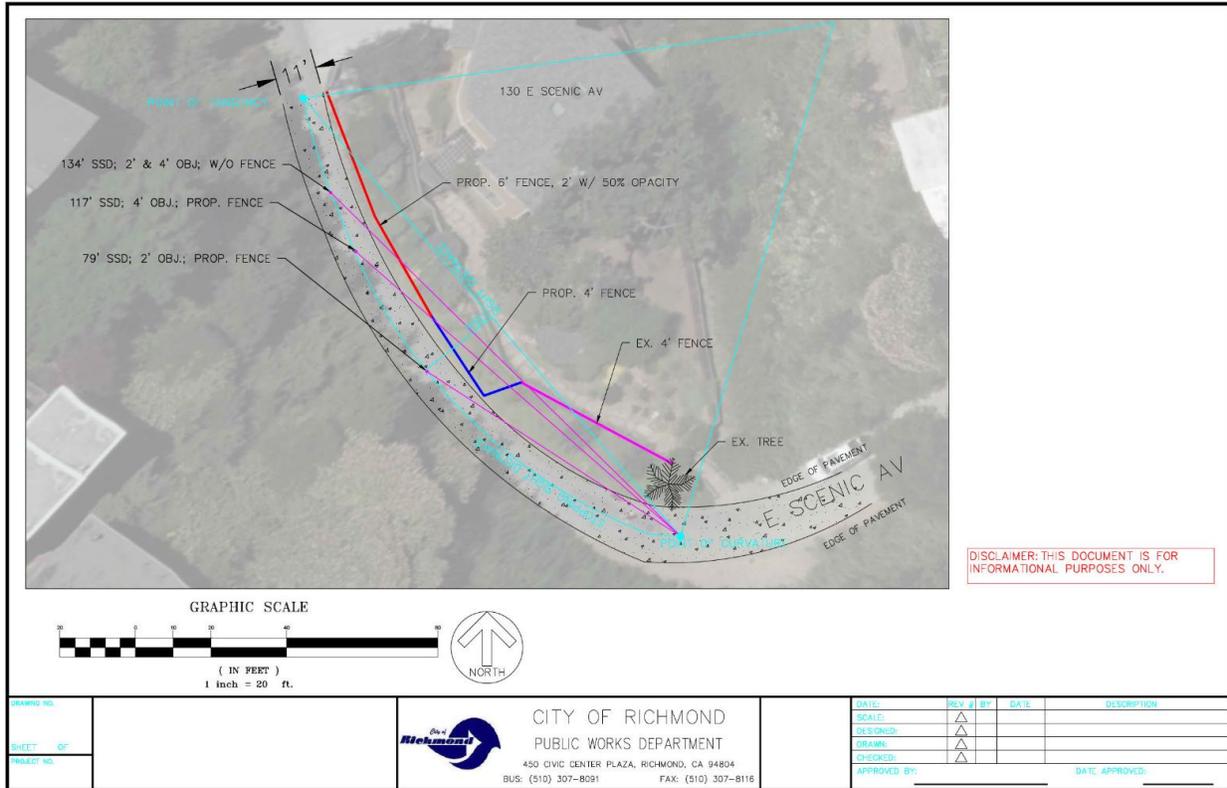


Figure 2 - Site Plan does not show property line

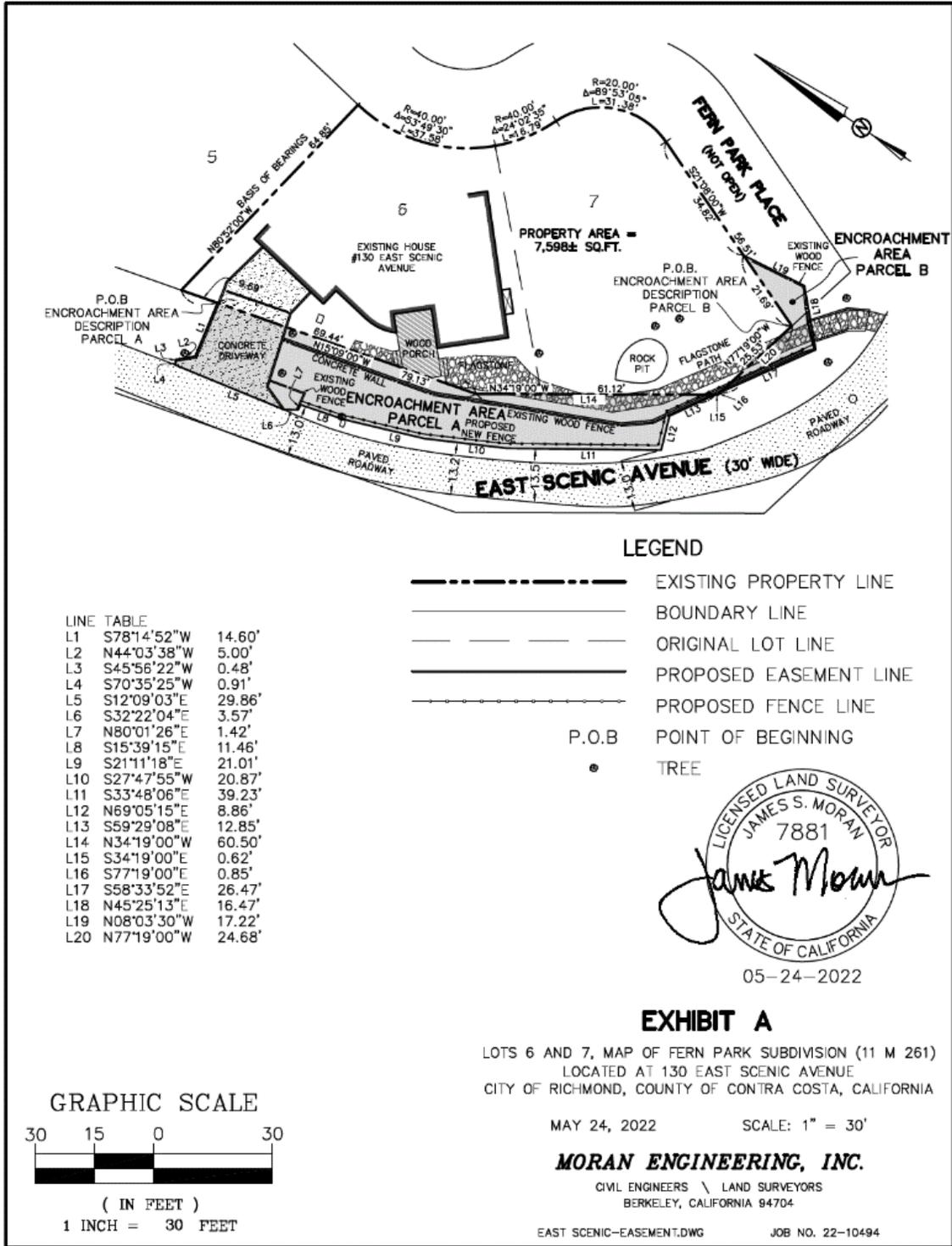


Figure 3 – Survey does not show dimensions between existing property line and proposed fence. It shows that there are numerous other existing encroachments that are not part of this application.

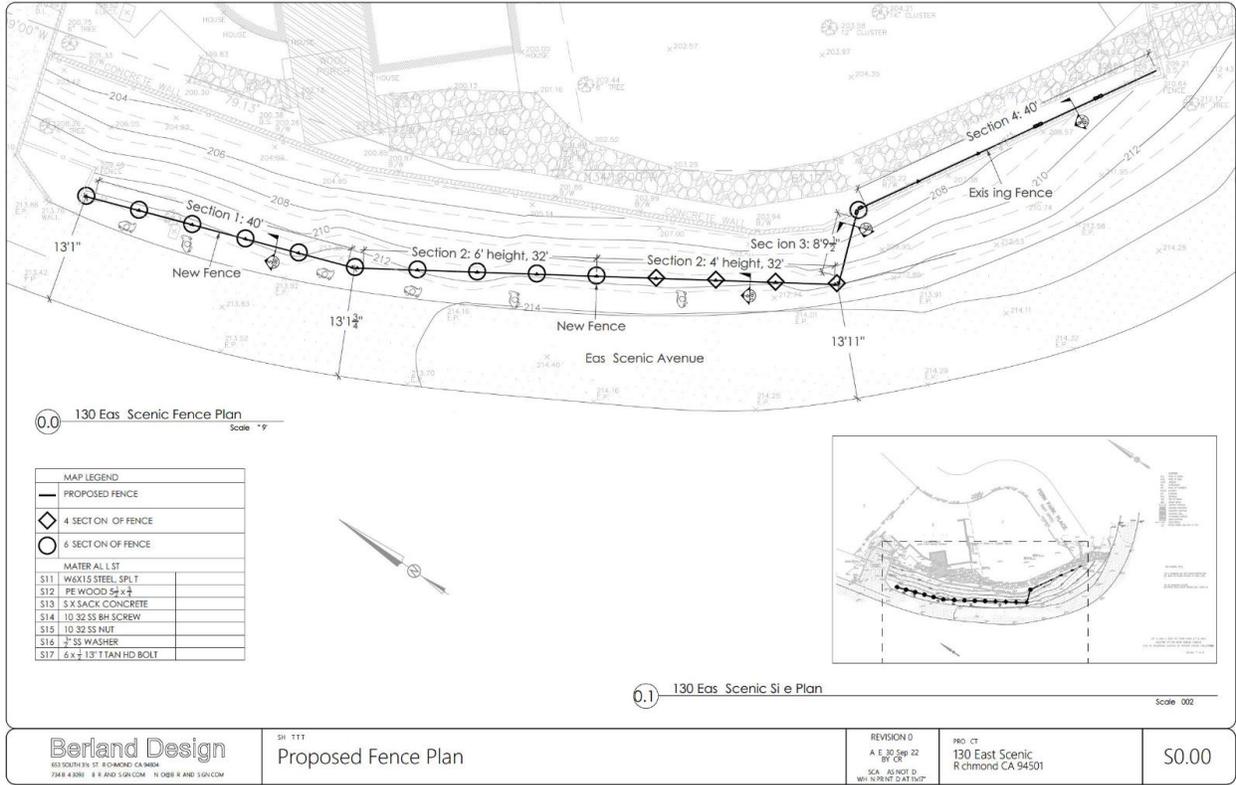


Figure 4 - Site plan does not show dimensions between existing property lines and proposed fence

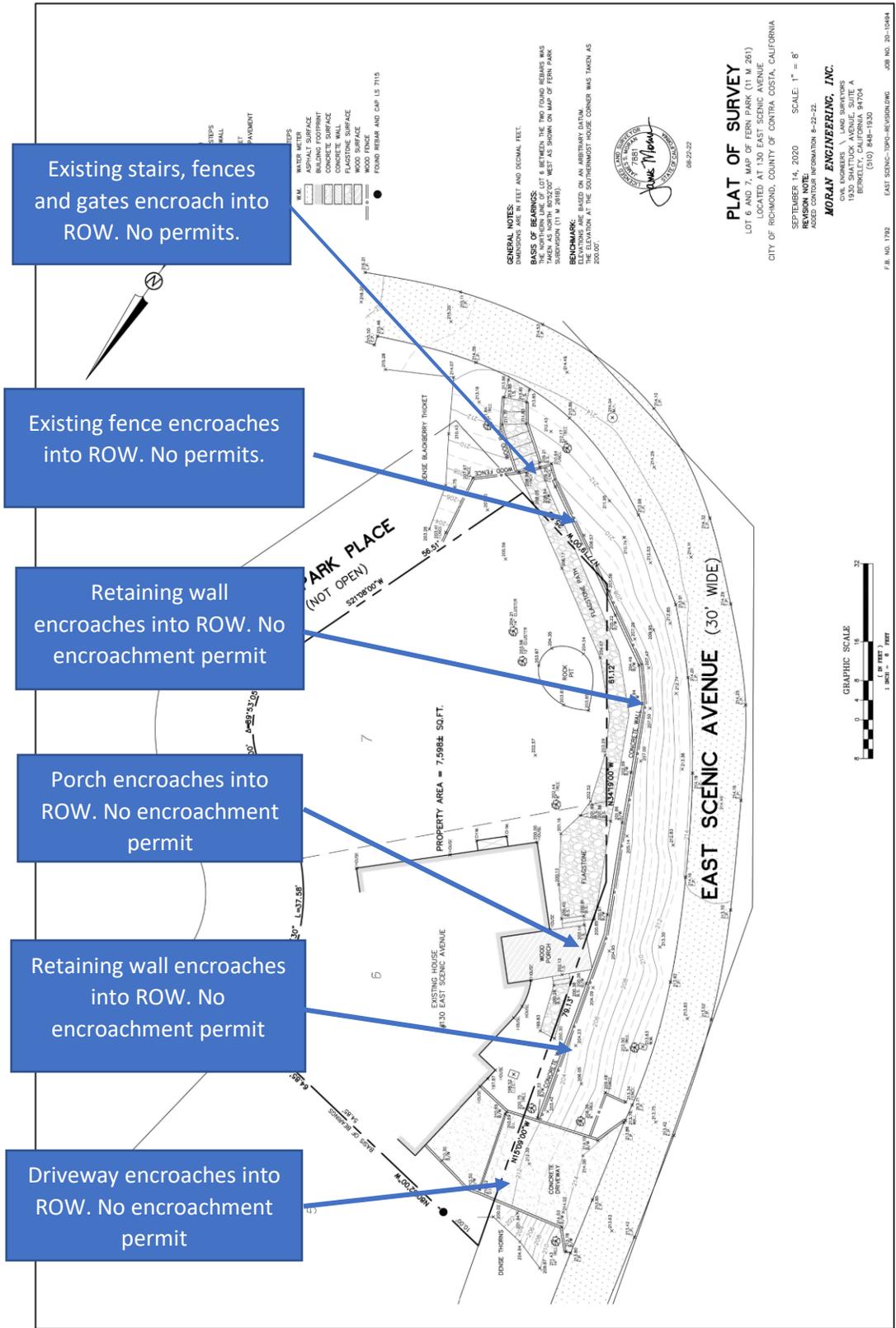


Figure 5 - Multiple existing structures at 130 east Scenic Avenue encroach into ROW without permits

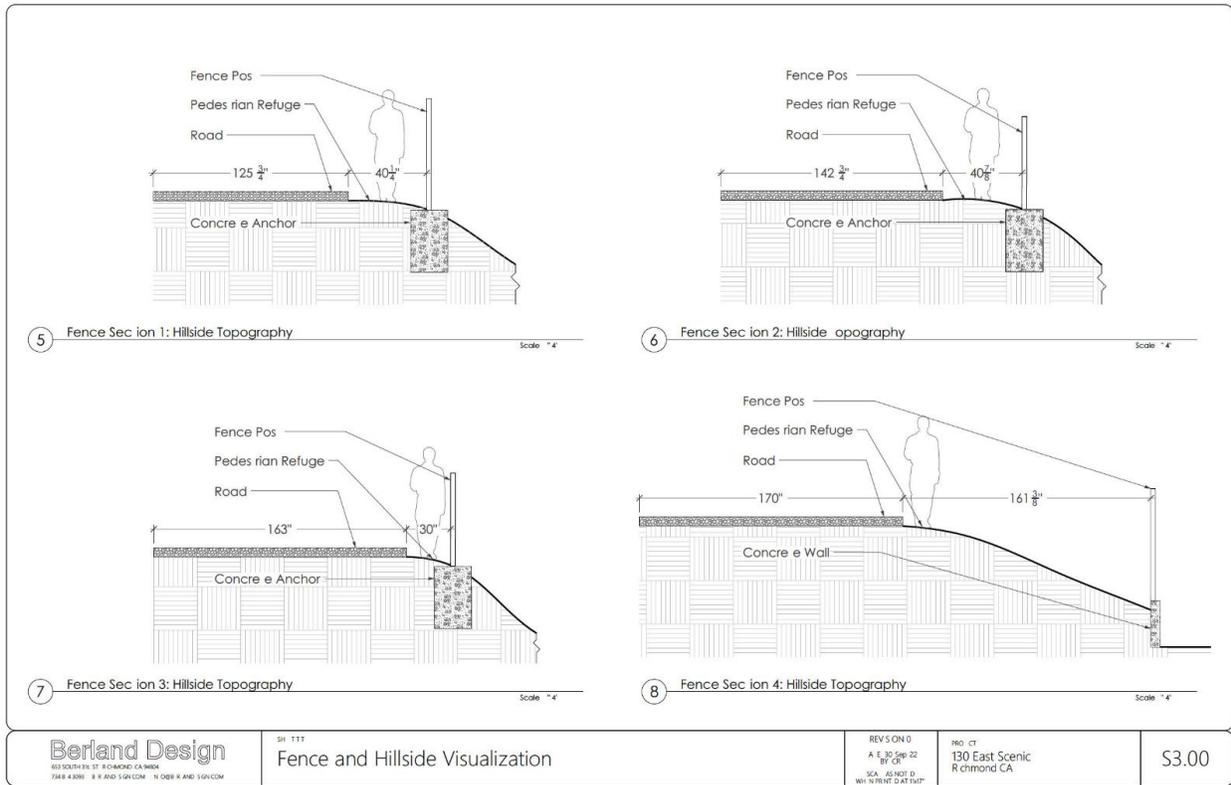


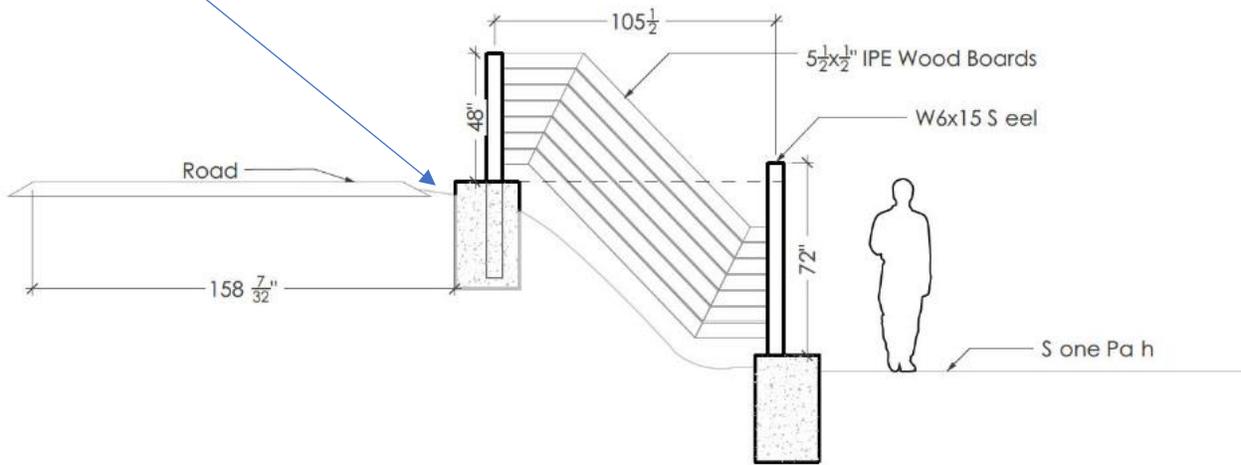
Figure 6 - Sections do not show property lines

The notice posted at the property is deficient because:

- It does not include start and completion dates (12.30.180.(b) (2) (C)).
- It does not include the location of the public hearing (12.30.180.(b) (2) (E))
- It does not include the method by which interested parties may acquire a copy of the application. It only states, “call above” (12.30.180.(b) (2) (F)).

12.30.190 Findings and Conditions, (a)(2)(I) states, “The encroachment does not obstruct (i) More than nine feet of a one-way street travel lane, which includes space for a four-foot (48-inch) sidewalk on one side;” As can be seen from the sections from the application shown below, the “sidewalk” ranges from 30 inches to 40 7/8 inches, none of which satisfy this finding and condition.

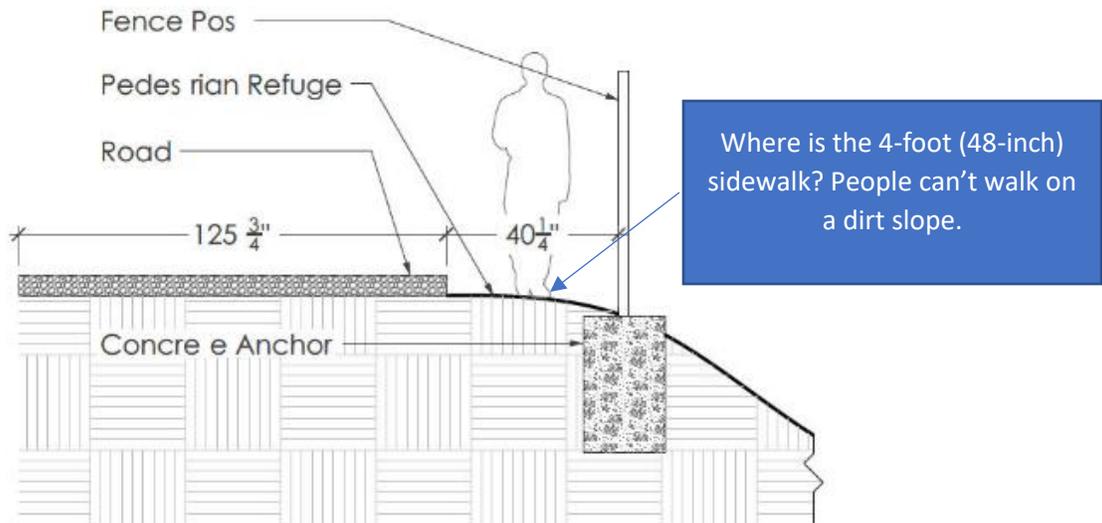
Where is the 4-foot (48-inch) sidewalk?



3 Elevation: Section 3

Scale 1/4" = 2'

Figure 7 - Section 3 from Encroachment Application

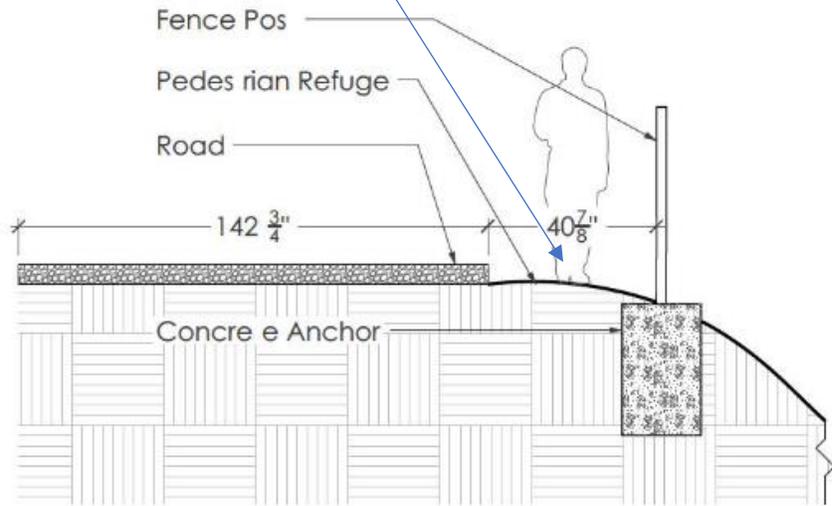


5 Fence Section 1: Hillside Topography

Scale 1" = 4'

Figure 8 - Section 5 from Encroachment Application

Where is the 4-foot (48-inch) sidewalk? People can't walk on a dirt slope.

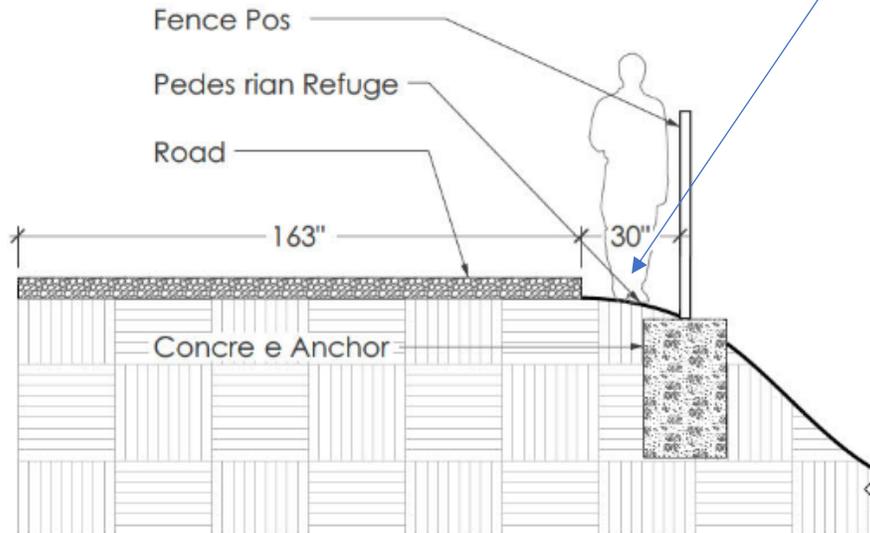


6 Fence Section 2: Hillside Topography

Scale " 4'

Figure 9 - Section 6 from Encroachment Application

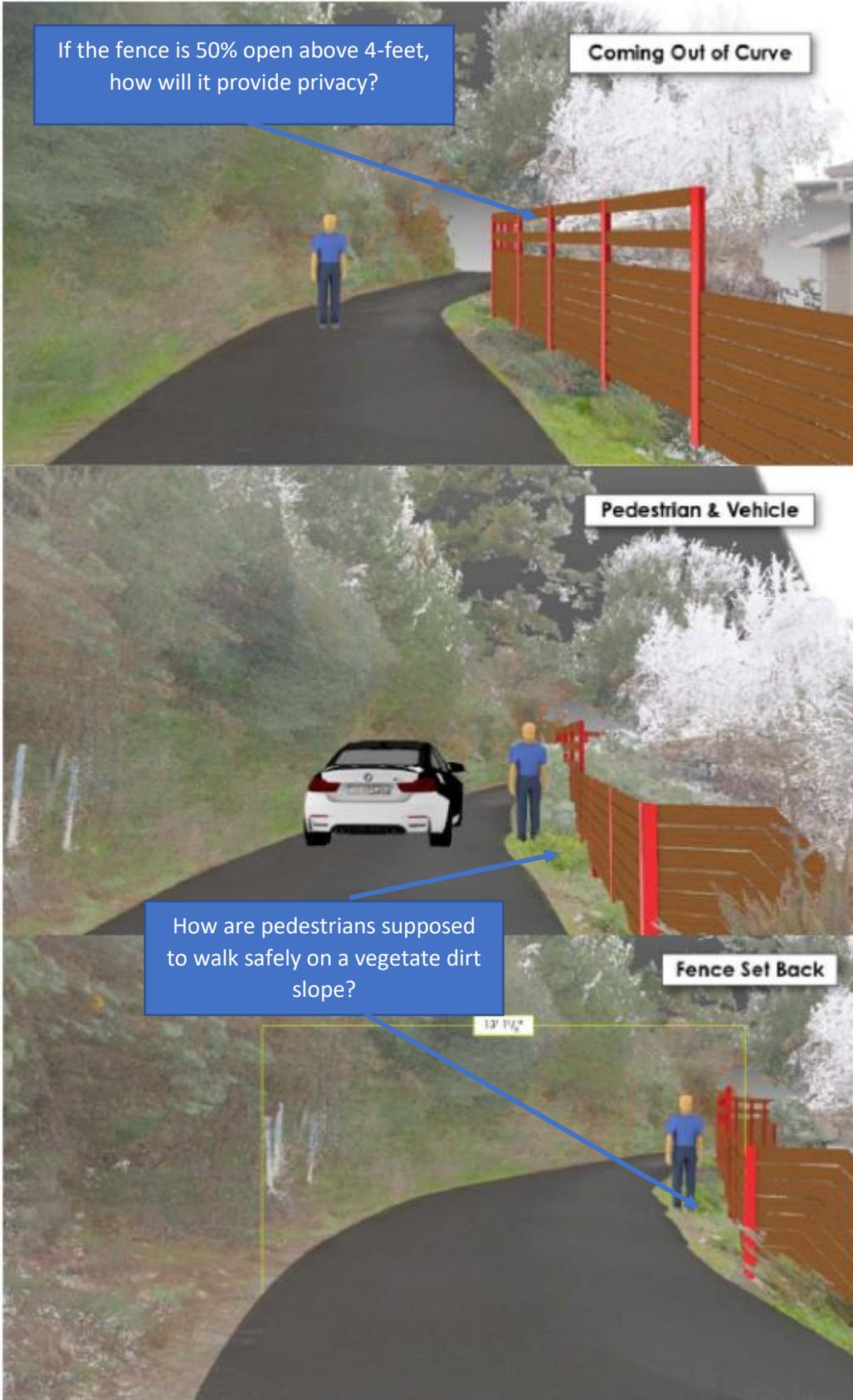
Where is the 4-foot (48-inch) sidewalk? People can't walk on a dirt slope.

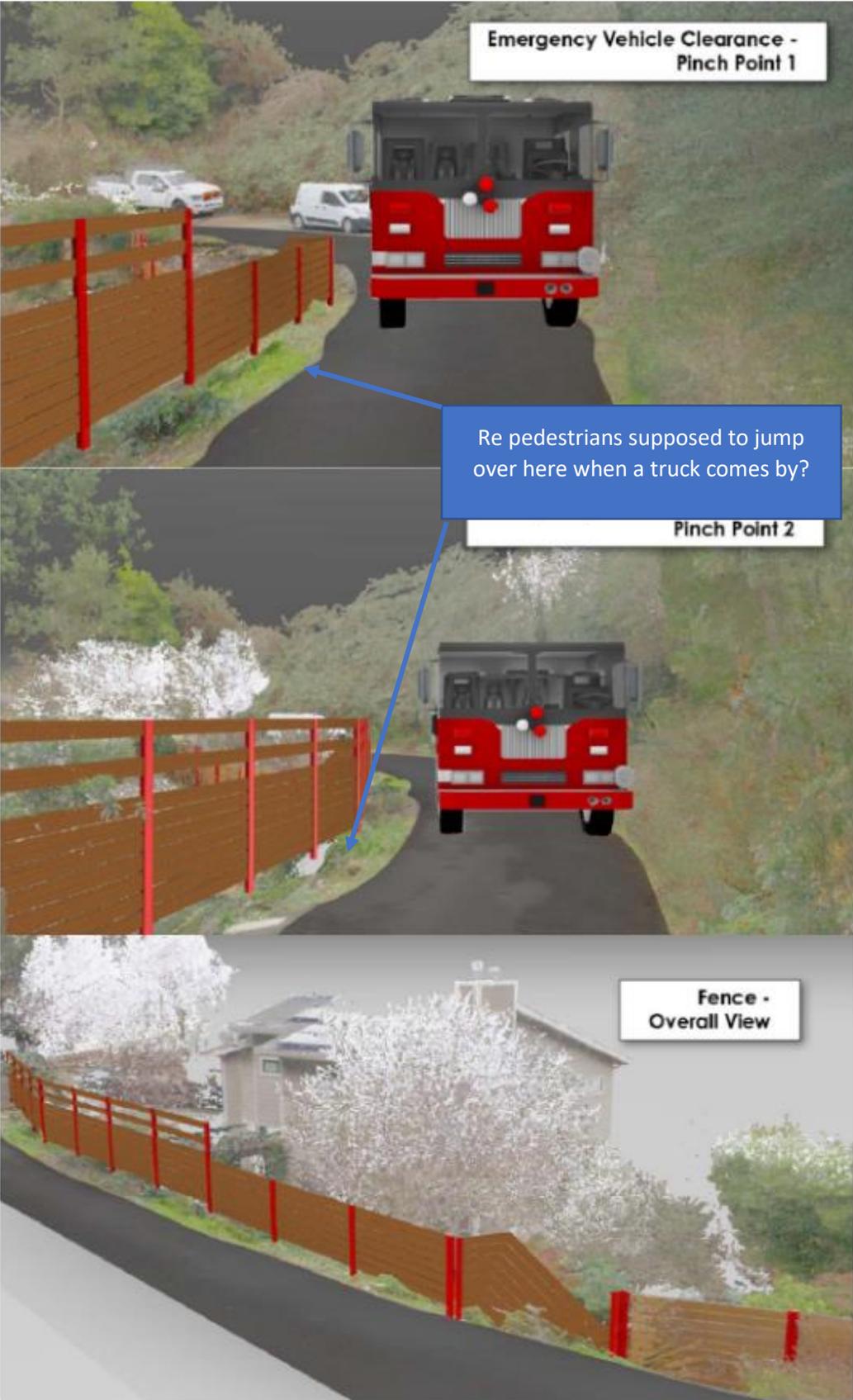


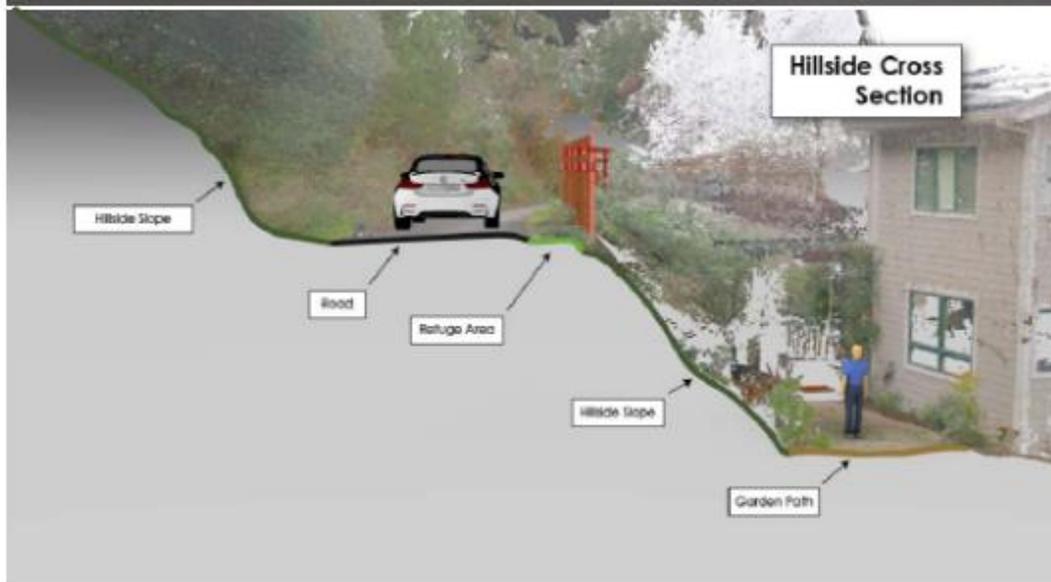
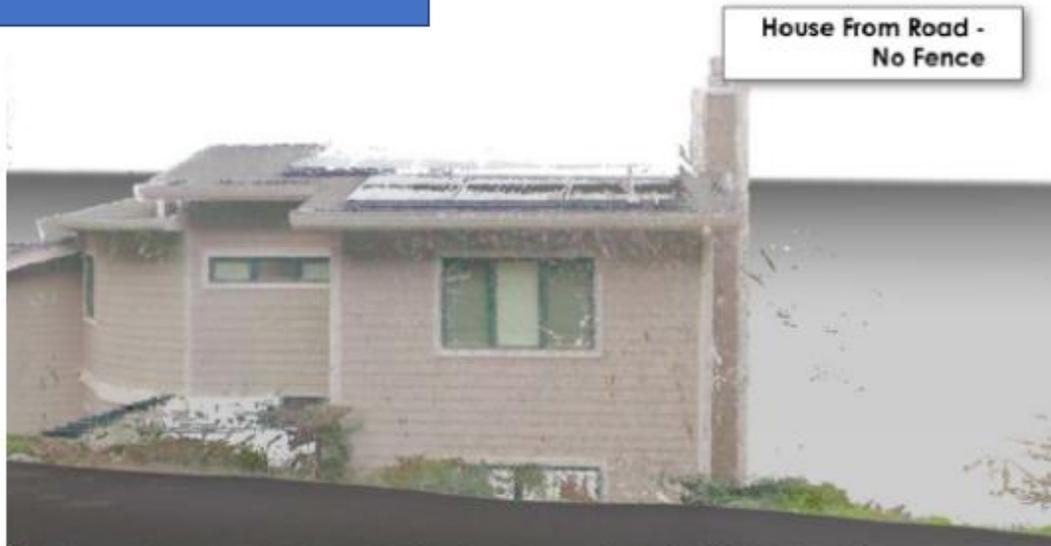
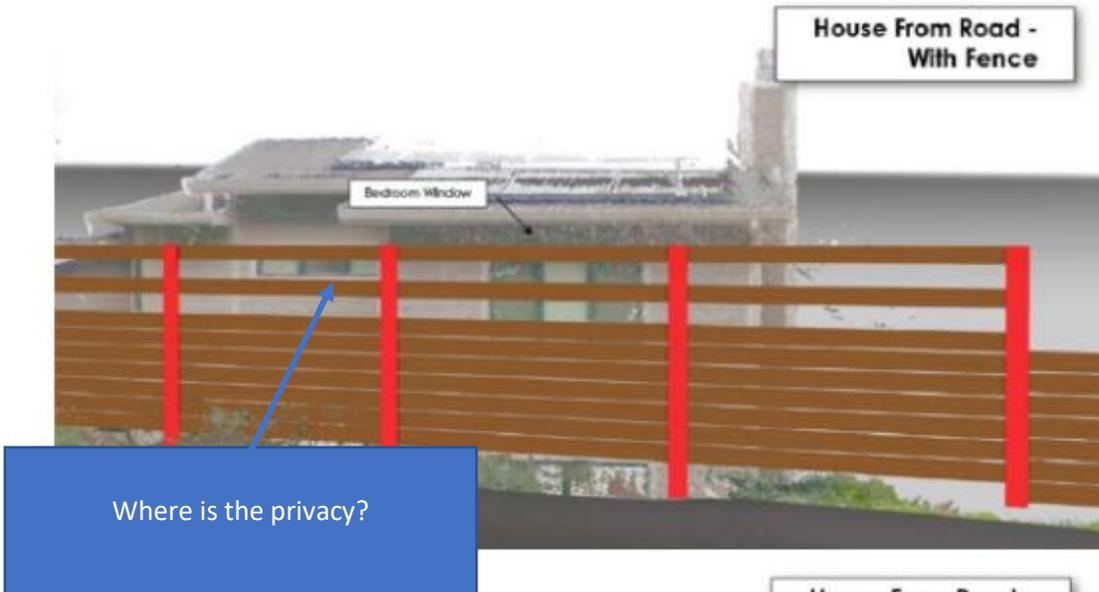
7 Fence Section 3: Hillside Topography

Scale " 4'

Figure 10 - Section 7 from Encroachment Application







To summarize, this encroachment application is deficient in multiple respects, has no public benefit and should be rejected.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Butt". The signature is written in a cursive, somewhat stylized font.

Tom Butt

From: [andi biren](#)
To: [City Clerk Dept User](#)
Subject: public comments - Open Forum
Date: Tuesday, February 21, 2023 11:52:58 AM

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My comment is in regard to the Keller Beach Sewer. My husband and I live on the bay side of Western Drive, and therefore we would be among those most negatively affected by moving the sewer line under Western Drive. We would like to see the city consider and choose a safe way to keep the sewer line below the grade of our home. We are concerned about emergency access and just plain access to our homes while construction is ongoing.

If, after due consideration and a feasibility study, that is not possible, the city should shoulder the cost of pumping the sewage up to the new sewer pipe. I say this for several reasons: 1) most of the residents on the bay side of Western Drive are on fixed incomes; 2) many of us have paid thousands of dollars for new sewer laterals DOWN to the current line; 3) this would be a reasonable expansion of the current sewer lateral grant program.

Additionally, my husband and I and our next door neighbors have paid additional thousands of dollars to pave the street in front of our homes, after years of asking the city to fix the rutted potholed Western Drive, to no avail. If the street is to be torn up for the sewer line, Richmond should not only totally repave the street (not just patch), but coordinate with PG&E to underground the utilities while the street is opened up. Furthermore, the street should be engineered so that rain water runs into the storm drains instead of people's houses.

Please consider these concerns and communicate with your constituents.

From: [Andrew Cann](#)
To: [City Clerk Dept User](#)
Subject: Regarding Keller Beach Public Hearing - Feb 21 2023
Date: Tuesday, February 14, 2023 3:55:36 PM

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

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Hello,

We would like to bring attention to the impact of the proposed sewer relocation of the Keller Beach line. It is important to understand that a sewage pumping station, wherever it is placed in our neighborhood - would be a significant environmental problem for all of us. Point Richmond is a neighborhood unlike any other in the East Bay and we hope to preserve its special qualities.

(1). When sewage flows through pipes and is pumped, air mixes with the sewage and bacterial digestion begins - creating noxious smells when vented. These noxious smells can travel long distances and permeate our entire neighborhood.

(2) Even though the electric pumps themselves will be located below grade in a vault, they have to be quite powerful to pump a lot of material up a high grade. They must operate continuously, and will emit a continuous hum 24-7.

(3) To prevent the pumps from stopping in case of an electrical outage, there must also be a gas or diesel-powered generating system located in a small building near the underground pumps. It may only be needed on rare occasions, but it still must be tested monthly or on some other schedule for 15-30 minutes. This will be annoyingly loud, and also will involve workers and trucks periodically bringing in fresh fuel to replace stale fuel, etc.

Here is a list of the some of the potential negative effects of a pumping station:

1. Odor: The waste that is collected in a modern sewer lift station can produce offensive odors. This can be a huge issue, especially in residential areas, since the smell is not pleasant and can be very disruptive.

2. Vermin: Due to the presence of waste products in the sewage lift station, it can attract vermin such as rats, cockroaches, and other pests. This can lead to pests becoming a nuisance and can potentially spread disease.

3. Noise: Sewer lift stations are equipped with pumps that can create a considerable amount of noise. This noise can be disruptive in a residential neighborhood.

4. Health Concerns: Sewer lift stations can potentially create health concerns due to the presence of hazardous materials. These hazards can be brought into the station from runoff from areas surrounding the station, and the gases that the station emits can be a potential health hazard.

5. Contamination: Depending on its location, a modern sewer lift station can potentially contaminate nearby water sources. This is due to the waste that is collected in the station, as well as the runoff from areas around the station.

Thank you for taking these comments into consideration,

Andrew Cann + Christiana von Hippel
700 Ocean Ave, Richmond, CA

From: gdperrett@aol.com
To: [City Clerk Dept User](#)
Subject: Public Comments Agenda Item # X2
Date: Tuesday, February 21, 2023 12:56:06 PM

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Under Ordinance No. 01-22 N.S., under unnumbered paragraph 12 commencing " WHEREAS the City Council finds and determines...." it states that "during the moratorium, in which the remediation solutions and alternative sewer options are being studied..." Alternative sewer options plural means more than one alternative option. If Coastland is studying one option, namely the onshoring of the sewer line, who is studying the other, or second option and what is that option?

Thank you.

Dr. H.E. Perrett

From: [joseph john](#)
To: [City Clerk Dept User; cesar@cesarzepeda.com; Nikolay George; thekeating4; cesarzepeda@ci.richmond.ca.us](#)
Subject: Keller Beach Sewer Relocation
Date: Tuesday, February 21, 2023 10:07:33 AM

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Mayor Butt and Council members,

We, the undermentioned property owners, on Ocean Ave appreciate and support the City's initiative to move/upgrade the existing decrepit sewer line to prevent a likely environmental disaster and the proposed extended the moratorium.

During one of the previous meetings on the subject, the Mayor Butt requested the then Public Work's director to initiate a proposal to amend the City ordinance to include permitting local sewer retainer tanks until the sewer line problem is resolved. This will help several vacant lot owners to proceed with applying for building permits / new construction and mitigate the home shortage in the area. This will have other advantages such as no discharge to KBSS, no impact to City streets, lower cost, water conservation and so on. Increasing the number of new residences will generate additional tax revenue for the City and bring life to the undeveloped lots with more than six decades of vacancy history. Your prompt action and advise in this matter will be highly appreciated

Thanks

Andrew Keating

Joseph John

Nikolay George

From: [Joy Tahan Ruddell](#)
To: [City Clerk Dept User](#); [Robert Armijo](#); [Cesar Zepeda](#)
Subject: Keller Beach Sewer Project - email for February 21 City Council meeting
Date: Tuesday, February 21, 2023 9:18:31 AM

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Hello Council Member Zepeda, Mr. Armijo, and the City Clerks office,

I would like to express my concern with the Keller Beach Sewer project in advance of the City Council Meeting this evening. My name is Joy Ruddell and my husband and I live on Ocean Avenue. We moved in over the summer and are dismayed at the lack of transparency and information related to this project.

We understand that something must be done with the current sewer line in the Bay. We understand the environmental impacts of the failure of that system would be catastrophic to the Bay. However, we feel that more research on the right thing to do, and the way to do it, is needed. I am listing my specific concerns below in hopes that will be addressed this evening:

1. No transparency – why have you waited so long to talk to us about this? Why was this not an issue during the election?
2. Scale, Scope and Timeline – the map provided is not clear. Is this a multi year project? Are there initial proposed dates for the project that list the impact on streets?
3. Clarify – Many homes on Ocean Ave. already have their sewer headed to the street, not to the bay. Is the entire line going to be replaced?
4. Will we need to upgrade our sewer laterals to connect to the new sewer line? And who will pay for that?
5. What measures are in place to minimize disruption to homeowners? Many of us only have street parking. How will this impact parking? Access to our homes? Access for safety (fire. etc)?
6. Will we be able to meet with someone to go over the project as it is closer to happening? Perhaps a community meeting?
7. You have not addressed what they will be doing with the existing sewer line on the beach? Removal? Abandon? How will this impact homeowners?
8. What is the Environmental and geological impact to the area?
9. Where is the money coming from? Our property taxes?

10. Which pocket parks are going to be affected? What is the impact to the pocket parks and public access to those parks?

11. At what point was the City made aware of the problem and why was that info not passed on? Why was this not included as mandatory in new homeowners disclosure packets?

12. Is this really the best answer? No way to repair the line on the coast? Why is there no feasibility study on repairing the line on the Bay?

13. Why didn't this phase of the project go out for bid? Will you go to bid before the future phases of the project?

Thank you for your time and consideration. I look forward to hearing more at the meeting tonight.

Yours,

Joy Tahan Ruddell
771 Ocean Avenue

From: [Kerala](#)
To: [City Clerk Dept User](#)
Subject: Public comments for hearing re KBSS urgency ordinance # 01-22 for Feb 21,2023
Date: Monday, February 20, 2023 7:14:01 PM

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Hello

Thank you for planning to update the sewer system.

Our house is on the ocean side of Ocean Ave. Which is lower than the proposed sewer line. Sewer will have to be pumped out of the house into the line.

Who is responsible for: 1. The installation of the pumps? 2. Any work inside or outside the house/driveway etc related to installing the sewer lateral and pumps? 3. Pump failure? 4. Any damage related to a pump failure?

Regards

Kerala Serio

From: [Melinda Mendelson](#)
To: [City Clerk Dept User](#)
Subject: Agenda item #X.2 February 21, 2023 Keller Beach Sewer Relocation Moratorium
Date: Monday, February 20, 2023 5:38:06 PM

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Honorable City Council members:

Thank you for extending the moratorium.

I am extremely concerned regarding the relocation of the sewer. It will have a severe impact on my life and the comfort of our home. If the line is moved inland we will be faced with the expense of connecting to a new line but also the destruction of our street and access to our home for a long period of time.

The City of Richmond has commissioned a Feasibility Study of the Keller Beach Sewer Relocation that as currently planned will provide incomplete and insufficient information on which to decide whether it will be best to maintain the existing sewer line or relocate the line to the interior. Each option must be thoroughly evaluated prior to making a decision on how to proceed with this multi-million dollar project. The evaluation must be made public throughout the process so that the citizens directly impacted are adequately informed.

With best regards,

Melinda Mendelson
531 Cliffside Court
Point Richmond, CA 94801
707-304-3776

From: [Norman Hantzsche](#)
To: [City Clerk Dept User](#)
Cc: [Cesar Zepeda](#); [Eric von Hippel](#); cvhippel@gmail.com; ajcann@gmail.com; [Don Mill](#); josemon65@hotmail.com; [Joshua Horne](#); [Jonathan Livingston](#); [Daniel Chavarria](#); [Robert Armijo](#); [Robert Stevens](#)
Subject: Public Comments Agenda Item #X.2
Date: Tuesday, February 21, 2023 12:24:01 PM
Attachments: [Comment letter on Ordinance 01-22.docx](#)
[Draft Lanuage - Moratorium Exception for Holding Tanks.docx](#)

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City Council,

I am submitting a proposed amendment to Section 5 of the Keller Beach Sanitary Sewer Moratorium (Ordinance No. 01-22), to include an additional exception clause allowing the temporary use of an onsite holding tank for new home construction. The basis and details for this exception clause along with proposed language are provided in the attached documents.

Briefly:

- The proposed amendment was submitted a year ago at the March 1, 2022 hearing on this matter.
- Per minutes from the March 1st hearing: *“The council requested staff to review the proposal to allow residential onsite temporary holding tanks for sewage collection and return to the council with an amendment if it was a satisfactory public safety option.”*
- On April 4, 2022 the proposal was presented in an hour-long question and answer session with City staff (Public Works, Planning, Building and Consultants) covering all technical matters; no questions went unanswered except what the next procedural steps should be.

- It was agreed at the April 4th meeting that procedural issues needing input from the City Attorney's office were to be followed-up on by Public Works staff and then a second meeting would be reconvened, within a few weeks.
- Inquiries and attempts were made throughout the rest of 2022 to help the process along, including preparation of a draft Operating Agreement for review and use by Public Works and the City Attorney's office.
- Between the departure of the former Public Works Director (Joe Leach) and the shared/hand-off of responsibility between Public Works and City Attorney's office, no further progress was made.
- The new Public Works Director was contacted by email on February 16, 2023 to bring him up to speed on this proposal, as we were just informed (February 13, 2023) we had to start again with the new City staff.
- I am aware of no outstanding questions or concerns from either Public Works or the City Attorney's office about any details and whether or not the proposal is a "satisfactory public safety option".
- Several property owners and architects in the affected Keller Beach Moratorium area have continually expressed interest and support for the proposal since it was introduced last March.

Please accept the proposed additional exception clause allowing the temporary use of an onsite holding tank as an amendment to the Keller Beach SS Moratorium, Ordinance No. 01-22.

Thank you,
Norman Hantzsche
726 Ocean Avenue
Richmond

DRAFT LANGUAGE

**Proposed Addition to Ordinance No. 01-22, Section 5. Exceptions
Moratorium Exception for Sewage Holding Tank
(to follow exception “b”)**

c. Projects ordinarily requiring a connection to the Keller Beach Sanitary Sewer for which the owner/developer submits a design for the installation of a sewage holding tank within the boundaries of the subject property for collection, containment and periodic, as needed, pump-out and hauling of all sanitary sewage wastes generated on the subject property.

Said sewage holding tank shall be approved for use on an interim basis only, until such time as permanent connection of the subject property to the public sanitary sewer is authorized.

The design of the holding tank system shall require approval and permitting under Richmond Municipal Code Chapter 12.18 – Discharge to the Wastewater Treatment System, administered by the City Manager and designated staff.

The property owner/developer shall agree to be solely responsible for all costs and expenses of installing and maintaining said holding tank, among other terms, conditions and provisions of the permit issued under Chapter 12.18.

At such time as connection to the public sewer is authorized, the holding tank shall either be: (a) formally abandoned in accordance with applicable requirements of the City Building Division and California Plumbing Code; or (b) converted for use as a rainwater cistern, in accordance with requirements of California Plumbing Code Chapter 16 – Nonpotable Rainwater Catchment Systems, and subject to review and approval by the City Building Division.

March 1, 2022

Subject: Public Comments on Agenda Item #Q.4. Proposed Extension of Ordinance No. 01-22

Mayor Butt and City Council Members:

I'm writing to propose a modification to "Section 5. Exceptions" provision of Ordinance No. 01-22, under which the City would be imposing a moratorium on building permits for properties in the Keller Beach Sanitary Sewer (KBSS) area. The proposed modification I would like you to consider is to add another exception clause that would allow property owners the option of installing an onsite holding tank for sewage collection and hauling on a temporary-interim basis, until such time as connection to the public sewer is authorized. I've attached draft Ordinance language to aid in your understanding and consideration of this proposal.

I'm a 40-year resident and local business owner in Richmond, a professional water and wastewater engineer, and presently assisting neighboring property owners (Eric and Jessie Von Hippel) who are directly impacted by the moratorium. The Von Hippels were well into the planning and design approval process for a new residence in the KBSS area before learning last fall of the City's movement toward establishing a building moratorium. At the City Council's KBSS study session in September the Von Hippels were encouraged to work directly with the Public Works Department on a pumped-pressure sewer connection (up and over Marine Street), along the lines of what is now provided for under exception clause "b" in Ordinance No. 01-22. Although technically possible, this is not a very practical solution for most all affected properties in the KBSS moratorium area. Additionally, initial communications with the Public Works staff showed some skepticism toward this approach, and no headway on scheduling a meeting with the Von Hippels to discuss their situation and proposal.

A more practical option is needed, and I believe the temporary holding tank approach would provide this. A holding tank is basically a buried concrete or fiberglass tank (e.g., 1,000 to 2,000 gallons capacity) that receives and stores sewage wastes, and is pumped out periodically by a commercial pumping service, typically every few months. Used only a temporary-interim basis, in the future the tank could be converted for continued use as a rainwater holding tank (cistern), once the moratorium is lifted and the ability to obtain a normal sewer connection is restored.

I believe holding tanks for temporary use can be permitted under the City Municipal Code Chapter 12.18 – Discharge to the Wastewater Treatment System, which is administered by the City Manager and Building Division. While Chapter 12.18 is established mainly to deal with industrial discharges, the code also explicitly covers "domestic users" (Section 12.18.040.6). The code notes that domestic users (i.e., residential occupancies) are not required to be individually permitted "... under normal circumstances..." However, the adoption of the KBSS building moratorium would clearly create non-normal circumstances, thereby making it appropriate to consider application of this section of the City Code for residential properties.

Please consider the following advantages and benefits of offering a temporary holding tank exception clause in Ordinance No. 01-22:

- **No new sewage discharge to KBSS.** There would be no new discharge of sewage to the Keller Beach Sanitary Sewer, achieving the objective of Ordinance No. 01-22.
- **No impact to City streets.** There would be no disruption of City streets or utilities for construction or ongoing operations, as there would be no work in the public right-of-way. The holding tanks, associated facilities and work would be confined to the private property/building site.
- **No additional burden on Public Works staff.** There would be no additional burden placed on Public Works staff to deal with individual property owners and awkward piping systems within the City right-of-way. It would not distract Public Works staff from the more pressing task of developing and implementing an appropriate solution for KBSS.
- **No special legal agreements.** There would be no need to create and execute special legal agreements between the City and private citizens as required for the construction and maintenance of private pressure sewer lines in City streets.
- **Valid use of Chapter 12.18.** The permitting and use of individual residential holding tanks would be a valid application of existing authority under Code Chapter 12.18 , and could proceed seamlessly under the administration of the City Manager and Building Division. Chapter 12.18 contains comprehensive provisions to ensure proper and safe design, installation, monitoring, maintenance and reporting of holding tank operations, with administration by staff experienced in the implementation of the Code.
- **Significantly lower costs.** A temporary holding tank approach would be far less costly than required for the administration, engineering, installation, operation and eventual abandonment of a short-term pressure sewer connection as envisioned under exception clause “b”.
- **Indirect water conservation benefit.** For those property owners opting for a holding tank approach, they would necessarily be inclined toward implementing high levels of water conservation to minimize wastewater generation and the associated costs for pumping/hauling. This would likely include attention to water use habits, as well as building design for water efficiency, graywater reuse and rainwater harvesting aided by the future availability of a large capacity cistern - in essence, a model of sustainable residential water management.

The impacts of the building moratorium will be significant for individuals involved with current and planned home building projects when, in fact, the real target of the moratorium is the flow of wastewater in aging sewers. Modifying the exception provisions of the moratorium to allow temporary holding tanks under Chapter 12.18 offers reasonable mitigation to affected property owners; and it does so in a way that is sensible, economical, protective and environmentally progressive. Please consider and include this recommended modification to Ordinance 01-22.

Sincerely,

Norman Hantzsche, PE
Principal/Managing Engineer

Xc: Eric and Jessie Von Hippel
Joshua Horne, Architect

From: [Rick Beal](#)
To: [City Clerk Dept User](#)
Subject: Keller Beach Sewer
Date: Tuesday, February 14, 2023 12:38:42 PM

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As a long time resident of richmond, an owner of two homes on western dr amd a retired individual living on a fixed income I am extremely concerned about the process And proposal to relocate the western drive sewer line

- **Issue 1.** With no public involvement the City has decided to move the sewer line inland and is commissioning a feasibility study of the relocation without exploring the feasibility and cost of repairing the existing sewer line.
 - a. The cost of the project won't be known until the end of the feasibility study. This project will no doubt cost tens of millions of dollars, take years to complete, require that many residents retrofit their sewer laterals, etc. (not to mention the great disruption this will cause to residents who live along the path of the proposed line) and the City will not even know the feasibility or cost of the alternative, which is repairing the existing line. Undertaking the feasibility and cost of the repair is the least the City should be doing, and this should include an analysis of what other cities with similarly old and degrading sewer lines running along its shores are doing, this is not a problem unique to Richmond!
 - b. In weighing the options, the city should not only take into account the geographical feasibility of moving the sewer line inland, but also the impact on residents (e.g., cost to individuals to update their sewer laterals, the disruption that years of construction will cause (parts of the line will run through private property, through people's yards!), given the narrow streets, how will traffic, emergency services, trash collection, etc. work while the streets are dug up to run the new pipes? Etc. etc.). Note when I acquired and improved my property 20 years ago the city made me upgrade and improve my lateral connection to the existing sewer to insure it wouldn't leak. This was done at considérable expense to me so I know the city can come up with a way to improve the existing line. Also there is virtually no way that homes like mine on the western bay side can make their sewage run uphill to the street! I doubt anyone at the city has bothered to consider this and the devaluation of all the properties like mine!

Issue 2. Without soliciting bids, the city has agreed to hire the same engineering firm that reviewed the camera footage and prepared the initial report, to undertake the feasibility of moving the line inland. This is a \$500,000 contract which, as far as we can tell, is unrelated to the review of video footage. Setting aside the conflict of interest of this engineering firm, this seems to be a violation of rules requiring that the City solicit bids for public contracts. Note this is the same

- Lack of transparency and process that the current council railed against regarding the prior city administration! The City should solicit bids for the feasibility studies to avoid waste of tax dollars.
- **Issue 3.** The City has provided no plan for dealing with the costs of any of this. It will be tens of millions of dollars!
- **Issue 4.** The City has done a terrible job of running a transparent process and keeping residents informed; there was no community outreach until after the decision was made. The first I had any inkling of something happening was when surveyors turned up in my driveway just a few weeks ago!!!
- **Issue 5.** Pump stations, with a constant humming and noxious gases will need to be installed in several pocket parks along the proposed new path.

--

Rick Beal 415.902.7017

From: [Rodrick Satre](#)
To: [City Clerk Dept User](#)
Cc: kbsewerresidents@gmail.com; [Philip Rosenthal](#)
Subject: Agenda Item X.2 Keller Beach Sewer Line moratorium and alternatives
Date: Tuesday, February 21, 2023 11:41:33 AM
Attachments: [image.png](#)

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Please distribute to staff and the City Council as related to public comment item X.2 set for this evening's agenda

The staff report claims that a replacement of the 63 year old sewer line would not be allowed environmental permits for shoreline replacement. That statement is contradicted based on similar projects that were approved by Bay Coastal Development Commission and the United States Environmental Protection Agency (US EPA) under federal law as found below

Eligibility for Categorical Exclusion

This project is eligible for a categorical exclusion under 40 CFR § 6.204(a)(1)(ii), which requires that projects be:

“Actions relating to existing infrastructure systems (such as sewer systems; drinking water supply systems; and stormwater systems, including combined sewer overflow systems) that involve minor upgrading, or minor expansion of system capacity or rehabilitation (including functional replacement) of the existing system and system components (such as the sewer collection network and treatment system; the system to collect, treat, store and distribute drinking water; and stormwater systems, including

[-] adjacent to or on the same property as adjacent facilities.”

in the present case, the alternative that should be studied is "functional replacement of the existing system and system components.

Regards,
Rodrick I Satre, REA

From: [Rodrick Satre](#)
To: [Robert Armijo](#)
Cc: [Cesar Zepeda](#); [City Clerk Dept User](#); [Philip Rosenthal](#)
Subject: KELLER-BEACH SEWER LINE
Date: Tuesday, February 14, 2023 9:04:31 AM

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Robert,

I'm writing to you with a suggested third option for the choices of what to pursue in updating the sewer main that is now located in the shallow shore area in point Richmond; forgo repairs to the existing one and install a new line also along the shoreline but slightly inbound of the existing system. Over the last 60+ years the shoreline has receded and there is ample room to install a new, updated materials line inbound of the existing line.

Laterals can be connected to the system and both terminal systems would be in play until all lines are in place.

This option is bound to be less complicated than installing a new, mile long system in the footprints of Ocean and Western Drive etc and connections would be reduced to only Bayside homes plus the mains that flow to current line found near the low tide line.

Relative to tearing up city streets and causing tons more lateral connections, this could be done much faster and avoid the required lift stations and power drops a street install would require.

As soon as this parallel line was operational, new connections that are blocked could connect allowing residential projects that are planned to move forward

Regards,
Rodrick Satre

Sent from my Boost Samsung Galaxy A32 5G
Get [Outlook for Android](#)

From: [Simon Winer](#)
To: [City Clerk Dept User](#)
Cc: [Cesar Zepeda](#)
Subject: 1) Public Comments Agenda Item # X.2 Sewer Moratorium. City Council meeting 2/21/23
Date: Tuesday, February 21, 2023 12:23:21 PM

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X.2 Keller Beach Sanitary Sewer Temporary (45-day) Urgency Ordinance. Comments for Sewer Moratorium Agenda item X.2. City Council Meeting 2/21/23

Dear City of Richmond and Counselor Zepeda,

Claire and I live at 360 Western. We would like to make the following comments with regard to extending the existing sewer connection moratorium:

- The moratorium on new connections to the Keller Beach sewer line should be continued until such time as that line is repaired or an alternative line is constructed.
- Raw sewage cannot be released to the Bay, this problem is only exacerbated by additional new connections to the sewer, as Baykeeper has pointed out.
- If the moratorium is not extended then the City will just start granting building permits and they will never undertake to build a leakproof sewer.
- Baykeeper will successfully sue the City and then we will have to do it anyway. What not save the cost of all that litigation by doing things right (for a change?)

Thanks for your work on this important matter.

Best,

Simon Winer and Claire Arbour

510 830 9574

From: [Simon Winer](#)
To: [City Clerk Dept User](#)
Subject: Fwd: Comments for Keller Beach Sewer Relocation Zoom meeting 2/21/23
Date: Tuesday, February 21, 2023 12:29:57 PM

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----- Forwarded message -----

From: **Simon Winer** <simonwiner@gmail.com>
Date: Tue, Feb 21, 2023 at 11:55 AM
Subject: Comments for Keller Beach Sewer Relocation Zoom meeting 2/21/23
To: <cityclerkdept@ci.richmond.ca.us>, <cesar_zepeda@ci.richmond.ca.us>

cityclerkdept@ci.richmond.ca.us

cesar_zepeda@ci.richmond.ca.us

[Comments for Keller Beach Sewer Relocation Zoom meeting 2/21/23](#)

Dear City of Richmond and City Councillor Zepeda,

Claire and I live at 360 Western. We would like to make the following comments with regard to the proposed sanitary sewer project:

- The proposed route along Western is the most complicated option
- Western has many hills and valleys that necessitate the pumping of sewage along the proposed route.
- Sewer lines need venting, how is this going to be achieved along this route without significant odor nuisance being created? The vents at the low points will create the most noxious gasses, are they going to be abated with activated carbon?
- If the City imposes a new sewer route, surely the whole cost of the project should be borne by the City? The City proposes that the downslope houses pump to the new sewer line. This cost will be about \$20,000 per house for the pump and a new lateral. Surely the residences should not shoulder that cost as the City proposes to impose that new route?
- What happened during periods of power outage to the downslope houses? Their systems my overflow?
- I'm not convinced that using the old route is impossible? Refurbishing the existing line via sleeving or some other method should be fully evaluated as that route provides the least

problems and cost. I know here are offsets and dips but those could be repaired locally.

- Why has there been such a long lag between the notification from Baykeeper about that sewer line and the city doing something about it?
- The City did grant some building permits within the catchment basin after notification from Baykeeper. Is this fair? Other building applications are now on hold until the moratorium is lifted. Surely the City needs to rescind the approved permits?
- What happens to those waiting or planning development within this sewer watershed? Are they on hold until the new line comes online?
- Does the existing treatment plant on Canal have the capacity to handle future new connections as it is already causing Public Nuisance for odor.

Thanks for your work on this important matter.

Best,

Simon Winer and Claire Arbour

510 830 9574

From: [Vivien Feyer](#)
To: [City Clerk Dept User](#)
Cc: [Vivien Feyer](#); [Cesar Zepeda](#)
Subject: Public Comments – Open Forum. September 21 2023
Date: Tuesday, February 21, 2023 11:08:59 AM

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RICHMOND CITY COUNCIL OPEN FORUM:

I'd like to add my voice to the many who are coming to you with concerns about the failing Keller Beach Sewer Line - and the City's decision making process.

I raise two questions:

First, as I understand it, *the City committed to conducting an impartial analysis of the repair, **RECONSTRUCTION**, or replacement of this old and failing line.*

The discussion - and the investment of significant resources - has somehow moved to the consideration of ONLY two alternatives, presented by ONE engineering company - essentially either a simple repair or a complete relocation.

Have we already made commitments that force us to choose between these two options, both clearly poor ones?

The best approach may be **neither** of these, but rather the careful step by step RECONSTRUCTION of at least parts of the existing line, with state of the art materials and techniques, and full attention to the sensitive environment.

What is being done in other locales with similar challenges?

Can this option be fully investigated before leaping into what may be a poor decision?

Secondly, as we weigh the advantages and disadvantages of each possible approach, it seems important to remember that this process will take many years.

How will the faulty pipeline that is in use during that time be maintained and repaired - or not?

How will that cost - in terms of both money and environment - figure into the larger equation?

It would seem reasonable to keep this in mind - and to come up with a watertight plan that assures as much protection as possible from leakage and spills over the next few years.

Might we consider plans that would include this as part of the larger process - and perhaps begin with reconstruction now in the faultiest places?

Thank you for giving these questions serious thought before moving forward.

Vivien Feyer, Richmond, California

From: [Tom Piazza](#)
To: [City Clerk Dept User](#)
Subject: Encroachment Permit for 8 Western
Date: Tuesday, February 14, 2023 4:15:52 PM

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Re: Encroachment Permit for 8 Western

Dear Council Members:

This saga of the Encroachment reminds me of the situation in developing countries, where people routinely construct things without permits, expecting that eventually they will receive an amnesty. Has Richmond now sunk to that level?

Certain facts are indisputable:

- No permit was ever obtained for the construction of that fence on public land.
- It interferes with walkers and is potentially dangerous.
- Granting a permit now will set a precedent for others to exploit later,.

Although we can all sympathize with the current owners, they should seek recourse from the sellers who misrepresented the boundaries of the property and the lack of permits. It is not acceptable to present an illegal encroachment as a fait accompli and expect that everyone will simply waive any legitimate concerns. I hope that the Council will act to preserve the integrity of the permitting process.

Sincerely yours,

Thomas Piazza
55 Crest Ave.
Richmond

From: [Cordell Hindler](#)
To: [City Clerk Dept User](#)
Subject: public comments- Y.1 Budget Session
Date: Friday, February 17, 2023 12:27:21 PM

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Good Evening Mayor Martinez, Council Members and Staff,

I Really Appreciate the Hard Work That Our Departments have Done to Provide Services to our Community

Sincerely
Cordell

From: [Cordell Hindler](#)
To: [City Clerk Dept User](#)
Subject: Public Comments Y.2 Budget Session
Date: Friday, February 17, 2023 12:40:42 PM

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Hello Mayor Martinez, Council Members and Staff,

The Community Services and Other Departments have Done an Outstanding Job on The Presentations

Sincerely
Cordell

From: [Cordell Hindler](#)
To: [City Clerk Dept User](#)
Subject: Public Comments Z.3 New Business
Date: Friday, February 17, 2023 12:45:55 PM

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Hello Mayor Martinez, Council Members and Staff,

Let the Record Reflect That It was My Idea to Reinstate the Finance Committee

So I am asking that the Council to Approve the Creation of the Finance Committee

Sincerely
Cordell